

**NIUE LAWS**

**TAU FAKATUFONO-TOHI A NIUE**

**LEGISLATION AS AT 31 DECEMBER 2019**

**VOLUME 2  
TOHI 2**

**STATUTES D-M**

Government of Niue  
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## EDITORIAL NOTE

The *Niue Legislation 2019* was prepared under the Reprint of Statutes Act 1991 as a statement of the legislation of Niue as at 31 December 2019. This is a four volume collection:

Volumes 1, 2 and 3 presents the consolidated statutes.

Volume 4 presents the consolidated subsidiary legislation.

The four volumes are complemented by a volume with the Constitution and related materials, and by a booklet of Legislation Tables as at 31 December 2019.

The six books supersede the *Niue Laws 2006* and the two reprints of 2007 – the Criminal Law Code and the Family Law Code.

Exceptionally, some legislation has not been reproduced in the four volumes of this reprint. Where that is the case, the text is annotated at the appropriate place. The prime examples of omissions are Acts which deal with treaty arrangements. In such cases, the texts are not of everyday use to the operation of the legal system and are readily available for public access on the internet. Other examples of omissions are the substantial bodies of law which deal in detail with particular areas of administration.



# DEATHS BY ACCIDENTS COMPENSATION ACT 1952

1952/35 (NZ) – 1 January 1953

1	Short title		PART 2
2	Interpretation		APPORTIONMENT OF DAMAGES
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		18	Considerations to be taken into account
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		20	[Spent]
		21-22	[Repealed]
			PART 3
		23	[Repealed]

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## To consolidate and amend certain enactments relating to actions for damages on behalf of the families of persons killed by accident

### 1 Short title

This is the Deaths by Accidents Compensation Act 1952.

### 2 Interpretation

(1) In this Act –

“child”, in relation to any deceased person, means a son, daughter, grandson, granddaughter, stepson, or stepdaughter of the deceased person;

“dependant”, in relation to any deceased person, means any wife, husband, parent, or child of that person who has suffered injury as a result of the death of the deceased person or who might reasonably have expected to enjoy some actual pecuniary benefit if the deceased person had not died, whether or not the wife, husband, parent, or child was either wholly or partially dependent upon the deceased person before his death;

“parent”, in relation to any deceased person, means a father, mother, grandfather, grandmother, stepfather, or stepmother of the deceased person;

“wife”, in relation to any deceased person, means the person who is his wife at his death; and includes every other person who has been his wife and is maintained or entitled to be maintained by him either wholly or partly at the time of his death or would have been so maintained or entitled but for the incapacity due to the accident from which his death resulted.

(2) For the purposes of this Act, in deducing any relationship which is included within the meaning of “parent” and “child” any illegitimate person and any person legally adopted outside Niue shall be treated as being, or as having been, the legitimate offspring of his mother and reputed father or, as the case may be, his adopters.

**3 Act to bind the Crown**

This Act shall bind the Crown.

PART 1

ACTIONS FOR DAMAGES

**4 Right of action when death is caused by negligence**

(1) Where the death of a person is caused by any wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect of it, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as to amount in law to a crime.

(2) [Spent]

(3) Not more than one action shall lie under this Act for the same subject-matter of complaint.

**5 Action to be for benefit of family**

Every such action shall be for the benefit of the wife or husband and the parents and children of the person whose death has been so caused.

**6 Persons who may bring action**

(1) (a) Every such action shall be brought by and in the name of the executor or administrator of the deceased person.

(b) Where no action is so brought within 6 months after the date of the death of the deceased person, or where within 6 months after the date of the death of the deceased person, the executor or administrator declares in writing his desire not to bring the action, or where there is for the time being no executor or administrator of the deceased person, the action may be brought by and in the name of the person, or (if there are more than one) the names of all or of any of the persons, for whose benefit the action would have been if it had been brought by and in the name of the executor or administrator.

(2) Where any such action is brought by and in the name of any person or persons other than the executor or administrator of the deceased person, the action shall be for the benefit of the same person or persons, and shall be subject to the same procedure, as nearly as may be, as if it were brought by and in the name of the executor or administrator.

**7 Amount of damages**

(1) In every such action the Court may award –

(a) Such damages as it may think proportioned to the injury resulting from the death to the person or persons for whose benefit the action is brought; and

(b) Damages in respect of the amount of actual pecuniary benefit which the person or persons for whose benefit the action is brought might reasonably have expected to enjoy if the death had not occurred, whether or not the person or persons have been either wholly or partially dependent upon the deceased person before his death; and

(c) Damages in respect of the medical and funeral expenses of the deceased person if the expenses have been incurred by the person or any of the persons by whom or for whose benefit the action is brought.



## Deaths by Accidents Compensation Act

(2) In awarding damages in any such action the court shall not take into account any gain, whether to the estate of the deceased person or to any dependant, that is consequent on the death of the deceased person.

### **8 Plaintiff to deliver full particulars**

In every such action the plaintiff on the record shall be required to deliver to the defendant or his solicitor, in or together with the statement of claim, full particulars of the person or persons for whose benefit the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

### **9 Money paid into Court**

If the defendant pays money into court, it shall be sufficient if he pays it in one sum for the benefit of all persons entitled under this Act as a compensation for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided.

### **10 Limitation of actions**

(1) Except as provided in this section, no action shall be brought under this Act after the expiration of 2 years from the date of the death of the deceased person.

(2) Application may be made to the court, after notice to the intended defendant, for leave to bring such an action at any time within 6 years from the date of the death of the deceased person; and the court may grant leave accordingly, subject to such conditions (if any) as it thinks it is just to impose, where it considers that the delay in bringing the action was occasioned by mistake or by any other reasonable cause or that the intended defendant was not materially prejudiced in his defence or otherwise by the delay.

(3) Where any person who is under a disability at the date of the death of the deceased person is entitled, under the proviso to section 6(1), to bring an action in respect of that death, that action may be brought, without the leave of the court, within 2 years from the date when he ceased to be under a disability or sooner died, or an application for leave to bring that action may be made under section 6(2) within 6 years from the date when he ceased to be under a disability or sooner died, if when the action (without such leave) is commenced or the application is made, as the case may be –

(a) No other person has commenced an action under this Act in respect of the death of the deceased person or made an application for leave to bring such an action; and

(b) No grant of administration has been made in Niue in respect of the estate.

(4) For the purposes of this section, a person shall be deemed to be under a disability while he is an infant or of unsound mind.

## PART 2

### APPORTIONMENT OF DAMAGES

### **11 Interpretation**

For the purposes of this Part –

(a) "trustee" means the trustee appointed by the Court;

(b) without prejudice to the generality of the expression "of unsound mind", a person shall be conclusively presumed to be of unsound mind while he is detained or kept in custody (otherwise than as a voluntary inpatient) under Part 26 of the Niue Act 1966.

**12 Costs, medical and funeral expenses**

Where any damages for which an action lies under this Act are recovered (either in an action or without any action being brought), the costs which are properly payable out of the damages and are not otherwise recovered may be paid there out, and the amount (if any) recovered in respect of the medical and funeral expenses of the deceased person may be refunded to the person or persons who paid them, and the balance of the damages may be allotted or disposed of by the court as provided in this Part.

**13 Damages may be allotted**

(1) Where the court makes an order under this Part and is satisfied that there was only one dependant of the deceased person, the balance of the damages shall be allotted to that dependant.

(2) Where the court makes an order under this Part and is satisfied that there were 2 or more dependants, the court may order –

- (a) That the balance of the damages or so much thereof as it may specify shall be allotted to any dependant exclusively, or shall be allotted in such proportions as the court determines among the dependants or among such 2 or more of them to the exclusion of the other or others of them as the court specifies;
- (b) That the balance of the damages or so much thereof as it may specify shall be held on trust as a class fund for the benefit of the dependants or of such 2 or more of them to the exclusion of the other or others of them as the court specifies.

**14 Disposition of damages**

(1) Where any amount is allotted to a dependant under section 13, that amount shall be paid to him unless he is an infant or of unsound mind or except in so far as the court orders that the whole or any part of that amount shall be held on trust under subsection (2).

(2) Where any amount is allotted to any dependant who is an infant or of unsound mind or the court orders that the whole or any part of the amount allotted to a dependant is to be held on trust for that dependant under this subsection, then, except so far as the court directs any immediate payment therefrom, and subject to any directions or conditions given or imposed by the court –

- (a) The amount shall be invested and held by the trustee upon trust –
  - (i) to make such payments (if any) to the dependant out of the income and capital of the amount as the court may specify; and
  - (ii) to apply the income and capital of the amount or so much of it as the trustee thinks fit for or towards the maintenance or education (including past maintenance or education provided after the death of the deceased person) or the advancement or benefit of the dependant;
- (b) The dependant shall have no power, either by himself or in conjunction with any other person or persons, to terminate the trusts upon which the amount is held or to modify or extinguish those trusts;
- (c) The interest of the dependant in the income and capital of the amount shall not, while it remains in the hands of the trustee, be alienated, or pass by bankruptcy, or be liable to be seized, sold, attached, or taken in execution by process of law.

(3) (a) Upon any dependant ceasing to be an infant or of unsound mind while any amount is held on trust for his benefit under subsection (2), the balance of that amount and of the income from it remaining in the hands of the trustee shall be paid to the dependant except in so far as the court may have ordered before the payment

## Deaths by Accidents Compensation Act

is made that the whole or any part of that amount shall continue to be held on trust under that subsection;

(b) Where the trustee has notice that an application has been made to the court for such an order he shall not make any payment under this subsection until the application has been disposed of.

(4) (a) The court may order that, if any dependant dies while any amount allotted to him is held on trust under subsection (2) (whether or not he is an infant or of unsound mind) any balance of the amount and of the income from it remaining in the hands of the trustee at his death, or so much of it as the court may specify, shall form part of the dependant's estate, or shall be added to the amount allotted to any other dependant or to the amounts allotted to all or any of the other dependants in such proportions as the court may specify or to any class fund set aside out of the balance of the damages, and shall be subject to the trusts of the amount or amounts or fund to which it is added.

(b) If and so far as that balance is not wholly disposed of under any order of the court made during the lifetime of the dependant for whose benefit it had been held, or made on an application to the court made not later than 6 months after that dependant's death, it shall form part of his estate.

### **15 Class fund**

Where any amount is to be held on trust as a class fund for any dependants under section 13(2), that amount shall be invested and the trustee may, but subject to such directions and conditions as the court may give or impose, apply the income and capital of that amount or so much of it as the trustee thinks fit for or towards the maintenance or education (including past maintenance or education provided after the death of the deceased person) or the advancement or benefit of those dependants or of any one or more of them to the exclusion of the other or others of them in such shares and proportions and generally in such manner as the trustee thinks fit; and may so apply the income and capital of that amount notwithstanding that only one of those dependants remains alive.

### **16 Power to authorise advances**

(1) The court may authorise moneys to be advanced to any dependant (whether by way of loan or otherwise) as it thinks fit and upon or subject to such conditions as it thinks fit, out of the damages or out of any amounts allotted to other dependants or out of any amount held on trust as a class fund, for any purpose that the court thinks proper in the interests of the dependants or any of them.

(2) Without limiting the generality of this section, it is hereby declared that any such advance may be made for the purpose of purchasing or otherwise acquiring a residential property for the use of the dependant either alone or in conjunction with any other dependants, or for the purpose of repaying any moneys secured by way of mortgage or otherwise on any residential property owned by the dependant and so used, or for the purpose of furnishing any such residential property.

(3) (a) Where moneys are advanced by way of loan, the court may give such directions in respect of the security to be taken, and may either prescribe the conditions upon or subject to which the moneys are to be advanced or authorise the trustee to prescribe the conditions at his discretion.

(b) The conditions may include power to the trustee to remit interest and principal moneys or any part thereof to the extent of the amount or value of any maintenance, education, advancement, or benefit which the dependant to whom the moneys are advanced may provide for any other dependants.

**17 Variation of orders**

The Court may vary any order made by it in respect of damages which have been recovered (either in an action or without an action being brought) under this Act and in respect of the income from it so far as the damages and income are for the time being in the hands of the trustee.

**18 Considerations to be taken into account**

In making or varying an order under this Part the court shall have regard to all relevant considerations including, where the damages are recovered in an action which is tried with a jury, any recommendation which the jury may make in respect of the order; and the court may when it considers that it is just and proper to do so, take into consideration all or any of the following matters –

- (a) Any gain to any dependant that is consequent on the death of the deceased person; and
- (b) Circumstances which have arisen after the date of the death of the deceased person; and
- (c) The probable future needs of the dependants.

**19 Persons who may apply for order**

An order or variation of an order under this Part may be made by the court of its own motion or on an application made by –

- (a) Any dependant of the deceased person;
- (b) The husband or wife of any such dependant;
- (c) Any near relation by blood or marriage of any such dependant;
- (d) [Repealed]
- (e) The trustee who holds the amount to which the application relates; or
- (f) Any other person who adduces proof of circumstances which in the opinion of the court make it proper that he should make the application.

**20** [Spent]

**21-22** [Repealed]

PART 3

**23** [Repealed]

# DEPARTURE TAX ACT 1996

1996/212 – 3 October 1996

1	Short title	5A	Failure of carrier to pay
2	Interpretation	6	Offences
3	Departure tax	7	Regulations
4	Collection of departure tax	8	[Spent]
5	Departure tax to remain property of Crown		

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## To impose tax upon travellers departing from Niue and to provide for its collection

### 1 Short title

This is the Departure Tax Act 1996.

### 2 Interpretation

In this Act and its regulations –

“Act” means the Departure Tax Act 1996;

“carrier” means a person who provides international travel, and includes an agent of the carrier;

“child” means a person of 2 years of age and up to the age of 12 years;

“diplomat” means a person who has accredited diplomatic status recognised by the Niue Government together with that person’s immediate family;

“infant” means a person under the age of 2 years;

“transit passenger” means a passenger who –

- (i) does not leave the airport or ship; or
- (ii) leaves the airport or vessel only because of an interruption to the journey caused by unserviceability of that aircraft or vessel, or caused by any other delay beyond the control of the passenger or the operator concerned; or
- (iii) stays on Niue solely for the purpose of securing onward travel to a country other than that from which the person arrived from, and departs from Niue within 12 hours of arrival.

### 3 Departure tax

(1) Subject to subsection (2) every person departing Niue shall pay a departure tax at the prescribed rate.

(2) The following persons shall not be liable to pay departure tax imposed by subsection (1) –

- (a) Any member of the crew of a scheduled, military, diplomatic, or licensed commercial aircraft or vessel;
- (b) An infant or child;
- (c) Any diplomat together with any member of his immediate family; and
- (d) Any transit passenger.

#### **4 Collection of departure tax**

(1) A carrier must collect the proper amount of departure tax from a person liable to pay the tax before the person departs Niue.

(2) A person liable to pay departure tax must not depart Niue without first paying the tax.

(3) A carrier must account to the Customs Department of Treasury for the departure tax collected and pay the amount collected to that Department.

(4) A carrier must keep proper records showing –

(a) the amount and date the departure tax was collected; and

(b) the person from whom the departure tax was collected; and

(c) the international travel for which the departure tax was collected; and

(d) any refund of departure tax.

(5) A carrier must keep the records required by subsection (4) for at least 7 years from the date of collection.

(6) A carrier must, not later than the 20<sup>th</sup> day of each month, pay to the Customs Department of Treasury without any deduction the departure tax collected for international travel completed in the immediately preceding month.

#### **5 Departure tax to remain property of Crown**

(1) The departure tax that is required to be collected under section 4 constitutes a debt due to the Crown payable by the carrier.

(2) Departure tax payable in accordance with section 4 and any penalties imposed under section 5A are recoverable at the suit of the Crown in a court of competent jurisdiction.

(3) Until the departure tax collected is paid to the Customs Department of Treasury, the tax –

(a) is deemed to be held in trust for the Crown; and

(b) is a charge on the property of the carrier; and

(c) is not property of the carrier that is liable to execution; and

(d) in the event of the carrier's bankruptcy, liquidation, or an assignment for the benefit of the carrier's creditors –

(i) does not form part of the carrier's estate in bankruptcy, liquidation, or assignment; and

(ii) ranks in priority after preferential claims for wages and in priority to all other claims.

#### **5A Failure of carrier to pay**

If a carrier fails to pay departure tax on the due date in accordance with section 4(6), there must be added to the amount due and owing a penalty of 2% for each month or part of a month that the amount remains outstanding.

#### **6 Offences**

(1) Any person who fails to comply with or acts in contravention of this Act or any regulations thereunder commits an offence.

(2) Any person who knowingly makes a false or misleading statement in, or in connection with, any return to be furnished under this Act or any regulations made thereunder commits an offence.

(3) Any person who commits an offence against this Act or any regulations made thereunder, for which no other penalty is prescribed, shall be liable on conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 2 years.

## Departure Tax Act

### **7 Regulations**

(1) Subject to this Act, Cabinet may make such regulations as may be necessary or expedient for giving effect to this Act and for its due administration.

(2) Without limiting the general power conferred by subsection (1), regulations may be made under this section –

- (a) For exempting certain persons or classes of persons from payment of departure tax;
- (b) Prescribing forms or stamps required to certify and receipt payment of departure tax;
- (c) Prescribing penalties for any breach of this Act or regulations made under it.

### **8 [Spent]**





# DEVELOPMENT INVESTMENT ACT 1992

1992/164 – 1 October 1992

1	Short title	20	Variation, suspension and revocation of concessions	
2	Interpretation			
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3	Purposes of Act	21	Disclosure and filing	
4	Application of Act			
5	Act binding on Crown		PART 6	
	PART 2		GUARANTEES TO FOREIGN ENTERPRISES	
	REGULATION OF FOREIGN ENTERPRISES	22	Guarantees to foreign enterprises	
6	Restriction on carrying on business by foreign enterprise		PART 7	
7	[Spent]	23	JUDICIAL REVIEW	
8	Registration	24	Application for review	
9	Issue of certificate of registration	25	Defects in form	
10	Variation of registration	26	Interim orders	
11	Revocation of registration	27	Sufficiency of application	
12	Continuation of business	28	Procedure	
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18	Registration of foreign enterprise	36	Offences by corporations	
19	Government departments or agencies to be informed	37-38	Refund of concessions	
			Regulations	
			[Spent]	
			SCHEDULES	

## To introduce a development and investment incentive scheme and to regulate foreign investment in Niue

- 1 Short title**  
This is the Development Investment Act 1992.
- 2 Interpretation**  
In this Act –  
“activity” means an undertaking of whatever nature engaged in by an enterprise and includes each and every other undertaking that is associated with or incidental to that undertaking;  
“book and document” and “book or document” includes all books, accounts, records, registers, rolls, computer tapes, discs, and printouts;

“carry on business” means to be engaged in an activity for the principal purpose of deriving a gain from that activity whether such gain is pecuniary or otherwise, but does not include –

- (a) An isolated transaction, not being one of a number of similar transactions repeated from time to time;
- (b) Maintaining a bank account in Niue;
- (c) Taking security for or collecting any debt or enforcing any rights relating to any security;
- (d) The gathering of any information or undertaking a feasibility study;

“Code” means the Investment Code published under Part 4;

“employee” means any person who receives or is entitled to receive a source deduction payment under the Income Tax Act 1961;

“enterprise” means any person carrying on business or proposing to carry on business;

“existing activity” means an activity being carried on immediately before the commencement of this Act;

“foreign enterprise” means –

- (a) In the case of an enterprise that is a body corporate, an enterprise –
  - (i) (a) in which 50 percent or more of the voting shares or power is held or controlled by persons who are not local persons; and,
  - (b) in which 50 percent or more of the value or number of the shares are beneficially owned or controlled by persons who are not local persons; or,
  - (ii) that does not have its central management or control in Niue.
- (b) In the case of an enterprise other than a body corporate, an enterprise –
  - (i) in which 50 percent or more of the members or partners are not local persons; or
  - (ii) in which 50 per cent or more of the beneficial ownership of which is owned by persons who are not local persons.
- (c) An enterprise that is a person other than a local person –

“foreign interest” means –

- (a) In the case of an enterprise that is a body corporate, the interest being –
  - (i) the voting shares or power held or controlled by persons who are not local persons; or
  - (ii) the value or number of shares beneficially owned or controlled by persons who are not local persons;
- (b) In the case of an enterprise other than a body corporate the interest in which the beneficial ownership is owned or controlled by persons who are not local persons;

“local enterprise” means an enterprise other than a foreign enterprise;

“local person” means –

- (a) A Niuean;
- (b) A person who has the status of a permanent resident under the Immigration Act 2011;

“share” includes any legal or beneficial interest in the capital or investments of a company;

“shareholder” includes any member of a body corporate whether its capital is divided into shares or not;

“trustee” includes an executor or administrator.

## Development Investment Act

(2) Where in the opinion of Cabinet the activity in which an enterprise is engaged is primarily for a religious, educational, charitable or community purpose, Cabinet may exempt that enterprise from all or any of the provisions of this Act on such conditions as Cabinet thinks fit.

### PART 1 GENERAL

#### **3 Purposes of Act**

The purposes of this Act are to –

- (a) Promote, foster and assist the establishment of enterprises generally in Niue;
- (b) Encourage investment activity that will make the best use of resources consistent with national development and investment policies;
- (c) Regulate and control the direction, extent and scope of foreign investment;
- (d) Facilitate the participation of local persons in investment and in the ownership, management and control of enterprises.

#### **4 Application of Act**

(1) The provisions of the –

- (a) Income Tax Act 1961;
- (b) Customs Act 1966;
- (c) Customs Tariff Act 1982;
- (d) Immigration Act 2011;

shall be subject to this Act and every decision of Cabinet made under this Act shall override any decision made by Cabinet or any Minister under any of those Acts.

(2) Nothing in this Act shall derogate from any other power of control of investment or employment under any other Act, except that no such power shall be exercised in a manner inconsistent with this Act.

(3) Registration of a foreign enterprise under this Act shall not of itself relieve the enterprise from compliance with any other Act.

#### **5 Act binding on Crown**

This Act shall bind the Crown.

### PART 2

#### REGULATION OF FOREIGN ENTERPRISES

#### **6 Restriction on carrying on business by foreign enterprise**

No foreign enterprise shall carry on business in Niue in any activity unless that foreign enterprise is registered under this Act to carry on business in respect of that activity.

7 [Spent]

#### **8 Registration**

(1) No foreign enterprise shall carry on business in Niue in any activity unless it has first applied to and is registered by Cabinet under this section as a foreign enterprise to carry on business in respect of that activity.

(2) Every application made to Cabinet under subsection (1) shall contain full particulars of –

- (a) The name of the enterprise;
- (b) The address of its registered office and principal place of business;
- (c) The proposed activities in respect of which registration is sought;

- (d) The names and addresses of its shareholders, or partners, directors, executive officers, secretary, accountant and auditor or of the persons carrying out those functions;
- (e) The legal and beneficial ownership of authorised, issued and paid-up capital, and the number, class, nominal and paid-up shares held by each shareholder: Provided that where the enterprise has not divided its capital into shares, the information shall relate to any beneficial interest in the capital and profits of the enterprise held by or on behalf of any person or a trustee of any beneficiary;
- (f) Particulars of proposed capital expenditure together with the sources and forms of financing of the enterprise;
- (g) A balance sheet setting out its assets and liabilities;
- (h) The number of local persons and expatriate persons to be employed, and the provision for the training of local persons;
- (i) The proposed activity to be undertaken and the nature and source of raw materials to be used;
- (j) Such other information as Cabinet may require.

(3) When considering an application, Cabinet shall take into account the criteria set out in the Investment Code and may either –

- (a) Approve the application with or without such terms and conditions as Cabinet may impose; or
- (b) Decline the application.

(4) Where Cabinet approves an application without imposing any terms and conditions the applicant shall be registered as a foreign enterprise to carry on business in respect of the specified activity or activities.

(5) Where Cabinet approves an application subject to terms and conditions the applicant shall notify Cabinet whether such terms and conditions are acceptable and in the event that they are, Cabinet shall register the applicant as a foreign enterprise to carry on business in respect of such activities as shall have been approved by Cabinet.

## **9 Issue of certificate of registration**

On registration of an enterprise as a foreign enterprise to carry on business in respect of an activity or activities under this Part, Cabinet shall issue to the enterprise a certificate of registration setting out the name of the foreign enterprise and the activity or activities in respect of which it is approved to carry on business.

## **10 Variation of registration**

Upon application being made to Cabinet by a foreign enterprise registered under this Act, Cabinet may vary all or any of the terms or conditions of the registration of the foreign enterprise.

## **11 Revocation of registration**

(1) Where a foreign enterprise has –

- (a) Contravened any of the provisions of this Act; or
- (b) Failed to comply with any term or conditions of its registration as a foreign enterprise,

and Cabinet, after due enquiry and having regard to the nature of the contravention or failure, considers that it is undesirable that the enterprise should continue to be registered under this Act, or registered in respect of a particular activity, Cabinet shall notify the foreign enterprise of its opinion and of the reasons for such opinion, and shall invite the foreign enterprise to make representations within a period specified by Cabinet, being in any event not less than 21 days, as to why registration of the enterprise

## Development Investment Act

as a foreign enterprise under this Act should not be revoked, either wholly or in respect of any particular activity.

(2) Upon receipt of any representations made under subsection (1), and after due consideration of those representations or, on expiry of the specified period if no such representations are made, Cabinet may revoke the registration of the foreign enterprise either –

- (a) Wholly; or
- (b) In respect of any particular activity.

(3) Where Cabinet revokes the registration of a foreign enterprise under subsection (2), either wholly or in respect of any particular activity, Cabinet shall give notice to the foreign enterprise of its decision and of the reasons for such decision.

(4) The revocation of the registration of a foreign enterprise under subsection (2) shall not in any way affect any liability of that foreign enterprise to its creditors or to any person interested in the affairs of the foreign enterprise, or the rights of such creditors or persons, whether or not the liability or right shall have arisen before or after the date that the revocation shall take effect.

### **12 Continuation of business**

No foreign enterprise shall carry on business in Niue in any activity after revocation of registration in respect of that activity has taken effect, except insofar as is necessary for the enterprise to wind up its affairs in relation to that activity, but in any event not exceeding 3 months, or such extended time as Cabinet may allow.

## PART 3

### CONTROL OF TAKEOVERS

### **13 Transfer of shares**

(1) A transfer of the legal or equitable interest in shares or any proprietary interest in an enterprise –

- (a) Where that transfer has the effect of the enterprise becoming a foreign enterprise; or
- (b) Where that transfer has the effect of increasing the foreign interest in an enterprise that is a foreign enterprise,

shall not be valid or of any effect unless the approval of Cabinet to such transfer or increase has first been obtained.

(2) An increase in the share capital or any proprietary interest of an enterprise where –

- (a) The increase shall have the effect of the enterprise becoming a foreign enterprise; or
- (b) Where the enterprise is a foreign enterprise, the increased capital is issued –
  - (i) to a subscriber who is not a local person or a local enterprise; or
  - (ii) to existing shareholders other than in the same proportion as, and upon the same terms, conditions and rights as, their existing shareholding,

shall not be valid or of any effect, unless the approval of Cabinet to such increase has first been obtained.

(3) For the purposes of subsection (1), any matter or thing (whether in Niue or elsewhere) having the effect of altering the effective ownership or control of any enterprise which has a direct or indirect interest in any enterprise carrying on business in Niue; including –

- (a) The transfer of shares or any proprietary interest;
- (b) The issue of new shares;

(c) Any change in the governing rules, shall be deemed for the purposes of this Act to be a transfer of shares in the enterprise carrying on business in Niue.

(4) Where the approval of Cabinet is sought for the purposes of this section, the enterprise concerned or any interested party shall apply to Cabinet in writing, setting out details of the proposed increase or transfer of shares and particulars of the parties involved.

(5) Cabinet may in granting any approval under this section impose such terms and conditions it thinks fit.

(6) The approval of Cabinet to a transfer of shares or proprietary interest shall not be withheld where, before the transfer or increase or alteration, the transferor or the enterprise has taken all reasonable steps to endeavour to transfer the shares or proprietary interest or new capital, to a local person or local enterprise.

#### **14 Change in status**

Where a foreign enterprise registered under this Act becomes a local enterprise Cabinet shall, on being satisfied of the change in status, deregister the enterprise as a foreign enterprise.

### **PART 4**

#### **INVESTMENT PRIORITIES AND INCENTIVES**

#### **15 Investment Code**

(1) Cabinet shall determine and publish in the *Gazette*, an Investment Code.

(2) The purpose of the Code shall be to inform potential investors as well as persons or bodies responsible for planning, promoting or encouraging investment in Niue of the priorities and reservations attached by Cabinet to investment in particular activities.

(3) The Code shall include particulars of –

- (a) Investments and activities which merit encouragement;
- (b) Activities which may be eligible for incentives and concessions to be approved under section 17(3);
- (c) General criteria by which any investment or new enterprise will be evaluated to determine its merits;
- (d) Criteria by which foreign investment or a foreign enterprise will be evaluated;
- (e) The kinds of activities reserved for local enterprises; and
- (f) Such other matters as Cabinet may decide.

#### **16 Investment incentives and concessions**

(1) Incentives and concessions as specified in the Schedule to this Act are hereby established and shall be capable of being granted by Cabinet notwithstanding any other enactment to the contrary.

(2) Cabinet may by regulation, amend, delete from or add to the Schedule, such incentives and concessions as Cabinet may determine.

(3) All regulations made under this section shall be laid before the Assembly forthwith after the making of it if the Assembly is then in session, and if not, shall be laid before the Assembly at the commencement of the next ensuing session.

#### **17 Application for incentives and concessions**

(1) An enterprise carrying on business in an activity which is eligible for incentives and concessions under the Investment Code may apply to Cabinet to be granted the incentives and concessions established by this Act.

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(2) Every application to Cabinet shall include, where applicable, the following information –

- (a) The nature of the enterprise, and the product or service to be provided;
- (b) The market potential for the product or service;
- (c) The legal and beneficial shareholding and the names and addresses of all legal and beneficial shareholders of the enterprise together with details of directors and management personnel;
- (d) The source and form of financing of the enterprise;
- (e) The locality of the enterprise and the title to the site held or expected to be obtained;
- (f) The number of persons to be employed and in particular details of expatriate personnel and the provision for the training of local persons;
- (g) The nature and source of raw materials intended to be used;
- (h) Details of proposed capital expenditure;
- (i) The dates on which the enterprise will commence its establishment and on which the enterprise will commence business in Niue;
- (j) The type and extent of the incentives, concessions or benefits sought;
- (k) The benefits that will accrue to Niue if the application is granted;
- (l) Such other information as Cabinet may require.

(3) Cabinet shall consider the application having regard to the Investment Code and may –

- (a) Approve the application on such terms and conditions (if any) as Cabinet may specify; or
- (b) Decline the application.

(4) Where an enterprise is granted incentives or concessions pursuant to subsection (3), such incentives or concessions and any terms or conditions shall be notified in writing to the enterprise.

### **18 Registration of foreign enterprise**

Approval of an application by a foreign enterprise under section 17 shall not waive the requirement for that enterprise to be registered pursuant to Part 2 as a foreign enterprise.

### **19 Government departments or agencies to be informed**

Cabinet shall cause such departments or agencies of Government as shall have an interest in the matter to be notified of every decision made by it under Part 2 and under this Part, and in particular –

- (a) The incentives and concessions (including any terms and conditions relating thereto) which have been granted, where the administration of such incentives and concessions ordinarily falls within the jurisdiction of that department or agency; and
- (b) The assistance Cabinet requires of the department or agency in order to facilitate the establishment by the enterprise of any activity.

### **20 Variation, suspension and revocation of concessions**

(1) Where Cabinet is of the opinion that a foreign enterprise has contravened or failed to comply with any term or condition of the granting to it of any incentive concession or benefit, and Cabinet, after due enquiry and having regard to the nature of the contravention or failure considers that it is undesirable that the enterprise or any activity carried on by it should continue to receive any incentive concession or benefit, Cabinet shall notify the enterprise of its opinion and of the reasons for such opinion, and shall invite the enterprise to make representations within a period specified



by Cabinet, being in any event not less than 21 days, as to why the grant to the enterprise of any incentive concession or benefit should not be revoked.

(2) On receipt of any representations made under subsection (1), and after due consideration of those representations or, upon the expiry of the specified period if no such representations are made, Cabinet may revoke the grant to the enterprise of any incentive concession or benefit.

(3) Where Cabinet revokes any grant to the enterprise under subsection (2), Cabinet shall give notice in writing to the enterprise of its decision and of the reasons for such decision.

## PART 5

### DISCLOSURE AND FILING OF INFORMATION

#### **21 Disclosure and filing**

(1) Every enterprise registered as a foreign enterprise under Part 2, and every enterprise in receipt of a concession, incentive or benefit granted under Part 4 shall, during the currency of such registration concession or benefit, file with Cabinet (or such department or agency as Cabinet may direct), not later than 30 June in each year –

- (a) The name of the enterprise;
- (b) The address of the registered office and principal place of business of the enterprise;
- (c) The activities of the enterprise;
- (d) The names and addresses of its directors, chief executive officer, secretary, accountant and auditor or the persons carrying out these functions;
- (e) Details of its shareholder as at the date of filing together with changes in it since the last date of filing with respect to –
  - (i) authorised, issued and paid-up shares; and
  - (ii) shareholders showing the number, class, nominal and paid-up shares held by each shareholder or on behalf of a beneficiary: Provided that where the enterprise has not divided its capital into shares, the information shall relate to any beneficial interest in the capital and profits of the enterprise held by or on behalf of a person or beneficial owner;
- (f) The activities being carried on in Niue by the enterprise.

## PART 6

### GUARANTEES TO FOREIGN ENTERPRISES

#### **22 Guarantees to foreign enterprises**

There is hereby extended to every foreign enterprise registered under this Act, the following guarantees –

- (a) There shall be no compulsory acquisition or expropriation of the property of any enterprise in Niue except –
  - (i) in accordance with due process of law; and
  - (ii) for a public purpose defined by law; and
  - (iii) for payment of compensation in a manner prescribed by law;
- (b) Subject to any law of Niue, every foreign enterprise shall be entitled –
  - (i) to remit overseas, earnings and expatriate capital;
  - (ii) to remit amounts necessary to meet payment principal, interest and service charges, and similar liabilities on foreign loans and the cost of other foreign obligations;



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- (iii) to remit overseas, compensation received in accordance with paragraph (a)(iii).

### PART 7

#### JUDICIAL REVIEW

#### **23 Application for review**

(1) The High Court may, on application (which may be called an application for review) being made to it by an enterprise within 21 days of that enterprise receiving notice of a decision to –

- (a) Revoke the registration of the enterprise as a foreign enterprise under section 11(3); or
- (b) Revoke the grant to the enterprise of any incentive, concession or benefit under section 20(2),

by order, grant in relation to such revocation, any relief that the applicant would be entitled to in any one or more of the proceedings for a writ or order of or in the nature of mandamus, prohibition, or certiorari, or for a declaration.

(2) Where on an application for review the applicant is entitled to an order declaring that a decision made is unauthorised or otherwise invalid, the Court may, instead of making such a declaration, set aside the decision.

(3) Where in any of the proceedings referred to in subsection (1), the Court had before the commencement of this Act, a discretion, on like grounds, to refuse to grant any relief on an application for review, it shall have the like discretion, on like grounds, to refuse to grant any relief on an application for review.

(4) Without limiting the generality of the foregoing provisions of this section, on an application for review the Court may direct that the whole or any part of the subject-matter of an application be reconsidered and redetermined, either generally or in respect of any specified matter. In giving any such direction the Court shall –

- (a) Advise its reasons for so doing; and
- (b) Give such directions as it thinks just as to the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

(5) Upon the reconsideration of any matter under subsection (4), regard shall be had to the Court's reasons for giving the direction and to the Court's directions.

#### **24 Defects in form**

On an application for review, where the sole ground of relief established is a defect in form or a technical irregularity, if the Court finds that no substantial wrong or miscarriage of justice has occurred, it may refuse relief and, where a decision has already been made, may make an order validating the decision, notwithstanding the defect or irregularity, to have effect from such time and on such terms as the Court thinks fit.

#### **25 Interim orders**

On an application for review, the Court may make such interim orders as it thinks proper, pending the final determination of the application.

#### **26 Sufficiency of application**

In an application for review it is sufficient if the applicant sets out in the application the grounds on which relief is sought, and the nature of the relief sought, without specifying the proceedings referred to in section 23(1) in which the claim would have been made before the commencement of this Act.

**27 Procedure**

Subject to this Part, the procedure in respect of any application for review shall be in accordance with the rules of the High Court.

**28 Savings**

Nothing in this Part shall limit the Crown Proceedings Act 1950.

PART 8

MISCELLANEOUS

**29 Advisory committees**

(1) Cabinet may for the purpose of this Act appoint advisory committees, and may define the functions of any such committee.

(2) The members of an advisory committee appointed under subsection (1) shall hold office during the pleasure of Cabinet.

(3) There may be paid out of money appropriated by the Assembly for the purpose to a member of any advisory committee who is not a public servant or other employee of the Crown, such remuneration and allowance as may be prescribed by Cabinet.

**30 Disclosure**

Every member of Cabinet and every other person engaged or employed by the Crown in connection with the purposes of this Act shall maintain and aid in maintaining the secrecy of all matters which come to this knowledge when carrying out any function or duty under this Act, and shall not use to his benefit or communicate any such matter to any other person, except for the purpose of carrying out a lawful function under this Act.

**31 Personal liability**

Every member of Cabinet and every other person engaged or employed by the Crown in connection with the purposes of this Act shall be exempt from personal liability in respect of any act or default done or made in connection with the purposes of this Act in good faith.

**32 Service of notices**

For the purposes of this Act, any notice to be given by Cabinet shall be deemed to have been served if delivered to the last known place of business of the enterprise, or to the last known place of business or residence of any person who is an officer or shareholder of the enterprise.

**33 Offences**

(1) A foreign enterprise which carries on business in contravention of section 8, commits an offence and shall be liable on conviction to a fine not exceeding 100 penalty units and, where the offence is a continuing one, to a further fine not exceeding 5 penalty units for every day or part of a day during which the offence continues.

(2) Every enterprise which for the purpose of obtaining or retaining any incentive concession or advantage under this Act, or for the purpose of obtaining registration of the enterprise or any activity under this Act, makes a false or misleading statement in any material particular or supplies any false or misleading information in any material particular commits an offence and shall be liable on conviction to a fine not exceeding 50 penalty units.

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(3) Every enterprise which without lawful excuse refuses or fails to comply with any provision of section 21 commits an offence and shall be liable on conviction to a fine not exceeding 20 penalty units.

(4) Every person who without lawful excuse acts in contravention of section 30, commits an offence and shall be liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term of 12 months or to both.

### **34 Offences by corporations**

Where a body corporate is guilty of an offence under this Act, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other officer of the body corporate, or any person purporting to act in any such capacity, that person as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

### **35 Refund of concessions**

Where any enterprise is convicted of any offence under section 33(2), the enterprise shall, in addition to any other penalty provided by this Act be liable to refund to the Crown the value of any incentive concession or advantage obtained by that enterprise at any time under this Act, and the amount so determined shall be recoverable as a debt due to the Crown.

### **36 Regulations**

(1) Cabinet may make all such regulations as may be necessary or expedient to giving full effect to the purposes or provisions of this Act and for its due administration.

(2) Without limiting the generality of subsection (1), Cabinet may make regulations prescribing –

- (a) Fees in respect of applications made under this Act;
- (b) Application forms and certificates required for the purpose of this Act;
- (c) Forms of notices required to be given under this Act.

**37-38** [Spent]

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## SCHEDULE

### Section 16

A schedule of incentives and concessions to encourage the establishment of enterprises and development investment.

#### **1 Tariff protection**

Import duty may be increased by an amount on a class of commodity presently or proposed to be produced or supplied by an enterprise to protect an approved activity where –

- (i) the activity is import substituting; and
- (ii) the protection is essential for the initial survival of the approved activity;  
or
- (iii) there is a threat of excessive or unreasonable trade competition by a foreign exporter into Niue of such a commodity.

## **2 Import duty concessions**

### **(a) Capital items**

Partial or full exemption from import duty may be granted to an enterprise on the importation, or refund of duty granted to an enterprise on plant, equipment, machinery or construction materials used or to be used in an approved activity, provided –

- (i) where the establishment of a project extends over several years, the concession or exemption shall not extend for more than 2 years;
- (ii) in the case of an existing or established enterprise, the replacement of capital items due to normal wear and tear or other causes together with consumable stocks shall not qualify for exemption from duty;

### **(b) Raw materials**

Partial or full exemption from import duty may be granted to an enterprise in respect of any essential raw or processed materials used directly in any production or manufacturing process in an approved activity which is import substituting or export generating for any specified period of time not exceeding 5 years. Cabinet may extend such concession for up to 2 further periods not exceeding 5 years each.

## **3 Tax incentives**

### **(a) Tax concessions**

Where any new or existing enterprise establishes a new activity in Niue, or where an activity already existing in Niue is materially expanded by any new or existing enterprise, and Cabinet is satisfied that such establishment or expansion will contribute substantially to the economic development of Niue, Cabinet may grant to that enterprise such concessions in respect of taxation on the income derived from that activity as Cabinet thinks fit.

A concession granted by Cabinet may take the form of a partial or full tax concession and may be granted for any period not exceeding 5 years to an enterprise engaged in an approved activity and may in special circumstances be renewed or extended up to 2 further periods of 5 years each.

### **(b) Recruitment of skilled local persons domiciled overseas**

(1) 200 percent of the allowable expenditures and costs on the recruitment of an employee who is a local person ordinarily domiciled overseas may be granted to any enterprise as a deduction against the taxable income of the enterprise in the year it is incurred, provided the enterprise satisfies Cabinet that –

- (i) the person possesses the skill and expertise for the job or position designated; and
- (ii) the person will be employed by the enterprise; and
- (iii) the person intends to reside permanently in Niue.

(2) The allowable expenditures and costs in each instance shall include –

- (i) one-way fares for the person, spouse and any children under 15 years of age;
- (ii) the cost of freight (to a maximum of \$5000) of personal effects;
- (iii) local establishment and relocation costs of up to \$5000.

### **(c) Counterpart training**

(1) Where an enterprise employing an employee other than a local person, or an expatriate designates a local person to be trained to replace the expatriate employee in that position or job, up to 200 percent of the direct cost of training incurred during each year may be claimed against the taxable income of the enterprise over the first 3 years of training.

(2) The allowance training costs shall include –

## Development Investment Act

- (i) In the case of overseas training – tuition fees, costs of materials directly associated with the course, fares of the trainee, salary or bursary paid to the trainee during the period of training, provided however that the enterprise first satisfies Cabinet that the training cannot be adequately carried out in Niue; or
  - (ii) In the case of local training – tuition fees, costs of materials directly associated with the course, and where on-the-job training is provided by an expatriate, the portion of the salary of the expatriate directly related to the on-the-job training;
- (d) Depreciation allowances

Accelerated depreciation allowances up to 200 percent of the rate specified in the Income Tax Act 1961 may be granted on plant, machinery, equipment, and permanent buildings used or to be used in any approved activity.

### **5 Residence permits**

Subject to such conditions normally applying, residence and work permits may be granted for periods up to 3 years to key personnel or employees of an approved enterprise.

### **6 Salary subsidy**

Cabinet may approve in certain circumstances and subject to the policies of Government that a proportion of the wages of a local person be subsidised by the Government for a period of up to 3 years, such subsidy not to exceed 75 percent for the first year, 50 percent for the second year and 25 percent for the third and final year.



# DIPLOMATIC PRIVILEGES AND IMMUNITIES ACT 1968

1968/36 (NZ) – 1 January 1969

1	Short title	10	The International Court of Justice
2	[Repealed]	10A	Facilitation of international inspectors under disarmament treaties
PART 1		11	International conferences
DIPLOMATIC PRIVILEGES AND IMMUNITIES		12	Reciprocal treatment
3	Interpretation	PART 3	
4	Application of this Part	13-18 [Repealed]	
5	Diplomatic privileges and immunities	PART 4	
6	Immunities of staff of a mission	MISCELLANEOUS PROVISIONS	
7	Withdrawal of privileges	19	Power to grant exemptions
PART 2		20	General provisions as to exemptions
PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANISATIONS AND PERSONS CONNECTED THEREWITH		21	[Repealed]
8	[Repealed]	22	Certificate of Cabinet
9	Privileges, immunities, and capacities of certain international organisations	23	[Repealed]
9A	Privileges, immunities and capacities of the Commonwealth Secretariat	24	Regulations
		25-27	[Repealed]
		SCHEDULES	

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## To consolidate and amend the law relating to diplomatic privileges and immunities, and to give effect to the Vienna Convention on Diplomatic Relations

- 1 Short title**  
This is the Diplomatic Privileges and Immunities Act 1968.
- 2** [Repealed]
- PART 1**  
DIPLOMATIC PRIVILEGES AND IMMUNITIES
- 3 Interpretation**  
In this Part –
- (a) “Convention” means the Vienna Convention on Diplomatic Relations signed in 1961, a copy of the English text of which is set out in Schedule 1; “mission” means a diplomatic mission of any State.
  - (b) Expressions defined in article 1 of the Convention have the meanings so defined.
- 4 Application of this Part**  
This Part shall, with respect to the matters dealt with there have effect in substitution for any previous enactment or rule of law in force in Niue immediately before the commencement of this Act.

**5 Diplomatic privileges and immunities**

(1) Subject to subsection (6), articles 1, 22 to 24, and 27 to 40 of the Convention shall have the force of law in Niue.

(2) Without prejudice to subsection (1), Cabinet may determine, either generally or in any case or class of case, the fiscal privileges which shall be accorded to any mission or persons connected with any mission, notwithstanding that the determination may extend treatment more favourable than that required by the provisions of the Convention, and may in like manner determine the terms and conditions on which those privileges may be enjoyed.

(3) (a) For the purpose of giving effect to the custom or agreement by which Niue and any other State extend to each other treatment more favourable than is required by the Convention, Cabinet may, by regulation, declare that a mission of that State and persons connected with that mission shall be accorded such immunity from jurisdiction, and inviolability, as are specified in the order;

(b) Nothing in this paragraph shall apply with respect to persons to whom section 6 applies.

(4) In subsections (2) and (3) “treatment more favourable” includes the according of privileges or immunities to persons who under the Convention may enjoy privileges and immunities only to the extent admitted by the receiving State.

(5) Where by or by virtue of this Act immunity from jurisdiction is accorded to persons who are not diplomatic agents or persons enjoying immunity under article 37 of the Convention, the immunity accorded to those first-mentioned persons may be waived in the manner and subject to the conditions specified in article 32 of the Convention, and the waiver shall have the same consequences as a waiver under that article.

(6) For the purposes of the articles referred to in subsection (1) –

- (a) A reference in those provisions to the receiving State shall be construed as a reference to Niue;
- (b) A reference in those provisions to a national of the receiving State shall be construed as a reference to a New Zealand citizen;
- (c) The reference in article 22(1) to agents of the receiving State shall be construed as including a reference to any constable and any person exercising a power of entry to premises;
- (d) The reference in article 32 to waiver by the sending State shall be construed as including a waiver by the head of the mission of the sending State or by a person for the time being performing the functions of the head of mission;
- (e) Articles 35, 36 and 40 shall be construed as granting the privileges or immunities that those articles require to be granted;
- (f) (i) the reference in article 36(1) to such laws and regulations as the receiving State may adopt shall be construed as including a reference to any law in force in Niue relating to the quarantine, or the prohibition or restriction of the importation into, or the exportation from, Niue of animals, plants, or goods;  
(ii) any immunity from jurisdiction that a person may possess or enjoy by virtue of subsection (1) shall not be prejudice;
- (g) The reference in article 37(4) to the extent to which privileges and immunities are admitted by the receiving State, and the reference in article 38(1) to any additional privileges and immunities that may be granted by the receiving State, shall, so far as they relate to privileges, be construed as references to such determinations as may be made by the Cabinet under subsection (2) of this section, and, so far as they relate to immunities, be construed as references



## Diplomatic Privileges and Immunities Act

to such immunities as may be conferred by a Regulation under subsection (3) of this section;

- (h) The reference in article 38(2) to the extent to which privileges and immunities are admitted by the receiving State shall, so far as it relates to privileges, be construed as a reference to such determinations as may be made by Cabinet under subsection (2) of this section, and, so far as it relates to immunities, be construed, in relation to persons to whom section 6 applies, as a reference to immunities conferred by that section, and, in relation to other persons to whom that paragraph applies, as a reference to such immunities as may be conferred by regulations under subsection (3) of this section.

### **6 Immunities of staff of a mission**

The members of the administrative and technical staff, and members of the service staff, of a mission who are New Zealand citizens or are permanently resident in Niue shall be accorded immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of their functions.

### **7 Withdrawal of privileges**

Where Cabinet is satisfied that the privileges and immunities accorded in relation to a mission of Niue in any State, or to persons connected with that mission, are less than those conferred by or by virtue of this Part in relation to the mission of that State, or to persons connected with that mission, it may, by regulation, withdraw, modify, or restrict, in relation to that mission or to persons connected with that mission, such of the privileges and immunities so conferred to such extent as appears to be proper.

## PART 2

### PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANISATIONS AND PERSONS CONNECTED THEREWITH

**8** [Repealed]

### **9 Privileges, immunities, and capacities of certain international organisations**

(1) This section shall apply to any organisation declared by Cabinet by regulation to be an organisation of which 2 or more States or the Governments thereof are members.

(2) Cabinet may, by regulation –

- (a) Provide that any organisation to which this section applies (hereinafter referred to as the organisation) shall, to such extent as may be specified in the order, have the privileges and immunities specified in Schedule 2 and shall also have the legal capacities of a body corporate;
- (b) Confer upon –
  - (i) any persons who are representatives (whether of Governments or not) on any organ of the organisation or at any conference convened by the organisation or are members of any committee of the organisation or of any organ thereof;
  - (ii) such officers or classes of officers of the organisation as are specified in the order, being the holders of such high offices in the organisation as are so specified;
  - (iii) such persons employed on missions on behalf of the organisation as are specified in the order – to such extent as may be specified in the order, the privileges and immunities specified in Schedule 3;

- (c) Confer upon such other classes of officers and servants of the organisation as are specified in the order, to such extent as may be so specified, the privileges and immunities specified in Schedule 4 –

and Schedule 5 shall have effect for the purpose of extending to the staffs of such representatives and members as are mentioned in paragraph (b)(i) and to the members of the families forming part of the household of officers of the organisation any privileges and immunities conferred on the representatives, members, or officers under that paragraph, except in so far as the operation of Schedule 5 is excluded by the order conferring the privileges and immunities.

(3) No regulation under this section shall confer any privilege or immunity upon any representative of the Government of Niue or any member of the staff of such a representative.

## **9A Privileges, immunities, and capacities of the Commonwealth Secretariat**

(1) Cabinet may by regulation –

- (a) Provide that the Commonwealth Secretariat shall, to such extent as may be specified in the regulation, have the privileges and immunities specified in Schedule 2 and shall also have the legal capacities of a body corporate;

(b) Confer upon –

- (i) any persons who are representatives (whether of Governments or not) on any organ of the Commonwealth Secretariat or at any conference convened by the Commonwealth Secretariat, or are members of any committee of the Commonwealth Secretariat or of any organ thereof;
- (ii) such officers or classes of officers of the Commonwealth Secretariat as are specified in the order, being the holders of such high offices in the Commonwealth Secretariat as are so specified;
- (iii) such persons employed on missions on behalf of the Commonwealth Secretariat as are specified in the order – to such extent as may be specified in the regulation, the privileges and immunities specified in Schedule 3;

- (c) Confer upon such other classes of officers and servants of the Commonwealth Secretariat as are specified in the regulation, to such extent as may be so specified, the privileges and immunities specified in Schedule 4 –

and Schedule 5 shall have effect for the purpose of extending to the staffs or such representatives and members as are mentioned in paragraph (b) (i) and to the members of the families forming part of the household of officers of the Commonwealth Secretariat any privileges and immunities conferred on the representatives, members, or officers under that paragraph, except in so far as the operation of Schedule 5 is excluded by the regulation conferring the privileges and immunities.

(1A) No regulation under this section shall confer any privilege or immunity upon any representative of the Government of Niue or any member of the staff of such a representative.

(2) Schedules 2, 4 and 5 shall apply with respect to the Commonwealth Secretariat and to persons connected therewith as if every reference in those Schedules to an organisation included a reference to the Secretariat.

## **10 The International Court of Justice**

Cabinet may, by regulation, confer on the Judges and Registrars of the International Court of Justice established by the Charter of the United Nations, and on suitors to that Court and their agents, counsel, and advocates, such privileges, immunities and facilities as may be

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required to give effect to any resolution of, or convention approved by, the General Assembly of the United Nations.

### **10A Facilitation of international inspectors under disarmament treaties**

- (1) Cabinet may make regulations doing all or any of the following things:
- (a) conferring on any people who are appointed as inspectors pursuant to any international agreement on disarmament, arms, or weapons control to which Niue is a party all or any of the privileges and immunities specified in Schedule 3;
  - (b) making provision (subject to and consistent with any other international obligations and commitments binding on Niue) for any people appointed as described in paragraph (a) to have access to all information and to all places in Niue relevant to enable those people to carry out their official duties;
  - (c) conferring upon any people to whom paragraph 57 of Article II of the Comprehensive Nuclear-Test-Ban Treaty applies, and any persons to whom Part II, Section B of the Protocol to that Treaty applies, any additional privileges and immunities required by the Treaty.
- (2) Cabinet may make regulations making provision (subject to and consistent with any other international obligations and commitments binding on Niue) for all or any of the people to whom subsection (1) applies to have access to all information and to all places in Niue relevant to enable those people to carry out their official duties.

### **11 International conferences**

Where –

- (a) A conference is held in Niue and is attended by representatives of the Government of Niue and the Government or Governments of one or more States or of any of the territories for whose international relations any of those Governments is responsible; and
- (b) It appears to Cabinet that doubts may arise as to the extent to which the representatives of those Governments (other than the Government of Niue) and members of their official staffs are entitled to privileges and immunities –

Cabinet may, by notice in the *Gazette*, direct that every representative of any such Government (other than the Government of Niue) shall be accorded such of the privileges and immunities conferred by or by virtue of Part 1 on a diplomatic agent as Cabinet specifies, and that such of the members of his official staff as the Cabinet may direct shall be accorded such of the privileges and immunities conferred by or by virtue of Part 1 on members of the diplomatic staff or the administrative and technical staff of a diplomatic mission as Cabinet specifies.

### **12 Reciprocal treatment**

Nothing in this Part shall be construed as precluding Cabinet, by regulation, from declining to accord privileges or immunities to, or from withdrawing, modifying, or restricting privileges or immunities in relation to nationals or representatives of any State, or the Government thereof, on the ground that the State, or the Government thereof, is failing to accord corresponding privileges or immunities to Niue representatives.

## PART 3

**13-18** [Repealed]

PART 4

MISCELLANEOUS PROVISIONS

**19 Power to grant exemptions**

(1) Notwithstanding any Act, the Minister may wholly or partly exempt from any public or local tax, duty, rate, levy, or fee any of the following Governments or persons –

- (a) The Government of any State (as defined in section 8) or the government of any territory for whose international relations the Government of any such State is responsible;
- (b) A representative or officer of the Government of any country other than Niue, or of any provisional Government, national committee, or other authority recognised by Her Majesty in right of Niue, if he is temporarily resident in Niue under any arrangement made with the Government of Niue;
- (c) A member of the official or domestic staff, or of the family, of any person to whom paragraph (b) applies.

(2) Where a person who is a member of the official or domestic staff of a person to whom subsection (1)(b) applies is a New Zealand citizen and not a citizen of the country concerned, or is not resident in Niue solely for the purpose of performing his duties as such a member, that person shall not, and a member of the family of that person shall not by reason only of his being a member of that family, be entitled to any exemption granted under subsection (1).

(3) In this section, “member of the family”, in relation to any person, means the spouse or any dependent child of that person.

**20 General provisions as to exemptions**

(1) The powers conferred on Cabinet by section 9 or section 9A or section 10 or on the Minister by section 19 shall be deemed to include power to exempt from any fee or duty under any other Act any instrument or class of instruments to which any organisation, Government, or person, as the case may be, to which or to whom the order or exemption applies is a party.

(2) [Repealed]

(3) Any exemption granted by Cabinet under section 19 may be granted either unconditionally or subject to such conditions as Cabinet thinks fit, and Cabinet may revoke any such exemption or revoke, vary, or add to any such conditions.

(4) Every exemption referred to in subsection (3) shall come into force on such date as may be specified in that behalf by Cabinet. The date so specified may be before or after the date of the granting of the exemption.

(5) Notwithstanding the provisions of any exemption referred to in subsection (3) any question arising as to the nature or extent of any such exemption, or to the Governments or persons entitled to any such exemption, shall be referred to and be determined by Cabinet. The decision of Cabinet shall not be liable to be challenged, reviewed, quashed, or called in question in any court.

**21** [Repealed]

**22 Certificate of Cabinet**

If in any proceedings any question arises whether or not any person or any organisation or the Commonwealth Secretariat is or was at any time or in respect of any period accorded any privilege or immunity under or by virtue of this Act, a certificate issued by Cabinet stating any fact relevant to that question shall be conclusive evidence of that fact.

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23 [Repealed]

### 24 **Regulations**

Cabinet may make such regulations as it thinks fit for the purposes of this Act.

25-27 [Repealed]

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### SCHEDULE 1

#### Section 3

#### THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS

THE STATES PARTIES TO THE PRESENT CONVENTION,

RECALLING that peoples of all nations from ancient times have recognized the status of diplomatic agents,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

BELIEVING that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

REALISING that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,

AFFIRMING that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention, HAVE AGREED as follows:

#### **ARTICLE 1**

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- (a) the “head of the mission” is the person charged by the sending State with the duty of acting in that capacity;
- (b) the “members of the mission” are the head of the mission and the members of the staff of the mission;
- (c) the “members of the staff of the mission” are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;
- (d) the “members of the diplomatic staff” are the members of the staff of the mission having diplomatic rank;
- (e) a “diplomatic agent” is the head of the mission or a member of the diplomatic staff of the mission;
- (f) the “members of the administrative and technical staff” are the members of the staff of the mission employed in the administrative and technical service of the mission;
- (g) the “members of the service staff” are the members of the staff of the mission in the domestic service of the mission;
- (h) a “private servant” is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;
- (i) the “premises of the mission” are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

#### **ARTICLE 2**

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

**ARTICLE 3**

1. The functions of a diplomatic mission consist *inter alia* in:
  - (a) representing the sending State in the receiving State;
  - (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
  - (c) negotiating with the Government of the receiving State;
  - (d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
  - (e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.
2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

**ARTICLE 4**

1. The sending State must make certain that the *agrément* of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.
2. The receiving State is not obliged to give reasons to the sending State for a refusal of *agrément*.

**ARTICLE 5**

1. The sending State may, after it has given due notification to the receiving States concerned, accredit a head of mission or assign any member of the diplomatic staff, as the case may be, to more than one State, unless there is express objection by any of the receiving States.
2. If the sending State accredits a head of mission to one or more other States it may establish a diplomatic mission headed by a *charge d'affaires ad interim* in each State where the head of mission has not his permanent seat.
3. A head of mission or any member of the diplomatic staff of the mission may act as representative of the sending State to any international organisation.

**ARTICLE 6**

Two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State.

**ARTICLE 7**

Subject to the provisions of Articles 5, 8, 9 and 11, the sending State may freely appoint the members of the staff of the mission. In the case of military, naval or air attaches, the receiving State may require their names to be submitted beforehand, for its approval.

**ARTICLE 8**

1. Members of the diplomatic staff of the mission should in principle be of the nationality of the sending State.
2. Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time.
3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

**ARTICLE 9**

1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.



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2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this Article, the receiving State may refuse to recognise the person concerned as a member of the mission.

### ARTICLE 10

1. The Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, shall be notified of:

- (a) the appointment of members of the mission, their arrival and their final departure or the termination of their functions with the mission;
  - (b) the arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the mission;
  - (c) the arrival and final departure of private servants in the employ of persons referred to in sub-paragraph (a) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons;
  - (d) the engagement and discharge of persons resident in the receiving State as members of the mission or private servants entitled to privileges and immunities.
2. Where possible, prior notification of arrival and final departure shall also be given.

### ARTICLE 11

1. In the absence of specific agreement as to the size of the mission, the receiving State may require that the size of a mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission.

2. The receiving State may equally, within similar bounds and on a non-discriminatory basis, refuse to accept officials of a particular category.

### ARTICLE 12

The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.

### ARTICLE 13

1. The head of the mission is considered as having taken up his functions in the receiving State either when he has presented his credentials or when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, in accordance with the practice prevailing in the receiving State which shall be applied in a uniform manner.

2. The order of presentation of credentials or of a true copy thereof will be determined by the date and time of the arrival of the head of the mission.

### ARTICLE 14

1. Heads of mission are divided into 3 classes, namely:

- (a) that of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;
- (b) that of envoys, ministers and internuncios accredited to Heads of State;
- (c) that of *chargés d'affaires* accredited to Ministers for Foreign Affairs.

2. Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class.

### ARTICLE 15

The class to which the heads of their missions are to be assigned shall be agreed between States.

### ARTICLE 16

1. Heads of mission shall take precedence in their respective classes in the order of the date and time of taking up their functions in accordance with Article 13.

2. Alterations in the credentials of a head of mission not involving any change of class shall not affect his precedence.

3. This article is without prejudice to any practice accepted by the receiving State regarding the precedence of the representative of the Holy See.

#### **ARTICLE 17**

The precedence of the members of the diplomatic staff of the mission shall be notified by the head of the mission to the Ministry for Foreign Affairs or such other ministry as may be agreed.

#### **ARTICLE 18**

The procedure to be observed in each State for the reception of heads of mission shall be uniform in respect of each class.

#### **ARTICLE 19**

1. If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions, a *chargé d'affaires ad interim* shall act provisionally as head of the mission. The name of the *chargé d'affaires ad interim* shall be notified, either by the head of the mission or, in case he is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

2. In cases where no member of the diplomatic staff of the mission is present in the receiving State, a member of the administrative and technical staff may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the mission.

#### **ARTICLE 20**

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the head of the mission, and on his means of transport.

#### **ARTICLE 21**

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.

2. It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

#### **ARTICLE 22**

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

#### **ARTICLE 23**

1. The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this Article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

#### **ARTICLE 24**

The archives and documents of the mission shall be inviolable at any time and wherever they may be.



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### ARTICLE 25

The receiving State shall accord full facilities for the performance of the functions of the mission.

### ARTICLE 26

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

### ARTICLE 27

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The diplomatic bag shall not be opened or detained.

4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate diplomatic couriers *ad hoc*. In such cases the provisions of paragraph 5 of this Article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorised port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

### ARTICLE 28

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

### ARTICLE 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

### ARTICLE 30

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability.

### ARTICLE 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

- (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

- (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
  - (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.
2. A diplomatic agent is not obliged to give evidence as a witness.
  3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.
  4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

#### **ARTICLE 32**

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.
2. Waiver must always be express.
3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under Article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.
4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.

#### **ARTICLE 33**

1. Subject to the provisions of paragraph 3 of this Article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.
2. The exemption provided for in paragraph 1 of this Article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition:
  - (a) that they are not nationals of or permanently resident in the receiving state; and
  - (b) that they are covered by the social security provisions which may be in force in the sending State or a third State.
3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.
4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.
5. The provisions of this Article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

#### **ARTICLE 34**

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of the Article 39;
- (d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
- (e) charges levied for specific services rendered;

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- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of Article 23.

### ARTICLE 35

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

### ARTICLE 36

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the official use of the mission;
- (b) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this Article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorised representative.

### ARTICLE 37

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in Article 33.

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

### ARTICLE 38

1. Except insofar as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

**ARTICLE 39**

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

**ARTICLE 40**

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this Article third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to *force majeure*.

**ARTICLE 41**

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

**ARTICLE 42**

A diplomatic agent shall not in the receiving State practise for personal profit any professional or commercial activity.

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### ARTICLE 43

The function of a diplomatic agent comes to an end, *inter alia*:

- (a) on notification by the sending State to the receiving State that the function of the diplomatic agent has come to an end;
- (b) on notification by the receiving State to the sending State that, in accordance with paragraph 2 of Article 9, it refuses to recognise the diplomatic agent as a member of the mission.

### ARTICLE 44

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

### ARTICLE 45

If diplomatic relations are broken off between 2 States, or if a mission is permanently or temporarily recalled:

- (a) the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;
- (b) the sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;
- (c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

### ARTICLE 46

A sending State may with the prior consent of a receiving State, and at the request of a third State not represented in the receiving State, undertake the temporary protection of the interests of the third State and of its nationals.

### ARTICLE 47

1. In the application of the provisions of the present Convention, the receiving State shall not discriminate as between States.
2. However, discrimination shall not be regarded as taking place:
  - (a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State;
  - (b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

### ARTICLE 48

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialised agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

### ARTICLE 49

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

### ARTICLE 50

The present Convention shall remain open for accession by any State belonging to any of the 4 categories mentioned in Article 48. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**ARTICLE 51**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

**ARTICLE 52**

The Secretary-General of the United Nations shall inform all States belonging to any of the 4 categories mentioned in Article 48:

- (a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Articles 48, 49 and 50;
- (b) of the date on which the present Convention will enter into force, in accordance with Article 51.

**ARTICLE 53**

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the 4 categories mentioned in Article 48.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present Convention.

DONE AT VIENNA, this eighteenth day of April one thousand nine hundred and sixty-one.

[Signatures not reproduced.]

SCHEDULE 2

Section 9(2)(a)

PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANISATIONS

1. Immunity from suit and legal process.
2. The like inviolability of official premises and archives as is accorded in respect of the official premises and archives of a diplomatic mission.
3. Immunity in relation to its property and assets, wherever located and by whomsoever held, from search, requisition, confiscation, expropriation, or any other form of interference.
4. The like exemption from taxes and rates, other than taxes on the importation of goods, as is accorded to the Government of any foreign State.
5. Exemption from taxes on the importation of goods directly imported by the organisation for its official use in Niue or for exportation, or on the importation of any publications of the organisation directly imported by it, subject to compliance with such conditions as the Minister of Customs may determine for the protection of the revenue.
6. Exemption from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by the organisation for its official use and in the case of any publications of the organisation directly imported or exported by it, subject to compliance with such conditions as the Minister of Customs may determine for the protection of the public health, the prevention of diseases in plants and animals, and otherwise in the public interest.
7. The right to avail itself, for telegraphic communications sent by it and containing only matter intended for publication by the press or for broadcasting (including communications addressed to or dispatched from places outside Niue), of any reduced rates applicable for the corresponding service in the case of press telegrams.



# Diplomatic Privileges and Immunities Act

## SCHEDULE 3

### Section 9(2)(b)

#### PRIVILEGES AND IMMUNITIES OF REPRESENTATIVES, MEMBERS OF COMMITTEES, HIGH OFFICERS, [PERSONS ON MISSIONS, AND CERTAIN MEMBERS OF EC DELEGATIONS]

1. The like immunity from suit and legal process as is accorded to a diplomatic agent.
2. The like inviolability of residence, official premises, and official archives as is accorded to a diplomatic agent.
3. The like exemption from taxes and rates as is accorded to a diplomatic agent.

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## SCHEDULE 4

### Section 9(2)(c)

#### PRIVILEGES AND IMMUNITIES OF OTHER OFFICERS AND SERVANTS, [MEMBERS OF EC DELEGATIONS WHO ARE SERVICE STAFF, AND PRIVATE SERVANTS OF MEMBERS OF EC DELEGATIONS]

1. Immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties.
2. Exemption from taxes in respect of emoluments received as an officer or servant of the organisation.
3. Exemption from taxes on the importation of furniture and effects imported at the time of first taking up post in Niue, that exemption to be subject to compliance with such conditions as the Minister of Customs may determine for the protection of the revenue.

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## SCHEDULE 5

### Section 9(2)

#### PRIVILEGES AND IMMUNITIES OF OFFICIAL STAFFS AND OF HIGH OFFICERS' FAMILIES

1. Where any person is accorded any such immunities and privileges as are mentioned in Schedule 3 to this Act as the representative on any organ of the organisation or a member of any committee of the organisation or of an organ thereof, the members of his official staff accompanying him as such a representative or member shall also be accorded those immunities and privileges to the same extent as the members of the staff of a mission are accorded the immunities and privileges accorded to a diplomatic agent.
2. Where any person is accorded any such privileges and immunities as are mentioned in Schedule 3 to this Act as an officer of the organisation, the members of the family of that person who form part of his household shall also be accorded those privileges and immunities to the same extent as the members of the family of a diplomatic agent who form part of his household are accorded the privileges and immunities accorded to that diplomatic agent.





# DOGS ACT 1966

1966/35 – 1 July 1966

	<b>PART 1</b>	18	Imposition of fine not to affect fees
	PRELIMINARY	19	Remission and refund of fees
1	Short title		
2	[Spent]		
3	Interpretation		
	<b>PART 2</b>		<b>PART 4</b>
	THE REGISTRAR		TOTAL NUMBER OF DOGS ON NIUE SUBJECT TO CONTROL
4	Registrar and Registration Office	20-21	[Repealed]
5	Principal duties of Registrar		
6	Register		<b>PART 5</b>
	<b>PART 3</b>		LIABILITY FOR INJURIES OR DAMAGE CAUSED BY DOGS
	REGISTRATION	22	Dangerous dogs may be destroyed
7	Dogs to be registered	23	Dog attacks
8	Dog collars and registration labels	24	Proof of mischievous propensity
9	Mode of registration		
10	Effect of registration		<b>PART 6</b>
11	Annual registration		MISCELLANEOUS PROVISIONS
12	Registration fees and other charges	25	Protection of officers of police
13	Change of ownership	26	No liability where dog wounded
14	Registration label	27	No compensation for destruction of dogs
15	Offences	28	Fines not affected by destruction of dog
16	Dogs that may be destroyed	29	Destroyed dogs
17	Burden of proof	30	Offences (General)
		31-32	[Repealed]
		33	Liability of owners of dogs

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## To provide for the registration and control of dogs and the liability for injuries and damage caused by dogs

- 1 Short title**  
This is the Dogs Act 1966.
- 2 [Spent]**
- 3 Interpretation**  
In this Act –
- “owner” (of a dog) includes every person who –
- (i) has the dog in his keep, care, custody, charge, or possession for the time being, whether the dog is at large or in confinement; or
  - (ii) occupies any dwelling, business premises or other place in which the dog is usually harboured or permitted to remain; and
- “registration label” means the label described in section 8 (1);
- “Secretary” means the Financial Secretary appointed under the authority of the Customs Act 1966;
- “vehicle” means any vehicle within the meaning of the Transport Act 1965;

“year” means a period of 12 months commencing on 1 April in each year and ending with 31 March then next ensuing.

## PART 2

### THE REGISTRAR

#### **4 Registrar and Registration Office**

(1) The duties of the Registrar under this Act shall form part of the duties of the Chief Officer of Police.

(2) (a) The Chief Officer of Police shall be deemed to be “the Registrar” within the meaning of this Act;

(b) Any reference in this Act to the Registrar shall be construed to include reference to every constable performing the duties of Registrar under this Act on behalf and under the authority of the Chief Officer of Police.

(3) The office of the Chief Officer of Police shall be deemed to be the office of the Registrar.

#### **5 Principal duties of Registrar**

The principal duties of the Registrar shall be –

(a) To keep at his office a register for the purposes of this Act;

(b) To make in the register the entries required by this Act;

(c) To receive and record all registration fees and any other money payable at his office under this Act.

#### **6 Register**

(1) The pages of the register shall be divided into columns under headings and indicating the entries required to be made by section 9(2)(b).

(2) The register shall be kept in book form or in any other form approved by Cabinet.

(3) The register may be examined by any person during office hours free of charge.

## PART 3

### REGISTRATION

#### **7 Dogs to be registered**

(1) No person shall own any dog of a greater age than 6 months for a period exceeding 14 days unless the dog is for the time being registered under this Act.

(2) Every owner of any such dog who does not apply for registration of that dog on or before the expiration of the period of 14 days commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units.

(3) It shall be lawful for the owner of any dog to have his dog registered before it attains the age of 6 months and the Registrar shall not refuse registration on the ground that the dog has not attained that age.

#### **8 Dog collars and registration labels**

(1) There shall be kept at the office of the Registrar a supply of dog collars having a metal label securely affixed to each collar numbered consecutively from

number one in each year upwards and marked with the year for which each collar is issued.

(2) Every owner shall be entitled to receive a collar, as provided in section 9 in respect of each dog which is being registered.

(3) Duplicate collars shall be issued on affirmation that the original has been lost or stolen.

## **9 Mode of registration**

(1) Application for every registration required under this Act shall be made by the owner, or by some person on his behalf, delivering or giving at the office of the Registrar a description of the dog and paying the prescribed registration fee and other charges (if any) unless remitted under section 19 with his application for registration.

(2) On receiving every amount so payable the Registrar shall –

(a) Issue a receipt therefore and a collar bearing the then available next number in consecutive order, to be worn on the neck of the dog;

(b) Register the dog by entering in the register –

(i) the name and residence of the owner;

(ii) the number of the registration label on the collar issued;

(iii) a description of the dog by which the collar is to be worn including kind or breed, age, sex, colour and other distinguishing marks or peculiarities (if any);

(iv) such other particulars as Cabinet may determine.

(3) Every person applying for the registration of a dog, who knowingly inserts or omits, or knowingly causes or permits to be inserted or omitted in the description of the dog to be registered any matter or thing contrary to or for the purpose of concealing the truth or who wilfully makes any false or misleading statement or material omission in any information supplied to the Registrar, commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units.

## **10 Effect of registration**

Every registration when duly made shall be deemed to be in force on the day on which it is made, and shall continue in force until 31 March then next ensuing.

## **11 Annual registration**

(1) Every registration shall be again made on or before 15 April of the next ensuing year if the dog first registered is still alive and kept on Niue at that time and shall be again so made from year to year.

(2) Every owner who does not apply for registration on or before 15 April of each year as specified in subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units.

(3) The provisions of section 8(2), section 9 and section 10 shall apply.

## **12 Registration fees and other charges**

(1) The fees payable for the registration of dogs under section 7 or section 11 shall be as Cabinet may prescribe by regulation.

(2) The charge for collars and duplicate collars including registration labels shall be such amount of money as Cabinet by public notice may determine, and as far as not so determined the charge for a collar as aforesaid shall be deemed to be included in the registration fee provided in subsection (1) and the charge for duplicate collars shall be the amount of their cost to the Government.

### **13 Change of ownership**

(1) Where the ownership of a registered dog is changed, the registration of the dog shall continue in force, but the new owner shall within 14 days notify the Registrar of the change in ownership, and the Registrar shall, without payment of any fee, enter the name of the new owner in the register in substitution for the name of the previous owner.

(2) Every person who fails to notify the Registrar as aforesaid commits an offence.

### **14 Registration label**

(1) It shall be lawful for the owner of any dog registered under this Act to affix to any other dog collar (in the manner in which it was affixed to the collar supplied by the Registrar) the registration label affixed to the collar supplied in respect of that dog by the Registrar.

(2) Nothing in this section shall be construed to authorise the wearing of any registration label by any dog other than the dog in respect of which it was issued.

### **15 Offences**

(1) Every person commits an offence who –

- (a) Falsely makes or counterfeits or, knowing the same to be false or counterfeit, purchases, uses, or has in his possession any label resembling or apparently intended to resemble or pass for a registration label;
- (b) Is the owner of any dog wearing a registration label issued in respect of another dog; or
- (c) Has his dog duly registered but allows it to be at large not wearing a collar having the registration label affixed to it;
- (d) Wilfully abandons any dog, whether for the purpose of avoiding registration or not;
- (e) Removes (except for the purposes of section 14) the registration label affixed to the collar to be worn by his dog; or
- (f) Removes from the neck of any dog the collar or the registration label required by his Act to be worn by that dog.

(2) If any dog is destroyed as provided in section 16 in consequence of the removal of the collar or registration label specified in subsection (1)(f), every person responsible for such removal may be ordered to pay to the owner the full value of the dog so destroyed as determined by the court in addition to any fine imposed.

### **16 Dogs that may be destroyed**

(1) Any constable may destroy every dog found at large in any place, if that dog –

## Dogs Act

- (a) Being a dog apparently over the age of 6 months does not wear a collar having the registration label affixed; or
- (b) Being a dog of any age and whether wearing a collar as aforesaid or not, is apparently suffering from disease or neglect.

(2) Every constable may for the purposes of this section enter any place at any time.

(3) Any person other than a constable finding a dog apparently over the age of 6 months at large in any place not being a public place without wearing a collar having the registration label affixed to it, may, without being answerable to the owner, destroy the dog if, on reasonable grounds he fears that the dog may cause damage to his property.

### **17 Burden of proof**

In any proceedings under this Act –

- (a) Any dog not wearing a collar having the registration label affixed to it shall, until the contrary is proved, be deemed to be unregistered;
- (b) Any dog wearing after 15 April in any year a collar having affixed to it the registration label issued for the year preceding the then current year, shall, until the contrary is proved, be deemed to be not registered for the then current year as prescribed in section 11;
- (c) The proof that a dog has been duly registered or does not require to be registered, shall be on the defendant.

### **18 Imposition of fine not to affect fees**

The imposition by the Court of any fine for failing to comply with this Act relating to registration shall not be construed as a release from the payment of any fee or other charge due.

### **19 Remission and refund of fees**

The Cabinet on grounds of hardship, may cause the whole or any portion of any fee payable under this Act to be remitted or refunded.

## PART 4

### TOTAL NUMBER OF DOGS ON NIUE SUBJECT TO CONTROL

**20** [Repealed]

**21** [Repealed]

## PART 5

### LIABILITY FOR INJURIES OR DAMAGE CAUSED BY DOGS

### **22 Dangerous dogs may be destroyed**

Where complaint is made to the Chief Officer of Police or the court that a dog, whether at large or not, is dangerous and is not kept under proper control, the court, if it is satisfied as to the grounds of the complaint, may, in addition to any fine that may be imposed under this Act, order that the dog be destroyed by the Police.

**23 Dog attacks**

(1) Where any dog –

- (a) Rushes at, or attacks, bites, startles or worries any person or any kind of poultry or animal being the property of any person whereby such person, poultry or animal is killed or injured or endangered or any other property damaged or endangered; or
- (b) Rushes at any vehicle in such a manner as to cause or to be likely to cause an accident;

the owner of the dog commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units.

(2) If it is proved to the satisfaction of the Court that the owner of a dog which causes an occurrence as aforesaid, permitted that dog to be at large although the dog was known to him to have been the cause of any such occurrence before, the owner shall be liable to a fine not exceeding 0.5 penalty units in lieu of the fine provided in subsection (1).

(3) Any person affected by the occurrence or witnessing same may, without being answerable to the owner, forthwith destroy the dog.

(4) Any fine provided in this section may be imposed in addition to any liability the owner may incur for injury or damage caused by the dog.

(5) In addition to any fine imposed under this section, the court may order that any dog which has not been destroyed under subsection (3), be destroyed by the Police.

**24 Proof of mischievous propensity**

The owner of a dog shall be liable in damages for injury done by the dog, and it shall not be necessary for the person seeking damages to show a previous mischievous propensity, or that the injury was attributable to neglect on the part of the owner of the dog.

PART 6

MISCELLANEOUS PROVISIONS

**25 Protection of officers of police**

The Chief Officer of Police shall with the approval of Cabinet issue directions as to the method to be followed by constables in destroying dogs in the respective circumstances specified in this Act, and no constable who, while exercising the powers conferred on him by this Act, in good faith does or orders or causes to be done may act in pursuance or intended pursuance of directions so issued, shall be under any civil or criminal liability in respect of it.

**26 No liability where dog wounded**

No person who, with the intention of destroying any dog under powers conferred on him by this Act, wounds or maims the dog shall, except in a case in which he causes unnecessary suffering to the dog, be under any liability, whether criminal or civil, for any injury done to the dog.

**27 No compensation for destruction of dogs**

No compensation shall be payable to the owner of any dog destroyed by the police under any order made in that behalf by the court under this Act or in the exercise of powers conferred in that behalf on the police by the provisions of this Act.

**28 Fines not affected by destruction of dog**

Where this Act provides for the imposition of a fine for any offence specified in this Act that fine may be imposed by the Court whether or not the dog in respect of which the offence has been committed, was destroyed before the fine is imposed.

**29 Destroyed dogs**

The Chief Officer of Police shall, with the approval of Cabinet, issue directions for the method of collection and disposal of carcasses destroyed by the Police under this Act and any directions so issued shall be carried out accordingly.

**30 Offences (General)**

(1) Every person commits an offence who –

- (a) Fails to comply with any duty or obligation imposed on him by this Act; or
- (b) Wilfully makes any false or misleading statement or any material omission in any application, information, or report to the police or the Secretary;
- (c) Wilfully obstructs, hinders, or resists any person in the exercise or execution of any power, duty, or function conferred or imposed on such person by the provisions of this Act.

(2) Every person who commits an offence against this Act for which no penalty is provided in this Act elsewhere than in this section or in the Niue Act 1966 is liable to a fine not exceeding 0.5 penalty units.

**31-32** [Repealed]

**33 Liability of owners of dogs**

In any action for damages for the act of a dog in attacking a human being or any animal, it shall be no defence that the defendant had no knowledge of the dangerous or mischievous character of the dog.





# DOMESTIC FISHING ACT 1995

1995/199 – 10 August 1955

	PART 1	14 Powers to apprehend offenders
	PRELIMINARY	15 Penalty
1	Short title	
2	Interpretation	
	PART 2	
	PROTECTION OF FISH	
3	Prohibited use of illegal fishing means	16 Fisheries officer
4	Power to destroy akau Niukini	17 Powers and duties of fisheries officer
5	Seizure and forfeiture	18 Licensing of boats
6	Arms Regulations 2005 not affected	19 Application for a licence
7	Marine reserves and fono for fishing	20 Grounds for refusal
8	Effect of a marine reserve or fono for fishing	21 Duration of licence
9	Bait fishing	22 Fees and regulations
10	Restriction on taking of certain species	23 Seaworthy condition required
11	Prohibited exports	24 Offences
12	Catch and size quota	24A Infringement offences
	PART 3	25 Personal liability of officers
	SUNDAY FISHING BAN	26 Offence of obstructing
13	Sunday fishing prohibited	27 Exemptions and requirements for boats
		28 Regulations
		29 [Spent]

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## PART 1

### PRELIMINARY

- Short title**

This is the Domestic Fishing Act 1995.
- Interpretation**

In this Act and its Regulations –

  - “ammunition” includes any cartridges, cartridge cases, gunpowder, bullets, and shots;
  - “annual licence fee” means the fee payable under this Act for a licence to operate a boat;
  - “boat” means any vessel or sea craft whatsoever whether propelled by oars or motorised, but does not include –
    - A canoe;
    - A yacht not registered in Niue;
    - A yacht’s tender not used for hire or reward; or
    - A commercial cargo vessel having a gross tonnage, in excess of 5 tonne;
    - A barge.
  - “destructive organism” means any aquatic organism, animal or any plant that is deemed destructive to any part of the marine environment by Regulation;
  - “Director” means the Director in charge of the Department of Agriculture, Forestry and Fisheries in Niue;
  - “exclusive economic zone” has the same meaning as in the Maritime Zones Act 2013;
  - “explosive” includes any article of which an explosive forms part and which is capable of destructive effect by way of explosion;

“firearm” includes any weapon from which a missile is discharged by the force of any explosive substance;

“fish” means every aquatic plant (including algae, dinoflagellates, diatoms, sea grasses) or animal whether vertebrate or invertebrate and including their eggs, spawn, spat and juvenile stages and includes any terrestrial vertebrate or invertebrate animal that has marine life phase within its normal biological life cycle;

“fishing” means –

- (a) Searching for, catching, taking or harvesting fish; or
- (b) The attempted searching for, catching, taking or harvesting of fish; or
- (c) Engaging in any activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish; or
- (d) Fish processing within the fishery waters; or
- (e) Transshipment within the fishery waters; or
- (f) Any operation at sea in support of or in preparation of any activity described in this definition; or
- (g) Taking or harvesting crabs, and live sea shells along the reef flats up to high water mark including diving for live sea shells and or corals;
- (h) Taking or harvesting, crustaceans which are carrying eggs to deposit in the sea, including the Uga, Kalahimu and Kalavi but excludes the searching for, catching, or taking of any ‘destructive organism’;

“fisheries officer” means any fisheries officer employed in the Fisheries Division of the Department of Agriculture, Forestry and Fisheries and includes the director or any person appointed by Cabinet by warrant;

“fishery waters” includes the internal waters, territorial sea, exclusive economic zone and continental shelf as defined in the Maritime Zones Act 2013;

“infringement notice” means a notice alleging the commission of an infringement offence;

“infringement offence” means an offence against this Act or regulations made under this Act that is classified as an infringement offence by regulations made under this Act;

“licence” means a licence issued under section 18;

“marine reserve” means a marine reserve declared by Cabinet under section 7;

“net” means a mesh device used to catch fish that can be casted, set or dragged, it does not including a flying fish net;

“prohibited fish exports” and “protected fish species” when referring to a species, includes –

- (a) A live species;
- (b) A dead species;
- (c) Any body parts cooked in part or whole.

“quarantine officer” means any quarantine officer employed by the Department of Agriculture, Forestry and Fisheries or any person appointed by Cabinet by warrant;

“take” (fish) includes pursuing, catching, removing, or extracting from the water or laying hold of by any means or device;

“underwater breathing apparatus” means scuba gear, or hooker unit, made up of an air tank, and requires the use of a mask or mouth regulator;

“vessel” means any boat, aircraft, ship or other sea-going craft.

# Domestic Fishing Act

## PART 2

### PROTECTION OF FISH

#### **3 Prohibited use of illegal fishing means**

(1) No person shall use –

- (a) Dynamite, gelignite, or any other explosive;
- (b) Firearms, hand held power heads exempt;
- (c) The New Guinea creeper, commonly known as “akau Niukini”, or any other poison or stupefying agent;
- (d) A net which has a mesh size less than a 75mm diagonal measurement other than for use as a flying fishing net;
- (e) Underwater breathing apparatus for the purpose of taking or killing fish other than for the taking of any destructive organism within Niue’s waters.

(2) Cabinet may permit the use of underwater breathing apparatus, subject to such terms conditions and restrictions as Cabinet may impose, for the purpose of conducting scientific research or for the gathering of data to assist in the conservation or management of Niue’s fishery resource.

(3) Every person who –

- (a) Acts or attempts to act or encourages or induces any other person to act in contravention of this section; or
- (b) Grows or fails to take steps to eradicate akau Niukini commonly known to be growing on his property, or has in his or her possession any plant or seed of akau Niukini;

shall be liable on conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months.

#### **4 Power to destroy akau Niukini**

Every officer of the Department of Agriculture, Forestry and Fisheries and every constable acting under the authority and on behalf of the Director shall forthwith destroy any plant or seed of akau Niukini which he finds possessed or grown by any person.

#### **5 Seizure and forfeiture**

(1) Any constable or any officer of the Department of Agriculture, Forestry and Fisheries acting under the authority and on behalf of the Director or Chief of Police may enter and search any place or vessel and may seize and remove any explosive or other thing or substance which on reasonable grounds he suspects has been used or is intended to be used in breach or attempted breach of section 3.

(2) On the conviction of an offence against section 3, the court may make an order declaring any item in section 3(1) so seized to be forfeited, and thereupon the same shall be deemed to be forfeited to the Government and may be disposed of as the court directs.

#### **6 Arms Regulations**

Nothing in this Act shall be construed to limit the Arms Registration (Fees) Regulations 2005.

#### **7 Marine reserves and fono for fishing**

(1) With the concurrence of the village council and or the Director, the Cabinet may by public notice declare a marine reserve, or a fono for fishing over any part of the reef or Niue waters specified in such public notice.

(2) Every marine reserve or fono for fishing so declared shall come into force on a day specified in the public notice.

(3) Every public notice issued under this section may in like manner be revoked at any time.

(4) Village councils must advertise and place signs to the effect of a fono to inform locals and tourists.

## **8 Effect of a marine reserve or fono for fishing**

(1) Except as otherwise provided in this section or permitted under any marine reserve or fono for fishing, no person shall, so long as any marine reserve or fono for fishing is in force –

(a) Enter the area over which the marine reserve or fono for fishing has been declared, for the purpose of fishing;

(b) Take any inorganic substance, living material, or matter from within any such area.

(2) (a) Every person commits an offence against this Act and shall be liable on conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months, who acts or attempts to act in contravention of subsection (1)(a) or (b).

(b) It shall be a defence to a charge under subsection (1)(a) if the person charged proves that he or she was not fishing or for the removal of any destructive organism, or for research purposes for the gathering of data to assist in the conservation of management of Niue's Fishery resource subject to the written approval of the Director.

(3) Nothing in this section shall be construed to affect the rights of Cabinet, the Director, and the Chief of Police or any person authorised to act on behalf of any of those persons, to enter the area over which the marine reserve or fono for fishing has been declared for the purpose of enforcing this Act or of taking samples of any kind or conducting any other test or examination on which the question of the continuation or revocation of the marine reserve or the fono for fishing may depend.

## **9 Bait fishing**

(1) No person shall take the bait fish known as "ulihega" from a bait fishing area recognised for that purpose by local village custom and during the time of day determined and promulgated by local village custom for that particular area, or as may be prescribed by by-law.

(2) The time of day determined or promulgated by local village custom or prescribed by by-law shall be deemed to include a provision that all bait fishing groups proceedings to the same general area shall depart from the shore for the bait fishing grounds at an agreed time where possible.

(3) No net, fish substance, ground or line bait other than coconut may be used to lure or catch "ulihega" at recognised village bait fishing grounds.

(4) Jigs and other bait may be used at FADs.

## **10 Restriction on taking of certain species**

(1) No person shall take, sell, trade, or export at any time or be in possession of, or interfere with any crustacean, that –

(a) Is carrying external eggs;

(b) Has had its external eggs, or the egg bearing appendages removed, by any means; or

(c) Is in its soft shell stage.

(2) No person shall take, sell, trade, export, or be in possession of, or interfere with, any Uga, crayfish, Tapatapa or clam whose size is less than indicated in the Domestic Fishing Regulations 1996.

## Domestic Fishing Act

(3) Every person who acts in contravention of subsection (1) or (2) commits an offence, and shall be liable on conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

### **11 Prohibited exports**

(1) Cabinet may restrict the export of any species of fish and or their meat or body parts by regulation.

(2) For the purpose of preventing the export of any species referred to in subsection (1) any constable, fisheries officer, or quarantine officer may without warrant at any wharf, airport, or other place of embarkation, search any luggage or cargo, if they have reason to believe or suspect that any person is committing or is likely to commit an offence against this Act and seize any such products and will be disposed of in a manner they consider appropriate under Cabinet's approval.

(3) Any person who contravenes subsections (1) or (2) or who obstructs a constable, fisheries officer or quarantine officer in the exercising of his powers under subsection (2) shall on conviction be liable for a fine of not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months, or both such fine and imprisonment.

### **12 Catch and size quota**

The Director may apply to Cabinet to prescribe by regulation a catch quota or size limit on any fish species.

## PART 3

### SUNDAY FISHING BAN

### **13 Sunday fishing prohibited**

(1) No person shall be allowed to fish on a Sunday between 4am and 9pm within Niue's internal waters or territorial sea.

(2) Any person contravening subsection (1) shall be guilty of an offence.

### **14 Powers to apprehend offenders**

Any constable or fisheries officer shall have the power under this Act to arrest with or without warrant any person committing an offence or whom he or she has reasonable cause to believe has committed an offence against section 13.

### **15 Penalty**

Any person offending against section 13 shall be liable to –

- (a) A fine not exceeding 1 penalty unit; and or
- (b) Imprisonment for a term not exceeding 3 months; and in addition to any other penalty the court may impose;
- (c) Forfeiture to the Government of the sea-craft together with its fishing gear and all fish taken.

## PART 4

### SAFETY AT SEA

### **16 Fisheries officer**

(1) Fisheries officers shall be appointed by the Niue Public Service Commission.

(2) The office of the fisheries officer may be held in conjunction with any other office which the Niue Public Service Commission shall consider to be not incompatible therewith.

**17 Powers and duties of fisheries officer**

The general powers and duties of the fisheries officer shall include –

- (a) The issuing of licences under section 18; and
- (b) The commencing of proceedings under section 18 to ensure compliance with section 18;
- (c) Carry out duties as in section 5(1).

**18 Licensing of boats**

No person shall put to sea in any boat continuously based on Niue, unless that boat is licensed under this Act, providing that visiting yachts and their ancillary boats shall be exempt from this Act in so far as they are not at any time used for hire or reward.

**19 Application for a licence**

An application for a boat licence shall be made in such manner as the fisheries officer may by notice prescribe and the fisheries officer may grant or refuse any such licence.

**20 Grounds for refusal**

A licence shall not be refused except on one or more of the following grounds –

- (a) That in the opinion of the fisheries officer the boat is not seaworthy;
- (b) That in the opinion of the fisheries officer the boat does not meet the minimum requirements for safety as prescribed by this Act;
- (c) That the person applying for the licence is by order of the court disqualified from holding a licence;
- (d) That the fee payable annually for a licence issued under this Act has not been paid;
- (e) That the applicant has not yet attained 16 years of age; and
- (f) That the applicant is not the owner of the boat and has not obtained written permission from the owner.

**21 Duration of licence**

Every licence shall come into force on 1 July and shall expire on the next following 30 June.

**22 Fees and regulations**

- (1) No licence shall be issued under this Act until the annual licence fee has been paid.
- (2) The annual licence fee shall be as determined by Cabinet by regulation.
- (3) The annual fee determined by Cabinet shall be payable for each year.

**23 Seaworthy condition required**

No person shall put to sea in a boat unless that boat is in a seaworthy condition and has the minimum safety equipment on board required under the regulation.

**24 Offences**

- (1) Every person who operates a boat in contravention of this Act commits an offence and on conviction shall be liable to –



## Domestic Fishing Act

- (a) A suspension of the licence issued for that boat under section 18 for a term not exceeding 6 months, or to a fine not exceeding 0.5 penalty units or both such suspension and fine, and notwithstanding any other penalty imposed, the court may order the boat to be impounded by the Government and held until such time as the Government, acting through the Director, is satisfied that the requirements of this Act have been met; and
- (b) In the case of repeated offending against this Act, in addition to any other penalty prescribed by paragraph (1)(a), the court may order the cancellation of any licence issued under section 18.

(2) Any person whose licence has been cancelled under section 24(1)(b) and who whilst the licence remains cancelled operates a boat in contravention of this Act commits an offence and shall on conviction be liable to a fine not exceeding 5 penalty units or to an imprisonment for a period not exceeding 6 months, or both such fine and imprisonment.

### **24A Infringement offences**

(1) If a person is alleged to have committed an infringement offence, the person may –

- (a) be proceeded against in the normal manner by the laying of an information against the person; or
- (b) be served with an infringement notice by a constable delivering it or a copy of it personally to the person's last known place of residence or business.

(2) An infringement notice must be in the prescribed form and must state –

- (a) details of the alleged infringement offence that are sufficient to fairly inform the person of the time, place and nature of the alleged offence; and
- (b) the amount of the infringement fee; and
- (c) an address at which the infringement fee may be paid; and
- (d) the time within which the infringement fee must be paid; and
- (e) that the person has a right to request a hearing; and
- (f) what will happen if the person does not pay the fee and does not request a hearing; and
- (g) any other prescribed information.

(3) If the person pays the infringement fee within the period stated in the infringement notice –

- (a) no further action may be taken against the person; and
- (b) no conviction may be entered against the person for the offence.

(4) If the person does not pay the infringement fee or request a hearing within the period stated in the infringement notice, the Director must serve the person with a reminder notice in the prescribed form that contains the same or substantially the same particulars as the infringement notice.

(5) If the person does not pay the infringement fee or request a hearing within the period stated in the reminder notice, proceedings may be commenced against the person by filing the reminder notice with the Court and, for that purpose –

- (a) the reminder notice must be treated as the information for the infringement offence; and
- (b) the Court is deemed to have made an order, on the date that the reminder notice is filed, that the defendant pay a fine equal to the amount of the infringement fee together with costs in the prescribed amount, but no conviction is entered against the person.

(6) A person requests a hearing by providing to the Director, within the period specified in the infringement notice or reminder notice, as the case may be, a

notice, signed by the person, requesting a hearing and accepting or rejecting liability and, if accepting liability, the reasons, if any, why the Court should impose a lesser fine than the infringement fee for the offence.

(7) A person found guilty at a hearing held for the purposes of subsection (6) is liable to a fine equal to the amount of the infringement fee (unless the Court imposes a lesser amount) together with costs in the prescribed amount, but no conviction is entered against the person.

(8) To avoid doubt, if a person commits an infringement offence and proceedings against the person are taken in the normal manner under subsection (1)(a), the person is liable to pay not the infringement fee but the amount that the Court determines in accordance with section 24. However, no conviction may be entered against the person.

## **25 Personal liability of officers**

No officer shall be personally liable for any act done by him in good faith in the exercise of any duties, powers, or authorities imposed or conferred on him by this Act.

## **26 Offence of obstructing**

Every person who wilfully obstructs, hinders, or resists any officer in the execution of any duty, power, or authority imposed or conferred on that officer by this Act, commits an offence and, except where the Niue Act 1966 provides a more severe penalty for the same offence, shall be liable on conviction to a fine not exceeding 2 penalty units.

## **27 Exemptions and requirements for boats**

(1) Cabinet may on its own motion or under an application in writing lodged with the fisheries officer exempt any person from this Act and may impose such terms and conditions as it thinks fit as a condition under which the exemption is granted. An exemption so granted may be revoked or varied by Cabinet at any time.

(2) Cabinet shall make regulations prescribing safety requirements for boats having a gross tonnage in excess of one tonne, resident, licensed to fish in Niue's EEZ or registered in Niue.

## **28 Regulations**

(1) Cabinet may make such regulations as may be necessary to give effect to this Act, for due administration of it and for the payment of any fees.

(2) the regulations may, without limitation –

- (a) create offences for contravention of the regulations and prescribe penalties not exceeding 5 penalty units for such offences;
- (b) declare which offences against this Act or regulations made under this Act constitute infringement offences;
- (c) prescribe infringement fees for infringement offences (which may be different fees for different offences, including different fees for a first, second, or subsequent offence) not exceeding the lesser of the following –
  - (i) 5 penalty units; or
  - (ii) the maximum penalty specified in the section of this Act that creates the offence (in the case of an offence against this Act that is declared to be an infringement offence).

## **29 [Spent]**



# EDUCATION ACT 1989

1989/130 - January 1989

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2	Interpretation	27	Child be sent to a special school
		28	Penalty for failure to enrol child
		29	Exemption from attendance
		29A	Exemption from attendance by children who have attained the age of 14 years
		30	Penalty for irregular attendance
		31	Principal to keep records
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			SCHOOL CLASSES, HOURS AND TERMS
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## To make provision for the education of the people of Niue under article 61(2) of the Niue Constitution

- 1 Short title**  
This is the Education Act 1989.
- 2 Interpretation**  
In this Act –  
“Department” means the Department of Education constituted by this Act;

- “Director” means the Director of Education and includes any person appointed as deputy of the Director;
- “government school” means any school maintained from public funds and controlled and administered by the Department under this Act;
- “Minister” means the Minister of Education;
- “parent” in relation to any child, includes the legal adoptive parent or legal guardian of that child and any person who has actual custody of that child;
- “primary school” means a school providing a 6 year course, or an 8 year course for pupils entering the school between the ages of 5 and 7 years;
- “private school” means any private school that is registered under this Act;
- “pupil” means any person who is enrolled on the register of pupils of any school and who has not attained the age of 21 years;
- “school” means any institution which not fewer than 8 pupils or other persons normally attend for their education: and includes the assembly of not fewer than eight persons for that purpose; and also includes any institution from which regular educational instruction is given by correspondence; and also includes any class, division or section of any school; but does not include –
- (a) Any institution or assembly in which instruction is given which is wholly or mainly of a religious character; or
  - (b) Any institution controlled by a religious organisation for the purpose of training persons for the ministry of religion or for admission to a religious order;
- “school age” in relation to any child, means any age between the age of 5 years and the age of 16 years or any earlier age at which the child ceases to be required to have his name enrolled on the register of a school under Part 4; or in the case of any child who is deemed by the Director (after special examination by a medical officer or other officer appointed for the purpose) to require special tuition, between such ages as the Director may from time to time determine, but in no case shall any person who has attained the age of 21 years be deemed to be of school age;
- “school committee” means a body of persons established under Part 2.

## PART 1

### CENTRAL ADMINISTRATION

#### **3 Department of Education**

There shall be a department of the Government of Niue called the Department of Education.

#### **4 Cabinet’s powers and responsibilities**

In pursuance of the responsibilities of Cabinet to establish and maintain schools for the education of the people of Niue under article 61(2) of the Constitution, Cabinet shall through the Minister have control and direction of the Department and of the officers thereof, and, subject to this Act, shall generally administer this Act.

#### **5 General duties of the Minister**

It shall be the duty of the Minister to promote the education of the people of Niue, and subject to this Act, and to the Constitution to control, administer and maintain all Government schools and to exercise such supervisory and other functions in relation to private schools as may be provided under this Act.

**6 Delegation of Minister's powers**

(1) The Minister may by writing under his hand either generally or particularly, delegate to the Director all or any of the powers which are conferred on the Minister by this Act or any other enactment, including powers delegated under any enactment, but not including the power to delegate under this section or the power to consent to a delegation under section 9.

(2) Subject to any general or special directions given or conditions or restrictions attached by the Minister, the Director may exercise any powers delegated as aforesaid in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

(3) Where the Director purports to act under any delegation under this section, he shall be presumed to be acting on the terms of the delegation in the absence of proof to the contrary.

(4) Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Minister.

(5) (a) Unless and until any such delegation is revoked, it shall continue in force under tenor.

(b) In the event of the Minister by whom any such delegation has been made ceasing to hold office, it shall continue to have effect as if made by the person for the time being holding office as Minister and, in the event of the Director ceasing to hold office, it shall continue to have effect as if made to the person for the time being holding office as Director or, if there is no Director in office or if the Director is absent from duty, to the person for the time being acting as Director.

**7 Director of Education**

A Director of Education, who shall be the administrative head of the Department of Education, shall be appointed by the Niue Public Service Commission.

**8 Appointment of other officers**

The Niue Public Service Commission may appoint as officers of the Department such Deputy Directors, Inspectors of Schools, and other officers and employees as may be necessary for the purposes of this Act.

**9 Delegation of Director's powers**

(1) (a) The Director may by writing either generally or particularly delegate to such officer or officers or employee or employees of the Department as he thinks fit all or any of the powers exercisable by him under this Act or any other enactment, including any powers delegated to him under this Act or any other enactment, but not including this present power of delegation.

(b) The Director shall not delegate any power delegated to him by the Minister without the written consent of the Minister.

(2) Subject to any general or special directions given or conditions or restrictions attached by the Director, the officer or employee to whom any powers as delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

(3) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Director.

(4) Any such delegation shall until revoked, continue in force under its tenor, notwithstanding the fact that the Director by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that Director.

**10 Expenses of administration to be appropriated by the Assembly**

All amounts payable for the expenses of the Department, and all amounts payable for such other purposes as may be necessary to give effect to this Act, shall be paid out of the money appropriated by the Assembly for the purposes of this Act.

PART 2

LOCAL ADMINISTRATION

**11 Prescribing zones of residence**

(1) The Director may, with the approval of the Minister, prescribe zones of residence of pupils, and any pupil ordinarily residing within any such zone who is not exempted from attendance at a school under Part 4 or who is not attending a private school shall attend the Government school which the Director prescribes as appropriate to that zone.

(2) Notwithstanding subsection (1) the Director may, with the approval of the Minister, authorise a pupil to attend a school outside such pupil's zone of residence if it is proven to the satisfaction of the Director that it is in the best interests of the pupil to attend that other school.

(3) For the purposes of this section a pupil shall be deemed to be ordinarily residing in a zone if he is actually residing in that zone.

(4) The boundaries of any such zone shall be notified by the Director in the *Gazette*.

**12 School committees**

(1) (a) For every Government school established under this Act, there shall be a school committee comprising of 5 members 4 of whom to be elected by the parents whose children attend that school in the manner as may be prescribed by regulations made under this Act.

(b) The Principal of each school shall be an ex officio member of the Committee.

(c) Where there is only one high school and one primary school for the whole of Niue, then the school committee in each case shall consist of one representative from each village.

(2) If at any time the parents referred to in subsection (1) refuse or neglect to elect a committee, or if for any cause whatever there is no school committee for any such school, the Director shall, until such time when a school committee is elected, be responsible for that school and exercise all the powers and functions of the school committee for that school as provided under this Act.

(3) Every school committee shall hold office for a term of one year, and any sitting member may be re-elected for any subsequent term or terms.

(4) Elections for school committees shall be held at the beginning of every calendar year and in no case later than April in each year.

**13 Qualifications of members of school committees**

(1) A person shall be incapable of becoming a member of a school committee if that person is –

(a) Mentally disordered under Part 26 of the Niue Act 1966; or

- (b) A bankrupt who has not obtained an order of discharge or whose order of discharge is suspended for a term not yet expired or is subject to conditions not yet fulfilled; or
- (c) A person convicted of any offence punishable by imprisonment, unless he has received a full pardon or has served his sentence or otherwise suffered the penalty imposed upon him.

(2) (a) Subject to subsection (1) every parent whose child attends a Government school shall be eligible to be elected a member of the school committee for that school and no other person shall be so qualified.

- (b) A parent can only be a member of one school committee at any one time.

#### **14 Vacancies on school committees**

(1) The office of any member of a school committee shall become vacant, and the vacancy shall be deemed to be an extraordinary vacancy, if the member

- (a) Dies; or
- (b) Resigns from office by writing under the member's hand delivered to the Chairman of the committee; or
- (c) Is absent without leave from 3 consecutive meetings of the committee; or
- (d) Becomes a mentally disordered person under Part 26 of the Niue Act 1966; or
- (e) Is adjudged a bankrupt; or
- (f) Is convicted of any offence punishable by imprisonment, and is sentenced to imprisonment for that offence.

(2) Every extraordinary vacancy on a school committee shall be filled by the election of a new member in the manner prescribed, and the member then elected shall retain office so long as the vacating member would have retained office if no such vacancy had occurred.

#### **15 Meetings of Committees**

(1) Each school committee shall hold its meetings, elect a chairman, appoint officers, and conduct its proceedings in such manner as it may determine, except where it is provided for by regulations.

(2) If at any time any committee fails from any cause for a period of 3 months to hold a meeting it shall cease to exist and section 12(2) shall apply accordingly.

#### **16 Committee to have management of schools**

(1) The committee of every Government school shall have the management of that school and shall ensure that the school is in good repair and order, and to provide for the proper cleaning of every such school and the outbuildings thereof, and make all necessary arrangements in regard to sanitary matters and to the care of the school grounds, gates and fences.

(2) Every school committee shall expend, in accordance with the instructions of the Director –

- (a) The grants made to it by the Director for incidental expenses; and
- (b) The grants made to it by the Director for special purposes.

(3) Subject to the terms of any trust, all other money received by the committee shall be used in such manner as the Committee thinks fit for the purposes of the school.

**17 School funds**

(1) The Director shall from year to year make grants to the committee of every school for incidental expenses and for any special purpose under regulations that may be made under this Act.

(2) Such funds obtained under subsection (1) and any donations, subscriptions, and all other money which may be received by the committee for the purposes of this Act shall form the School fund for that school, and every such School Fund shall be kept under regulations under this Act.

(3) Where any school committee ceases to function owing to the closing of the school the whole of the School Fund in the hands of the committee, after meeting its outstanding liabilities shall be paid to the Department and credited to the Department special fund for grants to committees for incidental expenses.

(4) The accounts of every school committee shall be audited by the Government Auditor under article 60 of the Constitution.

PART 3

ESTABLISHMENT OF SCHOOLS

**18 Establishment of Government schools**

(1) There shall be established in Niue such Government schools, institutions, classes, etc, as Cabinet considers necessary for the purposes of –

- (a) Providing pre-school education in the form of kindergartens, playcentres, and similar institutions;
- (b) Providing for primary education;
- (c) Providing for intermediate and secondary education;
- (d) Providing for special education such as for mentally and physically handicapped children;
- (e) Providing for further and or continuing education such as in the form of community colleges, etc;
- (f) Providing for the training of teachers;
- (g) Providing for the training of technical skills, trades, including cultural arts and crafts;
- (h) Providing for any other form of education or instruction which the Cabinet may determine as necessary and appropriate for the people of Niue.

(2) The Director shall advise the Minister as to the number and location of schools and teachers and as to the courses of instruction, which he believes to be necessary in order that the education of the people of Niue may be satisfactorily promoted, taking into account the aims and objects of education as Cabinet may direct or approve.

**19 Fees for education**

(1) All education provided in Government schools shall be free.

(2) Cabinet may by regulations require fees to be paid in respect of certain schools, institutions or classes of learning and also prescribe the nature and level of fees to be paid.

**20 Establishment and registration of private schools**

(1) Cabinet may, on the application of any person or body of persons desirous of establishing a private school, approve the establishment of such school upon such terms and conditions as Cabinet deems fit.



(2) (a) Every such application shall be made to the Director who may require the provision of any further information as the Director may require.

(b) Upon satisfaction that all relevant information pertaining to the application have been obtained, the Director shall as soon as practicable forward the application, together with any recommendations, to the Minister for consideration by Cabinet.

(3) On the approval of the application by Cabinet, the Director shall accordingly register the school as a private school and the registration shall be notified by him in the *Gazette*.

## **21 Deregistration of private schools**

(1) The Minister, with the approval of Cabinet, may cancel the registration of a private school if the Minister is satisfied on advice received from the Director that

(a) The school is conducted inefficiently or in a manner which is or is likely to be detrimental to the physical, mental, or moral welfare of the pupils attending; or

(b) Any instruction has been imparted therein to any pupil which is prejudicial to the peace, order and good government of Niue; or

(c) The school is carried on in premises which do not conform with the acceptable standards of health and hygiene.

(2) The Director shall give notice in writing of the cancellation of registration of any private school to the management of the school, and any such school shall be closed by the management not later than 4 days after the receipt of such notice. The Director shall also notify the cancellation of registration in the *Gazette*.

(3) The management of any private school who contravenes subsection (2) shall be guilty of an offence under this section and upon conviction shall be liable to a fine of 0.5 penalty units for every day they remain in breach.

## **22 School principals**

(1) Every Government school shall be under the control and supervision of a Principal appointed by the Niue Public Service Commission.

(2) The person holding office as Principal of each school at the commencement of this Act shall be deemed to have been appointed hereunder.

(3) The Principal shall be responsible for the care, safety, control and discipline of each pupil attending that school.

(4) The Principal of every Government school, shall in carrying out his duties and functions under this Act or in carrying out such further duties and functions as the Director may direct, be responsible to the Director.

## **23 Appointment of teachers and other staff**

There may be appointed by the Niue Public Service Commission such deputy principals, teachers and special education teachers and other staff to teach and carry out other duties in the Government schools as may be appropriate.

## **PART 4**

### **ENROLMENT AND ATTENDANCE OF PUPILS**

## **24 Enrolment and attendance to be compulsory**

(1) Every child of school age who is in Niue and is ordinarily resident in Niue shall, unless exempted under this Part be enrolled at and shall attend, whenever it is open, the Government school which is appropriate to his zone of residence, or as

directed by the Director under section 11(2) or a private school, or a special school or any other form of tuition as the Director deems necessary, during the whole of the period commencing on the child's fifth birthday (or on the next ensuing day on which any such school is open) and ending on the child's sixteenth birthday.

(2) Notwithstanding subsection (1) any child who will turn 5 during the duration of any school term shall be entitled to enrol at the beginning of that school term.

## **25 Parents' responsibilities**

It shall be the duty of each parent of any child of school age who is in Niue and is ordinarily resident in Niue to arrange for the enrolment of that child as a pupil at a school and to cause the child to attend that school and remain at school during the period provided for in section 24, on every day on which the school is open and during any subsequent period for which that child remains enrolled as a pupil at the school, unless the child is unable to attend or remain at school, on any day by reason of sickness or illness of parent, or other sufficient cause.

## **26 Exemption from enrolment**

(1) The parent of any child who has not completed his primary education may apply for and receive from the principal of the Government primary school nearest to his place of residence, a certificate of exemption under this section.

(2) The parent of any child who has completed his primary education may apply for and receive from the principal of the secondary school nearest to his place of residence, a certificate of exemption under this section.

(3) Every such certificate of exemption shall exempt the child from the obligation to have his name enrolled on the register of a school.

(4) No certificate of exemption shall be granted under this section, except upon the ground –

(a) That the child is elsewhere under instruction as regular and as efficient as in a Government school; or

(b) That the child is unable to attend school regularly or is unable to be educated by reason of physical or mental handicap.

(5) Any parent who is dissatisfied with any refusal to grant a certificate of exemption may appeal to the Director who may confirm or overrule the refusal.

(6) Every certificate of exemption given under this section shall state the ground of exemption, and a copy of every such certificate shall be forwarded to the Director within 14 days after its issue.

(7) The Director may cancel any certificate of exemption from enrolment granted under this section if he considers that the ground on which the certificate of exemption was granted no longer exists or has become in the particular case no longer such as to warrant the continuance of the exemption.

(8) Where any certificate of exemption from enrolment is granted on the ground specified in subsection (4)(b), the Director may, if he considers that the child would benefit from special education, revoke the certificate of exemption and, by notice in writing, call upon the parent of the child to have the name of the child enrolled on the register of any special school, special class, or correspondence school, or any recognised occupational group providing special facilities for the education of such children.



**27 Child be sent to a special school**

(1) It shall be the duty of the parent of every child who is of school age and is suffering from disability of body or mind of such magnitude as to require special education to take steps to provide efficient and suitable education for the child.

(2) In any case where the parent of the child fails to provide that education for the child, or is deemed by the Director to be unable to provide that education, the Director may direct that the child be sent to such special school, or class, or other institution providing special education as he thinks fit.

**28 Penalty for failure to enrol child**

(1) Where a child is required to be enrolled under this Act, the parent of the child commits an offence and is liable on conviction to a fine not exceeding 1 penalty unit.

(2) The payment of any such fine shall not be a bar to further proceedings in case of further default.

**29 Exemption from attendance**

(1) The parent of any child may apply for and receive a certificate of exemption from attendance from the Principal of the school at which the child is enrolled.

(2) Every such certificate of exemption from attendance shall exempt the child to whom it relates from attendance in whole or part at school.

(3) No certificate of exemption from attendance shall be granted under this section except upon the ground –

(a) That the child is unable to attend school by reason of sickness, danger of infection, infirmity, severe stress of weather, sudden and serious illness of a parent or other sufficient cause; or

(b) That the road by which the child has to travel to school is not sufficiently passable.

(4) Any parent who is dissatisfied with any refusal to grant a certificate of exemption from attendance may appeal to the Director who may confirm or overrule the refusal.

(5) (a) Every certificate of exemption from attendance shall state the ground of the exemption and shall be for such period only as the circumstances require; and no such certificate of exemption shall be granted for a longer period than 3 months, but any such certificate may be renewed for a like period during the continuance of the conditions for which the exemption has been granted.

(b) The Director, being satisfied that the conditions for which the exemption has been granted no longer exist, may cancel any such certificate of exemption.

(6) A child may be exempted from attendance for a period not exceeding 5 school days notwithstanding that no certificate exempting him from attendance has been granted if the Principal of the school attended by him is satisfied that the child has been absent for good and sufficient reason.

**29A Exemption from attendance by children who have attained the age of 14 years**

(1) The parent of a child who has attained the age of 14 years may apply to the Director for a certificate of exemption from attendance in respect of the child.

(2) A certificate of exemption granted under this section exempts the child to whom it relates from attendance at school.

(3) The Director must not grant a certificate of exemption under this section in respect of a child until the Director has satisfied himself that –

- (a) The child has been offered employment or training; and
- (b) It is in the child's best interest that the child should be so employed or trained instead of receiving instruction at a school.

(4) A parent who is dissatisfied with a refusal by the Director to grant a certificate of exemption under this section may appeal to the Minister who may confirm or overrule the refusal.

(5) A certificate of exemption granted under this section must –

- (a) State the nature of the employment or training that the child is to undertake; and
- (b) Be forwarded by the Director to the Minister within the 14 days after its issue.

(6) The Director may cancel a certificate of exemption granted under this section if the Director is satisfied that –

- (a) The child named in the certificate –
  - (i) is not employed or receiving the training specified in the certificate; or
  - (ii) has not attended the employment or undertaken the training on a regular basis; or
- (b) It has not proved to be in the child's best interest that the child should be employed or trained as specified in the certificate instead of receiving instruction at a school.

(7) The Director must within 14 days of cancelling a certificate of exemption granted under this section inform the Minister of the cancellation and the reason for the cancellation.

### **30 Penalty for irregular attendance**

(1) Where any child required by this Act to attend school has been enrolled on the register of a school and does not attend, each parent of the child commits an offence and is liable on conviction to a fine not exceeding 0.5 penalty units for every day on which the child fails to attend school as required by this Act; but no parent shall be liable to a fine exceeding 0.5 penalty units on conviction for a first offence against this section, nor to a fine exceeding 1 penalty unit on conviction for a second or subsequent offence against this section.

(2) In any prosecution under subsection (1) the onus of proof that any child is not required to attend school shall be on the person charged.

### **31 Principal to keep records**

(1) It shall be the duty of the principal of each school to enrol, and to maintain a proper roll of all pupils enrolled at the school, in such form and manner as may be required by the Director.

(2) The principal shall also ensure that the teachers keep proper records of attendance and the principal shall compile a summary of attendance for each school term which shall be forwarded to the Director at the end of each school term.

### **32 Inspection of attendance**

The Director or any officer of the Department directed by the Director may carry out inspection of attendance records in every Government school and every private registered school.

### **33 Restriction on enrolment**

The Director may, with the approval of the Minister, in order to avoid overcrowding at any Government school, limit the attendance at the school in such manner as it determines.

**34 Suspension and expulsion**

(1) (a) Notwithstanding the foregoing provisions it shall be lawful for the principal of any Government school to suspend from attendance any child who, from gross misconduct or incorrigible disobedience, may be considered an injurious or dangerous example to other pupils, or whose attendance at school is likely for any serious cause to have detrimental effect upon himself or upon the other pupils.

(b) No suspension of the pupil who is 14 years and under shall be for a period exceeding one week, except where extended as provided in this section.

(2) Where any pupil 14 years and under is suspended from attendance under subsection (1) the following shall apply –

(a) The principal shall immediately notify the parents or guardian of the pupil and the School Committee (if any) of the school of the suspension and the reasons therefore, and shall forward forthwith to the Director a full report of the suspension;

(b) The Director on receiving the report may, after such enquiry as he considers necessary, either reinstate the pupil conditionally or unconditionally or extend the term of the suspension for such period as he deems fit;

(c) Where after reasonable enquiries the Director is of the opinion that the pupil should not be reinstated in the school from which the pupil was suspended, the Director shall make arrangements for the re-establishing of the pupil in some other school providing education of the same kind which the pupil can conveniently attend, or if there is no such school available, the Director shall make arrangements for the pupil to be enrolled with a correspondence school whether established in Niue or elsewhere;

(d) The name of every suspended pupil shall remain on the register of the school from which he is suspended until he has been placed at some other school, or has been enrolled in a correspondence school, or has been granted by the Director exemption from the obligation to be enrolled as a pupil of any school notwithstanding section 26(4) and the suspended pupil shall not be entitled to attend the school from which he is suspended while the suspension continues.

(3) Where any pupil over 14 years of age is suspended from attendance under subsection (1), the following provisions shall apply –

(a) The principal shall immediately inform the parents or guardian of the pupil and the school committee (if any) of the school of the suspension and the reasons therefore, and shall forward forthwith to the Director a full report of the suspension;

(b) The Director, on receiving the report shall thereupon investigate the matter as he considers necessary and may direct that the pupil be reinstated conditionally or unconditionally, or he may expel the child.

**35 Forbidding attendance in certain cases**

(1) Notwithstanding any other provision of this Act, it shall be lawful for the principal of any Government school to forbid the attendance at the school of any pupil on the grounds of want of cleanliness or on the grounds that the principal has reasonable cause to suspect the pupil is suffering from any communicable disease.

(2) Immediately on forbidding the attendance of any pupil under this section the principal shall report to the parents of the pupil, the school committee (if any), and the Director the action taken by him and the grounds for taking it.

(3) In the case of the pupil whose attendance is forbidden on the grounds that the Principal has reasonable cause to suspect that he is suffering from any

communicable disease the Principal shall, in addition to making the reports required by subsection (2) give immediate notice of the case to the Director of Health.

(4) The Director shall cause an investigation to be made into the case of any pupil whose attendance is forbidden on the grounds of want of cleanliness and may direct the pupil to be readmitted or may confirm that his attendance remain forbidden until the cause of the complaint has been remedied or no longer exists.

(5) The Director may in his discretion refuse to permit the readmission of a pupil whose attendance at school has been forbidden on the grounds that the principal has reasonable cause to believe that the pupil is suffering from a communicable disease until the parent of the pupil supplies the certificate of a medical practitioner to the effect that the pupil is fit to return to school.

(6) The principal under this section shall not be liable for any action, whether on the ground of mistake of fact or on any other ground, unless the action was done in bad faith or without reasonable care.

## PART 5

### SCHOOL CLASSES, HOURS AND TERMS

#### **36 Classification of pupils**

The Director shall classify pupils under a system of nomenclature which distinguishes different classes, standard, or forms within schools in accordance with the stage and nature of instruction provided there, and may amend any such classification system.

#### **37 Hours and terms of attendance**

(1) All schools shall be open during the hours prescribed by the Minister, with the approval of Cabinet, from Monday to Friday (inclusive of both days) in each week, except on –

(a) Statutory holidays; and

(b) Such of those days as the Minister with the approval of Cabinet may require or permit any school to be closed, provided that in emergency situations the Minister shall be empowered to act without prior Cabinet approval.

(2) The period or periods of instruction on any day shall not exceed in total 5 hours for any pupil under the age of 6 years, or 6 hours for any pupil who is 6 years of age or older.

(3) All schools shall be open for periods totaling not less than 200 nor more than 210 days in any calendar.

(4) No school shall remain open for any continuous period or term which exceeds 15 weeks.

(5) Notwithstanding subsections (3) and (4) the Minister may, with the approval of Cabinet, increase or decrease the number of school days in any calendar year, or the number of weeks in any one period or term.

## PART 6

### COURSES OF INSTRUCTION

#### **38 Courses of instruction in Government schools**

(1) Courses of instruction in all Government schools in Niue shall be secular and of such content and standards which takes into account the following broad aims, namely –

(a) To adequately equip the people of Niue with knowledge and skills required to achieve national goals;

(b) To provide the people of Niue with the highest possible standard of education;

(c) To promote an understanding in the values of learning;

- (d) To continue to incorporate Niue's traditional arts, crafts and values in education development; and
- (e) To continue with the development of bilingualism (Niuean and English).

(2) All courses of instruction shall be approved by the Minister after consultation with the Director.

**39 Religious instruction**

(1) Notwithstanding section 38(1) provision may be made with the approval of the Minister for religious instruction to be given to pupils of any Government school for a period not exceeding 30 minutes for any class in any one week.

(2) (a) Such religious instruction shall be observed or conducted under syllabuses which are not contrary to Government policy and are given by voluntary instructors who must be approved by the Minister; and

(b) Such religious instruction shall be of a non-denominational character; and

(c) No teacher shall be compelled to give such instruction, or to attend while such instruction is being given against the dictates of his conscience; and

(d) If a parent of any pupil applies to the Principal of any school for the pupil to be excused wholly or in part from attendance at religious instruction, the pupil shall be excused from such attendance in accordance with the terms of the application.

PART 7

INSPECTION OF SCHOOLS

**40 Inspection of schools**

Every Government school and every registered private school shall be inspected by an Inspector of Schools or some other officer authorised by the Director for that purpose, at such times and in such manner as the Director may direct.

**41 Schools to be open for inspection**

Every Government school and every registered private school shall be opened at all times to visits or inspections by the Minister, or the Director or a Deputy Director, or by the Inspector of Schools, or by any other person directed by the Director to visit or inspect the school.

**42 Inspection of school accounts**

(1) The Director or any officer of the Department appointed by him for the purpose may inspect the books, records, and accounts of any school committee established under Part 2.

(2) For the purposes of exercising the powers conferred by subsection (1) the Director or officer appointed by him may, after giving reasonable notice to the school committee whose books, records and accounts are to be inspected, enter into any office, school, or other premises in which the school committee's books, records and accounts are kept, or require such books, records and accounts to be submitted to the Department for inspection.

PART 8

GENERAL PROVISIONS

**43 Guidance and counselling**

It shall be the duty of the principal of each Government school to give guidance and counselling to the pupil attending the school and to notify the parents of any pupil of any condition or circumstances which in the principal's opinion is affecting the normal progress of

the pupil through the school or is affecting the relationship of the pupil with the teachers, or with the other pupils of the school.

**44 Closing of schools in emergency**

Where the buildings or any of them used in connection with any Government school are wholly or partially destroyed by earthquake, fire, flood or other unforeseeable cause, and the attendance at the school has fallen to such an extent as in the opinion of the Minister to warrant the temporary or permanent closing of the school, the Minister may, notwithstanding anything contained in this Act or any other Act, direct that the school shall be temporarily or permanently closed and the school shall be closed accordingly as from the date of the Minister's direction.

**45 Wilful disturbance of school**

Any person who wilfully disturbs any school, or who upbraids, or abuses any teacher or other person engaged in the instruction of pupils in the presence of hearing of the pupils who are then in school, or are then assembled for school purposes whether in school or not, commits, an offence, and shall be liable on conviction to a fine not exceeding 1 penalty unit.

**46 Transport assistance**

The Director shall out of such money as may be appropriated by the Assembly for the purpose provide such school transport assistance as the Director thinks necessary.

**47 Medical inspection**

(1) Every pupil in attendance at a Government school shall undergo such medical and dental inspection and treatment as is provided for such pupils by the Government of Niue, and any such inspection and treatment provided by the Government shall be free in all cases.

(2) The consent of the parents shall be first obtained before any treatment is carried out.

**48 Regulations**

Cabinet may make regulations for all or any of the following purposes –

- (a) Providing for the election of school committees;
- (b) Providing for the provision and for the keeping of School Funds;
- (c) Providing for the establishment of any of the educational institutions referred to in section 18(1)(a), (d) – (h);
- (d) Defining the courses of study which may be given in accordance with this Act;
- (e) Fixing the terms and holidays to be observed in Government schools and defining the public holidays and other occasions on which any such school may be closed, and the conditions under which the Director may grant holidays on special occasions;
- (f) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for the due administration of it.



# ELECTRIC POWER SUPPLY ACT 1960

1960/6 – 1 September 1960

1	Short title	11	Power to alter dangerous radio aerials
2	Interpretation	12	Sale of electrical appliances and fittings
3	Licences required	13	Power to enter on land
4	Inspection	14	Removal of trees
5	Notice regarding repairs or alterations	15	Compensation
6	Power to enter premises	16	General penalty for offences
7	Hindering or obstructing the Director	17	Fines recoverable
8	Offence to repair or interfere with wires	18	Application of fees and fines
9	Stealing electricity	19	Regulation
10	Government not liable for failure of supply		

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## To make provision for the control of electric installations, wiring and appliances

### 1 Short title

This is the Electric Power Supply Act 1960.

### 2 Interpretation

In this Act –

“Director” means Director of Works;

“electric line” or “line” or “electric line or work” means any wire or wires or other conductor, instrument, apparatus, device, or means used or intended to be used or reasonably capable of being used for transmitting, distributing, or otherwise conducting electrical energy, or for the consumption or application of electrical energy used under a licence under this Act; and includes a telephone line;

“maintenance” includes any alteration, examination, removal or repair;

“owner” includes occupier.

### 3 Licences required

(1) No person shall lay, construct, put up, place, or use any electric line except under the authority of a licence issued to him by Cabinet.

(2) Every person who commits a breach of this provision is liable to a fine not exceeding 0.5 penalty units and where the offence is a continuing one to a further fine of 0.5 penalty units for each day during which the offence continues.

### 4 Inspection

The Director may direct any officer appointed by him to inspect any electric line or work whether such electric line or work is the property of the Government or not and upon or after such inspection may require that such additions, alterations or repairs shall be made thereto as in his opinion are necessary or desirable for the utility and safety of the undertaking and the public; all such additions, alterations or repairs shall be made in the manner to be approved by the Director or by an officer appointed by him for the purpose.

### 5 Notice regarding repairs or alterations

(1) Where in the opinion of the Director or any officer appointed by him any additions, alterations or repairs to any electric line or work are necessary the Director shall cause a notice to be served on the owner of the electric line or work or



on the consumer of electricity setting out the work required to be done and the time (being not less than 14 days after service) within which such work shall be completed to the satisfaction of the Director or an officer authorised by him.

(2) If the owner of any electric line or work or any consumer of electricity refuses or neglects to comply with any such notice issued under this section Cabinet in addition to instituting any proceedings against any person for breach of this Act may also discontinue the supply of electricity to the person so offending or cancel the licence for the continued use of such electric line or work.

## **6 Power to enter premises**

An officer appointed by the Director may at all reasonable times enter any premises to which electricity is or has been supplied in Niue in order to inspect the electric lines or work, meters, measuring instruments, fittings and apparatus for the supply of electricity and for the purpose of ascertaining the quantity of electricity consumed or supplied, or, where the supplying of electricity is no longer required or where the Government desires to take away and cut off the supply of electricity from any premises for the purpose of removing any electric lines, works, meters, measuring instruments, fittings, or apparatus belonging to the Government of Niue.

## **7 Hindering or obstructing the Director**

(1) Every person commits an offence against this Act who obstructs or hinders the Director or any person duly employed or authorised in the exercise of any power or function conferred on him by or under this Act or any regulation made thereunder.

(2) No proceedings for the recovery of any fine in respect of any such offence shall be a bar to an action at law by the Director or person so authorised by him in respect of any such act as aforesaid but every such action may be commenced and proceeded with as if no such proceedings had been taken under this Act.

## **8 Offence to repair or interfere with wires**

(1) Every person commits an offence against this Act who wilfully or negligently does any of the following –

- (a) Repairs, alters, or makes additions to any electric line or work or permits to be repaired, altered or added to any electric line or work except by a person acting under the authority either of the Director or of a licence issued to him under section 3;
- (b) Injures or suffers to be injured any electric line or work, meter or any electric measuring instrument;
- (c) Removes, alters or in any way interferes with the index in any electric meter or electric measuring instrument or knowingly prevents any such meter or measuring instrument from duly registering the quantity of electric energy supplied.

(2) For each such offence the offender shall, in addition to the expenses of making good any damage so occasioned to any electric line or work or any electric meter or electric measuring instrument, be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding 1 penalty unit, and to a further penalty not exceeding 0.5 penalty units for every day after the first day during which any such offence continues.

(3) Notwithstanding anything to the contrary in this section, Cabinet, in addition to instituting any proceedings against any person for a breach of this section

## Electric Power Supply Act

may also discontinue the supply of electricity to the person so offending (notwithstanding any agreement or contract previously existing).

(4) In any proceedings against any person on a breach of this section the existence of artificial means for causing any alteration to the index to any electric meter or measuring instrument or prevention in the registration of electricity supplied to any consumer or for fraudulently abstracting, consuming or using electricity when such electric line or work or electric meter or electric measuring instrument is under the custody or control of any consumer shall be *prima facie* evidence that such alteration, prevention, abstraction, or consumption has been fraudulently, knowingly and wilfully caused by the person using such electric line or work or electric meter or measuring instrument.

### **9 Stealing electricity**

Electricity is hereby declared to be a thing capable of being stolen within the meaning of section 74 of the Criminal Law Code and any person who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes, or uses any electricity shall be guilty of theft and punishable accordingly.

### **10 Government not liable for failure of supply**

No person who is a consumer of electrical energy supplied or sold by the Government shall have any claim against the Government in the event of any failure of the supply of any such energy through accident, tempest, drought or other unavoidable cause.

### **11 Power to alter dangerous radio aerials**

Where in the opinion of the Director any radio aerial by its proximity to an electric line is likely to be the cause of public or private danger, he shall cause a notice to be served on the owner of the aerial in terms of section 5 and the provisions of that section shall apply as far as they are applicable.

### **12 Sale of electrical appliances and fittings**

No person shall sell or keep for sale any electrical appliances or electrical fittings unless he is the holder of a licence to sell such electrical appliances or fittings granted by Cabinet.

### **13 Power to enter on land**

(1) Subject to this Act the Government may enter on any land for the purposes of the construction or maintenance of any electric line or work and may remain on that land for such time and execute and do all things necessary in connection with such line or work.

(2) In the exercise of the power conferred by this section the Government may cut and remove within a distance of 33 feet on either side of a line whether existing or proposed any trees and undergrowth which interfere or are likely to interfere with such line.

(3) Where it appears necessary from the hilly nature of the country the Government may cut and remove any trees and undergrowth within a distance of not more than 3 chains on either side of any such line.

### **14 Removal of trees**

(1) If any tree growing on any land causes or is likely to cause damage to an electric line or work the Government may cause notice to be given to the owner of that land to remove the said tree or any part thereof and if the owner of that land fails to comply with the terms of such notice within the time specified therein (being not less

than 7 days after service) the Government may enter upon that land and remove the tree or any part of it but so that no unnecessary damage is done or incurred thereby.

(2) If the rights and powers conferred by sections 13 and 15 shall have already been exercised in respect of any land no compensation shall be paid in respect of any tree or part thereof on such land and cut under the powers conferred by this section.

## **15 Compensation**

(1) Subject to this Act, where in the exercise of the powers conferred any damage is caused to land the owner shall be entitled to compensation.

(2) Where any such power is exercised with the consent of the owner and to the extent of such consent no compensation shall be paid.

## **16 General penalty for offences**

Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section shall be liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding 0.5 penalty units.

## **17 Fines recoverable**

A fine incurred under this Act shall except where it is otherwise expressly provided, be recovered upon the information of any person appointed by Cabinet in that behalf either generally or in any particular case.

## **18 Application of fees and fines**

All fees and fines levied and received under this Act shall be paid into the Niue Treasury and shall form part of the revenue of Niue.

## **19 Regulations**

Cabinet may by notice published in the *Gazette* make regulations –

- (a) Prescribing the forms of licences under this Act the conditions on which such licence may be issued and the fees payable on it;
- (b) So as to secure the protection of persons and property from injury or damage caused, either directly or indirectly, by electrical energy;
- (c) Prescribing conditions in respect of the construction, installation, maintenance, use, management, inspection, and testing of electric lines or works and of instruments, materials, appliances, apparatus, accessories, and equipment used or intended to be used in the construction, installation, maintenance, or use of electric lines or works or in the application of electrical energy;
- (d) Prohibiting the manufacture, importation, sale, and use of any materials, appliances, accessories, devices, and equipment which do not satisfy any prescribed tests or standards, or the use of which may be dangerous to persons or property, or which do not comply with any regulations under this section;
- (e) Providing for the removal of lines laid or erected in breach of this Act, and of any line in the use of which any of the conditions of the licence under which it was laid or erected are not observed or complied with, and for the removal or alteration of any dangerous line (whether erected under the authority of a licence issued under this Act or any other Act or not), at the expense in each case of the owner of the line;
- (f) Defining what may be deemed a dangerous electric line or work for the purpose of any regulations;

## Electric Power Supply Act

- (g) Prescribing conditions for the rates for and controlling the supply of electrical energy;
- (h) Prescribing fees to be paid in connection with any inspection or testing authorised by any regulations;
- (i) Imposing fines not exceeding 0.5 penalty units for the breach of any regulation.



# ENVIRONMENT ACT 2015

Act No. 333

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An Act to provide for the preservation and protection of the environment of Niue and, for that purpose —

- (a) authorise the making of environmental standards to regulate activities that affect the environment of Niue; and
- (b) ensure that all government departments and public authorities consider environmental matters when making decisions that have or may have an effect on the environment of Niue.

**1 Title**

This Act is the Environment Act 2015.

**2 [Spent]**

Part 1  
PRELIMINARY MATTERS

**3 Interpretation**

In this Act, unless the context otherwise requires —

“contravenes an environmental standard” has the meaning given in section 4;

“Court” means the Niue High Court;

“Department” means –

- (a) the Environment Department established by section 5 of the Environment Act 2003 and continued existence by section 37 of this Act; or
- (b) any other department that is responsible for the administration of this Act development consent, for an activity, means consent to carry out or continue the activity, as the case may be;

“Director” means the Director of the Environment Department or the Director of the department that is responsible for the administration of this Act, as the case may be;

“environment” –

- (a) means all natural and physical elements; and
- (b) includes –
  - (i) land, marine areas, freshwater supplies, and air; and
  - (ii) ecosystems and their constituent parts, including people and communities; and
  - (iii) the natural and physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes (commonly known as amenity values) environment officer means a person holding office under section 44 environmental contravention means a contravention of any of sections 14-22;

“environmental degradation” means the deterioration of the environment;

“environmental impact assessment”, for an activity, means an independent assessment of the effects the activity will or may have on the environment;

“environmental regulations” means regulations made under section 13(1), 23, 25, 53;

“environmental standard” –

- (a) means a standard established by regulations made under section 11(1); and
- (b) includes –
  - (i) a regulation made under section 23 protecting an area of land; and
  - (ii) a regulation made under section 25 protecting a species or subspecies of plant; and



## Environment Act

- (iii) any forest management plan made under an enactment;
- “freshwater supply” –
- (a) means a land-based source of fresh water; and
  - (b) without limiting the generality of paragraph (a), includes –
    - (i) an underground body of fresh water; and
    - (ii) an aquifer; and
    - (iii) a bore or well connected to an underground body of fresh water or aquifer;
- “independent”, in relation to an environmental impact assessment, means an environmental impact assessment carried out in accordance with the environmental regulations;
- “infringement notice” means a notice alleging the commission of an infringement offence;
- “infringement offence” means an offence against this Act or regulations made under this Act that is classified as an infringement offence by or in accordance with section 28(6);
- “land” –
- (a) means Crown land and Niuean land; and
  - (b) includes –
    - (i) the foreshore (within the meaning of section 2 of the Territorial Sea and Exclusive Economic Zone Act 1996); and
    - (ii) the bed of the territorial sea of Niue; and
    - (iii) any natural structure attached to the bed of the territorial sea of Niue (for example, a reef or shoal) part of which from time to time, or occasionally, protrudes above the surface of the sea; and
    - (iv) a plant growing on land; and
    - (v) a building, a structure, or any other thing permanently fixed to land;
- “living modified organism” –
- (a) means a living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology techniques (being techniques, not used in traditional breeding and selection, that overcome natural physiological reproductive barriers or recombination barriers); and
  - (b) includes agricultural crops (such as taro) that have been genetically modified for greater productivity or for resistance to pests or disease;
- “marine area” means –
- (a) the territorial sea of Niue; and
  - (b) the exclusive economic zone of Niue;
- “Minister” means the Minister responsible for the Department;
- “organism” –
- (a) means any organism capable of transferring or replicating genetic material; and
  - (b) includes —
    - (i) sterile organisms; and
    - (ii) viruses, viroids, plasmids, and bacteriophages; and
    - (iii) micro-organisms; and
    - (iv) subject to paragraph (c), a genetic structure that is capable of replicating itself (whether that structure comprises all or only part of an entity, and whether it comprises all or only part of the total genetic structure of the entity); and
    - (v) a reproductive cell or developmental stage of an organism; and

- (vi) any particle that is a prion; but
- (c) does not include a human or a genetic structure derived from a human;
- “outcome” includes effect;
- “prescribed” means prescribed in regulations made under this Act;
- “protected area” means an area of land prescribed as a protected area under section 23;
- “protected plant species” means a plant species prescribed as a protected species under section 25;
- “public authority” means a person or body executing a function in the public interest and for the public benefit pursuant to an enactment;
- “significant activity” means any activity that would require a development consent under section 8;
- “significant environmental impact” means an impact that significantly affects the environment, human health, or the health of animals or plants;
- “sustainable development” means any significant activity that meets that meets the needs of the present generation without compromising the ability of future generations to meet their own needs and involves using resources to improve the quality of human life while living within the carrying capacity of supporting ecological systems;
- “tapu” means a place or land sacred to Niueans in the traditional, spiritual, religious, ritual, or mythological sense;
- “waste” –
  - (a) means any thing disposed of or discarded; and
  - (b) includes —
    - (i) wastewater; and
    - (ii) a type of waste that is defined by its composition or source (for example, human waste, animal waste, organic waste, electronic waste, hazardous waste, or construction and demolition waste).

#### **4 Meaning of contravenes an environmental standard**

(1) For the purposes of this Act, a person contravenes an environmental standard if (in the course of preparing to carry on, carrying on, or dealing with the consequences of carrying on an activity protected by the standard) the person —

- (a) does a thing prohibited by the standard; or
- (b) does a thing whose outcome (direct or indirect) is or includes an outcome prohibited by the standard; or
- (c) fails or refuses to take all reasonably practicable steps to ensure that an outcome prohibited by the standard does not occur; or
- (d) fails or refuses to do a thing required by the standard; or
- (e) fails or refuses to do a thing where that failure or refusal has an outcome (direct or indirect) that is or includes an outcome prohibited by the standard; or
- (f) fails or refuses to take all reasonably practicable steps to ensure that an outcome required by the standard occurs.

(2) In this section, an activity protected by the standard means an activity of a kind described in the environmental standard as the subject-matter of the standard.

#### **5 Act binds the Government**

This Act binds the Government.

**6 Matters to be taken into account**

All persons exercising functions and powers under this Act must, to the extent applicable, take into account the following matters —

- (a) the maintenance and enhancement of the quality of the environment;
- (b) the efficient use and development of natural and physical resources;
- (c) the concept of sustainable development;
- (d) the protection of the water lens from contamination;
- (e) the protection of indigenous flora and indigenous fauna and their habitats;
- (f) the protection of the coastal zone from inappropriate use and development;
- (g) the protection of historic areas from inappropriate use and development;
- (h) the relationship of Niueans and their culture and traditions to their lands and historic areas;
- (i) the conservation and sustainable use of biological resources;
- (j) compliance with multilateral environment agreements to which Niue is a party.

**7 Act does not apply to certain existing activities**

This Act does not apply to any activity that—

- (a) was completed before the commencement of this Act; or
- (b) has been authorised under the Environment Act 2003; or
- (c) was lawfully begun before the commencement of this Act and —
  - (i) has, or is likely to have, effects that are the same as or similar in character, intensity, and scale to those of other activities lawfully carried on before the commencement of this Act; and
  - (ii) has not, since it was begun, been discontinued for any continuous period of 6 months (being a period all or part of which was after the commencement of this Act).

PART 2

ENVIRONMENTAL PROTECTION

*Development consents*

**8 Development consents required for certain activities affecting environment**

(1) This section applies to an activity if—

- (a) one or more of the following apply:
  - (i) the activity will or may have a significant environmental impact;
  - (ii) in an environmental standard, the activity is stated as one that must not be started or continued without development consent;
  - (iii) in an environmental standard, the activity is stated as being one that will or may have a significant environmental impact;
  - (iv) the activity will or may contravene an environmental standard; and
- (b) the activity is not—
  - (i) an existing activity to which section 6 applies; or
  - (ii) an activity to which section 12(1) applies.

(2) A person must not start an activity to which this section applies without first having been granted development consent to carry on the activity.

(3) A person must not continue any activity to which this section applies without first having been granted development consent for continuing the activity.

(4) Development consent for an activity to which this section applies —

- (a) must be applied for in accordance with the environmental regulations; and

- (b) may be granted —
  - (i) with or without conditions (including a condition that a condition be amended, or one or more further conditions imposed, during the life of the consent); and
  - (ii) by the Department or the Minister, as the regulations require.
- (5) An independent environmental impact assessment of the activity must be carried out as part of the process of obtaining development consent.
- (6) An environmental impact assessment —
  - (a) must be carried out in accordance with the environmental regulations; and
  - (b) may be —
    - (i) a single process, comprising an initial assessment; or
    - (ii) a two step process, comprising both initial and full assessments.
- (7) Development consent for an activity to which this section applies must not be granted unless an environmental impact assessment of the activity has first been carried out.

## **9 Objections to granting of development consent**

- (1) On receipt of an application for a development consent, the Director must give 2 weeks public notice that—
  - (a) provides a brief description of the application; and
  - (b) requests all interested persons to inform the Director whether they support the application or object to it and, if they do object, the reasons for that objection; and
  - (c) states the last day on which such information will be received and the name or official designation and address of the person to whom it should be sent.
- (2) The Director may —
  - (a) require an objector or an applicant to provide additional information; and
  - (b) delay consideration of the objection or response until the information is provided or, if the information is not provided within the time specified, refuse to consider the objection or response.
- (3) Before making a determination on an application in respect of which an objection has been made, the Director must endeavour to resolve the issues raised by the objection by means of consultation with the applicant and the objector, with a view to reaching agreement on the matters raised by the objection.

## **10 Consent holder must inform Department of change in circumstances**

- (1) This section applies if the holder of development consent for an activity is required to notify, communicate, or report information to the Director or the Department as a condition of the development consent.
- (2) The consent holder must, as soon as practicable, notify the Department of any change in circumstances that has the effect of rendering any information previously notified, communicated, or reported false, incomplete, or misleading.

## **11 Suspension or cancellation of development consent**

- (1) The Director may suspend a development consent granted for an activity, by written notice to the consent holder, if he or she considers on reasonable grounds that the holder is contravening or is likely to contravene any condition of the consent.

(2) A consent holder given notice under subsection (1) must cease carrying out the activity until the holder has proved, to the satisfaction of the Director, that the activity will be carried out in compliance with the conditions of the consent.

(3) If the holder does not so satisfy the Director within 15 working days of receiving notice under subsection (1), or such later time as the Director permits, the Director may, by written notice to the holder, cancel the consent (regardless of whether the consent was granted by the Director or the Minister).

## **12 Certain activities exempt from development consent requirement**

(1) Section 8 does not apply to an activity to which it would otherwise apply if —

- (a) the activity is expressly authorised by an enactment other than this Act; or
- (b) the activity is of a kind expressly authorised by this Act, the environmental regulations, or an enactment other than this Act.

(2) However, if Cabinet, or a government department, or an officer of a government department is empowered under any enactment to grant a consent, licence, or other permission to any person that authorises that person to carry out an activity that will or may have a significant environmental impact, then, as the case may be, before granting the permission, —

- (a) Cabinet must be satisfied that—
  - (i) a contravention of any relevant environmental standard will not result from the granting of the permission; or
  - (ii) the person to whom the permission is granted will comply with the environmental standard when carrying out the activity; and
- (b) the government department or officer must obtain the consent of the Director, whether or not the enactment expressly requires the Director's consent.

(3) The Director may give consent for the purposes of subsection (2)(b) only if he or she is satisfied that—

- (a) a contravention of any relevant environmental standard will not result from the granting of the permission; or
- (b) the person to whom the permission is granted will comply with the environmental standard.

### *Environmental standards*

## **13 Establishment of environmental standards**

(1) Cabinet may make regulations establishing a standard for the carrying on of one or more activities of a kind described in the regulations as the subject-matter of the standard.

(2) A standard may state elements of the environment for whose protection it is established.

(3) A standard may specify—

- (a) activities that must not be started or continued without development consent (for the purposes of section 8(1)(a)(ii)); and
  - (b) activities that may be carried out without development consent (for the purposes of section 12(1)).
- (4) A standard must not be inconsistent with any other standard (including a protected plant species notice or a protected area notice).

**14 Activities affecting land use**

A person must not carry out either of the following activities unless the activity is expressly authorised by this Act or the environmental regulations or has development consent:

- (a) using land in a manner that contravenes an environmental standard; or
- (b) doing anything in a manner that contravenes an environmental standard established for the protection of land.

**15 Disposing of waste or other matter and removal and disposal of asbestos**

(1) A person must not dispose of waste or other matter, including litter, in a manner that contravenes an environmental standard unless the disposal is expressly authorised by this Act or the environmental regulations or has development consent.

(2) A person must not remove or dispose of asbestos in a manner that contravenes an environmental standard unless the removal or disposal is expressly authorised by this Act or the environmental regulations.

**16 Activities affecting freshwater supplies**

A person must not carry out either of the following activities unless the activity is expressly authorised by this Act or the environmental regulations or has development consent:

- (a) doing anything to, in, with, or in relation to a freshwater supply in a manner that contravenes an environmental standard; or
- (b) doing anything in a manner that contravenes an environmental standard established for the protection of freshwater supplies.

**17 Activities affecting marine areas**

A person must not carry out either of the following activities unless the activity is expressly authorised by this Act or the environmental regulations or has development consent:

- (a) doing anything to, in, with, or in relation to a marine area in a manner that contravenes an environmental standard; or
- (b) doing anything in a manner that contravenes an environmental standard established for the protection of marine areas.

**18 Activities affecting animals**

A person must not carry out either of the following activities unless the activity is expressly authorised by this Act or the environmental regulations or has development consent:

- (a) doing anything to, in, with, or in relation to animals in a manner that contravenes an environmental standard; or
- (b) doing anything in a manner that contravenes an environmental standard established for the protection of animals.

**19 Activities affecting plants**

A person must not carry out either of the following activities unless the activity is expressly authorised by this Act or the environmental regulations or has development consent:

- (a) doing anything to, in, with, or in relation to plants in a manner that contravenes an environmental standard; or
- (b) doing anything in a manner that contravenes an environmental standard established for the protection of plants.



**20 Activities affecting air quality or atmosphere**

A person must not carry out either of the following activities unless the activity is expressly authorised by this Act or the environmental regulations or has development consent:

- (a) doing anything to, in, with, or in relation to the air or atmosphere in a manner that contravenes an environmental standard; or
- (b) doing anything in a manner that contravenes an environmental standard established for the protection of the air or atmosphere.

**21 Noise control**

A person must not carry out an activity in a manner that contravenes an environmental standard established in relation to noise control unless the activity is expressly authorised by this Act or the environmental regulations or has development consent.

*Living modified organisms*

**22 Development, use, and testing of living modified organisms**

(1) A person must not carry out any activity relating to the development, field testing, contained use, fermentation, or processing of a living modified organism unless the person has the written consent of the Director and the department responsible for the administration of the Biosecurity Act 2016 (the responsible department), whether granted with or without conditions.

(2) A person who causes or becomes aware of the unintentional release of a living modified organism must immediately notify the Director and the responsible department, and the Director, in conjunction with the responsible department, must—

- (a) take all action necessary in the circumstances to respond to the release (taking into account the precautionary principle that where there is a threat of serious or irreversible damage, lack of full scientific certainty is not to be used as a reason for postponing cost-effective measures to prevent environmental degradation); and
- (b) inform the Minister as soon as practicable.

*Protected areas*

**23 Protected areas**

(1) For the purposes set out in subsection (2), Cabinet may prescribe, —

- (a) on its own volition, an area of land to be a protected area;
- (b) on the request of a Village Council, an area of land within the Council's village to be a protected area, but only if the majority of magafaoa holding land in that part of the village have given their written consent to the request;
- (c) any place or land to be tapu.

(2) Cabinet may prescribe an area to be a protected area for any one or more of the following purposes —

- (a) science protection;
- (b) wilderness protection;
- (c) ecosystem protection and recreation;
- (d) conservation of specific natural features;
- (e) conservation through management intervention;
- (f) landscape or seascape conservation or recreation;
- (g) sustainable use of natural resources.

(3) An area of land prescribed to be a protected area under this section is protected to the extent set out in the regulations.



- (4) Without limiting subsection (2), the protection may be —
- (a) absolute, in which case no person may enter and no activities of any kind may be carried out in the protected area; or
  - (b) partial, in which case persons may enter and activities may be carried out in the manner specified in the notice.
- (5) To avoid doubt, partial protection of a protected area may relate to any matter, including the following:
- (a) access to the area; and
  - (b) activities that may or may not be carried out in the area, including activities relating to killing or taking any thing from the area; and
  - (c) when activities may be carried out in the area (whether by reference to season, month, time of day, or otherwise).

## **24 Protected areas and environmental standards**

Regulations made under section 23 that protect an area of land or a tapu, or any thing within that land or tapu, must be treated for all purposes as if they were an environmental standard made under this Act for the carrying on of any activity within the protected area.

### *Protected plant species*

## **25 Protected plant species**

- (1) For the purposes of safeguarding Niue's environment, Cabinet may prescribe —
- (a) of its own volition, a species or subspecies of plant as a protected species;
  - (b) on the request of a Village Council, a species or subspecies of plant to be a protected species within the Council's village or part of the village, but only if the majority of magafaoa holding land in the village or part of the village have given their written consent to the request.
- (2) Regulations made for the purposes of subsection (1) may prescribe a species or subspecies of plant as—
- (a) absolutely protected; or
  - (b) protected in the circumstances specified in the regulations.

## **26 Protected plant species and environmental standards**

Regulations made under section 25 protecting a species or subspecies of plant must be treated for all purposes as if they were an environmental standard made under this Act for the carrying on of any activity.

### *Relationship of Act with other legislation and legal requirements*

## **27 Relationship of Act with other legislation and legal requirements**

- (1) To the extent that this Act is inconsistent with any other enactment, it overrides the other enactment.
- (2) To the extent that the environmental regulations are inconsistent with any other subordinate legislation, they override the other subordinate legislation.
- (3) In any enactment in relation to which the Director is required to give his or her consent or permission before an activity may be carried out, the Director may do so only if, in addition to any precondition specified in the enactment, he or she is also satisfied that—
- (a) any relevant environmental standard will not be contravened by the giving of his or her consent or the granting of his or her permission; or

- (b) the person to whom the consent or permission is given or granted will comply with the environmental standard.

(4) To avoid doubt, complying with this Act in relation to an activity does not limit or affect the need to comply with any obligation imposed by any other enactment in relation to that activity (for example, a building consent, water extraction licence, or timber cutting licence).

### PART 3

#### ENFORCEMENT

#### **28 Failure to comply with Act is offence**

(1) A person who carries out an activity to which section 8(1) applies without development consent, in contravention of the conditions of consent, or while consent is suspended, commits an offence and is liable on conviction to, —

- (a) in the case of an individual —
  - (i) a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 2 years, or both; and
  - (ii) in the case of a continuing offence, a further fine not exceeding 100 penalty units for each day or part of a day during which the offence continues; or
- (b) in the case of a body corporate —
  - (i) a fine not exceeding 15 000 penalty units; and
  - (ii) in the case of a continuing offence, a further fine not exceeding 100 penalty units for each day or part of a day during which the offence continues.

(2) A person who provides information for the purposes of section 8(1) knowing that the information is false or misleading in any material particular, or who fails to comply with section 10(2), commits an offence and is liable on conviction to —

- (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 2 years, or both; or
- (b) in the case of a body corporate, a fine not exceeding 1 000 penalty units.

(3) A person who contravenes an environmental standard or contravenes section 22(1) commits an offence and is liable on conviction to —

- (a) in the case of an individual —
  - (i) a fine not exceeding 5 000 penalty units or a term of imprisonment not exceeding 2 years, or both; and
  - (ii) in the case of a continuing offence, a further fine not exceeding 500 penalty units for each day or part of a day during which the offence continues; or
- (b) in the case of a body corporate —
  - (i) a fine not exceeding 10 000 penalty units; and
  - (ii) in the case of a continuing offence, a further fine not exceeding 1 000 penalty units for each day or part of a day during which the offence continues,

(4) A person who fails or refuses to comply with section or 22(2) or any request or requirement of an environment officer made under any of sections 46 to 49 commits an offence and is liable on conviction to a fine not exceeding 100 penalty units.

(5) In addition to any penalty imposed under subsections (1) to (3), the Court may order the person to pay the costs of any remedial actions taken by the

Department or any other government department or public authority to rectify any consequences of the contravention or non-compliance concerned.

(6) The following offences are infringement offences:

- (a) an offence against subsection (3) for the contravention of an environmental standard in relation to noise;
- (b) any other offence against this Act that is declared by regulations made under section 46 to be an infringement offence.

## **29 General offences**

(1) A person commits an offence who—

- (a) does not submit any report or provide information as required under this Act or the environmental regulations; or
- (b) offers or gives any inducement to any person exercising functions and powers under this Act or the environmental regulations which might reasonably be considered to have the purpose of influencing a decision of that person under this Act or the environmental regulations; or
- (c) fails to comply with any requirement or condition of any approval or consent granted under this Act or the environmental regulations; or
- (d) does not comply with the terms of any order of the Court made under this Act and served on that person.

(2) A person who commits an offence against any of paragraphs (a) to (d) of subsection (1) is liable on conviction to—

- (a) fine not exceeding 100 penalty unit; or
- (b) a term of imprisonment not exceeding 12 months; or
- (c) both penalties described in paragraphs (a) and (b).

## **30 Infringement offences**

(1) If a person is alleged to have committed an infringement offence, the person may —

- (a) be proceeded against in the normal manner by the laying of an information against the person; or
- (b) be served with an infringement notice by a constable delivering it or a copy of it personally to the person's last known place of residence or business.

(2) An infringement notice must be in the prescribed form and must state —

- (a) details of the alleged infringement offence that are sufficient to fairly inform the person of the time, place, and nature of the alleged offence; and
- (b) the amount of the infringement fee; and
- (c) an address at which the infringement fee may be paid; and
- (d) the time within which the infringement fee must be paid; and
- (e) that the person has a right to request a hearing; and
- (f) what will happen if the person does not pay the fee and does not request a hearing; and
- (g) any other prescribed information.

(3) If the person pays the infringement fee within the period stated in the infringement notice, —

- (a) no further action may be taken against the person; and
- (b) no conviction may be entered against the person for the offence.

(4) If the person does not pay the infringement fee or request a hearing within the period stated in the infringement notice, the Department must serve the

person with a reminder notice in the prescribed form that contains the same or substantially the same particulars as the infringement notice.

(5) If the person does not pay the infringement fee or request a hearing within the period stated in the reminder notice, proceedings may be commenced against the person by filing the reminder notice with the Court and, for that purpose

- (a) the reminder notice must be treated as the information for the infringement offence; and
- (b) the Court is deemed to have made an order, on the date that the reminder notice is filed, that the defendant pay a fine equal to the amount of the infringement fee together with costs in the prescribed amount, but no conviction is entered against the person.

(6) A person requests a hearing by providing to the Department, within the period specified in the infringement notice or reminder notice, as the case may be, a notice, signed by the person, requesting a hearing and accepting or rejecting liability and, if accepting liability, the reasons, if any, why the Court should impose a lesser fine than the infringement fee for the offence.

(7) A person found guilty at a hearing held for the purposes of subsection (6) is liable to a fine equal to the amount of the infringement fee (unless the Court imposes a lesser amount) together with costs in the prescribed amount, but no conviction is entered against the person.

(8) To avoid doubt, if a person commits an infringement offence and proceedings against the person are taken in the normal manner under subsection the person is liable to pay not the infringement fee but the amount that the Court determines in accordance with section 26. However, no conviction may be entered against the person.

### **31 Civil remedies for environmental contraventions**

(1) Any person (the applicant) may institute proceedings in the Court that seek all or any of the relief set out in subsection (2) against any other person (the defendant) if the defendant has allegedly committed an environmental contravention.

(2) The Court may grant all or any of the following in relation to proceedings instituted under subsection (1):

- (a) an injunction;
- (b) damages for loss resulting from the contravention concerned (the contravention);
- (c) a declaration that the defendant has committed the contravention;
- (d) an order that the defendant make a public apology for the contravention;
- (e) an order that any stated consequences of the contravention be reversed;
- (f) an order for an account for profits arising from the contravention;
- (g) an order for the seizure of any item in respect of which the contravention occurred that is owned by, in the possession of, or under the control of the defendant;
- (h) any other orders that the Court thinks appropriate in the circumstances.

### **32 Civil remedies in relation to prospective environmental contraventions**

(1) Any person (the applicant) may institute proceedings in the Court that seek all or any of the relief set out in subsection (2) against any other person (the defendant) if there is reason to believe that the defendant intends to commit an environmental contravention.

(2) The Court may grant all or any of the following in relation to proceedings instituted under subsection (1):

- (a) an injunction;
- (b) damages for loss resulting from the intended contravention concerned (the prospective contravention);
- (c) a declaration that the prospective contravention would be an environmental contravention;
- (d) an order for the seizure of any object in respect of which the prospective contravention is intended to occur that is owned by, in the possession of, or under the control of the defendant;
- (e) any other orders that the Court thinks appropriate in the circumstances.

### **33 Matters to be taken into account**

In deciding what relief is to be granted under section 31(2) or 32(2) the Court may take into account (to the extent that they are applicable) all or any of the following:

- (a) whether the defendant was aware or ought reasonably to have been aware that an action, or a failure or refusal to act, was or would be an environmental contravention;
- (b) the effect of the environmental contravention or prospective environmental contravention on the applicant;
- (c) anything done by the defendant to mitigate the effects of the contravention or prospective contravention;
- (d) any cost or difficulty that may have been associated with ascertaining the facts of the particular case;
- (e) any cost or difficulty in ceasing or reversing any consequences of the contravention or prospective contravention;
- (f) whether the parties have undertaken any other action to resolve the situation.

### **34 Additional penalties for environmental contraventions**

(1) The Court may, in addition to any other punishment that may be imposed under this Act and having regard to the nature of the offence and the circumstances surrounding its commission, make an order —

- (a) for indemnification of the Government, occupiers, or any person whose interest is affected by the damage caused to the environment or to human health;
- (b) for replacement and restitution to their natural state of things affected;
- (c) for rehabilitation of the environment affected at the cost of the party responsible for the offence;
- (d) directing the offender to compensate any affected party, in whole or in part, for any environmental damage or the cost of any remedial or preventive action taken or caused to be taken as a result of the act or omission that constituted the offence;
- (e) prohibiting the offender from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- (f) directing the offender to take such action as the Court considers appropriate to remedy or avoid any harm to the environment that results or may result from the act or commission that constituted the offence;
- (g) directing the offender to post such bond or pay such amount of money to the Department or into Court as will ensure compliance with any order made under this section;

- (h) directing the seizure and forfeiture of any vessel, aircraft, or vehicle used in the commission of any offence;
- (i) requiring the offender to comply with such other reasonable conditions as the Court considers appropriate and just in the circumstances.

(2) Where an offender has been convicted of an offence under this Act, the Court may, at the time the sentence is imposed and on the application of the person aggrieved, order the offender to pay to that person an amount by way of satisfaction or compensation for loss of or damage to property or income suffered by that person as a result of the commission of the offence.

(3) Where an amount that is ordered to be paid under subsections (1) or (2) is not paid within the specified time, a civil judgment may be filed with the Court and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in the Court in civil proceedings.

(4) The Court may in addition to any other punishment that may be imposed under this Act impose a fine for each day the offence continues until compliance is fulfilled.

### **35 Community service orders**

(1) Upon the conviction of any person, the prosecution may make submissions to the Court on the appropriateness of a community service order and of the availability of any community service work.

(2) The Court may sentence a person to a community service order instead of or in addition to a fine.

(3) The Court may order a person sentenced to a community service order to work under appropriate supervision a specified number of hours for a charitable or community cause or organisation, and where possible, the work should relate to environmental matters.

(4) The Court may specify whether the Director, a constable or some other person is to supervise the community service order work.

### **36 Other rights of action and remedies**

This Part does not affect any rights of action or other remedies, whether civil or criminal, provided for under any other enactment or rule of law.

## **PART 4**

### **ADMINISTRATION**

#### *Environment Department*

### **37 Environment Department to continue**

The Environment Department established by section 5 of the Environment Act 2003 continues in existence. .

### **38 Functions of Department**

(1) The Department's functions are —

- (a) to administer and implement this Act and the environmental regulations;
- (b) to administer or implement any other enactment or part of any other enactment for which the Department is responsible, including the Wildlife Act 1972 and the Water Act 2012;
- (c) to help the Government of Niue to formulate—
  - (i) environmental and resource management objectives; and
  - (ii) environmental policies and legislation;



- (d) to design and implement, in collaboration with other departments if relevant, programmes for—
    - (i) environmental planning and natural resource management; and
    - (ii) environmental impact assessments; and
    - (iii) waste management; and
    - (iv) pollution control; and
    - (v) nature conservation; and
    - (vi) protection of cultural and historic areas; and
    - (vii) dealing with climate change and natural disasters, including programmes relating to disaster risk management; and
    - (viii) control and use of living modified organisms;
  - (e) to promote environmental awareness, undertake public information campaigns, and promote and provide environmental education;
  - (f) to review environmental legislation (including this Act) and, where necessary, propose amendments and regulations;
  - (g) to monitor and enforce environmental laws and policies;
  - (h) to oversee the formulation of collaborative policies and programmes on environmental matters with public authorities and with non-governmental organisations, and advise on, promote, and assist in implementing those policies and programmes;
  - (i) to promote the study of the environment through research, surveys, classifications, and compilation of databases;
  - (j) to undertake environmental studies and issue reports;
  - (k) to oversee, monitor, and approve research carried out in Niue relating to the environment;
  - (l) to promote community involvement in making decisions in relation to the environment;
  - (m) to encourage and foster knowledge, innovation, and practices embodied in traditional lifestyles that promote the protection, conservation, improvement, and management of the environment;
  - (n) to perform all other functions conferred by or under this Act.
- (2) For the purposes of performing the functions described in subsection (1) the Department has all the necessary powers.
- (3) To avoid doubt, when performing the functions described in subsection (1), the Department must—
- (a) implement the general policy of the Government in relation to the protection and preservation of Niue's environment; and
  - (b) comply with any policy directive given to it by Cabinet that is not inconsistent with this Act or any other enactment.

**39 Functions of Department relating to international conventions and other multilateral environment agreements (MEAs)**

- (1) The Department also has the following functions:
- (a) to consult and liaise with other government departments and public authorities to identify—
    - (i) international conventions relating to the environment and multilateral environment agreements (MEAs) that it may be in Niue's interests to be a party to; and
    - (ii) the obligations that Niue would assume under those conventions or MEAs; and



- (b) in relation to international conventions relating to the environment or MEAs to which Niue is a party —
  - (i) to ensure Niue's effective representation at meetings of the parties and other relevant meetings;
  - (ii) to liaise with relevant regional and international bodies to ensure that Niue meets its obligations under the conventions and MEAs;
  - (iii) to manage or participate in projects aimed at implementing aspects of the conventions and MEAs;
  - (iv) to disseminate information about the subject-matter of the conventions and MEAs and create public awareness about them;
  - (v) to prepare all necessary reports and report regularly to the Minister and Cabinet in relation to the implementation of the conventions and MEAs;
  - (vi) to share information and otherwise provide the co-operation required by the conventions and MEAs;
  - (vii) to recommend that laws be amended or enacted to implement effectively the requirements of the conventions and MEAs;
  - (viii) to work with relevant departments and public authorities to implement obligations under the conventions and MEAs.
- (2) For the purposes of performing the functions described in subsection (1), the Department has all the necessary powers.
- (3) Subsection (1) does not limit the role, powers, or functions of any other department or public authority in relation to any international convention relating to the environment or MEA.

#### **40 Staff of Department**

- (1) The Department comprises the Director, and all other officers necessary for the administration of this Act, as appointed by the Niue Public Service Commission.
- (2) The functions of the Director are to—
  - (a) manage the administration of this Act; and
  - (b) oversee the efficient, effective, and economical management of the Department; and
  - (c) set and update priorities for the work of the Department; and
  - (d) give advice to persons to whom he or she is accountable on matters concerning the environment and the functions of the Department; and
  - (e) carry out all other actions that are necessary to discharge those functions properly and effectively.

#### **41 Power of Director to delegate**

- (1) The Director may delegate any of his or her powers (including the power to perform any of his or her functions) to any —
  - (a) officer of the Department or any member of staff of any other department; or
  - (b) public authority.
- (2) The Director must not delegate this power to delegate.

#### **42 Annual report**

- (1) The Director must give to the Minister a report each financial year on the operations of the Department in the preceding year.
- (2) The Minister must table a copy of the report before the Assembly at the first available meeting.

**43 Protection from personal liability**

The Director, environment officers, and staff of the Department are not personally liable for anything done or omitted to be done in performing their functions in good faith under this Act or the environmental regulations.

*Environment officers*

**44 Appointment of environment officers**

(1) The Nine Public Service Commission may, by notice in writing, appoint one or more environment officers.

(2) In addition, the Commission may, by notice in writing to the individual, appoint any of the following individuals to be environment officers to perform the functions of an environment officer specified in the notice for the purpose specified in the notice:

- (a) constables;
- (b) biosecurity officers;
- (c) customs officers;
- (d) fisheries officers;
- (e) public health inspectors;
- (f) any other officer employed in the public service;
- (g) any other person who the Commission considers on reasonable grounds is an appropriate person to perform the functions in relation to which the Commission intends to make the appointment.

**45 Identification of environment officers**

(1) The Director must issue each environment officer appointed under section 44(1) or 44(2)(g) with an identification card.

(2) If it is practicable in the circumstances, an environment officer must produce his or her identification card —

- (a) on each occasion before the officer exercises a power under this Act; and
- (b) when requested to do so by any person who is affected by the actions of the officer while the officer exercises a power under this Act.

(3) It is sufficient for the purposes of complying with subsection (2) if an environment officer appointed under any of paragraphs (a) to (f) of section 44(2) produces any identification card that he or she holds in respect of his or her primary position as described in that paragraph so long as —

- (a) the identification card is endorsed a reference to the officer's appointment under this Act; or
- (b) the officer can demonstrate in some other way that he or she is lawfully acting as an environment officer.

**46 Power of environment officers to inspect**

(1) An environment officer may inspect any place (other than a private home) if he or she believes on reasonable grounds that—

- (a) anything has been done, is being done, or is intended to be done in that place in contravention of this Act; or
- (b) there is in that place any thing whose presence there is a contravention of this Act, whether absolutely or by virtue of the lack of some necessary approval or consent (however described).

(2) If an application for an approval or consent is made but not determined under this Act or the environment regulations, an environment officer may inspect the place in which the environment officer reasonably considers the proposed activity will take place.

(3) An environment officer may inspect any thing if he or she believes on reasonable grounds that the thing contravenes this Act, or any action has been, is being, or is about to be done to the thing in contravention of this Act.

(4) The owner or occupier of any place at which an environment officer exercises or attempts to exercise a power of inspection under this or any other Act—

(a) must give the officer—

(i) all reasonable assistance to enable the officer to exercise the power; and

(ii) all information in relation to the exercise of the power that the officer reasonably requires; but

(b) is not required to give a response or information (whether in reply to a question or otherwise) that may incriminate himself or herself.

(5) Before requiring a person to answer questions or give a response or information, an environment officer must inform a person of his or her rights under subsection (4)(b).

#### **47 Consents and approvals authorise inspections**

(1) Every consent or approval issued under this Act or the environmental regulations authorises any environment officer to inspect any place to which the consent or approval relates (other than a private home) if the officer believes on reasonable grounds that something is being done in that place in contravention of this Act.

(2) The power to inspect conferred by subsection (1) is in addition to those conferred under section 46, and does not limit or affect them.

#### **48 Power of environment officers to seize evidential items**

(1) An environment officer may, without a Court order or a search warrant, seize any thing (a seized item) if—

(a) the seized item—

(i) is produced to the officer; or

(ii) is in plain view during an inspection authorised by this Act or any other Act; and

(b) the officer has reasonable grounds to believe that—

(i) an offence against this Act or the environmental regulations has been committed; and

(ii) the seized item is evidence of the commission of the offence.

(2) The environment officer must—

(a) take reasonable steps to—

(i) tell the owner (or person in apparent possession) of the seized item the reason for its seizure; and

(ii) give the owner or person a receipt for the seized item; and

(b) remove the seized item to a place for safe keeping; and

(c) otherwise deal with the seized item in the same manner as if it were being seized under the authority of a search warrant under section 170 of the Criminal Law Code.

**49 Power of environment officers to seize and remove certain waste**

(1) An environment officer may, without a Court order or a search warrant, seize and remove from any land any item specified in subsection (2) if the Director believes on reasonable grounds that the item—

- (a) has been abandoned; and
- (b) is no longer capable of being used for its original purpose.

(2) The items referred to in subsection (1) are any vehicle, vessel, trailer, satellite dish, solar panel, gas cylinder, whiteware, or eware.

(3) The Director may dispose of any item removed under this section in the manner that he or she thinks fit, and no compensation is payable to any person for the disposal of it.

(4) In this section,—

“e-ware” means any computer, computer screen, printer, television, or computer equipment;

“whiteware” means a cooker, refrigerator, washing machine, or microwave oven.

**50 Powers that are exercisable by warrant**

(1) An environment officer may not enter a private home for the purposes of sections 46 to 49 except —

- (a) with the consent of the owner or occupier; or
- (b) under the authority of a warrant made by an order issued under this section on an application by the officer.

(2) In any other case, an environment officer may apply for a warrant under this section if the officer reasonably believes that the officer may not be able to exercise any powers under sections 46 to 49 without a warrant, for example because—

- (a) no person is present to grant access to a place that is locked or otherwise inaccessible; or
- (b) a person has denied the officer access to a place or there is reasonable ground for believing that a person may deny the officer access to a place; or
- (c) a person has prevented the officer from exercising any of those powers; or
- (d) there are reasonable grounds to believe that an attempt by the officer to exercise any of those powers without the warrant might defeat the purpose of the powers concerned or cause an adverse effect.

(3) A judicial officer may make an order issuing a warrant under this section if satisfied on evidence in writing given under oath by the environment officer that the warrant is necessary for the purpose in subsection (1) or (2), as the case may.

(4) A warrant under this section may authorise an environment officer to exercise such powers under sections 46 to 49 that are specified in the warrant, and the warrant expires at the close of 14 days after the date on which it is issued unless extended by a judicial officer for a further period not exceeding 14 days.

(5) In this section, judicial officer means a Judge of the High Court or, if a Judge is not present in Niue, a Commissioner of the High Court or any two Justices of the Peace.

PART 5

ENVIRONMENTAL LEVIES AND REFUNDS

**51 Cabinet may prescribe levies**

- (1) Cabinet may prescribe levies based on the polluter pays principle in respect of any specified items imported into Niue or any operation that produces any product—
- (a) that will or may have a significant environmental impact when they become waste; or
  - (b) in relation to which there are significant benefits to Niue from reduction, reuse, recycling, or recovery of the items.
- (2) The items or operations to which the levy applies must be prescribed.
- (3) The levy must be paid to the Customs Office but is in addition to any other levy required under the Customs Act 1966 or any other enactment.
- (4) The Niue Treasury must keep separate accounts of any levy payable under this section so the amounts collected and any items to which they relate can be readily identified.
- (5) A levy collected under this section must be paid into the Niue Government Account controlled by the Niue Treasury.

**52 Refunds for certain used items**

- (1) For the purposes of maintaining or enhancing Niue's environment, Cabinet may prescribe—
- (a) used items for which a refund may be given; and
  - (b) the amount of the refund; and
  - (c) requirements that must be met before an item qualifies for a refund (for example, that the item first be cleaned and taken to a particular place).
- (2) Regulations made for the purposes of this section may leave any matter or thing to be regulated or controlled by the Director.

PART 6

MISCELLANEOUS

**53 Regulations**

- (1) Cabinet may make regulations for the purposes of this Act.
- (2) In particular, regulations may be made for all or any of the following purposes:
- (a) prescribing the process by which development consent is granted for an activity;
  - (b) prescribing the requirements of an environmental impact assessment for an activity, including —
    - (i) the information to be provided in an assessment; and
    - (ii) the circumstances in which both an initial and a full impact assessment are required; and
    - (iii) the persons who may conduct an assessment;
  - (c) prescribing forms to be used for the purposes of this Act;
  - (d) prescribing matters for which fees are payable under this Act and the amount of those fees, and providing for the Department to recover from applicants for development consents its reasonable costs for carrying out environmental impact assessments of any kind in relation to their applications;
  - (e) declaring which offences against this Act or regulations made under this Act constitute infringement offences;

- (f) prescribing infringement fees not exceeding 5 penalty units for infringement offences (which may be different fees for different offences, including different fees for a first, second, or subsequent offence);
- (g) prescribing matters relating to the identification, management, and control of living modified organisms;
- (h) providing for any other matters contemplated by this Act that are necessary for its full administration or necessary for giving it full effect.

(3) Regulations made under this section may create offences for contravention of the regulations and may prescribe penalties for an offence committed against them of fines not exceeding 500 penalty units.

(4) Subsection (3) is subject to subsection (2)(f).

#### **54 Liability of company**

(1) If a company fails to comply with a provision of this Act, each person who is a director of the company or who is concerned in managing the company, is taken to have failed to comply with that provision, unless the person satisfies the Court that the person —

- (a) has no actual, imputed or constructive knowledge of the failure by the company to comply with the provision; or
- (b) was not in a position to influence the conduct of the company concerning its failure to comply with the provision, or, if in that position, had used all due diligence to prevent failure to comply by the company.

(2) If a company fails to comply with a provision of this Act, each person who is a director of the company or who is concerned in managing it may be proceeded against and convicted whether or not the company has been proceeded against and whether or not the company has been convicted.

(3) The company remains liable for any offence committed by it whether or not proceedings are commenced against the directors or those concerned with managing the company.

#### **55 Company liability in case of bankruptcy**

Where any company commits an offence under this Act, any penalty or award against that company takes precedence over any secured or preferred claim lodged in any action for bankruptcy against that company.

**56-60** [Spent]

# EXTRADITION ACT 2007

2007/292 – 19 December 2007

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## PART 1

### 1 Title

This Act is the Extradition Act 2007.

### 2 Interpretation

In this Act—

“Court” means the High Court;

“extradition country” means—

- (i) New Zealand; or
- (ii) a country with which Niue has undertaken to surrender all persons who are wanted by the authorities of that country for the carrying out of a sentence or detention order or against whom those authorities are proceeding for an offence; or
- (iii) a colony, territory or protectorate of an extradition country; or
- (iv) a territory for the international relations of which an extradition country is responsible;

“extradition offence” means—

- (i) an offence against a law of an extradition country for which the maximum penalty is death, or imprisonment or other deprivation of liberty, for a period of not less than 12 months; or
- (ii) conduct which is required to be treated as an extradition offence under an extradition treaty between an extradition country and Niue;

“extraditable person” means—

- (i) a person accused of having committed an extradition offence; or



- (ii) a person convicted of an extradition offence in respect of whom there is an intention to impose a sentence as a consequence of the conviction;
- “extradition request” means a request in writing by an extradition country for the surrender of an extraditable person to that country.

### **3 Extradition treaties**

- (1) Where an extradition treaty operates between Niue and an extradition country, the Cabinet may, by regulation, provide that this Act—
  - (i) shall not apply to that extradition country, or
  - (ii) shall apply in relation to that extradition country subject to such limitations, conditions, exceptions, or qualifications as are specified in the regulations.
- (2) Subject to subsection (1), this Act shall be read subject to the terms of the treaty and shall be construed to give effect to the treaty.

## **PART II**

### **EXTRADITION FROM NIUE**

### **4 Provisional arrest**

- (1) The Court may issue a provisional arrest warrant, on such conditions as it thinks fit, even though no request for surrender has been made, if it is satisfied on the basis of the information presented that—
  - (i) a warrant for the arrest of a person has been issued in an extradition country by a court or authority; and
  - (ii) the person is, or is suspected of being, in Niue or on his or her way to Niue; and
  - (iii) there are reasonable grounds to believe that the person is an extraditable person in relation to the extradition country and the offence for which the person is sought is an extradition offence; and
  - (iv) it is necessary or desirable for an arrest warrant to be issued urgently.
- (2) A person for whom an arrest warrant is issued according to subsection (1) must be brought as soon as practicable before the Court.
- (3) The person must be remanded by the Court in custody or, subject to subsection (5), placed on bail for such a period as may be necessary for an extradition request according section 5 to be received and endorsed according to section 6.
- (4) The Court shall not remand a person on bail unless there are special circumstances that justify the remand.
- (5) If the Court does not receive the extradition request under section 5 within reasonable time, which shall not exceed 30 days from the date of the provisional arrest, the Court may order that—
  - (i) the provisional arrest is terminated; and
  - (ii) the proceedings are adjourned or terminated.
- (6) As soon as the extradition request under section 5 is received and endorsement under section 6 is made, the section 7 procedures must be followed.

### **5 Request for surrender**

- An extradition request shall be made to the Court in writing and be accompanied by —
- (i) a charge supported by affidavit, or an authenticated copy of an affidavit made before a judge of the extradition country; and
  - (ii) an authenticated copy of a warrant of arrest; and

- (iii) an accurate statement of the offence or offences for which extradition is requested, including the time and place of their commission, their legal descriptions and a reference to the relevant legal provisions; and
- (iv) a copy of the relevant enactments or, where this is not possible, a statement of the relevant law; and
- (v) as accurate a description as possible of the extraditable person, together with any other information which will help to establish that person's identity and nationality; and
- (vi) (I) a statement that the requirements of section 16(1) will be fulfilled; or  
(II) a request for consent according to section 16(2).

## **6 Endorsement of extradition country's arrest warrant**

(1) The Court may make an endorsement on the warrant authorising the execution of the warrant in Niue where—

- (i) a request for surrender is made in the form provided in section 5; and
- (ii) the Court is informed by affidavit that the person for whose arrest the warrant is in force is, or is suspected of being, in or on their way to Niue; and
- (iii) there are reasonable grounds to believe that the person is eligible under section 9 to be surrendered to the country requesting the surrender.

(2) A warrant endorsed under subsection (1) is sufficient authority for a constable to execute the warrant in accordance with this Act.

## **7 Procedure following arrest**

(1) A person arrested on a warrant endorsed under section 6 must be brought before the Court as soon as possible.

(2) The Court may remand the person in custody, or, admit the person to bail subject to subsection (3), for such a period as may be necessary for the purposes of section 9.

(3) The Court shall not remand the person on bail unless there are special circumstances justifying such remand.

## **8 Consent to surrender by extraditable person**

(1) A person may at any time notify the Court that he or she consents to surrender to the extradition country for the extradition offence for which surrender is sought.

(2) The person can consent to surrender even when the offence for which surrender is sought is not an extradition offence.

(3) After receiving notification of consent under subsection (1) the Court shall make a surrender order in respect of the person.

(4) The Court must not issue a surrender order under subsection (3) unless it is satisfied that the person has freely consented to the surrender for the offence or offences in full knowledge of the consequences.

(5) After the Court issues a surrender order under subsection (3), section 13 applies as if the person had been found eligible for surrender.

## **9 Determination of eligibility for surrender**

(1) The Court must determine whether a person is eligible for surrender in relation to the offence for which surrender is sought.

- (2) A person is eligible for surrender if the Court is satisfied that—
- (i) the requirements of sections 5 and 6 have been satisfied; and
  - (ii) the person is an extraditable person in relation to the extradition country; and
  - (iii) the offence is an extradition offence in relation to the extradition country; and
  - (iv) there are no substantial grounds to believe that a restriction under section 10 or 11 on the surrender of the person applies; and
  - (v) the surrender is in accordance with the provisions of any treaty between Niue and the extradition country; and
  - (vi) the extradition country provided sufficient undertakings where they requested under section 11(2); and
  - (vii) if the conduct constituting the extradition offence had taken place within the jurisdiction of Niue, that conduct or equivalent conduct would have constituted an extradition offence under the laws of Niue.

(3) The Court is not entitled for the purpose of this section to receive evidence to contradict an allegation that the person to whom the proceedings relate has engaged in conduct that constitutes the offence for which surrender is sought.

## **10 Mandatory restrictions**

An extradition request must be refused if—

- (i) the extradition offence is a political offence in relation to the extradition country; or
- (ii) on surrender to the extradition country, the person may be prejudiced at their trial, or punished, detained or restricted in their personal liberty, by reason of their race, religion, nationality or political opinion; or
- (iii) the person has been acquitted or pardoned by a competent tribunal or authority in the extradition country or Niue or has undergone the punishment provided by the law of the extradition country or Niue, in respect of the extradition offence or another offence constituted by the same conduct as constitutes the extradition offence.

## **11 Discretionary restrictions**

(1) An extradition request may be refused if—

- (i) having regard to all the circumstances of the case, it would be unjust or oppressive to surrender the person, because of—
  - (I) the trivial nature of the case; or
  - (II) the accusation of an offence against that person was not made in good faith in the interests of justice; or
  - (III) the amount of time that has passed since the offence is alleged to have been committed or was committed; or
- (ii) the person has been accused of an offence within the jurisdiction of Niue (other than the offence for which the surrender is sought), and the proceedings against the person have not been disposed of; or
- (iii) the person may be or has been sentenced to death and the extradition country is unable to sufficiently assure that—
  - (I) the person will not be sentenced to death; or
  - (II) the sentence will not be carried out; or
- (iv) the person is a New Zealand citizen and there is no treaty in force between Niue and the extradition country which provides for the extradition of New Zealand citizens; or there is no treaty between New Zealand and the extradition

countries which provides for the extradition of New Zealand citizens from Niue.

(2) For the purpose of determining under subsection (1) whether an extradition request is to be refused or not, the Court may seek any undertakings from the extradition country that the Court thinks fit.

(3) Subsection (1) (iv) does not apply to an extradition request by New Zealand.

## **12 Procedure following determination of eligibility for surrender**

(1) If the Court is satisfied that the person is eligible for surrender, the Court must—

- (i) issue a declaration that the person is eligible for surrender; and
- (ii) issue a warrant for the detention of the person pending the surrender of the person to the extradition country; and
- (iii) inform the person that —
  - (I) he or she will not be surrendered until the expiration of 15 days after the date of the issue of the warrant; and
  - (II) during that time the person has the right to apply for a review of the decision determining eligibility for surrender under section 9.

(2) Where the Court issues a warrant under subsection (1) (i), the Court may grant bail to the person on such conditions as it thinks fit.

(3) If the Court is not satisfied that the person is eligible for surrender, it must discharge the person, unless it orders that the person continue to be detained, under this Act.

## **13 Review of decision**

(1) Where the Court makes a decision under section 12, the person or the requesting country may, within 15 days after the date of decision, apply to the Court of Appeal for a review of the decision.

(2) The Court of Appeal may—

- (i) confirm or quash the Court's decision, and
- (ii) direct the Court either to discharge and release the person or order by warrant that the person be surrendered to the extradition country.

(3) The Court of Appeal shall review the decision by way of rehearing, and may have regard to evidence in addition to or in substitution of the evidence that was before the Court.

## **14 Surrender order**

(1) The Court must make a surrender order in respect of the person after the expiration of the period of 15 days from the issue of the warrant of detention.

(2) Any property in the possession of the person at the time of their arrest that may be material as evidence of the offence to which the request for their surrender relates shall, if the Court so directs, be delivered up on the person's surrender.

## **15 Discharge of offender**

The Court shall, on application, order that the offender be released unless sufficient cause is shown against the release, where a person is in custody in Niue at the expiration of one month from the date of the surrender order under section 13(2) or under section 14, whichever is the later.

**16 Person extradited not to be tried for other offences**

(1) A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his or her surrender other than that for which he or she was extradited, nor shall he or she be for any other reason restricted in his or her personal freedom, except when Niue consents.

(2) A request for consent under subsection (1) shall be submitted, accompanied by the documents mentioned in section 5 and a certified record of any statement made by the extradited person in respect of the offence concerned.

(3) Consent under this section shall be given when the offence for which extradition is requested is an extradition offence in accordance with this Act.

**PART III**

**EXTRADITION TO NIUE**

**17 Request by Niue**

(1) The Chief Officer of Police (or the person authorised by the law of an extradition country) may make a request to the relevant authority of an extradition country for the surrender of a person who is accused or has been convicted of an extradition offence against the law of Niue and is suspected of being in that country or on their way to that country.

(2) Any person surrendered pursuant to a request under subsection (1) may be brought to Niue and delivered to the proper authorities to be dealt with according to law.

**18 Person surrendered not to be tried for other offences**

A person who is surrendered by an extradition country shall not, until he or she has left or has had an opportunity of leaving Niue-

- (i) be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his or her surrender other than that for which he or she was extradited, nor shall he or she be for any other reason restricted in his or her personal freedom;
- (ii) be detained in Niue for the purpose of being surrendered to another country with the purpose of being proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his or her surrender other than that for which he or she was extradited, nor shall his or her personal freedom be restricted for any other reason.

**PART IV**

**MISCELLANEOUS**

**19 Directions by Court**

Where a matter of procedure or evidence is not provided for in this Act or regulations made under this Act, the Court shall give such directions as it thinks fit in respect of that matter of procedure or evidence.

**20 Search and seizure**

(1) Upon arrest under an endorsed extradition country's arrest warrant, the constable may search the person arrested without further warrant.

(2) The constable may seize any thing found on the person or under the person's apparent control if the officer believes on reasonable grounds that the thing may be evidence as to the commission of any offence in relation to which the warrant to arrest was endorsed.

(3) Subsection (2) does not authorise a constable to remove, or to require the person to remove, any clothing that the person is wearing unless the removal of clothing is essential for the collection of evidence.

(4) When the removal of clothing is essential for the collection of evidence, the search shall be carried out by a constable of the same sex as the person searched and in a private room.

(5) A constable may retain any property or thing seized under subsection (2) pending any direction from the Court as to the manner in which the thing is to be dealt with.

**21 Search and seizure warrants**

(1) The Court may issue a search and seizure warrant under such conditions as it thinks fit when it—

- (i) receives a request accompanied by affidavit setting out the reasons and circumstances for the request; and
- (ii) is satisfied that there are reasonable grounds for suspecting that there may be in any place any thing that may be material as evidence in proving any offence in relation to which the warrant to arrest was endorsed.

(2) The warrant under subsection (1) shall be issued in accordance with section 170 of the Criminal Law Code.

**22 Delivery of property**

(1) If a person is ordered to be surrendered under this Act, the Court may direct that anything that may be evidence of the extradition offence in the extradition country, including anything seized under section 20, be delivered on the person's surrender.

(2) The Court may refuse to direct that any particular thing be delivered to the extradition country or returned to the person if the thing is required for the investigation of an offence within the jurisdiction of Niue or the possession of the thing by the person would be unlawful in Niue.

**23 Procedure**

Proceedings under this Act shall be conducted in accordance with the rules for the trial of summary offences.

**24 Official documents and their authentication**

(1) In any proceedings under this Act—

- (i) a duly authenticated document that purports to set out testimony given on oath, or declared or affirmed to be true, by a person in proceedings in an extradition country, shall be admissible as evidence of the matters stated in the testimony;

- (ii) a duly authenticated document that purports to have been received in evidence, or to be a copy of a document that has been received in evidence in proceedings in an extradition country shall be admissible in evidence;
- (iii) a duly authenticated document that certifies that a person was convicted, on a date specified in the document of an offence against the law of, or of a part of, an extradition country shall be admissible as evidence of the fact and date of the conviction; and
- (iv) a duly authenticated document that purports to be a foreign warrant shall be admissible in evidence.

(2) A document shall be deemed to be duly authenticated for the purpose of being admitted in evidence in proceedings under this Act where, in the case of a document that—

- (i) purports to set out testimony given, declared or affirmed by a person in proceedings in an extradition country, the document purports to be certified by a judicial officer in that extradition country and to be the original document containing or recording that testimony or a true copy of that original document;
- (ii) purports to have been received in evidence, or to be a copy of a document that has been received in evidence, in proceedings in an extradition country, the document purports to be certified by a judicial officer in or of that country and to have been, or to be a true copy of a document that has been so received in evidence;
- (iii) certifies that a person has been convicted of an offence, the document purports to be certified by a judicial officer in or of that country; or
- (iv) purports to be a foreign warrant, the document purports to be signed by a judicial officer in or of the country in which the document was issued and the document purports to be authenticated by the oath of a witness or by being signed by or sealed with the official seal of a Minister in or of that country.

(3) The Court shall take judicial notice of the signature or seal of a Minister authenticating any document specified in subsection (2).

(4) Nothing in this section shall be construed as preventing the proof of any matter, or the admission in evidence of any document, in accordance with any enactment in Niue.

## **25 Regulations**

The Cabinet may make regulations for the purposes of this Act.

## **26 [Spent]**



# FAMILY LAW CODE

[Reprint approved by Cabinet CM(07)498]

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PART 1  
MARRIAGE

**1 Prohibited degrees of consanguinity or affinity**

(1) A marriage forbidden by the following Schedule is void—

SCHEDULE  
Forbidden Marriages

- |                                 |                                    |
|---------------------------------|------------------------------------|
| 1 A man may not marry his—      | 2 A woman may not marry her—       |
| (1) Grandmother                 | (1) Grandfather                    |
| (2) Grandfather's wife          | (2) Grandmother's husband          |
| (3) Wife's grandmother          | (3) Husband's grandfather          |
| (4) Father's sister             | (4) Father's brother               |
| (5) Mother's sister             | (5) Mother's brother               |
| (6) Mother                      | (6) Father                         |
| (7) Stepmother                  | (7) Stepfather                     |
| (8) Wife's mother               | (8) Husband's father               |
| (9) Daughter                    | (9) Son                            |
| (10) Wife's daughter            | (10) Husband's son                 |
| (11) Son's wife                 | (11) Daughter's husband            |
| (12) Sister                     | (12) Brother                       |
| (13) Son's daughter             | (13) Son's son                     |
| (14) Daughter's daughter        | (14) Daughter's son                |
| (15) Son's son's wife           | (15) Son's daughter's husband      |
| (16) Daughter's son's wife      | (16) Daughter's daughter's husband |
| (17) Wife's son's daughter      | (17) Husband's son's son           |
| (18) Wife's daughter's daughter | (18) Husband's daughter's son      |
| (19) Brother's daughter         | (19) Brother's son                 |
| (20) Sister's daughter          | (20) Sister's son                  |

3 This Schedule shall apply whether the relationship is by whole blood or by the half blood.

4 In this Schedule, “wife” includes a former wife, whether she is alive or deceased, and whether her marriage was terminated by death or divorce or otherwise; and “husband” has a corresponding meaning.

(2) Notwithstanding subsection (1), any persons who are not within the degrees of consanguinity but are within the degrees of affinity so prohibited may apply to the Court for its consent to their marriage, and the Court may make an order dispensing with that prohibition so far as it relates to the parties to the application, and, if such an order is made, that prohibition shall cease to apply to the parties.

**2 Marriages to take place before Marriage Officer**

(1) Every marriage shall take place in the presence of a Marriage Officer and of at least two other witnesses.

(2) In this section, “Marriage Officer” means any Judge or Commissioner of the High Court, the Registrar of the High Court, or any person appointed as a Marriage Officer under subsection (3).

(3) The Cabinet may appoint any minister of religion, or person whom it believes to be a fit and proper person, as a Marriage Officer.

(4) A marriage celebrated other than in accordance with this section is void.

**3 Offence**

If any person acts as a Marriage Officer in Niue without being qualified by office or appointment so to act, he is liable to imprisonment for a term not exceeding 3 years.

**4 Notice of marriage**

(1) A Marriage Officer shall not solemnise or record any marriage, unless notice in writing of the intention of the parties to enter into the marriage has been given to the Marriage Officer by one of the parties at least 2 clear days before the day of the marriage.

(2) On receipt of that notice, the Marriage Officer shall publish it in such manner as he thinks sufficient to give due publicity to the intended marriage.

(3) On every such notice, there shall be payable by the person giving it such fee (if any) as may be prescribed by regulations, and all such fees shall be payable into the Niue Government Account.

(4) No marriage shall be invalidated by any breach of the requirements of this section.

**5 Mode of solemnisation**

Every marriage shall, subject to this Part, be solemnised in such manner as the Marriage Officer thinks fit.

**6 Record of marriage**

Every marriage shall, at the time of the solemnisation, be recorded in writing by the Marriage Officer in the form and with the several particulars prescribed by regulations under this Act, but no marriage shall be invalidated by any error or defect in that form or in the particulars so required to be recorded.

**7 Signature of record**

The aforesaid record of every marriage shall be signed by the parties, and by two witnesses, and by the Marriage Officer, all being present at the same time, and when the record has been so signed the marriage shall be deemed to be fully solemnised and shall take effect.

**8 Transmission of record**

The record of every marriage shall be forthwith delivered by the Marriage Officer to the Registrar of the Court, and shall be preserved by the Registrar in the same manner as if it was a record of the High Court.

**9 Minimum age of marriage**

A Marriage Officer shall not solemnise or record any marriage, unless the husband is at least 18 years of age and the wife is at least 15 years of age, but no marriage shall be invalidated by a breach of this section.

**10 Marriage of minors**

(1) A Marriage Officer shall not solemnise or record the marriage of any man under the age of 21 years or of any woman under the age of 19 years without the consent of one of the parents of the man or woman, if either of those parents is alive and resident in Niue.

(2) A Judge of the Court may in any case, if he thinks fit so to do, grant exemption from the requirements of this section.

(3) No marriage shall be invalidated by any breach of this section.

**11 Offence by Marriage Officer**

If any Marriage Officer commits any breach of the provisions of this Part, or signs any record of a marriage containing any statement known by him to be false, he is liable to a fine not exceeding 1 penalty unit.

**12 Signature of false record by party or witness**

Every party or witness to a marriage who signs a record of it containing any statement known by him or her to be false is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding 0.5 penalty units.

**13 Misrepresentation as to facts to procure marriage**

Every person who, by any wilful misrepresentation made to a Marriage Officer, procures or attempts to procure the solemnisation by that officer of any marriage is liable to imprisonment for a term not exceeding one year.

**14 Sanction of Court to be obtained**

(1) Every minor in contemplation of his marriage may, with the sanction of the Court, given on the application of the minor or his guardian, make a valid and binding settlement or contract for a settlement of all or any part of his property, or property over which he has a power of appointment whether in possession, reversion, remainder or expectancy.

(2) Every conveyance, appointment and assignment of any such property, and every contract to make a conveyance of it, appointment, or assignment of it executed by the minor with the sanction of the Court for the purpose of giving relief to the settlement shall be as valid and effectual as if the minor were of full age.

(3) Where there is no guardian the Court may require a guardian to be appointed, and may also require that any persons interested or appearing to be interested in the property be served with notice of the application to the Court for its sanction.

(4) Where any appointment under a power of appointment or any disentailing assurance, has been executed under this section by any minor as tenant in tail, and afterwards that minor dies under age, the appointment or disentailing assurance shall thereupon become absolutely void.

(5) [Repealed]

(6) The authority conferred by this section shall not extend to powers of which it is expressly declared that they shall not be exercised by a minor.

**15 Legal status of married women**

(1) Save where otherwise provided by this Act, the legal capacity of a married woman, whether contractual, proprietary, testamentary, or of any other kind whatsoever, shall be the same as that of an unmarried woman.

(2) Save in respect of intestate succession, marriage shall not confer on either party any rights to or in respect of the property of the other.

(3) The rule of the common law that for certain purposes a husband and wife are deemed to be one person only is hereby abolished for all purposes, including the law of domicile.

(4) A husband shall not be responsible, as such, for torts committed by his wife.

(5) Nothing in this section shall affect the validity or operation of a restraint on anticipation.



PART 2  
DIVORCE

**16 Nullity of marriage**

The Court shall in proceedings for nullity of marriage have and exercise in Niue the same jurisdiction as is possessed for the time being by the courts in New Zealand.

**17 Domicile of a married woman**

The domicile of a married woman shall be determined as if she were an adult and single.

**18 Grounds of divorce and jurisdiction of High Court**

(1) Subject to subsection (2), any married person (the petitioner) may take proceedings in the High Court for the dissolution of his or her marriage with the other party to the marriage (the respondent) on any ground specified in subsection (3).

(2) No proceedings for divorce may be taken in the High Court unless—

- (a) The petitioner or the respondent is at the commencement of the proceedings domiciled in Niue; and
- (b) Where the ground alleged in the petition is one of those specified in subsection (3)(l), (m) and (n), has been domiciled or resident in Niue for 2 years at least immediately preceding the filing of the petition.

(3) A petition for divorce may be presented to the High Court on one or more of the following grounds, and on no other ground –

- (a) That the respondent has since the solemnisation of the marriage been guilty of adultery;
- (b) That the respondent, being the wife of the petitioner, has since the solemnisation of the marriage and without the consent of the petitioner been artificially inseminated with the semen of some man other than the petitioner;
- (c) That the respondent without just cause has wilfully deserted the petitioner and without just cause has left the petitioner continuously so deserted for 3 years or more;
- (d) That the respondent—
  - (i) Being the petitioner's husband, has for 3 years or more been an habitual drunkard or drug addict, and has either habitually left his wife without means of support or habitually been guilty of cruelty towards her; or
  - (ii) Being the petitioner's wife, has for a like period been an habitual drunkard or drug addict, and has either habitually neglected her domestic duties and rendered herself unfit to discharge them or habitually been guilty of cruelty towards him;
- (e) That the respondent has since the solemnisation of the marriage been convicted of attempting to commit the murder of the petitioner or any child (of any age) of the petitioner or respondent, or has been convicted of any offence under section 23 of the Criminal Law Code against the petitioner or any such child;
- (f) That the respondent has since the solemnisation of the marriage been convicted of incest, attempted rape or assault with intent to commit rape against any child (of any age) of the petitioner or respondent, or of sexual intercourse or attempted sexual intercourse with any such child under 15 years of age;
- (g) That the respondent, being the husband of the petitioner, has committed rape or buggery since the solemnisation of the marriage;
- (h) That the respondent has since the solemnisation of the marriage been convicted of murder;
- (i) That the respondent is a person of unsound mind and is unlikely to recover, and has been a patient for a period or periods of not less in the aggregate than



7 years within the period of 10 years immediately preceding the filing of the petition;

- (j) That the respondent is a person of unsound mind and is unlikely to recover, and has been continuously a person of unsound mind for a period of 7 years immediately preceding the filing of the petition, and has been a patient during the final 3 years of the said period of 7 years;
- (k) That the respondent is a person of unsound mind and is unlikely to recover, and has been a patient for a period of 5 years immediately preceding the filing of the petition;
- (l) That the petitioner and respondent are parties to an agreement for separation, whether made by deed or other writing or orally, and that the agreement is in full force and has been in full force for not less than 3 years;
- (m) That—
  - (i) the petitioner and respondent are parties to a decree, order, or judgment made in Niue or in any country if that decree, order, or judgment has in that country the effect that the parties are not bound to live together; and
  - (ii) that decree of separation, separation order, or other decree, order, or judgment is in full force and has been in full force for not less than 3 years;
- (n) That the petitioner and respondent are living apart and are unlikely to be reconciled, and have been living apart for not less than 7 years.

## **19 Grounds of refusal of divorce**

If the Court is of opinion—

- (a) That, in the case of a petition based on a matrimonial wrong, the petitioner's own habits or conduct induced or contributed to the wrong complained of so as to disentitle the petitioner to a divorce or the petitioner has condoned the wrong complained of; or
- (b) That, in the case of the adultery of the respondent, the petitioner has been in any manner accessory to or has connived at the adultery—

the Court shall dismiss the suit; but, subject to section 20, in all other cases, if the Court is satisfied that the case of the petitioner has been established, the Court shall pronounce a decree of divorce.

## **20 Discretion to refuse decree in certain cases**

(1) (a) Where a petition for divorce is presented on any of the grounds specified in section 18 (3) (1) (m) and (n), and the petitioner has proved his or her case, the Court shall have a discretion whether or not to grant a decree of divorce.

- (b) The Court shall not, in the exercise of that discretion, refuse to grant a decree by reason only of the adultery of either party after their separation.

(2) The Court may dismiss any petition for divorce if there has been collusion between the petitioner and the respondent with intent to cause a perversion of justice.

## **21 Co-respondent as a party**

In any proceedings in the Court for divorce on the ground of adultery, the Court may make the person with whom the respondent is alleged to have committed adultery a co-respondent in the proceedings.

**22 Agreement no bar to divorce**

No covenant or agreement between the parties to proceedings for divorce shall operate as a bar to the institution or prosecution of the proceedings.

**23 No appeal to Court of Appeal**

No appeal shall lie to the Court of Appeal from any decree of the Court for divorce.

**24 Order for maintenance of divorced wife**

(1) When a decree of divorce is made by the Court, the Court may, in and by the decree, order the husband to pay towards the future maintenance of his wife (whether petitioner or respondent), so long as she remains unmarried, a reasonable sum at such times and in such manner as the Court thinks fit.

(2) Every such order shall be deemed to be a maintenance order under Part 23 and all the provisions of that Part shall, so far as applicable, apply to it accordingly.

(3) In addition to or instead of making an order under subsection (1), the Court may, when making any such decree, order the husband to pay to the wife such capital sum as the Court thinks fit.

**25 Order as to custody of children**

The Court may in and by any decree of divorce or of nullity, or at any time and from time to time thereafter, make such order as it thinks fit as to the custody of the children of the marriage.

**26 Molestation of divorced wife by her husband**

If, at any time after a decree of divorce or of dissolution of a voidable marriage has been pronounced at the suit of the wife, her former husband—

(a) Commits any trespass by entering or remaining upon or in any land, house, or building which is in her occupation or in which she dwells or is present; or

(b) Attempts or threatens to commit any such trespass; or

(c) Molests her by watching or besetting her dwellinghouse or place or business, employment, or residence, or by following or waylaying her in any road or other public place—

he is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding 0.5 penalty units.

PART 3

BIRTHS

**27 Births and deaths**

The Cabinet may make regulations to provide for the registration of births and deaths and the due administration of it.

**28 Legitimacy**

(1) Every person, whether born before 1 January 1967, and whether born in Niue or not, and whether or not his parents or either of them were domiciled in Niue at the time of his birth, shall for all the purposes of the law of Niue be deemed to be the legitimate child of each of his parents, and all other relationships in respect of that person shall be deemed to be traced through lawful wedlock accordingly.

(2) The provisions of this section—

(a) In so far as it affects wills, shall have effect only in relation to the wills of testators who die after 1 January 1967, and

(b) In so far as it affects instruments other than wills, shall have effect only in relation to instruments executed after the commencement of this Act.

(3) All wills of testators who have died before 1 January 1967, and all other instruments executed before 1 January 1967, shall be governed by the enactments and rules of law which would have applied to them if this Act had not been passed.

(4) The estates of all persons who have died intestate as to the whole or any part of it before 1 January 1967 shall be distributed under the enactments which would have applied to them if this Act had not been passed.

(5) No action shall lie against any executor or administrator or trustee of the estate of any person who dies after 1 January 1967 or the trustee under any instrument executed after 1 January 1967 by any person whose relationship to the deceased or to any other person or, as the case may be, to the settlor or to any other person is in any degree traced otherwise than through lawful wedlock, by reason of the executor or administrator or trustee having made any distribution of the estate or trust disregarding the claims of the person so related where at the time of making the distribution the executor, administrator, or trustee had no notice of the relationship of that person to the deceased or the settlor or any other person.

#### PART 4 ADOPTION

### **29 Interpretation**

In this Part –

“adopted child” means any person in respect of whom an adoption order is in force;

“adoption order” means an adoption order made by the Land Court;

“adoptive parent” means any person who adopts a child under an adoption order; and, in the case of an order made in favour of a husband and wife on their joint application, means both the husband and wife; but does not include a spouse who merely consents to an adoption;

“child” means a person who is under the age of 21 years;

“father”, in relation to any child born out of wedlock, means the natural father;

“Land Court” means the Land Division of the High Court.

### **30 Adoption by Niuean custom invalid**

No adoption by Niuean custom made after 1 November 1969 shall be of any force or effect, whether in respect of intestate succession or otherwise.

### **31 Land Court may make adoption orders**

(1) Subject to this Part, the Land Court may, upon an application made by any person, whether domiciled in Niue or not, make an adoption order in respect of any child, whether Niuean or European, and whether domiciled in Niue or not.

(2) An adoption order may be made on the application of spouses jointly in respect of a child.

(3) An adoption order may be made in respect of the adoption of a child by the mother or father or the child, either alone or jointly with his or her spouse.

### **32 Prohibition of payments in consideration of adoption**

Except with the consent of the Land Court, it shall not be lawful for any person to give or receive or agree to give or receive any payment or reward in consideration of the making of arrangements for an adoption or proposed adoption.

**33 Restrictions on making adoption orders**

(1) No adoption order shall be made under this Part unless the Land Court is satisfied that –

- (a) The child to be adopted is under the age of 21 years at the date of the filing of the application; and
- (b) The applicant or, in the case of a joint application, one of the applicants, has attained the age of 25 years and is at least 21 years older than the child, or is the mother or father of the child; and
- (c) The applicant (if unmarried) is at least 30 years older than the child; and
- (d) Where the child is female and the sole applicant is male, the applicant is the father of the child, or there are special circumstances which justify the making of an order; and
- (e) The child, if in the opinion of the Land Court is above the age of 12 years, consents to the adoption; and
- (f) The applicant is a fit and proper person to have the care and custody of the child and of sufficient ability to maintain the child, and the adoption will not be contrary to the welfare and interests of the child.

(2) In order to satisfy itself as to the matters mentioned in subsection (1)(f) the Land Court shall call for a report on it by Cabinet or by an officer of the Niue Public Service nominated for the purpose by Cabinet.

(3) No adopted child shall, in the lifetime of an adoptive parent and while the adoption order remains in force, be adopted by any other person save the husband or wife of that parent.

**34 Consents to adoptions**

(1) No adoption order shall be made without the consent of the parents or of the surviving parent (if any) of the child, whether that child is born in lawful wedlock or not, but no such consent shall be required from any parent if the Land Court is satisfied that the child has been deserted by that parent, or that that parent is for any reason unfit to have the care and custody of the child, or if the Land Court for any other reason whatsoever considers that the consent of that parent should be dispensed with.

(2) Every consent given under subsection (1) shall be given in writing and witnessed by one of the persons specified in section 78(1) of the Niue Act 1966 and every such witness shall certify that the parent signing the consent fully understands the effect of an adoption order.

(3) Where the application for an adoption order is made by either a husband or a wife alone, no order shall be made without the consent of the spouse of the applicant, save that no such consent shall be required if the Land Court is satisfied that the spouses are living apart and that their separation is likely to be permanent.

**35 Effect of adoption order**

(1) Every adoption order shall confer the surname of the adoptive parent on the adopted child, with such first or Christian name as the Court, on the application of the person who is applying for the adoption order, may fix.

(2) Upon an adoption order being made, the following shall have effect for all purposes, whether civil, criminal, or otherwise, but subject to the provisions of any enactment which distinguishes in any way between adopted children and children other than adopted children, namely –

- (a) The adopted child shall be deemed to be the child of the adoptive parent, and the adoptive parent shall be deemed to be the parent of the child, as if the child had been born to that parent in lawful wedlock:  
Provided that, where the adopted child is adopted by his mother either alone or jointly with her husband, the making of the adoption order shall not prevent the making of an affiliation order or maintenance order, or of an application for an affiliation order or maintenance order, in respect of the child;
- (b) The adopted child shall be deemed to cease to be the child of his existing parents (whether his natural parents or his adoptive parents under any previous adoption), and the existing parents of the adopted child shall be deemed to cease to be his parents, and any existing adoption order in respect of the child shall be deemed to be discharged under section 37:  
Provided that, where the existing parents are the natural parents, this paragraph shall not apply for the purposes of any enactment relating to forbidden marriages or to the crime of incest;
- (c) The relationship to one another of all persons (whether the adopted child, the adoptive parent, the existing parents, or any other persons) shall be determined under this subsection so far as they are applicable;
- (d) The foregoing provisions shall not apply for the purposes of any deed, instrument, will, or intestacy, or affect any vested or contingent right of the adopted child or any other person under any deed, instrument, will, or intestacy, where the adoption order is made after the date of the deed or instrument or after the date of the death of the testator or intestate, as the case may be, unless in the case of a deed, instrument, or will, express provision is made to that effect;
- (e) The adoption order shall not affect the race, nationality, or citizenship of the adopted child;
- (f) The adopted child shall acquire the domicile of his adoptive parent or adoptive parents, and the child's domicile shall thereafter be determined as if the child had been born in lawful wedlock to the said parent or parents:  
Provided that nothing in this paragraph shall affect the domicile of origin of the child;
- (g) In any case where the adoption order was made before the adopted child attained the age of 3 years, the child's domicile of origin shall be deemed to be the domicile which he first acquired under paragraph (f) upon the making of the adoption order, but nothing in this Act shall affect the domicile of origin of an adopted child in any other case;
- (h) Any existing appointment as guardian of the adopted child shall cease to have effect;
- (i) Any affiliation order or maintenance order in respect of the adopted child and any agreement (not being in the nature of a trust) which provides for payments for the maintenance of the adopted child shall cease to have effect:  
Provided that, where the adopted child is adopted by his mother either alone or jointly with her husband, the order or agreement shall not cease to have effect by reason of the making of the adoption order:  
Provided also that nothing shall prevent the recovery of any arrears which are due under any order or agreement at the date on which it ceases to have effect.

**36 Adoption order may be varied or discharged**

(1) The Land Court may vary or discharge any adoption order subject to such terms and conditions as it thinks fit, on the application of any adoptive parent or of the adopted child.

(2) The Land Court may, subject to such terms and conditions as it thinks fit, discharge any adoption made in any place outside Niue either before or after 1 November 1969 if –

- (a) The person adopted is living and is domiciled in Niue; and
- (b) Every living adoptive parent is domiciled in Niue.

(3) No application for discharge of any adoption shall be made without the prior approval of Cabinet and no adoption order or adoption shall be discharged unless the adoption order was made by mistake as to a material fact in consequence of a material misrepresentation to the Land Court or to any person concerned.

(4) Where the Land Court discharges an adoption order or adoption as aforesaid, it may confer on the person to whom the order or adoption related such surname with such first or Christian name as the Land Court thinks fit; but, if it does not do so, the names of the person shall not be affected by the discharge of the order.

**37 Adoption order discharged**

Upon an adoption order being discharged –

- (a) The relationship to one another of all persons (whether the adopted child, the adoptive parents, the natural parents, the guardians of the child at the date of the adoption order or adoption, or any other persons) shall be determined as if the adoption order or adoption had not been made; and any appointment as guardian of the adopted child which was made while the adoption order or adoption was in force shall cease to have effect: Provided that the discharge of the order or adoption shall not affect anything lawfully done or the consequences of anything unlawfully done while the order or adoption was in force;
- (b) No change in the child's domicile shall occur by reason only of the discharge; but, where during the infancy of the child any natural parent resumes custody of the child to whom the discharged order or adoption related, the domicile of the child shall be determined as if neither the discharged order or adoption nor any prior adoption order or adoption in respect of the child had been made;
- (c) Any affiliation order, maintenance order, or agreement for payment of maintenance which ceased to have effect under section 35 (2) (i) have effect under its terms: Provided that nothing in this paragraph shall cause the order or agreement to have any effect in respect of the period while the adoption order or adoption remained in force: Provided also that notice of the discharge of the adoption order or adoption shall be served on every person who is bound by the affiliation order, maintenance order, or agreement, but nothing in this proviso shall restrict the effect of the affiliation order, maintenance order, or agreement between the date of the discharge of the adoption order or adoption and the service of notice of the discharge;
- (d) For the purposes of any other deed or instrument (except a will) made while the order or adoption was in force, or of the will or intestacy of any testator or intestate who died while the order or adoption was in force, or of any vested or contingent right of the adopted child or any other person under any such deed, instrument, will or intestacy, the order or adoption shall be deemed to continue in force.



PART 5  
GUARDIANSHIP

**38 Objective of Part**

The objective of this Part is to define and regulate the authority of parents as guardians of their children, their power to appoint guardians, and the powers of the courts in relation to the custody and guardianship of children.

**39 Interpretation**

In this Part –

“child” means a person under the age of 20 years;

“near relative” means a step-parent, grandparent, aunt, uncle, brother, or sister; and includes a brother or sister of the half-blood as well as of the full-blood;

“upbringing” includes education and religion.

**40 Definition of custody and guardianship**

For the purposes of this Part –

“custody” means the right to possession and care of a child;

“guardianship” means the custody of a child (except in the case of a testamentary guardian and subject to any custody order made by the Court) and the right of control over the upbringing of a child, and includes all rights, powers, and duties in respect of the person and upbringing of a child that were at 1 January 1970 vested by any enactment or rule of law in the sole guardian of a child.

*Jurisdiction*

**41 Personal jurisdiction**

(1) The Court shall have jurisdiction under this Part –

- (a) Where any question of custody, guardianship, or access arises as an ancillary matter in any proceedings in which the Court has jurisdiction; or
- (b) Where the child who is the subject of the application or order is present in Niue when the application is made; or
- (c) Where the child, or any person against whom an order is sought, or the applicant, is domiciled or resident in Niue when the application is made.

(2) Notwithstanding subsection (1) the Court may decline to make an order under this Part if neither the person against whom it is sought nor the child is resident in Niue and the Court is of the opinion that no useful purpose would be served by making an order or that in the circumstances the making of an order would be undesirable.

*Natural Guardianship*

**42 Guardianship of children**

(1) Subject to this Part, the father and the mother of a child shall each be a guardian of the child.

(2) Subject to this Part, the mother of a child shall be the sole guardian of the child if –

- (a) She is not married to the father of the child, and either –
  - (i) has never been married to the father; or
  - (ii) her marriage to the father of the child was dissolved before the child was conceived; and
- (b) She and the father of the child were not living together as husband and wife at the time the child was born.



(3) Where the mother of a child is, or was at the time of her death, its sole guardian by virtue of subsection (2) the father of the child may apply to the Court to be appointed as guardian of the child, either in addition to or instead of the mother or any guardian appointed by her, and the Court may make such order on the application as it thinks proper.

(4) On the death of the father or the mother the surviving parent, if he or she was then a guardian of the child, shall, subject to this Part, be the sole guardian of the child.

#### **43 Declaration as to guardianship of father**

Any man who alleges that he is a guardian of a child by virtue of section 6 (other than by a virtue of an order under subsection (3)) may apply to the Court for an order declaring that he is a guardian of the child, and, if it is proved to the satisfaction of the Court that the allegation is true, and that the man has not been deprived of his guardianship the Court may make the order.

#### *Appointment and Removal of Guardians*

#### **44 Testamentary guardians**

(1) The father or the mother of a child (including an unborn child) may by deed or will appoint any person to be a guardian of the child after his or her death, and that person is in this Part referred to as a testamentary guardian.

(2) If the person appointing a guardian under subsection (1) is himself a guardian of the child at his death, the testamentary guardian shall thereupon if he is of full age and capacity be either sole guardian or a guardian in addition to any other guardian.

(3) If the person appointing a guardian under subsection (1) is not himself a guardian at his death, the testamentary guardian may apply to the Court, and the Court may appoint him as a guardian accordingly.

(4) Notwithstanding any enactment or rule of law, a child may appoint a guardian by deed or will under subsection (1).

#### **45 Court-appointed guardians**

(1) Subject to the provisions of this section, the Court may on application made for the purpose or on the making of an order under section 47, appoint a guardian of a child either as sole guardian or in addition to any other guardian, and either generally or for any particular purpose, and either until the child attains the age of 20 years or sooner marries, or for any shorter period.

(2) The High Court shall have exclusive jurisdiction to appoint and remove a guardian *ad litem* in respect of any proceedings before that or any higher court, and may appoint or remove a guardian *ad litem* in respect of any proceedings before any other court.

#### **46 Wards of Court**

(1) The Court may upon application order that any unmarried child be placed under the guardianship of the Court, and may appoint any person to be the agent of the Court either generally or for any particular purpose.

(2) An application under subsection (1) may be made –

- (a) By a parent, guardian or near relative of the child;
- (b) [Repealed]
- (c) By the child, who may apply without guardian *ad litem* or next friend;
- (d) With the leave of the Court, by any other person.

(3) (a) Between the making of the application and its disposal, and after it if an order is made, the Court shall have the same rights and powers in respect of the person and property of the child as the Court possessed immediately before 1 January 1970 in relation to wards of Court.

(b) The Court shall not direct any child of or over the age of 18 years to live with any person unless the circumstances are exceptional.

(c) Where any child under the guardianship of the Court marries without the Court's consent the Court shall not have the power to commit that child or his or her spouse for contempt of Court for so marrying.

(4) A child who has been placed under the guardianship of the Court shall cease to be under such guardianship when the Court so orders or when the child reaches the age of 20 years or sooner marries, whichever first occurs.

#### **47 Removal of guardian**

(1) The Court may on application by the other parent or by a guardian or near relative or, with the leave of the Court, by any other person deprive a parent of the guardianship of his child or remove from his office any testamentary guardian or any guardian appointed by the Court.

(2) No parent shall be deprived of the guardianship of his child under subsection (1) unless the Court is satisfied that the parent is for some grave reason unfit to be a guardian of the child or is unwilling to exercise the responsibilities of a guardian.

#### **48 Custody orders**

(1) Subject to section 61 the Court may on application by the father or mother, or a step-parent, or a guardian, of a child or with the leave of the Court by any other person, make such order with respect to the custody of the child as it thinks fit.

(2) Any order made under subsection (1) may be made subject to such conditions as the Court thinks fit.

#### **49 Orders in other proceedings**

(1) Subject to section 61, in any proceedings for nullity, separation or divorce the Court may, before or by or after the principal decree or order, make such order (whether an interim order or a permanent order) as it thinks just with respect to the custody and upbringing of any child of the marriage.

(2) In any such case the Court may make a guardianship order vesting the sole guardianship of the child in one of the parents, or make such other order with respect to the guardianship of the child as it thinks fit.

(3) An order may be made under subsection (1) or (2) and any such order may be varied or discharged, notwithstanding that the Court has refused to make a decree or to give any other relief sought.

(4) Unless the Court makes a guardianship order every person who was a guardian of the child shall continue to be a guardian of the child.

### *Disputes*

#### **50 Disputes between guardians**

(1) When more than one person is a guardian of a child, and they are unable to agree on any matter concerning the exercise of their guardianship, any of them may apply to the Court for its direction, and the Court may make such order relating to the matter as it thinks proper.

(2) Where more than one person has custody of a child, and they are unable to agree on any matter affecting the welfare of the child, any of them may apply to the

Court for its direction, and the Court may make such order relating to the matter as it thinks proper.

(3) Where under an order of the Court more than one person is a guardian or has custody of a child the Court shall have exclusive jurisdiction to settle disputes.

**51 Review of guardian's decision or refusal to give consent**

A child of or over the age of 16 years who is affected by a decision or by a refusal of consent by a parent or guardian in an important matter may apply to the Court which may review the decision or refusal and make such order in respect of the matter as the Court thinks fit.

*Access*

**52 Access rights**

(1) On making any order with respect to the custody of a child the Court may make such order with respect to access to the child by a parent who does not have custody of it under the order as it thinks fit.

(2) A parent who does not have custody of his child may apply to the Court for an order granting him access to the child, and the Court may make such order as it thinks fit.

(3) In this section "parent" includes a step-parent, and "child" has a corresponding meaning.

**53 Access of other relatives on death of parent**

If a parent of a child has died, the Court may order that the parents of the deceased parent, or either of them, or any brother or sister of the deceased parent, or any brother or sister of the child, shall have access to the child at such times and places as the Court thinks fit.

*Variation and Enforcement of Orders*

**54 Variation or discharge of orders**

(1) The Court may vary or discharge any order with respect to the custody or upbringing of a child, or with respect to access to a child.

(2) (a) The Court may vary or discharge any order vesting the guardianship of a child in one parent or in any other person or persons.

(b) If any such guardianship order is discharged, and no other guardianship order is made, guardianship shall vest in the person (if any) who would be the guardian if the order discharged had not been made.

(3) An application to vary or discharge any order to which this section applies may be made by any person affected by the order, or by any person on behalf of the child who is the subject of the order.

(4) This section does not apply to an interim order or to an adoption order.

**55 Effect of custody agreements**

An agreement between the father and mother of a child with respect to the custody or upbringing of or access to the child shall be valid, whether or not either of the parties is a minor, but shall not be enforced if the Court is of opinion that it is not for the welfare of the child to give effect to it.

**56 Enforcement of custody and access rights**

(1) (a) Where any person is entitled to the custody of a child, whether under this Part or to the order of a court, the Court may on the application of the person so entitled to custody, issue a warrant authorising any constable or social worker or any

other person named in the warrant to take possession of the child and to deliver him to the person entitled to custody.

(b) Where more than one person is entitled to the custody of a child no warrant issued under this subsection shall authorise the removal of the child from the possession of one of those persons and the delivery of him to another of them.

(2) The Court may on the application of the person entitled to access to a child under an order of the Court, issue a warrant authorising any constable or social worker or any other person named in the warrant to take possession of the child and deliver him to the person entitled to access in accordance with the order.

(3) The powers conferred on a court by subsections (1) and (2) may be exercised on the making of the order.

(4) For the purpose of executing any warrant issued under subsection (1) or (2), any constable or social worker or any other person named in the warrant, may enter and search any building, aircraft, ship, vehicle, premises, or place, with or without assistance and by force if necessary.

(5) The constable, social worker or other person executing any such warrant shall have it with him and shall produce it if required to do so.

(6) Every person who wilfully resists or obstructs any person in the execution of any such warrant, or who wilfully fails or refuses to afford to any person engaged in the execution of any such warrant immediate entrance to any premises or to any part of them, commits an offence and shall be liable on conviction to a fine not exceeding 4 penalty units.

(7) Nothing in subsections (1) to (3) shall limit or affect any other power to enforce a right of custody or access exercisable by any court at 1 January 1970.

(8) Where the Court declines to enforce a right of custody or access it may of its own motion vary or discharge any existing order of custody or access accordingly.

(9) Subject to section 46 (3)(b) in considering an application under subsection (1) or (2) of this section, or any other application to enforce a right of custody or access, the Court shall not grant the application contrary to the wishes of the child if the child is of or over the age of 18 years.

## **57 Preventing removal of child from Niue**

(1) A Judge or the Registrar of the Court who has reason to believe that any person is about to take a child out of Niue with intent to defeat the claim of any person who has applied for or is about to apply for custody of or access to the child, or to prevent any order of any Court as to custody of or access to the child from being complied with, may issue a warrant directing any constable or social worker to take the child (using such reasonable force as may be necessary) and place it in the care of some suitable person pending the order or further order of the court having jurisdiction in the case.

(2) Any person who without the leave of the Court takes or attempts to take any child out of Niue knowing that proceedings are pending or are about to be commenced under this Part in respect of the child or that an order of any Court conferring custody of or access to the child on any other person is in force or with intent to prevent any order of any Court as to custody of or access to the child from being complied with commits an offence and shall be liable on conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 3 months or to both.

(3) No proceedings for contempt of court shall be taken against any person in respect of any act to which this section applies.

*Marriage of Child*

**58 Termination of guardianship**

(1) Guardianship of a child shall terminate when the child attains the age of 20 years or marries under that age.

(2) Nothing in subsection (1) shall limit or affect the appointment of a guardian *ad litem* or the powers of the Court in respect of any such guardian.

**59 Domicile of married minor**

The domicile of a minor who is or has been married shall be determined as if the minor were an adult.

*Miscellaneous Provisions*

**60 Welfare of child paramount**

(1) (a) In any proceedings where any matter relating to the custody or guardianship of or access to a child, or the administration of any property belonging to or held in trust for a child, or the application of the income thereof, is in question, the Court shall regard the welfare of the child as the first and paramount consideration.

(b) The Court shall have regard to the conduct of any parent to the extent only that such conduct is relevant to the welfare of the child.

(2) In any such proceedings the Court shall ascertain the wishes of the child, if the child is able to express them, and shall, subject to section 56(9), take account of them to such extent as the Court thinks fit, having regard to the age and maturity of the child.

(3) Nothing in this section shall limit sections 64 and 64A of the Trustee Act 1956.

**61 Custody of children over 16**

(1) An order with respect to the custody of a child of or over the age of 16 years shall not be made unless there are special circumstances.

(2) An order in respect of a child under the age of 16 years in so far as it relates to custody shall expire when the child attains that age unless the Court in special circumstances otherwise orders at the time of making the order or subsequently.

(3) Nothing in this section shall limit or affect the power of the Court to make orders in respect of the upbringing of a child, or to appoint or remove guardians.

(4) Nothing in this section shall apply in respect of children who are under the guardianship of the Court.

**62 Consents to operations**

(1) Subject to subsection (6), the consent of a child of or over the age of 16 years to any donation of blood by him, or to any medical, surgical, or dental procedure (including a blood transfusion) to be carried out on him for his benefit by a person professionally qualified to carry it out, shall have the same effect as if he were of full age.

(2) The consent of or refusal to consent by a child to any donation of blood or to any medical, surgical, or dental procedure (including a blood transfusion) whether to be carried out on him or on any other person, shall if the child is or has been married have the same effect as if he were of full age.

(3) Where the consent of any other person to any medical, surgical, or dental procedure (including a blood transfusion) to be carried out on a child is necessary or sufficient, consent may be given –

(a) By a guardian of the child; or

(b) If there is no guardian in Niue or no such guardian can be found with reasonable diligence or is capable of giving consent, by a person in Niue who has been acting in the place of a parent; or

(c) If there is no person in Niue who has been so acting, or if no such person can be found with reasonable diligence or is capable of giving consent, by the Court.

(4) Where a child has been lawfully placed for the purpose of adoption in the home of any person that person shall be deemed to be a guardian of the child for the purposes of subsection (3).

(5) Nothing in this section shall limit or affect any enactment or rule of law whereby in any circumstances –

(a) No consent or no express consent is necessary; or

(b) The consent of the child in addition to that of any other person is necessary; or

(c) Subject to subsection (2), the consent of any other person instead of the consent of the child is sufficient.

### **63 Procedure and costs**

(1) All proceedings under this Part shall, unless the Court otherwise directs, be heard in private.

(2) In any proceedings under this Part the Court may make such order as to costs as it thinks fit.

### **64 Evidence**

In all proceedings under this Part (other than criminal proceedings), and whether by way of hearing in the first instance or by way of appeal, or otherwise howsoever, the Court may receive any evidence that it thinks fit, whether it is otherwise admissible in a court of law or not.

### **65 Solicitor or counsel may be appointed**

The Court may appoint a solicitor or counsel to assist it or to represent any child who is the subject of or who is otherwise a party to proceedings under this Part, and where any solicitor or counsel is so appointed his fees and expenses shall be paid by such other party or parties to those proceedings as the Court shall order or, if the Court so decides, shall be paid out of money appropriated for the purpose by Assembly.

### **66 Appeals**

(1) [Repealed]

(2) An appeal shall lie to the Court of Appeal from any order or decision of the High Court under this Part, other than an order or decision under section 50.

(3) Except on an appeal on a question of law, the Court of Appeal may rehear the whole or any part of the evidence, or may receive further evidence, if it thinks that the interests of justice so require.

(4) The decision of the Court of Appeal shall in every case be final.

### **67 Regulations**

Cabinet may make regulations for the purposes of this Act and for providing for the enforcement in Niue of orders with respect to the custody and upbringing of and access to children made in other countries, and relating to the enforcement in other countries of orders made in Niue with respect to the custody and upbringing of and access to children.



**68 Part to be code**

(1) Except as otherwise expressly provided in this Part, this Part shall have effect in place of the rules of the common law and of equity relating to the guardianship and custody of children.

(2) (a) Subject to section 46, no person shall be appointed as or shall have any powers as guardian of the property of any child.

(b) Nothing in this Part shall limit or affect any power of the Court in relation to any property held on trust or to the administration thereof.

(3) In matters not provided for by this Part, the Court shall have all the powers in respect of the persons of children as does the High Court of New Zealand.

**69 Custody of minors**

(1) The High Court may, on the application of any person, make such order as it thinks fit with respect to the custody of any minor (being unmarried) by any parent or guardian of that minor.

(2) Where the Court is satisfied that the minor has no parent or guardian fit to have such custody, the Court may make such order as it thinks fit for the custody of the minor by any other person.

(3) The jurisdiction conferred by this section shall in all cases be exercised in such manner as the Court deems most conducive to the welfare of the minor.

PART 6

CHILD ALLOWANCE

**70 Interpretation**

In this Part –

“applicant” means the person who makes an application for a child allowance;

“application” means a form filled out by the applicant when applying for a child allowance;

“beneficiary” means a person who receives a child allowance in that year;

“Director” means the Director of Community Affairs;

“qualifying child” means a child who meets the criteria under section 73 and includes a stepchild, an adopted child and any child who, if not a member of the applicant’s family is recognised by the Director as a member of the applicant’s family;

“recognised school” means a school that is recognised and approved by the Director for the purposes of this Part;

“Welfare Committee” means the committee constituted under section 5 of the Pensions and Benefits Act 1991.

**71 Payment out of Government Account**

Child allowance payable under this Part shall be paid from the Niue Government Account out of money appropriated by the Niue Assembly for the purpose.

**72 Amount and payment date**

(1) The rate of child allowance payable shall be such amount as may be determined by Cabinet to regulations made under this Part, such amount to be paid out to a qualifying person as defined in section 78 for each qualifying child as defined in section 75.

(2) No child allowance shall be payable in respect of any period before the first payment date pursuant to subsection (1).



**73 Qualifying child**

(1) A qualifying child shall be a child who qualifies on a residence basis as set out in section 75 and who is –

- (a) Either a Niuean by descent;
- (b) A permanent resident of Niue; or
- (c) A New Zealand citizen.

(2) A qualifying child may apply for a child allowance who, at the time of application –

- (a) Is ordinarily resident in Niue;
- (b) Is not married;
- (c) Is financially dependent; and
- (d) Is attending a recognised school in Niue.

**74 Disabled/disadvantaged persons**

(1) Notwithstanding section 73 a disabled/disadvantaged person, who is not required or is unable to attend school shall be eligible for child allowance up to the age of 18 years.

(2) The Director on advice of the Welfare Committee shall have sole discretion to determine whether any child comes within the definition of disabled/disadvantaged to such an extent as to qualify for the exemptions referred to herein.

**75 Residence qualifications**

Subject to section 76 an applicant and/or the child the subject of the application who has been absent from Niue for a continuous period of more than 12 months immediately preceding the application shall not be eligible for child allowance until a period of 6 months has elapsed since returning to Niue.

**76 Exemptions**

(1) Any person being the child of an Award Holder who as a direct consequence of being overseas in the years immediately preceding application cannot fulfil the residence requirement in section 75 shall not be required to complete such requirement before being eligible to become a qualifying child.

(2) For the purposes of this section an “Award Holder” is a person who has taken up study or training overseas which will be of benefit to the Award Holder and Niue’s development.

**77 Period allowance is payable**

(1) Child allowance payable in respect of a qualifying child shall, subject to this Part, commence on the day the application is approved by the Director and shall continue until the day on which the child leaves a recognised school.

(2) No allowance shall be payable in respect of any period before 31 December 1997.

(3) If an application is received by the Director after the closing date as determined by the Director, the allowance shall not commence until the following year.

(4) (a) It is the responsibility of the qualifying person to inform the Director in writing of any intended absence from Niue, of the child or themselves.

(b) Failure to inform the Director in writing will result in the loss of future allowances.

**78 Person allowance is payable to**

(1) A qualifying person shall be a parent or guardian whose application for child allowance has been granted by the Director.

(2) Unless otherwise provided, child allowance shall be payable only to the mother of a qualifying child (whether application for the allowance has been made by the mother or father or another person).

(3) The child allowance may be paid to the father of that child, if –

- (a) The mother of the child has passed away, or has left permanently for overseas, or has left the family permanently without the child; and
- (b) The child is living with the father and under his care and control.

(4) In any other case the Director may determine that the child allowance shall be paid to any person who has care and control of the child.

(5) No child allowance shall be payable to any applicant if another allowance is being paid in another country or received from overseas for that child.

**79 Application of child allowance**

(1) Money received by way of child allowance shall be used towards the maintenance, education, or welfare of the child or children in respect of whom it is paid, with a sum allocated by Cabinet under regulations, for assisting the school committee at the school the child attends.

(2) (a) The Director may refuse to grant an allowance or may terminate or suspend an allowance if the Director is satisfied that the allowance will not be or has not been properly applied.

(b) Any person aggrieved by a decision of the Director made pursuant to this section may appeal to the Court for a ruling.

(3) A child allowance cannot be used as collateral or for guaranteeing a loan.

**80 Applying for allowance**

An application for a child allowance shall be on an approved application form and addressed to the Director and shall be by way of statutory declaration in such form with such information and evidence as the Director may determine.

**81 Investigation of applications**

(1) Every application shall be investigated by the Director, who shall decide as to whether the allowance is payable and if so, to whom.

(2) It shall be the duty of every person to answer all questions put by the Director concerning any application for a child allowance, or concerning any statements contained in any application for a child allowance.

(3) For the purpose of ascertaining the child's enrolment and attendance the Director shall have access to the child's school attendance records when required.

**82 Recovery of allowance**

(1) If any allowance is procured or paid by fraud or false information, the amount so paid may be recovered from the qualifying person as a debt due to the Crown.

(2) The Director may make any necessary adjustments in any future allowance or any other benefit or allowance (whether payable under this or any other enactment) thereafter becoming payable to the qualifying person.

**83 Offences**

Every person who –

- (a) Makes any statement knowing it to be false in any material particular;
- (b) Wilfully does or says anything or omits to do or says anything for the purpose of misleading or attempting to mislead any officer concerned in the administration of this Part or any other person whomsoever for the purpose of obtaining (for himself or any other person) or which results in himself or any other person obtaining any allowance under this Part;
- (c) Demands or accepts from any applicant or from any other person any fee or other consideration for procuring or endeavouring to procure any allowance under this Part for that child, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 2 months, or to a fine not exceeding 2 penalty units or to both such imprisonment and fine.

**84 Proceedings for offences**

(1) Notwithstanding any other enactment, an information for an offence against this Part may be laid at any time within 5 years after the facts alleged in the information have been brought to the knowledge of any person concerned in the administration of this Part.

(2) Every information relating to an offence may, notwithstanding any other enactment, be heard and determined before the Court.

**85 Delegation of powers of Director**

(1) The Director may either generally or particularly, delegate to another officer of the Department such of his powers under this Part or its regulations as the Director may determine.

(2) Subject to this section and to any general or special directions given or conditions attached by the Director, the officer to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

**86 Regulations**

Cabinet may make all necessary regulations to carry out the provisions of this Part.

PART 7

MAINTENANCE AND AFFILIATION ORDERS

**87 Interpretation**

In this Part –

“adequate maintenance” means maintenance reasonably sufficient for the necessities of the person to be maintained, irrespective of the means or ability of the person who is bound to afford such maintenance;

“child” means a person under the age of 16 years;

“defendant” means any person against whom a maintenance order or affiliation order is or has been made under this Part or is applied for under this Part;

“destitute person” means any person unable, whether permanently or temporarily, to support himself by his own means or labour;

“maintenance” includes lodging, feeding, clothing, teaching, training, attendance, and medical and surgical relief;

“maintenance order” means an order under this Part for the payment of money for or in respect of the past or future maintenance of any person.

**88 Applications**

Any application to the Court for or in relation to a maintenance order or an affiliation order may, except where otherwise expressly provided, be made either by the person in whose favour the order is to be or has been made or by any other person.

**89 Affiliation orders**

(1) On application made to the Court by or by the authority of a woman who is the mother of a child or who is with child, the Court may, if it is satisfied that the defendant (not being her husband) is the father of that child, make an order (herein called an affiliation order) adjudging the defendant to be the father of that child accordingly.

(2) No affiliation order shall be so made unless the application is made before or within 6 years after the birth of the child, unless the defendant has contributed to or made provision for the maintenance of the child, or has since the birth of the child cohabited with the mother as man and wife, in which case the application may be made at any time after the expiration of the said period of 6 years, if within 2 years immediately preceding the application the defendant has contributed to or provided for the maintenance of the child or has so cohabited with its mother.

(3) If at any time the defendant has been absent from Niue, the period of his absence shall not be counted in computing the respective periods of 6 years or 2 years.

(4) No such application shall be made unless the child is under 16 years of age at the time of the application.

**90 Evidence**

(1) The evidence of the mother of the child or of any woman who is with child as aforesaid shall not be necessary for the making of an affiliation order.

(2) No person shall be adjudged to be the father of a child upon the evidence of the mother or of a woman who is with child as aforesaid, unless her evidence is corroborated in some material particular to the satisfaction of the Court.

**91 Maintenance order in favour of illegitimate child**

When an affiliation order has been made by the Court against any person as the father of a child, whether already born or not, the Court may, at the same time or at any time thereafter, make a maintenance order in favour of the child against the person so adjudged to be the father of the child.

**92 Maintenance order against father in favour of child**

(1) The Court may make a maintenance order against the father of any child (not being an illegitimate child) in favour of that child if the Court is satisfied that the father has failed or intends to fail to provide that child with adequate maintenance.

(2) When the father and child are living apart from each other, and the Court is satisfied that there is reasonable cause for the child continuing so to live apart from the father, the father shall not be deemed to have made provision for the adequate maintenance of the child merely by reason of the fact that he is ready and willing to support the child if and so long as the child lives with him.

**93 Maintenance order against mother in favour of child**

(1) The High Court may make a maintenance order in favour of a child against the mother of that child, if it is satisfied that the mother is of sufficient ability in that behalf and has failed or intends to fail to make provision for the adequate maintenance of the child.

(2) When the mother and child are living apart from each other, and the Court is satisfied that there is reasonable cause for the child continuing so to live apart from the mother, the mother shall not be deemed to have made provision for the adequate maintenance of the child merely by reason of the fact that she is ready and willing to support the child if and so long as the child lives with her.

**94 Maintenance order against husband**

(1) The Court may make a maintenance order against a husband in favour of his wife, if it is satisfied that the husband has failed or intends to fail to provide his wife with adequate maintenance.

(2) Unless the Court is satisfied that the wife is a destitute person, no maintenance order shall be made against the husband if it is proved that he is not of sufficient ability to contribute to her maintenance.

(3) When the husband and wife are living apart from one another and the wife has, in the opinion of the Court, reasonable cause for refusing or failing to live with her husband, the husband shall not be deemed to have provided her with adequate maintenance merely by reason of the fact that he is ready and willing to support her if and so long as she lives with him.

**95 Maintenance order against wife**

(1) The Court may make a maintenance order against a married woman in favour of her husband, if it is satisfied that the husband is a destitute person and that his wife is of sufficient ability to contribute to his maintenance.

(2) No such order shall be made if the Court is satisfied that there is reasonable cause for the failure of the wife to contribute to the maintenance of her husband.

**96 Maintenance order against any person in favour of father or mother**

The Court may make a maintenance order against any person in favour of the father or mother of that person, if it is satisfied that the father or mother, is a destitute person and that the defendant is of sufficient ability to contribute to the maintenance of that destitute person.

**97 Disobedience to maintenance order**

Every person who disobeys a maintenance order commits an offence and is liable on conviction to a fine not exceeding 1 penalty unit and imprisonment for a term not exceeding 6 months.

**98 Maintenance money a debt**

All money due under a maintenance order shall constitute a debt due by the defendant to the person to whom the money is payable under the terms of the order.

**99 Order in favour of non-residents**

A maintenance order may be made in favour of any person otherwise entitled to it although not present or resident in Niue.

**100 Order against non-residents**

A maintenance or affiliation order may be made against any defendant otherwise liable although not present or resident in Niue.

**101 Orders *in absentia***

If the Court is satisfied that a defendant is absent from Niue, or that his residence is unknown, or that he cannot be found, the Court may hear and determine the application *ex parte* and make a maintenance order or affiliation order accordingly.

**102 Repeated applications**

The dismissal of an application for a maintenance order or affiliation order shall not, unless the Court so orders, be a bar to the making of a further application in the same matter against the same defendant.

**103 Payments not to be made in advance**

(1) No money payable under a maintenance order shall, without the precedent consent of a Judge of the High Court, be paid more than one year in advance of the due date of it.

(2) If any money is paid in breach of this section, it shall not be taken into account in any proceedings for the enforcement of the maintenance order or for the punishment of any disobedience to it; but no money so paid in breach of this section shall be recoverable by the person by whom it was paid.

**104 Cancellation, variation, and suspension of orders**

(1) The High Court may at any time make an order cancelling an affiliation order, or cancelling, varying, or suspending any maintenance order or substituting a new maintenance order, on the grounds—

- (a) That the order was obtained by fraud or perjury; or
- (b) That since the making of the order new and material evidence has been discovered; or
- (c) That since the making of the order the circumstances have so changed that the order ought to be so cancelled, varied, or suspended, or that a new order ought to be substituted for it.

(2) The power hereby conferred to cancel or vary an order shall include the power to remit wholly or in part any arrears due under the order, and any such arrears may be remitted either on the grounds hereinbefore in this section mentioned or, if the Court thinks fit, on the ground that the defendant is not of sufficient ability to pay them.

**105 Payment of maintenance money**

Any maintenance order may direct the money payable under it to be paid either to the person in whose favour the order is made or to any other person on behalf of that person.

**106 Security for obedience to maintenance orders**

(1) Whenever a maintenance order is made, the High Court may, by the same order or by order made at any later time, direct the defendant to give security for his obedience to the maintenance order.

(2) Every such security shall, as the Court determines, be either the payment into Court of such sum of money, not exceeding 4 penalty units, as the Court directs, or the giving of a bond to Her Majesty with one or 2 sureties to be approved by the Court in a sum not exceeding 4 penalty units, conditioned for due obedience to the maintenance order.

(3) When such security has been required, the Court may commit the defendant to prison until the order requiring security has been complied with, but no person shall be so detained in custody for a longer period than 6 months.



(4) All money so paid into Court or recovered by suit or otherwise under any such bond shall be available, under the direction of the Court, for the satisfaction of all claims under the maintenance order.

(5) The Court may, on being satisfied that the security is no longer required, order any amount so paid into Court to be repaid to the defendant, or cancel any bond so given.

**107 Operation of agreements**

No agreement shall be effective so as to take away or restrict any liability imposed on any person by this Part to contribute to the maintenance of any other person, or affect the operation of any maintenance order or the right of the High Court to make any such order.

**108 Purport and duration of maintenance orders**

(1) Every maintenance order shall be an order for the periodical payment, at such times and in such manner as the Court thinks fit, of such sum of money as the Court thinks reasonable.

(2) The intervals between the successive payments shall not exceed 28 days.

(3) When any such order is made in respect of the maintenance of a child, the order shall cease to be in force so soon as that child attains the age of 16 years.

**109 Order for past maintenance**

Any maintenance order may require the defendant, in addition to making such periodical payments as aforesaid, to pay such sum as the Court thinks reasonable, not exceeding 1 penalty unit, on account of the past maintenance, previous to the making of the order, of the person in respect of whose maintenance the order is made.

**110 Leaving Niue while maintenance money in arrear**

(1) Every person against whom a maintenance order has been made is liable to imprisonment for a term not exceeding 2 years, if, while any money payable under the order is in arrear and unpaid, he leaves or attempts to leave Niue without the permission in writing of a Judge of the High Court.

(2) In any prosecution under this section the burden of proving that the permission of a Judge was so given shall be upon the accused.

**111 Leaving Niue after affiliation order and before birth of child**

(1) Every person against whom an affiliation order is made before the birth of the child is liable to imprisonment for a term not exceeding 2 years, if he leaves or attempts to leave Niue without the permission in writing of a Judge of the Court at any time within 12 months after the making of the order.

(2) In any prosecution under this section the burden of proving that the permission of a Judge was so given shall be upon the accused.

**112 Leaving Niue with intent to disobey maintenance order**

Every person against whom a maintenance order has been made is liable to imprisonment for a term not exceeding 2 years, if he at any time after it leaves or attempts to leave Niue with intent to make default in obeying that order.

**113 Leaving Niue while failing to maintain wife**

(1) Every person is liable to imprisonment for a term not exceeding 2 years, if he without reasonable cause fails to provide his wife with adequate maintenance and



at any time while failing so to do leaves or attempts to leave Niue without the permission in writing of a Judge of the High Court.

(2) In any prosecution under this section the burden of proving that the permission of a Judge was so obtained shall be upon the accused.

**114 Leaving Niue while failing to maintain child**

(1) Every person who is the father of a child is liable to imprisonment for a term not exceeding 2 years, if he without reasonable cause fails to provide that child with adequate maintenance and at any time while failing so to do leaves or attempts to leave Niue without the permission in writing of a Judge of the High Court.

(2) In any prosecution under this section the burden of proving that the permission of a Judge was so given shall be upon the accused.

**115 Leaving Niue with intent to desert wife or child**

Every person who is the husband of any woman or the father of any child is liable to imprisonment for a term not exceeding 2 years, if he leaves or attempts to leave Niue with the intention of failing without reasonable cause to make adequate provision for the maintenance of that wife or child during his absence.

**116 Evidence of intent**

In any prosecution for an offence against this Part, the fact that the defendant has at any time within 3 years after leaving Niue habitually made default in obeying an order of maintenance or in providing his wife or child with adequate maintenance shall be sufficient evidence, unless the contrary is proved, that the defendant left Niue with intent so to make default.

PART 8

WILLS AND SUCCESSION

**117 Meaning**

That the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Part, except where the nature of the provision or the context of the Part shall exclude such construction, be interpreted as follows; (that is to say,) the word "Will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, by virtue of an Act, 12 Car. 2. c. 24, intituled, 'An Act for taking away the Court of Wards and Liveries, and Tenures in capite and by Knights Service, and Purveyance, and for settling a Revenue upon His Majesty in lieu thereof,' or by virtue of an Act, 14 & 15 Car. 2 (I.), intituled, 'An Act for taking away the Court of Wards and Liveries, and Tenures in capite and by Knights Service,' and to any other testamentary disposition; and the words "Real Estate" shall extend to manors, advowsons, messuages, lands, tithes, rents and hereditaments, whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; and the words "Personal Estates" shall extend to leasehold estates and other chattels real, and also to monies, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and every word importing the single number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

**118 All property may be disposed of by will**

That it shall be lawful for every person to devise, bequeath, or dispose of, by his will executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which if not so devised, bequeathed, or disposed of would devolve upon the heir at law, or customary heir of him or, if he became entitled by descent, of his ancestor, or upon his executor or administrator; and that the power hereby given shall extend to all real estate of the nature of customary freehold or tenant right, or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding that, being entitled as heir, devisee, or otherwise to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the want of a custom to devise or surrender to the use of a will or otherwise, could not at law have been disposed of by will if this Part had not been made, or notwithstanding that the same, in consequence of there being a custom that a will or a surrender to the use of a will should continue in force for a limited time only, or any other special custom, could not have been disposed of by will according to the power contained in this Part, if this Part had not been made; and also to estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether the same shall be a corporeal or an incorporeal hereditament; and also to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

**119 Devisees of customary and copyhold estates**

Provided always, That where any real estate of the nature of customary freehold or tenant right, or customary or copyhold, might, by the custom of the manor of which the same is holden, have been surrendered to the use of a will, and the testator shall not have surrendered the same to the use of his will, no person entitled or claiming to be entitled thereto by virtue of such will shall be entitled to be admitted, except upon payment of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of the surrendering of such real estate to the use of the will, or in respect of presenting, registering, or enrolling such surrender, if the same real estate had been surrendered to the use of the will of such testator: Provided also that where the testator was entitled to have been admitted to such real estate, and might, if he had been admitted hereto, have surrendered the same to the use of his will, and shall not have been admitted thereto, no person entitled to claiming to be entitled to such real estate in consequence of such will shall be entitled to be admitted to the same real estate by virtue thereof, except on payment of all such stamp duties, fees, fine, and sums of money as would have been lawfully due and payable in respect of the admittance of such testator to such real estate, and also of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of surrendering such real estate to the use of the will, or of presenting, registering, or enrolling such surrender, had the testator been duly admitted to such real estate, and afterwards surrendered the same to the use of his will; all which stamp duties, fees, fine, or sums of money due as aforesaid shall be paid in addition to the stamp duties, fees, fine, or sums of money due or payable on the admittance of such person, so entitled or claiming to be entitled to the same real estate as aforesaid.

**120 Wills of customary freeholds**

That when any real estate of the nature of customary freehold or tenant right, or customary or copyhold, shall be disposed of by the will, the lord of the manor or reputed manor of which such real estate is holden, or his steward, or the deputy of such steward, shall cause the will by which such disposition shall be made, or so much thereof as shall contain the disposition of such real estate, to be entered on the court rolls of such manor or reputed manor; and when any trusts are declared by the will of such real estate, it shall not be necessary to enter the declaration of such trusts; but it shall be sufficient to state in the entry on the court rolls that such real estate is subject to the trusts declared by such will; and when any such real estate could not have been disposed of by will if this Part had not been made, the same fine, heriot, dues, duties, and services shall be paid and rendered by the devisee as would have been due from the customary heir in case of the descent of the same real estate, and the lord shall as against the devisee of such estate have the same remedy for recovering and enforcing such fine, heriot dues, duties, and services as he is now entitled to for recovering and enforcing the same from or against the customary heir in case of a descent.

**121 Estates pur autre vie**

That if no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate *pur autre vie*, whether freehold or customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to the executor or administrator either by reason of a special occupancy or by virtue of this Part, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

**122 Will of a person under age**

That no will made by any person under twenty-one years shall be valid.

**123 Will of a married woman**

Provided also, That no will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this Act.

**124 Every will shall be in writing and signed by the testator in the presence of two witnesses at one time**

That no will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say,) it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

**125 Appointments by will**

That no appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

**126 Soldiers and mariners wills**

Provided always, That any soldier being in actual military service, or any mariner or seamen being at sea, may dispose of his personal estate as he might have done before the making of this Act.

**127 Wills of seamen**

That this Part shall not prejudice or affect any of the provisions contained in an Act intituled, 'An Act to amend and consolidate the Laws relating to the Pay of the Royal Navy,' respecting the wills of petty officers and seamen in the Royal Navy, and non-commissioned officers of marines, and marines, so far as relates to their wages, pay, prize money, bounty money, and allowances, or other monies payable in respect of services in Her Majesty's Navy. [That Act is not Niue law.]

**128 Publication not to be requisite**

That every will executed in manner hereinbefore required shall be valid without any other publication thereof.

**129 Incompetency of attesting witness**

That if any person who shall attest the execution of a will shall at the time of the execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

**130 Gifts to an attesting witness**

That if any person who shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

**131 Creditor attesting to be admitted a witness**

That in case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

**132 Executor to be admitted a witness**

That no person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

**133 Will revoked by marriage**

That every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin, under Part 9).

**134 No will revoked by presumption**

That no will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

**135 Revocation of will**

That no will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

**136 Alteration in a will**

That no obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as is hereinbefore required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

**137 Revival of will**

That no will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and shewing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shewn.

**138 A devise not to be rendered inoperative by any subsequent conveyance or act**

That no conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

**139 A will to speak from the death of the testator**

That every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

**140 A residuary devise**

That, unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.



**141 A general devise**

That a devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold, and leasehold estates of the testator, or his customary, copyhold and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

**142 A general gift**

That a general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

**143 A devise without any words of limitation**

That where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

**144 The words “die without issue,” or “die without leaving issue” shall be construed to mean die without issue living at the death**

That in any devise or bequest of real or personal estate the words “die without issue,” or “die without leaving issue,” or “have no issue,” or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise: Provided, that this Part shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

**145 No devise to trustees or executors, except for a term or a presentation to a church, shall pass a chattel interest**

That where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

**146 Trustees under an unlimited devise**

That where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple, or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

**147 Devises of estates tail**

That where any person to whom any real estate shall be devised for an estate tail or an estate in quasi entail shall die in the lifetime of the testator leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

**148 Gifts to children**

That where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

**149 Position of testator's signature**

Where by section 124 it is enacted , that no will shall be valid unless it shall be signed at the foot or end of it by the testator, or by some other person in his presence, and by his direction: Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within the said enactment, as explained by this section, if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will; and no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the said Act or this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it nor shall it give effect to any disposition or direction inserted after the signature shall be made.



**150 Wills of Niueans**

No will made by a Niuean shall have any force or effect with respect to his interest in Niuean land.

**151 Succession to deceased Niueans**

Subject to Part 4 and to every other enactment, the persons entitled on the death of a Niuean to succeed to his estate (other than an interest in Niuean land) so far as not disposed of by his will, and the shares in which they are so entitled, shall be determined under Niuean custom, so far as such custom extends, and shall be determined, so far as there is no Niuean custom applicable to the case under Part 9.

**152 Niuean land not to vest in administrator**

The interest of a Niuean in Niuean land shall in no case vest in his administrator by virtue of letters of administration.

**153 Niuean land not assets for payment of debts**

The interest of any person in Niuean land shall not upon his death be assets available for the payment of his debts and liabilities, whether to the Crown or otherwise, but this section shall not affect the operation of any charge to which that land is subject at the death of the deceased.

PART 9

ADMINISTRATION

**154 Objective of Part**

To consolidate and amend certain enactments relating to the administration of the estates of deceased persons.

**155 Interpretation**

(1) In this Part –

“administration” means probate of the will of a deceased person, and includes letters of administration of the estate of a deceased person, granted with or without a will annexed, for general, special, or limited purposes, and in the case of a trustee corporation includes an order to administer and an election to administer;

“administrator” means any person to whom administration is granted, and includes a trustee corporation in any case where it is deemed to be an executor or administrator by reason of having filed an election to administer;

“Commonwealth” means the Commonwealth of Nations, and includes every territory for whose international relations the Government of any country of the Commonwealth is responsible;

“Commonwealth country” means a country that is a member of the Commonwealth, and includes every territory for whose international relations the Government of that country is responsible;

“estate” means real and personal property of every kind, including things in action;

“intestate” includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate;

“personal chattels”, in relation to any person who has died, means all vehicles, boats, and aircraft and their accessories, garden effects, horses, stable furniture and effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors, and consumable

stores, which immediately before his death were owned by him or in which immediately before his death he had an interest as grantor under an instrument by way of security, or under an agreement that would have been such a hire purchase agreement if the purchaser were not engaged in the trade or business of selling goods of the same nature or description as the goods referred to in the agreement, but does not include any chattels used exclusively or principally at the death of the deceased for business purposes or money or securities for money;

“real estate” means lands, tenements, and hereditaments, corporeal or incorporeal, and whether in possession, reversion, remainder, or expectancy, and any estate or interest in them or any of them, whether freehold or chattel interests, and any possibility, right, or title of entry or action in or concerning them or any of them;

“Registrar” means the Registrar of the High Court;

“Rules” means rules made under the authority of this Part;

“securities” includes stocks, funds, shares and convertible notes;

“will” includes a codicil.

(2) References to a child or issue living at the death of any person include a child or issue who is conceived but not born at the death but who is subsequently born alive.

## SUB-PART 1

### ADMINISTRATION BY ADMINISTRATOR

#### *Grant of Administration*

#### **156 Probate jurisdiction**

(1) The Court shall continue to have jurisdiction and authority in relation to the granting and revoking of probate of wills and letters of administration with or without a will annexed of the estates of deceased persons, and in regard to the hearing and determining of proceedings relating to testamentary matters and matters relating to the estates of deceased persons.

(2) Without restricting subsection (1) or any other enactment, the Court shall have jurisdiction to make a grant of probate or letters of administration in respect of a deceased person, whether or not the deceased person left any estate in Niue or elsewhere, and whether or not the person to whom the grant is made is in Niue.

#### **157 Discretion of Court as to person to whom administration is granted**

(1) (a) In granting letters of administration with or without a will annexed, or an order to administer with or without a will annexed, in respect of the estate of any deceased person or any part of it, the Court shall have regard to the rights of all persons interested in the estate of the deceased person or the proceeds of sale of it, and, in particular, administration with a will annexed may be granted to a devisee or legatee, and any such administration may be limited in any way the Court thinks fit.

(b) Subject to subsection (2) where the deceased died wholly intestate as to his estate, administration shall be granted to some one or more persons beneficially interested in the estate of the deceased, if they make an application for the purpose.

(2) Where by reason of the insolvency of the estate or other special circumstances the Court thinks it necessary or expedient to do so, it may –

(a) Grant administration to such person or persons as it thinks expedient notwithstanding that some other person is appointed an executor or that, apart from this subsection, some other person would by law be entitled to a grant of administration;

(b) Grant probate to one or more of the executors appointed by a will, notwithstanding that some other person or persons may also be appointed as an executor or executors.

(3) A grant may be made under subsection (2) notwithstanding that any person excluded from the grant would be competent to take it.

(4) Before determining to exclude from any such grant any person who, apart from this section, would by law be entitled to, or be included in, the grant, and wishes to have, or to be so included in, the grant, the Court shall have regard to his competency and solvency, his ability effectively to administer the estate, the rights of all persons interested in the estate, and any changes in circumstances between the making of the will (if any) and the time when the Court is asked to make the grant.

#### **158 Administration pending legal proceedings**

(1) Where any legal proceedings touching the validity of the will of a deceased person, or for obtaining, recalling, or revoking any grant of administration, are pending, the Court may grant administration of the estate of the deceased to a temporary administrator, who shall, until he is discharged or removed under section 170, have all the rights and powers of a general administrator, other than the right of distributing the balance of the estate remaining after payment of debts, funeral and testamentary expenses, duties, and fees, and every such temporary administrator shall be subject to the immediate control of the Court and act under its direction.

(2) The Court may, out of the estate of the deceased, grant to a temporary administrator appointed under this section reasonable remuneration.

#### **159 Grant of special administration where administrator is out of Niue**

(1) (a) If at any time after the death of a person any administrator of his estate is residing out of Niue, the Court may, on the application of any creditor or person interested in the estate, grant to him or some other person special administration of the estate of the deceased in such form and with such powers as the Court may direct or approve.

(b) Unless the Court otherwise directs, every grant of special administration shall continue until the administrator to whom the grant is made is discharged or removed under section 170.

(2) While a grant of special administration of the estate of a deceased person remains in force the previously subsisting administration of that estate shall be deemed to be suspended, and the administrator shall not be liable for acts and things done by the administrator under the grant of special administration.

(3) The Court may, for the purpose of any legal proceedings to which the administrator under the special administration is a party, order the transfer into Court of any money or securities belonging to the estate, and all persons shall obey any such order.

(4) If the administrator capable of acting as such returns to and resides within the jurisdiction of the Court while any legal proceedings to which a special administrator is a party are pending, the administrator who so returns may be made a party to the legal proceedings and the Court may order that the costs of and incidental to the special administration and the legal proceedings shall be paid by such person and out of such fund as it may specify.

(5) Nothing in this section shall restrict section 170.

**160 Administration during minority of executor**

(1) Where a person who is sole executor of a will is at the date of the testator's death a minor who is not entitled to a grant of probate under subsection (3), administration with the will annexed may be granted to such person as the Court thinks fit, until the minor becomes entitled to and obtains a grant of probate to him; and on his attaining full age or sooner becoming entitled to a grant of probate under that subsection and not before, probate of the will may be granted to him.

(2) Where a testator by his will appoints a person who at his death is a minor who is not entitled to a grant of probate under subsection (3) to be an executor, the appointment shall not operate to transfer any interest in the estate of the deceased to the minor or to constitute him an administrator for any purpose, unless and until probate is granted to him under this section.

(3) Where a testator by his will appoints a person who is a minor to be an executor, probate of the will may be granted to the person if, at the date of the grant –

- (a) The person has attained full age; or
- (b) The person has attained the age of 18 years and is or has been married.

(4) A minor to whom probate is granted under subsection (3) (b) shall have the same rights, powers, duties, and obligations as executor as he would have if he were of full age, and shall be liable accordingly for his acts and omissions as executor.

**161 Administration with will annexed**

Where the Court grants administration of the estate of a deceased person with the will annexed, the will of the deceased shall be performed and observed in like manner as if probate of it had been granted to an executor.

**162 Cesser of right of executor to prove**

(1) Where a person appointed executor by a will –

- (a) Survives the testator but dies without having been granted probate of the will; or
- (b) Is cited to take out probate of the will and does not appear to the citation; or
- (c) Renounces probate of the will, his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of the testator's estate shall devolve and be committed as if that person had not been appointed executor.

(2) (a) Where a person is appointed by a will to be both executor and trustee and his rights in respect of the executorship wholly cease under subsection (1), his rights in respect of the trusteeship shall also wholly cease and the trusteeship shall devolve or be determined as if he had not been appointed as trustee.

(b) Nothing in paragraph (a) shall prevent his subsequent appointment as trustee.

**163 Withdrawal of renunciation**

(1) Notwithstanding section 162, an executor who has renounced probate may be permitted by the Court to withdraw the renunciation and prove the will.

(2) Where an executor who has renounced probate has been permitted to withdraw the renunciation and prove the will –

- (a) The probate shall take effect and be deemed always to have taken effect without prejudice to the previous acts and dealings of and notices to any other person to whom administration has been granted, and a memorandum of the subsequent probate shall be endorsed on the original grant of administration;
- (b) His rights (if any) in respect of the trusteeship shall revive except so far as the Court otherwise orders.

**164 Executor of executor represents original testator**

(1) (a) An executor of a sole or last surviving executor of a testator shall be the executor of that testator.

(b) A person who does not prove the will of his testator shall be deemed not to be an executor notwithstanding his appointment as such by the will, and in the case of an executor who on his death leaves surviving him some other executor of his testator who at the time of the testator's death has not proved but who afterwards proves the will of that testator, paragraph (a) shall cease to apply when probate to the surviving executor is granted.

(2) So long as the chain of representation is unbroken, the last executor in the chain is the executor of every preceding testator.

(3) The chain of representation is broken by –

- (a) The failure to leave a will; or
- (b) The failure of a testator to appoint an executor; or
- (c) The failure to obtain probate of a will,

but is not broken by a temporary grant of administration if probate is subsequently granted.

(4) Every person in the chain of representation to a testator –

- (a) Has the same rights in respect of the estate of that testator as the original executor would have had if living; and
- (b) Is, to the extent to which the estate of that testator has come to his hands, answerable as if he were an original executor.

**165 Administration bond**

(1) (a) Every person to whom a grant of administration (other than the probate of a will) is made shall, previously to the issue of it, execute a bond to the Registrar to enure for the benefit of the Registrar for the time being, with 2 sureties approved by the Court, conditioned for duly collecting, getting in, and administering the estate of the deceased, which bond shall be in such form as may be prescribed by rules.

(b) It shall not be necessary for any trustee, corporation or any person obtaining administration to the use or for the benefit of Her Majesty, to execute any such bond, and in any case in which the Court is willing to dispense with sureties under subsection (2) it may dispense with the bond.

(2) In every case in which a bond is required under subsection (1), the bond shall be in a penalty equal to the amount under which the estate of the deceased is sworn, if that amount does not exceed 20,000 dollars, and shall be in a penalty of 20,000 dollars where the amount exceeds that sum; but the Court may dispense with one or both of the sureties, or direct that the penalty be reduced in amount, and may also if it thinks fit direct that more bonds than one be given, so as to limit the liability of any surety to such amount as the Court thinks reasonable.

(3) The bond required under subsection (2) shall relate to both real and personal estate.

(4) The Court may in place of a bond, accept a security in favour of the Registrar of any corporation or guarantee society approved by Cabinet.

(5) Every such security shall be in such form and under such regulations as the rules direct.

**166 Proceedings if condition of bond broken**

The Court may, on being satisfied that the condition of any such bond or security has been broken, order the Registrar to assign the bond or security to some person to be named in



the order and that person or his administrator may thereupon sue upon the bond or security in his own name as if the bond or security had been originally given to him, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the bond or security.

**167 Administration as evidence**

Every administration of a will or with a will annexed shall be evidence of that will upon all questions concerning real estate in the same manner and to the same extent as in questions concerning personal estate, and every administration shall, in the absence of proof to the contrary, be sufficient evidence of the death and the date of the death of the testator or intestate.

**168 Certificates of administration**

(1) Subject to subsection (2) at any time after the grant of the relevant administration the Registrar may, on the request of the administrator, issue under his hand and seal such number of certificates of administration, in the form set out in the Schedule, as may be required.

(2) [Repealed]

(3) (a) Every such certificate shall, in the absence of proof to the contrary, be sufficient evidence of the death and the date of death of the testator or intestate and of the grant of administration to the administrator for all purposes including registering the administrator as proprietor of any estate or interest in any land or of any securities issued by or property in any bank or company or body or association.

(b) No bank or company or body or association to which any such certificate is produced shall be concerned to inquire concerning the trusts on which the administrator holds any such land or securities or property, or as to the authority to transfer or deal with the same.

(4) The fee payable to the Registrar in respect of each such certificate shall be \$1 or such other amount as may be prescribed by the Cabinet.

**169 Proceedings where executor neglects to prove will**

(1) In any case where any executor named in a will neglects or refuses to prove the will, or to renounce probate of it, within 3 months from the death of the testator, the Court may, upon the application of any other executor or executors or of any person interested in the estate or of any creditor of the testator, grant an order *nisi* calling upon the executor who so neglects or refuses to show cause why probate of the will should not be granted to that executor alone or with any other executor or executors or, in the alternative, why administration should not be granted to the applicant or some other person.

(2) Upon proof (whether by affidavit or otherwise) of service of the order, or upon the Court dispensing with service of the order, if the executor who is so called upon does not appear or upon cause being shown, the Court may make such order for the administration of the estate, and as to costs, as appears just.

**170 Discharge or removal of administrator**

(1) Where an administrator is absent from Niue for 12 months without leaving a lawful attorney, or desires to be discharged from the office of administrator, or becomes incapable of acting as administrator or unfit to so act, or where it becomes expedient to discharge or remove an administrator, the Court may discharge or remove that administrator, and may appoint any person to be administrator in his place, on such terms and conditions in all respects as the Court thinks fit.

(2) The administrator so removed or discharged shall, from the date of that order, cease to be liable for acts and things done after that date.

(3) Upon any administrator being discharged or removed as aforesaid (whether or not any such administrator is appointed) all the estate and rights of the previous administrator or administrators which were vested in him or them as such shall become and be vested in the continuing administrator or administrators (including any administrator appointed under subsection (1) who shall have the same powers, authorities, discretions, and duties, and may in all respects act, as if he or they had been originally appointed as the administrator or administrators.

(4) This section shall, with all necessary modifications, extend to the case where an administrator dies, and the powers and authorities hereby conferred may be exercised and shall take effect accordingly.

(5) Nothing in this section shall restrict section 159.

#### *Administering of Estates*

### **171 Interim vesting of estate where no executor appointed**

(1) Subject to this Part and any other Act, where a person dies without leaving a will that effectively appoints an executor, his estate shall, until administration is granted in respect of it, vest in the Crown in the same manner and to the same extent as formerly in England in the case of personal property it vested in the ordinary.

(2) While any estate remains vested in the Crown under this section, the Crown Proceedings Act 1950 shall apply to the service on the Crown of notices and documents relating to the estate as if they related to civil proceedings instituted against the Crown.

### **172 Executor not to act while another administrator is in office**

Subject to this Part and any other Act, where administration has been granted in respect of any part of the estate of a deceased person, and is not for the time being suspended, no person other than the administrator of that part of the estate shall have power to bring an action or otherwise act as administrator of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked.

### **173 Estate to vest in administrator**

(1) (a) Immediately upon the grant of administration of the estate of any deceased person, all the estate then unadministered of that person, whether held by him beneficially or held by him in trust, shall vest in the administrator to whom the administration is granted for all the estate therein of that person.

(b) Nothing in paragraph (a) shall affect the earlier vesting in an executor by operation of law.

(2) The title of every administrator to any part of the estate of a deceased person shall relate back to and be deemed to have arisen immediately upon the death of the deceased person, as if there had been no interval of time between the death and the grant of administration.

(3) If there are concurrently more administrators than one of any part of the estate that part shall vest in them as joint tenants.

### **174 How estate to be held by administrator**

Subject to this Part, the administrator shall hold –

(a) The estate of any person who dies or who has died leaving a will according to the trusts and dispositions of the will, so far as the will affects that estate;

(b) The estate of any person who dies intestate as to that estate under Sub-Part 3.



**175 Estate to be assets for payment of debts**

The whole of the estate of every deceased person shall be assets in the hands of his administrator for the payment of all duties and fees payable under any Act imposing or charging duties or fees on the estates of deceased persons, and for the payment in the ordinary course of administration of his debts and of debts properly incurred by his administrator; and for those purposes the administrator may, in as full and effectual a manner in law as the testator or intestate could have done in his lifetime, sell, lease (with or without an optional or compulsory purchasing clause), or mortgage (with or without a power of sale), the estate, or any part of it.

**176 Power of sale on intestacy**

(1) On the death of a person intestate as to any real or personal estate, his administrator shall have power to sell that real estate and to call in, sell, and convert into money such part of that personal estate as may not consist of money, with power to postpone the sale, calling in, and conversion for such a period as the administrator, without being liable to account, may think proper, and so that, unless required for purposes of administration owing to want of other assets, personal chattels be not sold under this section except for special reason.

(2) This section shall have effect notwithstanding that the administrator has ceased to hold the real or personal estate as administrator and holds it as trustee.

(3) Where the deceased leaves a will this section shall have effect subject to the will.

**177 Method of sale or lease**

(1) Sections 14 to 18 of the Trustee Act 1956 shall, so far as they are applicable and with any necessary modifications, apply to any sale or lease under sections 175 and 176 of this Act as if the sale or lease were under sections 14 to 18 of the Trustee Act 1956.

(2) Nothing in this section shall restrict the term of any lease which may be granted under section 175.

(3) Land of any value may be sold or leased under section 175, or may be sold under section 176 without the consent of the Court.

**178 Administrator to represent real estate**

In all actions concerning the real estate of a deceased person, his administrator shall represent his real estate and the persons interested in it in the same manner and to the same extent as, in actions concerning personal estate, the administrator represents that estate and the persons interested in it.

**179 Rights and duties of administrator as to real estate**

The administrator of any deceased person shall have the same rights and be subject to the same duties and liabilities with respect to the real estate of that person as he has and is subject to with respect to the personal estate of that person, and shall perform the duties imposed on the administrator by any Act imposing or charging duties or fees or liabilities on the estates of deceased persons.

**180 Payment of claims where estate insufficient**

Where the estate of any deceased person is insufficient to pay his debts, funeral, and testamentary expenses in full, it shall be lawful for the administrator to apply that estate under the priorities that would be applicable if it were being administered under Part 17 of the

Insolvency Act 1967 (NZ), without the administrator being under any obligation to have recourse to that Part or to administer that estate under it and any surplus shall be held for the person or persons lawfully entitled.

**181 Administration suits**

(1) [Repealed]

(2) In any action or other proceeding for the administration by the Court of the estate of any deceased person, no court shall have jurisdiction to order or allow payment of costs out of the estate to the party responsible for the commencement or continuance of the action or proceeding, unless the Court first certifies that there were reasonable grounds for the action being commenced or continued, and then only to the extent to which the continuance was necessary.

**182 Debts under deeds and simple contracts to stand in equal degree**

(1) Subject to this Part and any other Act, in the administration of the estate of every person who has died no debt or liability of the person shall be entitled to any priority or preference by reason merely that it arises under a bond, deed, or instrument under seal; but all the creditors of that person shall be treated as standing in equal degree and be paid accordingly out of the assets of the deceased person, whether those assets are legal or equitable.

(2) Nothing in subsection (1) shall prejudice or affect any lien, charge, mortgage, or other security which any creditor may hold or be entitled to for payment of his debt or liability.

**183 Charges on property**

(1) (a) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, an interest in property, or where an interest in property passes by survivorship on the death of a person, and at the time of his death the interest is charged with the payment of money, whether by way of mortgage, charge, or otherwise, and the deceased has not by will, deed, or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for payment of all amounts charged thereon; and every part of the said interest, according to its value, shall bear a proportionate part of the amounts charged on the whole.

(b) Where a person dies possessed of or entitled to an interest in any personal chattels that passes under the will or on the intestacy of the person to the person's husband or wife, nothing in this subsection shall apply to that interest in those personal chattels.

(2) Such a contrary or other intention shall not be deemed to be signified –

(a) By a general direction for payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate, or his residuary personal estate; or

(b) By a charge of debts upon any such estate –  
unless that intention is further signified by words expressly or by necessary implication referring to all or some part of the charge on the interest in property.

(3) Nothing in this section shall affect the right of a person entitled to the payment with which the interest in property is charged to obtain payment or satisfaction out of the other assets of the estate or otherwise.

**184 Liability of specific devise or bequest where estate is insufficient**

If any testator's estate primarily liable for the payment of his debts is insufficient for that purpose, each of his specifically devised or bequeathed estates (if more than one) shall be liable to make good the deficiency, in the proportion that the value of each of those estates bears to the aggregate value of the specifically devised or bequeathed estates of the testator.

**185 Proving executors may exercise powers**

Where probate is granted to one or some of 2 or more persons named as executors, whether or not power is reserved to the others or other to prove, all the powers which are conferred by law or by the will on the administrator may be exercised by the proving executor or executors for the time being, and shall be as effectual as if all the persons named as executors had concurred in it.

**186 Interest on legacies and annuities**

(1) In any case where a legacy is charged upon both land and chattels, unless the will otherwise provides, interest shall be payable on the legacy and be a charge on the land and chattels under the rules of law that would apply if the legacy were charged upon the land only.

(2) While interest is payable on any legacy or on any arrears of an annuity, under the will or instrument under which the legacy or annuity is payable or any enactment or rule of law, unless the will or instrument otherwise provides or the Court otherwise orders, the interest on the legacy or arrears of the annuity shall be payable at the rate for the time being prescribed by Cabinet, and while no such regulation is in force at the rate of 5 percent per annum.

(3) Where an administrator (under any power conferred on him in that behalf) appropriates any property in or towards satisfaction of any legacy (other than an annuity), the legatee shall be entitled to the income from the property so appropriated, and interest shall not be payable out of any other part of the estate on so much of the legacy as has been satisfied by the appropriation.

**187 No right of retainer by administrator**

No person, being a creditor in his own right or as a trustee of any estate of which he is administrator, shall, by virtue of his office as administrator, have any right of retainer in priority to the other creditors of the estate in respect of any debt due to him; but every such creditor or administrator shall rank with other creditors, but without prejudice to any preferential claim or security which as a creditor he might have been able to enforce if he had not been the administrator.

**188 Rights and liabilities of administrator**

Every person to whom administration of the estate of a deceased person is granted, other than an executor, shall, subject to the limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were the executor of the deceased.

**189 Liability of agent of administrator**

No person appointed an administrator upon an application made by him as the attorney or agent for an administrator absent from Niue, shall be liable to account or pay money, or transfer property, to any one in respect of his administratorship excepting only to the administrator whose attorney or agent he was, or to any person who, after his appointment as administrator upon an application so made, is appointed administrator of the same estate.

**190 Administrator's right to distrain**

(1) An administrator may distrain for arrears of a rentcharge due or accruing to the deceased in his lifetime on the land affected or charged with it, so long as the land remains in the possession of the person liable to pay the rentcharge or of the persons deriving title under him, and in like manner as the deceased might have done had he been living.

(2) An administrator may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living. Any such arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made –

- (a) Within 6 months after the termination of the lease or tenancy; and
- (b) During the continuance of the possession of the lessee or tenant from whom the arrears were due.

(3) The enactments relating to distress for rent shall apply to any distress made under subsection (2).

**191 Administrator may be required to exhibit inventory**

Every administrator shall, when required by the Court so to do, exhibit on oath in the Court a true and perfect inventory and account of the estate of the deceased, and the Court shall have power to require administrators to bring in inventories.

**192 Protection of persons acting on administration**

(1) Every administrator or person who makes any payment or disposition or assumes any liability, or who permits any payment or disposition to be made, or who does any act, or who permits any act to be done, in good faith under an administration shall, notwithstanding any defect or circumstances whatsoever affecting the validity of the administration or its subsequent revocation, have the same indemnity and protection in so doing and in respect of all commission and remuneration earned by him in so doing, as he would if the administration were valid and not revoked.

(2) Where an administration is revoked, all payments and dispositions made in good faith to an administrator before the revocation shall be valid discharges to the person making the same; and the administrator who acted under the revoked administration may retain and reimburse himself out of the estate that comes into his hands in respect of any acts, payments, dispositions, liabilities, commission, and remuneration in respect of which he is indemnified as aforesaid or which the person to whom administration is afterwards granted might have properly made.

(3) Nothing in subsection (1) shall affect or prejudice the rights of any person entitled to any money or property that has been the subject of a payment or disposition to which that subsection relates against any person (other than the administrator in that capacity) to whom the payment or disposition has been made, but the person so entitled shall have the same remedy against the person (other than the administrator in that capacity) to whom the payment or disposition was made as he would have had against the administrator if the payment or disposition had not been made.

(4) Nothing in this section shall restrict section 195.

**193 Following of assets**

(1) In any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust and there is nothing in any Act to prevent the distribution from being disturbed, the Court may –

- (a) Make, subject to such terms and conditions as it thinks fit, in respect of any interest in any such assets that is for the time being retained by the person to whom those assets were distributed or his administrator or any person who has received any interest in those assets from either of them otherwise than in good faith and for full valuable consideration an order on any claim to which section 35 of the Trustee Act 1956 applies, or an order requiring the transfer of payment of any such interest in any such assets to the administrator of the deceased or the trustee or to any person who under any enactment or rule of law has a right to follow the assets;
- (b) Order that any person to whom any assets were so distributed or his administrator shall pay to any applicant for an order on any claim to which section 35 of the Trustee Act 1956 applies, or to the administrator of the deceased or the trustee or to any person who under any enactment or rule of law has a right to follow the assets a sum not exceeding the net value of the assets at the date of the distribution, or in a case where full valuable consideration has not been given a sum not exceeding the amount by which that net value exceeds the value of the consideration at that date, together (if the Court thinks equitable) with interest on it from that date until the date of the order at such rate as the Court may specify;
- (c) Order that any person who has received any interest in any such assets from the person to whom they were distributed or his administrator, otherwise than in good faith and for full valuable consideration, shall pay to any applicant for an order on any claim to which section 35 of the Trustee Act 1956 applies, or to the administrator of the deceased or the trustee, or to any person who under any enactment or rule of law has a right to follow the assets, a sum not exceeding the net value of that interest at the date of the distribution, or in a case where full valuable consideration has not been given a sum not exceeding the amount by which that net value exceeds the value of the consideration at that date, together (if the Court thinks equitable) with interest on it from that date until the date of the order at such rate as the Court may specify;
- (d) In making any such order fix such terms and conditions as the Court thinks fit and for the purpose of giving effect to any such order, make such further order as it thinks fit.

(2) The remedies given to any person by subsection (1) are in addition to all other rights and remedies (if any) available to that person, and nothing in that subsection shall restrict any such other rights and remedies.

(3) Subject to subsection (4), no application for an order under subsection (1) shall be heard by the Court –

- (a) [Repealed]
- (b) In the case of an application to which section 194 (b) (i) applies, unless that application is made within 1 year after the satisfaction by the administrator or trustee of any claim in respect of any right or remedy against him;
- (c) In any other case, unless the application for an order under subsection (1) is made within the time within which the applicant could have enforced his claim in respect of the estate without special leave of the Court if the assets had not been distributed:

Provided that, with the special leave of the Court, the application may be heard by the Court on an application made within the time within which the applicant could have enforced his claim in respect of the estate with special leave of the Court if the assets had not been distributed.



(4) Notwithstanding subsection (3), in any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust, and any person who is entitled to apply for an order under subsection (1) has, within the time specified in subsection (3), made an application to the Court for an order on any claim to which section 35 of the Trustee Act 1956 applies, and that person was not aware of the distribution at the time when he made that application, that person or any other person on whose behalf that application is deemed to be made, may apply to the Court under subsection (1), and the application may be heard by the Court after the expiration of the period prescribed by subsection (3) if it is made within 6 months after the date on which that person first became aware of the distribution.

#### **194 Freedom to exercise remedies**

Notwithstanding any rule of law to the contrary, in any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust –

- (a) Any person may exercise the remedies (if any) given to him by section 193 (1) and all other rights and remedies available to him (including all rights which he may have to follow assets and any money or property into which they have been converted) without first exercising the rights and remedies (if any) available to him against the administrator or the trustee in consequence of the making of the distribution;
- (b) If any person exercises any right or remedy available against the administrator or the trustee in consequence of the distribution of any such assets, the administrator or trustee may –
  - (i) apply to the Court for any order which may be made under section 193 (1);
  - (ii) in any proceedings against him in respect of the exercise of any such right or remedy, by leave of the Court and in accordance with the rules of court relating to such notices, issue a third party notice against any person against whom he may apply for an order under subparagraph (i).

#### **195 Restriction on following assets**

In any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust, relief (whether under section 193 (1) or in equity or otherwise) against any person other than the administrator or trustee or in respect of any interest of any such person in any assets so distributed and in any money or property into which they have been converted, may be denied wholly or in part, if –

- (a) The person from whom relief is sought received the assets or interest in good faith and has altered his position in the reasonably held belief that the distribution was properly made and would not be set aside; and
- (b) In the opinion of the Court it is inequitable to grant relief or to grant relief in full, as the case may be.

#### **196 Liability of person fraudulently obtaining or retaining estate of deceased**

If any person other than the administrator, to the defrauding of creditors or without full valuable consideration, obtains or receives or holds any part of the estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the estate received or coming into his hands, or the debt or liability released, after deducting –

- (a) Any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death which might properly be retained by an administrator; and
- (b) Any payment made by him which might properly be made by an administrator.

*Powers and Procedure of Court*

**197 Direction to executor to prove or renounce**

The Court shall have power to direct any person named as executor in a will to prove or renounce probate of the will, and (subject to this Part and any other enactment and the Rules) to do such other things as it thinks fit concerning the granting and revocation of administration, and the hearing and determination of proceedings relating to testamentary matters and matters relating to the estates of deceased persons.

**198 Production of instruments purporting to be testamentary**

The Court may, whether any suit or other proceeding is or is not pending with respect to any administration, order any person to produce any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of that person; and if it is not shown that any such paper or writing is in the possession or under the control of any person, but it appears that there are reasonable grounds for believing that he has knowledge of any such paper or writing, the Court may direct that person to attend for the purpose of being examined in open court, or upon interrogatories, respecting the same; and that person shall be bound to answer any such questions or interrogatories, and, if so ordered, to produce and bring in any such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering any such questions or interrogatories, or not bringing in any such paper or writing, as he would have been subject to in case he had been a party to a suit in the Court and had made any such default; and the costs of any such suit or proceeding shall be in the discretion of the Court.

**199 Continuance of legal proceedings**

If, while any legal proceeding is pending in any court by or against an administrator to whom a temporary administration has been granted, that administration is revoked, the Court may order that the proceeding be continued by or against the new administrator in like manner as if the same had been originally commenced by or against him, but subject to such conditions and variations, if any, as that court directs.

**200 Question of fact may be tried by a jury**

(1) If any question of fact arises in any proceeding under this Part, the Court may cause the same to be tried by a jury before the Court itself, or before any Judge of the Court, and may settle an issue for that purpose.

(2) In every such case the subsequent proceedings in respect of that issue shall be the same as if it had been settled in an ordinary action.

**201 Practice of Court in its administration jurisdiction**

The practice of the Court in regard to administration shall, except where otherwise provided, be regulated, so far as the circumstances of the case will admit, by the practice of the Court.

**202 Power to make rules**

Cabinet may make rules of Court, including rules –

- (a) Prescribing the forms of administration;



- (b) Prescribing the practice in obtaining a grant of administration, and the procedure and practice of the Court and the duties of the Registrar;
- (c) Regulating the procedure and practice of the Court with respect to non-contentious or common form probate business;
- (d) Regulating the procedure and practice of the Court with respect to contentious probate business;
- (e) Regulating the practice and procedure of the Court in relation to the resealing of probates or letters of administration under Sub-Part 2, and in particular for the purpose of imposing upon persons applying under it for the resealing of probates or letters of administration, or relieving any such persons from, any requirements that may be imposed upon persons applying to the Court for original grants of probate or letters of administration;
- (f) Prescribing orders of priority among applicants for administration which shall apply unless the Court in special circumstances otherwise directs;
- (g) Generally for carrying the provisions of this Act into effect.

*Caveats*

**203 Caveat may be lodged**

(1) Any person may lodge with the Registrar a caveat against any application for administration at any time previous to the granting of administration, and every such caveat shall set forth the name of the person lodging it, and an address within Niue at which notices may be served on him.

(2) Every such caveat shall, unless application for administration is sooner made, lapse upon the expiration of one year from the date of the lodging of the caveat.

(3) (a) Any such caveat may be withdrawn by the caveator at any time by notice in writing lodged with the Registrar.

(b) A copy of every such notice shall be served on any person who has applied for administration or to whom an order *nisi*, under section 204 has been granted.

(4) Nothing in this section shall prevent any person who has lodged a caveat from lodging a subsequent caveat, whether or not any caveat previously lodged has lapsed or been withdrawn.

**204 Where a caveat lodged, Court may grant order *nisi***

In every case where a caveat has been lodged and has neither lapsed nor been withdrawn, the following provisions shall apply –

- (a) The Court may, upon application on behalf of the person applying for administration, supported by affidavits upon which, if there had been no caveat, administration would have been granted, make an order *nisi* for the grant of administration to the person applying, and every such order shall name a time and place for showing cause against the same, and the Court may enlarge any such order;
- (b) Every such order *nisi*, and every order enlarging the same, shall be served on the caveator by delivering a copy of the same at the address mentioned in his caveat;
- (c) If before the day named in the order *nisi* or the day to which the order is enlarged the caveat is withdrawn, the order *nisi* may be made absolute at any time thereafter;
- (d) In any case to which paragraph (c) does not apply, if on the day named in the order *nisi*, or on the day to which the order is enlarged, the caveator does not appear, the order *nisi* may be made absolute, upon an affidavit of service; but

if the caveator appears, the hearing shall be conducted in the same manner as nearly as may be as in an ordinary action, and the Court may order –

- (i) that the order nisi be made absolute or discharged; or
  - (ii) that the application for administration be made in solemn form, and any order made under subparagraph (i) or (ii) may be with or without costs as may be just, and, if the Court so directs, those costs may be paid out of the estate;
- (e) Upon the hearing of the order *nisi* the parties may, subject to the Rules, verify their cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of the opposite party orally in open court, and after cross-examination may be re-examined orally in open court by or on behalf of the party by whom the affidavit was filed.

*Miscellaneous Provisions*

**205 Administration granted to trustee companies**

(1) No grant of probate of the will of any deceased person or letters of administration of the estate of a deceased person, either with or without a will annexed, shall be made to any company unless the company is expressly authorised by an Act to apply for and obtain the grant.

(2) A grant of probate or letters of administration to a syndic of a company shall be deemed to be a grant to that company; and where a power is granted to a company or to the directors of a company by will to nominate any person as executor of the will, a grant to a person so nominated shall be deemed to be a grant to the company.

(3) Nothing in this section shall –

- (a) Prevent the grant of probate of the will of any deceased person to any company or to a syndic of the company in any case where the company is appointed as executor of the will and the actual document providing for the appointment was made before 1 January 1963;
- (b) Prevent the grant of probate of the will of any deceased person to any person nominated as executor of the will by a company or the directors of a company pursuant to a power granted by any testamentary instrument, if the actual document granting the power was made before 1 January 1963;
- (c) Prevent the resealing in Niue of probate or letters of administration granted to a company in any other country;
- (d) Affect any grant of probate or letters of administration subsisting at 1 January 1971.

**206 Other Acts providing for payment without administration**

Nothing in this Part shall affect the powers of any person or body to make any payment to, or register any person to be, the owner of any property under any enactment authorising the payment of money belonging to the estate of a deceased person without requiring administration of the estate to be obtained.

**207 Bondsmen and sureties deemed to be trustees**

Every person who, in the capacity of bondsman or surety for another, receives money or other property belonging to the estate of any deceased person shall be deemed to be a trustee within the meaning of the Trustee Act 1956 in respect of that money or property, and may under that Act apply for relief and to be discharged from the custody of the money or property.

SUB-PART 2

ADMINISTRATION GRANTED OUT OF NIUE

**208 Interpretation**

(1) For the purposes of this Sub-Part “probate or letters of administration” includes an exemplification of any probate or letters of administration, or a duplicate of it sealed with the seal of the court granting the same, or a copy certified as correct by or under the authority of the court granting the same, and also includes an exemplification or a copy certified by or under the authority of any court, or a duplicate sealed under the seal of any court, of any instrument which is filed in or issued out of that court and which within the jurisdiction of that court operates to make any person the administrator of any property of a deceased person as if probate or letters of administration had been granted to him by that court.

(2) The filing in or the issuing out of any court of any instrument which operates to make any person an administrator in the manner described in subsection (1) shall be deemed to be equivalent to the granting of probate or letters of administration by that court to that person.

**209 Estate of person dying abroad not to vest without administration**

(1) Estate in Niue belonging to any person who dies abroad shall not vest in any person under any bequest or devise, or under an intestacy, or by inheritance, until administration of that estate is obtained in Niue; or, if probate or letters of administration of the estate have been granted in any place out of Niue, unless the probate or letters of administration are resealed in Niue as provided in this Sub-Part.

(2) Upon the estate in Niue becoming legally vested under this section, the legal estate shall vest as from the time of the death of the person from whom it is obtained.

**210 Resealing of probate**

(1) Where any probate or letters of administration granted in a competent court in any country are produced to and a copy deposited with the Registrar of the Court the probate or letters of administration may be sealed with the seal of the Court, and shall have the like force and effect and have the same operation in Niue, and every executor and administrator thereunder shall perform the same duties and be subject to the same liabilities, as if the probate or letters of administration had been originally granted by the Court.

(2) Nothing in this section shall prevent the Court from making an independent grant of administration in Niue.

**211 Seal not to be affixed till fees are paid and administration bond effected**

(1) The seal of the Court shall not be affixed to any probate or letters of administration granted in any Commonwealth country (other than Niue) or in the Republic of Ireland, or by a competent court in any other country, so as to give operation as if the grant had been made by the Court, until all such fees have been paid as would have been payable if the probate or letters of administration had been originally granted by the Court ; and, further, no such letters of administration shall be so sealed until such bond is entered into as would have been required if the letters had been originally granted by the Court:

(2) The Court may if it thinks fit dispense with the bond or reduce the amount of the penalty thereunder.

(3) Where letters of administration are at any time granted to any Public Trustee or other like public official of any Commonwealth country (other than Niue) or

of the Republic of Ireland or of any other country to which section 210 is declared to apply, it shall not be necessary, upon the resealing in Niue of the letters of administration, for the Public Trustee or other official, as the case may be, to execute any such bond.

**212 No probate granted out of Niue to be evidence unless resealed**

Probate or letters of administration granted in any place out of Niue shall not be received in evidence of the title of any person to any estate in Niue until the probate or letters of administration are resealed in Niue as provided in this Sub-Part.

**213 Effect of sections 209 and 212**

Nothing in sections 209 and 212 shall restrict any other enactment relating to the payment or devolution of any estate without administration.

SUB-PART 3

DISTRIBUTION OF INTESTATE ESTATES

**214 Succession on intestacy**

Where any person dies intestate as to any real or personal estate, that estate shall be distributed in the manner or be held on the trusts mentioned in this section, namely –

- (a) If the intestate leaves a husband or wife, the surviving husband or wife shall take the personal chattels absolutely and, in addition, the residue of the estate shall stand charged with the payment of a sum of \$12,000 to the surviving husband or wife with interest on it from the date of the death until paid or appropriated, at the rate from time to time prescribed by or under section 186, and, subject to providing for that sum and the interest on it, the residue of the estate shall be held –
  - (i) if the intestate leaves issue, in trust as to one-third for the surviving husband or wife absolutely, and as to the other two-thirds on the statutory trusts for the issue of the intestate;
  - (ii) if the intestate leaves no issue, in trust as to two-thirds for the surviving husband or wife absolutely, and as to the other one-third if the intestate leaves both parents, in trust for the father and mother in equal shares absolutely or, if the intestate leaves only one parent, in trust for the surviving father or mother absolutely;
  - (iii) if the intestate leaves no issue or parent, in trust for the surviving husband or wife absolutely;
- (b) If the intestate leaves issue but no husband or wife, the estate shall be held on the statutory trusts for the issue of the intestate;
- (c) If the intestate leaves no husband or wife or issue but a parent or parents, the estate shall be held in trust for the parents in equal shares if they both survive the intestate but if only one of them survives the intestate for that one;
- (d) If the intestate leaves no husband or wife or issue or parent, the estate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely:

Firstly, on the statutory trusts for the brothers and sisters (whether of full or of half blood) of the intestate; but if no person takes an absolutely vested interest under such trusts; then

Secondly, in trust for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then

Thirdly, on the statutory trusts for the uncles and aunts of the intestate, being brothers and sisters (whether of full or of half blood) of a parent of the intestate;

- (e) In default of any person taking an absolute interest under the foregoing provisions, the estate shall belong to the Crown as *bona vacantia*, and in place of any right to escheat; and the Crown may (without prejudice to any other powers), out of the whole or any part of the property devolving on it, provide for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

## 215 Statutory trusts in favour of issue and other classes of relatives

(1) Where the estate of any intestate, or any part of it, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts, namely –

- (a) In trust, in equal shares if more than one, for all or any the children or child of the intestate, living at the death of the intestate, who attain full age or marry under that age, and for all or any of the issue living at the death of the intestate who attain full age or marry under that age of any child of the intestate who predeceases the intestate, the said issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent takes an absolutely vested interest:

Provided that if any person capable of taking under this paragraph (including this proviso) dies before taking an absolutely vested interest leaving any child or children who shall be living at the expiration of 21 years from the death of the intestate or who shall sooner attain full age or marry under that age, that child or those children shall take, in equal shares if more than one, the share which his, her, or their parent would have taken if he or she had not so died;

- (b) The statutory power of advancement, and the statutory provisions which relate to maintenance, education, and benefit, and the accumulation of surplus income, shall apply, and when a person becomes entitled to a vested share or interest under the statutory trusts, that person shall be entitled on attaining the age of 18 years or sooner marrying to give a valid receipt for his share or interest;
- (c) The administrator may permit any minor who has a vested or contingent interest in any personal chattels to have the use and enjoyment of the chattels in such manner and subject to such conditions (if any) as the administrator may consider reasonable, and without being liable to account for any consequential loss.

(2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest –

- (a) The estate of the intestate and the income of it and all statutory accumulations, if any, of the income, or so much of it as may not have been paid or applied under any power affecting the same, shall go, devolve, and be held under this Part as if the intestate had died without leaving issue living at the death of the intestate;
- (b) References in this Part to the intestate “leaving no issue” shall, subject to this section, be construed as “leaving no issue who attain an absolutely vested interest”;



- (c) References in this Part to the intestate “leaving issue” or “leaving a child or other issue” shall, subject to this section, be construed as “leaving issue who attain an absolutely vested interest”.

(3) Where under this Part the estate of an intestate or any part of it is directed to be held on the statutory trusts for any class of the relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate as if those trusts were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.

**216 Application to cases of partial intestacy**

(1) Where any person dies leaving a will effectively disposing of part of his estate this Sub-Part, shall have effect in respect of the part of his estate not so disposed of, subject to the will and subsection (2).

(2) Where the deceased leaves a husband or wife who acquires a beneficial interest under the will of the deceased, the references in section 214 to a sum of \$12,000 payable to a surviving husband or wife, and to interest on that sum, shall be taken as references to that sum diminished by the value of the beneficial interest at the date of death, and to interest on that sum as so diminished, and, accordingly, where the value exceeds that sum, section 214 shall have effect as if references to that sum and to interest were omitted.

(3) References in subsections (1) or (2) to a beneficial interest acquired under a will shall be construed –

- (a) As including a reference to a beneficial interest acquired by virtue of the exercise by the will of a general power of appointment, but not a special power of appointment;
- (b) As not including a reference to a beneficial interest in any personal chattels.

(4) For the purposes of this section the administrator may ascertain and fix the value of the beneficial interest under section 28 of the Trustee Act 1956, and no action shall lie against the administrator if he distributes the estate in accordance with the value that he has honestly and reasonably so fixed.

SUB-PART 4

MISCELLANEOUS PROVISIONS

**217 Right of successor on intestacy to disclaim**

(1) Subject to this section, where a successor has become entitled under this Part to an interest as a beneficiary in the whole or any part of the real and personal property which passes on the intestacy of any person –

- (a) The successor may, by deed delivered to the intestate person’s administrator, disclaim that interest if at the date of the disclaimer he has attained full age and is of sound mind;
- (b) The Court may, by order, disclaim the interest on behalf of the successor or authorise the disclaimer of the interest by or on behalf of the successor if at the date of the disclaimer the successor has not attained full age or is not of sound mind.

(2) No disclaimer under this section shall be valid unless –

- (a) The disclaimer is made by the successor in his lifetime; and
- (b) The disclaimer relates to the whole of the successor’s interest as a beneficiary in the real and personal property which passes on the intestacy of the person, including property which any other person has disclaimed under this section; and

- (c) The disclaimer is made within one year after the date of the first grant in Niue of administration in respect of the estate or will of the intestate person or within such extended period as may be allowed by the Court.
- (3) No disclaimer under this section shall be valid if –
  - (a) The successor has entered into enjoyment of the whole or any part of the interest to which he has become entitled as aforesaid; or
  - (b) The successor has transferred, assigned, mortgaged, settled, or otherwise disposed of that interest or of any part of it or of any property which would include that interest or any part of it if it were not disclaimed, or has covenanted or agreed to do any such thing; or
  - (c) There is any valuable consideration for the disclaimer; or
  - (d) The disclaimer provides for any assignment of the disclaimed interest or in any manner provides who is to be entitled to that interest; or
  - (e) The successor is bankrupt when the disclaimer is made.
- (4) Every disclaimer under this section shall be irrevocable.
- (5) Where a disclaimer which complies with all the requirements of this section has been made by or on behalf of any successor and the disclaimer is not void and does not become void by reason of its being deemed under section 218 to be a transfer of the disclaimed interest –
  - (a) The property which passes on the intestacy of the person shall be distributed, and estate duty in his estate shall be assessed, as if the successor had died immediately before the intestate person leaving only such issue (if any) as the successor would have left if he had died immediately before the intestate person;
  - (b) The successor shall be deemed for all purposes neither to have become entitled to nor to have disposed of the disclaimed interest or any part of it.
- (6) Nothing in this section shall affect any right which any successor may have to disclaim any property apart from this section.
- (7) Every disclaimer under this section shall be deemed to be made at the first point of time when everything has been done in respect of the disclaimer which is necessary to comply with the requirements of this section and of any order of the Court which relates to the disclaimer and is made under this section.

## **218 Effect of bankruptcy on disclaimer**

- (1) Where a successor disclaims the interest as a beneficiary to which he is entitled in any real or personal property which passes on the intestacy of any person, or disclaims any interest as a beneficiary in any real or personal property to which he is entitled under the will of a deceased person, then, for the purposes of any rule of law relating to the protection of creditors –
  - (a) The successor shall be deemed to have accepted the disclaimed interest; and
  - (b) The disclaimer shall be deemed to be a transfer of the disclaimed interest by the successor to the person or persons who become entitled to it in consequence of the disclaimer.
- (2) Where any such successor has disclaimed any such interest in any property and there is no possibility of the disclaimer being void or voidable otherwise than by reason of its being deemed to be a transfer of the disclaimed interest, the deceased person's administrator may distribute the disclaimed interest or any part of it as if there were no possibility of the disclaimer being or becoming void or voidable by reason of its being deemed to be a transfer of the disclaimed interest if, at the date of the distribution –



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- (a) The successor is not bankrupt; and
- (b) The administrator has no reason to believe that the successor is about to become bankrupt; and
- (c) The administrator has no reason to believe that the disclaimer is void or voidable or is about to become void or voidable by reason of its being deemed to be a transfer of the disclaimed interest.

(3) No action shall lie against any such administrator by reason of his distributing any disclaimed interest as aforesaid or by reason of his having failed to make any inquiry as to whether the successor was about to become bankrupt or as to whether the disclaimer was void or voidable or about to become void or voidable by reason of its being deemed to be a transfer of the disclaimed interest; but nothing in this subsection or in subsection (2) shall affect any right which any person may have to follow and recover any property to which the disclaimer relates.

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SCHEDULE  
Section 168  
*Certificate of Administration*

In the High Court of Niue

In the estate of \_\_\_\_\_ of \_\_\_\_\_

Under section 168 of the Family Law Code, I hereby certify that, on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, probate of the will [or letters of administration in the estate]\* of the above-named deceased who died on or about \_\_\_\_\_ [date] was [were] granted to \_\_\_\_\_

\_\_\_\_\_, of \_\_\_\_\_

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

[Seal]

Registrar.

[\*In the case of a limited or special grant the exact nature of the grant should be shown.]

**COMPARATIVE REFERENCE FOR THE SOURCE OF THE  
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1 Prohibited degrees of consanguinity or affinity	Niue Act 1966 s515
2 Marriages to take place before Marriage Officer	Niue Act 1966 s516
3 Offence	Niue Act 1966 s519
4 Notice of marriage	Niue Act 1966 s520
5 Mode of solemnisation	Niue Act 1966 s521
6 Record of marriage	Niue Act 1966 s522
7 Signature of record	Niue Act 1966 s523
8 Transmission of record	Niue Act 1966 s524
9 Minimum age of marriage	Niue Act 1966 s525
10 Marriage of minors	Niue Act 1966 s526
11 Offence by Marriage Officer	Niue Act 1966 s527
12 Signature of false record by party or witness	Niue Act 1966 s528
13 Misrepresentation as to facts to procure marriage	Niue Act 1966 s529
14 Sanction of Court to be obtained	Property Law Act 1952 s133
15 Legal status of married women	Niue Act 1966 s707
16 Nullity of marriage	Niue Act 1966 s531
17 Domicile of a married woman	Niue Act 1966 s533
18 Grounds of divorce and jurisdiction of High Court	Niue Act 1966 s534
19 Grounds of refusal of divorce	Niue Act 1966 s535
20 Discretion to refuse decree in certain cases	Niue Act 1966 s536
21 Co-respondent as a party	Niue Act 1966 s537
22 Agreement no bar to divorce	Niue Act 1966 s539
23 No appeal to Court of Appeal	Niue Act 1966 s540
24 Order for maintenance of divorced wife	Niue Act 1966 s543
25 Order as to custody of children	Niue Act 1966 s544

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26	Molestation of divorced wife by her husband	Niue Act 1966 s545
27	Births and deaths	Niue Act 1966 s727A
28	Legitimacy	Niue Act 1966 s708
29	Interpretation	Niue Amendment (No2) Act 1968 s91
30	Adoption by Niuean custom invalid	Niue Amendment (No2) Act 1968 s92
31	Land Court may make adoption orders	Niue Amendment (No2) Act 1968 s95
32	Prohibition of payments in consideration of adoption	Niue Amendment (No2) Act 1968 s96
33	Restrictions on making adoption orders	Niue Amendment (No2) Act 1968 s97
34	Consents to adoptions	Niue Amendment (No2) Act 1968 s98
35	Effect of adoption order	Adoption Act 1955 s16
36	Adoption order may be varied or discharged	Niue Amendment (No2) Act 1968 s100
37	Adoption order discharged	Adoption Act 1955 s20
38	Objective of Part	Guardianship Act 1968 s1
39	Interpretation	Guardianship Act 1968 s2
40	Definition of custody and guardianship	Guardianship Act 1968 s3
41	Personal jurisdiction	Guardianship Act 1968 s5
42	Guardianship of children	Guardianship Act 1968 s6
43	Declaration as to guardianship of father	Guardianship Act 1968 s6A
44	Testamentary guardians	Guardianship Act 1968 s7
45	Court-appointed guardians	Guardianship Act 1968 s8
46	Wards of Court	Guardianship Act 1968 s9
47	Removal of guardian	Guardianship Act 1968 s10
48	Custody orders	Guardianship Act 1968 s11
49	Orders in other proceedings	Guardianship Act 1968 s12
50	Disputes between guardians	Guardianship Act 1968 s13
51	Review of guardian's decision or refusal to give consent	Guardianship Act 1968 s14
52	Access rights	Guardianship Act 1968 s15
53	Access of other relatives on death of parent	Guardianship Act 1968 s16

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54	Variation or discharge of orders	Guardianship Act 1968 s17
55	Effect of custody agreements	Guardianship Act 1968 s18
56	Enforcement of custody and access rights	Guardianship Act 1968 s19
57	Preventing removal of child from Niue	Guardianship Act 1968 s20
58	Termination of guardianship	Guardianship Act 1968 s21
59	Domicile of married minor	Guardianship Act 1968 s22
60	Welfare of child paramount	Guardianship Act 1968 s23
61	Custody of children over 16	Guardianship Act 1968 s24
62	Consents to operations	Guardianship Act 1968 s25
63	Procedure and costs	Guardianship Act 1968 s27
64	Evidence	Guardianship Act 1968 s28
65	Solicitor or counsel may be appointed	Guardianship Act 1968 s30
66	Appeals	Guardianship Act 1968 s31
67	Regulations	Guardianship Act 1968 s32
68	Part to be code	Guardianship Act 1968 s33
69	Custody of minors	Niue Act 1966 s69
70	Interpretation	Child Allowance Act 1995 s2
71	Payment out of Government Account	Child Allowance Act 1995 s3
72	Amount and payment date	Child Allowance Act 1995 s4
73	Qualifying child	Child Allowance Act 1995 s5
74	Disabled/disadvantaged persons	Child Allowance Act 1995 s6
75	Residence qualifications	Child Allowance Act 1995 s7
76	Exemptions	Child Allowance Act 1995 s8
77	Period allowance is payable	Child Allowance Act 1995 s9
78	Person allowance is payable to	Child Allowance Act 1995 s10
79	Application of child allowance	Child Allowance Act 1995 s11
80	Applying for allowance	Child Allowance Act 1995 s12
81	Investigation of applications	Child Allowance Act 1995 s13
82	Recovery of allowance	Child Allowance Act 1995 s14
83	Offences	Child Allowance Act 1995 s15
84	Proceedings for offences	Child Allowance Act 1995 s16

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85	Delegation of powers of Director	Child Allowance Act 1995 s17
86	Regulations	Child Allowance Act 1995 s18
87	Interpretation	Niue Act 1966 s547
88	Applications	Niue Act 1966 s549
89	Affiliation orders	Niue Act 1966 s551
90	Evidence	Niue Act 1966 s552
91	Maintenance order in favour of illegitimate child	Niue Act 1966 s553
92	Maintenance order against father in favour of child	Niue Act 1966 s554
93	Maintenance order against mother in favour of child	Niue Act 1966 s555
94	Maintenance order against husband	Niue Act 1966 s556
95	Maintenance order against wife	Niue Act 1966 s557
96	Maintenance order against any person in favour of father or mother	Niue Act 1966 s558
97	Disobedience to maintenance order	Niue Act 1966 s559
98	Maintenance money a debt	Niue Act 1966 s560
99	Order in favour of non-residents	Niue Act 1966 s561
100	Order against non-residents	Niue Act 1966 s562
101	Orders <i>in absentia</i>	Niue Act 1966 s563
102	Repeated applications	Niue Act 1966 s564
103	Payments not to be made in advance	Niue Act 1966 s565
104	Cancellation, variation, and suspension of orders	Niue Act 1966 s566
105	Payment of maintenance money	Niue Act 1966 s567
106	Security for obedience to maintenance orders	Niue Act 1966 s568
107	Operation of agreements	Niue Act 1966 s569
108	Purport and duration of maintenance orders	Niue Act 1966 s570
109	Order for past maintenance	Niue Act 1966 s571
110	Leaving Niue while maintenance money in arrear	Niue Act 1966 s572
111	Leaving Niue after affiliation order and before birth of child	Niue Act 1966 s573

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112	Leaving Niue with intent to disobey maintenance order	Niue Act 1966 s574
113	Leaving Niue while failing to maintain wife	Niue Act 1966 s575
114	Leaving Niue while failing to maintain child	Niue Act 1966 s576
115	Leaving Niue with intent to desert wife or child	Niue Act 1966 s577
116	Evidence of intent	Niue Act 1966 s579
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118	All property may be disposed of by will	Wills Act 1837 s3
119	Devisees of customary and copyhold estates	Wills Act 1837 s4
120	Wills of customary freeholds	Wills Act 1837 s5
121	Estates pur autre vie	Wills Act 1837 s6
122	Will of a person under age	Wills Act 1837 s7
123	Will of a married woman	Wills Act 1837 s8
124	Every will shall be in writing and signed by the testator in the presence of two witnesses at one time	Wills Act 1837 s9
125	Appointments by will	Wills Act 1837 s10
126	Soldiers and mariners wills	Wills Act 1837 s11
127	Wills of seamen	Wills Act 1837 s12
128	Publication not to be requisite	Wills Act 1837 s13
129	Incompetency of attesting witness	Wills Act 1837 s14
130	Gifts to an attesting witness	Wills Act 1837 s15
131	Creditor attesting to be admitted a witness	Wills Act 1837 s16
132	Executor to be admitted a witness	Wills Act 1837 s17
133	Will revoked by marriage	Wills Act 1837 s18
134	No will revoked by presumption	Wills Act 1837 s19
135	Revocation of will	Wills Act 1837 s20
136	Alteration in a will	Wills Act 1837 s21
137	Revival of will	Wills Act 1837 s22



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138	A devise not to be rendered inoperative by any subsequent conveyance or act	Wills Act 1837 s23
139	A will to speak from the death of the testator	Wills Act 1837 s24
140	A residuary devise	Wills Act 1837 s25
141	A general devise	Wills Act 1837 s26
142	A general gift	Wills Act 1837 s27
143	A devise without any words of limitation	Wills Act 1837 s28
144	The words “die without issue,” or “die without leaving issue” shall be construed to mean die without issue living at the death	Wills Act 1837 s29
145	No devise to trustees or executors, except for a term or a presentation to a church, shall pass a chattel interest	Wills Act 1837 s30
146	Trustees under an unlimited devise	Wills Act 1837 s31
147	Devises of estates tail	Wills Act 1837 s32
148	Gifts to children	Wills Act 1837 s33
149	Position of testator’s signature	Wills Amendment Act 1852 s1
150	Wills of Niueans	Niue Act 1966 s489
151	Succession to deceased Niueans	Niue Act 1966 s490
152	Niuean land not to vest in administrator	Niue Act 1966 s491
153	Niuean land not assets for payment of debts	Niue Act 1966 s497
154	Objective of Part	Administration Act 1969 s1
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156	Probate jurisdiction	Administration Act 1969 s5
157	Discretion of Court as to person to whom administration is granted	Administration Act 1969 s6
158	Administration pending legal proceedings	Administration Act 1969 s7
159	Grant of special administration where administrator is out of Niue	Administration Act 1969 s8
160	Administration during minority of executor	Administration Act 1969 s9

161	Administration with will annexed	Administration Act 1969 s10
162	Cesser of right of executor to prove	Administration Act 1969 s11
163	Withdrawal of renunciation	Administration Act 1969 s12
164	Executor of executor represents original testator	Administration Act 1969 s13
165	Administration bond	Administration Act 1969 s15
166	Proceedings if condition of bond broken	Administration Act 1969 s16
167	Administration as evidence	Administration Act 1969 s17
168	Certificates of administration	Administration Act 1969 s18
169	Proceedings where executor neglects to prove will	Administration Act 1969 s19
170	Discharge or removal of administrator	Administration Act 1969 s21
171	Interim vesting of estate where no executor appointed	Administration Act 1969 s22
172	Executor not to act while another administrator is in office	Administration Act 1969 s23
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175	Estate to be assets for payment of debts	Administration Act 1969 s26
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177	Method of sale or lease	Administration Act 1969 s28
178	Administrator to represent real estate	Administration Act 1969 s29
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180	Payment of claims where estate insufficient	Administration Act 1969 s31
181	Administration suits	Administration Act 1969 s32
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183	Charges on property	Administration Act 1969 s34
184	Liability of specific devise or bequest where estate is insufficient	Administration Act 1969 s37

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185	Proving executors may exercise powers	Administration Act 1969 s38
186	Interest on legacies and annuities	Administration Act 1969 s39
187	No right of retainer by administrator	Administration Act 1969 s40
188	Rights and liabilities of administrator	Administration Act 1969 s41
189	Liability of agent of administrator	Administration Act 1969 s42
190	Administrator's right to distrain	Administration Act 1969 s43
191	Administrator may be required to exhibit inventory	Administration Act 1969 s44
192	Protection of persons acting on administration	Administration Act 1969 s45
193	Following of assets	Administration Act 196 s949
194	Freedom to exercise remedies	Administration Act 1969 s50
195	Restriction on following assets	Administration Act 1969 s51
196	Liability of person fraudulently obtaining or retaining estate of deceased	Administration Act 1969 s52
197	Direction to executor to prove or renounce	Administration Act 1969 s53
198	Production of instruments purporting to be testamentary	Administration Act 1969 s54
199	Continuance of legal proceedings	Administration Act 1969 s55
200	Question of fact may be tried by a jury	Administration Act 1969 s56
201	Practice of Court in its administration jurisdiction	Administration Act 1969 s57
202	Power to make rules	Administration Act 1969 s59
203	Caveat may be lodged	Administration Act 1969 s60
204	Where a caveat lodged, Court may grant order <i>nisi</i>	Administration Act 1969 s61
205	Administration granted to trustee companies	Administration Act 1969 s63
206	Other Acts providing for payment without administration	Administration Act 1969 s67
207	Bondsmen and sureties deemed to be trustees	Administration Act 1969 s68
208	Interpretation	Administration Act 1969 s69

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209	Estate of person dying abroad not to vest without administration	Administration Act 1969 s70
210	Resealing of probate	Administration Act 1969 s71
211	Seal not to be affixed till fees are paid and administration bond effected	Administration Act 1969 s72
212	No probate granted out of Niue to be evidence unless resealed	Administration Act 1969 s73
213	Effect of sections 209 and 212	Administration Act 1969 s74
214	Succession on intestacy	Administration Act 1969 s77
215	Statutory trusts in favour of issue and other classes of relatives	Administration Act 1969 s78
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217	Right of successor on intestacy to disclaim	Administration Act 1969 s81
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# FILM AND PUBLIC ENTERTAINMENT ACT 1979

1979/45 – 1 January 1980

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SCHEDULES			

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## To make better provision for the regulation and control of the exhibition of films and public entertainment

PART 1 PRELIMINARY	
<b>1</b>	<b>Short title</b> This is the Film and Public Entertainment Act 1979.
<b>2</b>	<b>Interpretation</b> In this Act – “Board” means the Film and Public Entertainment Control Board established under section 3; “Censor” means the Censor of films appointed under section 13 and includes any assistant Censor appointed under that section; “Chairman” means the Chairman of the Board;

- “Chief of Police” includes any person authorised to exercise or perform any of the powers, duties, or functions of the Chief of Police;
- “exhibitor’s licence” means an exhibitor’s licence issued under section 4;
- “film” means a cinematograph film; and includes a videotape, and any other material record of visual moving images that is capable of being used for the subsequent projection of those images in a fixed sequence on to any screen; and also includes any part of any such film, and any copy or part of a copy of the whole or any part of a film;
- “film exhibition” means –
- (a) The exhibition of a cinematograph film and any part of a cinematograph film; and
  - (b) Includes the production of any music, speech or other sound whatsoever in connection with the projection of a film;
- “Minister” means the Minister of Police;
- “natural scenery” means the landscape features of nature existing in its natural state;
- “premises” includes any building, enclosure, ground or open-air space;
- “projection” means the act of presenting film on a screen by means of a cinematograph machine or other apparatus;
- “public entertainment” means any concert, dance, boxing or any other form of public entertainment whatsoever;
- “renter” means any person who supplies any film to any other person whether for financial reward or other consideration;
- “scenario” means a statement or summary of the plot and of the incidents depicted in a film.

## PART 2

### FILM AND PUBLIC ENTERTAINMENT CONTROL BOARD

#### **3 Film and Public Entertainment Control Board**

- (1) There shall be established a board, to be known as the Film and Public Entertainment Control Board.
- (2) The members of the Board shall consist of –
  - (a) The Minister who shall be the chairman;
  - (b) The Chief of Police; and
  - (c) The Secretary to the Board who shall be appointed by the Public Service Commission and who may hold any other office which the Public Service Commission considers to be not incompatible therewith.
- (3) At all meetings of the Board the Chairman, or in his absence such member as the other members may select, shall preside.
- (4) Three members of the Board shall constitute a quorum at any meeting of the Board.
- (5)
  - (a) At all meetings of the Board the decision of the majority of members present shall prevail.
  - (b) In the event of equality of votes on any decision the person presiding shall have a second or casting vote.
- (6) Subject to this Act, the Board shall regulate its own procedure.
- (7) The Board shall cause a proper record of its proceedings to be kept.
- (8) Every licence or other document issued by the Board shall be signed by the Chairman and the Secretary of the Board.



(9) The Cabinet may give the Board directions as to the policy to be adopted in the exercise of the powers and duties conferred and the duties upon the Board by or under this Act and the Board shall at all times act in compliance with such directions.

### PART 3

#### LICENSING OF EXHIBITORS

#### **4 Exhibitor's licences**

(1) Subject to subsection (7), no person shall exhibit, or cause or permit or suffer to be exhibited, any film unless he is the holder of a licence, hereinafter referred to as an exhibitor's licence, issued under this section and valid in respect of the exhibition of such film at the premises specified in such licence.

(2) Any person who exhibits, or causes or permits or suffers to be exhibited, any film in contravention of subsection (1) or in contravention of any of the terms or conditions of any exhibitor's licence shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 2 penalty units.

(3) Application for an exhibitor's licence shall be made, in the form prescribed in Schedule 1, to the Board for the area in which the premises in respect of which the licence is sought are situated.

(4) The Board may –

(a) Refuse an application for an exhibitor's licence if it is satisfied that the premises do not comply with Part 6 or if the applicant is a person who has been convicted of an offence under this Act; or

(b) Grant such a licence –

(i) generally, in which case the licence shall, unless sooner revoked or surrendered, remain in force until 31 December following the date of its issue; or

(ii) specifically, in respect of any period not exceeding 7 days as may be specified in the licence.

(5) (a) An exhibitor's licence shall be in the form prescribed in Schedule 2 and, on payment of the prescribed fee, may be granted subject to such terms and conditions as the Board considers necessary in the interests of the safety, health, and convenience of persons attending any film exhibition held under the authority of such licence.

(b) The Board may remit or waive any fee payable under this subsection in the case of any film exhibition held for any charitable, educational or public purpose.

(6) Every exhibitor's licence granted under this section shall be limited in its application so as to authorise the exhibition of films only at such premises as may be specified in such licence.

(7) Films may be exhibited without an exhibitor's licence –

(a) In any premises to which the public are not admitted, for the purpose solely of entertaining the friends or employees of the occupier where no charge whatever is made for such film exhibition; or

(b) In any hospital, nursing home, institution for the care of the aged or of children, or educational institution, where entrance to the film exhibition, is restricted to the inmates or students and the staff of such hospital, nursing home or institution; or

(c) By any charitable, philanthropic, religious, educational, social or sporting body or organisation where –

- (i) the film is exhibited to further the bona fide objects or purposes of the body or organisation, those objects or purposes being film; and
- (ii) admission to the film exhibition is restricted to the members of that body or organisation and their families; and
- (iii) the public generally is not invited by the public notice or advertisement, or by any communication of whatever nature addressed to the public at large, to attend that film exhibition; and
- (d) In any premises which are the subject of a liquor licence issued under the Liquor Act where no charge whatsoever is made for such film exhibition.

## **5 Suspension or revocation of exhibitor's licence**

- (1) An exhibitor's licence may be suspended or revoked –
  - (a) By the Board, if in its opinion the safety, health or convenience of persons attending any film exhibition held under the authority of such licence is not adequately provided for;
  - (b) By the Board, if in its opinion the quality of sound and sharpness of image of any film approved by the Censor falls below a reasonable standard for public exhibition;
  - (c) By a court, if the holder of such licence has been convicted of any offence against this Act.
- (2) In the event of an exhibitor's licence being suspended or revoked under subsection (1), the Board shall not grant any further licence to such exhibitor while such suspension or revocation remains in force.

## **6 Exhibitor's licence dispensed with in certain cases**

Notwithstanding anything contained in this Part, the Board may, if the Censor certifies that any film falls within any of the following categories, authorise in writing any person to exhibit such film in any suitable premises without an exhibitor's licence –

- (a) Films depicting wholly or mainly surgical or medical techniques and intended to be used for instructional purposes;
- (b) Films intended to be used wholly or mainly by educational institutions for educational purposes;
- (c) Films intended to be used wholly or mainly by religious organisations for purposes of religious instruction;
- (d) Films depicting wholly or mainly industrial or manufacturing processes;
- (e) Films being wholly or mainly commercial advertisements relating to the advertiser's or sponsor's activities;
- (f) Scientific films, including natural history films, intended to be used for educational purposes;
- (g) Films depicting wholly or mainly cultural, sporting or recreational activities, and intended to be used wholly or mainly by cultural, sporting or recreational organisations for instructional or educational purposes;
- (h) Films depicting wholly or mainly natural scenery.

## **7 Duties of licensee**

Every holder of an exhibitor's licence shall ensure that every film exhibition is conducted in such a manner as to provide for the safety, convenience and good order of the persons attending the film exhibition and that there is a responsible, competent and sober person operating the projector used in the premises for the purpose of the film exhibition.

PART 4  
CENSORSHIP OF FILMS

**8 Appointment of Censor**

(1) (a) The Board shall appoint a suitable person to be the Censor and such other persons as it considers necessary, to be known as assistant Censors, to assist the Censor or to act in his stead.

(b) No member of the Board may be appointed as the Censor or an assistant Censor.

(2) (a) Subject to any directions given by the Censor, every assistant Censor shall have and may exercise all or any of the powers, duties, discretion and authorities conferred upon the Censor by or under this Act.

(b) Every decision of an assistant Censor shall be signified in the name of the Censor and shall be deemed to be a decision of the Censor.

**8A Directions to the Censor**

(1) The Board may give the Censor directions as to the policy to be adopted in the exercise of the powers and duties conferred upon him by or under this Act and the Censor shall at all times act in compliance with such directions.

(2) The Board may, in giving directions to the Censor under subsection (1), place a prohibition either totally, or in respect of public or private viewing only, on films of a particular kind, or films displaying certain kinds of activities, and such a prohibition shall be binding on the Censor.

**9 Films not to be exhibited unless approved**

(1) Subject to subsection (2) no person shall exhibit any film (in public or in private) or make available for rent or exhibition any film unless and until that film has been examined and approved by the Censor.

(2) (a) The Censor, after considering the application for approval, may exempt a film from the requirements of examination and may approve it for exhibition or rent without first examining it if he has reason to believe that the film as described in the application would otherwise meet the requirements for approval.

(b) An exemption may be granted absolutely, or subject to such conditions as the Censor may impose.

(3) (a) The Censor may at any time require a film that was granted an exemption from examination under subsection (2) to be resubmitted to him for examination and if necessary classification.

(b) In any such case the earlier approval shall be deemed to be cancelled.

**10 Application for approval of film**

(1) Subject to section 14 (2) every application for the approval by the Censor of any film shall be made in writing on the form prescribed by the Censor and be accompanied by a scenario of that film and the prescribed fee.

(2) The Censor may dispense in a particular case with the requirement relating to the submission of a scenario.

**11 Examination of films by Censor**

(1) Where any film is submitted to the Censor for examination by him the Censor shall, unless he exempts the film from examination under section 9, as soon as practicable, examine the film at premises approved for such purposes by the Board.

(2) The Censor may require any film in respect of which his approval is sought under this Act to be exhibited before him for the purpose of censorship, at such time as he may determine and in a place approved by the Board for such purpose at the expense and risk of the applicant.

(3) Subject to subsection (4) in examining any film under this Act the Censor may consult any person whom he considers may be able to assist him in forming an opinion of the film on which to base his decision in respect of the film.

(4) (a) The Board may determine either generally or in respect to any particular film the eligibility of any person to be present with the Censor when he is examining a film and that decision shall be binding on the Censor.

(b) The applicant shall be entitled as of right to attend any such examination.

## **12 Powers of Censor**

(1) After examining a film for the purposes of this Part the Censor shall either –

(a) Approve the film for exhibition or rental and classify it in accordance with section 13; or

(b) Return the film to the applicant specifying the part or parts of the film that would require to be omitted or altered in order to obtain the approval of the Censor; or

(c) Refuse to approve the film for exhibition or rental.

(2) The Censor shall not refuse to approve a film for exhibition, or rental other than under a direction under section 8A, without the film having first been examined under section 11.

(3) The Censor shall not approve any film or any part of a film for public exhibition which is, in his opinion, indecent, obscene, injurious to morality or likely to encourage public disorder or crime.

## **13 Classification of film approved by Censor**

(1) The Censor shall give each film approved for exhibition or rental under section 12(1)(a) one of the following classifications –

(a) Approved for general exhibition; or

(b) Approved for exhibition to persons over the age of 13 years; or

(c) Approved for exhibition to adult audiences only; or

(d) Approved for restricted exhibition.

(2) Any film falling into subsection (1)(d) may be approved subject to –

(a) The condition that such film shall be exhibited only to a specified class or classes or description of persons; or

(b) Any other condition that the Censor may consider necessary or advisable.

(3) No person shall exhibit or cause to be exhibited any film approved under subsection (1) –

(a) In the case of a film in category (b) to any persons under the age of 13 years;

(b) In the case of a film in category (c), to any person who is not an adult;

(c) In the case of a film in category (d), except under the conditions subject to which such approval was granted.

## **14 Certificates**

(1) The Censor shall –

(a) Signify his approval of a film and the category into which he has classified it or his refusal to approve a film by a certificate prescribed in Schedule 3;

(b) Keep in his office a register of films in which shall be entered with respect to each film the several particulars set out in the certificate issued under this section and such other particulars as may be prescribed.

(2) (a) A certificate issued under subsection (1)(a) shall be valid for a period of 2 years from the date of issue.

(b) Where upon the expiry of the said period, application is again made under section 10 for the approval of the same film, no fee shall be chargeable therefor.

#### **14A Offence to mislead Censor**

Every person commits an offence and shall be liable to a fine not exceeding 2 penalty units and to forfeiture of the films involved who knowingly misleads or attempts to mislead the Censor in respect to the content of any film submitted to him for approval or provides any false information to the Censor about such a film in the application for approval or elsewhere.

#### **14B Renter's licence**

(1) No person shall rent any film to any person unless he is the holder of a renter's licence granted under this section.

(2) An application for a renter's licence shall be made to the Board on the form provided and shall be accompanied by the prescribed fee.

(3) The Board may grant such renters' licences and impose such conditions upon such licences as it considers are necessary to meet the local conditions.

(4) Subject to any conditions imposed by the Board for a shorter term, every renter's licence unless sooner revoked, or surrendered shall remain in force for one year from the date of its issue, and may upon payment of the appropriate fee be renewed at the discretion of the Board.

(5) It shall be a condition of every renter's licence that the licensed renter shall not make available for rent any film that has not been approved by the Censor and shall comply with all conditions imposed by the Censor in respect of every film made available for rent.

(6) Any person who rents a film, or causes or permits or suffers to be rented any film in contravention of this section, or in contravention of any terms or conditions of a renter's licence shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 2 penalty units and where applicable to loss of the renter's licence for such period as the Court thinks fit, and to forfeiture of the films involved.

### **PART 5**

#### **CONDUCT OF FILM EXHIBITIONS AND PUBLIC ENTERTAINMENTS**

#### **15 Film exhibition restriction**

(1) It shall be unlawful to exhibit, or cause or permit or suffer to be exhibited any film except as provided in this section.

(2) A film exhibition, not being a film exhibition for educational purposes only, may be given in villages or Alofi on any night of the week except Sunday.

(3) With the written consent of the Chief of Police a special film exhibition suitable for children may be given, either in Alofi or any village, on any night or afternoon to be stated in such consent.

(4) A film exhibition for educational purposes may be authorised by the Chief of Police in any village at any time during school hours; and at night in any village provided that in respect of any one village not more than one such film exhibition may be so given each week, and that no such film exhibition shall be given in any village on any night on which a film exhibition is being given in that village by a licensed exhibitor.

**16 Children under 12 years**

Except as provided by section 15(3), no child under 12 years of age shall be taken or admitted to any film exhibition held at night except on a Friday and Saturday night.

**17 Disqualified exhibitor**

Any licensed exhibitor who is disqualified from holding a licence under this Act shall be deemed to be disqualified from taking any active part in a film exhibition either as lecturer, raconteur, or in any capacity whatsoever.

**18** [Repealed]

**19 Late night entertainment prohibited**

No film exhibition or public entertainment conducted in any hall, building or public place in Niue shall be continued after midnight without the prior written permission of the Board.

**20 Excessive noise prohibited**

It shall not be lawful for any person conducting or having the control of any film exhibition or public entertainment to permit such film exhibition or public entertainment to inconvenience any person not attending or to unnecessarily disturb the peace.

**21 Public entertainment restriction**

It shall not be lawful for any person to conduct or allow to be conducted without the written permission of the Board any film exhibition or public entertainment on Sunday.

**22 No liquor near entertainment places**

It shall not be lawful for any person to serve, consume, or be in possession of any intoxicating liquor in or in the vicinity of any building used for the film exhibition or public entertainment unless the said building is licensed and has been granted approval by the Liquor Board to sell liquor in conjunction with the said film exhibition or public entertainment.

**23 Penalty**

Any person acting in contravention of this Part commits an offence and is liable to a fine not exceeding 0.5 penalty units.

PART 6

PLACES OF ENTERTAINMENT

**24 Licensed premises**

(1) No premises shall be used for any film exhibition or public entertainment unless they are licensed under this section.

(2) The Board shall have authority to license premises for any film exhibition or public entertainment and before it issues a licence in respect of such building it shall have regard to the following –

- (a) That the premises are provided with an adequate number of exits clearly indicated and so placed and maintained as to readily afford the patrons ample means of egress;
- (b) That the doors of all exits are so constructed and maintained as to easily open outwards on being pressed from within;
- (c) That the furniture in the premises is so arranged as not to interfere with the free access to the exits;



- (d) That fire appliances suitable to the character of the building are provided and maintained in good working order to the satisfaction of the Chief of Police;
- (e) That the electrical work, apparatus and appliances are installed and maintained in accordance with the standard prescribed by the Electric Power Supply Act and any regulations made under it;
- (f) That adequate toilet facilities for the use of the patrons are supplied to the satisfaction of the Director of Health; and
- (g) That the premises are properly ventilated, kept clean and maintained to the satisfaction of the Director of Health.

(3) (a) A licence granted under this section may be granted in respect of a particular date or dates, or for a period of time not exceeding one year, and may be granted in respect of public entertainment generally, or for one or more particular types of public entertainment.

- (b) A licence shall also specify the particular premises at which the public entertainment shall occur, and may be granted subject to such terms and conditions as the Board may determine. (4) The Board may delegate its functions under this section to one or more of its members, and may at any time revoke such delegation.

## **25 Attendance of responsible persons**

(1) In order to ensure the safety of the patrons, the person conducting or having control of any film exhibition or public entertainment, or some responsible person nominated by him for the purpose, shall be present on the premises during the whole time of any film exhibition or public entertainment.

(2) All persons responsible for or employed in or in connection with any film exhibition or public entertainment shall take due precautions for the prevention of accidents.

## **PART 7**

### **GENERAL PROVISIONS**

## **26 Supervision and control by police**

(1) All film exhibitions or public entertainment shall be subject to the supervision and control by the Chief of Police.

(2) A constable at all reasonable times may enter any building in which he has reason to believe that a film exhibition or public entertainment is being or is about to be given with a view to seeing whether the provisions of this Act and the conditions of any permission granted under this or any other Act have been or are being complied with.

## **27 Hindering or obstructing officers**

Every person commits an offence who prevents the Chief of Police or any constable from carrying out this Act or who obstructs or hinders the Chief of Police or any constable in the exercise of any power or function conferred on him by or under this Act.

## **28 Offences**

Any person who conducts or in any way assists in conducting any film exhibition or public entertainment in contravention of this Act or of any conditions or restriction specified in any licence or any permission granted under this Act shall be guilty of an offence.



**29 General penalty**

(1) Every person who commits an offence against this Act or against any regulations made under this Act for which no penalty is provided elsewhere than in this section shall be liable on conviction to a fine not exceeding 2 penalty units.

(2) Where any person who is the holder of a licence under section 24 has breached any provision of Parts 5, 6 or 7 or a term or condition of any licence issued under section 24, the Court may, in addition to any other penalty prescribed by law, and after taking into account the views of the Board, and of the licensee, either –

- (a) Suspend such licence for such period (not exceeding one month) as the Court thinks fit, or
- (b) For a second or subsequent offence, and if it is necessary in the public interest, revoke such licence.

**30 Proceedings before High Court**

All proceedings under this Act for the recovery of any penalty shall be taken before the Court.

**31 Fees and penalties**

All fees paid and penalties recovered under this Act shall be paid into the Treasury, and shall form part of the general revenue of the Government.

**32 Regulations**

The Cabinet may, after consultation with the Board, make regulations for all or any of the following purposes –

- (a) Prescribing any fees payable under this Act;
- (b) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

**33 [Spent]**

SCHEDULE 1

Section 4(3)

APPLICATION FOR A LICENCE TO EXHIBIT FILMS

To the Secretary, Film and Public Entertainment Control Board,  
Application is hereby made for a licence to exhibit films in accordance with the following particulars –

- 1. Name of applicant.....
- 2. Occupation: .....
- 3. Address: .....
- 4. Location of premises where licence is sought: .....
- 5. Full description of premises (e.g. hall, building or not): .....
- .....
- .....

Film and Public Entertainment Act

6. Size and nature of premises (state whether licensed or not): .....

7. Proposed days and hours of operation: .....

.....

.....

8. Proposed charges: .....

SIGNED by or on behalf of the Applicant:

Signature: .....

Date: .....

FOR OFFICE USE ONLY

Application No:..... Date received.....

Previous Applications: .....GRANTED/REFUSED

Date this application presented to Board: .....

This application: GRANTED/REFUSED

Terms on which licence granted: .....

.....

.....

.....

.....

Fee payable:

\_\_\_\_\_

SCHEDULE 2  
Section 4(5)  
EXHIBITOR'S LICENCE

..... having paid the prescribed  
fee of \$20, is hereby licensed to give film exhibitions in Niue, subject to the following conditions –

.....

.....

.....

Niue Legislation 2019

.....  
.....

Secretary..... Chairman .....

This licence expires on 31 December 20 ; but it may be revoked by the Board at any time if, in its opinion, the licensee has acted in a manner unfitting him to hold a licence or the licensee contravenes of the conditions laid down in this licence.

-----  
SCHEDULE 3  
Section 14(1)(a)  
APPROVAL CERTIFICATE OF CENSOR

Niue, ..... 20 .....

SUBJECT to the undermentioned conditions, the film

.....submitted by

..... is hereby approved for exhibition in Niue.

Conditions

.....  
.....  
.....  
.....



- (b) allows withdrawals of currency;
  - (c) pays cheques or payment orders drawn on the financial institution, or collects cheques or payment orders on behalf of a person other than the financial institution;  
and includes any facility or arrangement for a safety deposit box or for any other form of safe deposit;
- “Attorney-General” has the same meaning as in section 2 of the Proceeds of Crime Act 1998;
- “cash” means any coin or paper money that is designed as legal tender in the country of issue, and includes bearer bonds, traveller’s cheques, postal notes, and money orders;
- “customer” means anyone to whom a financial service is rendered;
- “Department” means either:
- (a) The Office of the Attorney-General; or
  - (b) Any other Department or Office of the Executive Government of Niue if that other Department or Office is, with the authority of the Premier of Niue, for the time being responsible for hosting and supporting the Unit;
- “financial institution” has the meaning given by section 3;
- “financing of terrorism” means an offence against section 7 of the Terrorism Suppression and Transnational Crimes Act 2006;
- “Minister” means the Minister for Finance;
- “money laundering offence” means an offence within the terms of sections
- “prescribed” means prescribed by regulations made under this Act;
- “serious offence” has the same meaning as in section 4 of the Proceeds of Crimes Act 1998;
- “supervisory authority”:
- (a) means a person within the Public Service designated as the “Bank Supervisor”
  - (b) in relation to a financial institution that is a company incorporated under the Companies Act 2006 includes the Registrar (as defined in Part 13 of that Act);  
and
- “suspicious transaction report” means a report prepared under section 8;
- “transaction” has the meaning given by section 4;
- “Unit” means the Financial Intelligence Unit established under Part 5.

### **3 Meaning of financial institution**

For the purposes of this Act and every other enactment of Niue, each of the following is a “financial institution”:

- (a) A bank, being:
  - (i) a registered bank as defined in section 2 of the Niue Bank Act 1994; or
  - (ii) the Niue Bank constituted or established by section 4 of the Niue Bank Act 1994; or
  - (iii) any other person, partnership, corporation, or company carrying on in Niue the business of banking;
- (aa) an approved agent within the meaning of section 84A of the Niue Bank Act 1994;
- (b) A person carrying on the business:
  - (i) as a trustee in respect of funds of other persons; or
  - (ii) as a trust or company service provider;
- (c) A person carrying on a business of an insurer, an insurance intermediary, a securities dealer, or a futures broker;

## Financial Transactions Reporting Act

- (d) A person (other than a person mentioned in paragraph (a), (b), or(c)) carrying on a business of:
  - (i) exchanging money; or
  - (ii) collecting, holding, exchanging, or remitting funds, or otherwise negotiating funds transfers, on behalf of other persons; or
  - (iii) preparing pay-rolls on behalf of other persons, in whole or in part, from funds collected; or (iv) delivering funds (including payrolls):
- (e) A person carrying on a business of:
  - (i) issuing, selling or redeeming traveller's cheques, money orders, or similar instruments; or
  - (ii) collecting, holding, cashing in, remitting and delivering cash as part of a business or providing payroll services;
  - (iii) dealers in precious metals and dealers in precious stones when they engage in any transaction with a customer equal to or above \$10,000 or its equivalent in foreign currency; or
  - (iv) acting as agents for clients in the buying and selling of real estate; or
  - (v) casinos or gambling houses, including a person who carries on that business through the internet, when their customers engage in transactions equal to or above \$10,000 or its equivalent in foreign currency:
- (f) A lawyer, a notary, an independent legal professional and an accountant when they prepare for or carry out transactions for their client relating to any of the following activities:
  - (i) buying and selling real estate, businesses, and business entities;
  - (ii) managing client money, securities, or other assets;
  - (iii) managing bank, savings, or securities accounts, including the crediting or debiting of accounts or causing this to be done;
  - (iv) organising contributions for the creation, operation or management of companies, legal persons or arrangements;
- (g) Renting of a safe deposit box;
- (h) Any other person prescribed by regulations.

#### **4 Meaning of transaction**

For the purposes of this Act, a "transaction" includes:

- (a) The opening of an account;
- (b) A deposit withdrawal, exchange, or transfer of funds (in any currency) whether —
  - (i) in cash; or
  - (ii) by cheque, payment order, or other instrument; or
  - (iii) by electronic or other non-physical means;
- (c) The use of a safety deposit box or any other form of safe deposit;
- (d) Entering into a fiduciary relationship;
- (e) A payment made in satisfaction, in whole or in part, of a contractual or other legal obligation;
- (f) The use of trust or company services;
- (g) Any other transactions prescribed by regulations.

#### **5 Application**

(1) This Act applies in relation to a transaction conducted through a financial institution.

(2) A financial institution must comply with the requirements of this Act despite an obligation as to secrecy, or other restriction on the disclosure of information, and regardless of whether that obligation or restriction is imposed by law (for example, by any other enactment) or otherwise.

## PART 2

### OBLIGATION TO REPORT

#### **6 Financial institution to report financial transaction**

(1) A financial institution must report each of the following to the Unit in writing (which may be given by way of electronic mail) or in any other form and manner that may be approved by the Minister:

- (a) A transaction of an amount in cash that exceeds \$10,000 or its equivalent in foreign currency, or any other amount that may be prescribed, in the course of a single transaction, unless the recipient and the sender is a financial institution;
- (b) The sending out of Niue at the request of a customer of any electronic funds transfer that exceeds \$10,000 or its equivalent in foreign currency, or any other amount that may be prescribed, in the course of a single transaction;
- (c) The receipt from outside Niue of an electronic funds transfer, sent at the request of a customer, of an amount that exceeds \$10,000 or its equivalent in foreign currency, or any other amount that may be prescribed, in the course of a single transaction.

(2) Subsection (1) (b) does not apply when the financial institution sends an electronic funds transfer to a person or entity in Niue, even if the final recipient is outside Niue.

(3) Subsection (1) (c) does not apply when the financial institution receives an electronic funds transfer from a person or entity in Niue, even if the initial sender is outside Niue.

(4) If a financial institution fails, without reasonable excuse, to comply with subsection (1), the financial institution is guilty of an offence punishable on conviction:

- (a) In the case of an individual - by a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or
- (b) In the case of a body corporate - by a fine not exceeding 10,000 penalty units.

#### **7 Offence to conduct transactions for purpose of ensuring no report made under section 6**

(1) A person commits an offence, and is liable on conviction to the penalty stated in subsection (3), if –

- (a) The person conducts 2 or more transactions or electronic funds transfers that are of an amount below the relevant threshold set out in section 6(1); and
- (b) It may reasonably be concluded, having regard to the matters specified in subsection (2), that the person conducted the transactions or transfers in that manner or form for the sole or dominant purpose of ensuring, or attempting to ensure, that no report in relation to the transactions or transfers would be made under section 6(1).

(2) The matters referred to in subsection (1) are –

- (a) The manner and form in which the transactions or transfers were conducted, including, without limitation, all or any of the following –
  - (i) the value of the currency involved in each transaction or transfer;
  - (ii) the aggregated value of the currency involved in the transactions or transfers;
  - (iii) the period of time over which the transactions or transfers occurred;



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- (iv) the interval of time between any of the transactions or transfers;
- (v) the locations at which the transactions or transfers were initiated or conducted; and
- (b) Any explanation made by the person as to the manner or form in which the transfers were conducted.
- (3) The penalty referred to in subsection (1) is –
  - (a) In the case of an individual - a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or
  - (b) In the case of a body corporate - a fine not exceeding 10,000 penalty units

### PART 3

#### OBLIGATION TO REPORT SUSPICIOUS TRANSACTIONS

#### **8 Financial institutions to report suspicious transactions**

(1) If –

- (a) A person conducts or seeks to conduct any transaction through a financial institution (whether or not the transaction or proposed transaction involves cash); and
- (b) The financial institution has reasonable grounds to suspect that the transaction or proposed transaction is or may be relevant to –
  - (i) the investigation or prosecution of any person for a money laundering offence, financing of terrorism, or any other serious offence; or
  - (ii) the enforcement of the Proceeds of Crime Act 1998,

the financial institution must prepare a report of the transaction or proposed transaction and give the report to the Unit as soon as possible, but no later than two working days after forming the suspicion.

(2) If a financial institution fails without reasonable excuse to comply with subsection (1), the financial institution is guilty of an offence punishable on conviction

- (a) In the case of an individual - by a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or
- (b) In the case of a body corporate - by a fine not exceeding 10,000 penalty units.

(3) A suspicious transactions report must –

- (a) Be in writing and may be given by electronic mail or by any other approved form and manner; and
- (b) Contain the details specified in the Schedule; and
- (c) Contain a statement of the grounds on which the financial institution holds the suspicion; and
- (d) Be signed or otherwise authenticated by the financial institution.

(4) A financial institution that has given a suspicious transaction report to the Unit must –

- (a) Automatically monitor other transactions of the customer who produced a suspicious transactions report, and report any further suspicions found; and
- (b) Provide to the Unit any further information that it has about the transaction or proposed transaction or information sent to the Unit as soon as possible and, in any event, within two working days.

(5) If a financial institution fails without reasonable excuse to comply with subsection (4), the financial institution is guilty of an offence punishable on conviction

- (a) In the case of an individual - by a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or

- (b) In the case of a body corporate - by a fine not exceeding 10,000 penalty units

## **9 Supervisory authority or auditor to report certain suspicious transactions**

A supervisory authority or auditor of a financial institution must report the information that it has about a transaction or attempted transaction (“the relevant information”) to the Unit if the authority or auditor suspects on reasonable grounds that the relevant information may be

- (a) Of assistance in the enforcement of the Proceeds of Crime Act 1998; or
- (b) Relevant to the detection, investigation, or prosecution of –
  - (i) a money laundering offence; or
  - (ii) financing of terrorism; or
  - (iii) a serious offence; or
- (b) Related to the commission of –
  - (i) a money laundering offence; or
  - (ii) financing of terrorism; or
- (c) Evidence of preparations by a person or persons for the commission of financing of terrorism.

## **10 Disclosure of suspicious transaction reports**

(1) A financial institution must not disclose to any person that the financial institution –

- (a) Is contemplating making a suspicious transaction report; or
- (b) Has given a suspicious transaction report to the Financial Intelligence Unit; unless required to do so under this Act or any other Act.

(2) If a financial institution contravenes subsection (1), the financial institution is guilty of an offence punishable on conviction –

- (a) In the case of an individual - by a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or
- (b) In the case of a body corporate - by a fine not exceeding 10,000 penalty units

(3) Nothing in this section prevents the disclosure of any information contained in a suspicious transaction report in connection with, or in the course of, proceedings before a court.

(4) Subsection (1) does not apply to disclosures made –

- (a) To an officer or employee or agent of the financial institution, for a purpose connected with the performance of that person’s duties; or
- (b) To a barrister or solicitor, for the purpose of obtaining legal advice or representation in relation to the matter; or
- (c) To the supervisory authority of the financial institution, for the purposes of carrying out the supervisory authority’s functions.

(5) No person referred to in subsection (4)(b) to whom disclosure of any information to which that subsection applies has been made may disclose that information except to another person of the kind referred to in that subsection for the purpose of –

- (a) The performance of the first-mentioned person’s duties; or
- (b) Obtaining legal advice, or representation in relation to the matter.

(6) No person referred to in subsection (4)(c) to whom disclosure of any information to which that subsection applies has been made may disclose that information except to a person referred to in that subsection for the purpose of giving legal advice or making representations in relation to the matter.

**11 Restrictions on disclosure of certain information**

(1) This section applies to information that will identify, or is likely to identify, any of the following –

- (a) A person who has handled a transaction report in respect of which a suspicious transaction report has been made;
- (b) A person who has prepared a suspicious transaction report;
- (c) A person who has made a suspicious transaction report;
- (d) Any information contained in a suspicious transaction report or information provided under section 8(4).

(2) A person must not disclose the information except for any of the following purposes –

- (a) The enforcement of the Proceeds of Crimes Act 1998; or
- (b) The detection, investigation, or prosecution of -
  - (i) a money laundering offence; or
  - (ii) financing of terrorism; or (iii) a serious offence.

(3) No person may be required to disclose any information to which this section applies in any judicial proceedings unless the Judge or other presiding officer is satisfied that the disclosure of information is necessary in the interests of justice.

(4) A person who discloses information in contravention of this section is guilty of an offence punishable, on conviction, by a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

(5) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of an offence against section 10(2).

**12 Protection of persons reporting suspicious transactions**

(1) No civil, criminal, or disciplinary proceedings may be taken against –

- (a) A financial institution; or
- (b) An officer, employee, or agent of the financial institution acting in the course of that person's employment or agency;

in relation to any action by the financial institution or the officer, employee or agent taken in good faith under section 8.

(2) Subsection (1) does not apply in respect of proceedings for an offence against a section in this Part.

**13 Other preventative measures by financial institutions**

(1) A financial institution must appoint a compliance officer to be responsible for ensuring the financial institution's compliance with the requirements of this Act.

(2) The requirement in subsection(1) does not apply to an individual who, in the course of carrying on his or her business, does not employ, or act in association with, any other person.

(3) A financial institution must establish and maintain internal procedures–

- (a) To screen prospective officers or employees of the institution to ensure, so far as practicable, that those persons do not have criminal backgrounds and, in particular, to ensure that they have had no involvement of any kind in money laundering or financing of terrorism; and
- (b) To make the institution's officers and employees aware of the laws in Niue about money laundering; and

- (c) To make the institution's officers and employees aware of the procedures, policies, and audit systems adopted by the institution to deal with money laundering; and
  - (d) To train the institution's officer and employees to recognise and deal with money laundering.
- (4) A financial institution must prepare a written statement of the institution's internal procedures and submit it to the Unit –
- (a) In the case of a financial institution carrying on business when this Act commences, within 3 months after that commencement; or
  - (b) In the case where an existing written statement has been updated, within 2 working days; or
  - (c) In any other case, within 3 months after the financial institution starts to carry on business.
- (5) The supervisory authority of a financial institution must –
- (a) Examine and supervise the financial institution to ensure compliance with this Act; and
  - (b) Adopt any necessary measures to prevent any person who is unsuitable from controlling or participating, directly or indirectly, in the directorship, management, or operation of the financial institution; and
  - (c) Co-operate with law enforcement agencies and the Unit, within or outside Niue, in any investigation, proceedings or prosecutions relating to money laundering, financing of terrorism or any other serious offence.

#### PART 4

##### OBLIGATIONS TO KEEP RECORDS AND VERIFY IDENTITY

#### **14 Financial institutions to keep records of transactions**

(1) A financial institution must keep the records of every transaction that is conducted through the financial institution that are reasonably necessary to enable the transaction to be readily reconstructed at any time by the Unit.

(2) Without limiting subsection (1), those records must contain the following information –

- (a) The nature of the transaction;
- (b) The amount of the transaction and the currency in which it was denominated;
- (c) The date on which the transaction was conducted;
- (d) The parties to the transaction;
- (e) The place and time of the transaction;
- (f) The nationality of the parties to the transaction;
- (g) Details of any natural person's valid passport, drivers licence, or official identification;
- (h) Details of any legal entity's constitution, if not older than 3 months.

(3) The records required by subsection (1) must be kept for at least 6 years after whichever of the following dates applies –

- (a) If the transaction involves an account or is part of a business relationship, the date on which the account is closed or the business relationship ceases; and
- (b) In any other case, whichever is the later of the following dates –
  - (i) the date on which the financial institution last obtained information identifying the parties to the transaction; or
  - (ii) the date on which the financial institution last received or sent correspondence relating to the transaction; or
  - (iii) the date of the transaction.

(4) If a financial institution contravenes subsection (1) or (3), the financial institution is guilty of an offence punishable on conviction –

- (a) In the case of an individual - by a fine not exceeding 250 penalty units or imprisonment for a term not exceeding 2 years, or both; or
- (b) In the case of a body corporate - by a fine not exceeding 1000 penalty units

**15 Financial institutions to verify customers' identity**

(1) When establishing a business relationship or conducting a transaction with a person, a financial institution must, before carrying out the transaction, verify the identity of the person on the basis of any official or other identifying document or other evidence that is reasonably capable of verifying the identity of the person.

(2) Without limiting the generality of subsection (1) –

- (a) If the person is a legal entity, a financial institution must adequately verify its legal existence and structure, including information relating to –
  - (i) the person's name, legal form, address, and directors; and
  - (ii) the principal owners and beneficiaries; and
  - (iii) provisions regulating the power to bind the entity, provisions to verify that persons purporting to act on behalf of the customer are so authorised, and provisions to identify those persons; and
- (b) If the person is a politically exposed person, the financial institution must –
  - (i) adequately identify and verify the person's identity as set out in this section; and
  - (ii) have appropriate risk management systems to determine whether the customer is a politically exposed person; and
  - (iii) obtain approval of senior management before establishing a business relationship with the person; and
  - (iv) take reasonable measures to establish the source of wealth and funds of the person; and
  - (v) conduct regular and ongoing enhanced monitoring of the business relationship; and
- (c) The financial institution must prescribe the official or identifying document required for the verification of any particular person or class of person.

(3) A financial institution must take reasonable measures to ascertain the purpose of any transaction and the origin and ultimate destination of the funds involved in that transaction.

(4) If a person conducts a transaction through a financial institution and the financial institution has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person or persons, then, in addition to complying with subsections (1), (2), and (3), the financial institution must verify the identity of the other person or persons for whom, or for whose ultimate benefit, the transaction is being conducted.

(5) If a financial institution contravenes any of subsections (1) to (4), the financial institution is guilty of an offence punishable on conviction –

- (a) In the case of an individual – by a fine not exceeding 250 penalty units or imprisonment for a term not exceeding 2 years, or both; or
- (b) In the case of a body corporate – by a fine not exceeding 1000 penalty units.

(6) Subsection (1) or (2) may be waived in each of the following circumstances –

- (a) If the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity or, depending on the transaction profile, if the transaction is a low risk bulk and

regular transaction of institutions like utilities, pension funds and treasury, unless the financial institution has reason to suspect that the transaction is suspicious or unusual, or if the financial institution has reason to doubt the accuracy or veracity of previously obtained information about the identity of the person;

- (b) If the transaction is an occasional transaction not exceeding 1000 penalty units or its equivalent in foreign currency or any other amount that may be prescribed, unless the financial institution has reason to suspect that the transaction is suspicious or unusual;
- (c) any other circumstances that may be prescribed.

(7) For the purposes of subsection (6), “occasional transaction” means any transaction involving cash that is conducted by any person otherwise than through an account in respect of which the person is the holder.

## **16 Identification required to conduct business**

If satisfactory evidence of the customer’s identity is not produced to, or obtained by, a financial institution under section 15, the financial institution must not proceed any further with the transaction unless directed to do so by the Unit.

## **17 Financial institutions to keep records relating to customers**

(1) A financial institution must keep –

- (a) If evidence of a person’s identity (“the identified person”) is obtained under section 15, a record that indicates the kind of evidence that was obtained, and comprises either a copy of the evidence or information that enables a copy of it to be obtained; and
- (b) A record of all correspondence between the identified person and the financial institution.

(2) The records referred to in subsection(1) must be kept for at least 6 years after whichever of the following dates applies –

- (a) If the transaction involves an account or is part of a business relationship, the date on which the account is closed or the business relationship ceases; and
- (b) In any other case, whichever is the later of the following dates:
  - (i) the date on which the financial institution last obtained evidence of a person’s identity; or
  - (ii) the date on which the financial institution last received correspondence from, or sent correspondence to, the identified person; or
  - (iii) the date of the transaction.

(3) If a financial institution contravenes subsection (1) or (2), the financial institution is guilty of an offence punishable on conviction –

- (a) In the case of an individual – by a fine not exceeding 250 penalty units or imprisonment for a term not exceeding 2 years, or both; or
- (b) In the case of a body corporate – by a fine not exceeding 1000 penalty units.

## **18 Financial institutions to monitor transaction**

(1) A financial institution must pay special attention to the following if they have no apparent or visible economic or lawful purpose –

- (a) Transactions that are complex, large, or unusual;
- (b) Unusual patterns of transactions.

(2) A financial institution must pay special attention to the following –



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- (a) Business relationships and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or the financing of terrorism;
- (b) Wire transfers that do not contain complete originator information.
  - (3) In relation to subsections (1) and (2), a financial institution –
    - (a) Must examine as far as possible the background and purpose of the transactions or business relations and record its findings in writing; and
    - (b) On request, must make available those findings to the Unit or to a law enforcement agency to assist the Unit or agency in an investigation relating to any of the following offences:
      - (i) a money laundering offence;
      - (ii) a serious offence;
      - (iii) financing of terrorism.

### **19 Financial institutions to include originator information with funds transfers**

A financial institution must include accurate originator information on electronic funds transfers and on any other form of funds transfers and that information must remain with the transfers, except where –

- (a) The electronic funds transfers or any other form of funds transfer result from a transaction carried out using a credit card or debit card, and provided that the credit or debit card number is included in the information accompanying the transfers (except in the case where the credit or debit card is used as a means of payment to effect the electronic funds transfers or any other form of funds transfer, where the requisite originator information must be included and is to remain with the transfers); or
- (b) The electronic funds transfers are transfers or settlements between financial institutions, and where the originator and beneficiary of the transfers are acting on their own behalf.

## PART 5

### FINANCIAL INTELLIGENCE UNIT

### **20 Establishment of Financial Intelligence Unit**

- (1) The Financial Intelligence Unit is hereby established.
- (2) The Unit operates within the Department.

### **21 Functions and powers of the Unit**

- (1) The Unit has the following functions –
  - (a) To receive and analyse suspicious transactions reports and any other information given to, or obtained by the Unit; and
  - (b) To disseminate information based on reports received under paragraph (a) –
    - (i) to the Department; and
    - (ii) if the Attorney-General considers it appropriate, to the police, a law enforcement agency (whether within or outside Niue), or a supervisory body outside Niue; and
  - (c) To conduct examinations to ensure compliance with this Act by financial institutions; and
  - (d) To receive information from, and otherwise assist, the Department the police, a law enforcement agency (whether within or outside Niue), or a supervisory body outside Niue, in relation to –



- (i) the detection, investigation or prosecution of a money laundering offence, financing of terrorism, or a serious offence; or
  - (ii) the enforcement of the Proceeds of Crime Act 1998; and
  - (e) to issue guidelines to financial institutions in relation to transaction record keeping and reporting obligations and measures to prevent the misuse of the financial institutions; and
  - (f) to provide training programmes for financial institutions about transaction record keeping and reporting obligations; and
  - (g) to prepare and present an annual report to the Niue Assembly.
- (2) The Unit may collect, free of charge and at the Unit's request, any information the Unit considers relevant to money laundering, financing of terrorism, and serious offences, whether or not that information is publicly available, including information that is collected or maintained in databases maintained by the Government.
- (3) The head of the Unit is responsible for ensuring that the Unit performs its functions properly, efficiently, and effectively, and must report to the Minister of Finance quarterly.
- (4) The Public Service Commission must appoint –
- (a) The Attorney-General or another employee of the Niue Public Service as the head of the Unit (who may exercise and perform the functions, powers, and duties of a member of the Unit, and report to the Minister); and
  - (b) Employees of the Niue Public Service as members of the Unit (who report to the head of the Unit).
- (5) Until an appointment is made under subsection (4) the Attorney-General must be taken to have been appointed under that subsection as the head of the Unit.
- (6) A member of the Unit –
- (a) May enter the premises of any financial institution during ordinary business hours to inspect any records kept by the institution under Part 4, and make notes and take copies of the whole or any part of the record; and
  - (b) May send any information derived from that inspection to the organisations mentioned in paragraph (1) (b); and
  - (c) May analyse and assess all reports and information; and
  - (d) May direct any financial institution or Government institution to take appropriate steps to facilitate any investigation being conducted by the Unit.

## **22 Agreements for information exchange with outside agencies**

- (1) In this section “agreement” means an agreement or arrangement in writing that relates to the exchange of information between the Unit and any law enforcement agency or supervisory body outside Niue.
- (2) The Unit may, with the Minister's approval, enter into an agreement with any of the following –
- (a) An institution or an agency of a foreign State, or an international organisation established by Governments of foreign states, that has powers and duties similar to those of the Unit;
  - (b) Any other law enforcement agency or supervisory body outside Niue.
- (3) The agreement must restrict the use of information to purposes relevant to the detection, investigation, or prosecution of –
- (a) A money laundering offence; or
  - (b) A serious offence;
  - (c) Financing of terrorism; or
  - (d) An offence that is substantially similar to an offence referred to in any of paragraphs (a) to (c).

(4) The agreement must also stipulate that the information must be treated in a confidential manner and must not be further disclosed without the express consent of the Unit or the relevant law enforcement agency or supervisory body outside Niue.

### **23 Search warrants**

(1) A member of the Unit may apply to a Judge of the High Court for a warrant –

- (a) To enter premises belonging to, or in the possession or control of, a financial institution or of any officer or employee of the institution; and
- (b) To search the premises and remove any document, material, or thing on the premises.

(2) The Judge must grant the application if he or she is satisfied that there are reasonable grounds for believing that –

- (a) The financial institution has failed to keep a transaction record or report a suspicious transaction as required by this Act; or
- (b) An officer or employee of a financial institution is committing, has committed, or is about to commit, a money laundering offence.

### **24 Secrecy provision**

(1) This section applies to a person while the person is, or after the person ceases to be, an officer, employee, or agent of the Unit, of the Department, or of the police.

(2) The person must not, directly or indirectly, divulge or communicate to any other person, or make a record of –

- (a) Any information contained in a suspicious transaction report; or
- (b) Any information provided under section 21(1)(d) or any other provision of this Act; or
- (c) Any other sensitive information to which the person is or was directly or indirectly privy to in the carrying out of the tasks of the Unit;

except for one or more of the following purposes –

- (d) The detection, investigation or prosecution of a money laundering offence, financing of terrorism or any other serious offence;
- (e) The enforcement of the Proceeds of Crime Act 1998;
- (f) The exercise or performance of the person's functions, powers, or duties under this Act;
- (g) Obtaining of legal advice or representation in relation to the matter.

(3) Despite subsection (2)(b), nothing in this section applies to information disclosed to a person under section 25 or section 26.

(4) If a person contravenes subsection (2) that person is guilty of an offence punishable on conviction by a fine of not more than 200 penalty units or imprisonment for a term not exceeding 2 years or both.

### **25 Direction to disclose information**

(1) The Attorney-General may issue a direction to the person in charge of a financial institution, Government department, or statutory body requiring that person to disclose to the Attorney-General, or to a police officer nominated by the Attorney-General in the direction, a document or other information –

- (a) That is not readily available to the public; and
- (b) To which that person may reasonably have access, or that is in the possession or under the control of that person.

(2) However, the Attorney-General may issue the direction only if satisfied that the document or other information is relevant to any or all of the following purposes:

- (a) The enforcement of this Act;
- (b) The detection, investigation, or prosecution of –
  - (i) a money laundering offence;
  - (ii) financing of terrorism;
  - (iii) a serious offence.

(3) The direction must be complied with by the person to whom it is issued, and applies notwithstanding any provision in any other law.

## **26 Secrecy of information disclosed under direction**

(1) No person to whom information has been disclosed under a direction under section 25 must, directly or indirectly, divulge or communicate to any other person, or otherwise further disclose, or make a record of, the information, except for any or all of the following purposes –

- (a) the enforcement of this Act;
- (b) the detection, investigation, or prosecution of –
  - (i) a money laundering offence;
  - (ii) financing of terrorism;
  - (iii) a serious offence.

(2) A person to whom information has been disclosed in accordance with subsection (1) or with this subsection must not disclose the information to another person except for a purpose referred to in subsection (1)(a) or (b).

(3) Where information is communicated to a person under a direction under section 25 or subsection (1) or (2), the person –

- (a) Must not voluntarily give the information in evidence in a proceeding before the Court other than a proceeding for a purpose referred to in subsection (1)(a) or (b); and
- (b) Must not be required to communicate the information to the Court.

(4) A person who discloses information in contravention of this section is guilty of an offence punishable, on conviction, by a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

## **27 Evidential value of copies**

(1) If a document is examined or provided pursuant to a direction under section 25 –

- (a) The person by whom it is examined or to whom it is provided, or any officer or person authorised for the purpose by the recipient of the direction, may make or cause to be made one or more copies of the document; and
- (b) A certified copy of the document is evidence of the nature and content of the original document, and has the same probative force as the original document would have had if it had been proved in the ordinary way.

(2) In subsection (1) –

“certified copy of the document”, in relation to a document examined or provided pursuant to a direction under section 25, means a copy of the document purporting to be certified –

- (a) By the recipient of the direction; and
- (b) As a copy made pursuant to this section; and

“recipient of the direction” means the person in charge of the relevant financial institution, Government department, or statutory body.

**28 Protection of persons complying with directions**

- (1) This section applies to an action taken –
- (a) In compliance or purported compliance with a direction under section 25; and
  - (b) By an officer, employee, or agent of a financial institution, Government department, or statutory body acting in good faith and in the performance of that person's functions, powers, or duties, or in the course of that person's employment or agency.
- (2) No civil or criminal proceedings may be taken, in relation to the action, against either or both of the officer, employee, or agent, and the financial institution, Government department, or statutory body.
- (3) Nothing in this section prevents proceedings to enforce compliance with a direction under section 25.

**29 Immunity**

No action lies against any of the following for anything done in good faith in the exercise or performance, or purported exercise or performance, of any function, power, or duty under this Act –

- (a) The Attorney-General;
- (b) The head or any member of the Unit;
- (c) Any agent or employee of the Unit;
- (d) Any person acting at the direction of the head of the Unit.

PART 6

CURRENCY REPORTING AT THE BORDER

**30 Certain cash and instruments to be reported**

- (1) An individual who arrives in, or is leaving, Niue with more than the prescribed sum in cash or negotiable bearer instruments (as defined in section 31(1)) on his or her person, or in his or her luggage, must make or cause to be made to a Customs officer a report that complies with subsection (3) and, if the individual fails to do so, he or she is guilty of an offence punishable on conviction by a fine of not more than 20 penalty units.
- (2) Until another sum is prescribed instead, the prescribed sum is \$10, 000.
- (3) A report complies with this subsection if it –
- (a) Is in writing and in the prescribed form or, if no form is prescribed, in a form approved by the Customs officer; and
  - (b) Contains the following details in relation to the cash or negotiable bearer instruments to which the report relates –
    - (i) the nature and amount of each type of cash or negotiable bearer instrument; and
    - (ii) the total amount of the cash or negotiable bearer instruments; and
  - (c) Is made by the individual himself or herself (or, if he or she is, by reason of age or disability, incapable of complying with the requirements of this section, by a parent or guardian or other person for the time being having the care of the individual, and on the individual's behalf); and
  - (d) Is signed by the person who made the report or, as the case requires, on whose behalf the report is made; and
  - (e) Is given to the Customs officer before the cash or negotiable bearer instruments leave the control of the Customs.
- (4) It is a defence to a charge under this section against a person in relation to a failure to make or cause to be made a report to a Customs officer before cash or a

negotiable bearer instrument leaves the control of the Customs if the defendant proves —

- (a) That the failure was due to some emergency or to any other circumstance outside the reasonable control of the defendant; and
- (b) That the defendant made or caused to be made a report in respect of that cash or negotiable bearer instrument as soon as practicable after the obligation to make the report arose.

### **31 Powers of search**

(1) In this section and sections 32 to 35 —

“authorised officer” means —

- (a) A police officer; or
- (b) A Customs officer; or
- (c) A member of the Unit;

“negotiable bearer instrument”, without limiting the definition of the term “cash” in section 2(1) —

- (a) Means a document representing ownership of debts or obligations; and
- (b) Includes a bill of exchange, promissory note, or certificate of deposit, whether made payable to the bearer or not.

(2) Subsections (3) and (4) apply to a person who—

- (a) Is about to leave, or has arrived in, Niue; or
- (b) Is about to board or leave, or has boarded or left, a ship or aircraft that is about to leave, or has arrived in, Niue.

(3) An authorised officer may detain a person to whom this subsection applies and examine an article that the person has with him or her, or in his or her luggage, for the purpose of determining whether the person has in his or her possession cash or negotiable bearer instruments in respect of which a report under section 30 is required.

(4) An authorised officer may detain and search a person to whom this subsection applies if the authorised officer suspects on reasonable grounds that an offence against section 30 is being, or may have been, committed by the person.

### **32 Further provisions on search**

(1) Reasonable force may be used if it is necessary to effect a detention, or examination, or search under section 31(3) or (4).

(2) An authorised officer may exercise a power under section 31(3) or (4) with any assistance that may be reasonable and necessary.

(3) A person may be searched under section 31(4) only by a person of the same sex, and no search under section 31(4) may be carried out in the view of a person who is not of the same sex as the person to be searched.

(4) Every search under section 31(4) must be conducted with decency and sensitivity and in a manner that affords to the person being searched the greatest degree of privacy and dignity consistent with the purpose of the search.

(5) An authorised officer, and any person assisting that officer, may stop, board, and search a ship, aircraft, or conveyance for the purposes of exercising the powers conferred by section 31(3) or (4).

### **33 Seizure of cash or instruments**

(1) An authorised officer may seize and, in accordance with section 34, detain cash or negotiable bearer instruments found in the course of an examination or

search under section 31(3) or (4) if the officer believes, on reasonable grounds, that the cash or negotiable bearer instruments may be evidence of the commission of –

- (a) A money laundering offence; or
- (b) Financing of terrorism; or
- (c) An offence under section 30 of this Act; or
- (d) A serious offence.

(2) An authorised officer who seizes cash or a negotiable bearer instrument under subsection (1) must report the seizure to the Unit.

(3) An authorised officer may seize and, in accordance with section 34, detain cash or a negotiable bearer instrument that is being (in any form or manner) imported into, or exported from, Niue if the cash or negotiable bearer instrument comes to the attention, or into the possession, of the authorised officer in the exercise or performance of his or her official powers, functions, or duties, and he or she has reasonable grounds for suspecting that it is derived from, or intended by a person for use in the commission of –

- (a) A money laundering offence; or
- (b) Financing of terrorism; or
- (c) A serious offence.

### **34 Detention of cash or instruments seized**

(1) Cash or a negotiable bearer instrument seized under section 33 must not be detained by the authorised officer for longer than 48 hours after seizure, unless the High Court makes an order of continued detention for a period not exceeding 3 months from the date of seizure.

(2) The Court may make an order of continued detention under subsection (1) only if satisfied on a written application for the purpose –

- (a) That there are reasonable grounds to suspect that the cash or negotiable bearer instrument was derived from, or is intended by a person for use in the commission of, an offence of the kind specified in section 33(3)(a) to (c); and
- (b) That the continued detention of the cash or negotiable bearer instrument is justified while its origin or derivation is further investigated.

(3) Having made an order of continued detention under subsection (1), the Court may later (and once only) order, if it has taken all reasonable steps to notify and hear all parties concerned, and is satisfied of the matters specified in subsection (2)(a) and (b), the continued detention of the cash or negotiable bearer instrument.

(4) However, the total period of detention under any later order must not exceed 2 years from the date of that order.

### **35 Release of detained cash or instruments**

(1) The authorised officer must release cash or a negotiable bearer instrument detained under section 34, or under an order made under that section, to the person from whom it was seized or to any other person claiming an interest in that cash or negotiable bearer instrument if –

- (a) The High Court orders (on a written application made by, or on behalf of, that person, and after the Court has considered any views of the Unit and the authorised officer to the contrary) that its continued detention is no longer justified; or
- (b) The authorised officer is satisfied that its continued detention is no longer justified.



(2) The continued detention of cash or a negotiable bearer instrument detained under section 34 is justified for the purposes of subsection (1) so long as the cash or negotiable bearer instrument is relevant to –

- (a) An investigation or prosecution of –
  - (i) a money laundering offence or any other offence against the Proceeds of Crime Act 1998; or
  - (ii) financing of terrorism; or
  - (iii) a serious offence; or
- (b) Any other investigation, or any other proceeding, under the Proceeds of Crime Act 1998.

## PART 7

### OTHER MATTERS

#### **36 Opening accounts in false names**

A person who opens or operates an account with a financial institution in a false name is guilty of an offence punishable on conviction by –

- (a) In the case of an individual - imprisonment for a term of not more than 4 years or a fine of not more than 1000 penalty units or both; or
- (b) In the case of a body corporate - a fine of not more than 5000 penalty units.

#### **37 Anonymous accounts prohibited**

(1) A financial institution must not open, operate, or maintain an anonymous account or an account in a false name.

(2) If a financial institution contravenes subsection (1), the financial institution is guilty of an offence punishable on conviction by:

- (a) In the case of an individual - imprisonment for a term of not more than 4 years or a fine of not more than 1000 penalty units or both; or
- (b) In the case of a body corporate - a fine of not more than 5000 penalty units.

(3) However, a financial institution does not contravene subsection (1) just because the financial institution operates, on or after the commencement of this Act and in what appears to the financial institution to be the account holder's true name, an account that –

- (a) Existed on the commencement of this Act; and
- (b) Was at that time an anonymous account.

#### **38 Alternative remittance**

(1) For the purposes of this section a “funds or assets transfer system” is one that consists of a financial service that accepts cash, cheques or any other instrument of payment or stores of value at a given location and pays an equal amount in cash or in any other form to a beneficiary located in another geographical area by means of a method of communication, a message, transfer, compensation or clearing system to which the funds or assets transfer system belongs.

(2) A person who is not a financial institution and who, on behalf of, or in the name of, another person operates a funds or assets transfer system as a principal or essential part of his or her activities must be authorized to do so by the relevant supervisory authority.

(3) A person who operates a funds or assets transfer system is subject to Parts 2 and 3 and any other requirements prescribed by the relevant supervisory authority.

(4) A person commits an offence who operates a funds or assets transfer system in contravention of this section and is liable on conviction –



## Financial Transactions Reporting Act

- (a) In the case of a natural person, to a fine not exceeding 2,500 penalty units or a term of imprisonment not exceeding 5 years; and
- (b) In the case of a body corporate, to a maximum fine of 10,000 penalty units.

### **39 Regulations**

Cabinet may make such regulations as are necessary or convenient for the purposes of this Act.

### **40 [Spent]**

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## SCHEDULE

[Section 8(3)]

### DETAILS THAT MUST BE INCLUDED IN SUSPICIOUS TRANSACTION REPORTS

- 1 The name and address of the financial institution, including the branch of the institution (if applicable) at which the transaction was conducted.
- 2 The nature of the transaction.
- 3 The date of the transaction.
- 4 The total amount involved in the transaction.
- 5 The type of currency involved in the transaction, and its equivalent in the local currency.
- 6 For each person conducting the transaction with the financial institution:
  - (a) The name of the person; and
  - (b) The business or residential address of the person; and
  - (c) The occupation, business, or principal activity of the person; and
  - (d) The nationality and date and place of birth of the person; and
  - (e) In the case of a natural person, details of the person's current passport, official government identification or driving licence; and
  - (f) In the case of a body corporate, details of its Constitution (if it is not older than 3 months); and
  - (g) The method used by the financial institution to verify the identity of the person; and
  - (h) The place and time of the financial transaction; and
  - (i) whether the transaction was conducted on behalf of the person or on behalf of another person.
- 7 For any person on whose behalf the transaction was conducted:
  - (a) The name of the person; and
  - (b) The address of the person; and
  - (c) The occupation of the person (or, where appropriate, the business or principal activity of the person); and
  - (d) The nationality and date and place of birth of the person.



# FIREWORKS ACT 1958

1958/56 – 5 June 1958

1	Short title	6	Offences and penalties
2	Interpretation	7	Cabinet may impose conditions
3	Construction or manufacture of fireworks	8	Fireworks may be seized
4	Written consent of Cabinet required	9	Fireworks seized
5	Permit to discharge fireworks	10	Offences and penalties

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## To make provision for the control of the manufacture, importation and use of fireworks

### 1 Short title

This is the Fireworks Act 1958.

### 2 Interpretation

In this Act –

“fireworks” means any explosive and any firework composition enclosed in any case or contrivance or otherwise manufactured so as to form a squib, cracker, serpent, rocket (other than a ship safety rocket), maroon, lance wheel, Chinese fire, Roman candle or other article made or adapted for the production of pyrotechnic effects and includes sparklers, matches, and throwdowns;

“import” means to bring or cause to be brought or sent or to introduce in any other way whatever into Niue.

### 3 Construction or manufacture of fireworks

No person in Niue shall construct or manufacture any fireworks or produce fireworks in any manner or by any method whatever whether by making a new article or adapting any existing article.

### 4 Written consent of Cabinet required

(1) No person shall import any fireworks without having first obtained the written consent of Cabinet.

(2) Any officer of Police or Customs may detain and examine the contents of any imported package in respect whereof a breach of this section is reasonably suspected and any fireworks found to be imported contrary to this section shall be seized.

### 5 Permit to discharge fireworks

(1) No person shall discharge any fireworks in Niue except pursuant to a permit granted by Cabinet and subject to such terms and conditions in the permit as Cabinet imposes having regard to the interests of the public safety and of the safety of any person.

(2) Every person who commits a breach of this section is liable to a fine not exceeding 0.5 penalty units.

**6 Offences and penalties**

(1) Every person commits an offence under this Act who discharges any fireworks in any place with intent to do bodily harm to any person or sends or delivers to or causes to be received by any person any fireworks.

(2) Every person who commits an offence against this section shall be liable to a fine not exceeding 2 penalty units or to imprisonment not exceeding 3 months.

**7 Cabinet may impose conditions**

(1) Any consent or permit granted by Cabinet under this Act may be given subject to such terms and conditions as Cabinet, in its discretion, may impose.

(2) Cabinet may delegate its functions under this Act to an officer of Police or Customs and any functions so delegated shall be exercised subject to any general or specific directions which may be given by Cabinet in that behalf.

**8 Fireworks may be seized**

Any officer of Police, on being authorised so to do by warrant under the hand of a Commissioner or Registrar of the Court, may, by force if need be, enter and search any land or buildings in or upon which he has reasonable cause to believe that there are any fireworks in respect of which a breach of this Act has been committed, and any such fireworks found on such land or buildings shall be seized.

**9 Fireworks seized**

Any fireworks seized under this Act shall become the property of Her Majesty free and discharged from all rights, title, estate or interest possessed in respect of it by any other person and shall be destroyed or otherwise disposed of as in any case Cabinet may direct.

**10 Offences and penalties**

(1) Every person commits an offence against this Act who –

- (a) Fails to comply with any lawful requirements of Cabinet under this Act; or
- (b) In any manner obstructs an officer of Police or Customs in the lawful exercise of any power, function, or authority conferred on him by or under this Act; or
- (c) With intent to procure by purchase or otherwise any fireworks contrary to this Act deceives, or attempts to deceive, any officer in the performance of his duty under this Act; or
- (d) Discharges any fireworks in a public place or so near to it as to endanger, annoy or frighten any persons; or
- (e) Discharges any fireworks in any public place or while so situated that any property whether movable or immovable is thereby liable to catch fire.

(2) Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable to a fine not exceeding 1 penalty unit.

(3) Every corporate body committing an offence against this Act shall be liable to a fine not exceeding 2 penalty units.

# FOOD CONTROL ACT 1981

1981/70 - 18 December 1981

PART 1 PRELIMINARY		PART 4 REGULATIONS	
1	Short Title	12	Regulations
2	Interpretation		
PART 2 GENERAL		PART 5 ADMINISTRATION	
3	Prohibition against sale of poisonous, unwholesome or adulterated food	13	Powers of Inspectors
4	Misleading or deceptive labeling	14	Analysis of samples
5	Standards for foods	15	Restriction of appointment of Inspectors
6	Prohibition against sale of food not of the nature, substance or quality demanded	16	Power of the Director to obtain particulars of certain food ingredients
7	Sale and preparation of food under unsanitary conditions		
8	Medical examination for persons engaged in the handling of food	PART 6 LEGAL PROCEEDINGS	
		17	Power of Cabinet
		18	Prosecution
		19	Offences
		20	Certificate of analysis
PART 3 IMPORTATION, WARRANTIES AND DEFENCES		PART 7 SAVINGS	
9	Importation		
10	Warranties	21	Savings
11	Defences		

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## To protect the public against health hazards in the sale and use of food to supplement the public Health Act 1965

### PART 1 PRELIMINARY

- 1 Short title**

This is the Food Control Act 1981.
- 2. Interpretation**

In this Act –

  - “advertisement” includes any representation by any means whatsoever for the purpose of promoting directly or indirectly the sale or disposal of any food;
  - “article” includes –
    - (a) any food and any labeling or advertising materials in respect; or
    - (b) anything used for the preparation, preservation, packing or storing of any food;
  - “certificate of registration” includes every renewal of it;
  - “Director” means the Director of Health;
  - “engaged in the handling of food” means the handling of food as employer or employee or sole proprietor or in any capacity whatsoever whether for remuneration or not;
  - “food” means any article manufactured sold or represented for use as food or drink for human consumption;

“handling of food” means taking part in the manufacture, preparation, storage, packing, carriage or delivery of food for sale or in the retail of food;

“Inspector” means any Food Inspector appointed under section 7 of the Public Health Act 1965;

“unsanitary conditions” means such conditions or circumstances as might cause contamination of any food with dirt or filth or might render the same injurious or dangerous to health;

“label” includes any tag, brand, mark, pictorial or other descriptive matter, written, printed, stenciled, marked, embossed or impressed on, or attached to or included in, belonging to, or accompanying any food;

“package” includes anything in which any food is wholly or partly placed or packed and includes any basket, pail, tray or receptacle of any kind whether open or closed;

“premises” means and includes any premises or buildings or any room or other part thereof or any place in or on which food is handled;

“preparation” includes manufacture processing and any form of treatment;

“sell” includes to barter or to offer or attempt to sell or receive for sale or send forward for sale or deliver for sale or cause or suffer or allow to be sold, offered or exposed for sale and to supply meals at any restaurant, hotel or boarding-house;

“ship” includes any boat or craft;

“vehicle” has the same meaning as in section 3 of the Transport Act 1965.

## PART 2

### GENERAL

#### **3 Prohibition against sale of poisonous, unwholesome or adulterated food**

Any person who prepares or sells any food that –

- (a) Has in or upon it any substance which is poisonous, harmful or otherwise injurious to health; or
- (b) Consists in whole or in part of any filthy, putrid, rotten, decomposed or diseased substance or foreign matter, is unwholesome or is otherwise unfit for human consumption; or
- (c) Is adulterated;

commits an offence.

#### **4 Misleading or deceptive labeling**

Any person who labels, packages, prepares, sells or advertises any food in a manner that is false, misleading or deceptive as regards its character, nature, value, substance, quality, composition, merit or safety, or in contravention of any regulation made under this Act, commits an offence.

#### **5 Standards for foods**

Where a standard has been prescribed by regulation under this Act for any food, any person who labels, packages, prepares, sells or advertises any food which does not comply with that standard, in such a manner that it is likely to be mistaken for food of the prescribed standard, commits an offence.

#### **6 Prohibition against sale of food not of the nature, substance or quality demanded**

Any person who sells to the prejudice of the purchaser any food which is not of the nature, substance or quality of the article demanded by the purchaser commits an offence.

**7 Sale and preparation of food under unsanitary conditions**

Any person who sells, prepares, packages or stores for sale any food under unsanitary conditions commits an offence.

**8 Medical examination for persons engaged in the handling of food**

(1) Every person who is engaged in the handling of food shall undergo such medical examinations as is prescribed by the Director, who shall certify the suitability or otherwise of that person.

(2) No person shall be engaged in the handling of food unless he has received a certificate declaring him to be suitable to be so engaged.

(3) Every certificate issued under this section shall be renewable annually.

(4) The costs of any medical examination pursuant to this section shall be met by the employer of the person to be engaged in the handling of food.

PART 3

IMPORTATION, WARRANTIES AND DEFENCES

**9 Importation**

(1) Subject to subsection (2), the importation of any article which does not comply with this Act or any regulations made under this Act, is prohibited.

(2) Where an article sought to be imported into Niue would, if sold in Niue, constitute a contravention of this Act or any regulation made under this Act, the article may be imported into Niue for the purpose of satisfactorily relabelling or reconditioning the same so that this Act or the regulations are complied with and, where such relabelling or reconditioning is not carried out within 3 months of the importation, such article shall be exported by the importer within a further period of one month or such other period as Cabinet may direct and, where it is not so exported, it shall be forfeited and disposed of as the Director may direct.

**10 Warranties**

(1) No manufacturer or distributor of, or dealer in, any article shall sell such article to any vendor unless he gives a warranty in writing in the prescribed form as to the nature and quality of such article to the vendor specifying that the article may lawfully be sold under this Act or the regulations.

(2) Any person who contravenes subsection (1) or gives a warranty which is false commits an offence.

**11 Defences**

In any proceedings for an offence under this Act it shall be a sufficient defence for the defendant to prove –

(a) That he purchased the food from another person who furnished a written warranty in compliance with section 9, and sold the food in the same condition the article was in at the time he purchased it; and

(b) That he could not, with reasonable diligence, have ascertained, that the sale of the article would be in contravention of this Act or the regulations;

(c) In relation to an offence concerning the publication of an advertisement, that he received the advertisement for publication in the ordinary course of business and had no reason to believe that an offence would be committed.



PART 4  
REGULATIONS

**12 Regulations**

- (1) Cabinet may make regulations for the purposes of this Act.
- (2) Without prejudice to the generality of subsection (1), the Cabinet may make regulations –
  - (a) Declaring that any food or class of food is adulterated if any prescribed substance or class of substance is presented in it or has been added to it or extracted or omitted from it;
  - (b) In respect of –
    - (i) the labeling and packing and the offering, exposing and advertising for sale of food;
    - (ii) the size, dimension, fill and other specifications of packages of food;
    - (iii) the sale or the conditions of sale of any food; and
    - (iv) the use of any substance as an ingredient in any food, to prevent the consumer or purchaser of it from being deceived or misled as to its quality, quantity, character, value, composition, effect, merit or safety or to prevent injury to the health of the consumer or purchaser;
  - (c) Prescribing standards of composition, strength, potency, purity, quality or other property of any food;
  - (d) In respect of the importation or exportation of food, in order to ensure compliance with this Act;
  - (e) In respect of the method of preparation, preserving, packing, storing, conveying and testing of any food, in the interests of, or for the prevention of injury to, the health of the consumer, user or purchaser, and for the observance of adequate standards of hygiene in the carrying out of these activities;
  - (f) In respect of the carriage of goods subject to this Act, including the licensing of vehicles used in such carriage;
  - (g) Requiring persons who sell food to maintain such books and records as Cabinet considers necessary for the proper enforcement and administration of this Act;
  - (h) Providing for the analysis or examination of food for the purposes of this Act or for any other purpose and prescribing methods of analysis;
  - (i) Providing for the taking of samples of any articles for the purpose of this Act or for any other purposes;
  - (j) Exempting any food from all or any of the provisions of the Act and prescribing the conditions of such exemption;
  - (k) In respect of the premises in which foods are prepared, packaged, stored or sold;
  - (l) Providing for the registration of premises in which food is prepared;
  - (m) Prescribing anything which is to be or which may be prescribed under this Act.
- (3) (a) Before making any regulations Cabinet shall consult with such organizations as appear to them to be representative of interests substantially affected by the regulations.
  - (b) In cases of urgency they may make regulations without such consultations.
- (4) It shall be an offence for any person to commit any act in contravention of any regulation made under this section.

PART 5

ADMINISTRATION

**13 Powers of Inspectors**

(1) An Inspector may, at any reasonable hour for the proper performance of his duty –

- (a) Enter any premises where he believes any article to which this Act applies is prepared, preserved, packaged, stored or conveyed, examine any such article and take samples and examine anything that he believes is used or capable of being used for such preparation, preservation, packaging, storing, or conveying;
- (b) Stop or search or detain any aircraft, ship or vehicle in which he believes on reasonable grounds that any article subject to this Act is being conveyed and examine any such article and take samples for the purpose of this Act;
- (c) Open and examine any receptacle or package which he believes contains any article to which this Act applies;
- (d) Examine any books, documents or other records found in any premises mentioned in paragraph (a) that he believes contain any information relevant to the enforcement of this Act with respect to any article to which this Act applies and make copies or take extracts; and
- (e) Seize and detain for such time as may be necessary any article by means of or in relation to which he believes this Act or the regulations has been contravened.

(2) An Inspector acting under this section shall, if so required, produce his authority.

(3) Any owner, occupier or person in charge of any premises entered by an inspector under subsection (1) (a), or any person found there, who does not give to the inspector all reasonable assistance in his power and furnish him with such information as he may reasonably require, commits an offence.

(4) Any person who obstructs or impedes any inspection in the course of his duties or prevents or attempts to prevent the execution by the inspector of his duty under this Act commits an offence.

(5) Any person who knowingly makes any false or misleading statement either orally or in writing to any inspector engaged in carrying out his duties under this Act commits an offence.

(6) An Inspector shall release any article seized by him under this Act when he is satisfied that all the provisions of this Act or the regulations with respect to it have been complied with.

(7) Where an Inspector has seized an article under this Act and the owner or the person in whose possession the article was at the time of seizure consents to its destruction, the article may be destroyed or otherwise disposed of as the Inspector may direct; if the owner or the person does not consent to the destruction of the article, the Inspector may apply to the court for the destruction or disposal of such article and the court may make such order as it thinks fit.

(8) Where any article has been seized under subsection (1)(e) and the owner has been convicted of an offence under this Act, the article may be destroyed or otherwise disposed of as the court may direct.

(9) Any person who removes, alters, or interferes in any way with any article seized under this Act without the authority of an Inspector commits an offence.

(10) Any article seized under this Act may at the option of an Inspector be kept or stored in the premises where it was seized or may at the direction of an inspector be removed to any other place.

(11) Any Inspector may submit any article seized by him or any sample from it or any sample taken by him to a laboratory for analysis or examination.

**14 Analysis of samples**

Any sample taken under this Act shall be analysed or examined as soon as practicable by a suitably qualified person, and the person carrying out the analysis or the examination shall give the inspector who took the sample a certificate specifying the results of the analysis or examination, and such certificate shall be in such form as may be prescribed by the Director.

**15 Restriction on appointment of Inspectors**

No person shall be appointed as an Inspector for any area in which he is engaged directly or indirectly in any trade or business connected with the sale of food.

**16 Power of Director to obtain particulars of certain food ingredients**

(1) The Director may direct any person who at the date of the direction or at any subsequent time carries on a business which includes the production, importation or use of any substances to which this Act applies to furnish to him within such time as may be specified in such direction, such particulars, as may be so specified, of the composition, and use of any such substance sold or for sale in the course of that business or used in the preparation of food.

(2) Without prejudice to the generality of subsection (1), a direction made under it may require the following particulars to be furnished in respect of any substance –

- (a) Particulars of the composition and chemical formula of the substance;
- (b) Particulars of the manner in which the substance is used or proposed to be used in the preparation of food;
- (c) Particulars of any investigations carried out by or to the knowledge of the person carrying on the business in question, for the purpose of determining whether and to what extent the substance or any product formed when the substance is used as aforesaid is injurious to or in any other way affects health;
- (d) Particulars of any investigations carried out by or to the knowledge of the person carrying on the business in question, for the purpose of determining the cumulative effect on the health of a person consuming the substance in ordinary quantities.

PART 6

LEGAL PROCEEDINGS

**17 Power of Cabinet**

(1) On the conviction of any person for any offence under this Act, Cabinet may, direct that any licence issued to such person under any regulations made under this Act, be revoked.

(2) Where a person has been convicted of an offence under this Act, the court may order that any article by means of or in relation to which the offence was committed or anything of a similar nature belonging to or in the possession of the convicted person or found with such article, be forfeited, and upon such order being made such articles and things may be disposed of as the Court may direct.

**18 Prosecution**

(1) Where a person having analysed or examined any article to which this Act applies, has given his certificate and from that certificate it appears that an offence

## Food Control Act

under this Act has been committed, an Inspector may take proceedings under this Act before the court.

(2) In any proceedings under this Act, the contents of any package appearing to be intact and in the original state of packing by the manufacturer shall be deemed, unless the contrary is proved, to be an article of the description specified on the label.

(3) In any proceedings taken under this Act, it shall not be necessary to prove knowledge or intention on the part of the accused.

### 19 Offences

(1) A person found guilty of an offence under this Act for which no special penalty is provided shall be liable on conviction –

- (a) In the case of a first offence, to a fine not exceeding 1 penalty unit or to an imprisonment for a term not exceeding 3 months, or to both such fine and imprisonment;
- (b) In the case of a subsequent offence, to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

(2) If a person found guilty of an offence is found to have committed the offence with the intent to defraud or mislead he shall be fined a sum not exceeding 5 penalty units or imprisonment for a term not exceeding 6 months or both.

### 20 Certificate of analysis

(1) In any proceedings under this Act –

- (a) A certificate or analysis purporting to be signed by a person carrying out an analysis or examination shall subject to subsection (2) be accepted as prima facie evidence of the facts stated in it;
- (b) Evidence that the package containing any article to which this Act applies, bore a name, address or registered mark of the person by whom it was manufactured or packed shall be prima facie evidence that such article was manufactured or packed by that person;
- (c) Any substance commonly used for human consumption if sold or offered, exposed or kept for sale, shall be presumed, until the contrary is proved, to have been sold or to have been or to be intended for sale for human consumption;
- (d) Any substance commonly used for human consumption which is found on premises used for the preparation, storage or sale of that substance and any substance commonly used in the manufacture of produces for human consumption which is found on premises used for the preparation, storage or sale of those products, shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale, for human consumption;
- (e) Any substance capable of being used in the composition or preparation of any substance commonly used for human consumption which is found on premises on which that substance is prepared shall until the contrary is proved, be presumed to be intended for such use.

(2) (a) The party against whom a certificate or analysis is produced under subsection (1) may require the attendance of the person performing the analysis for the purpose of cross-examination; the accused, if found guilty, will be liable for the costs of the attendance at the proceedings of the person performing the analysis.

- (b) No certificate under subsection (1) of a person carrying out an analysis or examination shall be received in evidence unless the party intending to produce it has before the trial given the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate.

PART 7

SAVINGS

**21 Savings**

This Act shall be additional to and not in derogation of any other legislation.

## **GENERAL AGREEMENT ON TARIFFS AND TRADE ACT 1948**

[EDITORIAL NOTE: This Act is not reproduced. The text can be found in *Niue Legislation as at 1 August 1990* vol 2 p 181.]





# GENERAL LAWS ACT 1968

1968/52 – 1 November 1968

	<b>PART 1</b>		11 Public to be duly warned
	<b>PRELIMINARY</b>		12 Effect of closing order
1	Short title		13 Restricted admittance to closed area
2	–		14 Offences
3	Interpretation		15 Aggravated offences
4	Chief of Police to administer Act		
	<b>PART 2</b>		<b>PART 4</b>
	<b>UNAUTHORISED PERSONS ON BOARD SHIP</b>		<b>OFFENCES INJURIOUS TO PUBLIC MORALITY</b>
5	Application of Part 2		16-18 [Reprint – Criminal Law Code 2007]
6	[Spent]		
7	Disobedience when ordered to leave ship		<b>PART 5</b>
8	Arrest without warrant		<b>MISCELLANEOUS</b>
9	Offence of obstructing or resisting		16 [Spent]
	<b>PART 3</b>		17 Application of fines
	<b>CONTROL OF WHARF</b>		18 Power to make regulations
10	Closing order		

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## To make better provision for the order and good government of Niue

	<b>PART 1</b>	
	<b>PRELIMINARY</b>	
<b>1</b>	<b>Short title</b>	This is the General Laws Act 1968.
<b>2</b>	–	
<b>3</b>	<b>Interpretation</b>	In this Act – “Chief of Police” means the Chief of Police in Niue.
<b>4</b>	<b>Chief of Police to administer Act</b>	The Chief of Police shall be charged with the administration of this Act under the general direction and control of Cabinet.
	<b>PART 2</b>	
	<b>UNAUTHORISED PERSONS ON BOARD SHIP</b>	
<b>5</b>	<b>Application of Part 2</b>	(1) This Part shall apply to every ship calling on Niue from the time of her arrival in the roadstead until the time of her departure from it. (2) In this Part, “ship” includes every description of vessel used for overseas voyages, however propelled, but does not include ships of the naval forces of any country.

6 [Spent]

**7 Disobedience when ordered to leave ship**

Every person who not being a person bound or entitled to sail on the ship or a person duly authorised to be on the ship for any purpose recognised by law) refuses or fails to leave the ship when ordered so to do by the master or any officer of the ship or by any officer of Police or Customs or, after having complied with an order to leave the ship or after being taken ashore, re-enters or attempts to reenter the ship commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units or to imprisonment for a term not exceeding 3 months.

**8 Arrest without warrant**

The master or any officer of the ship or any officer of Customs may take ashore or, as circumstances require, take into custody any person who acts in contravention of section 7 and deliver him to a constable and any constable may arrest without warrant any person so acting or so delivered to him.

**9 Offence of obstructing or resisting**

Every person who wilfully obstructs, hinders, or resists any person in the exercise or execution of any power, duty or function conferred or imposed on such person by this Part commits an offence and, unless the Criminal Law Code provides a more severe penalty in respect of the same offence, shall be liable on conviction to a fine not exceeding 0.5 penalty units.

PART 3  
CONTROL OF WHARF

**10 Closing order**

The Chief of Police in concurrence with the Revenue Manager shall have power to close at any time and for any period of time the wharf or any portion of it, or any building, machinery, or other construction erected on or near the wharf (in this Part referred to as the closed area).

**11 Public to be duly warned**

The Chief of Police shall in such customary and practicable manner as he deems fit make generally known to the public every order under section 10 specifying the closed area and the hours of commencement and termination of the order.

**12 Effect of closing order**

The effect of any order so made shall be that, for the period of time specified in the order, any closed area shall be deemed not to be open to the public as of right.

**13 Restricted admittance to closed area**

(1) Except with the permission of the constable on duty on the wharf, no person shall enter any closed area unless his presence is required for the working of the wharf or for the pursuit of any legitimate and customary other work or business in connection with it.

(2) Any constable may remove from the closed area any person found there in contravention of this Part.

**14 Offences**

Every person who acts in contravention of this Part commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units.

**15 Aggravated offences**

Every person who, after being ordered or removed from any closed area re-enters or attempts to re-enter that closed area commits an offence and, unless the Criminal Law Code provides a more severe penalty in respect of the same offence, shall be liable on conviction to a fine not exceeding 0.5 penalty units or to imprisonment for a term not exceeding 3 months.

PART 4

OFFENCES INJURIOUS TO PUBLIC MORALITY

**16-18** [Reprint – Criminal Law Code 2007]

PART 5

MISCELLANEOUS

**19** [Spent]

**20 Application of fines**

All fines paid or collected under this Act shall form part of the public revenues of Niue and shall be paid into the appropriate account.

**21 Power to make regulations**

- (1) Cabinet may make regulations –
  - (a) For the purposes of this Act, and
  - (b) For the implementation of the International Convention for the Safety of Life at Sea 1974, the International Shipping and Port Security Code and any other international standard, requirement or recommended practice relating to maritime and port security.
- (2) Regulations made under this section may make provision for –
  - (a) Fees and charges, and
  - (b) Offences and penalties for the contravention of such regulations.



# GENEVA CONVENTIONS ACT 1958

1958/19 (NZ) – 18 September 1958

[EDITORIAL NOTE: The Schedules to this Act are not reproduced. They provide the texts of:

- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949;
- Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949;
- Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949; • Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949.

Access to these Conventions is available at: <http://www.unhcr.ch/html/intlinst.htm> and in *Niue Legislation as at 1 August 1990* vol 2 p. 222.]

1	Short title	7	Reduction of sentence, and custody of protected prisoners of war and internees
2	Interpretation		
	<i>Punishment of Offenders against Conventions</i>		<i>Prevention of Abuse of Red Cross and Other Emblems</i>
3	Punishment for grave breaches of Conventions	8	Use of Red Cross and other emblems
	<i>Provisions as to Certain Legal Proceedings</i>		<i>Miscellaneous</i>
4	Notice of trial of protected persons to be served on protecting power	9	Regulations
5	Legal representation of prisoners of war		
6	Appeals by protected persons		SCHEDULES

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## To enable effect to be given to certain International Conventions done at Geneva on 12 August 1949, and for purposes connected therewith

### 1 Short title

This is the Geneva Conventions Act 1958.

### 2 Interpretation

(1) In this Act –

“the First Convention” means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 1;

“the Second Convention” means the Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annex to that Convention) is set out in Schedule 2;

“the Third Convention” means the Geneva Convention relative to the Treatment of Prisoners of War adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 3;

“the Fourth Convention” means the Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 4;

“Conventions” means the First Convention, the Second Convention, the Third Convention, and the Fourth Convention;

“Court” does not include a Court Martial;

“Niue aircraft” means any aircraft that is registered or required to be registered in Niue and includes any aircraft belonging to or in the service of Her Majesty in right of Niue, whether a civil or a military aircraft;

“Niue ship” means a “Niue ship” or “ship belonging to Her Majesty” and includes an unregistered ship which is required by the law of Niue to be registered in Niue or in some other Commonwealth country;

“protected internee” means a person protected by the Fourth Convention and interned in Niue;

“protected prisoner of war” means a person protected by the Third Convention;

“protecting power”, in relation to a protected prisoner of war or a protected internee, means the power or organisation which is carrying out, in the interests of the power of which he is a national, or of whose forces he is, or was at any material time, a member, the duties assigned to protecting powers under the Third Convention or the Fourth Convention, as the case may be.

(2) If the ratification on behalf of Niue of any of the Conventions is subject to a reservation or is accompanied by a declaration, that Convention shall, for the purposes of this Act, have effect and be construed subject to and in accordance with that reservation or declaration.

#### *Punishment of Offenders Against Conventions*

### **3 Punishment for grave breaches of Conventions**

(1) Any person who in Niue or elsewhere commits, or aids or abets or procures the commission by another person of, a grave breach of any of the Conventions is guilty of an offence.

(2) For the purposes of this section –

- (a) A grave breach of the First Convention is a breach of that Convention involving an act referred to in article 50 of that Convention committed against persons or property protected by that Convention;
- (b) A grave breach of the Second Convention is a breach of that Convention involving an act referred to in article 51 of that Convention committed against persons or property protected by that Convention;
- (c) A grave breach of the Third Convention is a breach of that Convention involving an act referred to in article 130 of that Convention committed against persons or property protected by that Convention;
- (d) A grave breach of the Fourth Convention is a breach of that Convention involving an act referred to in article 147 of that Convention committed against persons or property protected by that Convention.

(3) This section applies to persons regardless of their nationality or citizenship.

(4) The punishment for an offence against this section shall be –

- (a) Where the offence involves the wilful killing of a person protected by the relevant Convention, the same as that for the time being for murder;
- (b) In any other cases, imprisonment for a term not exceeding 14 years.

(5) No one shall be prosecuted for an offence under this section without the leave of Cabinet.

(6) The provisions of section 5 (other than subsection (2)) shall apply in relation to the trial of a person who is not a protected prisoner of war for an offence

against this section in like manner as they apply in relation to the trial of a protected prisoner of war.

(7) If in proceedings under this section in respect of a grave breach of any of the Conventions any question arises under article 2 of that Convention (which relates to the circumstances in which the Convention applies), that question shall be determined by the Minister of Foreign Affairs and a certificate purporting to set out any such determination and to be signed by or on behalf of that Minister shall be received in evidence and be deemed to be so signed without further proof, unless the contrary is shown.

(8) The enactments relating to the trial by Court Martial of persons who commit civil offences shall have effect for the purposes of the jurisdiction of Court Martial convened in Niue as if this section had not been passed.

*Provisions as to Certain Legal Proceedings*

**4 Notice of trial of protected persons to be served on protecting power**

(1) The court before which –

- (a) A protected prisoner of war is brought up for trial for any offence; or
- (b) A protected internee is brought up for trial for an offence for which that court has power to sentence him to death or to imprisonment for a term of 2 years or more –

shall not proceed with the trial until it is proved to the satisfaction of the court that a notice containing the particulars mentioned in subsection (2), so far as they are known to the prosecutor, has been served not less than 3 weeks previously on the protecting power (if there is a protecting power), on the accused, and (if the accused is a protected prisoner of war) on the prisoners' representative.

(2) The particulars referred to in subsection (1) are –

- (a) The full name and description of the accused, including the date of his birth and his profession or trade, if any, and, if the accused is a protected prisoner of war, his rank and his army, regimental, personal, or serial number;
- (b) His place of detention, internment, or residence;
- (c) The offence with which he is charged; and
- (d) The court before which the trial is to take place and the time and place appointed for the trial.

(3) For the purposes of this section a document purporting –

- (a) To be signed on behalf of the protecting power or by the prisoners' representative or by the person accused, as the case may be; and
- (b) To be an acknowledgement of the receipt by that power, representative or person on a specified day of a notice described in it as a notice under this section –

shall, unless the contrary is shown, be sufficient evidence that the notice required by subsection (1) was served on that power, representative, or person on that day.

(4) In this section "prisoners' representative" in relation to a particular protected prisoner of war at a particular time means the person by whom the functions of prisoners' representative within the meaning of article 79 of the Third Convention were exercisable in relation to that prisoner at the camp or place at which that prisoner was, at or last before that time, detained as a protected prisoner of war.

(5) Any court which adjourns a trial for the purpose of enabling the requirements of this section to be complied with may, notwithstanding anything in any other enactment or any rule of law, remand the accused for the period of the adjournment.



## **5 Legal representation of prisoners of war**

(1) The court before which a protected prisoner of war is brought up for trial for any offence shall not proceed with the trial, unless –

- (a) The accused is represented by counsel; and
- (b) It is proved to the satisfaction of the court that a period of not less than 14 days has elapsed since instructions for the representation of the accused at the trial were first given to counsel for the accused;

and if the court adjourns the trial for the purpose of enabling the requirements of this subsection to be complied with, then, notwithstanding anything in any other enactment or rule of law, the court may remand the accused for the period of the adjournment.

(2) In the absence of counsel accepted by the accused as representing him, counsel instructed for the purpose on behalf of the protecting power shall, without prejudice to the requirements of subsection (1)(b) be regarded for the purposes of that subsection as representing the accused.

(3) If the court adjourns the trial under subsection (1) by reason that the accused is not represented by counsel, the court shall direct that a counsel be assigned to watch over the interests of the accused at any further proceedings, in the absence of counsel either accepted by the accused as representing him or instructed as mentioned in subsection (2), counsel assigned under this subsection shall, without prejudice to the requirements of subsection (1)(b) be regarded for the purposes of the said subsection (1) as representing the accused.

(4) (a) A counsel shall be assigned under subsection (3) in such manner as may be prescribed by regulations made under this Act, and any counsel so assigned shall be entitled to receive, out of money appropriated by the Assembly for the purpose, such remuneration and disbursements as may be in like manner prescribed.

- (b) While there are no regulations for the purposes of this section or so far as any such regulations do not apply, the Offenders Legal Aid Act 1954 (NZ) and of any regulations made under that Act shall apply to the assignment, remuneration, and disbursement of counsel under this section.

## **6 Appeals by protected persons**

(1) Where a protected prisoner of war or a protected internee has been sentenced by a court to death or to imprisonment for a term of 2 years or more, the time allowed in relation to the institution of an appeal or an application for leave to appeal against the conviction or sentence shall, notwithstanding anything to the contrary in any other enactment, be the period from the date of his conviction or, in the case of an appeal against sentence, of his sentence to the expiration of 28 days after the date on which the convicted person receives a notice that the protecting power has been notified of his conviction and sentence, being a notice given –

- (a) In the case of a protected prisoner of war, by an officer of the New Zealand armed forces; or
- (b) In the case of a protected internee, by or on behalf of the person in charge of the prison or place in which he is confined.

(2) [Repealed]

(3) Where subsection (1) applies in relation to a convicted person, then, unless the Court otherwise orders, an order of the Court relating to the restitution of property or the payment of compensation to an aggrieved person shall not take effect, and any provision of law relating to the reversion of property on conviction shall not take effect in relation to the conviction, while an appeal by the convicted person against his conviction or sentence is possible.

(4) Subsections (1) and (2) shall not apply in relation to an appeal against a conviction or sentence if, at the time of the conviction or sentence, there is no protecting power.

(5) Notwithstanding anything to the contrary in any other Act, where a protected prisoner of war has been sentenced by a court to death, the sentence shall not be executed before the expiration of 6 months from the date specified in article 101 of the Third Convention.

(6) Notwithstanding anything to the contrary in any other act, where a protected internee has been sentenced by a court to death, the sentence shall not be executed before the expiration of 6 months from the date specified in article 74 of the Fourth Convention.

## **7 Reduction of sentence, and custody of protected prisoners of war and internees**

(1) When a protected prisoner of war or a protected internee is convicted of an offence, the court shall –

- (a) In fixing a term of imprisonment in respect of the offence, deduct from the term which it would otherwise have fixed any period during which the convicted person has been in custody in connection with that offence before the trial; and
- (b) In fixing any penalty other than imprisonment in respect of the offence, take that period of custody into account.

(2) Where the Minister of Justice is satisfied that a protected prisoner of war accused of an offence has been in custody in connection with that offence, while awaiting trial, in a place other than a camp or place in which protected prisoners of war are detained, for an aggregate period of not less than 3 months, that Minister may direct that the prisoner shall be transferred from that custody to the custody of an officer of the New Zealand armed forces and thereafter remain in military custody at a camp or place in which protected prisoners of war are detained, and be brought before the court at the time appointed for his trial.

### *Prevention of Abuse of Red Cross and Other Emblems*

## **8 Use of Red Cross and other emblems**

(1) Subject to this section, it shall not be lawful for any person, without the authority of the Minister of Defence or a person authorised by him in writing to give consent under this section, to use for any purpose whatsoever any of the following emblems, designations, designs, or wordings:

- (a) The emblem of a red cross with vertical and horizontal arms of the same length on, and completely surrounded by, a white ground, or the designation “Red Cross” or “Geneva Cross”;
- (b) The emblem of a red crescent moon on, and completely surrounded by, a white ground, or the designation “Red Crescent”;
- (c) The following emblem in red on, and completely surrounded by, a white ground, that is to say, a lion passing from right to left of, and with its face turned towards, the observer, holding erect in its raised right forepaw a scimitar, with, appearing above the lion’s back, the upper half of the sun shooting forth rays, or the designation “Red Lion and Sun”;
- (d) Any design consisting of a white or silver cross with vertical and horizontal arms of the same length on, and completely surrounded by, a red ground, being the heraldic emblem of the Swiss Confederation, or any other design so nearly resembling that design as to be capable of being mistaken for that heraldic emblem;

(e) Any design or wording so nearly resembling any of the emblems or designations specified in the foregoing provisions of this subsection as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems.

(2) If any person contravenes the foregoing provisions of this section he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding 1 penalty unit and to forfeit any goods upon or in connection with which the emblem, designation, design, or wording was used.

(3) The Minister of Defence or a person authorised by that Minister to give consents under this section shall not refuse to give such a consent, and shall not withdraw such a consent, except for the purpose of giving effect to the provisions of the Conventions.

(4) In the case of a trade mark registered before the passing of this Act, the foregoing provisions of this section shall not apply by reason only of its consisting of or containing a design or wording which reproduces or resembles an emblem or designation specified in subsection (1)(b) or (c).

(5) Where a person is charged with using a design or wording to which subsection (4) applies for any purpose and it is proved that he used it otherwise than as, or as part of, a trade mark registered as aforesaid, it shall be a defence for him to prove

(a) That he lawfully used that design or wording for that purpose before the passing of this Act; or

(b) In a case where he is charged with using the design or wording upon goods, that the design or wording had been applied to the goods before he acquired them by some other person who had manufactured or dealt with the goods in the course of trade and who lawfully used the design or wording upon similar goods before the passing of this Act.

(6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the body corporate, or any person purporting to act in any such capacity he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(7) This section extends to the use in or outside Niue of an emblem, designation, design, or wording referred to in subsection (1) on any Niue ship or Niue aircraft.

(8) No one shall be prosecuted for an offence under this section without the leave of Cabinet.

#### *Miscellaneous*

### **9 Regulations**

(1) Cabinet may make all such regulations as may be necessary or expedient for giving full effect to this Act and for the due administration of it.

(2) All regulations made under this section shall be laid before Parliament within 28 days after the date of the making of it if Parliament is then in session and, if not, shall be laid before Parliament within 28 days after the date of the commencement of the next ensuing session.

#### SCHEDULES

[Not reproduced]

# GOVERNMENT LOANS ACT 1980

1980/56 – 25 June 1980

1	Short title	13	Niue stock
2	Interpretation	14	Stock register
3	Authority to raise loans	15	Stock certificates
4	Methods of raising loans	16	Transfer and transmission of stock
5	Charge on Niue Government Account	17	Stock holders of unclaimed interests
6	Issue of debentures	18	Closing of register
7	Redemption of debentures	19	Interest and payment
8	Interest on debentures	20	Redemption of stock
9	Form of debentures and coupons	21	Withdrawal from Niue Government Account
10	Transfer of debentures and coupons	22	Sinking fund
11	Register of debentures		
12	Redeemed debentures		

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## To make provision for the raising of loans both locally and overseas by the Government

### 1 Short title

This is the Government Loans Act 1980.

### 2 Interpretation

In this Act –

“debenture” means any debenture issued under this Act;

“loans” means loans raised under this Act;

“register” includes any book kept by any registering authority under this Act;

“registering authority” means the Treasury;

“stock” means stock issued under this Act and includes any share or interest in such stock;

“stockholder” means any person holding stock and entered as proprietor of it in the register.

### 3 Authority to raise loans

(1) Cabinet is hereby empowered, subject to this Act, to raise internally or externally loans of such sums of money as the Assembly may authorise by resolution.

(2) All moneys borrowed under the authority of this Act shall be applied for such purposes as shall be specified by the resolution authorising the borrowing of such moneys.

### 4 Methods of raising loans

Loans may be raised under this Act –

(a) By the issue of securities in the form of debentures payable to bearer; or

(b) By the creation and issue of registered or inscribed stock which shall be known as Niue stock; or

(c) In such other manner as Cabinet may, in consultation with any lender, decide.

**5 Charge on Niue Government Account**

The principal moneys and interest represented by loans issued under this Act are hereby charged upon and shall be payable out of the Niue Government Account.

**6 Issue of debentures**

(1) Where Cabinet deems it expedient to raise money by debentures, such debentures may be issued by the Treasury on behalf of the Government upon the best and most favourable terms that can be obtained, and to such amounts and on such conditions, subject to this Act, as Cabinet may direct.

(2) Debentures shall be of such denominations as the Cabinet may determine.

**7 Redemption of debentures**

Debentures shall be redeemable either –

(a) At par on a fixed date to be declared on the issue of the debentures: Provided that Cabinet may reserve the option to redeem the debentures prior to such date on such conditions as may be declared at the time of issue; or

(b) By annual drawings at par; or

(c) At the option of Cabinet by purchase.

**8 Interest on debentures**

(1) The interest upon the principal represented by each debenture shall run from the date of issue named in that behalf in the debenture, and shall be paid half-yearly on the dates named in that behalf in the debenture.

(2) (a) There shall be attached to every debenture coupons for the payment of interest to become due in each half year upon the principal represented by the debenture.

(b) The coupons shall be sufficient in number to provide for the payment of interest either during the whole period for which the debenture has to run or for such limited period as Cabinet may determine.

**9 Form of debentures and coupons**

The debentures and coupons shall be in such form as Cabinet may direct.

**10 Transfer of debentures and coupons**

Every debenture and coupon, and the right to receive the principal and interest represented by it shall be transferable by delivery.

**11 Register of debentures**

Every debenture shall, before being issued, be registered in a register book to be kept for that purpose by the Treasury.

**12 Redeemed debentures**

(1) Upon the repayment of the principal moneys secured by any debenture, the debenture shall, and on the redemption by purchase of any debenture the debenture may, together in either case with all outstanding coupons, be delivered up to the issuing authority for cancellation.

(2) Debentures redeemed by purchase which are not delivered up for cancellation shall be deemed part of the sinking fund and may in all respects be dealt with as such.

**13 Niue stock**

Niue stock may be issued in Niue or elsewhere, upon the directions of Cabinet upon the best and most favourable terms that can be obtained, and to such amounts and on such conditions, subject to this Act, as Cabinet may before the issue direct.

**14 Stock register**

- (1) A register shall be kept in which –
  - (a) All stock issues under this Act shall be registered, or, in the case of inscribed stock, inscribed;
  - (b) All transfers, transmissions and other dealings in such stock under this Act shall be registered; and
  - (c) All other matters and things which by this Act are required to be entered therein shall be entered.
- (2) Issues of inscribed stock shall be inscribed in the register by entering the name of the stock holder, the amount of such stock and such other particulars as may be prescribed.
- (3) The register shall be prima facie evidence of title of any person in respect of any stock of which he is entered as the stockholder.
- (4) The register shall be kept by the Treasury.

**15 Stock certificates**

- (1) (a) The registering authority shall within 30 days of receipt of the final instalment payable on any stock send to the stockholder a certificate, which shall be known as a stock certificate, showing that stock to the value specified in it has been registered or inscribed in the name of the stockholder.
  - (b) In the case of inscribed stock a stock certificate need not be issued unless demanded by the stockholder.
- (2) (a) Such stock certificate shall be prima facie evidence of the title of the stockholder to the stock specified in it.
  - (b) In the case of inscribed stock the want of such certificate shall not prevent the owner of any stock from disposing of it.

**16 Transfer and transmission of stock**

- (1) Stock shall be transferable by an instrument of transfer to be approved by Cabinet, and a certificate issued, at the request of the transferee, by the registering authority in pursuance of such transfer and in respect of the stock so transferred shall be prima facie evidence of the title of the holder of the certificate to the stock specified.
- (2) Any person to whom any stock is transmitted may apply in such form as may be approved by the Cabinet to the registering authority by which the register in which such stock is registered or inscribed to be registered as the proprietor of such stock.
- (3) Every transmission application shall be verified by statutory declaration or in such other manner as may be approved by Cabinet and shall be supported by the production to the registering authority of the original or certified true copies of all documents under which the applicant claims to be entitled to be registered as the proprietor of the stock.
- (4) If the registering authority is satisfied that a person applying under subsection (2) to be registered as the proprietor of any stock, is entitled so to be registered, it shall register such transmission by entering the name of such person in the register as the proprietor of such stock.



(5) No person shall have any claims against the Government in respect of any transmission registered under subsection (4) but nothing in this subsection shall relieve the person to whom the stock is transmitted from any liability to account for or deal with the stock in accordance with law.

#### **17 Stock holders of unclaimed interests**

The registering authority shall keep, in a separate book, a list of the stock holders on whose stock the interest has been unclaimed for 5 years, together with their registered addresses, and such list shall be open for inspection without payment of a fee.

#### **18 Closing of register**

(1) (a) The registering authority may, for a period not exceeding 14 days prior to each payment of interest on any stock registered or inscribed under this Act, close the register of that stock as regards transfer upon giving not less than 7 days notice of such closing.

(b) Such notice shall be published in the *Gazette* in the case of stock issued in Niue and in a newspaper circulating in the country concerned in the case of other stock.

(2) The persons who on the day of such closing are registered as stockholders shall, as between them and their transferees, be entitled to the interest then next payable on the stock.

#### **19 Interest and payment**

Interest shall be payable on stock half-yearly by the registering authority, at the rate fixed by Cabinet at the time of the issue of such stock.

#### **20 Redemption of stock**

(1) (a) Stock shall be redeemable at par on a date to be named in that behalf by Cabinet or the registering authority when issuing the stock.

(b) Cabinet or the registering authority may reserve the option to redeem the stock in whole or in part, by drawings or otherwise at any time prior to such date on such conditions as may be declared at the date of issue.

(2) From and after the date appointed for the redemption of the stock or any part of it all the interest on the principal moneys secured thereby shall cease and determine, whether payment of the principal shall have been demanded or not.

#### **21 Withdrawal from Niue Government Account**

So long as any portion of any loan remains outstanding, Cabinet shall in each half-year withdraw from the Niue Government Account a sum equal to one half year's interest on the whole of that loan outstanding, and shall authorise the payment out of such sum of the then current half-year's interest on the date on which it falls due.

#### **22 Sinking fund**

(1) (a) Cabinet shall in each half-year ending with the day on which the interest on any loan falls due withdraw from the Niue Government Account for formation of a sinking fund for repayment of that loan at par a sum equal to one-half of the annual contribution specified in the prospectus, or in the case of a loan not issued publicly, in the terms of issue relating to the loan.

(b) The said contribution shall in respect of any money raised under this Act commence not later than 3 years after the date from which the interest on such money shall commence to run.



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(2) The amounts withdrawn from the Niue Government Account under subsection (1), less any amounts utilised under subsection (5), shall be invested in investments approved by the Cabinet and, if invested in Niue, shall be invested in any one or more of the following –

- (a) On deposit with the Niue Post Office;
- (b) On deposit in any savings bank outside Niue; and
- (c) In any security issued by the Government or by any statutory organisation in Niue.

(3) All investments made under subsection (2) shall be retained as a sinking fund for the final extinction of any loan for which the sinking fund has been formed and any dividends, interest or produce of or arising out of or in consequence of any such investments may be invested in any similar manner to that authorised by subsection (2) and any such investment may at any time with the approval of Cabinet be changed to any other investment authorised by subsection (2).

(4) In case the sinking fund provided for by this section shall be insufficient for the payment of all the principal moneys borrowed under the authority of this Act in respect of any particular loan at the time the same shall have become due Cabinet shall make good the deficiency out of the Niue Government Account or by a loan authorised by section 3.

(5) Cabinet may authorise the utilisation of any amount withdrawn from the Niue Government account for contribution to the sinking fund prescribed by subsection (1) for the purchase of debentures or Niue stock for which the sinking fund has been established.

(6) The Governor-General may authorise the utilisation of the whole or any part of the sinking fund for the repayment in part or in whole of any loan for which the sinking fund has been established, whether or not such loan has become due for repayment.



# IMMIGRATION ACT 2011

2011/309 – 7 April 2011

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**1 Short Title**

This is the Immigration Act 2011.

**2 Purpose**

The purpose of this Act is to confirm the Government of Niue's right to control its borders. This includes managing and efficiently addressing the risks associated with those persons who attempt to enter or remain in Niue unlawfully, or who use the immigration system for personal gain contrary to the aims of Government immigration policy. This Act achieves its purpose through –

- (a) confirming the inalienable right of New Zealand citizens born in Niue to travel to and remain in Niue;
- (b) confirming the right of all other New Zealand citizens, except those who are prohibited persons, to travel to and remain in Niue;
- (c) requiring all other persons to hold valid visas or permits, or exemptions from the requirement to hold a visa or permit, in order to travel to or remain in Niue;
- (d) providing an administrative structure to facilitate the management of the immigration system;
- (e) providing that Cabinet makes individual decisions in respect of those people who pose a particular risk to Niue, and those who apply for residence permits;
- (f) providing for an efficient response to the deportation of persons unlawfully in Niue, criminal offenders, or those that pose a national security or reputational risk to Niue;
- (g) confirming the minimum requirements that those engaging in and benefiting from the immigration system in Niue must observe;
- (h) requiring the licensing of immigration advisors;
- (i) providing for immigration offences and penalties to enable Niue to address offending and to deter against immigration offending.

**3 Interpretation**

In this Act –

"carrier" means the owner or charterer of a craft and includes the agent of the owner or charterer in Niue or if there is no agent the person in charge;

"certificate of identity" means a document other than a passport issued by the Government of any country to any person for the purposes of international travel which purports to establish the identity but not the nationality of the person and which confers on the person the right to enter the country of the issuing Government;

"craft" means any form of aircraft, ship or other vehicle or vessel capable of being used to transport any person to or from Niue from or to any country outside Niue;

"Chief Immigration Officer" means the person appointed by the Niue Public Service Commission under section 10;

"employment" means any activity undertaken for gain or reward regardless of whether the gain or reward is monetary

"Immigration Officer" means an employee of the Public Service designated under section 11;

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- "immigration place" means any place approved by the Chief Immigration Officer for the purposes of –
- (a) processing persons arriving in or departing from Niue; or
  - (b) enabling transit passengers to wait pending the departure of their craft;
- "imprisonment" means any form of detention or custody whereby a person is deprived of liberty for a continuous period;
- "last known address" means the address given in the most recently completed application or arrival card or as later notified to an Immigration Officer by the person;
- "Minister" means the Minister to whom responsibility for immigration is assigned;
- "New Zealand citizen" means any person holding a valid New Zealand passport or who has the right to hold a valid New Zealand passport;
- "passport" means a document that is issued to a person by the Government of any country which purports to establish the identity and nationality of the person and which confers on the person the right to enter the country of the issuing Government;
- "permanent resident" means any person who has been granted permanent residence status under section 20;
- "permit" means a temporary permit granted under this Act;
- "person in charge" means the master, captain, pilot in command, driver or other person for the time being responsible for a craft;
- "revocation notice" means a document stating that a visa or temporary permit, or exemption from the requirement to hold a visa or temporary permit has been revoked;
- "temporary permit" means a permit granted under section 14;
- "transit passenger" means a person who arrives in Niue from another country while in transit to another overseas destination and who throughout the whole period of his or her stay in Niue remains on board the craft or in an immigration place;
- "valid permit" means a temporary permit or a residence permit which has not been revoked or in the case of a temporary permit expired;
- "valid visa" means a visa that is current for travelling to Niue, which has not been revoked or has expired;
- "visa" means a visa granted under section 12.
- "visitor" means any person not being a prohibited immigrant who enters Niue for a period not exceeding 30 days and who is in possession of a valid passport or other relevant travel document, and includes any one or more dependant members of the family of such person.

### **3A Application**

- (1) With the exception of Part 7, this Act shall not apply to -
- (a) The sea, land and air forces of any Commonwealth country; or
  - (b) Any person entitled to diplomatic privileges and immunities under the Diplomatic Privileges and Immunities Act 1968; or
  - (c) Any person entitled to consular privileges and immunities under the Consular Privileges and Immunities Act 1971; or

(d) Any person or class of persons in respect of whom the Cabinet in its discretion grants an exemption from all of the requirements of this Act.

(2) With the exception of Part 7, this Act shall not apply to –

- (a) A permanent resident of Niue; or
- (b) A Niuean who was born in Niue; or
- (c) A person other than a Niuean who was born in Niue; or
- (d) A New Zealand citizen permanently residing in Niue prior to 1 January 1996.

## PART 1

### GENERAL IMMIGRATION MATTERS

#### **4 Rights of New Zealand citizens born in Niue**

(1) For the purposes of this Act, every New Zealand citizen born in Niue has the right to travel to or remain in Niue at any time.

(2) Nothing in this Act shall abrogate the right declared in subsection (1) and no provision of this Act that is inconsistent with that right shall apply to New Zealand citizens born in Niue.

(3) No New Zealand citizen born in Niue shall require a visa to travel to, or require a permit in order to remain, or undertake any activity, in Niue.

(4) To avoid doubt a person to whom this section applies cannot be considered a prohibited person under this Act.

(5) If section 9 applies to a New Zealand citizen to whom section 4 does not apply, he or she must hold a valid visa in order to travel to, and a valid permit in order to remain in, Niue.

(6) To avoid doubt a person to whom subsection (1) applies cannot have his or her right to travel to, or remain in, Niue revoked under Part 4.

#### **5 Rights of persons who are not born in Niue**

(1) Subject to subsections (2) and (3), a person who is not born in Niue shall, upon application to the Chief Immigration Officer remain lawfully in Niue if that person has a parent that is either:

- (a) A New Zealand citizen and born in Niue, or
- (b) A permanent resident, and
- (c) who is ordinarily resident in Niue.

(2) For the purposes of this section a person shall be deemed to be ordinarily resident in Niue if, and only if –

- (a) He is actually residing in Niue;
- (b) Having been actually resident in Niue with the intention of residing there indefinitely, he is outside Niue but has, and has ever since he left Niue an intention to return and reside there indefinitely.

(3) Any person who has been outside Niue continuously for any period of more than 3 years, otherwise than for the purpose of:

- (a) undergoing medical treatment, or
- (b) a course of education or of technical training or instruction, or
- (c) any other purpose that Cabinet may prescribe by regulations from time to time during the whole or substantially the whole of that period,

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shall be deemed not to have been actually resident in Niue during that period with the intention of residing there indefinitely.

(4) A person under this section who is born overseas is deemed for the purposes of section 4 to be born in Niue.

### **6 Requirement to hold a visa to travel to Niue**

(1) Every person must hold a valid visa granted under this Act in order to travel to Niue lawfully unless-

- (a) he or she is exempt from the requirement to hold a visa under this Act; or
- (b) he or she holds a valid residence permit.

(2) Cabinet may make regulations under this Act to exempt any person or class of persons from the requirement to hold a visa, or types of visa, in order to travel to Niue, but no regulations may exempt a person to whom section 9 applies from the requirement to hold a visa in order to travel to Niue.

(3) For the purposes of this section persons intending to arrive in Niue as transit passengers are deemed to be travelling to Niue.

### **7 Requirement to hold a permit to remain in Niue**

(1) Every person must hold a valid permit granted under this Act in order to remain in Niue lawfully unless he or she is exempt from the requirement to hold a permit under this Act.

(2) Cabinet may make regulations under this Act to exempt any person or class of persons from the requirement to hold a permit, or types of permit, in order to remain in Niue, but no regulations may exempt a person to whom section 9 applies from the requirement to hold a permit in order to remain in Niue.

(3) Every person who is required to hold a valid permit in order to remain in Niue but who does not hold a valid permit is deemed to be unlawfully in Niue.

### **8 Persons unlawfully in Niue**

(1) A person unlawfully in Niue is obliged to leave Niue immediately and is liable to be deported.

(2) Every person is required to report to an Immigration Officer at an immigration place on becoming unlawful in Niue.

(3) An Immigration Officer may require any person to provide his or her passport or certificate of identity for inspection if the Immigration Officer reasonably suspects the person of being unlawfully in Niue or breaching the conditions of his or her permit.

### **9 Prohibited persons**

(1) The following are prohibited persons and are unable to travel to, or remain in Niue, unless granted a visa or permit in accordance with subsection (2) or (3) –

- (a) A person who at any time has been convicted of any offence for which that person has been sentenced to a period of imprisonment, whether served or not, that was:
  - (i) for an indeterminate period; or



- (ii) for a period of 12 months or more;
  - (b) A person who has been removed or deported from any country including Niue;
  - (c) A person who in the opinion of Cabinet, Minister or the Chief Immigration Officer threatens national security;
  - (d) A person who in the opinion of Cabinet, Minister or the Chief Immigration Officer threatens the public order or public interest;
  - (e) A person who has failed to comply with the requirements under sections 33 and 34.
- (2) Cabinet may grant a prohibited person a visa or permit.
- (3) Nothing in subsection (2) gives any person to whom this section applies the right to apply for any visa or permit, and where any person purports to apply for any visa or permit under this section-
- (a) Neither Cabinet nor the Minister is under any obligation to consider the application; and
  - (b) whether the application is considered or not, neither Cabinet nor the Minister is obliged to give any reasons for any decision relating to the application.
- (4) No person is a prohibited person under this section where:
- (a) the event that would otherwise make him or her a prohibited person under this section occurred prior to the commencement of this Act; and
  - (b) he or she resided lawfully in Niue for the three years prior to the commencement of this Act; and
  - (c) in each of those three years he or she spent at least 200 days in each year in Niue.

## **10 Chief Immigration Officer**

- (1) The Niue Public Service Commission must appoint a member of the Public Service as the Chief Immigration Officer who is responsible for the administration of this Act.
- (2) The Chief Immigration Officer may hold other positions in the Public Service while designated as the Chief Immigration Officer.
- (3) Unless otherwise stated in this Act the Chief Immigration Officer may not exercise the powers vested in Immigration Officers..
- (4) Where the Chief Immigration Officer is a constable he or she may exercise the powers of an Immigration Officer under section 11(4)..

## **11 Immigration Officers**

- (1) The Chief Immigration Officer, after consultation with the Niue Public Service Commission, must designate employees of the Public Service as Immigration Officers for the purposes of this Act.
- (2) A person who is designated as an Immigration Officer must be issued with a warrant of designation signed by the Chief Immigration Officer which must be produced upon request when exercising any powers under this Act.
- (3) A person's designation as an Immigration Officer expires when –
- (a) the person is no longer undertaking immigration duties as part of their employment; or

## Immigration Act

(b) it is revoked by the Chief Immigration Officer..

(4) Constables are deemed to be designated as Immigration Officers but only for the purposes of sections 8(3), 27(1), 26(3), 26(4), 28(2), 31(1)(f), 31(1)(g), 31(1)(h), and 32(4).

(5) A person may be designated as an Immigration Officer while holding other positions in the Public Service which do not involve immigration duties.

### PART 2

#### TEMPORARY ENTRY - VISAS AND TEMPORARY PERMITS

## 12 Visas

(1) A visa entitles the holder to lawfully travel to Niue in accordance with the conditions stated on his or her visa and to apply for a temporary permit on arrival.

(2) The grant of a visa is a matter of discretion for the Chief Immigration Officer.

(3) A visa may be subject to any conditions imposed by the Chief Immigration Officer.

(4) Every visa granted under this Act must –

(a) be in a form approved by the Chief Immigration Officer which may include an electronic form; and

(b) be endorsed in the applicant's valid passport or valid certificate of identity unless the visa is granted in an electronic form; and

(c) state the date on which it expires; and

(d) state whether it is valid for single or multiple entry to Niue; and

(e) state any conditions to which it is subject.

(5) Cabinet may certify and publish temporary entry guidelines to assist with the determination of applications for visas.

(6) Except for visitor visas, every applicant for a visa must be of –

(a) genuine intent in their stated reason for travel to Niue; and

(b) good character; and

(c) good health.

(7) There are the following types of visas:

(a) visitor visas for tourists to Niue;

(b) work visas for persons intending to undertake employment or provide any services in Niue;

(c) student visas for persons intending to undertake a course of study in Niue;

(d) transit visas for transit passengers.

(8) Regulations may be promulgated under this Act to –

(a) amend the purposes of any of the visas described in subsection (7);

(b) create other types of visas and the purposes for them.

(9) A visa remains valid for the period up to and including the date of expiry so stated in the visa.

(10) To avoid doubt a visa does not entitle the holder to remain in Niue.

## 13 Applications for visas for travel to Niue

(1) Every person requiring a visa in order to travel to Niue must apply on the relevant form to the appropriate office with any applicable fee.

(2) The Chief Immigration Officer will determine where applications for visas may be made.

(3) Without limiting the places at which the Chief Immigration Officer may determine where applications for visas can be made, those places may be –

(a) a Niue High Commission; .

(b) an office of a New Zealand Government agency responsible for the determination of immigration applications for New Zealand.

(4) Nothing in this section prevents the Chief Immigration Officer from granting an applicant a visa of a different type to that applied for if he or she considers it appropriate in the circumstances.

(5) Nothing in this section prevents a person who is exempt from the requirement to hold a visa in order to travel to Niue to apply for and be granted a visa prior to commencing that travel.

#### **14 Temporary permits**

(1) A temporary permit entitles the holder to remain lawfully in Niue for the period stated on the temporary permit.

(2) The grant of a temporary permit is a matter of discretion for the Chief Immigration Officer.

(3) A temporary permit may be subject to any conditions imposed by the Chief Immigration Officer.

(4) Every temporary permit granted under this Act must –

(a) be in a form approved by the Chief Immigration Officer which may include an electronic form; and

(b) be endorsed in the applicant's valid passport or valid certificate of identity unless the permit is granted in an electronic form; and

(c) state the date on which it expires; and

(d) state any conditions to which it is subject.

(5) Cabinet may publish temporary entry guidelines to assist the Chief Immigration Officer to establish the form of temporary permit applications.

(6) Every applicant for a temporary permit must be of –

(a) genuine intent in their stated reason for being in Niue; and

(b) good character; and

(c) good health.

(7) There are the following types of temporary permits:

(a) work permits for persons intending to undertake employment or provide any services in Niue;

(b) student permits for persons intending to undertake a course of study in Niue.

(8) Regulations may be promulgated under this Act to –

(a) amend the purposes of any of the permits under subsection (7);

(b) create other types of temporary permits and the purpose for them.

(9) A temporary permit remains valid for the period up to and until the earlier of

(a) the date the holder departs Niue; or

(b) the date of expiry so stated in the temporary permit.

## Immigration Act

(10) To avoid doubt a temporary permit does not entitle the holder to travel to Niue.

### **15 Applications for temporary permits on arrival in Niue**

(1) Every person must immediately apply for a temporary permit on arrival in Niue to the Immigration Officer at an Immigration Place together with any applicable fee, unless-

- (a) he or she is exempt from the requirement to hold a permit under this Act; or
- (b) he or she holds a residence permit.

(2) Where a person is refused a temporary permit on application on arrival in Niue that person is deemed to be unlawfully in Niue.

(3) Nothing prevents the Chief Immigration Officer from granting an applicant a temporary permit of a different type to that applied for if he or she considers it appropriate in the circumstances. .

### **16 Applications for further temporary permits**

(1) A person holding a valid temporary permit may apply in Niue, to the Chief Immigration Officer with any applicable fee, for the grant of a further temporary permit to remain in Niue.

(2) Where an application for a further temporary permit is granted under this section, the new permit becomes valid on the earlier of –

- (a) the date of the grant of the new permit; or
- (b) the date the permit held at the date of application expires.

(3) Where a person is granted a further temporary permit any valid temporary permit held at the time of the grant of the further temporary permit expires.

(4) The fact that a person has applied for a further temporary permit does not affect the person's unlawful status if the person's existing permit expires before their application is determined.

(5) Nothing in this section gives any person the right to remain in Niue while an application for a further temporary permit is being considered if the person does not hold a valid temporary permit.

(6) Nothing in this section prevents the Chief Immigration Officer from granting an applicant a further temporary permit of a different type to that applied for if he or she considers it appropriate in the circumstances.

### **16A Clearance requirements**

(1) In addition to the requirements under sections 14, 15 and 16 every application shall be accompanied by -

- (a) At least two character references of the applicant; and
- (b) A police report and health clearances from the relevant officials of the applicant's home country; and
- (c) Any other information that the Chief Immigration Officer may specify or require.

(2) For the purposes of sections 14, 15 and 16 and of this section, "applicant" shall be construed to include the applicant's spouse and any member of the applicant's family included in the application.

**16B Further permit requirements for persons researching tāoga Niue**

(1) If a person wishes to remain in Niue for the purpose of research concerning tāoga Niue (as defined in the Tāoga Niue Act 2012), a temporary permit may be issued to that person –

- (a) only with the prior written approval of the Director of the Department of Tāoga Niue; and
- (b) subject to such conditions as to research procedures, guarantees, and publication of results as the Director may impose.

(2) The requirements of subsection (1) are in addition to the requirements under sections 14 to 16A.

**17 Sponsors for applicants for temporary permits**

(1) Applicants for temporary permits must have a sponsor acceptable to the Chief Immigration Officer if required under the temporary entry guidelines.

(2) A sponsor must be either –

- (a) residing in Niue at the time of sponsorship and be:
  - (i) a person born in Niue who has resided on Niue for at least 10 years;
  - (ii) a permanent residence permit holder for at least 10 years;
  - (iii) not subject to subsection (7), section 9, or section 20(7)(b);
  - (iv) at least 40 years of age or have the ability to demonstrate that they are of sound mind and good health; or
- (b) a company based in Niue which is not subject to subsection (7), or section 20(7).

(3) A sponsor must submit with an application for a temporary permit any documentation required by the temporary entry guidelines, to the Chief Immigration Officer or Cabinet.

(4) A sponsor may be required to undertake to provide any or all of the following in respect of the applicant including the applicant's immediate family –

- (a) accommodation;
- (b) maintenance;
- (c) costs of deportation if the applicant or the applicant's immediate family becomes unlawful;
- (d) the costs of any health or social services required by the applicant or the applicant's immediate family;
- (e) any other costs incurred by the Government resulting from a breach of the conditions of a visa or temporary permit.

(5) A sponsor must demonstrate that the sponsor has the financial ability to meet any undertaking given.

(6) If the sponsor fails to comply with any undertaking given the sponsor is liable to pay to the Government all costs incurred by the Government in respect of that failure.

(7) Where a sponsor becomes liable under subsection (6) the sponsor is prohibited from:

- (a) leaving the country permanently, and
- (b) sponsoring any further applicants for a temporary permit under this Act until all liability to the Government has been met.

**18 Bonds**

(1) The Chief Immigration Officer must require an applicant for a temporary permit to pay a monetary bond with the Immigration Department before any temporary permit is granted for the purpose of minimising the financial risk to the Government if the person has to be deported from Niue.

(2) In determining the level of bond that may be paid the Chief Immigration Officer must have regard to the amount that it is likely to be the cost of returning the applicant and any accompanying immediate family to a country that he or she has the right to lawfully enter and permanently reside.

(3) Bonds must be in New Zealand currency and paid to the Chief Immigration Officer before the temporary permit is granted.

(4) The Chief Immigration Officer must hold the bond in a Government bank account until –

- (a) it is returned; or
- (b) it is used to pay for the costs associated with the deportation of the applicant and any accompanying immediate family.

(5) Where the Government incurs costs in the departure of the applicant and any accompanying immediate family the bond must be used to meet those costs.

(6) Where subsection (5) applies any of the bond remaining after the Government's costs have been met must be returned to the applicant on his or her departure from Niue.

(7) No interest or inflationary amount is payable on a bond held by the Chief Immigration Officer and any bond or part bond that is returned to the applicant shall be paid in New Zealand dollars.

**19 Grant of a temporary permit to a person unlawfully in Niue**

(1) The Chief Immigration Officer may at his discretion grant a temporary permit to a person who is unlawfully in Niue.

(2) Nothing in subsection (1) gives any person the right to apply for any temporary permit and where any person purports to apply for any temporary permit under subsection (1) –

- (a) The Chief Immigration Officer is under no obligation to consider the application; and
- (b) Whether the application is considered or not the Chief Immigration Officer is not obliged to give any reasons for any decision relating to the application.

**PART 3**

**PERMANENT RESIDENCE CERTIFICATES**

**20 Permanent Residence Certificates**

(1) A permanent residence certificate entitles the holder to –

- (a) indefinitely remain in Niue;
- (b) indefinitely travel from and return to Niue without the need to hold a visa; and
- (c) undertake any lawful activity in Niue without the need for any other permit that would otherwise be required under this Act.



(2) Cabinet may grant a person permanent residence status at its discretion.

(3) Nothing in subsection (2) gives any person the right to apply to Cabinet for a permanent residence status and where any person purports to apply for residence under subsection (2) –

- (a) Cabinet is under no obligation to consider the application; and
- (b) Whether the application is considered or not, Cabinet is not obliged to give any reasons for any decision relating to the application.

(4) Cabinet must publish Residence Criteria for the grant of permanent residence certificates.

(5) The grant of a permanent residence status by Cabinet shall –

- (a) only be considered where the applicant has resided continuously on Niue on a temporary permit for a period of not less than 10 years;
- (b) only be in accordance with Residence Criteria applicable at the time the application is made, unless further Residence Criteria are certified by Cabinet in accordance with subsection (7) that affects the application; and
- (c) only occur after the Chief Immigration Officer has agreed that the application meets the applicable Residence Criteria.

(6) Residence Criteria may have retrospective effect if certified as having such effect.

(7) Applicants for permanent residence must have a sponsor acceptable to Cabinet if required under the Residence Criteria.

(8) Where Cabinet determines, or Residence Criteria require, that an applicant must have a sponsor and where a sponsor fails to meet any undertakings required, the sponsor is –

- (a) liable for any costs incurred by the Government in respect of the failure; and
- (b) prohibited from leaving the country permanently and sponsoring any further applicants for a permit under this Act until all liability to the Government has been met or has been waived by Cabinet.

(9) Where a person is granted a permanent residence certificate any valid temporary permit held at the time of the grant of the permanent residence status expires.

## **21 Applications for permanent residence certificates**

(1) An application for a permanent residence certificate may only be made by a person in Niue holding a valid temporary permit to the Chief Immigration Officer in accordance with any requirements in Residence Criteria with any applicable fee.

(2) An applicant for a permanent residence certificate may include in the application the following persons to be granted permanent residence certificates–

- (a) his or her spouse; or
- (b) his or her biological children under the age of 18 years (including those of a spouse); or
- (c) his or her legally adopted children under the age of 18 years (including those of a spouse).



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(3) No child may be granted a permanent residence certificate on application unless Cabinet is satisfied that the child may, in the child's lawful country of residence, be legally removed permanently to Niue.

(4) Every applicant for a grant of permanent residence certificate must be of –

- (a) good character; and
- (b) good health,

such standards for good health and good character to be prescribed by regulations from time to time.

### PART 4

#### REVOCATIONS

#### **22 Revocation of a visa or exemption from the requirement to hold a visa**

(1) The Chief Immigration Officer may at any time revoke a person's visa, or exemption from the requirement to hold a visa.

(2) A revocation notice under this section must –

- (a) state the reasons for the revocation; and
- (b) in the case of a visa be served either directly to the person or by post to the person's last known address; or
- (c) in the case of an exemption be held by the Chief Immigration Officer.

(3) A revocation notice under this section takes effect as soon as it is made and the revoked visa, or exemption from requirement to hold a visa, is not valid for travel to Niue.

(4) An Immigration Officer may advise a carrier, or person in charge of a craft, that a person's visa, or exemption from the requirement to hold a visa has been revoked.

(5) The effect of a revocation of a person's exemption from the requirement to hold a visa under this section is that the person must obtain a valid visa in order to travel to Niue despite any regulations made under this Act that would otherwise apply to the person.

#### **23 Revocation of a temporary permit or exemption from requirement to hold a permit**

(1) The Chief Immigration Officer may at any time revoke a person's temporary permit, or exemption from the requirement to hold a temporary permit, by serving that person with a revocation notice.

(2) A revocation notice under this section must –

- (a) state the reasons for the revocation; and
- (b) advise the person of the ability to have the decision to revoke the temporary permit or exemption reconsidered under subsection (3); and
- (c) be served either
  - (i) directly to the person; or
  - (ii) by post to the person's last known address.

(3) Once a revocation notice becomes effective under this section the person is deemed to be unlawfully in Niue.

**24 Revocation of a permanent residence certificate**

(1) Cabinet may revoke a person's permanent residence certificate if either directly, or indirectly,

- (a) it was granted as a result of administrative error; or
- (b) it was procured by fraud, forgery, false or misleading representation, or the concealment of relevant information; or
- (c) it was procured with the assistance of an immigration advisor who was at the time of application not the holder of a valid licence issued under Part 8;
- (d) Cabinet considers the holder poses a risk to national security; or
- (e) The person is continuously absent from Niue for a period longer than three years.

(2) Where a permanent residence certificate is revoked under subsection (1) the residence status of any dependents included on the permanent residence holder's application for residence is also deemed to be revoked.

(3) Cabinet may revoke a permanent residence certificate within 10 years of its initial granting if-

- (a) the holder is convicted of an offence (whether in Niue or not) and is sentenced to a term of imprisonment for 12 months or more; or
- (b) the holder is convicted of an offence (whether in Niue or not) for which the Court has the power to impose imprisonment for a term of 2 years or more.

(4) For the purposes of subsection (3) it does not matter whether any period of imprisonment is served.

(5) If Cabinet intends to revoke a holder's permanent residence certificate under this section it must-

- (a) notify the holder in writing of the reasons for the intended revocation by either-
  - (i) serving the holder personally with the notification; or
  - (ii) sending the notification of revocation to the holder's last known address; and
- (b) give the holder no less than 15 working days from the date of the notification to provide any response to the intended revocation; and
- (c) consider any response that might be received from the holder to Cabinet's notification in making a final decision whether to revoke the permanent residence certificate or not; and
- (d) notify the holder, in writing, of the final decision as to whether to revoke the permit or not and stating reasons for the decision by either
  - (i) serving the notice to the holder personally; or
  - (ii) sending the notice to the holder's last known address.

(6) Where under subsection (5)(c) Cabinet decides to revoke a person's permanent residence certificate the revocation of the certificate takes effect from the date of Cabinet's decision.

(7) Once revocation becomes effective under this section the person to whom the revocation applies to is deemed to be unlawfully in Niue.

PART 5

DEPORTATION

**25 Persons unlawfully in Niue liable to deportation**

(1) Every person unlawfully in Niue is liable to be deported from Niue on the first available craft.

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- (2) There is no requirement to inform a person that he or she is liable to be deported before he or she is deported and deportation may be carried out at any time.
- (3) The liability to be deported arises regardless of how the person came to be unlawfully in Niue.

### **26 Persons liable to deportation may be arrested and detained**

(1) Every person liable to be deported may be arrested by an Immigration Officer and detained in a prison, or other place as determined by the Chief Immigration Officer, until he or she is able to be deported.

(2) Subject to section 28 the Chief Immigration Officer may release a person detained under this section and impose any conditions on his or her release.

(3) Where a person has been released under subsection (2) he or she may be arrested by an Immigration Officer and detained in a prison, or other place as determined by the Chief Immigration Officer if –

- (a) the person has breached any conditions that were imposed on his or her release; or
- (b) the Chief Immigration Officer considers that release on conditions is no longer appropriate.

(4) Where a person has been released under subsection (2) he or she may be arrested by an Immigration Officer and detained in a prison, or other place as determined by the Chief Immigration Officer, for the purposes of facilitating his or her departure from Niue.

### **27 Obligation of persons liable to deportation to surrender and obtain documentation**

(1) Every person who is liable to be deported must surrender without delay his or her passport or certificate of identity to an Immigration Officer and apply without delay, upon request by an Immigration Officer, for any travel documentation required from any other country as part of his or her departure from Niue.

(2) Every person who fails to meet his or her obligations under this section must be arrested by an Immigration Officer and detained, in a prison or other place as determined by the Chief Immigration Officer, until the person has met his or her obligations under this section.

(3) A person who is detained under this section must not be released under section 26(2) until the person has met his or her obligations under this section.

## PART 6

### REQUIREMENTS OF PERSONS ACCESSING THE IMMIGRATION SYSTEM

### **28 Requirements of applicants**

- (1) Every applicant for a visa or permit must-
  - (a) be truthful and must not –
    - (i) provide any fraudulent, false or misleading representation or information in the course of his or her application; or
    - (ii) conceal any relevant information in the course of his or her application;
  - and

- (b) inform an Immigration Officer of any change in circumstances that may affect the decision on the application; and
- (c) upon request from an Immigration Officer provide an address where notices can be served and correspondence sent; and
- (d) where the application is successful, provide his or her own valid genuine passport or certificate of identity for the grant of the visa or permit.

(2) Where any address provided under subsection (1)(c) is for a third party any correspondence or notice sent to that address shall be deemed to be have been served on the applicant.

(3) Where any passport or certificate of identity provided for the grant of a visa or permit is not the applicant's own valid genuine passport or certificate of identity, any visa or permit granted in the passport or certificate of identity is null and void.

(4) Every person who fails to meet the requirements under subsection (1) commits an offence against this Act and is liable to a fine of up to 100 penalty units and up to 2 years imprisonment.

## **29 Requirements of visa and temporary permit holders**

(1) Every visa or temporary permit holder must-

- (a) hold his or her genuine passport or certificate of identity which is valid for at least six months after the date of the expiry of his or her current visa or temporary permit; and
- (b) comply with the conditions of his or her visa or temporary permit; and
- (c) apply for a different visa or temporary permit if any intended activity in Niue is not allowed on the visa or temporary permit held; and
- (d) apply within a reasonable time before the expiry of the current temporary permit for any further temporary permit required in order to remain lawfully in Niue; and
- (e) inform an Immigration Officer of any change in circumstances that might affect his or her immigration status.

(2) Every person who fails to meet the requirements under this section commits an offence against this Act and is liable to a fine of up to 100 penalty units and up to 2 years imprisonment.

## **30 Requirements of sponsors**

(1) Sponsors of applicants for visas and permits must-

- (a) genuinely intend to sponsor the applicant for the stated purpose of the application; and
- (b) be genuinely able to meet any undertakings given in respect of the applicant; and
- (c) actually meet the undertakings given in respect of the applicant.

(2) Every sponsor who fails to meet the requirements under this section commits an offence against this Act and is liable for a fine of up to 100 penalty units and up to 2 years imprisonment.

## **30A Requirements of employers**

Sponsors of applicants for permits must –

- (a) genuinely intend to sponsor the applicant for the stated purpose of the application; and

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- (b) be genuinely able to meet any undertakings given in respect of the applicant; and
- (c) actually meet the undertakings given in respect of the applicant.

### **30B Requirements and Offences**

- (1) Any person who fails to meet their obligations under this Part commits an offence under this Act and is liable to a fine of up to 100 penalty units and up to 2 years imprisonment.
- (2) Where a person fails to meet their obligations and holds a permit to remain in Niue under this Part they are liable to have that permit revoked and be deported from Niue.
- (3) A sponsor's liability for any offence under this Part does not affect any liability to meet the costs incurred by the Government or any prohibition on future sponsorship under section 16 and 19.

## PART 7

### ENTRY AND DEPARTURE

### **31 Responsibilities of carrier and persons in charge of craft**

- (1) The carrier or person in charge of any craft that intends to arrive or arrives in Niue must –
  - (a) ensure that every person on board the craft either holds a valid visa to travel to Niue or is exempt from the requirement to hold a visa to travel to Niue and holds the necessary documentation for immigration purposes to apply for a permit on arrival, or have his or her immigration status confirmed, in Niue; and
  - (b) ensure that no person is permitted to travel to Niue on that craft where the person does not comply with subparagraph (a); and
  - (c) ensure that every person on board the craft reports immediately on arrival to an Immigration Officer at an Immigration Place; and
  - (d) prevent with reasonable force if necessary the disembarkation of any person on that craft to any place other than an Immigration Place; and
  - (e) on request by the Chief Immigration Officer or an Immigration Officer provide a list of the details of all persons on board the craft since its last port of call; and
  - (f) immediately report to an Immigration Officer if a stowaway has been found on the craft; and
  - (g) inform an Immigration Officer if any person on board the craft is known to pose a risk to public health or be a prohibited person; and
  - (h) allow an Immigration Officer to board and inspect the craft for the purposes of carrying out his or her functions under this Act; and
  - (i) remove from Niue at their own cost any person who arrived in Niue on the craft if that person is not permitted to remain in Niue.
- (2) The carrier or person in charge of any commercial craft that intends to depart or departs from Niue must allow on board any person (subject to the payment of any fare) liable to be deported from Niue under this Act.

(3) The carrier or person in charge of any craft that intends to arrive or arrives in Niue, or intends to depart or departs from Niue, must comply with any further obligations relating to procedures for the control and immigration processing of persons entering and departing from Niue imposed by regulations made under this Act.

(4) Every carrier or person in charge of a craft who fails to comply with this section without reasonable excuse commits an offence against this Act and is liable to

- (a) in the case of the carrier a fine not exceeding 500 penalty units;
- (b) in the case of the person in charge of the craft a fine not exceeding 100 penalty units and up to 3 months imprisonment.

### **32 Responsibilities of persons arriving in Niue**

(1) Every person arriving in Niue must report immediately to an Immigration Officer at an Immigration Place and-

- (a) if required to be granted a temporary permit in order to remain in Niue apply for a temporary permit; or
- (b) if not required to be granted a temporary permit in order to remain in Niue obtain confirmation of his or her immigration status in Niue.

(2) For the purposes of subsection (1) a person must produce to an Immigration Officer his or her own valid genuine passport or certificate of identity, a properly completed arrival card and any documentation required by the arrival card or an Immigration Officer.

(3) Every person who does not comply with this section commits an offence under this Act and is liable to-

- (a) immediate arrest and detention by an Immigration Officer; and
- (b) a fine of up to 100 penalty units; and
- (c) up to 2 years imprisonment.

(4) Every person who does not comply with the requirements under this section becomes a prohibited person under section 9.

(5) This section does not apply to transit passengers who remain on the craft they have arrived in or who remain only in an Immigration Place until departing to another destination.

### **33 Responsibilities of persons departing Niue**

(1) Every person departing from Niue must report to an Immigration Officer at an Immigration Place and produce his or her own valid genuine passport or certificate of identity, a properly completed departure card and any documentation required by the departure card or an Immigration Officer.

(2) Every person who does not comply with this section commits an offence under this Act and is liable to-

- (a) immediate arrest and detention by an Immigration Officer; and
- (b) a fine of up to 100 penalty units.

(3) Every person who does not comply with the requirements under this section becomes a prohibited person under section 9.

(4) This section does not apply to transit passengers.

**34 Transit passengers**

(1) If a person is exempt from the requirement to hold a visa in order to travel to Niue they shall not require a temporary permit if arriving in Niue from another country if they remain on the craft or in an Immigration Place whilst in transit to another destination.

(2) Nothing in this Act requires transit passengers holding transit visas who remain on the craft they have arrived in or who remain in an Immigration Place until departing to another destination to apply for a temporary permit on arrival.

(3) This section ceases to apply after 24 hours of a transit passenger arriving in Niue at which time a person is deemed to –

- (a) no longer be a transit passenger; and
- (b) have arrived in Niue.

(4) To avoid doubt a person to whom subsection (3) applies must comply with section 33.

PART 8

IMMIGRATION ADVISORS

**35 Immigration advice**

In this Part –

"immigration advice" means the provision of advice, direction, assistance to, or representation of, another person in any immigration matter relating to Niue for any direct, or indirect, gain or reward, whether that occurs in or outside of Niue; "immigration advisor" is a person providing immigration advice.

**36 Immigration advisors to be licensed**

(1) Any immigration advisor must be licensed by the Chief Immigration Officer.

(2) The Chief Immigration Officer must consider a request by a person to be licensed as an immigration advisor and in determining whether to issue a licence must consider –

- (a) the character of the person (including but not limited to any criminal convictions); and
- (b) the qualifications and practical experience of the person; and
- (c) whether the issue of the licence would pose a risk to the integrity of Niue's immigration system.

(3) After considering a request made under subsection (2) the Chief Immigration Officer must either –

- (a) issue a licence to the person; or
- (b) advise the person in writing why request was not granted.

(4) A licence issued under this section cannot be issued for more than two years duration.

(5) The Chief Immigration Officer may revoke any licence issued if there is good cause to do so.

(6) Where an application for a visa or permit is submitted which has been the subject of immigration advice by an immigration advisor who does not hold a valid licence –

- (a) a visa or permit may not be granted in respect of that application; and



(b) where any visa or permit is so granted it is liable to be revoked.

(7) A person who gives immigration advice without a valid licence issued under this section commits an offence against this Act and is liable to a fine not exceeding 500 penalty units and up to 3 years imprisonment.

(8) Any licensed immigration advisor who wilfully misleads any person or acts negligently or unprofessionally (including charging excessively) in the course of providing immigration advice commits an offence against this Act and is liable to a fine not exceeding 100 penalty units and up to 2 years imprisonment.

## PART 9

### OFFENCES

#### 37 General offences

(1) Every person commits an offence against this Act who —

- (a) makes any statement, or provides any information, evidence, or submission, knowing that it is false or misleading in any material respect, in support of —
  - (i) any application or request (whether by that person or by another person) for a visa or permit; or
  - (ii) any claim to an exemption; or
  - (iii) any request to Cabinet regarding an immigration matter; or
  - (iv) any request for an immigration advisor licence or
- (b) without reasonable excuse, refuses or fails to produce or surrender any document or to supply any information when required to do so by the Chief Immigration Officer or an Immigration Officer in accordance with any of the provisions of this Act; or
- (c) without reasonable excuse, produces or surrenders any document or supplies any information to an Immigration Officer, the Chief Immigration Officer, the Minister or Cabinet knowing that it is false or misleading in any material respect; or
- (d) whether within or outside Niue, procures, produces or surrenders or passes off a passport, certificate of identity, permit, or certificate of citizenship, or anything purporting to be a passport, certificate of identity, visa, permit, or certificate of citizenship —
  - (i) as relating to that person when in fact, to that person's knowledge, it relates to some other person; or
  - (ii) knowing it to be forged or to have been obtained fraudulently; or
- (e) whether within or outside Niue, sells, hires, lends, gives, or otherwise disposes of a passport, certificate of identity, visa, permit, or certificate of citizenship relating to that person (or anything purporting to be a passport, certificate of identity, visa, permit, or certificate of citizenship relating to that person) to any other person (the "receiver") —
  - (i) without necessarily knowing which, knowing that the receiver will—
    - (A) produce it or pass it off as relating to the receiver or some other person; or
    - (B) sell, hire, lend, give, or otherwise dispose of it; or

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- (ii) without necessarily intending either in particular, intending the receiver to —
    - (A) produce it or pass it off as relating to the receiver or some other person; or
    - (B) sell, hire, lend, give, or otherwise dispose of it; or
  - (f) for a material benefit, aids, abets, incites, counsels, or procures any other person to be or to remain in Niue unlawfully or to breach any condition of a permit granted to the other person; or
  - (g) whether within or outside Niue, and whether or not the other person in fact enters Niue, aids, abets, incites, counsels, or procures any other person to enter Niue unlawfully (whether by arriving in Niue in a manner that does not comply with section 32, by arriving in Niue without holding a visa where the other person requires a visa to travel to Niue, or otherwise howsoever) —
    - (i) knowing that the person's entry into Niue is or would be unlawful; or
    - (ii) reckless as to whether the person's entry into Niue is or would be unlawful; or
  - (h) whether within or outside Niue, aids, abets, incites, counsels, or procures any other person to complete an arrival card in a manner that the person aiding or assisting knows to be false or misleading in any particular; or
  - (i) aids, abets, incites, counsels, or procures any other person to be or to remain in Niue unlawfully or to breach any condition of a permit granted to the other person under this Act; or
  - (j) resists or intentionally obstructs any Immigration Officer or the Chief Immigration Officer in the exercise of his or her powers under this Act; or
  - (k) not being an Immigration Officer personates or pretends to be an Immigration Officer; or
  - (l) for the purpose of encouraging, inducing, deterring, or preventing immigration to Niue of any person or class of persons, publishes, disseminates, or causes or procures the publication of any information or representations knowing that the information is, or the representations are, false or misleading; or
  - (m) not being the Chief Immigration Officer, an Immigration Officer, a constable, or a Customs Officer, enters or remains in an Immigration Place without the consent of the Chief Immigration Officer or an Immigration Officer.
- (2) Every person commits an offence against this Act who, not being an Immigration Officer —
- (a) after the person to whom a form required to be completed for the purposes of this Act relates has signed it and declared its contents to be true —
    - (i) alters information entered on it; or
    - (ii) enters further information on it; or
    - (iii) alters any material attached to it; or
    - (iv) attaches any material or further material to it; and
  - (b) allows the form to leave his or her possession without writing on it and signing a statement of —
    - (i) the information or material that has been altered, entered, or attached; and

(ii) why and by whom the information or material has been altered, entered, or attached.

(3) Regulations may be made under this Act prescribing further offences for immigration matters.

(4) Any offences prescribed by regulation made under this Act shall only be subject to the general penalties for offences under this Act.

### **38 Offences by employers**

(1) Every employer commits an offence against this Act who allows a person to undertake employment in the employer's service when the person is not entitled to undertake that specific employment under this Act.

(2) Unless the employer has made and received formal confirmation from the Chief Immigration Officer of the employees right to undertake employment, it shall be no defence to any liability under this Act that the employer was unaware of a person's immigration status.

(3) Every employer who commits an offence against this section is liable for a fine of up to 100 penalty units and up to 2 years imprisonment.

### **39 General penalties for offences**

Unless specifically provided for in this Act any offence committed under this Act shall carry a maximum penalty of –

- (a) a fine of up to 200 penalty units; and
- (b) up to five years imprisonment.

## **PART 10**

### **MISCELLANEOUS PROVISIONS**

### **40 Regulations**

Cabinet may make such regulations as it thinks fit for the purposes of this Act and for all or any of the following purposes:

- (a) prescribing fees for any matter arising from this Act;
- (b) exempting any person or class of persons from the requirement to hold a visa, or type of visa, in order to travel to Niue;
- (c) exempting any person or class of persons from the requirement to hold a permit, or type of permit, in order to remain in Niue;
- (d) amending the purposes of any of the types of visa or temporary permit under this Act;
- (e) creating other types of visa and temporary permits and the purposes and conditions of those permits;
- (f) prescribing additional obligations of any carrier or person in charge of a craft that intends to arrive or arrives in Niue, or intends to depart or departs from Niue, relating to procedures for the control and immigration processing of people entering and departing from Niue;
- (g) prescribing additional offences in relation to immigration matters.

**41 Special provision relating to judicial review of Cabinet decisions under this Act**

No review shall lie against any decision of Cabinet, not to grant a permanent residence certificate.

**42 Evidence in proceedings**

In any proceedings relating to any matter under this Act, a certificate signed by an Immigration Officer and containing a statement in relation to any person shall, in the absence of proof to the contrary established on the balance of probabilities, be deemed to be proof of the truth of the statement to the effect that—

- (a) the person is not a New Zealand citizen; or
- (b) the person was not born in Niue; or
- (c) the person holds or at any material time held, or does not hold or did not at any material time hold, a visa or permit; or
- (d) any visa or permit granted to the person was granted for a specified period or on or until a specified date, or was granted for an express purpose, or is or was subject to specified conditions; or
- (e) the person is or was at any material time, or is not or was not at any material time, exempt under this Act from the requirement to hold a visa or permit; or
- (f) a decision whether or not to issue or grant any visa or permit has been made; or
- (g) Cabinet, the Minister or an Immigration Officer was or was not satisfied as to any relevant specified matter; or
- (h) whether or not a particular stage of processing an application had been reached; or
- (i) the person was deported from Niue on a specified date, or that the person is liable to be deported; or
- (j) for the purpose of obtaining any visa or permit, the person made any statement or supplied any information to Cabinet, the Minister or an Immigration Officer that was false or misleading in any material respect or produced or surrendered to Cabinet, the Minister or an Immigration Officer any passport or certificate of identity or other document that was forged or obtained fraudulently; or
- (k) the person is, or is not, in Niue or has, or has not, left Niue, or was or was not in Niue or had or had not left Niue at any particular time or for or during any particular period; or
- (l) the person is, or is not, a person to whom section 9 of this Act applies; or
- (m) the person has any criminal convictions; or
- (n) the person's identification is other than claimed; or
- (o) the person travelled to Niue on a certain commercial craft at a certain time.

PART 11

REPEAL AND TRANSITIONAL PROVISIONS

**43-44** [Spent]



# INCOME TAX ACT 1961

1961/9 – 16 March 1961

1	Short title	32	Appeals to Court of Appeal
		33	Appeals from assessments
		34	Obligation to pay tax not suspended by objection or appeal
2	Interpretation	35	Determination of objection not to affect other income
		36	[Repealed]
			<i>PART 5</i>
			<i>INCOME TAX</i>
			<i>Special Exemptions</i>
		37	Meaning of “absentee”
		38	Income tax imposed
		39	Rates fixed
		40	When non-assessable income to be taken into account
			<i>General Exemptions</i>
		41	Personal rebate
		41A	Low income rebate
		42-44	[Repealed]
		45	Rebate for support of dependant relatives
		46	[Repealed]
		47	Special exemption for life insurance premium and superannuation fund contributions
		47A	Special exemption for primary produce income
		47B	Rebate for church donations
		48	Apportionment of special exemptions and rebates
			<i>Assessable Income and Deductions</i>
		49	Incomes wholly exempt from taxation
			<i>Assessable Income and Deductions</i>
		50	Exemption in respect of industries contributing to economic development
		51	Items included in assessable income
		52	Income from use or occupation of land
		53	Income credited in account or otherwise dealt with
		54	Deductions for repair, maintenance and depreciation
		55	Deductions in respect of buildings on Niuean leaseholds
		56	Other deductions not permitted from assessable income
		57	Deductions of expenditure or loss from income
		58	Losses incurred may be set off against future profits
		59	Amounts remitted to be taken into account in computing income
			<i>PART 3</i>
			<i>RETURNS AND ASSESSMENTS</i>
			<i>ADMINISTRATION</i>
3	Financial Secretary to administer Act		
4	Officers to maintain secrecy		
			<i>PART 1</i>
			<i>INTERPRETATION</i>
			<i>OBJECTIONS TO ASSESSMENT</i>
26	How objections originated		
27	Financial Secretary may amend assessment		
28	Hearing of objections by High Court		
29	Burden of proof on objector		
30	Costs		
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## Niue Legislation Act 2019

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# Income Tax Act

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## 1 Short title

This is the Income Tax Act 1961.

## PART 1 INTERPRETATION

## 2 Interpretation

(1) In this Act –  
“agent” means any person declared by this Act to be an agent for the purposes of income tax;

- “assessable income” means income of any kind which is not exempted from income tax otherwise than by way of a “special exemption” expressly authorised as such by this Act;
- “book and document” and “book or document” include all books, accounts, rolls, records, registers, papers and other documents;
- “business” includes any profession, trade, manufacture, or undertaking carried on for pecuniary profit;
- “charitable purpose” includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community;
- “company” means a Niuean company or any body corporate whether incorporated in Niue or elsewhere, but does not include a local or public authority;
- “debentures” includes debenture stock, and “debenture-holder” includes the owner of debenture stock;
- “dependant” in relation to an employee means a person in terms of section 113E;
- “dividends” in relation to any company shall be deemed to include –
- (a) All sums distributed in any manner and under any name among all or any of the shareholders of the company;
  - (b) Any credit given by the company without fully adequate consideration in money or money’s worth to any of its shareholders in respect of the amount unpaid on any shares that are not fully paid up;
  - (c) The paid up value of any share allotted by the company to any of its shareholders as such to the extent to which that value exceeds the value of the consideration in money or money’s worth (if any) paid or given by the shareholders to the company in respect of the shares allotted;
  - (d) The value of any other property of any kind whatsoever distributed by the company to any of its shareholders as such;
  - (e) All amounts received by any shareholder in respect of his shares (whether in money or money’s worth) upon the winding up of the company in excess of the amount paid up on his shares;
  - (f) Where any property of the company is sold or otherwise disposed of to a shareholder without consideration or for a consideration which in the opinion of the Financial Secretary is less than its market price or its true value, the excess of the market price or its true value, the excess of the market price of that property on the day it was sold or disposed of over the price (if any) realised on the sale or disposition or, if there is no market price, the excess of the price deemed to have been realised pursuant to a determination of the Financial Secretary under section 53(2)(b) over the price (if any) realised on the sale or disposition, and it shall be ground for an objection to an assessment of income tax under Part 3 that any determination of the Collector made for the purposes of this paragraph is erroneous in fact, and subject to the taxpayer’s right of objection to the Financial Secretary’s assessment under Part 3 shall also include any moneys advanced by the company to or for the benefit of any of its shareholders irrespective of the year in which the moneys were advanced if, in the opinion of the Financial Secretary, the making of the advance was not a bona fide investment by the company, but was virtually a distribution of profits, but shall not in any case include any payment or other transaction which, in the opinion of the Financial Secretary, is or is equivalent to a return of share capital:
- Provided that where any moneys advanced by a company to or for the benefit of any shareholders and deemed by virtue of this section to constitute a

dividend are subsequently repaid to the company, the Financial Secretary may amend in such manner as may be thereby rendered necessary the assessment made in respect of income derived by that shareholder, during the income year in which the advance was made, and may at any time refund any tax found to have been paid in excess of the amount properly payable, notwithstanding anything to the contrary in section 147:

Provided also that if in any case the Financial Secretary sees fit, the expression “dividends” shall be deemed not to include any payment or other transaction to the extent to which, in the opinion of the Financial Secretary, that payment or transaction constitutes a return to shareholders of premiums paid to the company in respect of the issue of share capital by the company:

Provided also that where any company that has reduced the amount of the paid up capital of any shareholder by writing off losses incurred by the company –

- (i) Subsequently gives credit without fully adequate consideration in money or money’s worth to that shareholder in respect of the amount unpaid on any shares in the company; or
- (ii) Subsequently allots shares to that shareholder the paid up value of which shares exceeds the value of the consideration in money or money’s worth (if any) paid or given by the shareholder to the company for the shares – the expression “dividends” shall for the purposes of this Act be deemed not to include the credit so given or the paid up value of the shares so allotted, as the case may be, to the extent that the Financial Secretary thinks just and reasonable, having regard to the amount of the paid up capital lost by the shareholder and any other relevant considerations;

“employee” means a person who receives or is entitled to receive a source deduction payment;

“employer” means a person who pays or is liable to pay a source deduction payment and includes -

- (a) The manager or other principal officer in the case of an unincorporated body of persons;
- (b) Each partner in the case of a partnership;
- (c) Each person in whom the property has become vested or to whom the control of the property has passed in the case of the estate of a deceased person, a trust, a company in liquidation, or an assigned estate, or in any other case where property is vested or controlled in a fiduciary capacity;

“income derived from Niue” means income described in section 82;

“income year” means in respect of the income of any person, the year in which that income has been derived by him;

“lease” means any disposition whatever by which a leasehold estate is created;

“leasehold estate” includes any estate howsoever created, other than a freehold estate;

“local authority” means a Village Council and includes any incorporated instrument of local government in Niue whether possessing rating powers or not;

“minerals” includes all minerals, metals, coal, oil, clay, stone, gravel, sand, and precious stones;

“non-assessable income” means income described in section 40;

“non-resident agent” means an agent within the meaning of this Act who, being in Niue, has no fixed and permanent place of business or abode there;

“notice” means a notice in writing given to a person by delivery or left at the person’s usual or last known place of abode or business in Niue or elsewhere or sent by post addressed to that person’s usual or last known place of abode or business in Niue or elsewhere and where there are several such places of business to any of them;

“officer” includes any person employed by the Niue Public Service Commission acting under the authority of the Financial Secretary;

“overseas company” has the same meaning as the Companies Act 2006;

“person” includes a local or public authority;

“person chargeable with income tax” means a person who derives assessable income;

“primary employment earnings” in relation to an employee and to any pay period means

- 
- (a) Earnings derived by an employee from one employer by way of source deduction payment (not being a withholding payment and not being an extra emolument) in that pay period;
- (b) Earnings derived by an employee where the employee has 2 or more employers by way of source deduction payment (not being a withholding payment and not being an extra emolument) in that pay period, which exceeds in amount the source deduction payment received from the other employer or as the case may be from each of those other employers;
- (c) Earnings derived by a full time employee (as defined in section 2(5) of the Income Tax Amendment Act 2009) by way of source deduction payment (not being a withholding payment and not being an extra emolument) in that pay period;
- (d) Earnings derived by an employee where the employee has 2 or more employers by way of source deduction payment (not being withholding payment and not being an extra emolument) in that pay period which are of equal amount as the source deduction payment received from the other employer or as the case may be from each of those other employers, the employee has the option to elect which he considers as the primary employment;

“public authority” means the Departments or other instruments of the Government;

“resident” means, subject to subsections (2) and (3) –

- (a) An individual who in a specific year —
  - (i) has his or her domicile in Niue at any time during that year;
  - (ii) is present in Niue for a period of, or periods amounting in aggregate to, 183 days in any 12 month period that commences or ends during that year;
  - or
  - (iii) is an employee of the Government of Niue posted abroad at any time during that year;
- (b) a company which —
  - (i) is incorporated, created, or formed in Niue in a specific year; or
  - (ii) has a centre of its administrative management in Niue at any time during a specific year;
- (c) a partnership with a partner who is a resident at any time during a specific year;
- (d) a trust —
  - (i) which was settled or established in Niue in a specific year;
  - (ii) of which a trustee is a resident in Niue at any time during a specific year;

“salary or wages” in relation to any person means salary, wages, or allowances (whether in cash or otherwise), including all sums received or receivable by way of overtime pay, bonus, gratuity, extra salary, commission, or remuneration of any kind in respect of and in relation to the employment of that person;

“secondary employment earnings” in relation to an employee and to any pay period means any source deduction payment that is not being a payment of primary

## Income Tax Act

- employment earnings and not being a withholding payment and not being an extra emolument derived in the pay period from any employer;
- “shareholder” includes any member of a company, whether the capital of that company is divided into shares or not; and “share” includes any interest in the capital of a company;
- “source deduction payment” means a payment by way of salary or wages, an extra emolument or a withholding payment;
- “superannuation fund” means the Niue Government Superannuation Fund and any superannuation fund established for the benefit of the employees of any employer and approved for the time being by the Financial Secretary for the purposes of this Act;
- “tax” means income tax;
- “taxable income” means the residue of assessable income after deducting the amount of all special exemptions to which the taxpayer is entitled;
- “taxpayer” means a person chargeable with income tax, whether on his own account or as the agent or trustee of any other person, and includes the executor or administrator of a deceased taxpayer;
- “trustee” includes an executor and administrator;
- “year” means a year commencing on 1 April and ending on 31 March, both of these days being included;
- “year of assessment” means the year for which income tax is payable.

(2) An individual who is a resident for a specific year "the current year", but who was not resident for the preceding year shall be treated as a resident in the current year only for the period which commenced on the date on which the individual was first present in Niue.

(3) A resident for the current year as defined in subsection (2) but who is not a resident for the following year shall be treated as a resident in the current year only for the period ending on the last day on which the individual was present in Niue.

## PART 2

### ADMINISTRATION

#### **3 Financial Secretary to administer Act**

(1) The Financial Secretary, subject to the control of Cabinet shall be charged with the administration of the Act.

(2) Any certificate, notice, or other document bearing the written, stamped, or printed signature of the Financial Secretary relating to any matter provided for in this Act shall, until the contrary is proved, be deemed to have been duly signed by the person by whom it purports to have been signed.

(3) Judicial notice shall be taken of every such signature and of the fact that the person whose signature it purports to be holds or has held the office of Financial Secretary.

#### **4 Officers to maintain secrecy**

(1) The Financial Secretary and every other officer of the Government –

- (a) Shall maintain and aid in maintaining the secrecy of all matters relating to this Act which come to his knowledge and shall not communicate any such matters to any person except for the purpose of carrying into effect this Act or any other enactment imposing taxes or duties payable to the Government; and also
- (b) Shall before he begins to perform any official duty under this Act, take and subscribe an oath of fidelity and secrecy to maintain secrecy in conformity with this section.



(2) Without limiting the generality of subsection (1)(a), it is hereby declared that no officer of the Government shall be required to produce in any court any book or document or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties as an officer of the Government, except when it is necessary to do so for the purpose of carrying into effect the Act or any other enactment imposing taxes or duties payable to the Government.

(3) Every person who wilfully acts in contravention of this section or in contravention of the true intent of any such oath shall be liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding 2 penalty units.

### PART 3

#### RETURNS AND ASSESSMENTS

##### **5 Annual returns by taxpayers for purposes of income tax**

(1) For the purpose of the assessment and levy of income tax every taxpayer shall in each year furnish to the Financial Secretary a return setting forth a complete statement of all the assessable income derived by him during the preceding year together with such other particulars as may be prescribed.

(2) Except as otherwise provided, every return of income under the Act shall

- (a) Be made and furnished in such of the forms prescribed for the purpose as is applicable;
- (b) Contain the information and particulars mentioned or referred to in that form;
- (c) Be verified by declaration as therein set forth;
- (d) Be accompanied by all such balance sheets, profit and loss accounts, statements, and other documents as are mentioned in the form or are otherwise required by the Financial Secretary.

(3) Any further or other return which a person is required to make or furnish to the Financial Secretary under section 11 or 13 or in pursuance of any other statutory provision shall, unless the form is prescribed by the statutory provision, be made and furnished in the form prescribed.

(4) Annual returns of income shall be made –

- (a) By all companies and all persons in business whether for the whole or part of the income year irrespective of whether a profit has been made or a loss incurred provided that this requirement shall not apply to any company or person in business whose total turnover does not exceed \$20,000;
- (b) By all other persons, whether taxpayers or not, who derive income from salary, wages, interest, rent, annuity, dividend or other sources where the total income so derived exceeds 6 penalty units per annum.

(5) (a) All returns of income and any other returns required the Act to be furnished to the Financial Secretary shall be furnished by posting or delivering the same to the Financial Secretary or other authorised officer at the office of the Financial Secretary or at such other place as the Financial Secretary may direct.

(b) Such direction may be given by the insertion of a general direction in any return form prescribed for use in any year of assessment or in such other manner as the Financial Secretary thinks fit.

(6) Wherever a person is required by this Act or the Financial Secretary to furnish a return to the Financial Secretary, it shall be the duty of that person to procure and make the required return and to take all steps necessary to ensure that the return is received at the place where or the person to whom under this Act the return is required to be furnished.

(7) (a) Every person who furnishes a return shall, in the return, state his postal address, and shall, within one month of any change in his postal address, give to the Financial Secretary at the place where he furnished his return notice in writing of the change, and of his new postal address.

(b) The posting of any notice addressed to a person at the last address given by him under this Act shall be sufficient service of notice on him for the purposes of the Act.

## **6 Returns to annual balance date**

(1) In lieu of furnishing a return under section 5 for any year ending on 31 March of that year, any taxpayer may with the consent of the Financial Secretary elect to furnish a return for the year ending on the date of the annual balance of his accounts, and in any such case the income derived during any year ending on a date between 1 October and the next succeeding 30 September inclusive, shall for the purposes of this Act be deemed to have been derived during the year ending on 31 March falling between the same two dates.

(2) Any election made by a taxpayer for the purposes of this section shall continue in force unless and until it is altered by the taxpayer with the prior approval in writing of the Financial Secretary.

## **7 Consequential adjustments on change in return date**

(1) In this section –

“new return date” means in the case of a taxpayer who has changed his return date, the date to which the change was made or, if he has made more than one change, means the date to which the last change was made;

“original return date” means in the case of a taxpayer who has changed his return date, the return date immediately prior to the new return date;

“return date” means the last day of the period for which a return of income is required to be made.

(2) Where, in any case a new return date has been approved by the Financial Secretary, the taxpayer shall furnish a return to the original return date and another return for the period between the original return date and the new return date.

(3) All returns of income made under subsection (2) to a date falling between 1 October and the next succeeding 30 September inclusive shall be deemed to be returns of income derived during the year ending on 31 March falling between those same two dates, and the income derived by a taxpayer during that period shall for the purposes of assessment, be added to any other income derived for the same year, and he shall be assessed and liable for income tax accordingly.

(4) Where, for the purposes of this section, a taxpayer is assessed for income tax on a return made for a period of less than a year, he shall be entitled, by way of special exemptions, only to an amount bearing to the total exemptions to which he would be entitled for a full year the same proportion as the number of days in that period bears to the number of days in a year; and where a taxpayer is assessed on a return or returns for a period of more than a year, the deduction to which he shall be entitled by way of special exemptions shall be proportionately increased.

(5) Where, for the purposes of this section, a taxpayer is assessed for income tax on returns made for a period that is less or greater than a year, the rate of tax shall be determined as for a year, and for the purposes of this subsection the taxable and non-assessable income of a taxpayer shall be deemed to have been derived at a uniform daily rate throughout the period for which the returns have been made and where that period is less than a year that daily rate shall be deemed to have continued for a year.



(6) Where a taxpayer has been assessed for income tax on a return made to any date other than 31 March in any year, the income derived by that taxpayer shall be deemed to have been assessed for tax to that other date, and not to 31 March.

(7) For the purposes of giving effect to this section and section 6, the Financial Secretary may, for any year or years of assessment, make all such assessments or additional assessments as he may deem necessary, notwithstanding anything to the contrary in this Act.

## **8 Returns by partners, co-trustees and joint adventurers**

(1) When income is derived by two or more persons jointly as partners, co-trustees or otherwise, the following provision shall apply –

- (a) In the case of trustees, they shall make a return of that income, and shall be jointly assessable thereon and jointly and severally liable for the tax so assessed.
- (b) In the case of partners –
  - (i) they shall make a joint return of the income of the partnership, setting forth the amount of that income and the shares of the several partners therein and every such return shall be signed by all the partners;
  - (ii) each partner shall make a separate return of all income derived by him and not included in any such joint return;
  - (iii) there shall be no joint assessment but each partner shall be separately assessed and liable for the tax payable on his total income, including his share of the income of any partnership in which he is a partner.
- (c) In any case other than that of co-trustees or partners, each person by whom income is so derived shall include in his return the amount of his share in the joint income and shall be assessed and liable accordingly.

(2) Where a husband and wife are carrying on business together or deriving income jointly without any formal partnership agreement, the whole of the income derived from the business or jointly shall, for the purposes of assessment, be deemed to have been equally split between the husband and wife and subsection (1)(b) shall in all respects apply as if there is a bona fide partnership agreement.

## **9 Returns by executors or administrators**

(1) The executor or administrator of a deceased taxpayer shall, in respect of all income derived by that taxpayer in his life-time, make the same returns as the taxpayer ought to have made or would have been bound to make if he had remained alive, and the Financial Secretary may require the executor or administrator to make such further returns relative to that income as the Financial Secretary thinks necessary and may assess the executor or administrator for income tax on that income in the same manner in which the taxpayer might have been assessed had he remained alive.

(2) The tax so assessed shall be deemed to be a liability incurred by the deceased taxpayer in his lifetime, and the executor or administrator of the taxpayer shall be liable for the same accordingly.

## **10 Special returns and special assessments**

(1) This section applies to the following persons –

- (a) An agent;
- (b) A non-resident trader;
- (c) A person who is believed by the Financial Secretary to be about to leave Niue or to be about to discontinue the carrying on of business in Niue;

- (d) A person who has ceased to carry on business in Niue or to derive assessable income;
- (e) The executors or administrators of a deceased taxpayer in respect of income derived by him in his lifetime;
- (f) A person who has become bankrupt, or a company which is in course of being wound up.

(2) The Financial Secretary may at any time during the income year or in any subsequent year, require any person to whom this section applies to make a return of income derived from any specified transaction or transactions or during any specific period, and may assess him for income tax on the income so returned, or when default is made in making such a return, or the Financial Secretary is dissatisfied therewith, then on such sum as the Financial Secretary thinks reasonable, and shall give notice of the assessment to the person so assessed.

(3) Any person so assessed shall have the same right of objection as if he had been assessed in the ordinary course.

(4) Tax so assessed shall be payable on demand, which may be made in and by the notice of assessment, or at any later date, and the tax shall be recoverable in the same manner as income tax assessed in the ordinary course.

(5) No assessment made under this section shall in any manner preclude a subsequent assessment of the same person in the ordinary course in respect of the whole of the income derived by him during the income year with respect to which the assessment under this section was made, but in such case the tax paid under the earlier assessment shall be credited in the subsequent assessment.

## **11 Other annual returns**

In addition to the foregoing returns every person, whether a taxpayer or not, shall make to the Financial Secretary such annual returns as may be prescribed for the purposes of this Act.

## **12 Dates by which returns to be furnished**

(1) The above-mentioned returns shall be made in each year on or before a date or dates of which the Financial Secretary gives public notice.

(2) Such notice shall be given by publishing the same in the *Gazette* or any newspaper published in Niue or in such other manner as the Financial Secretary may think necessary and sufficient.

## **13 Financial Secretary may require other returns**

In addition to the returns above-mentioned, every person, whether a taxpayer or not, shall as and when required by the Financial Secretary make such further or other returns as the Financial Secretary requires for the purposes of this Act.

## **14 Presumption as to authority**

A return purporting to be made by or on behalf of any person shall for all purposes be deemed to have been made by that person or by his authority, as the case may be, unless the contrary is proved.

## **15 Financial Secretary to make assessments**

(1) From the returns made as aforesaid and from any other information in his possession the Financial Secretary shall in and for every year and from time to time and at any time as may be necessary, make assessments in respect of every taxpayer, setting forth the amount upon which tax is payable and the amount of the tax.

(2) Every such assessment shall be made in such form and manner as the Financial Secretary thinks fit, and shall be signed by him.

**16 Rates of income tax**

(1) The Financial Secretary shall in any year of assessment assess the income tax of any taxpayer at the rates as set out in Schedule 1.

(2) If in any year of assessment the rates of tax as set out in Schedule 1 are varied by the passing of an amending Act, every assessment of income tax made in respect of that year before the passing of any such amending Act may be amended and reassessed on the basis of the new rates.

**17 Assessment by Financial Secretary**

(1) Where, in respect of a taxpayer in a specific year, the Financial Secretary —

(a) is not satisfied with a return submitted by that taxpayer; or

(b) has reason to believe that the taxpayer has not submitted a return, the Financial Secretary may make an assessment of the amount of taxable income and the amount payable by that taxpayer including income tax, penalties and other charges for which the taxpayer is liable.

(2) Except in the case of fraud or wilful neglect, the Financial Secretary shall not make an assessment under this section in respect of a period beyond 4 years from the year in which the assessment is made.

(3) Every assessment made under this section shall be given by notice to the taxpayer in respect of whom the assessment was made.

(4) Where the Financial Secretary has given notice to any taxpayer of an assessment under this section, that taxpayer shall pay the full amount within 28 days of the date of the notice of assessment.

**18 Assessment where default in furnishing returns**

If any person makes default in furnishing any return, or if the Financial Secretary is not satisfied with the return made by any person, or if the Financial Secretary has reason to suppose that any person although he has not made a return is a taxpayer, he may make an assessment of the amount on which in his judgment tax ought to be liable to pay the tax so assessed, save in so far as he establishes on objection that the assessment is excessive or that he is not chargeable with tax.

**19 Amendment of assessments**

(1) The Financial Secretary may make all such alterations in or additions to an assessment as he thinks necessary in order to ensure the correctness of it, notwithstanding that tax already assessed may have been paid.

(2) If any such alteration or addition has the effect of imposing any fresh liability or increasing any existing liability, notice of it shall be given by the Financial Secretary to the taxpayer affected, who shall, unless the alteration or addition was made with his consent, be entitled to object to it under the provisions as to objections hereinafter contained.

**20 Limitation of time for amendment of assessment**

When any person has made returns and has been assessed for income tax for any year, it shall not be lawful for the Financial Secretary to alter the assessment so as to increase the amount of it after the expiration of 4 years from the end of the year in which the assessment was made or (in any case where in the opinion of the Financial Secretary the returns so made

are fraudulent or wilfully misleading or omit all mention of income which is of a particular nature or was derived from a particular source, and in respect of which a return is required to be made) after the expiration of 10 years from the end of the year in which the assessment was made.

**21 Validity of assessment not affected by failure to comply with Act**

The validity of an assessment shall not be affected by reason that any of the provisions of this Act have not been complied with.

**22 Except in proceedings on objection assessments deemed correct**

Except in proceedings on objection to an assessment under the provisions hereinafter contained, no assessment made by the Financial Secretary shall be disputed in any Court or in any proceedings either on the ground that the person so assessed is not a taxpayer or on any other ground, and except as aforesaid, every such assessment and all the particulars thereof shall be conclusively deemed and taken to be correct, and the liability of the person so assessed shall be determined accordingly.

**23 Evidence of returns and assessments**

The production of any documents under the hand of the Financial Secretary purporting to be a copy of extract from any return or assessment shall in all Courts and in all proceedings be sufficient evidence of the original, and the production of the original shall not be necessary, and all Courts shall in all proceedings take judicial notice of the signature of the Financial Secretary either to the original or to any such copy or extract.

**24 Notice of assessment to taxpayer**

(1) As soon as conveniently may be after an assessment is made the Financial Secretary shall cause notice of the assessment to be given to the taxpayer.

(2) The omission to give any such notice shall not invalidate the assessment or in any manner affect its operation.

**25** [Repealed]

PART 4

OBJECTIONS AND ASSESSMENTS

**26 How objections originated**

(1) Any person who has been assessed for income tax may object to that assessment by delivering or posting to the Financial Secretary a written notice of objection stating shortly the grounds of his objection so that it reaches the Financial Secretary within the time specified in that behalf in the notice of assessment, not being less than 6 weeks after the date on which that notice of assessment is given.

(2) [Repealed by 2004/270]

(3) No notice of objection given after the time so specified shall be of any force or effect unless the Financial Secretary in his discretion accepts the same and gives notice to the objector accordingly.

**27 Financial Secretary may amend assessment**

The Financial Secretary shall consider all such objections and may alter the assessment pursuant to it; but if an objection is not allowed by the Financial Secretary, the objector may, within 6 months after the date on which notice of the disallowance is given to him by or on behalf of the Financial Secretary, by notice in writing to the Financial Secretary require that the objection be heard and determined by the Court before a Judge, and in that event the

objection shall be heard and determined in the Court; and the Court shall for the purpose of hearing and determining the objection, whatever the amount involved, have all the powers vested in it in its ordinary civil jurisdiction as if in an action between the objecting taxpayer and the Financial Secretary.

**28 Hearing of objections by High Court**

The procedure for the institution, hearing and determination of such proceedings in the High Court shall be in accordance with the ordinary practice of that Court.

**29 Burden of proof on objector**

On the hearing and determination of all objections to assessments of income tax the burden of proof shall be on the objector, and the Court may receive such evidence as it thinks fit, whether receivable in accordance with law in other proceedings or not.

**30 Costs**

On the determination of any objection the Court may award such costs as it deems just either against the Financial Secretary or against the objector.

**31 Court may confirm, cancel or alter the assessment**

On the determination of any such objection the Court may either confirm or cancel the assessment, or increase or reduce the amount, and the assessment shall be altered by the Financial Secretary, if necessary, so as to conform to that determination.

**32 Appeals to Court of Appeal**

The determination of the High Court on any such objection shall be subject to appeal to the Court of Appeal on any question of law but shall be final and conclusive on any question of fact unless the High Court is satisfied that the amount of tax bona fide in dispute between the objector and the Financial Secretary exceeds \$1000 in which case the Financial Secretary or the objector may appeal to the Court of Appeal on any question of fact.

**33 Appeals from assessments**

(1) In this Act “appeal” means a proceeding in the High Court for the determination of an objection made under the Act to an assessment of income tax, and the term “appellant” means the person by whom any such objection has been made.

(2) The parties to the appeal shall be the appellant and the Financial Secretary as respondent.

(3) (a) For the purpose of every appeal the Financial Secretary shall state and sign a case setting forth the facts as alleged by him, the nature of the assessment made by him, the ground of objection thereto, and the question for the determination of the Court.

(b) The case, so stated and signed, shall be filed by the Financial Secretary in the High Court, and the filing of the case shall be deemed to be the institution of the appeal.

(c) A copy of the case so filed shall be sent by the Financial Secretary to the appellant, either through the post office or otherwise.

(4) Within fourteen days after the filing of the case by the Financial Secretary or within such further time as the Financial Secretary may allow the appellant may, if he thinks fit file an answer to the case. The answer shall set forth the facts as alleged by the appellant and the grounds of his appeal.

(5) The case as stated and filed by the Financial Secretary shall not be conclusive as to the matters set forth in it, either against the appellant or the Financial

Secretary, except so far as agreed to in writing by or on behalf of the Financial Secretary and the appellant.

(6) After the filing of the case by the Financial Secretary, the Registrar of the Court shall on the application of the Financial Secretary or of the appellant, appoint a time and place for the hearing of the appeal, that time not being earlier (except with the consent of the Financial Secretary and the appellant) than 21 days after the date of the filing of the case.

(7) Reasonable notice by post or otherwise of the time and place so appointed shall be given by the person on whose application the appointment has been made to the other party to the appeal.

(8) At the time and place so appointed, a Judge of the High Court or in the absence of a Judge the Registrar of the Court may adjourn the hearing to any other time or place, and so on from time to time.

(9) If either party fails to appear at the hearing, the Court shall in its or his discretion either adjourn the hearing or determine the appeal in the same manner as if both parties were present.

(10) The procedure at the hearing of the appeal shall be the same, with all necessary modifications, as if the appeal were an action which the appellant is the plaintiff and the Financial Secretary is the defendant.

### **34 Obligation to pay tax not suspended by objection or appeal**

The obligation to pay and the right to receive and recover any tax shall not be suspended by any objection, or appeal, but if the objector succeeds the amount (if any) of the tax received by the Financial Secretary in excess of the amount which, according to the decision on the hearing of the objection, or appeal, was properly payable shall forthwith be repaid to him by the Financial Secretary.

### **35 Determination of objection not to affect other income**

The determination of an objection under any of the foregoing provisions shall relate solely to the income which is the subject of the assessment objected to and shall not affect the right of the Financial Secretary to assess any other income of the objector, or to amend the assessment objected to in any manner rendered necessary by the assessment of such other income.

### **36 [Repealed]**

## **PART 5 INCOME TAX**

### **37 Meaning of “absentee”**

(1) “Absentee” in this part means a person who has not been a resident during any part of the income year.

(2) A taxpayer shall not be deemed to be an absentee within the meaning of this Part if the Financial Secretary is satisfied that the absence of the taxpayer from Niue during the income year has been for the sake of his or her health, or of the health of the husband or wife, as the case may be, or of any child of the taxpayer.

(3) No person who is absent from Niue in the service in any capacity of the Government nor the wife of any such person if she is absent from Niue with him, shall by reason of such absence be deemed to be an absentee within the meaning of this Part.



**38 Income tax imposed**

(1) Subject to this Act, there shall be levied and paid for the use of the Crown for the year commencing on 1 April in each year, a tax herein referred to as income tax.

(2) Subject to this Act income tax shall be payable by every person on all income derived by him during the year for which the tax is payable.

(3) The year in which income is so derived is in this Act referred to as the income year, and the year for which income tax is payable is in this Act referred to as the year of assessment.

**39 Rates fixed**

Income tax shall be assessed and levied on the taxable income of every taxpayer at such rate or rates as are set out in Schedule 1.

**40 Where non-assessable income to be taken into account**

(1) Where in any income year any taxpayer has derived assessable income and has also derived any non-assessable income from a source referred to in subsection (2), then, notwithstanding anything to the contrary in this Act, the rate of tax payable on this taxable income shall be computed as if the non-assessable income derived by him as aforesaid were assessable income.

(2) The non-assessable income referred to in subsection (1) includes –

- (a) (i) Income derived from securities issued by the Government subject to the condition that the income derived therefrom shall be exempt from income tax;
- (ii) Such income when payable out of Niue to an absentee shall not be so included;
- (b) Income derived from debentures issued by companies on terms providing for the payment of income tax by such companies as proved by section 150, and income derived from debentures to which sections 75 and 76 apply;
- (c) Dividends or other profits derived from shares or other rights of membership in companies save that such dividends or other profits when derived by an absentee from sources out of Niue shall not be so included.

**41 Personal rebate**

In the assessment of every taxpayer, other than an absentee, company, public authority, or unincorporated body, there shall be allowed as a rebate of income tax for that income year the sum of \$156.

*Special Exemptions*

**41A Low income rebate**

(1) This section applies to a person with assessable income of less than \$20,000 for an income year, other than an absentee or a company.

(2) The person is entitled to a rebate on the income tax payable by them, or that would otherwise be payable by them. The rate of the rebate is set out in Schedule 3.

(3) –

(4) Subsection (3) applies only to a person who is a full-time employee other than a self-employed person.

(5) For the purposes of this section, a full-time employee for an income year is a person who –

- (a) for a week, is employed for 20 hours or more; and



- (b) is employed for at least 40 weeks during the income year; and
- (c) receives income from a work activity for which they derive a source deduction payment or, in a case of incapacity for work, an amount of compensation in its place.

**42- 44** [Repealed]

**45 Rebate for support of dependent relatives**

(1) In the assessment of every taxpayer, (other than an absentee) who contributes towards the support of any relative during any income year there shall, subject to this section, be allowed as a rebate of income tax for that income year in respect of each such dependant relative, the sum of \$26.

(2) (a) Where a person is a dependant relative for the purposes of this section only one rebate shall be allowed in respect of that person notwithstanding that more than one taxpayer may have contributed towards the support of that relative.

(b) In the case of two or more taxpayers claiming a rebate in respect of the same dependant relative the Financial Secretary shall allow the rebate for the taxpayer who in his opinion has made the greatest financial contribution to the support of that dependant relative.

(3) No rebate shall be allowed under this section in respect of any relative if the Financial Secretary is satisfied that the relative has sufficient income or capital for his own support and that the contributions towards his support were not necessary.

(4) For the purpose of this section “relative” means –

- (a) A child, step-child, or adopted child who at any time during the income year is under the age of eighteen years, or who, being over the age of eighteen years, is suffering from any permanent mental or physical infirmity and is thereby permanently incapacitated from earning his or her own living or is attending full-time a university or educational institution recognized by the Financial Secretary; and
- (b) Any other person proved to the satisfaction of the Financial Secretary to be a relation of the taxpayer by blood, marriage, or adoption (not being the wife or husband of the taxpayer); including a former wife of a taxpayer; and including also any child, not being a child, step-child or adopted child of the taxpayer who is supported by the taxpayer as a foster child and who otherwise satisfies the requirements of paragraph (a): Provided that:
  - (i) where the wife of a taxpayer is not living with him she shall be deemed to be a relative of the taxpayer for the purposes of this section;
  - (ii) a rebate under this section in respect of the wife of a taxpayer shall be allowable only where the amount of it exceeds the amount of the rebate to which the taxpayer is entitled in respect of his wife under section 42 and shall be allowable in substitution for the last-mentioned rebate;
  - (iii) for the purpose of this section the wife of a taxpayer shall be deemed to be living with him unless the Financial Secretary is satisfied that she is in fact separated and living separate and apart from him, whether pursuant to a decree, order, or judgment of any Court, or pursuant to an agreement for separation, or by reason of the desertion of one of the parties by the other of them, or otherwise.

**46** [Repealed]

**47 Special exemption for life insurance premiums and superannuation fund contributions**

(1) Every taxpayer, (other than an absentee,) who has effected an insurance on his own life for his own benefit or for the benefit of his wife or his children shall be entitled to a deduction by way of special exemption from his assessable income of the amount of premium paid in the income year in respect of that insurance.

(2) [Repealed]

(3) The deductions by way of special exemption provided for in this section shall not in any case exceed in the aggregate the sum of \$800.

(4) Notwithstanding subsection (1) a special exemption shall not be allowed under that subsection in respect of the premiums paid on any pure endowment policy, that is to say, a policy of life insurance which does not provide for the payment of a specified capital sum on the death of the assured.

**47A Special exemption for primary produce income**

(1) Subject to subsection (2), the first \$5,000 income earned by a taxpayer during the income year that derives from the production of primary produce, or from the making of plaited baskets, trays, table-mats, grass skirts or any other plaited ware or handwork shall be exempt from taxation.

(2) Cabinet may issue instructions as to the nature of receipts that shall be required to be produced in order to qualify for the exemption give under subsection (1).

**47B Rebate for church donations**

(1) In the assessment of every taxpayer (other than an absentee) who during the income year makes cash donations to any Church situated in Niue and which in the opinion of the Financial Secretary is a recognized religious organization there shall be allowed as a rebate of income tax for that income year an amount equal to 20 cents for every complete dollar up to a maximum of \$100 donated to any such church or religious organization.

(2) For the purpose of this section all donations must be in cash and evidenced by a receipt.

**48 Apportionment of special exemptions and rebates**

(1) Every person arriving in or departing from Niue during any income year, shall be entitled to a deduction by way of special exemption from his assessable income, or to a rebate of income tax in his assessment for that income year, of –

(a) An amount equal to the same proportion of every deduction by way of special exemption or rebate to which he would have been entitled under sections 45, 47A and 47B, as the proportion that the number of days during which the income is deemed to have been earned bears to the numbers of days in the income year; and

(b) Such allowance under sections 46 and 47 as the Financial Secretary may consider appropriate.

(2) (a) For the purposes of this section an “absentee” shall be considered to be entitled to the same special exemptions under sections 45, 47, 47A and 47B as if he were a taxpayer other than an absentee.

(b) Nothing in this subsection shall entitle an “absentee” to the special exemptions or rebates provided under sections 45, 47, 47A and 47B in circumstances other than as provided in this section.

*General Exemptions*

**49 Incomes wholly exempt from taxation**

- (1) The following incomes shall be exempt from taxation –
- (a) The income, other than income received in trust, of a local authority, or of any public authority;
  - (b) Income derived from sinking funds in respect of any public debt or of the debt of any local authority;
  - (c) Income derived by any person from any pension or allowance granted by any Government in respect of any war or in respect of any disability or disablement attributable to or aggravated by service in any naval, military, air, or police force;
  - (d) Dividends and other profits derived from shares or other rights of membership in companies other than companies which are exempt from income tax;
  - (e) Income derived by women in the form of payments in the nature of alimony or maintenance made to her by her husband or former husband out of income belonging to him;
  - (f) Income derived by the trustees of a superannuation fund;
  - (g) Income (not being income of the kind referred to in paragraph (h)) derived by trustees in trust for charitable purposes, or derived by any society or institution established exclusively for such purposes and not carried on for private pecuniary profit;
  - (h) Income derived directly or indirectly from any business carried on by or on behalf of or for the benefit of trustees in trust for charitable purposes within Niue, or derived directly or indirectly from any business carried on by or on behalf of or for the benefit of any society or institution established exclusively for such purposes and not carried on for private pecuniary profits:  
Provided that if the aforesaid purposes are not limited to Niue the Financial Secretary may apportion the income in such manner as he deems just and reasonable between such purposes within Niue and the like purposes out of Niue, and may allow to the trustees, society or institution a partial exemption accordingly;
  - (i) Income derived by any society or association, whether incorporated or not, which is, in the opinion of the Financial Secretary, established substantially or primarily for the purpose of promoting any amateur game or sport if that game or sport is conducted for the recreation or entertainment of the general public, and if no part of the income or other fund of the society or association is used or available to be used for the private pecuniary profit of any proprietor, member or shareholder of it;
  - (j) Income derived by any society or association whether incorporated or not, which is, in the opinion of the Financial Secretary, established substantially or primarily for the purpose of advertising, beautifying or developing the island of Niue or any village or district therein so as to attract trade, tourists, visitors, or population, or to create, increase, expand or develop amenities for the general public, if no part of the income or other funds of the society or association is used or is or may become available to be used for any other purpose, not being a charitable purpose;
  - (k) Income derived by any person from any maintenance or allowance provided for or paid to him in respect of his attendance at an educational institution in terms of a scholarship or bursary;
  - (l) Income derived by any person, in respect of any period of incapacity for work, from any sick pay or other allowance paid to him from any sick, accident or

death benefit fund to which he was a contributor at the date of commencement of that period of incapacity;

- (m) Income derived by any trustee in trust for any sickness, accident, or death benefit fund, not being income derived directly or indirectly from any business carried on by or on behalf of or for the benefit of that trustee;
- (n) Income expressly exempted from income tax by any other Act to the extent of the exemption so provided;
- (o) Moneys received by a wife from her husband or a husband from his wife;
- (p) –
- (q) Income and profits derived by any cooperative society registered under the Cooperative Societies Regulations 1953;
- (r) Income derived from any bonds or securities issued exempt from tax by the Government or by any local or public authority: Provided that the approval of the Government has been obtained for the issue of the bonds or other securities to be issued exempt from tax;
- (s) Income of the South Pacific Commission and the income in so far as it is derived from the funds of the South Pacific Commission of persons employed by the Commission;
- (t) Income of the United Nations or of any specialised agency of the United Nations and the income in so far as it is derived from the funds of the United Nations or any such agency of persons employed by the United Nations or any such agency;
- (u) Income declared by Cabinet by regulation to be exempt from taxation because of its liability to taxation in another country;
- (v) Income derived by any person from any pension or benefit granted to him under the Pensions and Benefits Act 1991;
- (w) Income derived by the Niue Bank;
- (x) Income derived from a periodic payment by way of superannuation, pension, retiring allowance or annuity in respect of or in relation to past employment of that person or any person of whom that person is or has been the wife, or husband, or a child or dependent.

(2) For the purposes of this section “sickness, accident, or death benefit fund” means any fund established for the benefit of the employees of any employer or of the members of any incorporated society or for the benefit of the widows and dependants of any deceased employees of any employer, or of any deceased members of any incorporated society, and approved for the time being by the Financial Secretary.

#### *Assessable Income and Deductions*

### **50 Exemptions in respect of industries contributing to economic development**

(1) Where any new industry or enterprise is established in Niue or where any industry or enterprise already existing in Niue is materially expanded, and where Cabinet is satisfied that such establishment or expansion as the case may be will contribute substantially to the economic development of Niue, Cabinet may grant to the enterprise, or to the person or persons contributing to the establishment or expansion of that industry or enterprise such concessions in respect of taxation on the income derived whether directly or indirectly from that industry or enterprise as may be specified by Cabinet.

(2) Concessions granted by Cabinet under the authority of this section may take the form of exemption of all or part of the income from taxation, reduction in the rates of taxation on all or part of the income, extension of the period during which losses may be carried forward, allowance of special deductions from assessable income, or

may be in such other form as Cabinet considers desirable and appropriate to the particular application.

(3) A grant made under this section shall specify the period (not exceeding 5 years) during which any concession is to apply, and the period as specified may be extended by Cabinet.

(4) Any grant made under this section may be made upon or subject to such conditions as Cabinet thinks fit and may at any time be revoked by Cabinet if the taxpayer fails to comply with any such conditions.

## **51 Items included in assessable income**

Without in any way limiting the meaning of the term, the assessable income of any person shall for the purposes of this Act be deemed to include, save so far as express provision is made in this Act to the contrary, all income derived from the following sources –

- (a) All profits or gains derived from any business (including any increase in the value of stock in hand at the time of the transfer or sale of the business, or on the reconstruction of a company);
- (b) All salaries, wages, or allowances (whether in cash or otherwise), including all sums received or receivable by way of bonus, gratuity, extra salary, or emolument of any kind, in respect of or in relation to the employment or service of the taxpayer:

Provided that where any bonus, gratuity, or retiring allowance (not being moneys paid to any director of a company pursuant to its articles of association) is paid in a lump sum in respect of the employment or service of the taxpayer on the occasion of his retirement from such employment or service only 5 per cent of that lump sum shall be deemed to be income; and

Provided also that, without limiting the meaning of “allowance” as used in this paragraph the said term shall be deemed to include (in the case of a taxpayer who in any income year has been provided in respect of any office or position held by him with board or lodging, or the use of a house or quarters, or has been paid an allowance in lieu of being so provided with board or lodging or with the use of a house or quarters the value of such benefits, such value to be determined in case of dispute by the Financial Secretary, subject to the Financial Secretary’s assessment under Part 4:

Provided also that the Financial Secretary may determine whether and to what extent any allowance in respect of or in relation to the employment or service of any person constitutes a reimbursement or expenditure exclusively incurred by him in the production of his assessable income, and the allowance shall to the extent so determined be exempt from income tax, and in such case the determination of the Financial Secretary shall be final and conclusive, save that the taxpayer may have a right of appeal under section 36 (2);

- (c) All profits or gains derived from the sale or other disposition of any real or personal property or any interest therein, if the business of the taxpayer comprises dealing in such property, or if the property was acquired for the purpose of selling or otherwise disposing of it, and all profits or gains derived from the carrying on or carrying out of any undertaking or scheme entered into or devised for the purpose of making a profit;
- (d) All rents, fines, premiums, or other revenues (including payments for or in respect of the goodwill of any business, or the benefit of any statutory licence or privilege) derived by the owner of land from any lease, licence, or easement affecting the land or from the grant of any right of taking the profits of it;



- (e) All royalties or other like payments dependent upon production from or the use of any real or personal property, whether or not they are instalments of the purchase price of any property;
- (f) All interests, dividends, annuities and pensions:  
Provided that where any securities have been acquired by purchase or otherwise during the income year, the Financial Secretary may, where he considers it equitable so to do, apportion between the transferor and the transferee any interest due or accruing due at the date of the transfer and not them paid;
- (g) Income derived from any other source whatsoever.

**52 Income from use or occupation of land**

(1) Without limiting section 51(c) the assessable income of any person shall, for the purposes of this Act, be deemed to include –

- (a) All profits or gains derived from the use or occupation of any land;
- (b) All profits or gains derived in any income year from the extraction, removal, or sale of any minerals, or timber whether by the owner of the land from which they are obtained or by any other person, reduced by an amount equal to the cost of those minerals or of that timber.

(2) For the purposes of subsection 1(b) “timber” shall be deemed to include standing timber, and “sale” shall be deemed to include any dispositions by way of a licence or easement, or the grant of any right of taking any profits or produce from land.

**53 Income credited in account or otherwise dealt with**

For the purposes of this Act every person shall be deemed to have derived income although it has not been actually paid to or received by him, or already become due or receivable, but has been credited in account, or re-invested, or accumulated, or capitalised, or carried to any reserve, sinking or insurance fund, or otherwise dealt with in his interest or in his behalf.

**54 Deductions for repair, maintenance and depreciation**

(1) (a) In calculating the assessable income derived by any person from any source no deduction shall be made in respect of any of the following sums or matters – the repair of premises, or the repair, alteration, or supply of implements, utensils, or machinery used in the production of income, beyond the amount expended in any year for those purposes.

(b) Where depreciation of such premises, implements, utensils or machinery, whether caused by fair wear and tear or by the fact of such premises, implements, utensils, or machinery becoming obsolete or useless, cannot be made good by repair, the Financial Secretary may allow such deductions as he thinks just up to but not exceeding the rates of depreciation as set out in Schedule 2 except that in the year in which any implements, utensils, or machinery are disposed of or discarded, the Financial Secretary may allow such further deductions as he thinks just.

(c) Where the Financial Secretary has for any year of assessment allowed a deduction in respect of the depreciation of any premises, implements, utensils, or machinery, and the taxpayer at any time afterwards sells such premises, implements, utensils, or machinery at a price in excess of the amount to which the value of those assets has been reduced by such allowance, the Financial Secretary may make a revised assessment for that or any subsequent year without allowing such deduction or without allowing such portion of it as he

thinks fit, and may recover the additional amount of income tax accordingly. For the purpose of giving effect to this proviso the Financial Secretary may at any time alter any assessment, notwithstanding anything to the contrary in section 20.

- (d) Where the Financial Secretary is satisfied that any repairs or alterations of any plant, premises or machinery do not increase the capital value of the plant, premises or machinery, or that the repairs or alterations increase that value by an amount less than the cost of the repairs or alterations, he may allow such deductions as he thinks just.

(2) For the purposes of subsection (1)(c) –

- (a) Where any asset has been sold together with other assets of a business, the part of the consideration attributable to that asset shall be determined by the Financial Secretary, and the part of the consideration so determined shall be deemed to be the price at which that asset was sold by the vendor and purchased by the purchaser;
- (b) Where any property is sold, distributed or otherwise disposed of without consideration or for a consideration which, in the opinion of the Financial Secretary, is less than the market price for the true value of the property on the day it was sold, distributed or otherwise disposed of, that property shall be deemed to have been sold at and to have realised such market price or, if there is no market price, shall be deemed to have been sold at and to have realised such price as the Financial Secretary determines.

(3) It shall be ground for an objection to an assessment of income tax under Part 4 that any determination of the Financial Secretary made for the purpose of subsection (2) is erroneous in fact.

(4) Without limiting the discretion of the Financial Secretary under subsection (1), it is hereby declared that he has power to refuse in whole or in part to allow any deduction under that subsection in any case where he is not satisfied that complete and satisfactory accounts have been kept by or on behalf of the taxpayer and that sufficient depreciation has been provided for in the taxpayer's accounts.

(5) Sections 58, 61, 62 and 66(3) shall have effect notwithstanding anything to the contrary in this section and sections 56 and 57.

## **55 Deductions in respect of buildings on Niuean leaseholds**

(1) The Financial Secretary, in calculating the assessable income derived by any taxpayer during any income year, may allow such deductions as he thinks fit in respect of any sum expended by the taxpayer –

- (a) In acquiring or erecting any building on any Niuean freehold land which the taxpayer holds on lease; or
- (b) In purchasing the unexpired period of any lease of Niuean freehold land.

(2) (a) In ascertaining the amount that may be deducted under this section in respect of any income year, the amount expended by the taxpayer in respect of the acquisition or erection of the building or in respect of the purchase of the lease shall be apportioned by the Financial Secretary over the unexpired period of the lease (including any period in respect of which a right of renewal exists) calculated from the date of the acquisition or erection or purchase as the case may be and the amount deducted in respect of any income year shall not in any case exceed the amount apportioned to that year.

(b) [Repealed]

- (c) Where the unexpired portion of a lease is sold to any company over which the vendor has control as defined by section 75 or to any partnership over which



the vendor has control the amount of the annual deductions shall be limited to the amount by which the vendor would have been entitled had the sale not taken place.

(3) Where the Financial Secretary has, for any year of assessment, allowed a deduction under this section and the taxpayer at any time afterwards sells the unexpired period of the lease, the Financial Secretary may make a revised assessment in respect of that year of assessment without allowing that deduction or without allowing such portion of it as he thinks fit, and may recover the additional amount of income tax accordingly.

(4) For the purpose of giving effect to subsection (3) the Financial Secretary may at any time alter any assessment, notwithstanding section 20.

(5) For the purposes of this section, where the unexpired period of the lease has been sold together with other assets of a business the consideration attributable to the sale of the lease and of any buildings erected on the demised land shall be determined by the Financial Secretary, and the part of the consideration so determined shall be deemed to be the price at which the lease and buildings were sold by the vendor and purchased by the purchaser.

(6) A taxpayer to whom this section applies may elect whether he will claim a deduction hereunder or will claim a deduction for depreciation under section 54, but any deduction made under this section shall be in substitution for any deduction for depreciation which may be allowable under section 54.

## **56 Other deductions not permitted from assessable income**

In calculating the assessable income derived by any person from any source, no deduction except as expressly provided in this Act shall be made in respect of any of the following sums or matters –

- (a) Investments, expenditure, loss, or withdrawal of capital; money used or intended to be used as capital; money used in the improvement of premises occupied; interest which might have been made on such capital or money if laid out at interest;
- (b) Bad debts, except debts which are proved to the satisfaction of the Financial Secretary to be in fact bad and to have been actually written off as bad debts by the tax payer in the income year:  
Provided that all amounts at any time received on account of any such bad debt shall be credited as income in the year in which they are received, and shall be subject to tax accordingly:  
Provided further that if in the opinion of the Financial Secretary the amount of debts written off as bad in any income year is excessive, he may, notwithstanding section 20, reopen the assessments made in any previous years in which he considers that the debts had in fact become bad;
- (c) Any expenditure or loss recoverable under any insurance or contract of indemnity;
- (d) Payments of any kind made by a husband to his wife or by a wife to her husband;
- (e) Rent of any dwelling house or domestic offices, save that, so far as such dwelling house or offices are used in the production of the assessable income, the Financial Secretary may allow a deduction of such proportion of the rent as he may think just and reasonable;
- (f) Income tax;
- (g) Interest, except so far as the Financial Secretary is satisfied that it is payable on capital employed in the production of the assessable income.

**57 Deduction of expenditure or loss from income**

(1) (a) In calculating the assessable income of any person deriving such income from one source only, any expenditure or loss exclusively incurred in the production of the assessable income for any income year may except as expressly provided in this Act be deducted from the total income derived for that Act.

(b) In calculating the assessable income of any person deriving such income from two or more sources, any expenditure or loss exclusively incurred in the production of assessable income for any income year may except as expressly provided in this Act be deducted from the total income derived by the taxpayer for that year from all such sources as aforesaid.

(2) In calculating the non-assessable income of any person any expenditure or loss exclusively incurred in the production of the non-assessable income for any income year may be deducted from such income derived for that year. Any such expenditure or loss deductible under this subsection shall be determined in the same manner as if the non-assessable income was assessable.

(3) Except as expressly provided in this Act no deduction shall be made in respect of any expenditure or loss of any kind for the purpose of calculating the assessable income of any taxpayer.

**58 Losses incurred may be set off against future profits**

(1) For the purpose of this section any loss incurred by a taxpayer shall be ascertained under this Act for the calculation of assessable income.

(2) (a) Any taxpayer who satisfies the Financial Secretary that he has in any year incurred a loss shall be entitled to claim that such loss be carried forward, and, so far as may be, deducted from or set off against his income for the 6 years succeeding the year in which the loss was incurred.

(b) No claim to a deduction or set-off will be allowed under this section in respect of any loss which has been allowed for or set-off under the law of any country relating to income tax.

(c) Any relief under this section shall be given so far as possible from the first succeeding assessment, and so far as it cannot then be given, shall be given from the next succeeding assessment, and so on.

(d) In no case shall a loss of assessable income be set off against non-assessable income nor shall a loss of non-assessable income be set off against assessable income.

(e) (i) Where, if a profit has been made from the transaction in which the loss was incurred, the amount of the profit would have been assessable or non-assessable income as the case may be, no relief shall be given under this section in respect of that loss.

(ii) Where, if a profit had been made as aforesaid, the amount of the profit would have been assessable or non-assessable income, the amount of the loss carried forward to any year shall be deducted from or set off against the taxpayer's assessable or non-assessable income, as the case may be, for that year so far as that income extends.

(3) (a) Notwithstanding subsections (1) and (2) if in any year of assessment any taxpayer, being a company, claims to carry forward any loss made by it in any former income year, the claim shall not be allowed unless the Financial Secretary is satisfied that the shareholders of the company on the balance date of the company for the year to which the loss claimed is to be carried forward were substantially the same as the shareholders of the company on the balance date of the company for the year in which the loss was incurred.

- (b) For the purposes of this subsection the shareholders of a company at any date shall not be deemed to be substantially the same as the shareholders on any other date unless, on both such dates, not less than two-thirds in nominal value of the allotted shares in such company were held by or on behalf of the same persons.
- (c) For the purposes of this subsection shares in a company held by or on behalf of another company shall be deemed to be held by the shareholders of such last-mentioned company and shares held by or on behalf of the trustee of the estate of a deceased shareholder, or by or on behalf of the persons entitled to those shares as beneficiaries under the will or intestacy of a deceased shareholder, shall be deemed to be held by that deceased shareholder.

**59 Amounts remitted to be taken into account in computing income**

(1) Where the amount of any expenditure or loss incurred by a taxpayer has been taken into account in calculating his assessable income for any income year, and subsequently the liability of the taxpayer in respect of that amount is remitted in whole or in part, the assessable income derived by the taxpayer during that year shall be deemed to be increased by the amount so remitted, and the taxpayer shall be assessable and liable for income tax accordingly.

(2) Where the amount of any expenditure or loss incurred by a taxpayer has been taken into account in calculating for the purposes of section 58 the amount of any loss incurred by him in any income year, and subsequently the liability of the taxpayer in respect of that amount has been remitted in whole or in part, the amount of the loss that may be carried forward under section 58 shall be deemed to be reduced by the amount so remitted.

(3) For the purposes of this section a liability in respect of any expenditure or loss shall be deemed to have been remitted to the extent to which the taxpayer has been discharged from that liability without fully adequate consideration in money or money's worth.

(4) For the purposes of giving effect to this section, the Financial Secretary may at any time alter any assessment, notwithstanding section 20.

**60 Apportionment of income received in anticipation**

(1) When income is derived by any person in any year by way of fines, premiums, or payment for goodwill on the grant of a lease, or in any other like manner by way of anticipation, the Financial Secretary may at the request of that person during the next succeeding year, apportion that income between the income year and any number of subsequent years not exceeding 5, and the part so apportioned to each of those years shall be deemed to have been derived in that year, and shall be assessable for income tax accordingly.

(2) Any such apportionment may be at any time cancelled by the Financial Secretary, and thereupon the income so apportioned or the part of it on which income tax has not yet been paid shall become assessable for income tax as if derived during the year preceding that in which the apportionment was so cancelled.

**61 Expenditure incurred in borrowing money or obtaining lease**

The Financial Secretary may, in calculating the assessable income of any taxpayer, allow such deduction as he thinks fit in respect of expenditure incurred by the taxpayer during the income year for the preparation, stamping, and registration of any lease of property used in the production of his assessable income, or of any renewal of such lease, or in borrowing of money employed by the taxpayer as capital in the production of assessable income.

**62 Deduction in respect of premium paid on account of leased machinery**

(1) The Financial Secretary may, in calculating the assessable income of any taxpayer, allow such deduction as he thinks fit in respect of any premium, fine, or foregift, or any consideration in the nature of a premium, fine, or foregift, paid by the taxpayer in respect of the lease of any machinery used by him in the production of income, or in respect of the renewal of any such lease, or in respect of the assignment of transfer of any such lease.

(2) In ascertaining the amount that may be deducted in any year under this section the total amount paid by the taxpayer as aforesaid shall be apportioned by the Financial Secretary over the period of the lease unexpired at the date of payment, and the amount deducted for any year shall not in any case exceed the amount apportioned to that year.

**63 Income derived from disposal of trading stock**

(1) Where any trading stock is sold together with other assets of a business the part of the consideration attributable to the trading stock shall, for the purposes of this Act, be determined by the Financial Secretary, and the part of the consideration so determined shall be deemed to be the price paid for the trading stock by the purchaser.

(2) For the purpose of this section any trading stock which has been disposed of otherwise than by sale shall be deemed to have been sold, and any trading stock so disposed of and any trading stock which has been sold for a consideration other than cash shall be deemed to have realised the market price of the day on which it was so disposed of or sold, but, where there is no market price, trading stock shall be deemed to have realised such price as the Financial Secretary determines.

(3) For the purposes of this section "trading stock" includes anything produced or manufactured and anything acquired or purchased for purposes of manufacture, sale or exchange; and also includes any other real or personal property sold or disposed of by the taxpayer where the business of the taxpayer comprises dealing in such property or the property was acquired by him for the purpose of sale or other disposal; and also includes livestock.

(4) It shall be grounds for objection to an assessment of income tax under Part 4 that any determination of the Financial Secretary made for the purpose of this section is erroneous in fact.

**64 Valuation of trading stock, including livestock**

(1) For the purposes of this Act "trading stock" includes anything produced or manufactured, and anything acquired or purchased for purpose of manufacture, sale or exchange and also includes livestock but does not include land.

(2) Where any taxpayer owns or carries on any business the value of his trading stock at the beginning and at the end of every income year shall be taken into account in ascertaining whether or not he has derived assessable income during that year.

(3) (a) The value of the trading stock of any taxpayer to be taken into account at the beginning of any income year shall be its value as at the end of the last preceding income year.

(b) Where the taxpayer's business is commenced and his trading stock is acquired during the income year the value of the trading stock as at the beginning of the income year shall be deemed to be an amount equal to its cost price.

(4) The value of the trading stock of any taxpayer to be taken into account, at the end of any income year shall be, at the option of the taxpayer, its cost price, its market selling value, or the price at which it can be replaced.

(5) Where the value of the trading stock of any taxpayer at the beginning of any income year exceeds the value of his trading stock at the end of that year the amount of the excess shall be allowed as a deduction in computing the assessable income of the taxpayer for that year.

(6) Where the value of the trading stock of any taxpayer at the beginning of any income year exceeds the value of his trading stock at the end of that year the amount of the excess shall be allowed as a deduction in computing the assessable income of the taxpayer for that year.

(7) Where in any income year the whole or any part of the assets of a business owned or carried on by any taxpayer is sold or otherwise disposed of (whether by way of exchange, or gift, or distribution in terms of a will, or on an intestacy, or otherwise howsoever, and whether or not in the ordinary course of the business of the taxpayer or for the purpose of putting an end to that business or any part of it), and the assets sold or otherwise disposed of consist of or include any trading stock the consideration received or receivable for the trading stock or (if any case where section 62 or 64 applies) the price which under that section the trading stock is deemed to have realised shall be taken into account in computing the taxpayer's assessable income for that year or for any subsequent income year, be deemed to have purchased it at the amount of that consideration or price.

(8) Subject to sections 62 and 64, the price specified in any contract of sale or arrangement as the price at which any trading stock is sold or otherwise disposed of as aforesaid shall be deemed for the purposes of this section to be the consideration received or receivable for the trading stock.

(9) Notwithstanding subsections (1) to (8) the value of trading stock on hand at the beginning of the first income year to which the provisions of this Act are applicable shall be deemed to be an amount equal to its cost price.

## **65 Sale of trading stock for inadequate consideration**

(1) Where any trading stock is sold or otherwise disposed of without consideration in money or money's worth or for a consideration that is less than each of –

- (i) the cost price of the trading stock; and
- (ii) the market price on the day of the sale or other disposition or where there is no market price, such price as the Financial Secretary determines (referred to below as “the market price”),

the following provisions shall apply, namely –

- (a) The trading stock shall be deemed for the purposes of this Act to have been sold at and to have realised the cost price or the market price, whichever is the lower;
- (b) The price which under this section the trading stock is deemed to have realised shall be taken into account in calculating the assessable income of the person selling or otherwise disposing of the trading stock;
- (c) The person acquiring the trading stock shall, for the purpose of calculating his assessable income, be deemed to have purchased the trading stock at the price which under this section the trading stock is deemed to have realised.

(2) It shall be grounds for objection to an assessment of income tax that any determination of the Financial Secretary made for the purposes of this section is erroneous in fact.

(3) For the purposes of this section “trading stock” includes anything produced or manufactured, and anything acquired or purchased for purposes of manufacture, sale or exchange, and also includes livestock and also includes any other



real or personal property where the business of the person by whom it is sold or disposed or comprises dealing in such property or the property was acquired by him for the purpose of sale or other disposal.

**66 Assessment and deduction of patent rights and expenses, and trade mark renewals**

(1) For the purposes of this section “patent rights” means the right to do or authorise the doing of anything which would, but for that right, be an infringement of a patent.

(2) Where any taxpayer sells any patent rights, any sum received by him or owing to him in respect of the sale or such part thereof as the Financial Secretary considers just and reasonable shall be deemed to be assessable income and shall be assessed for income tax in such manner as the Financial Secretary determines.

(3) The Financial Secretary, in calculating the assessable income derived by any taxpayer during any income year, may allow such deduction as he thinks fit in respect of any sum expended by the taxpayer on the purchase of any patent rights or any expenditure incurred by him in the grant, maintenance or extension of a patent or in the renewal of any registration of any trade mark or trade name used by him in the production of his assessable income for that year.

**67 Deduction for scientific research**

In calculating the assessable income derived by any taxpayer during any income year, the Financial Secretary may allow such deduction as he thinks fit in respect of any expenditure incurred by the taxpayer during that year in connection with scientific research directly relating to the trade or business carried on by the taxpayer, except so far as the expenditure relates to an asset in respect of which a deduction for depreciation is allowable under section 54(1).

**68 Deduction of testamentary annuities charged on property**

(1) (a) Notwithstanding anything to the contrary contained elsewhere in this Act, where property has been devised or bequeathed by will subject to the payment of an annuity or has been made subject to the payment of an annuity by a deed of family arrangement, and that property or any property substituted therefor has been transferred to a beneficiary and is charged with payment of the annuity or any part thereof, the amount paid in any income year on account of that annuity by the owner of that property or substituted property shall be allowed as a deduction in calculating the income derived by the owner from that property or substituted property in that income year so far as that income extends.

(b) No deduction shall be allowed under this section where the owner for the time being of the property or substituted property (not being a beneficiary) is a person who has acquired the same by purchase subject to the condition that he assumes the liability for the whole or any part of the annuity charged thereon.

(c) To the extent that an annuity payable by the owner of the property or substituted property under a deed of family arrangement represents, in the opinion of the Financial Secretary, consideration for the purchase of the property or substituted property by the owner, the annuity shall not be allowed as a deduction under this section.

(2) In this section “beneficiary”, in relation to any property, means a person to whom that property has been devised or bequeathed by will, or a person who is entitled, pursuant to a provision in a will, to purchase, subject to payment of an annuity, that property, being property that forms part of the estate of the testator; and includes a person who is entitled to the property pursuant to a deed of family arrangement.

**69 Contributions to employees' superannuation fund**

(1) (a) In calculating the taxable income of any employer the Financial Secretary may allow a deduction of any amount set aside or paid by the employer as or to a fund to provide individual personal benefits, pensions, or retiring allowances to employees of that employer.

(b) A deduction shall not be allowed under this section unless the Financial Secretary is satisfied that the fund has been established or the payment made in such a manner that the rights of the employees to receive the benefits, pensions or retiring allowances have been fully secured.

(2) The Financial Secretary shall have a discretion as to whether or not a deduction should be allowed under subsection (1) of the whole or any part of any amount set aside or paid as mentioned in that subsection.

**70 Financial Secretary may make arrangements, for first three income years**

It is hereby declared that subject to this Act the Financial Secretary may in respect of the first income years of any person to whom this Act becomes applicable, make such arrangements, compromises, or calculations as he sees fit, in the assessment of income derived by that person during those years, and may make such assessments of income tax as he sees fit to give effect to such arrangements, compromises or calculations.

*Provisions relating to Companies and Associations*

**71 Profits of mutual associations in respect of transactions with members**

(1) Where an association enters into transactions with its members, or with its members and others, any profit or surplus arising from those transactions which would be included in the profits or gains of the association if the transactions were not of a mutual character shall be deemed to be profits or gains arising from those transactions and to be assessable income of the association except that, in computing the assessable income of the association the Financial Secretary shall allow as expenses any sums which –

(a) Represent a discount, rebate, dividend, or bonus granted or paid by the association to members or other persons in respect of amounts paid or payable by or to them on account of their transactions with the association, being transactions which are taken into account in computing the assessable income; and

(b) Are calculated by reference to the said amounts or to the magnitude of the said transactions and not by reference to any share or interest in the capital of the association.

(2) Where any discount, rebate, dividend, or bonus is granted or paid to any person by an association, it shall form part of the assessable income of that person if the transaction from which it arises is of such a nature that any payment in respect of it by that person to the association would be allowed as a deduction in computing the assessable income of that person.

(3) For the purpose of this section, a discount, rebate, dividend or bonus shall be deemed to have been granted to or paid to a person when it has been credited in account or otherwise dealt with in his interest or on his behalf.

(4) In this section “association” includes any body or association of persons, whether incorporated or not, other than those mentioned in section 49(1)(q).



**72 Overseas insurance companies other than life insurance companies**

(1) For the purpose of this Act the assessable income of an overseas insurance company shall include the amount of gross premiums derived by the company in respect of business (other than life assurance business) transacted in Niue.

(2) Income tax on the assessable income of an overseas insurance company determined in accordance with subsection (1), shall be assessed at the rate as set out in Schedule 1.

(3) “Overseas insurance company” for the purposes of this section means a company mainly carrying on the business of insurance or guarantee against loss, damage or risk of any kind whatever whose main place of business is situated outside Niue.

**73 Companies with substantially the same shareholders or under the same control**

(1) If the Financial Secretary is satisfied with respect to two or more companies consisting substantially of the same shareholders or under control of the same persons, that the separate constitution or the separate continuance of those companies is not exclusively for the purpose of more effectively carrying out their objects but is wholly or partly for the purpose of reducing their taxation, the Financial Secretary may, for the purposes of income tax, treat those companies as if they were a single company, and in any such case those companies shall be jointly assessed and jointly and severally liable with such right of contribution or indemnity between themselves as is just.

(2) Section 75(2) and (3) shall be deemed to be also applicable to this section.

**74 Liability of new companies for tax payable by former companies with substantially the same shareholders or under the same control**

(1) In this section –  
“company” means a Niue company or an overseas company within the meaning of this Act;

“new company” means a company carrying on business in Niue and consisting substantially of the same shareholders as an original company or being under the control of the same persons as an original company;

“original company” means a company which having at any time carried on business in Niue has, ceased to carry on business in Niue, and includes any such company that has been wound up.

(2) For the purposes of this section, a new company shall be deemed to consist substantially of the same shareholders as an original company if not less than one half of the paid up capital of the new company is held by or on behalf of shareholders in the original company. Shares in one company held by or on behalf of another company shall for the purposes of this subsection be deemed to be held by the shareholders in the last mentioned company.

(3) Where an original company within the meaning of this section has been wound up its shareholders and directors, as on the commencement of its winding up, shall respectively be deemed to be the shareholders and the persons having the control of the company for the purposes of this section.

(4) Where an original company as hereinbefore defined was, when it ceased to carry on business in Niue liable under this Act for any income tax or was liable to be assessed for any such tax, and such tax has not been paid, the new company shall, for the purposes of this Act, be deemed to be the agent of the original company and shall be liable for all tax payable by the original company. It shall also be liable for all tax for

which the original company would have been liable if it had continued to carry on business in Niue.

**75 Defining when a company is under the control of any persons**

(1) For the purposes of this Act except where otherwise expressly provided a company shall be deemed to be under the control of the person –

- (a) By whom more than one half of the shares, or more than one half of the nominal capital, or more than one half of the paid up capital, or more than one half of the voting power is held, or;
- (b) Who have by any other means whatsoever control of the company; or
- (c) Who by reason of the shareholding at the end of any income year would be entitled to more than one half of the profits for that year if those profits were distributed by way of dividend at the end of that year.

(2) For the purposes of this Act, two companies shall be deemed to consist substantially of the same shareholders if not less than one half of the paid up capital of each of them is held by shareholders in the other or if not less than one half in nominal value of the allotted shares in each of them is held by shareholders in the other. Shares in one company held by another company shall for this purpose be deemed to be held by the shareholders in the last mentioned company.

(3) Where a nominee of any person holds any shares, nominal capital, paid up capital, or voting power in a company, or has by any other means whatsoever any power of control in a company, or is entitled to a share of profits distributed by a company, then for the purposes of this section those shares or that capital or that voting power or that power of control or that title to profits, as the case may be, shall be deemed to be held by that person, and in every such case that person and his nominee or that person and all his nominees shall be deemed to be one person.

(4) In this section –

“nominee”, in relation to any person, means any other person who may be required to exercise his voting power in relation to any company in accordance with the direction of that person, or who holds shares or debentures directly or indirectly on behalf of that person; and includes the husband or wife of that person and any relatives of that person by blood, marriage, or adoption;  
“person” includes a company and a local or public authority.

**76 Floating rate of interest on debentures**

(1) Where in any debenture issued by a company the rate of interest payable is not specifically determined, but is determinable from time to time by reference to the dividend payable by the company or otherwise howsoever, the interest paid on the debenture shall be considered part of the assessable income of the company and not of the debenture holder.

(2) Section 100 shall not apply with respect to any such debenture or to the interest paid or payable thereunder.

**77 Interest on debentures issued in substitution for shares**

(1) For the purposes of this section –

- (a) “The amount of the debenture” means, in respect of any debenture, the principal sum expressed to be secured by or owing under that debenture;
- (b) “Shareholder” includes, in respect of any company, a person by whom or on whose behalf shares in the company have at any time been held.

(2) Where a company has issued debentures to its shareholders or to any class of its shareholders, and the amount of the debenture or debentures issued to each

shareholder of the company or of that class has been determined by reference to the number or to the nominal value or to the paid up value of, or by reference otherwise howsoever to the shares in that company or in any other company (whether or not that other company is being or has been wound up) that were held by or on behalf of the shareholder at the time the debentures were issued or at any earlier time, the interest paid by the company on the debentures so issued shall be computed as part of the assessable income of the company and not of the debenture holder.

(3) The provisions of section 76 and of any other enactment shall apply with respect to all debentures to which subsection (2) applies and to the interest payable thereunder, in the same manner as if those debentures and that interest were debentures and interest of the kinds referred to in section 76.

**78 Payment of excessive remuneration or share of profits to relatives in certain cases**

(1) Where –

- (a) Any taxpayer carries on any business or undertaking and employs or engages any relatives of a director or shareholder of the company to perform services in connection with that business or undertaking; or
- (b) Any taxpayer carries on business in partnership with any person, whether or not any other person is a member of the partnership, and –
  - (i) any relative of the taxpayer is employed or engaged by the partnership to perform services in connection with the business; or
  - (ii) where one of the partners is a company, any relative of a director or shareholder of the company is employed or engaged by the partnership to perform services in connection with the business; or
- (c) Any taxpayer carries on business in partnership with any relative or with any company a director or shareholder of which is a relative of the taxpayer or, being a company, carries on business in partnership with any relative of a director or shareholder of the company whether or not any other person is a member of the partnership –

and the Financial Secretary is of the opinion that the remuneration, salary, share of profits or other income payable to or for the benefit of that relative or company under the contract of employment or engagement or the terms of the partnership exceeds such an amount as is reasonable having regard to the nature and extent of the services rendered, the value of the contributions made by the respective partners by way of services or capital or otherwise, and any other relevant matters, the Financial Secretary may for the purposes of this Act allocate the total profits or income of the business or undertaking before deduction of any amount payable to that relative or company between the parties to the contract or the partners or any of them in such shares and proportions as he considers reasonable and the amounts so allocated shall be deemed to be income derived by the person to whom those amounts are so allocated and by no other person.

(2) Where any sum paid or credited by a company, being or purporting to be remuneration for services rendered by any person who is a relative of a director or shareholder of the company, is allocated to that company under subsection (1), the amount so allocated to the company shall be deemed to be a dividend paid by the company to that person and received by him as a shareholder of the company.

(3) For the purposes of this section “relative” means a husband or wife, or a relative by blood within the fourth degree of relationship (whether legitimate or illegitimate), or a relative by marriage or adoption, and includes a trustee for a relative.

(4) Notwithstanding section 35(1) it shall be grounds for objection under Part 4 to an assessment of income tax that any determination of the Financial Secretary

made for the purposes of this section is erroneous and the Court hearing the objection, shall have power to review the determination of the Financial Secretary, and shall for that purpose have all the powers and functions of the Financial Secretary in making that determination, and the decision of the Court shall except for the purposes of objection thereto take effect as if it were the determination of the Financial Secretary; but nothing in this subsection shall restrict the right of the Financial Secretary or the objector to appeal against the decision of the Court under Part 4.

(5) [Spent]

(6) This section shall not apply to a bona fide contract of employment or to a bona fide contract of partnership. For the purposes of this section a contract of employment or a contract of partnership shall be deemed to be bona fide if it complies with the following conditions –

- (a) The contract is in writing or by deed signed by all the parties hereto;
- (b) No partner and no person employed or engaged under the contract was under the age of 21 years at the date on which the contract was signed;
- (c) The contract is binding on the parties to it for a term of not less than 3 years and is not capable of being terminated by any party thereto before the expiry of that term;
- (d) Each party to the contract has a real and effective control of the remuneration, salary, share of profits, or other income to which he is entitled under the contract;
- (e) The remuneration, salary, share of profits, or other income payable to a relative, or to a company, a director or shareholder of which is a relative, is not of such an amount that the transaction would constitute in whole or in part a gift for gift duties purposes if the Estate and Gift Duties Act 1968 (NZ) were in force in Niue.

#### **79 Excessive remuneration by company to shareholder or director**

Where any sum paid or credited by a company, being or purporting to be remuneration for services rendered by any person who is a shareholder or director of the company, exceeds such amount as in the opinion of the Financial Secretary is reasonable, the amount of the excess shall not be an allowable deduction in computing the assessable income of the company, and shall for the purposes of this Act be deemed to be a dividend paid by the company to that person and received by him as a shareholder of the company.

#### *Country of Derivation of Income*

#### **80 Liability for assessment of income derived from Niue and abroad**

(1) Subject to this Act all income derived by any person who is resident in Niue at the time when he derives that income shall be assessable for income tax whether it is derived from Niue or from elsewhere.

(2) Subject to this Act, all income derived from Niue shall be assessable for income tax, whether the person deriving that income is resident in Niue or elsewhere.

(3) Subject to this Act, income which is neither derived from Niue nor derived by a person then resident in Niue shall not be assessable for income tax.

**81** [Repealed]

#### **82 Classes of income deemed to be derived from Niue**

Subject to section 83, the following classes of income shall be deemed to be derived from Niue –

- (a) Income derived from any business carried on in Niue;

- (b) All salaries, wages, allowances and emoluments of any kind earned in Niue in the service of any employer or principal, whether resident in Niue or elsewhere;
- (c) Income derived by any person as the owner of land in Niue;
- (d) Income derived by any person from money lent or used in Niue (whether on security or otherwise)
- (e) Income derived from shares in or membership of a Niue company, or from debentures issued by a Niue company or by a local or public authority;
- (f) Income derived from debentures or other securities issued by the Administration, or from any contract made with that Administration;
- (g) [Repealed];
- (h) Income derived from the sale or other disposition of any property, corporeal or incorporeal, situated in Niue;
- (i) Income derived by a beneficiary under any trust, so far as the income of the trust fund is derived from Niue;
- (j) Income derived from contracts made or wholly or partly performed in Niue;
- (k) Income derived from the carriage by sea or by air of merchandise, mails, or passengers shipped or embarked in Niue;
- (l) Income derived directly or indirectly from any other source in Niue.

**83 Apportionment where income derived partly in Niue and partly elsewhere**

Whenever by reason of the manufacture, production or purchase of goods in one country and their sale in another, or by reason of successive steps of production or manufacture in different countries, or by reason of the making of contracts in one country and their performance in another, or for any other reason whatever the source of any income is not exclusively in Niue, that income shall be apportioned between its source in Niue and its source elsewhere, or attributed to one of such sources to the exclusion of the other in such manner as the Financial Secretary thinks just and reasonable, having regard to the nature and relative importance of the sources of that income; and the income so far as so apportioned or attributed to a source in Niue shall be deemed to be derived from Niue and shall be assessable for income tax accordingly.

**84 Relief from double taxation**

(1) Income derived by a person resident in Niue but not derived from Niue shall be exempt from income tax if and so far as the Financial Secretary is satisfied that it is derived from some other country or territory and that it is chargeable with income tax in that country or territory.

(2) In determining the country or territory from which income is derived the Financial Secretary shall apply the same rules, with the necessary modifications, as are applicable in determining whether income is derived from Niue.

(3) In this section “income tax” means in respect of any country or territory other than Niue, any tax which in the opinion of the Financial Secretary is substantially of the same nature as income tax under this Act.

**85 Tax agreements with other countries and territories**

- (1) A tax agreement may be negotiated for the following purposes—
- (a) to facilitate the exchange of information;
  - (b) to provide relief from double taxation;
  - (c) to provide relief from tax;



- (d) to tax the income derived from any source in Niue by persons who are not resident in Niue;
  - (e) to determine the income to be attributed to persons who are not resident in Niue and their agencies, branches, or establishments in Niue;
  - (f) to determine the income to be attributed to persons resident in Niue who have special relationships with persons who are not resident in Niue;
  - (g) to prevent fiscal evasion;
  - (h) to assist in recovering unpaid tax.
- (2) A tax agreement comes into force—
    - (a) on the date specified in regulations made by Cabinet; and
    - (b) only if those regulations contain a copy of the agreement.
  - (3) A tax agreement that comes into force in accordance with subsection (2)—
    - (a) has effect despite anything in this Act or any other Act in relation to—
      - (i) income tax;
      - (ii) any other tax;
      - (iii) the exchange of information that relates to a tax;
      - (iv) any obligation as to privacy or secrecy; and
    - (b) may be amended or revoked.
  - (4) In this section, tax agreement means an agreement that—
    - (a) is negotiated for one or more of the purposes set out in subsection (1); and
    - (b) is agreed between Cabinet and the government of any country or territory outside Niue.

*Income derived by a Trustee*

**86 Special provisions with respect to trustees**

With respect to income derived by a trustee the following provisions shall apply –

- (a) If and so far as the income of the trustee is also income derived by a beneficiary entitled in possession to the receipt of it under the trust, the trustee shall in respect of it be deemed to be the agent of that beneficiary, and shall be assessable and liable for income tax thereon accordingly, and all the provisions of this Act as to agents shall, so far as applicable, apply accordingly. Where any income is derived by a beneficiary as aforesaid subject to a condition, obligation, or trust requiring him to maintain or support any other person (whether out of the income so derived or otherwise) and that beneficiary would, apart from that condition, obligation or trust, be entitled to a special exemption in respect of the maintenance and support provided by him for that other person, that beneficiary shall be assessed for income tax and shall be entitled to the same special exemptions as if he were beneficially entitled to the income free from any such condition, obligation, or trust;
- (b) If and so far as the income of the trustee is not also income derived by any beneficiary as aforesaid, the trustee shall be assessable and liable for income tax on that income in the same manner as if he was beneficially entitled to it, save that the rate of tax shall be computed by reference to that income alone, and that the trustee shall not be entitled to any deduction by way of special exemption, and that no tax shall be payable if the assessable income does not exceed \$100, and that the amount of tax payable in any case shall, where

necessary, be reduced so as not to exceed the amount by which the assessable income exceeds \$100:

Provided that in any case where a trustee is required or is empowered at his discretion to pay or apply income derived by him to or for the benefit of specified beneficiaries or to or for the benefit of some one or more of a number of specified beneficiaries, or of a specified class of beneficiaries, a beneficiary in whose favour the trustee so pays or applies income shall be deemed to be entitled in possession to the receipt of the amount paid to him or applied for his benefit by the trustee under the trust:

Provided also that where the income of the trustee is also income derived by any beneficiary who is an infant but whose interest in that income is vested, the beneficiary shall for the purposes of this section be deemed to be entitled in possession to the receipt of that income under the trust;

- (c) The trustee shall in every case make a return of the whole incomes derived by him as trustee, and each such return shall be separate and distinct from any return of income derived by him under any other trust or in his own right;
- (d) Nothing in this section shall be so construed as to exempt a beneficiary from any income tax which would be payable by him had he derived the income to which he is entitled under the trust directly instead of through a trustee;
- (e) Where any company or corporation is a trustee any income assessable to the trustee under paragraph (b) shall be assessable at the rate applicable to a trustee other than a company or a corporation.

#### **87 Income received by trustee after death of deceased person**

It is hereby declared that any amount received in any income year by the trustee of the estate of a deceased person shall be deemed to be assessable or (as the case may require) non-assessable income derived by the trustee in that year if it does not represent assessable or non-assessable income derived by the deceased person during his lifetime but would have been included in his assessable or non-assessable income if he had been alive when it was received.

#### **88 Deduction from estate income of irrecoverable book debts of deceased taxpayer**

Where the amount of any debt owing to a deceased taxpayer at the date of his death has been included in the assessable income of the taxpayer or of the trustee of his estate for any income year, and the debt or any part of it is proved to the satisfaction of the Financial Secretary to be irrevocable and to have been actually written off by the trustee as a bad debt, the amount so written off shall be deemed to be a loss incurred by the trustee in the income year in which the amount was written off, and shall be allowable as a deduction first against any income derived by the trustee in that income year which is assessable to the trustee as income not derived by a beneficiary entitled in possession to the receipt of it under the trust during that year, and then, as to any balance, against any income derived in that year by or in trust for a beneficiary who has a vested interest in the capital of the estate to the extent that the loss is chargeable against the capital of that beneficiary; and any balance not allowed as a deduction in that year shall, so far as it extends, be allowable as a deduction in the same manner successively during the six succeeding years.

### PART 6

#### AGENTS AND NON-RESIDENTS

##### *Introduction*

#### **89 “Absentee” defined**

In this Part “absentee” means –

- (a) Any person (other than a company) who is for the time being out of Niue;



- (b) Any overseas company unless it has a fixed and permanent place of business in Niue at which it carries on business in its own name;
- (c) Any overseas company which is declared by the Financial Secretary to be an absentee for the purposes of this Act by notice given to that company or to its agent or attorney in Niue, so long as that declaration remains unrevoked.

**90 Rate and amount of tax payable by agent**

Except where otherwise expressly provided by this Act, the rate of tax for which an agent shall be so assessed and liable shall be determined by reference to the total taxable income of the principal, but it shall be charged and payable only on the income in respect of which the agency exists, and in the same proportion which that income bears to the total taxable income of the principal.

**91 Liability of principal not affected**

(1) Nothing in this Act relating to an agent shall be so construed as to release the principal from liability to make returns and to be assessed and chargeable with tax.

(2) No assessment of the agent shall preclude an assessment of the principal for the same tax, nor shall an assessment of the principal preclude an assessment of the agent for the same tax, and the principal and agent shall be jointly and severally liable for all tax for which the agent is liable.

(3) When two or more persons are liable to be assessed as agents in respect of the same tax, they shall be jointly and severally liable for it.

**92 Agents may recover tax from principal**

When an agent pays any tax he may recover the amount so paid from his principal, or may deduct the amount from any moneys in his hands belonging or payable to his principal.

**93 Agent may retain from moneys of principal amount required for tax**

An agent may during the year preceding the year of assessment, or at any later time, retain out of any moneys belonging or payable to his principal such sums as may reasonably be deemed sufficient to pay the tax for which the agent is or may become liable.

**94 Assessment deemed authority for payment of tax by agent**

An assessment made by the Financial Secretary shall, as between an agent and his principal, be a sufficient authority for the payment by the agent of the tax so assessed and the agent shall be entitled as against his principal to reimbursement accordingly.

**95 Agents to be personally liable for payment of tax**

(1) Every agent shall be personally liable for the tax on income in respect of which he is an agent.

(2) When the Financial Secretary is satisfied that an agent has no moneys of his principal with which he can pay the tax, and that he has not paid away any such moneys after notice of assessment of the tax, or that immediate enforcement of payment by the agent would be a cause of hardship, the Financial Secretary may allow the agent such further period for the payment, not exceeding 6 months after the date of the notice of assessment, as he thinks necessary and the additional tax imposed by section 115 on taxpayers in default shall not accrue until the expiry of the periods so allowed.

**96 Agents to make returns and be assessed as principal**

(1) Every agent shall make returns of the income in respect of which he is an agent, and shall be assessed thereon in the same manner as if he was the principal,

save that he shall be entitled to no special exemption other than such exemption (if any) as his principal may be entitled to.

(2) Every person liable to furnish a return as agent for any person shall furnish a separate return for each person for whom he is agent, in addition to his own individual return.

**97 Relation of principal and agent arising in effect**

When the Financial Secretary is satisfied that any person carrying on business in Niue (herein called the agent) is so far under the control of any other person carrying on business in Niue or elsewhere (herein called the principal) that the relation between them is in effect that of agent and principal, he may treat the first mentioned business as that of the principal, and as being carried on by the agent on his behalf, and may require returns to be made, and may make assessments accordingly, and the principal and agent shall be liable for income tax accordingly.

*Special Cases of Agency*

**98 Liability of mortgagee in possession**

For the purposes of this Act, a mortgagee in possession of any land or other property shall be deemed to be the agent of the mortgagor in respect of any income derived by that mortgagee from that land or other property on behalf of or for the benefit of the mortgagor, and the mortgagee shall make returns and be assessable and liable for tax on that income accordingly, and all the provisions of this Act as to agents shall, as far as they are applicable, apply accordingly.

**99 Guardian of person under disability to be his agent**

Every person who, as guardian, committee, or otherwise has the receipt, control or disposition of any income derived by a person under any legal disability shall for the purposes of this Act be the agent of that person in respect of that income, and shall make returns and be assessable and liable for income tax accordingly.

**100 Local and public authorities and companies deemed agent of debenture holders**

(1) Save as otherwise provided in section 75 and section 101, every company and local and public authority which has issued debentures, whether charged on the property of the company where appropriate or not, shall for the purposes of this Act be the agent of all debenture-holders, whether absentees or not, in respect of all income derived by them from those debentures, and shall make returns and be assessable and liable for income tax on that income accordingly.

(2) No deduction by way of special exemption or otherwise shall be allowed to the company or local or public authority as such agent, or to any debenture holders, in respect of the income so derived from debentures.

(3) Income so derived by holders of debentures issued by a company or a local or public authority shall be assessable and chargeable with income tax in conjunction with income derived by the debenture-holders from other sources, if any, and at the rate appropriate to the total income so derived.

(4) Nothing in this section shall be so construed as to render liable to income tax any income that is exempt from taxation by virtue of section 49.

**101 Modification in respect of income from company debentures, or local or public authority debentures**

(1) The duty to act as the agents of debenture holders imposed on companies or local or public authorities by section 100 shall not apply with respect to debentures issued to any person resident in Niue if the company or local or public authority that

has issued such debentures has supplied to the Financial Secretary, before it has been assessed in any year for income tax in respect of the income derived from those debentures, a certified list specifying the numbers of the debentures or other particulars sufficient to identify them, the names, addresses, and descriptions of the persons to whom the debentures have been issued, the interest derived or derivable therefrom, and such other particulars as may be prescribed.

(2) Where any such list is supplied the person named in it as the holder of any debentures shall be personally responsible for the making of returns, and shall be assessable and liable for income tax (though not to the exclusion of any other person) in respect of the income derived from those debentures at the rate fixed in respect thereof, unless and until he satisfies the Financial Secretary, before he has been assessed for income tax in any year, that he has transferred or assigned the debentures, and has given notice to the Financial Secretary in the prescribed form of the name, address, and description of the transferee or assignee.

(3) Every person being the transferee or assignee of any debenture shall in like manner remain personally liable in respect of it (though not to the exclusion of any other person) unless and until he has given notice to the Financial Secretary in the prescribed form of the transfer or assignment of the same.

(4) Any tax paid by the former holder of any debentures in respect of the income derived from it by a subsequent holder shall be deemed to be paid on behalf of that subsequent holder so far as it does not exceed the tax to which the subsequent holder might himself have been liable in respect of such debentures, and may be recovered by the former holder from such subsequent holder accordingly.

## **102 Recovery of income tax payable in respect of alimony or maintenance**

(1) This section applies with respect to any income tax that may hereafter become payable in respect of income received by or on behalf of any person as alimony or maintenance, pursuant to the order of any Court or pursuant to any deed or agreement.

(2) In any case to which this section applies, the person bound by any such order, deed, or agreement to pay any moneys as alimony or as maintenance as aforesaid, shall for the purpose of the payment of the income tax thereon, be deemed to be the agent of the person to whom or on whose behalf such moneys have been paid or are payable, and all the provisions of this Act as to the liability of agents shall apply with respect to him accordingly.

(3) It shall be no defence in any proceedings against an agent for the recovery of any income tax to which this section relates that any amount in respect of income tax has been paid by him to the person entitled to receive any moneys as alimony or maintenance.

### *Agents of Absentees and Non-residents*

## **103 Liability of agent of absentee principal for returns and tax**

Every person who in Niue carries on any business for and on behalf of a principal who is an absentee shall for the purposes of this Act be the agent of that principal in respect of all income derived by the principal through the business so carried on in Niue by means of that agent, and the agent shall make returns and be assessable and liable for income tax on that income accordingly, whether the incomes to the hands of the agent or not.

**104 Partner of absentee deemed agent**

Every person who in Niue carries on business in partnership with an absentee shall for the purposes of this Act be the agent of that absentee in respect of his share of the income of the business, and shall make returns and be assessable and liable for income tax accordingly.

**105 Master of ship or captain of aircraft deemed agent of absentee owner**

(1) When an absentee, by means of any ship or aircraft owned by him or under charter to him, carries on the business of the carriage of merchandise, mails or passengers the master of that ship, or the captain of that aircraft, as the case may be, shall (though not to the exclusion of any other agent) be the agent of that absentee for the purposes of this Act in respect of all assessable income so derived by that absentee, and shall be assessable and liable for income tax accordingly.

(2) Pending the payment of any tax assessed against such an absentee or against any person who is his agent for the purposes of this Act, the Financial Secretary shall withhold the clearance of the ship or aircraft in respect of which the tax is payable.

**106 Tenant, mortgagor or other debtor, to be agent of absentee landlord, mortgagee or other creditor**

(1) Any tenant, mortgagor or other person who transmits from Niue to any landlord, mortgagee or other creditor, being an absentee, any rent, interest, or other moneys being income derived by that absentee from Niue, shall for the purposes of this Act be the agent of that absentee in respect of all moneys so transmitted by him at any time, and he shall in respect of all such moneys make returns and be assessable and liable for income tax accordingly.

(2) For the purposes of this section any moneys paid by or on account of a person resident in Niue from a fund situated out of Niue shall be deemed to be moneys transmitted by that person from Niue.

**107 Person having disposal of income deemed agent**

Every person who in Niue has the receipt, control or disposal of any income derived by a principal who is an absentee shall for the purposes of this Act be the agent of the principal in respect of that income, and shall make returns and be assessable and liable for income tax on that income accordingly.

**108 Company to be agent of absentee shareholders**

A Niue company which is exempt from income tax shall be the agent of all shareholders or members who are absentees, and the company shall make returns and be assessable accordingly on all dividends and other profits paid or credited by the company to such shareholders or members at any time while they are absentees.

**109 Banking company to be agent of absentee depositors**

Every banking company, and every other company, local or public authority, or other person, who in the course of business receives or holds money by way of deposit and allows interest thereon shall for the purposes of this Act be the agent of all depositors who are absentees, and shall make returns and be assessable and liable for income tax accordingly on any interest which is paid or credited to a depositor while he is an absentee if that interest exceeds \$400 in any year.

**110 Premiums on insurance effected with persons not carrying on business in Niue**

(1) Where any person in Niue enters into a contract of insurance or guarantee against loss, damage, or risk of any kind whatever (not being a contract of

life insurance) with any person or overseas company not carrying on business in Niue, such last mentioned person or such company shall be liable to income tax at the rate as set out in Schedule 1 as being applicable to insurance companies on the amount of premium paid or payable by the first mentioned person in respect of such contract.

(2) Where the amount of premium paid or payable in respect of any such contract is not disclosed, the amount shall be deemed to be the same amount as would be chargeable in respect of a similar contract of insurance or guarantee effected with a company carrying on business in Niue.

(3) Every person who enters into a contract of insurance or guarantee as aforesaid shall for the purposes of this Act be deemed to be the agent of the person or overseas company with whom such contract is made, and shall make returns and be assessable and liable for income tax accordingly.

(4) Every person who exports any goods from Niue shall notify the Financial Secretary if such goods are insured, and, if so, the name and description of the person or company with whom such goods are insured, and the amount of the premium payable in respect of it.

#### **111 Liability as agent of employer of non-resident taxpayer and employer's agent**

(1) The employer or the agent of the employer of every non-resident taxpayer shall, for the purposes of this Act, be the agent of such non-resident taxpayer in respect of the salary, wages, or other emoluments received by him, and shall make returns and be assessable and liable for income tax thereon accordingly.

(2) Where any such non-resident taxpayer has made default in the payment of any income tax payable by him in respect of his salary, wages, or other emoluments as aforesaid, the amount of such tax shall, on application by the Financial Secretary, be deducted by the employer or his agent from any salary, wages, or other emoluments thereafter to be paid, and shall be paid to the Financial Secretary on behalf of the taxpayer.

(3) Where any non-resident taxpayer is in receipt of any pension or annuity payable out of any superannuation fund established in Niue, any income tax that may hereafter become payable by such non-resident taxpayer in respect of such pension or annuity shall, on application by the Financial Secretary, be deducted from any instalment or instalments of such pension or annuity thereafter to be paid, and shall be paid to the Financial Secretary on behalf of the taxpayer.

(4) For the purposes of this section "non-resident taxpayer" means any person who, being liable for income tax in respect of salary, wages, or other employment derived from Niue, or in respect of any annuity or pension derived from Niue has no fixed and permanent residence or place of abode in Niue.

#### **112 Non-resident trader to be agent of employees in Niue**

(1) Every non-resident trader shall for the purposes of this Act be the agent of all persons in his employment in Niue in respect of the salary, wages or other emoluments received by them, and shall make returns and be assessable and liable for income tax thereon accordingly.

(2) The agent in Niue of a non-resident trader shall, for the purposes of this section, be under the same obligations as his principal.

#### **113 Agents in Niue of principals resident or carrying on business abroad**

When any person in Niue, on behalf of a principal resident or carrying on business out of Niue, is instrumental in procuring the purchase from that principal of goods or merchandise which are in Niue or are to be imported into Niue in pursuance or in consequence of such



purchase, whether the contract or purchase is made in Niue or elsewhere, the principal shall in respect of the sale by him of such goods or merchandise be deemed to be carrying on business in Niue through the agency of that person; and the income derived from such business shall be deemed to be derived from Niue, in the same manner and to the same extent as if the contract had been made in Niue, and shall be assessable for income tax accordingly and the agent shall make returns and pay tax accordingly.

## PART 6A

### TAX DEDUCTIONS BY EMPLOYERS

#### **113A Application of this Part**

- (1) This Part shall apply notwithstanding anything in any other Part.
- (2) This Part shall apply to salary or wages for any period on or after 1 April 1984 and to other source deduction payments which are paid or would normally be paid on or after that date, notwithstanding that any such other source deduction payment may as to the whole or any part thereof be for a period before that date.
- (3) If any question is raised as to whether or not a source deduction payment is as to the whole or any part of it subject to this Part, it shall be determined by the Financial Secretary whose decision shall be final.
- (4) The amount of income tax for which an employee is liable in respect of the income earned by him in any income year shall be assessed under Part 5.

#### **113B Tax deductions to be made by employers**

For the purpose of enabling the collection of income tax from employees by instalments, where an employee receives a source deduction payment from an employer, the employer or other person by whom the payment is made shall, at the time of making the payment, make a tax deduction therefrom under this Part.

#### **113C Amount of tax deductions**

- (1) (a) The Financial Secretary shall issue tables based on the tax rates specified in this Act detailing the tax deductions that shall be made from every payment of salary and wages according to the amount of the payment the length of the pay period and the tax code of the employee; and every employer shall make tax deductions from every payment of salary or wages accordingly.
  - (b) No tax deduction need be made from any source deduction payment made to any employee in respect of his employment as a private domestic worker.
  - (c) If a tax deduction is not made by the employer in any such case section 113J shall apply to the employee.
- (2) Where the source deduction payment is being made in respect of an employee who has not made a declaration for the purposes of the tax code the basic tax deduction shall be the appropriate amount that would be deducted if the tax code of the employee were 'S'.

#### **113D Tax codes**

For the purpose of this Part the tax code of any employee in relation to any source deduction payment shall be such one of the following codes as applies to the employee namely

- 
- “no declaration”, signifying an employee who has not delivered to the employer a tax code declaration;
- “s”, signifying an employee who has no dependants;

“s+( )”, signifies an employee who has a dependant relative or dependant relatives where the number in brackets signifies the number of dependant relatives;  
“SEC”, signifies an employee who undertakes secondary employment in addition to primary employment.

### **113E Dependants**

(1) This section shall apply for the purpose of determining the tax code applicable to an employee.

(2) The spouse of the employee shall be deemed to be a dependant of the employee for the purposes of the tax code based on a tax code declaration which includes the spouse as a dependant if –

- (a) The marriage has subsisted at any time during the year in which the employee delivers the tax code declaration to the employer or to the Financial Secretary, and the spouse has been supported by the employee at any time during that year; and
- (b) The spouse has not in the year in which the tax code declaration is delivered derived income in excess of \$624; and
- (c) When the tax code declaration is delivered the employee anticipates that the income as aforesaid already derived and to be derived by the spouse in that year will not exceed in the aggregate \$624.

(3) A spouse who under subsection (2) is a dependant of an employee for the purposes of any tax code shall cease to be such a dependant if and when, before the tax code ceases to apply to the employee, the employee knows or anticipates, or should have known or anticipated, that the income as aforesaid derived and to be derived by the spouse in the year aforesaid has exceeded or will exceed \$724.

(4) A housekeeper shall be deemed to be a dependant of the employee for the purposes of the tax code based on a tax code declaration which includes the housekeeper as a dependant if, when the employee delivers the declaration to the employer or to the Financial Secretary, the employee anticipates that the aggregate amount of the payments to be made, during the year in which the tax code declaration is delivered, in respect of the services of a housekeeper or housekeepers will be not more than \$300.

(5) A housekeeper who under subsection (4) is a dependant of an employee for the purposes of any tax code shall cease to be a dependant if and when, before the tax code ceases to apply to the employee, the employee knows or anticipates or should have anticipated that the aggregate amount of the payments as aforesaid to be made during the year aforesaid will be more than \$300.

(6) A dependant relative as defined by section 45 shall be deemed to be a dependant of the employee for the purposes of the tax code based on a tax code declaration which includes the dependant relative as a dependant if, when the employee delivers the declaration to the employer or to the Financial Secretary, the employee anticipates that the dependant relative will qualify within the terms of section 45 as a dependant relative.

(7) A dependant relative who under subsection (6) is a dependant of an employee for the purposes of any tax code shall cease to be a dependant if and when before the tax code ceases to apply to the employee, the employee knows or anticipates or should have anticipated that the dependant relative does not qualify as a dependant relative within the terms of section 45.

(8) Except as provided in this section, no person shall be deemed to be a dependant of an employee.



**113F Tax code declaration**

(1) Every employee shall at the commencement of his employment complete a tax code declaration on the form prescribed by the Financial Secretary and deliver the completed tax code declaration to his employer. The tax code as determined by the particulars on that declaration shall be applied by the employer to that employee for the purposes of this Part.

(2) Where the circumstances of the employee change such that the employee ceases to be entitled to use the tax code based on his tax code declaration or the employee is entitled to use another tax code he shall within 7 days of such change in circumstances deliver to his employer another tax code declaration in a form authorised by the Financial Secretary. The tax code as determined by the particulars on the new declaration shall apply thereafter to the employee unless the tax declaration is again changed by the employee under this section.

(3) Notwithstanding subsections (1) and (2) the Financial Secretary may in such circumstances and to the extent that he thinks fit reduce or increase the amount of any tax deduction required to be made from the source deduction payment of any employee or class or classes of employees and the employer or the employers of such an employee or employees shall make deductions accordingly.

**113G Tax deductions to be credited to individual**

(1) Every employee who is required to furnish or who furnishes to the Financial Secretary a return of any assessable income derived by him in any income year shall except where the Financial Secretary otherwise directs, forward to the Financial Secretary with the return all tax deduction certificates delivered to the employee in respect of tax deductions made in the income year from source deduction payments made to the employee.

(2) The Financial Secretary shall apply the total amount of the tax deductions shown on the certificates forwarded under subsection (1) in payment successively of –

- (a) The income tax (if any) payable by the employee in respect of his income for the income year;
- (b) The income tax (if any) due by the employee and unpaid in respect of previous income years;

and shall refund to the employee an amount equal to the amount of the tax deductions not so credited.

(3) If the Financial Secretary has reason to believe that any tax deduction certificate received by him under this section is incorrect no action under subsection (2) shall be taken by the Financial Secretary until he is satisfied that the certificate is correct.

(4) The employer and the employee shall be liable jointly for any error in the amount shown in the tax deduction certificate which results in the crediting of, or refund of income tax in excess of the amount that the employer had actually deducted from a source deduction payment to which the certificate relates, and the amount of the excess shall be payable by 31 January in the succeeding income year.

**113H Contribution to superannuation funds**

(1) Where an employee is a contributor to a superannuation fund, the amount of the salary or wages paid to the employee for a pay period shall, for the purpose of calculating the amount of the tax deduction be deemed to be the residue of the payment of salary and wages after subtracting therefrom the amount of the regular current contributions made by the employee to the superannuation fund for that period.

(2) The maximum amount subtracted as provided for in this section shall not exceed \$30.76 in any fortnightly pay period with a corresponding limitation for other periods.

**113I Tax deduction from amounts credited to or applied for employees**

Where a source deduction payment, though not actually paid, is credited to or applied on account of any employee entitled to it, the amount so credited or applied shall, for the purposes of this Part be deemed to be paid when it is so credited or applied and a tax deduction in respect of it shall be made accordingly.

**113J Employee to pay deductions to Financial Secretary**

Where for any reason a tax deduction is not made or is not made in full at the time of the making of any source deduction payment or payments, the employee shall –

- (a) Not later than the 20th day of the month next after the month in which payment of the source deduction payment or payments were made, furnish to the Financial Secretary a return in the prescribed form of the source deduction payment or payments; and
- (b) Unless the employee is exempted from liability to pay the same or is not liable to pay the same, pay to the Financial Secretary an amount equal to the total of the tax deductions that should have been made and were not made, and that amount shall be due and payable to the Financial Secretary on the 20th day of the month next after the month in which payment of the source deduction payment or payments was made.

**113K Records to be kept by employer**

(1) Every employer who makes a source deduction payment to any employee shall keep a proper record in respect of the employee showing the amount of the source deduction payment before making any tax deduction, and the amount of the source deduction (if any) made from it, and shall enter these amounts in the record at the time of making the source deduction payment.

(2) Every employer shall take all reasonable precautions for the safe custody of all records that he is required to keep under this section, and of all pay sheets, receipts for source deduction payments, tax deduction certificates, tax code declarations, and tax code certificates, and shall retain all such records, pay sheets, receipts, tax code declarations, and tax code certificates for not less than 7 years after the making of the payments to which they relate except and to the extent that he is required by this Act to deliver to the Financial Secretary the signed tax deduction certificates tax code declarations, and tax code certificates.

(3) This section shall not require retention of any records, pay sheets, receipts, tax code declarations, or tax code certificates in respect of which the Financial Secretary has notified the employer that retention is not required.

**113L Payment of tax deductions to Financial Secretary**

Every employer who makes tax deductions from source deduction payments made to employees shall –

- (a) Not later than the 20th day of the month next after the month in which he has made any such deductions, pay to the Financial Secretary the amount of the tax deductions and deliver to the Financial Secretary a monthly remittance certificate in a form authorised by the Financial Secretary and showing the total amount of all source deduction payments made by the employer to employees

- in the month before making any tax deductions, and the total amount of all tax deductions made from those payments;
- (b) Not later than 31 May in each year, deliver to each employee a tax deduction certificate signed by the employer, being a certificate in a form authorised by the Financial Secretary and showing the total amount of all source deduction payments made by the employer to the employee in the preceding year (not including payments included in a tax deduction certificate previously delivered to the employee), and the total amount of the tax deductions made from this payments together with such other information as the Financial Secretary may from time to time prescribe;
  - (c) Not later than 31 May in each year deliver to the Financial Secretary a conciliation statement signed by the employer, being a certificate in a form authorised by the Financial Secretary and showing the total amount of all tax deductions paid to the Financial Secretary by the employer in respect of source deduction payments made in the preceding year, and the total amount of all tax deductions shown in tax deduction certificates delivered to employees in respect of those source deduction payments, together with an explanation if the two totals do not agree, and, accompanied by signed copies of all those tax deduction certificates delivered to him in the preceding year, and by all notices cancelling relevant deductions given to him in that year under section 113F.

### **113M Tax deductions protected from creditors**

The amount of every tax deduction made under this Part shall be held in trust for the Crown; and any amount so held in trust shall not be the property of the employer, and, in the event of the bankruptcy or liquidation of the employer or of an assignment for the benefit of the employer's creditors, shall remain apart, and form no part of the estate in bankruptcy, liquidation or assignment.

### **113N Employers who fail to make tax deductions**

(1) Where an employer fails to make any tax deduction in accordance with his obligations under this Part, the amount in respect of which default has been made shall constitute a debt payable by the employer to the Financial Secretary on the 20th day of the month next after the month in which payment of the source deduction payment should have been made.

(2) The right of the Financial Secretary to recover from the employer the amount in respect of which default has been made shall be in addition to any right of the Financial Secretary to recover that amount from the employee under this Part and nothing in this Part shall be construed as preventing the Financial Secretary from taking such steps as he thinks fit to recover that amount from the employer and from the employee concurrently, or from recovering that amount wholly from the employer or from the employee or partly from the employer and partly from the employee.

(3) Where any amount, including a penalty, recoverable under this Part from the employee is in fact paid by the employer, the amount so paid may be recovered by the employer from the employee.

### **113O Additional tax for default in making tax deductions**

- (1) Where –
- (a) Any employer or other person by whom any source deduction payment is made fails wholly or in part to make tax deduction therefrom his obligations under this Part; or

- (b) Any person who has made a tax deduction fails wholly or in part within the prescribed time and in the prescribed manner to pay the amount of the tax deduction to the Financial Secretary; or
  - (c) Any person who is liable to pay any amount to the Financial Secretary under this Part fails to pay the amount on the due date for payment of it – that employer or other person shall, unless the Financial Secretary is satisfied that he has not been guilty of wilful neglect or default, be liable, without conviction, in addition to any other penalty to which he may be liable, to a penalty equal to 10 percent of the amount in respect of which default has been made.
- (2) For the purposes of subsection (1) (b) a tax deduction shall be deemed to have been made if and when payment is made of the net amount of any source deduction payment.
- (3) A penalty imposed under this section shall for all purposes be deemed to be of the same nature as the amount or part of it in respect of which it is imposed, and shall be recoverable accordingly.
- (4) Subject to this Part, the other Parts shall apply with respect to the amount of every penalty imposed under this section as if it were additional tax under section 116 and as if the person liable to the penalty were the taxpayer.

### **113P Offences**

- (1) Every person commits an offence against this Act who –
- (a) Being an employer or other person by whom a source deduction payment is made to an employee, fails wholly or in part to make a tax deduction therefrom under his obligations under this Part; or
  - (b) Knowingly applies or permits to be applied the amount of any tax deduction or any part of it for any purpose other than the payment of the tax deduction to the Financial Secretary;
  - (c) Makes a false or misleading tax code declaration, or gives any false information, or misleads or attempts to mislead the Financial Secretary or any other officer, or any employer or other person, in relation to any matter or thing affecting a tax deduction or a reduced deduction; or
  - (d) Delivers or maintains or attempts to deliver or maintain, in contravention of this Part, a tax code declaration or a tax code certificate in respect of more than one employment, or otherwise obtains or attempts to obtain, in contravention of this Part, the benefit of a reduced deduction in respect of more than one employment; or
  - (e) Alters any tax code certificate or special tax code certificate issued by the Financial Secretary, or falsely pretends to be the employee named in any such certificate, or has in his possession, without lawful justification or excuse, a colourable imitation of any such certificate or, in contravention of this Act, causes or attempts to cause any employer or other person to refrain from making a tax deduction, or to make a reduced deduction, by the production of any document other than a tax code certificate or a special tax code certificate issued to him by the Financial Secretary and for the time being in force; or
  - (f) Alters any tax deduction certificate, or falsely pretends to be the employee named in any such certificate, or, in contravention of this Act, obtains or attempts to obtain for his own advantage or benefit credit with respect to, or a payment of, the whole or any part of the amount of a tax deduction made from a source deduction payment received by another person.

(2) Every person who commits an offence against this section shall be liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding 5 penalty units or to both.

(3) For the purposes of this section a tax deduction shall be deemed to have been made if and when payment is made of the net amount of any source deduction payment, and the amount of the tax deduction shall be deemed to have been applied for a purpose other than the payment thereof if the amount of the tax deduction is not duly paid to the Financial Secretary.

(4) No person shall be convicted of an offence under this section if he satisfies the Court that the failure to comply with the requirements of the section was due to illness, accident or other cause beyond his control.

### **113Q Application of other provisions to this Part**

Subject to this Part, the other Parts shall apply with respect to every amount that any employer, employee or other person is liable to account for or pay to the Financial Secretary under this Part as if the amount were income tax.

### **113R Withholding payments**

(1) The Financial Secretary may exercise discretion and withhold up to 10 percent of the total account to be paid to a supplier of goods or services to the Niue Government, as a contribution towards the total tax payable by the supplier in respect of his income in that income year.

(2) The Financial Secretary may exercise discretion particularly for suppliers of goods and services that are non-compliant or in arrears of tax payable in respect of any income year.

## **PART 7**

### **PAYMENT AND RECOVERY OF TAX**

#### **114 Due date for payment of tax**

(1) Income tax shall, except where expressly made payable in any other manner by this Act, be due and payable immediately a notice of assessment purporting to be signed by the Financial Secretary has been given to the taxpayer or on such later date as may be fixed by the Financial Secretary in the said notice.

(2) In any case where a notice of assessment in respect of any year has not been issued, and the delay is, in the opinion of the Financial Secretary, due to any neglect, default or omission of the taxpayer, then the Financial Secretary when issuing such notice of assessment, may fix a date which may be before the date of issue of such assessment, which shall be considered to be the date on which the tax payable under that assessment became due and payable.

#### **115 Payment of tax**

Payment of taxes and other moneys payable under this Act shall be effected at the Treasury.

#### **115A Payments of tax**

(1) There shall be payable by taxpayers who are in receipt of a sufficient level of remuneration by way of salary or wages to render them liable for income tax, such sum as the Financial Secretary by notice in writing in form numbered 1 set out in Schedule 3 may direct, a regular sum by way of deduction from salary or wage, at such time or at such intervals as the notice specifies, not exceeding twenty per cent of the



gross salary or wage, for the purpose of providing for payment of tax assessed in each tax year.

(2) The Financial Secretary may by notice in writing, in the form numbered 2 in Schedule 3 require any person to deduct from any amount payable to a taxpayer by way of salary or wage such sum as may be specified in the notice, and to pay every sum so deducted to the Financial Secretary for the credit of the taxpayer at such time or at such intervals as may be specified in the notice.

(3) This section shall bind the Crown.

(4) (a) Such sums as are paid to Treasury by employers under subsections (1) to (4) shall be credited to an account in the name of each individual taxpayer, and shall be used only for the purpose of meeting the whole or part of the tax assessed in any year in respect of that taxpayer.

(b) The individual record of a taxpayer will be available for perusal by that taxpayer on request in person during normal working hours, but may not be removed from Treasury.

(5) (a) The sums so deducted shall be deemed to be deposits within the meaning of section 12(a) Public Revenues Act 1959, but may not be withdrawn until the tax for the year has been assessed and become due and payable in terms of section 114 of this Act and will not earn interest.

(b) In the event of the amount to the credit of a taxpayer's account exceeding the amount of tax assessed and payable in terms of section 114 of this Act, a refund may be due to the taxpayer provided a surplus remains after taking into account deposits which have been lodged since 1 April in any tax year, as these deposits would be in respect of a new tax year and therefore not refundable.

(c) If a balance remains to the credit of a taxpayer's account after a final tax assessment has been paid prior to the taxpayer leaving the country, then such balance would be immediately refundable.

(6) Every person commits an offence and shall be liable on conviction to a fine not exceeding 2 penalty units who –

(a) Fails to make any deduction required by a notice under this section to be made from any amount payable by him to a taxpayer;

(b) Fails after making any such deduction to pay the sum deducted to the Financial Secretary within the time specified in that behalf in the notice.

#### **116 If default, additional tax to be charged**

(1) Subject to this section, if any tax remains unpaid at the expiration of one month after the due date of it (whether already assessed or not), or after the date of demand, as the case may be, five per cent on the amount of the tax unpaid shall be and be deemed to be added to it by way of additional tax, and shall be payable accordingly.

(2) In any case in which an assessment is increased after the due date of tax, and the Financial Secretary is satisfied that the taxpayer has not been guilty of wilful neglect or default in making due and complete returns for the purposes of that tax the Financial Secretary shall in his notice to the taxpayer of the assessment or amended assessment, or in any subsequent notice, fix a new date for the payment of the tax, or of the increase, as the case may be, and the date so fixed shall be deemed to be the due date of that tax or increase for the purposes of subsection (1).

(3) Where the taxpayer is resident beyond Niue and has no agent in Niue the Financial Secretary shall, before charging the additional tax as aforesaid, grant such further time, not exceeding 6 months after the due date of the tax, as he may deem necessary.

(4) An application for relief made in writing by or on behalf of any taxpayer who has become liable for the payment of any additional tax under subsections (1)-(3), the Financial Secretary, if having regard to the circumstances of the case thinks it equitable so to do, may, subject to this section, grant relief to the taxpayer –

- (a) By the remission of the whole or part of such additional tax; or
- (b) Where such additional tax has been paid in whole or in part, by the refund to the taxpayer of the whole or any part of such tax that has been paid, with or without the remission of any part of such additional tax that has not been paid.

(5) No amount of tax in excess of \$200 shall be remitted or refunded in any year under this section except with the approval of Cabinet.

**117 Mode of recovery of unpaid tax**

All unpaid tax shall be recoverable by the Financial Secretary on behalf of the Government by suit in the name of the Financial Secretary as a debt in the High Court.

**118 Deduction of income tax from payment due to defaulters**

(1) Where any taxpayer has made default in the payment of any income tax payable by him for any year of assessment, the Financial Secretary may by notice in writing require any person to deduct from any amount payable or to become payable by that person to the taxpayer such sum as may be specified in the notice, and to pay every sum so deducted to the Financial Secretary to the credit of the taxpayer within such time as may be specified in the notice.

(2) This section shall bind the Crown.

(3) Where any notice under this section relates to any wages or salary, the sums required to be deducted therefrom shall be computed so as not to exceed a deduction at the rate of one-twentieth per week of the tax due and payable by the taxpayer at the date of the notice, or at the rate of 20 per cent of the wages or salary, whichever rate is the less.

(4) Any notice under this section may be at any time revoked by the Financial Secretary by a subsequent notice to the person to whom the original notice was given (herein referred to as the debtor), and shall be so revoked at the request of the taxpayer at any time when the Financial Secretary is satisfied that all income tax then due and payable by the taxpayer has been paid, and that the Financial Secretary holds to the credit of the taxpayer an amount not less than the amount of the income tax (if any) to become due and payable by him during the then current year of assessment.

(5) A copy of every notice given under this section in respect of any taxpayer and of the revocation of any such notice shall be given to the taxpayer by the Financial Secretary.

(6) Whenever pursuant to a notice under this section any deduction is made from any amount payable to any taxpayer the taxpayer shall be entitled to receive from the debtor a statement in writing of the fact of the deduction and of the purpose for which it was made.

(7) The sum deducted from any amount under a notice under this section shall be deemed to be held in trust for the Crown, and, without prejudice to any other remedies against the debtor or any other person, shall be recoverable in the same manner in all respects as if it were income tax payable by the debtor.

(8) Every person commits an offence and shall be liable on conviction to a fine not exceeding 2 penalty units who –

- (a) Fails to make any deduction required by a notice under this section to be made from any amount payable by him to a taxpayer;



- (b) Fails after making any such deduction to pay the sum deducted to the Financial Secretary within the time specified in that behalf in the notice.

**119 Procedure where defendant absent**

In any action in the Court for the recovery of tax, if the defendant is absent from Niue or cannot after reasonable inquiry be found, service of the summons may with the leave of a Judge be affected by posting a duplicate or sealed copy thereof in a letter addressed to the defendant at his present or last known place of abode or business, whether in Niue or elsewhere.

**120 Particulars of claim or demand**

In an action in any court for the recovery of tax it shall be sufficient if the particulars of claim or demand state the amount sought to be recovered and the date on which same became payable, and such further particulars (if any) as the Financial Secretary thinks necessary in order fully to inform the defendant of the nature of the claim.

**121 Public officer appearing in legal proceedings for Financial Secretary**

In all proceedings in the Court on an objection to an assessment of tax and in any action in the Court for the recovery of tax, the Financial Secretary may appear by an officer of the Public Service, and the written authority of the Financial Secretary stating that any public officer so appearing is such an officer and that the officer appears for the Financial Secretary shall be sufficient evidence of the facts so stated and of the public officer's authority.

**122 Costs against Financial Secretary**

In all proceedings in any court for the recovery of tax, costs may be awarded to or against the Financial Secretary in the same manner as in other cases.

**123 Proceedings not affected by vacancy or change in office of Financial Secretary**

No action instituted by the Financial Secretary for the recovery of tax, and no proceedings on objection to an assessment of tax, shall abate by reason of any vacancy in the office of the Financial Secretary, or shall be deemed defectively constituted by reason of any change in the holder of that office, and every such action or proceeding shall be continued in the ordinary course as if the Financial Secretary and his successors in office were a corporation sole.

**124 Crown Proceedings Act not affected**

Nothing in this Act shall be so construed as to limit or affect the operation of the Crown Proceedings Act 1950 and all rights and remedies conferred upon the Crown in respect of the Government by that Act and by this Act shall co-exist, and may be exercised independently of one another, and tax may be recovered accordingly.

**125 Recovery of tax paid by one person on behalf of another**

Every person who under this Act pays any tax for or on behalf of any other person shall be entitled to recover the same from that other person as a debt, or to retain or deduct the same out of or from any money which is or becomes payable by him to that other person; and if he has paid the same as mortgagee, then, until repaid, it shall be deemed to form part of the moneys secured by the mortgagee and shall bear interest at the same rate accordingly.

**126 Stop notice by Financial Secretary**

- (1) Where the Financial Secretary is satisfied that a person is liable to pay income tax and arrangements are required for the payment of all income tax that is or

may become payable by that person and such arrangements have not been made, the Financial Secretary may issue a stop notice in respect of that person.

(2) Where the Financial Secretary has issued a stop notice under this section, no ticket or other authority to travel from Niue shall be issued to or in respect of that person until the stop notice has been cancelled by the Financial Secretary.

(3) Notice shall be given to the taxpayer and to the relevant immigration authorities of every stop notice issued or cancelled under this section.

(4) A person in respect of whom a stop notice is in force under this section who travels from Niue commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

(5) A person who permits or authorises a person in respect of whom a stop notice is in force under this section to travel from Niue commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

## PART 8

### PENALTIES

#### **127 Penalty for failure to furnish returns**

(1) Every person who –

- (a) Refuses or fails to furnish any return or information as and when required by this Act or by the Financial Secretary; or
- (b) Wilfully or negligently makes any false return, or gives any false information, or misleads or attempts to mislead the Financial Secretary, in relation to any matter or thing affecting his own or any other person's liability to taxation; or
- (c) Refuses or fails without lawful justification to duly attend and give evidence when required by the Financial Secretary, or to truly and fully answer any question put to him or to produce any book or paper required of him; or
- (d) Obstructs any officer acting in the discharge of his duties or in the exercise of his powers under this Act; or
- (e) Commits any other breach of this Act for which no other penalty is expressly provided; or
- (f) Aids, abets, or incites any other person to commit any offence against this Act

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commits an offence against this Act and is liable to a fine not exceeding 2 penalty units.

(2) In any proceedings against a person for refusing or failing to furnish any return or information as and when required by the Act, or by the Financial Secretary, a certificate in writing signed by the Financial Secretary certifying that the return or information so required has not been received from that person at the place where or by the person to whom the return or information should have been furnished, shall, in the absence or proof to the contrary, be sufficient evidence that the defendant has refused or failed to furnish the return or information.

#### **128 Fines recoverable**

All fines under this Act shall be recoverable by way of prosecution in the Court and only upon the information of the Financial Secretary, or of some person authorised in writing by the Financial Secretary in that behalf; and the signature of the Financial Secretary to any warrant of authority under this section shall be judicially noted.

**129 Information may be laid within ten years**

Notwithstanding anything in any other Act to the contrary any information in respect of any time within 10 years after the termination of the year in which the offence was committed.

**130 Penal tax in case of evasion**

If any taxpayer evades, or attempts to evade, or does any act with intent to evade, or makes default in the performance of any duty imposed upon him by this Act with intent to evade, the assessment or payment of any sum which is or may become chargeable against him by way of tax (which sum is hereinafter referred to as the deficient tax) he shall be chargeable, by way of penalty for that offence, with additional tax (penal tax) not exceeding an amount equal to the amount of the deficient tax.

**131 Nature of penal tax**

Subject to this Part penal tax shall for all purposes be deemed to be tax of the same nature as the deficient tax, and shall be deemed to be payable in and for the same year of assessment as the deficient tax.

**132 Assessment of penal tax**

The penal tax shall be assessed by the Financial Secretary in the same manner, so far as may be, as the deficient tax, but separately from it.

**133 Objections to penal tax**

(1) Any such assessment of penal tax shall be subject in the same manner as any other assessment of tax, to objection on the ground that the person so assessed is not chargeable with penal tax, or on the ground that the amount so assessed is excessive.

(2) All the provisions of this Act as to objections shall apply to an objection to an assessment of penal tax, save that the burden of proving the offence in respect of which penal tax is chargeable shall lie upon the Financial Secretary.

**134 Recovery of penal tax**

An assessment of penal tax may be made and the tax so assessed shall be recoverable at any time whether before or after the deficient tax has been assessed or become assessable or payable, or has been paid.

**135 Recovery of penal tax from executors or administrators**

(1) Penal tax shall be assessable against and recoverable from the executors or administrators of a deceased taxpayer, but, if so assessed, the amount of it shall be recoverable only as a debt incurred by the deceased in his lifetime.

(2) No penal tax shall be recoverable from any person other than the taxpayer himself, or his executors or administrators.

**136 Amendment of assessment of penal tax**

An assessment of penal tax may be amended in the same manner as any other assessment.

**137 Limitation of time for assessment of penal tax**

No assessment of penal tax shall be made or increased at any time after the expiration of 10 years after the year of assessment of the deficient tax.

**138 Recovery of penal tax not affected by conviction of taxpayer**

The assessment of recovery of penal tax in respect of any offence shall not be in any manner barred or affected by the fact that the taxpayer has been convicted under this Act of the same or any other offence; but no person who has paid the penal tax assessed against him for any offence shall be thereafter convicted of the same offence.

PART 9

GENERAL

**139 Financial Secretary to have power to inspect books and documents**

(1) Notwithstanding anything to the contrary in any other Act, the Financial Secretary or any officer of the Government authorised by him in that behalf shall at all times have full and free access to all books and documents, whether in the custody or under the control of a public officer or a body corporate or any other person whatsoever, for the purpose of inspecting any books and documents which the Financial Secretary or officer considers necessary or relevant for the purpose of collecting any tax or duty which the Financial Secretary is authorised to collect, or considers likely to provide any information otherwise required for any such purpose, and may, without fee or reward, make extracts from or copies of any such books or documents.

(2) The Financial Secretary or any officer of the Government authorised by him in that behalf, may for the purposes of any investigation under this section require the owner or manager of any property or business, to give him all reasonable assistance in the investigation and to answer all proper questions relating to any such investigation either orally, or, if the Financial Secretary or officer so requires, in writing, or by statutory declaration, and for that purpose may require the owner or manager or, in the case of a company, any officer of the company to attend at the premises with him.

**140 Information to be furnished on request of Financial Secretary**

(1) Every person (including any officer employed in or in connection with any department of the Government or by any public authority, and any other public officer) shall, if required by the Financial Secretary or by any officer of the Government authorised by him in that behalf furnish in writing any information and produce any books and documents which the Financial Secretary or officer considers necessary or relevant for any purpose relating to the administration or enforcement of this Act or any other Act administered by the Financial Secretary, and which may be in the knowledge, possession, or control of that person.

(2) Without limiting subsection (1) it is hereby declared that the information in writing which may be required under this section shall include lists of shareholders of companies, with the amount of capital contributed by and dividends paid to each shareholder, copies of balance sheets and of profit and loss accounts and other accounts and statements of assets and liabilities of any person.

(3) The Financial Secretary or any officer of the Government authorised by him in that behalf may require that any written information or particulars furnished under this section shall be verified by statutory declaration or otherwise.

**141 Inquiry before a Judge or Commissioner of the High Court**

(1) In any case in which the Financial Secretary deems it necessary to hold an inquiry for the purpose of obtaining any information with respect to the liability of any person for any tax or duty which the Financial Secretary is authorised to collect or any other information required for the purposes of the administration or enforcement of this Act or any other Act administered by the Financial Secretary, he may apply in

writing to a Judge or Commissioner of the High Court to hold an inquiry under this section.

(2) For the purposes of any such inquiry the Judge or Commissioner of the High Court may summon before him and examine on oath touching any matter which is relevant to the subject-matter of the inquiry, all persons whom the Financial Secretary or any other person interested requires to be so called and examined.

(3) The Judge or Commissioner of the High Court shall have all such jurisdiction and authority touching the summoning and examination of any such person as he would have in respect of a witness in a civil action within his ordinary jurisdiction and the person so summoned and examined shall, subject to this Act, have all such rights and be subject to all such liabilities as he would have and be subject to if he were such a witness as aforesaid.

(4) (a) The Financial Secretary and every person who is interested in the subject-matter of the inquiry may be represented by a barrister or solicitor, or, with the leave of the Court, by any other person, who may examine, cross-examine and re-examine under the ordinary practice, any person so summoned.

(b) Every person so summoned may be cross-examined by the Financial Secretary or by the Financial Secretary's barrister or solicitor.

(5) Every examination under this section shall take place in chambers.

(6) The statement of every person so examined shall be taken down in writing and signed by him in the presence of the Judge or Commissioner of the High Court and delivered to the Financial Secretary and shall not form part of the records of the Court.

(7) No person summoned or examined under this section shall be excused from answering any question on the ground that the answer may incriminate him or render him liable to any penalty or forfeiture.

(8) No statement made by any such person in answer to any question put to him shall in criminal proceedings be admissible in evidence against him, except upon a charge of perjury against him in respect of his testimony upon that examination.

(9) A person summoned under this section may receive such sum on account of travelling expenses and loss of time as the Judge or Commissioner of the High Court thinks reasonable and orders accordingly.

## **142 Inquiry by Financial Secretary**

(1) The Financial Secretary may, for the purpose of obtaining any information with respect to the liability of any person for any tax or duty which the Financial Secretary is authorised to collect or any other information required for the purposes of the administration or enforcement of any Act administered by the Financial Secretary, by notice in writing, require any person to attend and give evidence before him or before any officer of the department authorised by him in that behalf and to produce all books and documents in the custody or under the control of that person which contain or which the Financial Secretary or the authorised officer considers likely to contain any such information.

(2) The Financial Secretary may require any such evidence to be given on oath and either orally or in writing.

(3) If any person required to give evidence under this section refuses or wilfully neglects to appear before the Financial Secretary or authorised officer or to take an oath as witness or if any person being sworn as a witness at any such inquiry refuses or wilfully neglects to answer any question put to him touching the subject-matter of the inquiry or to produce to the Financial Secretary or authorised officer any

such documents as aforesaid, that person shall be liable on conviction to a fine not exceeding 2 penalty units.

(4) If any person wilfully gives false evidence at any inquiry under this section he shall be guilty of perjury within the meaning of the Criminal Law Code.

(5) A person required to attend before the Financial Secretary or an authorised officer may receive such sum on account of travelling expenses and loss of time as the Financial Secretary thinks reasonable and orders accordingly.

#### **143 Offences**

(1) Every person commits an offence against sections 139 to 142 who –

- (a) Acts in contravention of, or, without lawful justification or excuse, fails to comply in any respect with any provision of those sections or any requirement imposed thereunder;
- (b) Wilfully deceives or attempts to deceive the Financial Secretary or any officer of the department in the exercise of any powers or function under those sections;
- (c) With intent to deceive makes any false or misleading statement or any material omission, in any information given to the Financial Secretary or any officer of the department for the purposes of those sections.

(2) Every person who commits an offence against any one of sections 139 to 142 for which no other penalty is prescribed shall be liable on conviction to a fine not exceeding 1 penalty unit.

#### **144 Keeping of business records**

(1) Subject to subsection (2) every person carrying on business or deriving income other than salary or wages shall keep sufficient records in the English or Niuean language to enable his assessable income and allowable deductions to be readily ascertained by the Financial Secretary or any officer authorised by him in that behalf and shall retain all such records so kept.

(2) This section shall not require the retention of any records –

- (a) In respect of which the Financial Secretary has notified the taxpayer in writing that retention is not required;
- (b) Of a company which has been wound up and finally dissolved.

(3) For the purposes of this section “records” includes books of account recording receipts or payments or income or expenditure or purchases or sales, and also includes vouchers, invoices, receipts, and such other documents as are necessary to verify the entries in any such books of account and in the case of an agent, records of all transactions carried out on behalf of his principal.

(4) Every person who fails to comply with this section commits an offence.

#### **145 Employers to make returns as to employees**

Every person shall from time to time, as required by the Financial Secretary, make a return of all persons employed by him during any year, and of all salaries, wages, allowances and other emoluments received during that year by each person so employed.

#### **146 Return of interest paid on deposits**

Every bank, local or public authority or other company or person who in the course of business holds money by way of deposit and allows interest thereon shall from time to time, as required by the Financial Secretary, make a return of all interest so allowed during the year or other period to which the requisition of the Financial Secretary relates, together with the names, addresses, and occupations of the person to whom such interest has been allowed.



**147 Returns as to debentures and interest thereon**

Every company or local or public authority shall as required by the Financial Secretary make a return giving such particulars as the Financial Secretary requires relative to debentures issued by that company or local or public authority the holders thereof, and the interest paid or payable on it.

**148 Excess tax may be repaid within four years**

(1) In any case where the Financial Secretary is satisfied that tax has been paid in excess of the amount properly payable he shall advise the person concerned of the excess payment and shall refund the amount paid in excess if written application for the refund is made by or on behalf of the taxpayer –

- (a) In any case where the assessment of the tax has not been altered, within 4 years after the end of the year in which the assessment was made;
- (b) In any case where the original assessment has been altered (whether once or more than once), within 4 years after the end of the year in which the original assessment was made.

(2) In any case where an assessment has been altered so as to increase the amount of tax payable and the Financial Secretary is satisfied that by reason of that alteration tax has been paid in excess of the amount properly payable, he shall advise the person concerned of the excess payment and shall refund the amount so paid in excess by reason of that alteration if written application for the refund is made by or on behalf of the taxpayer within 4 years after the end of the year in which the alteration was made, notwithstanding that the application may be made after the time allowed by subsection (1).

**149 In cases of serious hardship Financial Secretary may grant relief to taxpayer**

(1) In any case where it is shown to the satisfaction of the Financial Secretary –

- (a) That any taxpayer has suffered such loss or is in such circumstances that the exaction of the full amount of the tax has entailed or would entail serious hardship; or
- (b) That, owing to the death of any person who if he had not died would have been liable to pay tax, the dependants of that person are in such circumstances that the exaction of the full amount of the tax has entailed or would entail serious hardship –

he may, subject to this section, release the taxpayer or the executor or administrator of the deceased taxpayer (as the case may be) wholly or in part from his liability, and may make such alterations in the assessment as are necessary for that purpose, and may if the tax as previously assessed or any part of it has been already paid, refund any tax paid in excess of the amount of the assessment as altered under this section.

(2) No amount of tax in excess of under \$200 shall be remitted or refunded in any one year under this section except with the approval of Cabinet.

**150 Agreements purporting to alter incidence of taxation to be void**

Every contract, agreement, or arrangement shall be absolutely void in so far as directly or indirectly it has or purports to have the purpose or effect of in any way altering the incidence of income tax, or relieving any person from his liability to pay such tax.



**151 Debentures issued free of income tax**

(1) Nothing in section 150 shall be so construed as to render void any contract, agreement, or arrangement made or entered into by any company to the effect that the interest on any debentures issued by that company shall be free of income tax; and all such contracts, agreements and arrangements are hereby declared to be valid and effective in accordance with this section unless the company is expressly or impliedly prohibited, by its memorandum or articles of association from making or entering into any such contract, agreement or arrangement.

(2) Where any debentures issued by a company purport to be issued free of income tax the company shall be liable for the payment of the income tax payable in respect of it, and the debenture-holders shall be entitled to receive the full amount of interest payable under the debentures.

**152 Regulations**

Cabinet may make such regulations as it thinks fit for —

- (a) The purposes of this Act;
- (b) Bringing a tax agreement into force in accordance with section 85(2); and
- (c) Imposing, revoking, suspending, reducing, or increasing income tax on a non-resident who has received income derived from Niue; and
- (d) Giving effect to, or enabling effect to be given to, any agreement or arrangement entered into by Cabinet for and on behalf of the Government of Niue for the exchange of information that relates to tax (including the automatic exchange of that information) in relation to Niue and any other country or territory.

**153 [Repealed]**

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SCHEDULE 1  
Rates of Income Tax  
(Section 39)  
Part A

**1 Interpretation**

In this Schedule “taxable income” means income on which income tax is payable.

**2 Companies**

The rate of income tax payable in respect of taxable income derived by a company in Niue shall be 30 cents for every dollar of taxable income.

**3 Other taxpayers**

On all income not included within clause 2 the rate of income tax for every dollar of taxable income shall be the effective rate of tax ascertained by calculating tax on that income in accordance with the rates of tax specified in Part B and multiplying the tax so calculated by the number of dollars included in that income.

Niue Legislation Act 2019

PART B

On so much income as –	The rate of tax for every dollar is –
is not more than \$10,000	10 cents
is more than \$10,000 but is not more than \$20,000	20 cents
is more than \$20,000	30 cents

PART C

In the case of an employee to whom the tax code “SEC” under section 113D applies, the rate of withholding from the salary or wages or other source deduction payment of the employee arising from an employment other than the employee’s primary employment is 10 cents in every dollar.

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SCHEDULE 2  
RATE OF DEPRECIATION  
(Section 54)

**1 Buildings**

Reinforced concrete throughout	1 per cent of cost price
Brick, stone or concrete walled	1½ per cent of cost price
Wooden-framed	2½ per cent of cost price
Steel framed	1 per cent of cost price
Other buildings which cannot be classified under any of the preceding headings	Such rate as may be fixed by the Financial Secretary in the particular case

**2 Assets other than Buildings**

Plant, machinery, vehicles, etc other than those listed hereunder	20 per cent of the diminishing value
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Containers (casks, crates, drums, cans, bottles and other containers)

Dies

Fences

Libraries in the case of professional men, but not salaried taxpayers

Loose tools

## Income Tax Act

Moulds

Machine tools

Patterns

Pipelines

Printing type

Sacks

Small articles requiring frequent

Renewal (crochery, cutlery, linen, etc.)

Cost of replacements each year

The Financial Secretary may specify that the replacement costs of any other items not particularly mentioned above may be allowed as a deduction in any year.

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SCHEDULE 3  
Low income rebate  
(Section 41A)

Category	Amount of assessable income of Taxpayer	Rebate
For a person whose primary employment earnings are not derived from employment in the Niue Public Service or a statutory body	\$20,000 a year or less	\$2,000
For every other person	\$10,000 a year or less	An amount equal to the income tax that would otherwise be payable on the assessable income of the taxpayer or \$1,000 whichever is the lesser amount
	More than \$10,000 a year but less than \$20,000 a year	\$1,000 less 10 cents for each dollar of assessable income of the taxpayer in excess of \$10,000

Niue Legislation Act 2019

SCHEDULE 4

Section 115A

Form No. 1

FORM OF NOTICE BY FINANCIAL SECRETARY TO TAXPAYER OF COMPULSORY  
REGULAR

DEPOSITS TOWARDS INCOME TAX

To .....

of.....

Dear Sir/Madam,

In terms of section 115a (1) of the Income Tax Act 1961 you are hereby notified that commencing on.....day.....month.....year you will be required to make deductions from your fortnightly/weekly pay a sum calculated at the rate of % of your gross pay for the period, and this sum will be deposited by your employer with the Treasury to the credit of your account. NOTE: Monies deposited to your account in Treasury by your employer in accordance with this notice may not be withdrawn until the income tax for the year or part of the year has been assessed and become payable in terms of section 114 of the Income Tax Act 1961. No interest will be paid on your deposit. Should the amount standing to the credit of your account be insufficient to meet the amount of tax assessed, you will be required to make a lump sum payment of the balance owing. Should the credit in your account exceed the amount of tax assessed, a refund may be due to you provided a surplus remains after taking into account deposits which have been lodged since 1 April in any year, as these deposits are in respect of a new tax year and would not be refundable.

Yours faithfully  
Financial  
Secretary  
Section 115A

Form No. 2

FORM OF A NOTICE BY FINANCIAL SECRETARY TO EMPLOYERS TO MAKE  
DEDUCTIONS ON A REGULAR BASIS FROM AN EMPLOYERS PAY FOR INCOME TAX  
PURPOSES AND TO PAY SUMS SO DEDUCTED TO TREASURY

To .....

of.....

Dear Sir/Madam

You are hereby given notice under section 115A(2) of the Income Tax Act 1961 to deduct from the fortnightly/weekly pay of Mr/Mrs/Miss.....of who is presently employed by you, until further notice, a sum calculated at the rate.....% of his/ her gross salary/wages and to pay this sum to the Financial Secretary, Alofi within.....days of each pay day.

Yours faithfully

NOTE: Under section 115A(6) of the Income Tax Act every person commits an offence and shall be liable on conviction to a fine not exceeding 2 penalty units who –

- (a) Fails to make any deduction required by notice under this section to be made from any amount payable by him to a taxpayer.
- (b) Fails after making any such deduction to pay the sum deducted to the Financial Secretary within the time specified in that behalf in the notice.

# INCORPORATED SOCIETIES ACT 1908

1908/212 (NZ) – 1 January 1909

1	Short title	24	Voluntary winding up of society
2	[Repealed]	25	Winding up of society by High Court
3	Interpretation	26	Petition to Court for winding up
4	Incorporated societies	27	Division of surplus assets on winding up
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6	Rules of incorporated societies	29	Corporate body may become of society
7	Application for incorporation	30	Pecuniary gain received by member
8	Registrar to register society if in order	31	Corporate body to be equivalent to 3 members
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10	Members to be a body corporate	33	Register of incorporated societies
11	Name of society	34	Inspection of documents
11A	Change of name	35	[Repealed]
12	Appeal from Registrar to High Court	36	Regulations
13	No liability on members for obligation of society	37	Incorporation of branches
14	Members to have no right to property of society	38	Application for incorporation of branch
15	Contracts by society	39	Registration of rules of branch
16	Service of summons on society	40	Application of Act
17	Security for costs where society is plaintiff	41	Members of branches not to be relieved of obligations as members of societies
18	Registered office	42	Evidence of membership of branch
19	Restriction of operations of society	43	Assistant Registrars
20	Society not to engage in operations involving pecuniary gain	44	Rules of society may provide for penalties
21	Alteration of rules	45	Improper use of word “Incorporated”
22	Register of members	46	Society may make regulations or bylaws
23	Annual financial statement		

## SCHEDULE

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### To make provision for the incorporation of societies which are not established for the purpose of pecuniary gain

#### 1 Short title

This is the Incorporated Societies Act 1908.

#### 2 [Repealed]

#### 3 Interpretation

In this Act –

“prescribed” means prescribed by this Act or by regulations;

“Registrar” means the Registrar of Incorporated Societies;

“society” means a society incorporated under this Act.

#### 4 Incorporated societies

(1) Any society consisting of not less than 15 persons associated for any lawful purpose but not for pecuniary gain may, on application being made to the Registrar under this Act, become incorporated as a society under this Act.

(2) No such application shall be made except with the consent of a majority of the members of the society.

## **5 Pecuniary gain**

Persons shall not be deemed to be associated for pecuniary gain merely by reason of any of the following circumstances, namely –

- (a) That the society itself makes a pecuniary gain, unless that gain or some part of it is divided among or received by the members or some of them;
- (b) That the members of the society are entitled to divide between them the property of the society on its dissolution;
- (c) That the society is established for the protection or regulation of some trade, business, industry, or calling in which the members are engaged or interested, if the society itself does not engage or take part in any such trade, business, industry, or calling, or any part of branch thereof;
- (d) That any member of the society derives pecuniary gain from the society by way of salary as the servant or officer of the society;
- (e) That any member of the society derives from the society any pecuniary gain to which he would be equally entitled if he were not a member of the society;
- (f) That the members of the society compete with each other for trophies or prizes other than money prizes.

## **6 Rules of incorporated societies**

(1) The rules of a society shall state or provide for the following matters –

- (a) The name of the society, with the addition of the word “Incorporated” as the last word in that name;
- (b) The objects for which the society is established;
- (c) The modes in which persons become members of the society;
- (d) The modes in which persons cease to be members of the society;
- (e) The mode in which the rules of the society may be altered, added to, or rescinded;
- (f) The mode of summoning and holding general meetings of the society, and of voting thereat;
- (g) The appointment of officers of the society;
- (h) The control and use of the common seal of the society;
- (i) The control and investment of the funds of the society;
- (j) The powers (if any) of the society to borrow money;
- (k) The disposition of the property of the society in the event of the winding up of the society;
- (l) Such other matters as the Registrar may require to be provided for in any particular instance.

(2) The rules of the society may contain any other provisions which are not inconsistent with this Act or with law.

(3) The rules of the society and any amendment of those rules shall be printed or typewritten.

## **7 Application for incorporation**

Every application for the incorporation of a society shall be made to the Registrar in manner following –

- (a) Two copies of the rules of the society having written an application for incorporation in the form in Schedule 1 or to the like effect shall be signed by not less than 15 persons being members of the society, and each subscriber to the application shall add to his signature his description and address, and his

signature shall be attested by a witness who is not a subscriber. When any body corporate is a subscriber its seal shall be affixed to the said application;

- (b) The 2 copies of the said rules so signed shall be delivered to the Registrar, together with the prescribed fee and together with a statutory declaration made by an officer of the society or by a solicitor to the effect that a majority of the members of the society have consented to the application, and that the rules so signed or sealed are the rules of the society.

## **8 Registrar to register society if in order**

The Registrar, on being satisfied that the requirements of this Act have been observed, shall thereupon do the following things –

- (a) Enter the name of the said society in the register kept by him under this Act, together with such other particulars with respect to the society as he thinks fit;
- (b) Issue under his seal a certificate that the society is incorporated under this Act;
- (c) Register the rules of the society by sealing with his seal the said copies of it;
- (d) Return one of those copies to the subscribers and retain the other copy.

## **9 Certificate of incorporation**

Every certificate of incorporation issued under the seal of the Registrar shall be conclusive evidence that all statutory requirements in respect of registration and of matters precedent and incidental to it have been complied with, and that the society is authorised to be registered and has been duly registered and incorporated under this Act.

## **10 Members to be a body corporate**

Upon the issue of the certificate of incorporation the subscribers to the rules of the society, together with all other persons who are then members of the society or who afterwards become members of the society under the rules thereof, shall, as from the date of incorporation mentioned in the certificate, be a body corporate by the name contained in the said rules, having perpetual succession and a common seal, and capable forthwith, subject to this Act and to the said rules, of exercising all the functions of a body corporate and of holding land.

## **11 Name of society**

No society shall be registered under a name which is identical with that of any other society registered under this Act, or of a company carrying on business in Niue (whether registered in Niue or not), or of any other body corporate established or registered in Niue under any Act, or so nearly resembles that name as to be calculated to deceive, except where that other society or company or body corporate, as the case may be, signifies its consent in such manner as the Registrar requires, and the Registrar is satisfied that registration of the society by the proposed name will not be contrary to the public interest.

## **11A Change of name**

(1) If, through inadvertence or otherwise, a society at its first registration, or on its registration by a new name, is registered by a name which is in contravention of section 11, or of any enactment other than this Act, relating to restrictions on the use of any name, the society shall, within a period of 6 weeks from the date of its being required by the Registrar to do so, or such longer period as he may allow change its name under section 21 to a name that is not in contravention as aforesaid.

(2) If a society makes default in complying subsection (1) it commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units for every day on which the offence has continued.



(3) No fee shall be payable to the Registrar in respect of an alteration of the rules of a society if the alteration only changes the society's name under the requirements of subsection (1).

**12 Appeal from Registrar to High Court**

An appeal shall lie to the High Court from any refusal of the Registrar to register a society or any enactment of the rules of a society, and the decision of the Court on any such appeal shall be final.

**13 No liability on members for obligation of society**

Except when otherwise expressly provided in this Act, membership of a society shall not of itself impose on the members any liability in respect of any contract, debt, or other obligation made or incurred by the society.

**14 Members to have no right to property of society**

Except when otherwise expressly provided by this Act or by the rules of a society, membership of a society shall not be deemed to confer upon the members any right, title, or interest, either legal or equitable, in the property of the society.

**15 Contracts by society**

(1) Any contract which, if made between private persons, must be by deed shall, when made by a society, be in writing under the common seal of the society.

(2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged with it may, when made by a society, be in writing signed by any person acting on behalf of and under the express or implied authority of the society.

(3) Any contract which, if made between private persons, might be made without writing may, when made by a society, be made without writing by any person acting on behalf of and under the express or implied authority of the society.

**16 Service on society**

Any summons, notice, order, or other document required to be served upon a society may be served by leaving the same at the society's registered office, or by sending it through the post in a registered letter addressed to the society at that office.

**17 Security for costs where society is plaintiff**

Where a society is the plaintiff in any action or other legal proceeding, and there appears by any credible testimony to be reason to believe that if the defendant is successful in his defence the assets of the society will be insufficient to pay his costs, any Court or Judge having jurisdiction in the matter may require sufficient security to be given for those costs, and may stay all proceedings until that security is given.

**18 Registered office**

(1) Every society shall have a registered office to which all communications may be addressed.

(2) Notice of the situation of that office, and of any change shall be given to the Registrar and recorded by him.

(3) Until that notice is given, the society shall be deemed not to have complied with this section as to having a registered office.

(4) If any society carries on its operations without having a registered office, every officer of the society and every member of the committee or other governing

body of the society shall be liable to a fine not exceeding 0.5 penalty units for every day during which those operations are carried on.

**19 Restriction of operations of society**

(1) If any society carries on or proposes to carry on any operation which is beyond the scope of the objects of the society as defined in its rules, the Registrar may give notice in writing to the society not to carry on that operation.

(2) If after the receipt of that notice the society fails or refuses to conform, every officer of the society and every member of the committee or other governing body of the society shall be liable to a fine not exceeding 0.5 penalty units for every day during which that failure or refusal continues, unless he proves that the failure or refusal has taken place without his authority or consent.

**20 Society not to engage in operations involving pecuniary gain**

(1) No society shall do any act of such a nature that if the doing thereof were one of the objects for which the society was established the members of the society would be deemed to be associated for pecuniary gain within the meaning of sections 4 and 5.

(2) Every society which does any such act shall be liable to a fine not exceeding 2 penalty units.

(3) Every member who aids, abets, procures, assists, or takes part in the doing of any such act by a society shall be liable to a fine not exceeding 0.5 penalty units, and all such members shall be jointly and severally liable to any creditor of the society for all debts and obligations incurred by the society in or in consequence of the doing of that act.

(4) Every member who derives any pecuniary gain from any act done by the society in breach of this section shall be deemed to have received the same to the use of the society, and the same may be recovered by the society accordingly.

**21 Alteration of rules**

(1) A society may alter its rules in the manner provided by the said rules, but subject to this Act.

(2) Every such alteration shall be in writing, signed or sealed in duplicate by at least 3 members of the society, and the documents so signed or sealed shall be delivered to the Registrar, accompanied by a statutory declaration made by a solicitor or at least one member to the effect that the said alteration has been made in accordance with the rules of the society.

(3) The Registrar, if satisfied that the alteration has been duly made, and that the rules as so altered conform in all respects to this Act, shall register the alteration in like manner as in the case of the original rules, and the said alteration shall take effect according to its tenor. Such registration shall be conclusive evidence that all conditions precedent to the making of the alteration, or to the registration, have been duly fulfilled.

(3A) Notwithstanding subsection (3) the Court, on an application made to it by any member of the society, if it is satisfied that any such condition as aforesaid has not been duly fulfilled, declare the alteration to be void in whole or in part, and order that the registration be cancelled in whole or in part, and may by the order give such directions and make such provisions as seem just in the circumstances of the case. On the delivery to the Registrar of a sealed copy of the Court's order he shall forthwith amend the register accordingly.

(4) No alteration in the objects of a society shall be registered unless the Registrar is satisfied either that the alteration is not of such a nature as to prejudicially

affect any existing creditor of the society, or that all creditors who may be so affected consent to the alteration.

(5) In the case of any alteration of the name of a society the Registrar may refuse to register the alteration until the making of it has been publicly advertised in such manner as the Registrar thinks fit.

## **22 Register of members**

(1) Every society shall keep a register of its members.

(2) The register shall contain the names, addresses, and occupations of those members and the dates at which they became members.

(3) Every society shall when required by the Registrar so to do, send to him a list of the names, addresses, and occupations of its members, accompanied by a statutory declaration verifying that list and made by some officer of the society.

## **23 Annual financial statement**

(1) Every society shall deliver annually to the Registrar, in such form and at such time as he requires, a statement containing the following particulars –

(a) The income and expenditure of the society during the society's last financial year;

(b) The assets and liabilities of the society at the close of the said year;

(c) All mortgages, charges, and securities of any description affecting any of the property of the society at the close of the said year.

(2) The said statement shall be accompanied by a certificate signed by some officer of the society to the effect that the statement has been submitted to and approved by the members of the society at a general meeting.

(3) If any default is made by a society in the observance of this section, every officer of the society shall be liable to a fine not exceeding 0.5 penalty units for every day during which the default continues.

## **24 Voluntary winding up of society**

(1) A society may be wound up voluntarily if the society, at a general meeting of its members, passes a resolution requiring the society so to be wound up, and the resolution is confirmed at a subsequent general meeting called together for that purpose and held not earlier than 30 days after the date on which the resolution so to be confirmed was passed.

(2) In subsection (1) "resolution" means a resolution carried by a majority of the valid votes cast by members voting at a general meeting in person or, if so allowed by the society's rules, by proxy; and for the purposes of that subsection the resolution shall be taken to be confirmed at the subsequent general meeting if the confirmation is carried by such a majority.

## **25 Winding up of society by High Court**

A society may be wound up by the High Court under the following circumstances –

(a) If the society suspends its operations for the space of a whole year; or

(b) If the members of the society are reduced in number to less than 15; or

(c) If the society is unable to pay its debts; or

(d) If the society carries on any operation whereby any member makes any pecuniary gain contrary to this Act; or

(e) If the Court or a Judge is of the opinion that it is just and equitable that the society should be wound up.

**26 Petition to Court for winding up**

(1) Any application to the Court for the winding up of a society shall be by petition presented either by the society, or by a member or by a creditor or by the Registrar.

(2) All costs incurred by the Registrar in making application for the winding up of a society shall, unless the Court or a Judge otherwise orders, be a first charge on the assets of the society.

**27 Division of surplus assets on winding up**

(1) On the winding up of a society or on its dissolution by the Registrar, all surplus assets after the payment of all costs, debts, and liabilities shall, subject to any trust affecting the same, be disposed of in manner provided by the rules of the society or if such assets cannot be disposed of under the rules, then as the Registrar directs.

(2) If the said surplus assets are subject to any trust, they shall be disposed of as the Court or a Judge directs in the case of a winding up by the Court, or as the Registrar directs in the case of a voluntary winding up or in the case of a dissolution by the Registrar, but an appeal shall lie from any such decision of the Registrar to the Court at the suit of any person interested.

(3) The decision of the Registrar under this section shall be final, unless notice of appeal is delivered to the Registrar within one month after the decision has been given.

**28 Dissolution by Registrar**

(1) If at any time the Registrar is satisfied that a society is no longer carrying on its operations or has been registered by reason of a mistake of fact or law he may make under his seal a declaration that the society is dissolved as from the date of the declaration, and shall thereupon publish the declaration in the *Gazette*, and make in the register an entry of the dissolution of the society.

(2) On the making of that entry the society shall be dissolved as from the date of the declaration.

(3) At any time after that the Registrar, on being satisfied that the declaration was made in error and ought to be revoked, may revoke the same by a declaration published in the *Gazette*, and shall thereupon make an entry of that revocation in the register and the society shall be revived from the date of the dissolution as if no such dissolution had taken place.

**29 Corporate body may become member of society**

Any corporate body, whether incorporated under this Act or in any other manner, may be a member of a society incorporated under this Act, unless the purposes for which the society is established are *ultra vires* of the said corporate body.

**30 Pecuniary gain received by member**

When any corporate body is a member of a society incorporated under this Act, any pecuniary gain received by any member of that corporate body shall be deemed for the purposes of this Act to be pecuniary gain received by a member of the society, and in respect of any such pecuniary gain every member of that corporate body shall be deemed to be a member of the society.

**31 Corporate body to be equivalent to 3 members**

In estimating –

(a) The number of subscribers to the rules of a society for the purposes of section 4 or section 7, or to the rules of a branch or group of branches for the purposes of section 37; or

(b) The number of members of a society for the purposes of section 4 or section 25 or of a branch for the purposes of section 37 and 38 –

every corporate body that is a subscriber or member shall be taken as the equivalent of 3 subscribers or 3 members as the case may require.

**32** [Repealed]

**33 Register of incorporated societies**

(1) The Registrar shall keep a register in which there shall be recorded all matters required by this Act or by any regulations to be recorded by the Registrar.

(2) The Registrar shall keep a seal for the authentication of any documents required for the purposes of this Act.

(3) There shall be paid to the Registrar such fees as may be prescribed by regulations in respect of such matters as may be so prescribed.

**34 Inspection of documents**

(1) Every person may, inspect the register or any documents lodged with the Registrar.

(2) Any person may, on payment of the prescribed fee, require a copy of the certificate of the incorporation of any society, or a copy of or extract from the register or any document lodged with the Registrar, to be certified by the Registrar under his seal.

(3) Any such copy or extract purporting to be under the seal of the Registrar shall be received in evidence in all proceedings, civil or criminal.

(4) No process for compelling the production of any document kept by the Registrar shall issue from any Court except with the leave of that Court, and every such process if issued shall bear on it a statement that it is issued with the leave of the Court.

**35** [Repealed]

**36 Regulations**

Cabinet may make such regulations as it thinks fit for the purposes of this Act.

**37 Incorporation of branches**

(1) Any society registered under this Act may apply to the Registrar in accordance with this Act for the incorporation of any local branch having not less than 15 members, or for the incorporation of a group or of groups of such branches of that society.

(2) No application for the incorporation of a local branch shall be made except with the consent of a majority of the members proposed to be incorporated as a local branch, and no application for the incorporation of a group of branches shall be made except with the consent of a majority of the members of each of those branches.

(3) Any group of local branches may be incorporated notwithstanding that the whole or any number of such branches may be already incorporated.

**38 Application for incorporation of branch**

Every application for the incorporation of a branch or group of branches of a society registered under this Act shall be made to the Registrar in manner following –

- (a) Two copies of the rules of the branch or group, having written thereon an application for incorporation, shall be signed by not less than two of the executive officers of the registered society, and also, in the case of a local branch, by not less than 15 persons being members of that branch, and, in the case of a group of branches, by not less than two members of each of the branches proposed to be incorporated.
- (b) Each subscriber to the application shall add to his signature his description and address, and his signature shall be attested by a witness who is not a subscriber;
- (c) When any body corporate is a subscriber its seal shall be affixed to the said application;
- (d) Two copies of the rules so signed or sealed shall be delivered to the Registrar, together with the prescribed fee, and with a statutory declaration made by an officer of the registered society, or by a solicitor, to the effect that a majority of the members of the branch or branches have consented to the application, and that the rules so signed or sealed are the rules of the branch or group.

**39 Registration of rules of branch**

The Registrar, on being satisfied that the requirements of sections 37 and 38 have been observed, and that the rules of the branch or group of branches are not inconsistent with this Act or with the rules of the registered society, shall thereupon do the following things –

- (a) Enter the name of the branch or group of branches in a special register to be kept by him for the purposes of this Act, together with such other particulars with respect to the branch or branches as he thinks fit;
- (b) Issue under his seal a certificate that the branch or group of branches is incorporated under this Act;
- (c) Register the rules of the branch or group of branches by sealing with his seal the said copies of it; and
- (d) Return one of those copies to the secretary of the registered society and retain the other copy.

**40 Application of Act**

All the provisions of this Act (including the powers conferred on societies to hold land) shall, so far as applicable, and with the necessary modifications, apply to branches of societies or to groups of such branches incorporated under sections 37 and 38.

**41 Members of branches not to be relieved of obligations as members of societies**

The incorporation of a branch of a society under sections 37 and 38 shall not relieve the members of that branch from any liabilities or obligations incident to their membership of the registered society, whether under this Act, or the rules of the society, or otherwise howsoever.

**42 Evidence of membership of branch**

For the purposes of this Act membership of a branch of a society shall be determined in accordance with the general rules of the society and the special rules (if any) of the branch in that behalf, and not otherwise, and every member of a local branch shall be deemed to be a member of the society and liable to all the obligations of membership.



**43 Assistant Registrars**

(1) There may be appointed such Assistant Registrars of incorporated societies as may be required.

(2) (a) Subject to the direction of the Registrar, or to regulations under the principal Act prescribing the duties of Assistant Registrars, every Assistant Registrar shall have and may exercise all the powers, duties, and functions of the Registrar.

(b) The fact of any Assistant registrar exercising any power, duty, or function as aforesaid shall be conclusive evidence of his authority so to do.

**44 Rules of society may provide for penalties**

In addition to the matters specified in section 6, the rules of any society may make provision for the imposition on any member of reasonable fines and forfeitures, and for the consequences of non-payment of any subscription or fine.

**45 Improper use of word “Incorporated”**

If any society, not being a society incorporated under this Act, operates under any name or title of which the word “Incorporated” or any name or title of which the word “Incorporated” or any contraction or imitation of that word is the last word, every member of the society shall be liable on summary conviction to a fine not exceeding 0.5 penalty units for every day upon which that name or title has been used.

**46 Society may make regulations or bylaws**

(1) In addition to the matters specified in section 6 the rules of any society may make provision for the making, amendment, or rescission of regulations or bylaws, not inconsistent with this Act or with the rules of the society, for such purposes as may be specified in that behalf in the rules.

(2) The making, amendment, or rescission of any regulations or bylaws under any rules in accordance with this section shall not be deemed to be an alteration of the rules under section 21.

SCHEDULE

Section 7(a)

APPLICATION FOR INCORPORATION

We, the several persons whose names are subscribed hereto, being members of the abovementioned society, hereby make application for the incorporation of the society under the Incorporated Societies Act 1908.

Dated this                      day of                      , 20   .



# INQUEST ACT 1964

1964/23 – 1 December 1964

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20	When to hold inquest in respect of fires or explosions	39 Duty of Police to assist
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		42 Offences
		43 [Spent]
		44 Application of fines
		SCHEDULE

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## To provide for inquiries into the manner of death of any person into the cause and origin of fires and explosions

	PART 1 PRELIMINARY
1	<b>Short title</b> This is the Inquest Act 1964.
2	–
3	<b>Interpretation</b> In this Act – “isolation station” means an isolation station appointed under the Public Health Act; “master” means and includes the owner of a ship and any person (except a pilot) having command or charge of any ship;

“Medical Officer” means a person appointed by a Medical Officer to have in his custody a person of unsound mind under Part 26 of the Niue Act 1966;

“Registrar” means the Registrar of the High Court and includes the Deputy Registrar;

“ship” includes every description of vessel used in navigation, however propelled, but does not include ships of the naval forces of any country.

## PART 2

### THE CORONER

#### **4 Office of Coroner established**

(1) Every person holding office as Judge, or Commissioner of the High Court, or any two Justices of the Peace acting together shall, without any authority other than this section by virtue of holding any such office, be a Coroner for the purposes of this Act.

(2) The Judge, when present, may execute the functions of Coroner or may at any time request a Commissioner of the High Court to execute any of the functions of a Coroner.

(3) Unless so requested –

(a) [Spent]

(b) A Commissioner of the High Court shall not execute the functions of Coroner when the Judge is present.

(4) Every person being a Coroner and executing functions of a Coroner under this section shall be deemed to be the Coroner within the meaning of this Act.

#### **5 Functions of Coroner**

The principal functions of the Coroner shall be to make inquiries and hold inquests in respect of the death of any person and of fires or explosions as required by this Act.

#### **6 Powers of Coroner and duties of Registrar**

(1) For the purpose of discharging his functions the Coroner shall, in addition to any particular power conferred on him by this Act, have and may exercise and invoke all the powers, privileges, authorities, and immunities which are possessed by a Judge in his ordinary jurisdiction including the power to punish for contempt of the High Court as provided in section 41.

(2) Every order, direction, determination or decision given or made by the Coroner under this Act shall be final.

(3) The Registrar shall keep the records of the Coroner’s office and shall issue summonses and warrants and perform all such other administrative duties in respect of that office as the Coroner may direct.

## PART 3

### REPORTS AND INQUIRIES INTO DEATH

#### **7 Duty to report death to Coroner**

(1) Every Medical Officer, constable, and the officer in charge of any prison or isolation station shall forthwith report to the Coroner the death of any person who, while being held in the custody of any such officer respectively, has died on Niue from any cause or has died from any cause or has disappeared in the circumstances specified in section 12.

(2) Where a person (not being a person held in custody under subsection (1)) has died on Niue a sudden death of which the cause is unknown or has died on Niue and there is reasonable cause to suspect that that person has died either a violent or unnatural death, every Medical Officer and every constable who is present when that

person dies or who finds that person lying dead or being drowned shall forthwith report the death to the Coroner, and any other person so being present or so finding the body shall forthwith notify any constable who thereupon shall report the death to the Coroner.

## **8 Inquiries by Police and Coroner**

(1) In each case where section 7 applies, the Chief Officer of Police shall make such inquiries as he thinks necessary for the purposes of this Act or as may be directed by the Coroner.

(2) On receipt of any report under section 7, the Coroner may direct any such inquiries to be made as he thinks necessary.

## **9 Medical report**

Whether or not an inquest is being held, the Coroner may at any time request the Director of Health or any member of the Director of Health's staff who has recently attended the person into whose death the Coroner is inquiring, to supply him with a report relating to the death of the deceased person.

## **10 Postmortem examination during inquiries**

(1) In each case, where the Coroner is informed that a person (not being a person held in the custody of any officer referred to in section 7(1)) has died a sudden death of which the cause is unknown, he may authorise and request the Director of Health to carry out a postmortem examination of the body and to report the result to him in writing.

(2) If the Coroner, on receipt of any such report or of a report under section 9, or as a result of inquiries made under section 8 is satisfied that the death was due to natural causes, he may decide not to hold an inquest.

## **11 Burial and exhumation**

(1) Notwithstanding anything to the contrary in an enactment for the time being in force it shall not be unlawful to exhume the body of any person if the Coroner orders, by writing under his hand, that body is to be exhumed for the purpose of an inquiry or inquest being held or to be held under this Act.

(2) Whether or not an inquest is being held, the Coroner may at any time, by writing under his hand, order the burial of the body of any person whose death has been reported to him under this Act or the burial of any body exhumed under an order under this section.

(3) As a condition of any order under this section the Coroner may prescribe such safety precautions as he thinks fit and every person who fails to comply with any such condition or does any act to hinder or prevent any such condition being complied with commits an offence and shall be liable on conviction to imprisonment for a term not exceeding one month or to a fine not exceeding 1 penalty unit.

## **12 Duty to report death on board ship**

(1) Where any loss of life occurs from any cause on or from any ship the master shall report the occurrence –

- (a) Forthwith when loss of life occurs on or near the coast or in the roadstead of Niue;
- (b) On arrival in the roadstead of Niue when loss of life has occurred at sea since the ship last departed from the port of any country or island other than Niue.

(2) Subsection (1) shall apply where a person disappears on or from any ship and this Act shall be read subject to this subsection, where applicable, and with the necessary modifications.

(3) Every report required under this section shall be made by the master whether or not any other person is required by section 7(1) to report the same occurrence.

(4) Every report required under this section shall be made by the master to any constable who shall report the death to the Coroner and thereupon this Part shall, so far as applicable, apply with all necessary modifications.

## PART 4

### INQUEST IN RESPECT OF DEATH

#### **13 Holding of inquest compulsory**

The Coroner shall hold an inquest in each case where he is informed that a person –

- (a) Has died on Niue from any cause while in the custody of a constable or of an officer of prisons; or
- (b) Is found dead on Niue and there is reasonable cause to suspect that the person has died either a violent or unnatural death; or
- (c) Has died on Niue a sudden death of which the cause is unknown and the Coroner has not proceeded as provided in section 8 (2), section 9, or section 10 or has so proceeded and, in the circumstances specified in section 10 is not satisfied that the death was due to natural causes; or
- (d) Has died from any cause or disappeared in the circumstances specified in section 12(1)(a) and either the ship is still on or near the coast or in the roadstead of Niue, or any witness is in Niue.

#### **14 Holding of inquest permissive**

(1) In each case where the Coroner has received a report under Part 3, and where the holding of an inquest is not required by section 13, the Coroner shall hold an inquest if he considers an inquest to be necessary or desirable.

(2) If in the circumstances specified in section 12(1)(b), the Coroner decides not to hold an inquest he shall direct, as far as practicable, such inquiries to be made and such evidence to be taken as may assist in the holding of an inquest (if any) in any country other than Niue.

#### **15 Purpose of inquest in respect of death**

An inquest shall be held for the purpose of establishing –

- (a) The fact that a person has died;
- (b) The identity of the deceased person;
- (c) When, where, and how the death occurred.

#### **16 View of body**

(1) Where in respect of the death of any person an inquiry or an inquest under this Act is held it shall not be necessary for the Coroner to view the body of the deceased person.

(2) No inquest shall be concluded unless the Coroner is satisfied that the body in respect of which the inquest is being held has been viewed by some person giving evidence at the inquest.

(3) Where a person has disappeared from any ship or the Coroner is satisfied that the body is destroyed or irrecoverable in any other circumstances he shall hold and

## Inquest Act

conclude any inquest required under this Act and the provisions of this Act shall, so far as applicable, apply to any such inquest subject to all necessary modifications.

### **17 Postmortem examination during inquest**

(1) At any time before the conclusion of an inquest, the Coroner may authorise and direct the Director of Health to carry out a postmortem examination of the body of the deceased person and, where necessary, to request an analyst or pathologist to make an analysis as part of the postmortem examination.

(2) The Coroner may direct the payment of such fees as he may think fit for an analysis so made by any person other than a Medical Officer and any such fee shall be paid out of the public revenue of Niue.

(3) For the purposes of this section and section 10(1), the Coroner may give such directions as he thinks fit to the disposal or removal of the body or any part of it and every person who fails to comply with any such direction or who does any act to hinder or prevent any such direction being complied with commits an offence and shall be liable on conviction to imprisonment for a term not exceeding one month or to a fine not exceeding 1 penalty unit.

## PART 5

### INQUIRIES AND INQUESTS IN RESPECT OF FIRES AND EXPLOSIONS

### **18 Duty to report fires and explosions**

(1) The Chief Officer of Police shall forthwith report to the Coroner every case in which –

- (a) Any building, store of goods, stack of copra, or growing crop is destroyed or damaged by fire; or
- (b) Any explosion occurs, whether or not bodily harm to any person or damage to any property is caused by or as a result of such explosion;
- (c) By any fireworks bodily harm to any person or damage to any property is caused, whether or not such fireworks are discharged under a permit issued under the Fireworks Act 1958; or
- (d) Any report required by subsection (2) is received by the Police.

(2) The master shall report to any constable –

- (a) Forthwith, every case in which any fire or explosion occurs on board ship on or near the coast or in the roadstead of Niue;
- (b) On arrival in the roadstead of Niue, every case in which any fire or explosion has occurred at sea since the ship last departed from the port of any country other than Niue and bodily harm has been caused to any person by or as a result of any such fire or explosion.

### **19 Inquiries by Police and Coroner**

(1) In each case where section 18 applies, the Chief Officer of Police shall make such inquiries as he thinks necessary for the purposes of this Act or as may be directed by the Coroner.

(2) On receipt of any report in section 18, the Coroner may direct any such inquiries to be made as he thinks necessary.

### **20 When to hold inquest in respect of fires and explosions**

(1) In each case where the Coroner has received a report under section 18 he shall hold an inquest if he considers an inquest to be necessary or desirable.

(2) If in the circumstances specified in section 18(2) (a) or (b) the Coroner decides not to hold an inquest he shall direct, as far as practicable, such inquiries to be

made and such evidence to be taken as may assist in the holding of an inquest (if any) in any country other than Niue.

**21 Purpose of inquest in respect of fires and explosions**

- (1) An inquest shall be held for the purpose of establishing –
- (a) The cause and origin of any fire; or
  - (b) The cause and origin of any explosion including the mode of storage of any explosives involved in the explosion; and
  - (c) Any other matter in connection with the fire or explosion in respect of which the inquest is being held and which the Coroner may consider appropriate to that inquest.
- (2) For the purposes of this section “explosives” includes any article of which an explosive forms part and which is capable of destructive effect by way of explosion.

PART 6

RULES OF PROCEDURE FOR INQUEST IN RESPECT OF DEATH AND INQUEST IN RESPECT OF FIRES AND EXPLOSIONS

**22 Inquest before Coroner alone**

All inquests shall be held before the Coroner alone.

**23 Date, place, and notification of hearing**

- (1) The Coroner shall fix the date, time, and place of the inquest and shall give notice of it to the Chief Office of Police and such other persons as he may determine.
- (2) The Coroner may adjourn any proceedings before him from time to time and from place to place as the circumstances of the case may necessitate.
- (3) It shall be lawful to hold an inquest on a Sunday whenever in the opinion of the Coroner it is expedient so to do.

**24 Procedure where criminal proceedings are pending**

- (1) If, before an inquest has been concluded, the Coroner is informed that some person has been charged with causing the death or, as the case may be, the fire or explosion in respect of which the inquest being held, and in the opinion of the Coroner the result of the charge may have a material bearing on the inquest, he shall adjourn the inquest until the criminal proceedings are terminated.
- (2) For the purposes of this section “criminal proceedings” means any proceedings within the criminal jurisdiction of the High Court and criminal proceedings before the High Court shall not be deemed to be terminated until leave to appeal can no longer be granted.
- (3) On the termination of the criminal proceedings –
- (a) If it appears to the Coroner that not all the facts and circumstances specified in section 15 or section 21 have been established he shall resume the inquest;
  - (b) If it appears to the Coroner that all those facts and circumstances have been established, he may decide not to resume the inquest.
- (4) If the adjourned inquest is an inquest in respect of the death of any person and the Coroner decides not to resume the inquest as aforesaid, he shall notify the Registrar of Births and Deaths of his decision and the date of it and give him all available particulars required to be registered by regulation 20 of the Births and Deaths Registration Regulations 1984.



**25 Hearing in public and publication of proceedings**

(1) The court or other place in which the inquest is held shall be open to the public.

(2) If the Coroner considers it desirable in the interest of decency or public order or in order to expedite the accuracy and justice of his finding, he may exclude any person from the whole or any part of the proceedings, or he may prohibit the publication of any part of the evidence given at the inquest.

**26 Publication where death was self inflicted**

At any inquest in respect of the death of any person –

(a) Where it appears to the Coroner that death may have been self-inflicted, he may, at any stage of the inquest direct that no report, or no further report of the proceedings shall be published until he has made his finding;

(b) Where the Coroner finds that death was self-inflicted, no report of the proceedings of this inquest shall, without the authority of the Coroner, be published other than the name, address, and occupation of the deceased person, and the fact that the Coroner has held an inquest and found that death was self-inflicted.

**27 Right of audience**

The Coroner may admit any person who, in the opinion of the Coroner, has a sufficient interest in the subject or result of the inquest to attend in person or to be represented by an attorney or agent and to examine and cross-examine any witness who gives evidence at the inquest.

**28 Every kind of evidence admissible**

In all proceedings under this Act the Coroner may admit any kind of evidence that he considers necessary for the purpose of establishing any of the matters referred to in section 15 or section 21.

**29 Examination of witnesses**

(1) The Coroner shall at the inquest examine on oath every person who tenders his evidence respecting the facts in issue and all other persons whom he thinks it expedient to examine and any person may be so examined whether or not he has been summoned to attend as a witness.

(2) The oath administered to any person so examined shall be in the form numbered 1 in the Schedule.

(3) (a) If no person admitted to examine and cross-examine witnesses under section 27 objects, the Coroner may permit any witness to give the whole or any part of his evidence by tendering a previously prepared statement in writing and confirming the same on oath.

(b) A witness may be cross-examined on his evidence in any such statement as if he had given that evidence orally at the inquest. (4) The Coroner may direct that all or any witnesses other than the witness under examination shall leave the place of hearing and remain outside until called upon to give evidence at the inquest.

(5) The Coroner shall cause the evidence admitted by him at the inquest to be put into writing and every evidence so put into writing or given in a previously prepared statement in writing shall be read over to and signed by the witness and by the Coroner.



**30 Protection of witnesses**

Every witness attending and giving evidence at any inquest shall have the same privileges and immunities as witnesses in the Court.

**31 Fees for witnesses**

Such reasonable amount in respect of expenses and loss of time as the Coroner deems fit to award shall be paid to any witness giving evidence at any inquiry or inquest.

**32 Default of witness and unauthorised publication**

(1) Every witness on whom a summons is duly served requesting him to attend at the inquest, who fails without sufficient excuse to appear or to produce any document which he is so required to produce, and any person, whether summoned to attend or not, who, being at the hearing and being required to give evidence or to produce any document then in his possession refuses, without sufficient excuse, to be sworn or to give evidence or to produce that document, commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units.

(2) Every person who publishes –

(a) A report of any proceeding in contravention of this Act; or

(b) Any question at any inquest which the Coroner –

(i) has forbidden or disallowed; or

(ii) has warned the witness he is not obliged to answer, and has ordered shall not be published;

commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units.

**33 Inquest may be completed by another Coroner**

Where a Coroner has commenced an inquest and dies or is incapacitated by illness, absence, or other sufficient cause from completing the inquest, the inquest may be completed by another Coroner who may act upon any evidence already given at the inquest in all respects as if it were given before him.

**34 Finding**

(1) After considering all the evidence before him at the inquest the Coroner shall give his finding and shall sign a certificate in the form numbered 2A or 2B (as the case may be) in the Schedule.

(2) Certified copies of every certificate shall be forwarded to Cabinet and if the finding is given at the conclusion of an inquest in respect of the death of any person, also to the Registrar of Births and Deaths.

**35 Inquest may be reopened**

(1) Where an inquest has been concluded and it is shown to the satisfaction of the Coroner that material evidence has been discovered which was not known or tendered at the inquest, or that the finding was based on any false or misleading evidence, or that the finding was defective or erroneous for any other reason, he may reopen the inquest and accept any part of the evidence given at the original inquest which appears to him correct, and conduct such further inquiries as may appear to him necessary.

(2) At the conclusion of the reopened inquest the Coroner shall give his finding as provided in section 34 and any such finding shall for all purposes replace the finding previously given.

**36 Procedure so far as not prescribed**

Subject to this Act the practice and procedure of the Coroner in the exercise of his functions and powers shall be such as he thinks in each case to be most consistent with natural justice and convenience.

PART 7

GENERAL

**37 Mortuaries**

Cabinet shall establish and maintain such places as may be necessary for the reception of dead bodies pending removal for burial or postmortem examination and shall provide facilities for carrying out in such places post mortem examinations under this Act.

**38 Power of Medical Officer to enter**

Every Medical Officer shall have power to enter any dwelling, building, premises, land, ship or any other place and execute in it any duties imposed on him by or under this Act.

**39 Duty of Police to assist**

It shall be the duty –

- (a) Of the Chief of Police to assist at all inquests, inquiries, and investigations held or made by the Coroner;
- (b) Of every constable to give every Medical Officer any assistance he may require in the execution of his duties under this Act and, when requested, to accompany him to any such places the Medical Officer may wish to enter as provided in section 38.

**40 Forms**

Save as provided in this Act all documents required or authorised in the exercise of any power, function, or duty under this Act may be in such form as the Coroner deems sufficient.

**41 Contempt**

(1) Section 101 of the Niue Act 1966 shall, with all necessary modifications, apply to any proceedings of or before the Coroner under this Act as if such proceedings were proceedings of or before the Court.

(2) Every person who commits an offence under subsection (1) shall be liable to imprisonment for a term not exceeding 6 months or a fine not exceeding 1 penalty unit as provided in this section.

(3) The offence of contempt shall be punishable either –

- (a) By the Court in the ordinary course of the criminal jurisdiction of that Court; or
- (b) Under subsections (4) and (5).

(4) If the contempt is committed in the presence or hearing of the Coroner, the Coroner then and there holding an inquest may, without order or warrant, direct any constable or other person to arrest the person so guilty of contempt and bring him before the Coroner.

(5) The Coroner may thereupon, after giving the person so arrested a reasonable opportunity of being heard in his defence, either order him to pay a fine not exceeding 1 penalty unit or commit him to prison for any period not exceeding 6 months.

(6) A person imprisoned for contempt or for default in payment of a fine imposed upon him for contempt, may be at any time discharged by order of the Coroner and any fine so imposed may be at any time remitted in whole or in part in the same manner.

**42 Offences**

(1) Every person commits an offence who –

- (a) Fails to comply with any direction given to him by the Coroner or any Medical Officer under this Act; or
- (b) Fails to comply with any duty or obligation imposed on him by this Act; or
- (c) Wilfully obstructs, hinders, or resists any person in the exercise or execution of any power, duty, or function conferred or imposed on such person by this Act; or
- (d) Deceives or attempts to deceive any such person as aforesaid; or
- (e) Does or omits, or causes or knowingly permits or suffers to be done or omitted, any act, matter, or thing contrary to this Act; or
- (f) Wilfully makes any false or misleading statement or any material omission in any information or report to the Police or any Medical Officer.

(2) Every person who commits an offence against this Act for which no penalty is provided in this Act elsewhere than in this section or in the Criminal Law Code, is liable to a fine not exceeding 0.5 penalty units.

(3) Where the provisions of this Act impose on two or more persons the duty to report one and the same occurrence to the Police, each of such persons shall be responsible for making the report as required.

(4) If any of the persons being so responsible furnishes the required report the other person or persons shall not be guilty of the offence of failing to comply with any duty or obligation imposed on him by this Act.

**43 [Spent]**

**44 Application of fines**

All fines paid under this Act shall form part of the public revenues of Niue and shall be paid into the appropriate account.

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SCHEDULE

Form No. 1

Oath of Witness

Do you swear by Almighty God that the evidence which you shall give at this inquest in respect of the death of ..... the disappearance at sea of..... the fire at..... the explosion at ..... shall be the truth, the whole truth and nothing but the truth.

Inquest Act

Form No 2A (Death)

I..... Coroner hereby certify that at an inquest concluded on the..... day of ..... 20..... at ..... having inquired when, where and how ..... came to his death ..... came to disappear at sea I found .....

Dated at ..... this .....day of ..... 20 .....

.....  
Coroner

Form No 2B (Fire or Explosion)  
Finding of Coroner

I..... Coroner hereby certify that an inquest concluded on the ..... day of ..... 20 ..... at..., having inquired into the cause and origin of the fire at ..... the explosion at ..... I found .....

Dated at ..... this .....day of ..... 20 .....

.....  
Coroner



# INTERNATIONAL FINANCE AGREEMENTS ACT 1961

Act 3 of 1961 (NZ) – 16 August 1961

[This Act as a whole was not made Niue law, but section 8 of the Act made specific provisions of the Act Niue law. Those provisions are set out here.]

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## SCHEDULE 1

### Article VIII, section 2

....

- (b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, cooperate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

### Article IX, sections 2-9

#### Status, Immunities and Privileges of the IMF

##### SECTION 2 – STATUS OF THE FUND

The Fund shall possess full juridical personality, and, in particular, the capacity –

- (i) To contract;
- (ii) To acquire and dispose of immovable and movable property;
- (iii) To institute legal proceedings.

##### SECTION 3 - IMMUNITY FROM JUDICIAL PROCESS

The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.

##### SECTION 4 - IMMUNITY FROM OTHER ACTION

Property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

##### SECTION 5 - IMMUNITY OF ARCHIVES

The archives of the Fund shall be inviolable.

##### SECTION 6 - FREEDOM OF ASSETS FROM RESTRICTIONS

To the extent necessary to carry out the operations provided for in this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature.

##### SECTION 7 - PRIVILEGE FOR COMMUNICATIONS

The official communications of the Fund shall be accorded by members the same treatment as the official communications of other members.

## Niue Legislation 2019

### SECTION 8 - IMMUNITIES AND PRIVILEGES OF OFFICERS AND EMPLOYEES

All Governors, Executive Directors, Alternates, officers and employees of the Fund –

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Fund waives this immunity;
- (ii) not being local nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members;
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

### SECTION 9 - IMMUNITIES FROM TAXATION

- (a) The Fund, its assets, property, income and its operations and transactions authorised by this Agreement shall be immune from all taxation and from all customs duties. The Fund shall also be immune from liability for the collection or payment of any tax or duty.
- (b) No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to Executive Directors, Alternates, officers or employees of the Fund who are not local citizens, local subjects, or other local nationals.
- (c) No taxation of any kind shall be levied on any obligation or security issued by the Fund, including any dividend or interest thereon, by whomsoever held –
  - (i) which discriminates against such obligation or security solely because of its origin; or
  - (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Fund.

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## SCHEDULE 2

### Article VII, sections 2-9

#### Statutes, Immunities and Privileges of the IBRD

### SECTION 2 - STATUS OF THE BANK

The Bank shall possess full juridical personality, and, in particular, the capacity –

- (i) to contract;
- (ii) to acquire and dispose of immovable and moveable property;
- (iii) to institute legal proceedings.

### SECTION 3 - POSITION OF THE BANK WITH REGARD TO JUDICIAL PROCESS

Actions may be brought against the Bank only in a Court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

### SECTION 4 - IMMUNITY OF ASSETS FROM SEIZURE

Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

### SECTION 5 - IMMUNITY OF ARCHIVES

The archives of the Bank shall be inviolable.



## International Finance Agreements Act

### SECTION 6 - FREEDOM OF ASSETS FROM RESTRICTIONS

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

### SECTION 7 - PRIVILEGE FOR COMMUNICATIONS

The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

### SECTION 8 - IMMUNITIES AND PRIVILEGES OF OFFICERS AND EMPLOYEES

All Governors, Executive Directors, Alternates, officers and employees of the Bank –

- (i) Shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity;
- (ii) Not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members;
- (iii) Shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

### SECTION 9 - IMMUNITIES FROM TAXATION

- (a) The Bank, its assets, property, income and its operations and transactions authorised by this Agreement, shall be immune from all taxation and from all customs duties. The Bank shall also be immune from liability for the collection or payment of any tax or duty.
- (b) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Executive Directors, Alternates, officials or employees of the Bank who are not local citizens, local subjects, or other local nationals.
- (c) No taxation of any kind shall be levied on any obligation or security issued by the Bank (including any dividend or interest thereon) by whomsoever held –
  - (i) Which discriminates against such obligation or security solely because it is issued by the Bank; or
  - (ii) If the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.
- (d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Bank (including any dividend or interest thereon) by whomsoever held –
  - (i) Which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
  - (ii) If the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank. \_\_\_\_\_

## SCHEDULE 3

### Article VI, sections 2-9 and 11

### Status, Immunities and Privileges of the IFC

### SECTION 2 - STATUS OF THE CORPORATION

The Corporation shall possess full juridical personality and, in particular, the capacity –

- (i) to contract;
- (ii) to acquire and dispose of immovable and movable property;
- (iii) to institute legal proceedings.

## Niue Legislation 2019

### SECTION 3 - POSITION OF THE CORPORATION WITH REGARD TO JUDICIAL PROCESS

Actions may be brought against the Corporation only in a Court of competent jurisdiction in the territories of a member in which the Corporation has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Corporation shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Corporation.

### SECTION 4 - IMMUNITY OF ASSETS FROM SEIZURE

Property and assets of the Corporation, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

### SECTION 5 - IMMUNITY OF ARCHIVES

The archives of the Corporation shall be inviolable.

### SECTION 6 - FREEDOM OF ASSETS FROM RESTRICTIONS

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of Article III, section 5, and the other provisions of this Agreement, all property and assets of the Corporation shall be free from restrictions, regulations, controls and moratoria of any nature.

### SECTION 7 – PRIVILEGE FOR COMMUNICATIONS

The official communications of the Corporation shall be accorded by each member the same treatment that it accords to the official communications of other members.

### SECTION 8 - IMMUNITIES AND PRIVILEGES OF OFFICERS AND EMPLOYEES

- All Governors, Directors, Alternates, officers and employees of the Corporation –
- (i) shall be immune from legal process with respect to acts performed by them in their official capacity;
  - (ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members;
  - (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

### SECTION 9 - IMMUNITIES FROM TAXATION

- (a) The Corporation, its assets, property, income, and its operations and transactions authorised by this Agreement, shall be immune from all taxation and from all customs duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty.
- (b) No tax shall be levied on or in respect of salaries and emoluments paid by the Corporation to Directors, Alternates, officials or employees of the Corporation who are not local citizens, local subjects, or other local nationals.
- (c) No taxation of any kind shall be levied on any obligation or security issued by the Corporation (including any dividend or interest thereon) by whomsoever held –
  - (i) which discriminates against such obligation or security solely because it is issued by the Corporation; or

## International Finance Agreements Act

- (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Corporation.
- (d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Corporation (including any dividend or interest thereon) by whomsoever held –
  - (i) which discriminates against such obligation or security solely because it is guaranteed by the Corporation; or
  - (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Corporation.

### SECTION 11 – WAIVER

The Corporation in its discretion may waive any of the privileges and immunities conferred under this Article to such extent and upon such conditions as it may determine.



# INTERNATIONAL FINANCE AGREEMENTS AMENDMENT ACT 1966

Act 26 of 1966 (NZ) – 16 September 1966

[This Act as a whole was not made Niue law, but sections 3, 4 and 5 of the Act made specific provisions of the Act Niue law. Those provisions are set out here.]

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## SCHEDULE 1

### Chapter VIII, articles 49-56 and 58

#### Status, Immunities, Exemptions and Privileges of the ADB

##### ARTICLE 49 – LEGAL STATUS

The Bank shall possess full juridical personality and, in particular, full capacity –

- (i) to contract;
- (ii) to acquire, and dispose of, immovable and movable property; and
- (iii) to institute legal proceedings.

##### ARTICLE 50 – IMMUNITY FROM JUDICIAL PROCEEDINGS

1 The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank in a court of competent jurisdiction in the territory of a country in which the Bank has its principal or a branch office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

2 Notwithstanding the provisions of paragraph 1 of this Article, no action shall be brought against the Bank by any member, or by any agency or instrumentality of a member, or by any entity or person directly or indirectly acting for or deriving claims from a member or from any agency or instrumentality of a member. Members shall have recourse to such special procedures for the settlement of controversies between the Bank and its members as may be prescribed in this Agreement, in the bylaws and regulations of the Bank, or in contracts entered into with the Bank.

3 Property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgments against the Bank.

##### ARTICLE 51 – IMMUNITY OF ASSETS

Property and assets of the Bank, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

##### ARTICLE 52 – IMMUNITY OF ARCHIVES

The archives of the Bank and, in general, all documents belonging to it, or held by it, shall be inviolable, wherever located.

##### ARTICLE 53 – FREEDOM OF ASSETS FROM RESTRICTIONS

To the extent necessary to carry out the purpose and functions of the Bank effectively, and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

ARTICLE 54 – PRIVILEGE FOR COMMUNICATIONS

Official communications of the Bank shall be accorded by each member treatment not less favourable than that it accords to the official communications of any other member.

ARTICLE 55 – IMMUNITIES AND PRIVILEGES OF BANK PERSONNEL

All Governors, Directors, Alternates, officers and employees of the Bank, including experts performing missions for the Bank:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives the immunity;
- (ii) where they are not local citizens or nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations, as are accorded by members to the representatives, officials and employees of comparable rank of other members; and
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

ARTICLE 56 – EXEMPTION FROM TAXATION

1 The Bank, its assets, property, income and its operations and transactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.

2 No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, Alternates, officers or employees of the Bank, including experts performing missions for the Bank, except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member.

3 No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held –

- (i) which discriminates against such obligation or security solely because it is issued by the Bank; or
- (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

4 No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held –

- (i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
- (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

ARTICLE 58 – WAIVER OF IMMUNITIES, EXEMPTIONS AND PRIVILEGES

The Bank at its discretion may waive any of the privileges, immunities and exemptions conferred under this Chapter in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interests of the Bank.

SCHEDULE 2

Article VIII, sections 2-9

Status, Immunities and Privileges of the IDA

SECTION 2 – STATUS OF THE ASSOCIATION

The Association shall possess full juridical personality and, in particular, the capacity

- (i) to contract;
- (ii) to acquire and dispose of immovable and movable property;
- (iii) to institute legal proceedings.

SECTION 3 – POSITION OF THE ASSOCIATION WITH REGARD TO JUDICIAL PROCESS

Actions may be brought against the Association only in a court of competent jurisdiction in the territories of a member in which the Association has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Association shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Association.

SECTION 4 – IMMUNITY OF ASSETS FROM SEIZURE

Property and assets of the Association, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

SECTION 5 – IMMUNITY OF ARCHIVES

The archives of the Association shall be inviolable.

SECTION 6 – FREEDOM OF ASSETS FROM RESTRICTIONS

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Association shall be free from restrictions, regulations, controls and moratoria of any nature.

SECTION 7 – PRIVILEGE FOR COMMUNICATIONS

The official communications of the Association shall be accorded by each member of the same treatment that it accords to the official communications of other members.

SECTION 8 – IMMUNITIES AND PRIVILEGES OF OFFICERS AND EMPLOYEES

All Governors, Executive Directors, Alternates, officers and employees of the Association –

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Association waives this immunity;
- (ii) not being local nationals shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members;



- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

SECTION 9 – IMMUNITIES FROM TAXATION

- (a) The Association, its assets, property, income and its operations and transactions authorised by this Agreement, shall be immune from all taxation and from all customs duties. The Association shall also be immune from liability for the collection or payment of any tax or duty.
- (b) No tax shall be levied on or in respect of salaries and emoluments paid by the Association to Executive Directors, Alternates, officials or employees of the Association who are not local citizens, local subjects, or other local nationals.
- (c) No taxation of any kind shall be levied on any obligation or security issued by the Association (including any dividend or interest thereon) by whomsoever held –
  - (i) which discriminates against such obligation or security solely because it is issued by the Association; or
  - (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Association.
- (d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Association (including any dividend or interest thereon) by whomsoever held –
  - (i) which discriminates against such obligation or security solely because it is guaranteed by the Association; or
  - (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Association.

# INTERPRETATION ACT 2004

2004/269

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	<b>GENERAL</b>		
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2	Purposes	19	Powers exercised under the repealed legislation to have continuing effect
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## Relating to the interpretation, application, and effect of legislation and public documents

### PART 1 GENERAL

- 1 Name**  
This is the Interpretation Act 2004.
- 2 Purposes**  
The purposes of this Act are—
  - (a) To state principles and rules for the interpretation of legislation and public documents;
  - (b) To shorten legislation and public documents; and
  - (c) To promote consistency in the language and form of legislation and public documents.

### **3 Application**

(1) This Act applies to an enactment that is part of the law of Niue and to a public document of Niue, whether passed, or written, before or after the commencement of this Act unless—

- (a) The enactment provides otherwise; or
  - (b) The context of the enactment or public document requires a different interpretation.
- (2) The provisions of this Act also apply to the interpretation of this Act.
- (3) This Act binds the Government.

### **4 Sources of law**

The sources of Niuean law are, in order of priority—

- (a) The Constitution;
- (b) Acts of the Assembly;
- (c) Regulations;
- (d) Niuean custom;
- (e) The common law of Niue.

### **5 Definitions**

In any enactment and public document—

“Assembly” has the same meaning as in article 82(1) of the Constitution;

“Commission” means the Niue Public Service Commission;

“Commonwealth country” or “part of the Commonwealth” means a country that is a member of the Commonwealth, and includes a territory for the international relations of which the member is responsible;

“constable” means an officer of police of the Niue Public Service;

“Constitution” means the Constitution of Niue, and includes the Act of the Parliament of New Zealand intitled the Niue Constitution Act 1974, and also includes any constitutional amendment, as that term is used in article 35 of the Constitution, when that constitutional amendment has come into force;

“contiguous zone” has the same meaning as in the Maritime Zones Act 2013;

“continental shelf” has the same meaning as in the Maritime Zones Act 2013;

“Court” means the High Court;

“day” means a calendar day;

“document” includes any publication and any matter written, expressed or described on any substance by means of letters, figures or marks;

“enactment” has the same meaning as in article 82(1) of the Constitution;

“exclusive economic zone” has the same meaning as in the Maritime Zones Act 2013;

“financial year” means a period of twelve months ending on 30 June;

“Government” means the Government of Niue;

“holiday” means Sunday, Christmas Day, Boxing Day, New Year’s Day, 2 January, Good Friday, Easter Monday, 25 April, the Sovereign’s Birthday, the third Monday and Tuesday of October, the fourth Monday of October, and any day declared by the Cabinet as a public holiday;

“internal waters” has the same meaning as in the Maritime Zones Act 2013;

“Judge” has the same meaning as in article 82(1) of the Constitution;

“judgment” includes any judicial decree, order, or determination, whether in an action or in any other judicial proceeding, whether civil or criminal;

“magafaoa” has the same meaning as in the Land Act 1969;

## Interpretation Act

- “Minister” means the Minister to whom responsibility for the department or subject to which the context refers has been assigned;
- “month” means a calendar month;
- “New Zealand” when used as a territorial description, means the islands and territories within the Realm of New Zealand but does not include Niue, Tokelau, the Cook Islands, or the Ross Dependency;
- “Niue” when used as territorial description, means the island of Niue and the territorial sea;
- “Niuean” means a person belonging to the aboriginal race of Niue, and includes a person descended from a Niuean;
- “owner”, in relation to Niuean land other than land held under lease or licence as defined in the Land Act 1969, means the magafaoa or a member of the magafaoa;
- “penalty unit” means one hundred dollars (\$100.00);
- “person” or any term descriptive of a person includes a corporation sole, a body corporate, and an unincorporated body;
- “prescribed” means prescribed by or under an enactment;
- “public place” means any road, any place open to or used by the public as of right, any wharf or jetty, any vessel at a wharf or jetty or within one mile of the shore, and any church or other building where divine service is being publicly held, any hall or room in which any public entertainment is being held, and any market place;
- “public notice” means making an act, matter or thing generally known in Niue by any customary and practicable means, or by publication in the *Niue Gazette*;
- “regulation” means any enactment other than an Act, but does not include regulations made by an authority which has jurisdiction limited to a district or village;
- “repeal”, in relation to an enactment, includes expiry, revocation, and replacement;
- “rules of court”, in relation to a court, means rules or regulations governing the practice or procedure of the court in question and made by the proper authority in that behalf;
- “territorial sea” has the same meaning as in the Maritime Zones Act 2013;
- “working day” means a day of the week other than a Saturday or a holiday;
- “writing” includes representing or reproducing words, figures, or symbols—
- (i) In a visible and tangible form by any means and in any medium;
  - (ii) In a visible form in any medium by electronic means that enables them to be stored in permanent form and to be retrieved and read.

## PART 2

### PRINCIPLES OF INTERPRETATION

#### **6 Ascertaining meaning of legislation**

- (1) The meaning of an enactment must be ascertained from its text, in light of its purpose and in its context.
- (2) The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment.
- (3) Examples of those indicators are preambles, the analyses, tables of contents, headings to Parts and sections, marginal notes, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment.

#### **7 Enactments do not have retrospective effect**

An enactment does not have retrospective effect.

PART 3  
LEGISLATION

**8 Date of commencement**

(1) An enactment comes into force on the date stated or provided in the enactment.

(2) If an enactment does not state or provide for a commencement date, the enactment comes into force on the date of its certification and sealing, or in the case of a regulation, on the day on which it is made.

**9 Time of commencement**

(1) An enactment comes into force at the beginning of the day on which the enactment comes into force.

(2) If an enactment is expressed to come into force from a particular day, the enactment comes into force at the beginning of the next day.

**10 Exercise of powers between passing and commencement of legislation**

(1) A power conferred by an enactment may be exercised before the enactment comes into force to—

- (a) Make a regulation or rule or other instrument;
- (b) Serve a notice or document;
- (c) Appoint a person to an office or position;
- (d) Establish a body of persons; or
- (e) Do any other act or thing for the purposes of the enactment.

(2) The power may be exercised only if the exercise of the power is necessary or desirable to bring, or in connection with bringing, an enactment into operation.

(3) The power may not be exercised if anything that results from exercising the power comes into force before the enactment itself comes into force unless the exercise of the power is necessary or desirable to bring, or in connection with bringing, the enactment into operation.

(4) Subsection (1) applies as if the enactment under which the power is exercised and any other enactment that is not in force when the power is exercised were in force when the power is exercised.

**11 Power to appoint to an office**

The power to appoint a person to an office includes the power to –

- (a) Remove or suspend a person from the office;
- (b) Reappoint or reinstate a person to the office;
- (c) Appoint another person in the place of a person who –
  - (i) Has vacated the office;
  - (ii) Has died;
  - (iii) Is absent; or
  - (iv) Is incapacitated in a way that affects the performance of the office.

**12 Power to correct errors**

The power to make an appointment or do any other act or thing may be exercised to correct an error or omission in a previous exercise of the power even though the power is not generally capable of being exercised more than once.

**13 Exercise of powers by deputies**

A power conferred on the holder of an office, other than a Minister, may be exercised by the holder's deputy lawfully acting in the office.

**14 Exercise of powers and duties**

Where an enactment confers a power or imposes a duty –

- (a) The power may be exercised and the duty shall be performed as occasion requires;
- (b) An act done in the exercise of the power may be cancelled or varied in the same manner as the power was exercised.

**15 Effect of repeal generally**

(1) The repeal of an enactment does not affect –

- (a) The validity, invalidity, effect, or consequences of anything done or suffered;
- (b) An existing right, interest, title, immunity, or duty;
- (c) An existing status or capacity;
- (d) An amendment made by the enactment to another enactment;
- (e) The previous operation of the enactment or anything done or suffered under it.

(2) The repeal of an enactment does not revive –

- (a) An enactment that has been repealed or a rule of the law that has been abolished;
- (b) Any other thing that is not in force or existing at the time the repeal takes effect.

**16 Effect of repeal on enforcement of existing rights**

- (a) The repeal of an enactment does not affect the completion of a matter or thing or the bringing or completion of proceedings that relate to an existing right, interest, title, immunity or duty.
- (b) A repealed enactment continues to have effect as if it had not been repealed for the purpose of completing the matter or thing or bring or completing the proceedings that relate to the existing right, interest, title, immunity, or duty.

**17 Effect of repeal on prior offences and breaches of enactments**

(1) The repeal of an enactment does not affect a liability to a penalty for an offence or for a breach of an enactment committed before the repeal.

(2) A repealed enactment continues to have effect as if it had not been repealed for the purpose of –

- (a) Investigating the offence or breach;
- (b) Commencing or completing proceedings for the offence or breach;
- (c) Imposing a penalty for the offence or breach.

**18 Enactments made under repealed legislation to have continuing effect**

(1) An enactment made under a repealed enactment, and which is in force immediately before that repeal, continues in force as if it had been made under any other enactment –

- (a) Which, with or without modification, replaces, or corresponds to, the enactment repealed, and
- (b) Under which it could be made.

(2) An enactment that continues in force may be amended or revoked as if it had been made under the enactment that replaces, or that corresponds to, the repealed enactment.

**19 Powers exercised under the repealed legislation to have continuing effect**

Anything done in the exercise of a power under a repealed enactment, and which is in effect immediately before that repeal, continues to have effect as if it had been exercised under any other enactment –

- (a) Which, with or without modification, replaces, or that corresponds to, the enactment repealed; and
- (b) Under which the power could be exercised.

**20 References to repealed enactment**

(1) The repeal of an enactment does not affect an enactment in which the repealed enactment is applied, incorporated, or referred to.

(2) A reference in an enactment to a repealed enactment is a reference to an enactment which, with or without modification, replaces, or corresponds to, the enactment repealed.

(3) Subsection (1) is subject to subsection (2).

**21 Amending enactment part of enactment amended**

An amending enactment is part of the enactment it amends.

**22 Regulations**

(1) All regulations shall state the enactment under which they were made and the date on which they were made.

(2) All regulations shall be laid before the Assembly at the first session of the Assembly following their making.

**23 Power to make regulations**

Where an enactment confers powers to make regulations –

- (a) If the regulations purport to be made in exercise of a particular power, they shall also be construed to be made in exercise of every other enabling power;
- (b) The regulations may be amended in the same manner in which they were made by the same person or by any other person on whom the enactment confers the power to make the regulations;
- (c) For general purposes and also for a special purpose, the special purpose shall not derogate from the power conferred by the general purpose provision.

**24 Enactments not binding on the Government**

No enactment binds the Government.

PART 4

MISCELLANEOUS

**25 Use of forms**

A form is not invalid because it contains minor differences from a prescribed form as long as the form has the same effect and is not misleading.

**26 Bodies corporate**

(1) Every body corporate shall –

- (a) Have perpetual succession and a common seal;
- (b) Have an office at such place as it may designate;
- (c) Have the rights of a natural person of full age and capacity; and



## Interpretation Act

(d) Carry on all such activities as may appear to it to be requisite, advantageous, convenient or conducive to the attainment of its objects.

(2) No member of a body corporate or of its controlling body who receives any emoluments from the State shall be deemed to hold a public office by reason of their appointment.

(3) (a) A member of a body corporate may resign office on giving one month's written notice in that behalf to the person who has the power of appointment.

(b) A member of a body corporate or of its controlling body who –

- (i) has unreasonably absented themselves from a meeting of the body corporate;
- (ii) has become insolvent, has assigned their estate for the benefit of the creditors or has made an arrangement with the creditors;
- (iii) has been guilty of any misconduct or default in the discharge of their duties as a member which, in the opinion of the person who has the power of appointment, renders them unfit to be a member;
- (iv) has been convicted of an offence of such a nature as, in the opinion of the person who has the power of appointment, renders it desirable that the member should be removed from office; or
- (v) is suffering from such mental or physical infirmity as, in the opinion of the person who has the power of appointment, renders that member unfit to discharge their duties as a member –

may be removed from office or suspended by the person who has the power of appointment.

(4) (a) Every body corporate shall sue and be sued in its corporate name.

(b) Service of any process by or on a body corporate shall be sufficient if made on behalf of the chairperson.

(5) (a) Subject to paragraph (b), no document shall be executed by or on behalf of a body corporate unless it is signed by the chairperson.

(b) Every cheque of a body corporate shall be signed by the chairperson and treasurer.

(c) Notwithstanding paragraphs (a) and (b), every document to which a body corporate is a party may be signed by any person nominated for the purpose by the body corporate and shall, when so signed, be deemed to be duly executed by or on behalf of the body corporate.

(6) Everything authorised or required to be done by a body corporate or by its controlling body shall be decided by a simple majority of members present and voting, or in accordance with subsections (9) and (10).

(7) At any meeting of a body corporate or of its controlling body, each member shall have one vote on the matter in question and, in the event of an equality of votes, the chairperson shall have a casting vote.

(8) A body corporate may delegate any of its powers to its controlling body.

(9) The linking by telephone or other means of telecommunication of a number of the members of the body corporate not less than the quorum (whether or not any of the members are outside of Niue) shall be deemed to constitute a meeting of the body corporate, and all the rules of the body corporate shall apply to that meeting if –

- (a) Each member has received at least two working days notice that there will be a meeting by telephone or other means of communication, and
- (b) At the commencement of the meeting each member has acknowledged the presence of all other members taking part in the meeting, and
- (c) Each member who takes part in the meeting is able throughout the meeting to hear each member who is taking part in the meeting.

(10) (a) A proposal in writing signed or assented to by letter, telegram, cable, telex, facsimile or other written manner, by all members of the body corporate or of its controlling body duly called and constituted shall be a decision of the body corporate.

(b) A decision made under this paragraph may consist of several documents in like form signed by any one or more of the members of the body corporate.

(11) Subject to subsections (6), (7), (9), and (10), a body corporate shall regulate its proceedings and those of its controlling body, committees and subcommittees in such a manner as it thinks fit.

## **27 Parts of speech and grammatical forms**

Parts of speech and grammatical forms of a word that is defined in an enactment have corresponding meanings in the same enactment.

## **28 Number**

Words in the singular include the plural and words in the plural include the singular.

## **29 Calendar and standard time**

(1) The calendar in Niue shall be one day behind the calendar in New Zealand, so that the first day of January in Niue shall be the day which is coincident for the most part with the second day of January in New Zealand, and so on from day to day throughout the year.

(2) The standard time of Niue is the solar time of longitude 165 degrees west of Greenwich.

## **30 Calculation of time**

(1) A period of time described as beginning at, on, or with a specified day, act, or event includes that day or the day of the act or event.

(2) A period of time described as beginning from or after a specified day, act or event does not include that day or the day of the act or event.

(3) A period of time described as ending by, on, at, or with, or as continuing to or until, a specified day, act, or event includes that day or the day or the act or event.

(4) A period of time described as ending before a specified day, act or event does not include that day or the day of the act or event.

(5) A reference to a number of days between two events does not include the days on which the events happened.

(6) A thing that, under an enactment, must, or may be done on a particular day or within a limited period of time may, if that day or the last day of that period is not a working day, be done on the next working day.

## **31 Distances**

A reference to a distance means a distance measured in a straight line on a horizontal or vertical plane.

## **32 Thumbprint or mark in lieu of signature**

Where a party to a document is unable to sign, the thumbprint or mark of that party, attested by the signature of two other persons who are not parties to the document and who certify the identity of the party affixing the thumbprint or mark shall have the same legal effect as if that party has signed their name.

**33 Electronically recorded documents**

(1) Where an electronically recorded document bears, as evidence that the document emanates from a particular individual, a personal identification mark, the mark shall have the same legal effect as if the individual had signed their name on the document.

(2) Where any matter is electronically recorded, a reference in any enactment –

(a) To an original shall be construed as a reference to that record;

(b) To a true or certified copy, shall be construed as a reference to a reprint of that record.

**34 Currency**

(1) The unit of currency of Niue is the New Zealand dollar.

(2) A tender of payment of money in New Zealand dollars is legal tender.

**35 Publication**

Public notice shall be given of all enactments and government appointments, warrants, and instruments.

**36-37** [Spent]



# LAND ACT 1969

1969/57 – 1 November 1969

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**To provide for the control and tenure of land, the survey of land, the registration of title to land and other like purposes**

**1 Short title**

This is the Land Act 1969.

**2 Interpretation**

In this Act –

“approved form” means a form approved by Cabinet;

“boundary mark” means any concrete peg or post, iron pipe, or spike in rock or other survey mark or other fixture used to denote a boundary;

“Court” means the Land Court;

“dealing” means every transfer, transmission, charge, lease, encumbrance or other alienation or transaction affecting any land or interest in land under this Act;

“endorsement”, in addition to its ordinary meaning includes anything written upon or at the foot of any document for giving effect to any of the purposes of this Act;

“instrument” means any printed or written deed, map, plan or other dealing affecting any land or interest in any land;

“Land Court” means the land division of the High Court;

“lease”, in relation to any Niuean land, includes, in addition to its ordinary meaning, any licence, grant, or other alienation conferring upon any person a right at law or in equity to the use or occupation of the land for any purpose, or a right to enter on it for the purpose of removing from it timber or any other valuable thing attached to or forming part of it, whether that alienation confers a right of exclusive possession or not;

“Magafaoa” in relation to any Niuean land means the family or group of persons descended from a common ancestor, including any person who has been legally adopted into the family, who at any given time are recognised as entitled by Niuean custom to any share or interest in the land, and excludes a former member of the family legally adopted into some other family. Where Niuean land is owned by a single person exclusively, that person is the Magafaoa of the land;

“owner” in relation to Niuean land other than land held under lease or licence may be construed as reference to the Magafaoa or a member of the Magafaoa;

“register” means to enter on the Land Register under this Act;

“Registrar” means the Registrar of the Court and includes a Deputy Registrar;

“surveyor” means any surveyor or other person for the time being authorised by Cabinet to act as such for the purposes of this Act.

PART 1

REGISTRATION

**3 The Land Register**

(1) There shall be kept in the Land Registry a book of record called “the Land Register and the Registrar shall, under this Part, enter in respect of each separate section of land in Niue (whether Crown land or Niuean land) the name, area and a plan certified by the Register under section 47 (3).

(2) The Registrar shall enter in that part of the Land Register relating to any section of land, the substance of every Court order or other instrument relating to the land of which registration is by this or any other enactment required or permitted, and which is duly presented to the Registrar for registration.

(3) [Repealed]

**4 Compulsory registration of instruments**

(1) Every instrument affecting or relating to the title to any land shall be registered:

Provided that it shall not be necessary to register –

- (a) Any lease or occupation order for a period not exceeding 2 years;
- (b) Any transfer, security charge or other instrument disposing of any lease, being a lease for a period not exceeding 2 years;
- (c) Any will;
- (d) Any appointment of a special representative.

(2) Notwithstanding subsection (1) no instrument of alienation affecting Niuean land shall be registered until the alienation referred to in such instrument has been confirmed by the Court.

**5 Effect of registration**

(1) No instrument, dealing or other matter which is by this Act or any other enactment required to be registered or entered in the Land Register shall until it has been registered or entered be effectual to create or extinguish or transfer or charge any interest in land.

(2) The Land Register shall in no way constitute conclusive evidence of ownership or of title.

**6 Language of instruments**

Every instrument affecting Niuean land shall be in the English language and shall be accompanied by a translation into the Niuean language to the satisfaction of the Registrar.

**7 Instruments to be signed and attested**

(1) (a) The execution by every person of an instrument required to be registered under this Act shall be attested by a person authorised to take statutory declarations under section 720 of the Niue Act 1966.

(b) No person shall attest the signature of any part to any instrument in or by virtue of which such person acquires or disposes of any interest.

(2) The attesting witness shall add to his signature his place of abode and calling, office, or description and shall certify in such attestation that the instrument has been explained by him to the party whose signature is attested and that such party appeared to understand its contents.

(3) (a) The date of the execution shall be stated in the instrument and no person shall sign the instrument as an attesting witness unless the date of execution has been so stated in the instrument.

(b) Where the instrument is executed on different dates by several parties, the date of execution by each party shall be stated in the instrument.

**8 Registrar may be required to give his reasons in writing**

Should the Registrar refuse to register any instrument, then the person seeking the registration of it may, in writing, require the Registrar to give, in writing his reasons for refusing to register such instrument and the Registrar shall give his reasons accordingly.

**9 Court may make order to restore effect of lost instruments**

(1) On proof to the satisfaction of the Court that any instrument has been lost or destroyed before the same has been registered under this Act, it may make an order under this section if it is satisfied –



- (a) That the said instrument was duly executed by or on behalf of the parties to it; and
- (b) In the case of an instrument requiring confirmation, that it was duly confirmed, or if it was not so confirmed, that the Court had made a pronouncement in favour of confirmation; and
- (c) That the instrument was not wilfully destroyed by or with the connivance of the applicant for an order under this section.

(2) By an order under this section the Court may declare the nature and effect of the instrument to which the order relates, and the instrument shall be deemed to have been of the nature and to have had effect under its tenor, as declared in this order.

(3) Instead of or in addition to making an order declaring the nature and effect of the instrument, the Court may, on application under this section make an order vesting any land or interest in land to which the instrument related in any person or persons claiming under the instrument or in any other person or persons claiming under or through the first-mentioned person or persons.

(4) On any application under this section the Court shall be guided in all matters by what it deems to be the real justice of the case.

## PART 2

### INVESTIGATION OF TITLE

#### **10 Determination of title**

(1) The Court shall determine every title to and every interest in Niuean land according to the customs and usages of the Niuean people, as far as the same can be ascertained.

(2) The Court may refuse to proceed with any application for investigation of title for the determination of the Magafaoa or relative interests in that land, until it has before it a plan of the survey of the land affected by it.

(3) The Court may at any stage of the proceedings require that all claims relating to such land, whether by the applicant or by any other person, shall be made in writing to the Court within a time to be fixed by the Court, after which time no further claims for inclusion will be admitted, except by the leave of the Court and upon such terms as the Court determines.

#### **11 Court may require written statement**

The Court may require any person having an interest in any application under this Part to lodge with the Court a statement in writing setting out any one or more particulars of the following matters –

- (a) The boundaries of the portion of the land which he claims;
- (b) The grounds of the claim;
- (c) The genealogical tables showing descent from the ancestor or ancestors through whom title is claimed down to and including all persons admitted by the claimant as entitled with him under his claim;
- (d) The names and the approximate location of cultivations, villages, burial places, with the names of relatives of the claimant and persons included in his claim who have been buried there, and any other places or marks of historical interest;
- (e) Any other proof or signs of occupation of or connection with the land by the claimant and other persons included in his claim.

*Ownership*

**12 Ownership determined by ascertaining and declaring Magafaoa**

The Court shall determine the ownership of any land by ascertaining and declaring the Magafaoa of that land by reference to the common ancestor of it or by any other means which clearly identifies the Magafaoa.

**13 Relative interests**

(1) (a) At any time after the ownership of land has been determined the Court upon application, may ascertain or declare the several members of the Magafaoa and their relative interests in the land.

(b) The jurisdiction of the Court under this section shall not be exercised except for the purposes of allocating moneys derived from land or any other purposes relating to this Act.

(2) Relative interests shall, in all cases where it can be conveniently done, be expressed in shares or decimal points of a share.

*Leveki Magafaoa*

**14 Appointment of Leveki Magafaoa**

(1) When the ownership of any land has been determined any member of that Magafaoa who was reached the age of 21 years may apply in writing to the Court for an order appointing a Leveki Magafaoa of that land.

(2) If the application is signed by members who in the Court's opinion constitute a majority of the members of the Magafaoa whether resident in Niue or elsewhere the Court shall issue an order appointing the person named in the application as the Leveki Magafaoa of that land.

(3) If no such application is received within a reasonable time, or applications are each signed by members who, though having attained the age of 21 years, constitute less than a majority of the Magafaoa who have attained such age the Court may appoint a suitable person to be Leveki Magafaoa of that land.

(4) The appointment of a Leveki Magafaoa shall not be questioned on the grounds that any member of the Magafaoa was absent from Niue, but the Court may consider any representation made in writing by any member so absent.

(5) Any person who is domiciled in Niue, and whom the Court is satisfied is reasonably familiar with the genealogy of the family and the history and locations of Magafaoa land, may be appointed as a Leveki Magafaoa of any land, but if he is not a member of the Magafaoa he shall not by virtue of such appointment acquire any beneficial rights in the land.

(6) In appointing any Leveki Magafaoa the Court may expressly limit his powers in such manner as it sees fit.

**15 Powers and functions of Leveki Magafaoa**

(1) The Leveki Magafaoa of any land, subject to this section and to the terms of his appointment and to any order or direction of the Court, shall have power to control the occupation and use of the land under Niuean custom and shall have power to alienate the land in accordance with and subject to Part 3.

(2) In the exercise of his powers under this section the Leveki Magafaoa shall under Niuean custom consult with the members of the Magafaoa whether resident in Niue or elsewhere and shall in particular meet the requirements as to consultation laid down by section 17(3) in relation to the sale and lease of land and the giving of security charges over land.

**16 Removal and replacement of Leveki Magafaoa**

(1) The Court may remove from office any Leveki Magafaoa if in its opinion he cannot by reason of mental or physical disability or for any reason carry out his duties satisfactorily or if he is shown to the satisfaction of the Court to have exercised his powers otherwise than in accordance with Niuean custom or in accordance with equity and good conscience or if he tenders his resignation in writing to the Registrar.

(2) Upon the death or removal from office of any Leveki Magafaoa a new Leveki Magafaoa may be appointed in the manner provided by section 14 and all the provisions of that section so far as they are applicable shall apply accordingly.

PART 3

ALIENATION OF NIUEAN LAND

*General Provisions*

**17 Alienation of Niuean land**

(1) No Niuean land or any interest of the Magafaoa in it may be alienated except in accordance with and subject to this section.

(2) (a) For the purposes of this section and of this Part a contract of sale of timber, minerals, crops, or other valuable things attached to or forming part of any Niuean land, or being the produce of it, shall be deemed to be an alienation of that land, unless the thing so sold or agreed to be sold has been severed from the land before the making of the contract.

(b) The term “crops” as used in this subsection shall not extend to any crop which attains maturity and may be harvested within the period of 2 years from sowing or planting.

(3) Subject to section 22 as to the confirmation by the Court, Niuean land may be alienated by the Leveki Magafaoa in any of the following ways –

- (a) He may transfer the land to the Crown under and subject to section 43;
- (b) He may lease the land under and subject to sections 26 and 29;
- (c) He may give a security charge over the land under and subject to sections 26 and 32.

(4) Nothing in this section shall be construed to affect the operation of any of the following provisions –

- (a) Section 30 relating to the execution by the Registrar, in certain cases, of renewals of leases;
- (b) Section 31 relating to the making by the Court of occupation orders;
- (c) Section 33 relating to the making of an order for the appointment of a receiver;
- (d) Sections 34 to 39 relating to the making of partition orders;
- (e) Sections 40 to 42 relating to the making by the Court of exchange orders;
- (f) Sections 44 to 46 relating to the making by the Court of an order setting apart any Niuean land as a reservation for communal purposes;
- (g) Section 51 relating to the taking of land by the Crown for public purposes;
- (h) Section 14 and 15 of the Electric Power Supply Act 1960 relating to the taking of land by the Crown for public purposes;
- (i) Sections 47 and 89 of the Niue Amendment Act (No 2) 1968 relating to the making by the Court of orders creating easements or rights of way over Niuean land;
- (j) Part 4 of the Niue Amendment Act (No 2) 1968 relating to the making by the Court of orders vesting Niuean land in bodies corporate for church purposes;
- (k) Part 7 of the Niue Amendment Act (No 2) 1968 relating to the declaration of any Niuean land as a road;

- (l) Part 16 of the Niue Act 1966 relating to the declaration by the Court of Niuean land to be subject to such land development provisions and the constitution of charges in respect of it;
- (m) The Mining Act 1977 in so far as it relates to the issue, grant, suspension, revocation or surrender of any licence affecting or relating to Niuean land;
- (o) Part III of the Mining Act 1977 relating to acquisition of land;
- (p) the provisions of the Proceeds of Crime Act 1998 relating to forfeiture orders.

**18 Interest in Niuean land not to be taken in execution**

(1) No interest of any person in Niuean land shall be capable of being taken in execution or otherwise rendered available by any form of judicial process for the payment of his debts or liabilities, whether in favour of the Crown or in favour of any other person.

(2) Nothing in this section shall affect the operation of any security charge or other charge to which the land is or may be subject.

**19 Restrictions on disposition of proceeds of Niuean land**

(1) An assignment of any rent, purchase money, cropping proceeds or other money which is or may become receivable in respect of Niuean land or any interest of the Magafaoa in it may be given in the approved form by the Leveki Magafaoa, or (in respect of his personal interest) by a member of the Magafaoa or by any lessee or licensee, to any of the following –

- (a) The Crown;
- (b) [Repealed]
- (c) Any lending institution approved by Cabinet.

(2) Except as provided in by subsection (1) no assignment, charge or other disposition shall be given over the proceeds of any rent, purchase money, or other money which is or may become receivable in respect of Niuean land or any interest in it.

**20 Purchase money, rents or other proceeds of alienation**

(1) All proceeds from any alienation, whether by way of purchase money, rent, or otherwise shall be paid to the Registrar for distribution to the Leveki Magafaoa or the persons entitled to it.

(2) The receipt of the Registrar shall be a sufficient discharge for any money so paid in the same manner as if the money had been paid to the persons entitled to it.

(3) All money so paid into the Court shall after any necessary deduction be paid out of Court to the Leveki Magafaoa or the persons entitled to it as determined by any order of the Court.

**21 Registrar may charge commission**

(1) The Registrar shall be entitled to charge a commission at the rate of 5 per cent on the money paid into the Court under section 20.

(2) The Court, having regard to the amount of money paid, to the number of persons entitled to it, and any other relevant matters, may direct that a lower rate of commission be charged in any specified case.

*Confirmation*

**22 Alienation to be confirmed**

(1) No alienation of Niuean land by the Leveki Magafaoa shall have any force or effect unless and until it has been confirmed by the Court.

(2) An appeal shall lie to the Court of Appeal from any decision of the Court to grant or refuse confirmation of an alienation or from any variation by the Court of the terms of any alienation.

(3) Nothing in this section shall apply to any arrangement or decision of the Leveki Magafaoa by which any person is given the right to use any land for a period not exceeding two years.

### **23 Application for confirmation**

No confirmation of an alienation of Niuean land by the Leveki Magafaoa shall be granted, unless an application for it is made by or on behalf of a party to the instrument of alienation within 6 months after the date of the execution of the instrument by the Leveki Magafaoa.

### **24 Orders of confirmation**

Confirmation shall be granted by an order of the Court and a certificate of such confirmation shall be endorsed or otherwise written on the instrument of alienation signed by a Judge of the Court, or by the Registrar acting under the authority of a Judge and sealed with the seal of the Court.

### **25 Effect of confirmation**

Subject to Part 1 as to registration on confirmation being granted, the instrument of alienation shall (if otherwise valid) take effect under its tenor as from and including the date at which it would have taken effect if no such confirmation had been required.

### **26 Conditions of confirmation**

(1) Subject to this section, no alienation shall be confirmed unless the Court is satisfied as to the following matters –

- (a) That the instrument of alienation has been executed in the manner required by this Act;
- (b) That the alienation is not contrary to equity or good faith, or to the interests of the persons alienating or to the public interest;
- (c) That having regard to the relationship (if any) of the parties and to any other special circumstances of the case the rental or consideration (if any) for the alienation is adequate;
- (d) That any lease which exceeds 5 years duration and any security charge has been agreed to by the majority of the members of the Magafaoa whether resident in Niue or elsewhere;
- (e) That the alienation is not otherwise prohibited by law.

(2) The Court may confirm an alienation notwithstanding any informality or irregularity in the mode of execution of the instrument of alienation if, having regard to the interest of all the parties, it is satisfied that the informality or irregularity is immaterial.

(3) No confirmation of an alienation shall be questioned or invalidated on the ground of any error or irregularity in the procedure by which it was applied for or granted.

### **27 Confirmation of instruments in pursuance of precedent contract**

When any valid contract to grant or renew a lease, or any other valid contract of alienation, has been duly confirmed, the confirmation of any lease or other instrument of alienation under that contract shall, if the instrument is duly executed under this Act, be granted by the Court as a matter of right.

**28 Alteration of instruments on confirmation**

(1) On an application for confirmation, the Court may, with the consent of all parties to the instrument of alienation, make, under the seal of the Court, such alterations as may be thought necessary in order to justify confirmation, and may thereupon confirm the alienation.

(2) The instrument of alienation as so altered shall, if otherwise valid, take effect as if the alterations had been made before its execution.

*Leases*

**29 Leases of Niuean land not to exceed 60 years**

(1) Except as provided in this section no lease of Niuean land shall be valid for a longer period than 60 years (including any term or terms of renewal to which the lessee may be entitled).

(2) Every such lease shall be granted so as to take effect in possession within one year from and including the date of the first execution of it by any party to it.

(3) With the prior written approval of Cabinet, leases may be granted for afforestation purposes or for the purpose of erecting commercial or industrial buildings providing for a renewal period taking the total term beyond 60 years if the right to such period or periods is expressed to be conditional upon the performance during the earlier term or terms of certain specified covenants as to the planting and care of trees, or to the erection in permanent materials of substantial improvements.

(4) A lease may be granted for public purposes or church purposes for a period not exceeding 60 years with perpetual rights of renewal or with other rights of renewal taking the total period beyond 60 years. Every such lease shall be expressed to be for public purposes or church purposes and shall provide for the termination of the lease if the land ceases to be used exclusively for those purposes.

(5) No lease of Niuean land shall make provision for the payment to the lessee of compensation for improvements effected by him on or to the land.

(6) Every lease made under this section shall be in an approved form.

(7) Nothing in this section shall be construed to apply to any lease of Niuean land to the Crown.

**30 Registrar may execute renewals**

(1) The lessee under any lease of Niuean land (whether granted before or after the commencement of this Act) who claims that he is entitled to a renewal of his lease and that it is difficult or impossible to obtain execution by the Leveki Magafaoa of an instrument of renewal may apply to the Court for an order directing the Registrar to execute, as an agent of the Magafaoa, an instrument of renewal in accordance with the terms of the lease, and the Court may make such order accordingly.

(2) On the making of an order under this section, the Registrar shall have full authority in accordance with the terms of the order to execute the renewal of the lease as if he were the duly appointed agent of the Magafaoa.

*Occupation Orders*

**31 Court may make occupation orders**

(1) The Court may under this section make in respect of any Niuean land to a member of the Magafaoa or the spouse or surviving spouse of a Member or a Member and spouse jointly an occupation order on such terms and conditions not inconsistent with this section as may be specified in the order.



(2) Application for an occupation order shall be made by the Leveki Magafaoa or by the member of the Magafaoa desiring the order, or by both, and shall be accompanied by a description and plan of the area to be occupied.

(3) Every occupation order shall upon registration take effect under its tenor.

(4) Unless the area concerned has already been defined by survey and used or occupied as a separate section an occupation order shall not be made over an area of less than 20 perches in the case of a village site and less than 2 acres for a plantation area.

(5) An occupation order may be made for the personal use of the person for whose favour it is made for his lifetime or for some specified term of years or may be granted upon terms that it passes to that person's successors under Niuean custom.

(6) Every occupation order of village site land shall, if possible, be made in favour of a husband and wife jointly.

(7) No rental or premium shall be payable in respect of an occupation order.

(8) Such occupation order may provide for the termination of it and the reversion to the Magafaoa of the land affected if the person in whose favour it is made or the person otherwise entitled to the benefit of it;

(a) Ceases to make full use of the land for any period of not less than 2 years which may be specified in such occupation order;

(b) Is absent from Niue for any period of not less than 2 years which may be specified in such occupation order otherwise than with the prior written approval of Cabinet for the purpose of any training, education or instruction;

(c) Fails to perform any of the special covenants which may be specified in the order;

(d) Surrenders rights conferred by the order by executing an instrument in the approved form.

(9) (a) The Leveki Magafaoa or the Registrar may apply to the Court for a certificate that the order has for any reason specified in subsection (8) terminated and the Court may, if it is satisfied that the order was terminated under subsection (8), give a certificate accordingly.

(b) Any such certificate may be registered.

#### *Security Charges*

### **32 Security charge over Niuean land**

(1) Security over Niuean land or any interest of the Magafaoa in any land and security over the interest of any nature of any person in Niuean land may be given by means of a security charge created under this section or any other charge created by or under any enactment.

(2) No security over Niuean land or any interests in it as aforesaid shall be given to any person or body except to –

(a) The Crown;

(b) [Repealed]

(c) Any lending institution approved for the purposes of this section by Cabinet.

(3) Security over Niuean land or any interest in it of the Magafaoa, or over the interest of any nature of any person in Niuean land shall be created by an instrument in an approved form executed by the Leveki Magafaoa or by the other person giving the security and registered under Part 1:

Provided however that any security charge executed by a Leveki Magafaoa shall be subject to confirmation by the Court as provided by sections 22 to 28.



(4) Except as provided in this section no security shall be given or constituted over Niuean land or any interest in it.

(5) No charge or security charge over Niuean land or any interest shall be enforceable by sale of the land or interest charged.

### **33 Appointment of Receiver**

The Court, on application and proof of default, may enforce a charge or security charge as aforesaid by appointing in respect of the land or interest charged a receiver and section 56 of the Niue Amendment Act (No 2) 1968 shall apply as if the receiver had been appointed under that section.

#### *Partitions*

### **34 Jurisdiction to partition Niuean land**

(1) The Court shall have exclusive jurisdiction to partition Niuean land.

(2) The jurisdiction to partition shall be discretionary and the Court may refuse to exercise it in any case in which it is of the opinion that partition would be inexpedient in the public interest or in the interests of the Magafaoa or other persons interested in the land.

### **35 Court may apportion rights and obligations**

(1) When a partition order is made, the Court may, in that order or in any subsequent order made on the application of any person interested, or of the Registrar, or of its own motion, apportion or adjust as between the several pieces into which the land has been partitioned all rights, obligations, or liabilities arising from any lease, occupation order, or charge to which the land is subject at the date of the partition of it and every such order of apportionment or adjustment shall have effect according to its tenor in the same manner in all respects as if all necessary transfers, releases, covenants, and other dispositions or agreements had been duly made in that behalf by all persons concerned.

(2) In the exercise of its powers under this section the Court shall not make any apportionment or adjustment without the consent of each and every –

(a) Lessee of the land; and

(b) Person having an interest in the land, by virtue of an order made under section 31, where the order has been made upon the terms mentioned in that section; and

(c) Person or body in whose favour a security charge created under section 32, subsists over the land or over any interest in the land.

(3) Subject to subsection (2) the Court may exercise the powers of apportionment or adjustment, conferred upon it by subsection (1).

### **36 Discretionary powers of Court**

In partitioning any land the Court may exercise the following discretionary powers –

(a) It may where the Leveki Magafaoa wishes to allocate a portion of the land to a member of the Magafaoa or the Magafaoa has become unduly large or in cases of irreconcilable family disputes, partition the land among groups of members of the Magafaoa on what appears to the Court to be the general desire of the persons concerned to be just and equitable;

(b) It shall avoid, as far as practicable, the subdivision of any land into areas which because of their smallness or their configuration or for any other reason, are unsuitable for separate ownership or occupation;

- (c) It may appoint new Leveki Magafaoa in respect of the pieces of land affected by any partition orders.

**37 Combination of several areas of land**

When the Magafaoa of one area of land is also the Magafaoa of any other areas of land, the Court may, for the purposes of partition between groups of members of the Magafaoa, treat those several areas as a single area owned by them and make an order or orders of partition accordingly.

**38 Saving of interests charged on partitioned land**

If, on the partition of any land, the share or interest of any person is subject to any right, charge, or interest vested in any other person, that right, charge, or interest shall, subject to any apportionment or adjustment made under section 35 attach to and affect the land or interest that is allocated by the partition order to the owners of the first-mentioned share or interest.

**39 Entries in Land Register**

When any land is partitioned by the Court, the Registrar shall give effect to the partition by entries in the land Register, recording particulars of any new section thereby created and to the extent necessary for cancelling or amending any former entry.

*Exchanges*

**40 Court may make exchange orders**

- (1) The Court may make an order of exchange of Niuean land.
- (2) Any interest in Niuean land may be exchanged for an interest in any other Niuean land or in Crown land.

**41 Conditions of exchange**

The Court shall not make an order of exchange unless satisfied –

- (a) That the exchange is not detrimental to the interests of the Magafaoa affected by it;
- (b) (i) That the interests to be so exchanged are in the opinion of the Court approximately equal in value; or  
(ii) That where in the opinion of the Court the interests so exchanged are so unequal in value as to require this course, a sufficient sum of money by way of equality of exchange has been actually paid, or sufficient security for the payment of it has been given;
- (c) That the majority (or where there are less than 5 members, the whole of the members of the Magafaoa) of the members of the Magafaoa whether resident in Niue or elsewhere consent to the exchange;
- (d) That the Minister consents to the exchange of any Crown land.

**42 Effect of order of exchange**

- (1) An order of exchange shall operate under its tenor to transfer and vest the respective interests expressed to be exchanged in the same manner as if all necessary instruments of assurance had been lawfully executed by and between all persons interested, and as if they had all been fully competent in that behalf.
- (2) When any Crown land becomes vested in a Magafaoa by an order of exchange, the land shall become Niuean land.

*Sales*

**43 Sale of Niuean land to the Crown**

(1) Niuean land may be alienated to the Crown by way of transfer by an instrument of transfer executed by the Leveki Magafaoa and confirmed by the Court.

(2) The instrument of transfer shall not be confirmed by the Court until the members of the Magafaoa and their shares have been ascertained by the Court.

(3) On application of the Crown or the Leveki Magafaoa the Court shall be satisfied that the majority (or where there are less than 5 members, the whole of the members of the Magafaoa) of the members of the Magafaoa whether resident in Niue or elsewhere consent to the terms and conditions of the sale.

(4) If some members of the Magafaoa of the land object to the sale of land to the Crown, the Court may make a partition order setting apart the shares of the members objecting if it is satisfied that the land can be economically subdivided.

(5) Any members of the Magafaoa of the land affected by the sale who are absent from Niue may forward their consents or objections in writing to the Registrar or appoint in writing some person to appear and speak on their behalf in the Court.

(6) In the registration of an instrument of alienation of Niuean land to the Crown duly confirmed by the Court, the land shall become Crown land.

*Reservations*

**44 Reservations for communal purposes**

(1) The Court may on the application of any Leveki Magafaoa and with the consent of the majority of the members, who in the Court's opinion constitute a majority of the members of the Magafaoa who are ordinarily resident in Niue, make an order setting apart any Niuean land, which is not subject to any charge, as a reservation for the common use of the residents of a village, or of a Church or other group or institution for such purpose as a burial ground, fishing ground, village site, landing place, place of historic interest, source of water supply, Church site, building site, recreation ground, bathing place or any other specified purpose whatsoever.

(2) Before making such an order the Court shall be satisfied that the members of the Magafaoa who are not ordinarily resident in Niue will not as a result of the proposed order suffer undue hardship.

**45 Revocation or variation of reservation**

(1) A reservation order may be revoked or varied by the Court whether as to boundaries of the land included in the reservation or as to the purposes of it.

(2) Where by reason of the revocation or variation of any reservation order under this section any land ceases to be a reservation or part of a reservation the land shall vest, as of its former estate in the Magafaoa and in which it was vested immediately before it was constituted or as included in the reservation, or in their successors. In any such case the Court may make an order vesting the land in the Magafaoa found by it to be entitled to the land, and if necessary ascertaining the members of the Magafaoa and their relative interests.

**46 Management and control of reservations**

The Court may by order, vest any reservation in any body corporate or in one or more persons in trust to hold and administer it for the benefit of the persons or class of persons for whose benefit the reservation is constituted, and may appoint a new trustee or new trustees or additional trustees.

PART 4  
SURVEYS

**47 Control and supervision of surveys**

(1) The control and supervision of all surveys of land in Niue, and the preparation of plans in relation thereto shall be the responsibility of the Registrar.

(2) No survey of land shall be conducted except under an order of the Court or by the Registrar or with his prior written authority and all such surveys shall be carried out by a surveyor.

(3) Any plan or diagram required to be endorsed on or appended to any instrument or otherwise included in the Land Register shall be prepared by or with the authority of the Registrar and shall be certified by him as representing the true boundaries of the land and such other details as may be relevant as agreed to by the interested parties or as determined by the Court.

(4) No charge shall be made for any survey for the purpose of the initial registration of any section of land or for the preparation of plans in relation thereto.

(5) Fees may be charged for any survey or for the preparation of any plan or diagram otherwise than provided in subsection (4) at such rate as may be fixed by the Registrar.

**48 Authority for survey**

(1) The Registrar or any person authorised in writing by the Court or by the Registrar may during the hours of daylight enter upon any land for the purpose of carrying out a survey of the land or any part of it and may do all things reasonably necessary for the purposes of such survey.

(2) The Leveki Magafaoa or the occupier of any land claiming to have suffered damage under subsection (1) by the entry on it for the purposes of survey may lodge a claim for compensation for such damage with the Registrar.

(3) The Registrar may make good any damage caused as aforesaid or may authorise payment in settlement of the claim.

(4) Any applicant not satisfied with the decision of the Registrar on his claim may apply to the Court to determine the amount (if any) of compensation and the Court shall issue an order accordingly.

**49 Authority to enter on land**

Before entry is made on any land under section 48 for the purposes of survey the Registrar shall give or cause to be given to the Leveki Magafaoa or to any occupier of the land such notice as is reasonable in the circumstances.

**50 Obstruction**

(1) Any person wilfully preventing or obstructing any survey, authorised under this Act or any other enactment, or destroying, effacing or removing any survey pegs or boundary mark placed under the authority of this Act shall be liable on conviction to a fine not exceeding 0.5 penalty units and shall also be liable to make good any loss or damage thereby occasioned.

(2) Any person having knowledge of the removal, destruction or possibility of the removal or destruction of any boundary mark or survey monument shall inform the Registrar who shall take such steps as are necessary and expedient to protect, repair or replace the same.

PART 5

MISCELLANEOUS PROVISIONS

**51 Procedure for taking land for public purposes**

(1) Cabinet may direct the Registrar to give notice under this section of a proposal to take land for public purposes.

(2) (a) The Registrar shall prepare a plan of the area proposed to be taken on which shall be set forth the names of the Magafaoa involved and as far as possible the names and addresses of the Leveki Magafaoa and of any lessee or occupier of the particular areas.

(b) The plan shall be held in the office of the Court and shall be available for public inspection.

(3) (a) The Registrar shall give notice in writing of the proposed taking of land to the Leveki Magafaoa and to any lessee or other person possessing an interest likely to suffer injury by the taking including any person or body in whose favour a security charge over the land exists.

(b) Each such notice shall advise that the plan may be inspected at the office of the Land Court and that any person may give to the Registrar within 30 days of the date of the notice written notification of his objection to the proposal and his reasons for it.

(4) The Registrar shall, where an objection has been lodged fix a time and place at which the objector may appear before Cabinet and support the objection by evidence and argument and shall give to the objector notice in writing of such time and place.

(5) If within the said period of 30 days no written notice of objection is received by the Registrar, or if after due consideration of the objection or objections Cabinet is of the opinion that effect should be given to the proposal to take the land for the public purpose, and that no private injury will be done by it for which due compensation is not provided by any enactment Cabinet may recommend to the Minister that the land be taken for the public purpose under section 11 of the Niue Amendment Act (No 2) 1968.

(6) In any case where the ownership of the land proposed to be taken has not been determined or a Leveki Magafaoa has not been appointed or it is considered desirable to determine the members of the Magafaoa and their relative interests, the Registrar may apply to the Court to exercise its jurisdiction accordingly.

(7) In any case where under any enactment or otherwise authority exists for the Crown through its servants, agents or workmen to enter on any Niuean land to carry out works for any public purpose, and no express provision is made as to the giving of notice, Cabinet or some person authorised by it shall before any entry is made on the land give to the Leveki Magafaoa or to any occupier of the land, such notice of his intention to enter as is reasonable in the circumstances.

**52 Registrar's powers**

(1) The Registrar may in the exercise of his powers under this Act state any case or reserve any question for consideration by the Court, or apply for directions to the Court, and the Court shall have the power to hear and determine the case or question, or give directions accordingly.

(2) Any person aggrieved by a decision of the Registrar given in pursuance of his powers under this Act may appeal to the Court, which may confirm, quash or vary the decision but no appeal shall lie under this subsection in any case where the decision of the Registrar has been given in confirmity with the determination by the

Court of a case or question stated or reserved by him in connection with the same matter for its consideration under subsection (1).

(3) The Registrar may, for the purposes of this Act –

- (a) In writing, require any person to produce any or give any information relating to land or to any interest in land;
- (b) In connection with any dealing with any land or interest in it, or with any disposition of it, in writing require any person having the custody or control of any duplicate instrument concerned to bring it into the Land Registry to be endorsed, cancelled, amended, inspected or otherwise dealt with as the case requires;
- (c) Make or delete all such entries upon or from the land register, instrument, duplicate, map, plan or other document as are necessary by reason of the operation of this Act or any other enactment.

**53 Officers not personally liable**

Neither the Registrar nor any members of his staff shall be personally liable to any action or proceeding for or in respect of any act or matter bona fide done, or omitted to be done by him or them in the exercise or supposed exercise of the powers conferred upon them by this Act or any other enactment.

**54** [Spent]

# LIQUOR ACT 1975

1975/2 – 13 February 1975

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## SCHEDULE

### To provide for the control of the manufacture and sale of liquor in Niue

#### 1 Short title

This is the Liquor Act 1975.

#### 2 Interpretation

(1) In this Act –

“Board” means the Liquor Board;

“Secretary” means the Financial Secretary;

“Commissioner” means a Commissioner of the High Court;

“Director” means the Director of Health;

“liquor” means any spirit, wine, ale, beer, stout, cider or any other fermented distilled or spirituous liquor ordinarily used as a beverage which contains more than 2 parts per cent of proof spirit;

“Minister” means the Minister of Customs, Shipping and Trade;

“police officer” means any constable of any rank acting with the express authority and under the instructions of the Chief Officer of Police.

(2) Where by this Act the Minister is enabled to delegate any of his powers to the Secretary, or to authorise the Secretary to take any action, he may in addition to it or in lieu of it delegate to or authorise any other officer of the Customs Department.

(3) Nothing in this Act shall apply to a minister of religion obtaining and using or giving wine or other liquor in connection with any religious rite or sacrament.

#### 3 Liquor Board

(1) There is hereby established for the purposes of this Act, a Board to be known as the Liquor Board which shall consist of not less than 3 persons nor more than 6 persons to be appointed by Cabinet.

(2) The persons appointed by the Cabinet from the general public shall hold office for a term of 3 years from the date of their appointment and may in like manner be reappointed.

(3) Three members of the Board present at a meeting shall form a quorum.

(4) The Board shall have power to –

(a) Grant or refuse any application for a licence under this Act:



Provided that no such application shall be finally considered by the Board until a written report from the Chief of Police has been received and considered by the Board;

- (b) Hold such inquiries and advise the Government on matters relating to the control of manufacture, sale and consumption of liquor in Niue;
- (c) Prescribe fees to be paid for licences under this Act;
- (d) Fix the price payable to licensees for liquor sold by them;
- (e) Prescribe opening and closing hours for the sale of liquor by licensees;
- (f) To do such things as may be prescribed by regulations under this Act.

(5) There shall be a Secretary of the Board who shall be appointed by the Public Service Commission and who may hold any other office in the Public Service which the Public Service Commission shall consider to be not incompatible with it.

(6) Members of the Board not being members of the Public Service may be paid in respect of each day or part of a day of attendance as members of the Board such sum as Cabinet shall determine, together with any expenses reasonably incurred by them in respect of their attendances at meetings of the Board.

#### **4 Manufacture and importation of liquor**

(1) It shall not be lawful for any person to brew or manufacture liquor in Niue except with the prior written authority of the Board to be given on such terms and conditions as it may deem fit to impose and to be consistent with any regulations made under this Act.

(2) Except as provided in section 5 it shall not be lawful for any person to import any liquor into Niue:

Provided that it shall be lawful for any person of or over the age of 18 years returning or entering into Niue to bring with him as part of his personal baggage and exempt from customs duty an amount that does not exceed:

- (a) (i) 3.5 litres of spirits; or
- (ii) 3.5 litres of liquor; or
- (iii) 3.5 litres of wine; or
- (iv) any combination of (i)-(iii) above provided that the total volume does not exceed 3.5 litres; or (b) 8.5 litres of beer.

(3) Every person who carries, conveys or conceals any liquor brewed, manufactured or imported in breach of this section or, who has in his possession or control any such liquor, or who is the owner, lessee, or occupier of any premises in or about which any such liquor is found, shall be guilty of an offence, unless in the case of an accused charged with being the owner, lessee, or occupier of premises in which any such liquor is found as aforesaid he satisfies the Court that such liquor was not there with his knowledge or consent.

#### **5 Minister may import liquor**

(1) The Minister may, for and on behalf of the Government, and at the cost of the Treasury Operating Account purchase and import into Niue such liquor of such nature as he thinks fit for sale or use under this Act.

(2) The Minister may delegate all or any of his powers under subsection (1) to the Secretary.

(3) The Board may grant a licence to a person to import liquor.

(4) A licence granted under subsection (3) is valid for one year but may be terminated by the Board if the licensee is convicted of an offence under this Act.

#### **6 [Spent]**

**7 Sales of liquor by Government**

(1) The Government may sell liquor to any persons of or over the age of 18 years who have not been prohibited under a prohibition order, at such prices as the Minister shall fix.

(2) Such sales shall be made for cash and from such Government store on such days and between such hours as the Minister shall direct.

(3) No such sale shall be of less liquor than is contained in a bottle or can or other sealed container, and no liquor shall be consumed by any person at any such store.

(4) The Secretary shall keep proper records relating to the importation custody and sale or other disposition of liquor.

**8 Licences to resell liquor**

(1) (a) It shall be lawful for the Board to grant, on application in the manner set out in the Schedule and upon payment of the appropriate fee a licence to the owners or occupiers of suitable premises authorising the holder of it to sell liquor in the licensed premises at such times and during such hours as shall be stipulated in the licence.

(b) No licence shall be granted under this section without due regard being had to the general policy in relation to it of the Village Council of the village wherein such premises are situated.

(2) A licence issued under this section shall be renewed annually on March 31 and shall be subject to all such terms and conditions imposed in each case as the Board thinks fit and the Board may cancel or vary any such licence.

(3) Any such licence may, at the Board's discretion, authorise the sale of liquor for consumption on the premises only or for consumption off the premises only, or for consumption either on the premises or off the premises.

**9 Offences by licensees**

(1) Every licensee who shall sell or expose for sale any liquor at any place or time or in any quantity or manner not authorised by his licence or by this Act shall be guilty of an offence.

(2) Any licensee who sells or supplies or allows to be sold or supplied any liquor to any person under 18 years of age shall be guilty of an offence.

(3) Every licensee commits an offence, who –

(a) Permits drunkenness, violence, quarrelsome behaviour, or disorderly or riotous conduct to take place on his licensed premises or sells any liquor to any drunken person; or

(b) Knowingly permits any disorderly or drunken persons to assemble or remain on his licensed premises; or

(c) Suffers or permits his licensed premises to be used as a gaming house within the meaning of section 53 of the Criminal Law Code.

(4) Every licensee shall be responsible for the acts or omissions of his servants or agents in contravention of this Act, notwithstanding that it shall appear that the offence charged was not committed by such licensee personally but by his servant or agent.

**10 Offence to sell liquor without authority**

Every person not being licensed under or by virtue of this Act to sell liquor, who sells or offers or exposes or keeps for sale any liquor commits an offence.

**11 Offences by persons under 18 years**

- (1) Every person under the age of 18 years commits an offence, who –
- (a) Purchases or consumes or has possession of any liquor on any premises where liquor is sold; or
  - (b) Has possession of any liquor in any place of resort open to or used by the public.
- (2) Every person commits an offence who, not being a licensee or agent or servant of a licensee supplies any liquor to a person under the age of 18 years in any place of resort open to the public.

**12 Offence to drink liquor in public thoroughfares**

Every person commits an offence who drinks any liquor on any road, street, footpath, alley or any thoroughfare of a public nature, or in any public passenger carrying vehicle or on any village green other than during the course of an official function lawfully held on it.

**13 Prohibition orders**

- (1) Upon the application of any person or any relative of such person or of the Police, and upon proof that such person is of confirmed intemperate habits a Commissioner may make a prohibition order in respect of such person prohibiting him from possessing or consuming any liquor for such period not exceeding 2 years as the Commissioner shall determine.
- (2) Every prohibited person who purchases or procures or possesses or consumes liquor during the currency of a prohibition order commits an offence.
- (3) Every person commits an offence who knowingly procures any liquor for a prohibited person or assists such person to procure liquor.
- (4) A prohibition order may at any time not less than 6 months after the date of the order be rescinded by a Commissioner on being satisfied that the prohibited person has in all respects complied with the prohibition order and appears unlikely to revert to his previous intemperate habits.
- (5) Whenever a Commissioner has made a prohibition order under this Act he shall cause notice of it to be given to the Chief Officer of Police, the Secretary, and all licensees holding licences granted under section 8.

**14 Penalties**

- (1) Any person convicted of an offence against this Act or any regulations made under this Act shall, until and unless any other penalty is provided, be liable for a first offence to a fine not exceeding 0.5 penalty units and for a second or any subsequent offence to imprisonment for a term not exceeding 6 months or a fine not exceeding 5 penalty units, or both.
- (2) Where any offender against this Act is a licensee, the convicting court may in addition recommend to the Board that his licence be cancelled.
- (3) Where a second or subsequent offence involving drunkenness is committed by any person the court in addition to any other penalty may make a prohibition order against him.
- (4) On the conviction of any person for an offence against this Act, the court, in addition to any other penalty imposed or order made by it, may declare any liquor which has been seized by the Police under section 16 (c) and in respect of which such person is convicted together with the container of such liquor, to be forfeited to the Government, to be sold, destroyed, or otherwise disposed of as the Minister thinks fit.

**15 Commencement of proceedings**

All proceedings for offences against this Act shall be commenced within a period of 6 months after the commission of the offence charged, and may be instituted and prosecuted in the name or at the instance of the Chief Officer of Police or the Secretary.

**16 Powers of constables**

Any constable may at any time –

- (a) Enter on and inspect any licenced premises or any part of it;
- (b) Demand the name address and age of any person in any licensed premises;
- (c) On suspecting on reasonable grounds that an offence against this Act has probably been committed at or in any place to enter on such place under the authority of a search warrant to be duly obtained by him, and to seize any liquor the possession of which is not satisfactorily accounted for by any owner or occupant of such place, such liquor to be held in safe custody pending an order being made under section 14 (4) in relation to it.

**17 Regulations**

(1) The Minister acting on the advice of Cabinet may make all such regulations as shall be necessary or expedient for giving full effect to this Act and for the due administration of it.

(2) Without limiting the general power conferred by subsection (1), it is hereby declared that regulations may be made under this section for all or any of the following purposes –

- (a) Prescribing procedures and forms in respect of applications for, grant of and renewal of licenses:  
Provided that unless and until such regulations shall be made amending the form of application for and grant of a licence the form contained in the Schedule shall be the form for the several matters referred to in the Schedule;
- (b) Providing for the keeping of records and accounts for the purposes of this Act;
- (c) Prescribing minimum standards with respect to the location size and nature of premises to qualify for the issue of a licence under this Act.

**18 [Spent]**

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SCHEDULE

Section 8

Application for Licence to Sell Liquor

To the Secretary, Liquor Board

Application is hereby made for a licence to sell liquor in accordance with the following particulars

- 1 Name of applicant .....
- 2 Occupation.....
- 3 Address .....
- 4 Location of premises where licence is sought .....
- 5 Full description of premises (eg club, restaurant, shop, etc).....

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- .....
- 6 Size and nature of premises .....
- .....
- 7 Proposed hours of operation (eg opening and closing). Whether split (eg 2pm-5pm, 7pm – 10pm, etc. ....
- 8 Additional facilities offered to members, patrons or customers (eg coffee, light snack, meals, entertainment, games, dancing, music, toilet) .....

SIGNED by or on behalf of the applicant

Signature .....

Date.....

FOR OFFICE USE ONLY

Application No..... Date Received.....

Previous Application..... Granted/Refused.....

Date this application presented to Board .....

This application: Granted/Refused .....

Terms on which licence granted: (e.g. hours, etc) .....

Fee payable

# MANUFACTURED GOODS TAX ACT 1964

1964/21 – 2 June 1964

	PART 1		PART 3
	PRELIMINARY		TAX ON GOODS MANUFACTURED IN NIUE
1	Short title	8	Tax imposed
2	Interpretation	9	Refunds
3	Recovery of tax		
	PART 2		PART 4
	TAX ON IMPORTED GOODS		MISCELLANEOUS PROVISIONS
4	Rates of tax payable	10	Regulations
5	Payment	10A	New Zealand Representative Act 1981
6	Personal effects exempted	11	[Spent]
7	Refunds		
			SCHEDULE

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## To provide for the imposition and collection of a tax on certain goods imported into, or manufactured in Niue

### PART 1 PRELIMINARY

- 1 Short title**

This is the Manufactured Goods Tax Act 1964.
- 2 Interpretation**

In this Act –

  - “current domestic value” has the same meaning as in the Customs Act 1966;
  - “goods” means movable personal property of all kinds;
  - “motor vehicle” means a vehicle which is drawn or propelled by mechanical power, but does not include –
    - (a) A tractor within the meaning of the Transport Act 1965;
    - (b) Any bulldozer, earth-scraper, earth-removing machine, earth-dumper, mobile crane or otherwise, or any other similar machine; or
    - (c) Any agricultural implement;
  - “value” in relation to goods, means –
    - (a) For the purposes of Part 2, their current domestic value; and
    - (b) For the purposes of Part 3 the cost of their production as ascertained by the Financial Secretary by reference to such accounting records as may be required to be kept by manufacturers by regulations made under this Act.
- 3 Recovery of tax**
  - (1) Tax payable under this Act (including any penalty charged under subsection (2)), shall constitute a debt due to the Government and shall be recoverable as such at suit of the Financial Secretary.
  - (2) If default is made in the payment of any tax payable under this Act the person making default shall be chargeable by way of penalty with additional tax equivalent to 50 per cent of the amount of tax in respect of which default was made.

PART 2

TAX ON IMPORTED GOODS

**4 Rates of tax payable**

(1) There shall be payable on all goods imported into Niue of the kind named in the Schedule a tax at the respective rates set out in it.

(2) The tax hereby imposed shall be payable on the sum of the value of such goods and the amount of Customs duty payable on such goods.

**5 Payment**

Tax payable under this Part shall be paid to the Financial Secretary by the importer of the goods before the entry of such goods is passed by the Revenue Manager.

**6 Personal effects exempted**

(1) In this section –

“motor car”, “motor cycle”, “power cycle”, “taxicab”, “tractor”, “trade motor” and “trailer” have the meanings attributed to them respectively by section 3(1) of the Transport Act 1965;

“personal effects” means and includes any personal effects, personal clothing, personal baggage, household goods, domestic chattels or private motor vehicle;

“private motor vehicle” means any motor car, motor cycle, power cycle or trailer, but does not include any taxicab, tractor or trade motor.

(2) Subject to subsection (3), nothing in this Act shall apply to any personal effects owned by any person at the date of that person’s arrival in Niue, and also owned by such person at the date of the import of the personal effects in Niue, and also imported in Niue –

(a) During the period of 3 months immediately prior to that person’s arrival in Niue; or

(b) Upon that person’s arrival in Niue; or

(c) During the period of 3 months immediately after that person’s arrival in Niue; and

neither sold, nor bartered, nor given away, nor otherwise disposed of by such person during the period of one year immediately after the import of such personal effects into Niue.

(3) Where, under subsection (2) any private motor vehicle has not been taxed under this Act and where, during the period of 5 years immediately after the import of such vehicle into Niue, such vehicle is used or converted for use as a taxicab, tractor or trade motor, then tax shall, under this Act, be paid, by the owner of the vehicle at the time when it is first so used or first so converted, on the value of it immediately before it was first so used or first so converted or immediately after it was first so used or first so converted, whichever is the higher, as if the vehicle had then been imported into Niue.

(4) Tax on any private motor vehicle referred to in subsection (3) shall, under this Act, be payable once only.

(5) Where any private motor vehicle is hired out for money, or for any other reward or other valuable consideration, for a period of at least 3 months or for periods which in the aggregate, amount to a period of at least 3 months then, on the completion of such period of 3 months the vehicle shall, for the purposes of subsection (2) be deemed to have been disposed of by the person who imported the vehicle into Niue and shall, for the purposes of subsection (3), be deemed to have been converted for use as a trade motor.



## Manufactured Goods Tax Act

(6) (a) The value at any particular time of any personal chattels or vehicle to which this section relates shall, for all or any of the purposes of this section, be assessed by the Revenue Manager.

(b) Any person interested who considers that any such assessment of value is excessive may, at any time within a period of 3 months after the date of issuing of any demand for payment of tax based on such assessment, appeal to the Court against the assessment and, after hearing any such appeal, the Court may either confirm the assessment or, if it thinks that the assessment is excessive, reduce the amount of it to a sum which it thinks proper and such demand for payment of tax shall be deemed to have been modified accordingly.

(c) The judgment of the Court on any such appeal shall be final.

### **7 Refunds**

The amount of any tax paid under this Part by an importer may be refunded upon application to the Financial Secretary if the goods on which the tax has been paid have not been used or sold and the Financial Secretary is satisfied that they have been exported from Niue.

## PART 3

### TAX ON GOODS MANUFACTURED IN NIUE

### **8 Tax imposed**

The tax imposed on goods by Part 2 shall also be payable on the value (as defined in this Act) of all such goods as are manufactured in Niue and shall be paid to the Financial Secretary by the manufacturer before such goods are offered for sale.

### **9 Refunds**

The amount of any tax paid under this Part by a manufacturer may be refunded upon application to the Financial Secretary if the goods on which the tax has been paid have not been used or sold and are surrendered if so required by the Financial Secretary to the Revenue Manager for destruction.

## PART 4

### MISCELLANEOUS PROVISIONS

### **10 Regulations**

Cabinet may make such regulations as it may consider necessary for the proper application or enforcement of this Act.

### **10A New Zealand Representative Act 1981**

The provisions of this Act shall not apply to any person entitled to privileges and immunities under the New Zealand Representative Act 1981.

### **11 [Spent]**

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# Niue Legislation 2019

## SCHEDULE

Goods	Rates of Tax Payable
1 Preserved Fruit	5 per centum
2 Confectionery	5 per centum
3 Wines fermented and containing more than 3 per cent proof spirit	10 per centum
4 Spirits and spiritous mixtures	10 per centum
5 Beer containing more than 2 per cent proof spirit	10 per centum
6 Cameras	10 per centum on items over \$20 C.D.V.
7 Radios and radiograms	10 per centum on items over \$20 C.D.V.
8 Watches and clocks	10 per centum on items over \$40 C.D.V.
9 Jewellery	10 per centum on all items
10 Tobacco	5 per centum
11 Cigarettes	5 per centum
12 Motor vehicles	10 per centum

# MARINE INSURANCE ACT 1908

1908/112/(NZ) – 4 August 1908

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	<i>Marine Insurance</i>	40	Warranty of seaworthiness of ship
3	Marine insurance defined mixed sea and land risks	41	No implied warranty that goods are seaworthy
4	Marine adventure and maritime perils defined	42	Warranty of legality
	<i>Insurable Interest</i>		<i>The Voyage</i>
5	Avoidance of wagering or gaming contracts	43	Implied condition as to commencement of risk
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7	When interest must attach	45	Sailing for different destination
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75	General provisions as to measure of indemnity	84	Return for failure of consideration
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80	Right of contribution	87	Implied obligations varied by agreement or usage
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82	Enforcement of return	90	[Repealed]
83	Return by agreement		

SCHEDULES

**To consolidate certain enactments relating to marine insurance**

**1 Short Title**

This is the Marine Insurance Act 1908.

**2 Interpretation**

In this Act –

“action” includes counterclaim and set-off;

“freight” includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or movables, as well as freight payable by a third party, but does not include passage money;

“movables” means any movable tangible property other than the ship, and includes money, valuable securities, and other documents;

“policy” means a marine policy.

*Marine Insurance*

**3 Marine insurance defined, mixed sea and land risks**

(1) A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses – that is to say, the losses incident to marine adventure.

(2) A contract of marine insurance may, by its express terms or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

(3) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply to it; but, except as provided by this section, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as defined by this Act.

**4 Marine adventure and maritime perils defined**

(1) Subject to this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

(2) In particular there is a marine adventure where –

(a) Any ship, goods, or other movables (“insurable property”) are exposed to maritime perils;

- (b) The earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to the marine perils;
- (c) Any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property by reason of maritime perils.
  - (3) “Maritime perils” means the perils consequent on or incidental to the navigation of the sea – perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detentions of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or designated by the policy.

*Insurable Interests*

**5 Avoidance of wagering or gaming contracts**

- (1) Every contract of marine insurance by way of gaming or wagering is void.
- (2) A contract of marine insurance is deemed to be a gaming or wagering contract –
  - (a) Where the assured has not an insurable interest, and the contract is entered into with no expectation of acquiring such an interest; or
  - (b) Where the policy is made “interest or no interest”, or “without further proof of interest than the policy itself”, or “without benefit of salvage to the insurer”, or subject to any other like term.
- (3) Where there is no possibility of salvage a policy may be effected without benefit of salvage to the insurer.

**6 Insurable interest defined**

- (1) Subject to this Act, every person has an insurable interest who is interested in a marine adventure.
- (2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure, or to any insurable property at risk therein, in consequence of which he may benefit by the safety of or due arrival of insurable property, or may be prejudiced by its loss, or by damage to it, or by the detention of it, or may incur liability in respect of it.

**7 When interest must attach**

- (1) (a) The assured must be interested in the subject-matter insured at the time of the loss, though he need not be interested when the insurance is effected.
- (b) Where the subject-matter is insured “lost or not lost”, the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss and the insurer was not.
- (2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss.

**8 Defeasible or contingent interest**

- (1) A defeasible interest is insurable, as also is a contingent interest.
- (2) In particular, where the buyer of goods has insured them he has an insurable interest, notwithstanding that he might at his election have rejected the goods, or have treated them as at the seller’s risk, by reason of the latter’s delay in making delivery or otherwise.

**9 Partial interest**

A partial interest of any nature is insurable.

**10 Reinsurance**

(1) The insurer under a contract of marine insurance has an insurable interest in his risk, and may reinsure in respect of it.

(2) Unless the policy otherwise provides, the original assured has no right or interest in respect of such reinsurance.

**11 Bottomry**

The lender of money on bottomry or respondentia has an insurable interest in respect of the loan.

**12 Master's and seamen's wages**

The master or any member of the crew of a ship has an insurable interest in respect of his wages.

**13 Advance freight**

In the case of advance freight, the person advancing the freight has an insurable interest in so far as such freight is not repayable in case of loss.

**14 Charges of insurance**

The assured has an insurable interest in the charges of any insurance which he may effect.

**15 Quantum of interest**

(1) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value of it, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

(2) A mortgagee, consignee, or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

(3) The owner of insurable property has an insurable interest in respect of the full value of it, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.

**16 Assignment of interest**

(1) Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there is an express or implied agreement with the assignee to that effect.

(2) The provisions of this section do not affect a transmission of interest by operation of law.

*Insurable Value*

**17 Measure of insurable value**

Subject to any express provision or valuation in the policy, the insurable value of the subject-matter insured must be ascertained as follows:

(a) In insurance on ship the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers

and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole; and, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured; and in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade;

- (b) In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance;
- (c) In insurance on goods or merchandise the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole;
- (d) In insurance on any other subject-matter the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance.

*Disclosure and Representations*

**18 Disclosure by assured**

(1) Subject to this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such a disclosure, the insurer may avoid the contract.

(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk.

(3) In the absence of inquiry the following circumstances need not be disclosed, namely:

- (a) Any circumstance which diminishes the risk;
- (b) Any circumstance known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business, as such, ought to know;
- (c) Any circumstance as to which information is waived by the insurer;
- (d) Any circumstance which is superfluous to disclose by reason of any express or implied warranty.

(4) Whether any particular circumstance which is not disclosed is material or not is in each case a question of fact.

(5) The term "circumstance" includes any communication made to or information received by the assured.

**19 Disclosure by agent effecting insurance**

Subject to section 18 as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer –

- (a) Every material circumstance known to himself; and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by him or to have been communicated to him; and
- (b) Every material circumstance which the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to an agent.

**20 Representations pending negotiation of contract**

(1) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it is untrue, the insurer may avoid the contract.



(2) A representation is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk.

(3) A representation may be either a representation as to a matter of fact or as to a matter of expectation or belief.

(4) A representation as to a matter of fact is true if it is substantially correct ie if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.

(5) A representation as to a matter of expectation or belief is true if it is made in good faith.

(6) A representation may be withdrawn or corrected before the contract is concluded.

(7) Whether a particular representation is material or not is in each case a question of fact.

## **21 When contract is deemed to be concluded**

A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy is then issued or not; and for the purpose of showing when the proposal was accepted reference may be made to the slip or covering note, or other customary memorandum of the contract, although it is unstamped.

### *The Policy*

## **22 Contract must be embodied in policy**

(1) No action shall be brought on a contract of marine insurance unless it is embodied in a marine policy under this Act.

(2) The policy may be executed and issued either at the time when the contract is concluded or afterwards.

## **23 What policy must specify**

A marine policy must specify –

- (a) The name of the assured or of some person who effects the insurance on his behalf;
- (b) The subject-matter insured and the risk insured against;
- (c) The voyage or period of time, or both, as the case may be, covered by the insurance;
- (d) The sum or sums insured;
- (e) The name or names of the insurers.

## **24 Signature of insurer**

(1) (a) A marine policy must be signed by or on behalf of the insurer.

(b) In the case of a corporation the corporate seal may be sufficient, but nothing in this section shall be construed as requiring the subscription of a corporation to be under seal.

(2) Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary is expressed, constitutes a distinct contract with the assured.

## **25 Designation of subject-matter**

(1) The subject-matter insured must be designated in a marine policy with reasonable certainty.

(2) The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy.

(3) Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.

(4) In the application of this section regard shall be had to any usage regulating the designation of the subject-matter insured.

## **26 Failure to execute and stamp policy**

(1) If any person, whether as an insurer or as the agent of an insurer, directly or indirectly receives or takes credit in account for any premium or consideration for any contract of marine insurance, and does not before or within 30 days after receiving or taking credit for such premium or consideration duly execute or procure to be duly executed, a policy of such insurance, he shall be liable to a fine of 2 penalty units.

(2) If any person, whether as an insurer or as the agent of an insurer, pays any sum of money upon any loss under a contract of marine insurance which is not expressed in a duly executed policy, or if he in any way settles any claim made in respect of such a contract, he shall be liable to a fine of 2 penalty units.

(3) This section does not apply to contracts of reinsurance of risks in respect whereof policies have been duly executed.

(4) This section applies to that agent of an insurer, whether such insurer resides or carries on business in Niue or elsewhere.

## **27 Voyage and time policies**

(1) (a) Where the contract is to insure the subject-matter at and from or from one place to another or others, the policy is called a “voyage policy” and where the contract is to insure the subject-matter for a definite period of time, the policy is called a “time policy”.

(b) A contract for both voyage and time may be included in the same policy.

(2) A time policy which is made for any time exceeding 12 months is invalid; but a time policy may contain an agreement to the effect that, in the event of the ship being at sea or the voyage otherwise not completed on the expiration of 12 months, the subject-matter of the insurance shall be held covered until the arrival of the ship at her destination, or for a reasonable time after it not exceeding 30 days.

## **28 Valued policy**

(1) A policy may be either valued or unvalued.

(2) A valued policy is a policy which specifies the agreed value of the subject-matter insured.

(3) Subject to this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss is total or partial.

(4) Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss.

## **29 Unvalued policy**

An unvalued policy is a policy which does not specify the value of the subject-matter insured, but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained in the manner hereinbefore specified.

**30 Floating policy by ship or ships**

(1) A floating policy is a policy which describes the insurance in general terms, and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration.

(2) The subsequent declaration or declarations may be made by endorsement on the policy or in other customary manner.

(3) Unless the policy otherwise provides, the declarations must be made in the order of despatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.

(4) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration.

**31 Premium to be arranged**

(1) Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable.

(2) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium is payable.

**32 Construction of terms in policy**

Subject to this Act, and unless the context of the policy otherwise requires the terms and expressions mentioned in Schedule 2 have, when contained in a policy, the meaning and operation attributed to them in that Schedule.

*Double Insurance*

**33 Double insurance**

(1) Where 2 or more policies are effected by or on behalf of the assured on the same adventure and interest or any part of it, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.

(2) Where the assured is over-insured by double insurance –

- (a) The assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he thinks fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act;
- (b) Where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by him under any other policy, without regard to the actual value of the subject-matter insured;
- (c) Where the policy under which the assured claims is an unvalued policy, he must give credit, as against the full insurable value, for any sum received by him under any other policy;
- (d) Where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

*Warranties*

**34 Nature of warranty**

(1) A warranty, in the following sections relating to warranties, means a promissory warranty – that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.

(2) A warranty may be express or implied.

(3) A warranty as above defined is a condition which must be exactly complied with, whether material to the risk or not. If it is not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach or warranty, but without prejudice to any liability incurred by him before that date.

**35 When breach of warranty excused**

(1) Non-compliance with a warranty is excused when, by reason of a change of circumstances the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.

(2) Where a warranty is broken, the assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss.

(3) A breach of warranty may be waived by the insurer.

**36 Express warranties**

(1) An express warranty may be in any form of words from which the intention to warrant is to be inferred.

(2) An express warranty must be included in or written upon this policy, or must be contained in some document incorporated by reference into the policy.

(3) An express warranty does not exclude an implied warranty, unless it is inconsistent therewith.

**37 Warranty of neutrality**

(1) Where insurable property, whether ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that so far as the assured can control the matter, its neutral character shall be preserved during the risk.

(2) (a) Where a ship is expressly warranted neutral, there is also an implied condition that, so far as the assured can control the matter, the ship shall be properly documented – that she shall carry the necessary papers to establish her neutrality, and that her papers shall not be falsified or suppressed, and that simulated papers shall not be used.

(b) If any loss occurs through breach of this condition, the insurer may avoid the contract.

**38 No implied warranty of nationality**

There is no implied warranty as to the nationality of a ship, or that her nationality shall not be changed during the risk.

**39 Warranty of good safety**

Where the subject-matter insured is warranted “well” or “in good safety” on a particular day, it is sufficient if it is safe at any time during that day.

**40 Warranty of seaworthiness of ship**

(1) In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.

(2) Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.

(3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation of equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage.

(4) A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

(5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure; but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

**41 No implied warranty that goods are seaworthy**

(1) In a policy on goods or other movables there is no implied warranty that the goods or movables are seaworthy.

(2) In a voyage policy on goods or other movables there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other movables to the destination contemplated by the policy.

**42 Warranty of legality**

There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner.

*The Voyage*

**43 Implied condition as to commencement of risk**

(1) Where the subject-matter is insured by a voyage policy “at and from” or “from” a particular place, it is not necessary that the ship should be at that place when the contract is concluded, but there is an implied condition that the adventure shall be commenced within a reasonable time, and that if the adventure is not so commenced the insurer may avoid the contract.

(2) The implied condition may be negated by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or that he waived the condition.

**44 Alteration of port of departure**

Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk does not attach.

**45 Sailing for different destination**

Where the destination is specified in the policy, and the ship instead of sailing for that destination sails for any other destination, the risk does not attach.

**46 Change of voyage**

(1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.

(2) Unless the policy otherwise provides, where there is a change of voyage the insurer is discharged from liability as from the time of change ie as from the time when the determination to change it is manifested; and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs.

**47 Deviation**

(1) Where a ship without lawful excuse deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs.

(2) There is a deviation from the voyage contemplated by the policy –

(a) Where the course of the voyage is specifically designated by the policy, and that course is departed from; or

(b) Where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from.

(3) The intention to deviate is immaterial; there must be a deviation in fact to discharge the insurer from his liability under the contract.

**48 Several ports of discharge**

(1) Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, but in the absence of any usage or sufficient cause to the contrary she must proceed to them, or such of them as she goes to, in the order designated by the policy. If she does not, there is a deviation.

(2) Where the policy is to “ports of discharge” within a given area, which are not named, the ship must, in the absence of any usage or sufficient cause to the contrary, proceed to them, or such of them as she goes to, in their geographical order. If she does not, there is a deviation.

**49 Delay in voyage**

In the case of a voyage policy the adventure insured must be prosecuted throughout its course with reasonable despatch, and if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable.

**50 Excuses for deviation or delay**

(1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused –

(a) Where authorised by any special term in the policy; or

(b) Where caused by circumstances beyond the control of the master and his employer; or

(c) Where reasonably necessary in order to comply with an express or implied warranty; or

(d) Where reasonably necessary for the safety of the ship or subject-matter insured; or

(e) For the purpose of saving human life, or aiding a ship in distress where human life may be in danger; or



- (f) Where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or
- (g) Where caused by the barratrous conduct of the master or crew, if barratry is one of the perils insured against.
  - (2) When the cause excusing the deviation or delay ceases to operate, the ship must resume her course and prosecute her voyage with reasonable despatch.

*Assignment of Policy*

**51 When and how policy is assignable**

(1) A marine policy is assignable unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in the policy, the assignee of the policy is entitled to sue thereon in his own name; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

(3) A marine policy may be assigned by endorsement thereon or in other customary manner.

**52 Assured who has no interest cannot assign**

Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative: Provided that nothing in this section affects the assignment of a policy after loss.

*The Premium*

**53 Policy effected through broker**

(1) Unless otherwise agreed, where a marine policy is effected on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium, and the insurer is directly responsible to the assured for the amount which may be payable in respect of losses or in respect of returnable premium.

(2) Unless otherwise agreed, the broker has, as against the assured, a lien upon the policy for the amount of the premium and his charges in respect of effecting the policy; and, where he has dealt with the person who employs him as a principal, he has also a lien on the policy in respect of any balance on any insurance account which may be due to him from such person, unless when the debt was incurred he had reason to believe that such person was only an agent.

**54 Effect of receipt on policy**

Where a marine policy effected on behalf of the assured by a broker acknowledges the receipt of the premium, such acknowledgement is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and the broker.

*Loss and Abandonment*

**55 Included and excluded losses**

(1) Subject to this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against; but subject as aforesaid, he is not liable for any loss not proximately caused by a peril insured against.

(2) In particular –

- (a) The insurer is not liable for any loss attributable to the wilful misconduct of the assured; but unless the policy otherwise provides, he is liable for any loss



proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;

- (b) Unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay is caused by a peril insured against;
- (c) Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

**56 Partial and total loss**

(1) A loss may be either total or partial. Any loss other than a total loss, as hereinafter defined, is a partial loss.

(2) A total loss may be either an actual total loss or a constructive total loss.

(3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive as well as an actual total loss.

(4) Where the assured brings an action for a total loss, and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.

(5) Where goods reach their destination in specie, but by reason of obliteration of marks or otherwise they are incapable of identification, the loss (if any) is partial and not total.

**57 Actual total loss**

(1) Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived of it, there is an actual total loss.

(2) In the case of an actual total loss no notice of abandonment need be given.

**58 Missing ship**

Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed.

**59 Effect of transshipment**

Where, by a peril insured against, the voyage is interrupted at an intermediate port or place under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and reshipping the goods or other movables, or in transshipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transshipment.

**60 Constructive total loss defined**

(1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

(2) In particular there is a constructive total loss –

- (a) Where the assured is deprived of the possession of his ship or goods by a peril insured against, and
  - (i) it is unlikely that he can recover the ship or goods, as the case may be, or

- (ii) the cost of recovering the ship or goods would exceed their value when recovered; or
  - (b) In the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired; or
  - (c) In the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.
- (3) In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired.

### **61 Effect of constructive total loss**

Where there is a constructive total loss, the assured may either treat the loss as a partial loss or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss.

### **62 Notice of abandonment**

- (1) (a) Subject to this section, where the assured elects to abandon the subject-matter insured to the insurer he must give notice of abandonment.
- (b) If he fails to do so, the loss can be treated only as a partial loss.
- (2) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer.
- (3) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of doubtful character the assured is entitled to a reasonable time to make inquiry.
- (4) Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.
- (5) (a) The acceptance of an abandonment may be either express or implied from the conduct of the insurer.
- (b) The mere silence of the insurer after notice is not an acceptance.
- (6) (a) Where notice of abandonment is accepted, the abandonment is irrevocable.
- (b) The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.
- (7) Notice of abandonment is unnecessary where, at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.
- (8) Notice of abandonment may be waived by the insurer.
- (9) Where an insurer has reinsured his risk, no notice of abandonment need be given by him.

### **63 Effect of abandonment**

- (1) Where there is a valid abandonment, the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental to it.
- (2) Upon the abandonment of a ship the insurer of it is entitled to any freight which is in the course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and

where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss.

*Partial Losses (Including Salvage and General Average and Particular Charges)*

**64 Particular average loss**

(1) A particular average loss is a partial loss of the subject-matter insured, which is caused by a peril insured against, and which is not a general average loss.

(2) (a) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than the general average and salvage charges are called particular charges.

(b) Particular charges are not included in particular average.

**65 Salvage charges**

(1) Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.

(2) (a) "Salvage charges" means the charges recoverable under maritime law by a salvor independently of contract, and does not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against.

(b) Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred.

**66 General average loss**

(1) A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.

(2) There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

(3) Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution.

(4) Subject to any express provision in the policy, where the assured has incurred a general average expenditure he may recover from the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute.

(5) Subject to any express provision in the policy, where the assured has paid or is liable to pay a general average contribution in respect of the subject insured he may recover it from the insurer.

(6) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding or in connection with the avoidance of a peril insured against.

(7) Where ship, freight, and cargo, or any two of those interests are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those subjects were owned by different persons.

*Measure of Indemnity*

**67 Extent of liability of insurer for loss**

(1) The sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full extent of the insurable value, or in the case of a valued policy to the full extent of the value fixed by the policy, is called the measure of indemnity.

(2) Where there is a loss recoverable under the policy, the insurer, or each insurer if there are more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy.

**68 Total loss**

Subject to this Act and to any express provision in the policy, where there is a total loss of subject-matter insured –

- (a) If the policy is a valued policy, the measure of indemnity is the sum fixed by the policy;
- (b) If the policy is an unvalued policy, the measure of indemnity is the insurable value of the subject-matter insured.

**69 Partial loss of ship**

Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy is –

- (a) Where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty;
- (b) Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation (if any) arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above;
- (c) Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above.

**70 Partial loss of freight**

Subject to any express provision in the policy, where there is a partial loss of freight the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy.

**71 Partial loss of goods, merchandise**

Where there is a partial loss of goods, merchandise, or other movables, the measure of indemnity, subject to any express provision in the policy is –

- (a) Where part of the goods, merchandise, or other movables insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy;
- (b) Where part of the goods, merchandise, or other movables insured by and unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in the case of total loss;

- (c) Where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value;
- (d) “Gross value” means the wholesale price or, if there is no such price, the estimated value, with in either case freight, landing charges, and duty paid beforehand; provided that, in the case of goods or merchandise customarily sold in bond, the bonded price is deemed to be the gross value.

**72 Apportionment of valuation**

(1) Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy.

(2) The insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act.

(3) Where a valuation has to be apportioned, and particulars of the prime cost of each separate species, quality, or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods.

**73 General average contributions and salvage charges**

(1) Subject to any express provision in the policy, where the assured has paid or is liable for any general average contribution the measure of indemnity is the full amount of such contribution if the subject-matter liable to contribution is insured for its full contributory value, but if such subject-matter is not insured for its full contributory value, or if only part of it is insured, the indemnity payable by the insurer must be reduced in proportion to the under-insurance, and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

(2) Where the insurer is liable for salvage charges, the extent of his liability must be determined on the like principle.

**74 Liabilities to third parties**

Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability.

**75 General provisions as to measure of indemnity**

(1) Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions of this Act, the measure of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.

(2) Nothing in this Act relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy.

**76 Particular average warranties**

(1) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy is apportionable; but if the contract is apportionable, the assured may recover for a total loss of any apportionable part.

(2) Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred under the provisions of the suing and labouring clause in order to avert a loss insured against.

(3) Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage.

(4) For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject-matter insured. Particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded.

**77 Successive losses**

(1) Unless the policy otherwise provides, and subject to this Act, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

(2) Where under the same policy a partial loss which has not been repaired or otherwise made good is followed by a total loss, the assured can only recover in respect of the total loss.

(3) Nothing in this section shall affect the liability of the insurer under the suing and labouring clause.

**78 Suing and labouring clause**

(1) Where the policy contains a suing and labouring clause, the engagement entered into by it is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred under the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage.

(2) General average losses and contributions and salvage charges, as defined by this Act, are not recoverable under the suing and labouring clause.

(3) Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy are not recoverable under the suing and labouring clause.

(4) It is the duty of the assured and his agents in all cases to take such measures as may be reasonable for the purpose of averting or minimising a loss.

*Rights of Insurer on Payment*

**79 Right of subrogation**

(1) Where the insurer pays for a total loss either of the whole, or, in the case of goods, of any apportionable part of the subject-matter insured, he becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss.



(2) Subject to the foregoing provisions, where the insurer pays for a partial loss he acquires no title to the subject-matter insured, or such part of it as may remain, but his is subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss.

**80 Right of contribution**

(1) Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract.

(2) If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt.

**81 Effect of under-insurance**

Where the assured is insured for an amount less than the insurable value, or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance.

*Return of Premium*

**82 Enforcement of return**

Where the premium or a proportionate part of it is by this Act declared to be returnable

—

- (a) If already paid, it may be recovered by the assured from the insurer; and
- (b) If unpaid, it may be retained by the assured or his agent.

**83 Return by agreement**

Where the policy contains a stipulation for the return of the premium or a proportionate part of it on the happening of a certain event, and that event happens, the premium or the proportionate parts is returnable to the assured.

**84 Return for failure of consideration**

(1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is returnable to the assured.

(2) Where the consideration for the payment of the premium is apportionable, and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is under the like conditions returnable to the assured.

(3) In particular —

- (a) Where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided that there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once been attached, the premium is not returnable;
- (b) Where the subject-matter insured or part of it has never been imperilled, the premium or a proportionate part is returnable: Provided that where the subject-matter has been insured “lost or not lost”, and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless at such time the insurer knew of the safe arrival;



- (c) Where the assured has no insurable interest throughout the currency of the risk, the premium is returnable; provided that this rule does not apply to a policy effected by way of gaming or wagering;
- (d) Where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable;
- (e) Where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable;
- (f) Subject to the foregoing where the assured has over-insured by double insurance, a proportionate part of several premiums is returnable:  
Provided that if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured no premium is returnable in respect of that policy; and when the double insurance is effected knowingly by the assured, no premium is returnable.

*Mutual Insurance*

**85 Modification of Act in case of mutual insurance**

(1) Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.

(2) The provisions of this Act relating to the premium do not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium.

(3) The provisions of this Act, in so far as they may be modified by the agreement of the parties, may in the case of mutual insurance be modified by the terms of the policies issued by the association, or by the rules and regulations of the association.

(4) Subject to subsections (2) and (3) this Act applies to a mutual insurance.

*Supplemental*

**86 Ratifications by assured**

Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of the loss.

**87 Implied obligation varied by agreement or usage**

(1) Where any right, duty, or liability would arise under a contract of marine insurance by implication of law, it may be negated or varied by express agreement, or by usage, if the usage be such as to bind both parties to the contract.

(2) The provisions of this section extend to any right, duty, or liability declared by this Act which may be lawfully modified by agreement.

**88 Reasonable time, a question of fact**

Where by this Act any reference is made to reasonable time, reasonable premium, or reasonable diligence, the question what is reasonable is a question of fact.

**89 Application of common law**

The rules of the common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts of marine insurance.

**90 [Repealed]**

# Marine Insurance Act

## SCHEDULE 1

[Spent]

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## SCHEDULE 2

### Section 32

#### *Rules for the Construction of Policies*

The following are the rules referred to by this Act for the construction of a policy where the context does not otherwise require:

- 1 Where the subject-matter is insured “lost or not lost”, and the loss has occurred before the contract is concluded, the risk attaches unless at such time the assured was aware of the loss and the insurer was not.
- 2 Where the subject-matter is insured “from” a particular place, the risk does not attach until the ship starts on the voyage insured.
- 3
  - (a) Where a ship is insured “at and from” a particular place, and she is at that place in goods safety when the contract is concluded, the risk attaches immediately.
  - (b) If she is not at that place when the contract is concluded the risk attaches as soon as she arrives there in good safety; and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival.
  - (c) Where chartered freight is insured “at and from” a particular place, and the ship is at that place in good safety when the contract is concluded, the risk attaches immediately. If she is not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety.
  - (d) Where freight other than chartered freight is payable without special conditions, and is insured “at and from” a particular place, the risk attaches *pro rata* as the goods or merchandise are shipped; provided that if there is cargo in readiness which belongs to the shipowner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo.
- 4 Where goods or other movables are insured “from the loading thereof”, the risk does not attach until such goods or movables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship.
- 5 Where the risk on goods or other movables continues until they are “safely landed”, they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases.
- 6 In the absence of any further licence or usage, the liberty to touch and stay “at any port or place whatsoever” does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination.
- 7 The term “perils of the seas” refers only to fortuitous accidents or causalities of the seas. It does not include the ordinary action of the winds and waves.
- 8 The term “pirates” includes passengers who mutiny and rioters who attack the ship from the shore.
- 9 The term “thieves” does not cover clandestine theft or theft committed by any one of the ship’s company, whether crew or passengers.
- 10 The term “arrest, etc. of kings, princes, and people” refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process.
- 11 The term “barratry” includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner or, as the case may be, the charterer.
- 12 The term “all other perils” includes only perils similar in kind to the perils specifically mentioned in the policy.
- 13 The term “average unless general” means a partial loss of the subject-matter insured other than a general average loss, and does not include “particular charges”.
- 14 When a policy contains the words “warranted free from particular average unless the ship is stranded, sunk or burnt”, or any similar expression, and any such accident has happened to the ship, the insurer is liable for the expected losses, although the loss is not attributable to such

accident, provided that when the accident occurs the risk has attached and (if the policy is on goods) the damaged goods are on board.

- 15** The term “ship” includes the hull, materials and outfit, stores and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade; and also, in the case of a steamship, the machinery, boilers, and coals and engine stores, if owned by the assured.
- 16** The term “freight” includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or movables, as well as freight payable by a third party, but does not include passage money.
- 17** The term “goods” means goods in the nature of merchandise, and does not include personal effects or provisions and stores, for the use on board.
- 18** In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods.

# MARITIME ZONES ACT 2013

2013/323 – 10 May 2013

1	Name	PART 6
2	Interpretation	DECLARATION AND LEGAL CHARACTER OF MARITIME ZONES
	PART 1 TERRITORIAL SEA	12 Declaration of maritime zones
3	Territorial sea	13 Legal character of maritime zones
4	Baseline of territorial sea	14 Control that may be exercised in contiguous zone
5	Internal waters	15 Rights in the exclusive economic zone and continental shelf
6	Internal waters and territorial sea vested in Crown	15A Marine protected areas
7	Permanent harbour works	15B Marine management and spatial planning
	PART 2 CONTIGUOUS ZONE	16 Rights of other States in maritime zones
8	Contiguous zone	PART 6A OFFENCES
	PART 3 EXCLUSIVE ECONOMIC ZONE	16A Breach of a marine protected area
9	Exclusive economic zone	PART 7 REGULATIONS
	PART 4 CONTINENTAL SHELF	17 Regulations
10	Continental shelf	PART 8 CONSEQUENTIAL AMENDMENTS
	PART 5 OFFICIAL CHARTS	18 [Spent]
11	Official charts	

## To make provision with respect to the territorial sea, contiguous zone, exclusive economic zone and the continental shelf of Niue, and related matters

- 1 Name**  
This is the Maritime Zones Act 2013.
- 2 Interpretation**  
In this Act —  
"contiguous zone" means the contiguous zone of Niue described in section 8;  
"continental shelf" means the continental shelf of Niue described in section 10;  
"exclusive economic zone" means the exclusive economic zone of Niue described in section 9;  
"low-water mark", means the line of low water at the lowest astronomical tide;  
"Minister" means the Minister responsible for maritime affairs;  
"nautical mile" means the international nautical mile of 1,852 metres;  
"territorial sea" means the territorial sea of Niue described in section 3.

PART 1

TERRITORIAL SEA

**3 Territorial sea**

The territorial sea comprises those areas of the sea having, as their inner limits, the baseline described in section 4 and, as their outer limits, a line measured seaward from that baseline, every point of which is distant 12 nautical miles from the nearest point of the baseline.

**4 Baseline of territorial sea**

The baseline from which the breadth of the territorial sea is measured shall be the low-water mark along the coast of Niue, or where there is a coral reef along any part of the coast of Niue, the low-water mark along the outer edge of the coral reef.

**5 Internal waters**

The internal waters comprise any areas of the sea that are on the landward side of the baseline of the territorial sea of Niue.

**6 Internal waters and territorial sea vested in Crown**

The seabed and subsoil of the internal waters and territorial sea are, and are taken always to have been, vested in the Crown.

**7 Permanent harbour works**

For the purposes of this Act, permanent harbour works forming an integral part of a harbour system are taken to form part of the coast of Niue.

PART 2

CONTIGUOUS ZONE

**8 Contiguous zone**

The contiguous zone comprises those areas of the sea that are beyond and adjacent to the territorial sea, having as their outer limits a line measured seaward from the baseline described in section 4, every point of which is distant 24 nautical miles from the nearest point of the baseline.

PART 3

EXCLUSIVE ECONOMIC ZONE

**9 Exclusive Economic Zone**

The exclusive economic zone of Niue comprises those areas of the sea, seabed and subsoil that are beyond and adjacent to the territorial sea having as their outer limits a line measured seaward from the baseline described in section 4, every point of which line is not more than 200 nautical miles from the nearest point of the baseline.

PART 4

CONTINENTAL SHELF

**10 Continental shelf**

The continental shelf comprises those areas of the seabed and subsoil of the submarine areas beyond and adjacent to the territorial sea having as their outer limits a line measured seaward from the baseline described in section 4, every point of which line is not more than 200 nautical miles from the nearest point of the baseline.

PART 5

OFFICIAL CHARTS

**11 Official charts**

(1) The Cabinet may endorse such charts as it considers fit showing any matter relating to the baseline of the territorial sea or the limits of the territorial sea, contiguous zone, exclusive economic zone or continental shelf.

(2) In any proceedings in a court, a certificate signed by the relevant Minister stating that a specified chart is a chart endorsed under this section is admissible as evidence of the matters stated in the certificate.

PART 6

DECLARATION AND LEGAL CHARACTER OF MARITIME ZONES

**12 Declaration of maritime zones**

The Cabinet may, from time to time, by public notice, declare, not inconsistently with sections 3, 8, 9, and 10, the geographic coordinates of the limits of the whole, or any part, of the territorial sea, contiguous zone, exclusive economic zone and continental shelf.

**13 Legal character of maritime zones**

The sovereignty of Niue extends to its land areas, internal waters, and territorial sea, and to the airspace over them and the seabed and subsoil under them, and the resources contained in them.

**14 Control that may be exercised in the contiguous zone**

Within the contiguous zone, an authorized officer of the Government of Niue may exercise the control necessary to:

- (a) Prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within Niue or the territorial sea; or
- (b) Punish infringement of its customs, fiscal, immigration or sanitary laws and regulations committed within Niue or the territorial sea; and all relevant laws of Niue extend to the contiguous zone accordingly.

**15 Rights in the exclusive economic zone and continental shelf**

(1) Within the exclusive economic zone, Niue has sovereign rights —

- (a) for the purposes of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of —
  - (i) the seabed;
  - (ii) the subsoil under the seabed, and
  - (iii) the waters over the seabed, and
- (b) with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.

(2) Within the continental shelf, Niue has —

- (a) sovereign rights for the purpose of exploring it and exploiting its natural resources, and
- (b) exclusive rights to authorise and regulate drilling on it for all purposes.

(3) Within the exclusive economic zone and the continental shelf, Niue has the exclusive right to construct, authorise and regulate the construction, operation and use of:

- (a) artificial islands;
- (b) installations and structures for the purposes provided in section 7, marine scientific research, the protection and preservation of the marine environment and other economic purposes, and
- (c) installations and structures which may interfere with Niue's exercise of its rights in the exclusive economic zone or continental shelf.

(4) Within the exclusive economic zone and continental shelf, Niue has exclusive jurisdiction over the artificial islands, installations and structures referred to in subsection (3), including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.

(5) Within the exclusive economic zone and continental shelf, Niue:

- (a) has jurisdiction with respect to protection and preservation of the marine environment, and
- (b) has the right to regulate, authorise and conduct marine scientific research.

(6) Within the contiguous zone, the exclusive economic zone and the continental shelf, Niue has such other rights as are conferred or recognised by international law.

#### **15A Marine protected areas**

(1) Within the exclusive economic zone and the continental shelf, Niue Cabinet has the exclusive right to authorise and regulate the establishment and management of marine protected areas.

(2) Marine protected areas may be established for fisheries' management, conservation or environmental protection measures.

(3) A marine protected area may be established subject to specific requirements or regulation as determined by Cabinet.

#### **15B Marine management and spatial planning**

(1) Within the exclusive economic zone and continental shelf to the extent that there is no inconsistency with any restrictions of an established marine protected area, Niue Cabinet has the exclusive right to authorise and regulate the establishment and management of marine management and spatial plans.

(2) A marine management or spatial plan may be established by regulation for any area within the maritime zones or within a marine protected area.

#### **16 Rights of other States in maritime zones**

(1) The Minister may, by order, prescribe sea lanes and traffic separation schemes for foreign ships exercising the right of innocent passage through the territorial sea.

(2) Subject to subsection (1), ships of all States have, in accordance with international law, the right of innocent passage through the territorial sea of Niue.

(3) Subject to this Act, any other law of Niue, and international law, all States shall enjoy in the exclusive economic zone the high seas freedoms of navigation



## Maritime Zones Act

and overflight and of the laying of submarine cables and pipelines, and all other internationally lawful uses of the sea related to those freedoms.

(4) Subject to this Act and any other law of Niue, all States may lay submarine cables and pipelines on the continental shelf in accordance with international law.

### PART 6A

#### OFFENCES

#### **16A Breach of a marine protected area**

A person who is found to be in breach of any restrictions required within a marine protected area commits an offence and is liable on conviction –

- (a) in the case of an individual, to a fine not exceeding 50 penalty units, or to imprisonment for a term not exceeding 6 months, or both; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

### PART 7

#### REGULATIONS

#### **17 Regulations**

Cabinet may make all such regulations as may in the opinion of Cabinet be necessary or expedient for giving effect to this Act and for its due administration.

### PART 8

#### CONSEQUENTIAL AMENDMENTS

#### **18 [Spent]**



# MERCANTILE LAW ACT 1908

1908/117 (NZ) – 4 August 1908

- |  |  |                                    |   |
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| 6                                      | Rights acquired by exchange of goods or documents  | 28                                 | Notices of sale to be given   |
| 7                                      | Agreements through clerks  | 29                                 | Moneys arising from sale, how to be applied   |
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**To consolidate certain enactments relating to trade and commerce**

**1 Short title**

This is the Mercantile Law Act 1908.

PART I  
MERCANTILE AGENTS

**2 Interpretation**

(1) In this Part –

“document of title” includes any bill of lading, dock warrant, warehouse keeper’s certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

“goods” includes wares and merchandise;

“mercantile agent” means an agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods;

“pledge” includes any contract pledging or giving a lien or security on goods, whether in consideration of an original advance, or of any further or continuing advance, or of any pecuniary liability.

(2) A person shall be deemed to be in possession of goods, or of the documents of title of goods, where the goods or documents are in his actual custody, or are held by any other person subject to his control or for him on his behalf.

**3 Powers of mercantile agent with respect to disposition of goods**

(1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods made by him when acting in the ordinary course of business of a mercantile agent shall, subject to this Part be as valid as if he were expressly authorised by the owner of the goods to make the same:

Provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition which would have been valid if the consent had continued to be valid notwithstanding the determination of the consent, provided that the person taking under the disposition has not at the time thereof notice that the consent has been determined.

(3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented by it, or any other documents of title to the goods, his possession of the first mentioned documents shall, for the purposes of this Part be deemed to be with the consent of the owner.

(4) For the purposes of this Part, the consent of the owner shall be presumed in the absence of evidence to the contrary.

**4 Effect of pledges of documents**

A pledge of the documents of title to goods shall be deemed to be a pledge of the goods.

**5 Pledge for antecedent debt**

Where a mercantile agent pledges goods as security for debt or liability due from the pledgor to the pledgee before the time of the pledge, the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge.

**6 Rights acquired by exchange of goods or documents**

The consideration necessary for the validity of a sale, pledge, or other disposition of goods under this Part may be either a payment in cash, or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, or any other valuable consideration; but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, documents, or security when so delivered or transferred in exchange.

**7 Agreements through clerks**

For the purpose of this Part an agreement made with a mercantile agent through a clerk or other person authorised in the ordinary course of business to make contracts of sale or pledge on his behalf shall be deemed to be an agreement with the agent.

**8 Provisions as to consignors and consignees**

(1) Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect of advances made to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person.

(2) Nothing in this section shall limit or affect the validity of any sale, pledge, or disposition by a mercantile agent.

**9 Effect of transfer of document of title to goods on vendor's lien and right of stoppage *in transitu***

(1) Where a document of title to goods has been lawfully transferred to a person as a buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, the last mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage *in transitu* as the transfer of a bill of lading has for defeating the right of stoppage *in transitu*.

(2) This section shall be construed subject to section 48 of the Sale of Goods Act 1908.

**10 Mode of transferring documents**

For the purposes of this Part the transfer of a document may be by endorsement, or where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery.

**11 Saving of rights of true owner**

Nothing in this Part shall –

- (a) Authorise a mercantile agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability, civil or criminal, for so doing; or

- (b) Prevent the owner of goods from recovering the goods from a mercantile agent or his trustee in bankruptcy at any time before the sale or pledge; or
- (c) Prevent the owner of goods pledged by a mercantile agent from having the right to redeem the goods at any time before the sale of it on satisfying the claim for which the goods were pledged and paying to the mercantile agent, if by him required, any money in respect of which such agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien; or
- (d) Prevent the owner of goods sold by a mercantile agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set-off on the part of the buyer against such agent.

## **12 Saving for common law powers of mercantile agent**

This Part shall be construed in amplification and not in derogation of the powers exercisable by a mercantile agent independently of this Part.

### PART 2

#### BILLS OF LADING

## **13 Rights of action and liabilities to vest in consignees and endorsees**

Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading, to whom the property in the goods therein mentioned passes on or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of action, and be subject to the same liabilities, in respect of such goods as if the contract contained in the bill of lading had been made with himself.

## **14 Right of stoppage *in transitu* or claims for freight not affected**

Nothing herein shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

## **15 Bill of lading in hands of consignee**

Every bill of lading in the hands of the shipper or of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading has had actual notice at the time of receiving the same that the goods were not in fact laden on board.

## **15A “Received for shipment” bills of lading**

(1) In this section “received for shipment” bill of lading means a shipping document issued under this section, signed by a person purporting to be authorised to sign the same, and acknowledging that the goods to which the document relates have been received for shipment.

(2) No “received for shipment” bill of lading shall be issued –

- (a) Until the goods are in possession of the owner of the ship or of some person duly authorised on his behalf;
- (b) Except for a named ship in which space has been actually reserved;

(c) Earlier than 21 days before the time when the ship is expected to be in port in readiness to load, but the issue of a “received for shipment” bill of lading shall be sufficient evidence until the contrary is proved that the requirements of this subsection have been complied with.

(3) Every “received for shipment” bill of lading shall contain a provision that, in the event of the goods being unavoidably shut out from the named ship, the shipowner shall forward the goods by his next available ship, or, at his option, by a ship of some other owner, or by a ship sailing within a specified number of days, but otherwise on the same terms and conditions, *mutatis mutandis*, as if the goods were actually shipped by the named ship.

(4) Every “received for shipment” bill of lading shall for all purposes be deemed to be a valid bill of lading with the same effect and capable of negotiation in all respects and with the same consequences as if it were a bill of lading acknowledging that the goods to which it relates had been actually shipped on board.

## **16 When master may be exonerated from liability**

The master or other person so signing any bill of lading may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder, or some person under whom the holder claims.

### PART 3

17–20 [Repealed]

### PART 4

#### DELIVERY OF GOODS, AND LIEN FOR FREIGHT

## **21 Interpretation**

In this Part –

“entry” means the entry required by the customs laws to be made for the landing or discharge of goods from an importing ship;

“goods” includes every description of wares and merchandise;

“owner of goods” includes every person who is for the time being entitled, either as owner or agent for the owner, to the possession of the goods, subject in the case of a lien to such a lien;

“report” means the report required by the customs laws to be made by the master of any importing ship;

“shipowner” includes the master of the ship and every other person authorised to act as agent for the owner or entitled to receive the freight, demurrage, or other charges payable in respect of such ship;

“warehouse” includes all warehouses, buildings and premises in which goods when landed from ships may be lawfully placed;

“warehouse owner” means the occupier of any warehouse as earlier defined;

“wharf” includes all wharves, quays, docks, and premises in or upon which any goods when landed from ships may be lawfully placed;

“wharf owner” means the occupier of any wharf.

## **22 Power to shipowner to enter and land goods in default of entry and landing by owner of goods**

Where the owner of goods imported from foreign parts into Niue fails to make entry of it, or, having made entry of it, to land the same or take delivery of it, and to proceed with all convenient speed by the times severally mentioned in this section, the shipowner may make



entry of and land or unship the said goods at the times, in the manner, and subject to the conditions following:

- (a) If a time for the delivery of the goods is expressed in the charterparty, bill of lading, or agreement, then at any time after the time so expressed:
- (b) If no time for the delivery of the goods is expressed in the charterparty, bill of lading, or agreement, then at any time after the expiration of 72 hours exclusive of a holiday, after the report of the ship:
- (c) If any wharf or warehouse is named in the charterparty, bill of lading, or agreement as the wharf or warehouse where the goods are to be placed, and if they can be conveniently there received, the shipowner in landing them by virtue of this enactment shall cause them to be placed on such a wharf or in such a warehouse;
- (d) In other cases the shipowner, in landing goods by virtue of this enactment, shall place them on or in some wharf or warehouse on or in which goods of a like nature are usually placed, such wharf or warehouse being, if the goods are dutiable, a wharf or warehouse duly approved by the Minister of Customs for the landing of dutiable goods;
- (e) If at any time before the goods are landed or unshipped the owner of the goods is ready and offers to land and take delivery of the same, he shall be allowed so to do, and his entry shall in such case be preferred to any entry made by the shipowner;
- (f) If any goods are for the purpose of convenience in assorting the same landed at the wharf where the ship is discharged, and the owner of the goods at the time of such landing has made entry and is ready and offers to take delivery of it and to convey the same to some other wharf or warehouse, such goods shall be assorted at landing; and shall if demanded, be delivered to the owner of it within 24 hours after assortment, and the expense of and consequent on such landing and assortment shall be borne by the shipowner;
- (g) If at any time before the goods are landed or unshipped the owner of it has made entry for the landing and warehousing of it at any particular wharf or warehouse other than that at which the ship is discharging and has offered and been ready to take delivery of it, and the shipowner has failed to make such delivery, and has also failed at the time of such offer to give the owner of the goods correct information of the time at which such goods can be delivered, then the shipowner shall, before landing or unshipping such goods under the power hereby given to him, give the owner of the goods or of such wharf or warehouse as last mentioned 24 hours' notice in writing of his readiness to deliver the goods, and shall, if he lands or unships the same without such notice, do so at his own risk and expense.

### **23 Continuation of lien for freight if shipowner gives notice**

(1) If at any time when any goods are landed from any ship and placed in the custody of any person as a wharf or warehouse owner the shipowner gives to the wharf or warehouse owner notice in writing that the goods are to remain subject to a lien for freight or other charges payable to the shipowner to an amount to be mentioned in such notice, the goods so landed shall in the hands of the wharf or warehouse owner continue liable to the same lien, if any, for such charges as they were subject to before the landing.

(2) The wharf or warehouse owner receiving such goods shall retain them until the lien is discharged as mentioned, and if he fails so to do shall make good to the shipowner any loss thereby occasioned to him.

(3) On production to the wharf or warehouse owner of a receipt for the amount claimed as due, and delivery to the wharf or warehouse owner of a copy of it or a release of freight from the shipowner, the said lien shall be discharged.

**24 Lien to be discharged on deposit with warehouse owner**

The owner of the goods may deposit with the wharf or warehouse owner a sum of money equal in amount to the sum so claimed by the shipowner and thereupon the lien shall be discharged, but without prejudice to any other remedy which the shipowner may have for the recovery of the freight.

**25 Right of warehouse owner, if no notice is given, to pay deposit to shipowner**

If such deposit is made with the wharf or warehouse owner and the person making the same does not within 15 days after making it give the wharf or warehouse owner notice in writing to retain it, stating in such notice the sum, if any, which he admits to be payable to the shipowner, or that he does not admit any sum to be so payable, the wharf or warehouse owner may at the expiration of such 15 days pay the sum so deposited over to the shipowner, and shall by such payment be discharged from all liability in respect of it.

**26 Course to be taken if notice to retain is given**

If such deposit is made with the wharf or warehouse owner, and the person making the same does within 15 days after making it give to the wharf or warehouse owner notice as aforesaid;

- (a) The wharf or warehouse owner shall immediately apprise the shipowner of such notice, and shall pay or tender to him out of the sum deposited the sum admitted by such notice to be payable, and shall retain the balance or, if no sum is admitted to be payable, the whole of the sum deposited for 30 days from the date of the said notice;
- (b) At the expiration of such 30 days, unless legal proceedings have in the meantime been instituted by the shipowner against the owner of the goods to recover the said balance or sum, or otherwise for the settlement of any disputes between them concerning such freight or other charges as aforesaid, and notice in writing of such proceedings has been served on him, the wharf or warehouse owner shall pay the said balance or sum over to the owner of the goods, and shall by such payment be discharged from all liability in respect of it.

**26A Arbitration deemed to be legal proceedings**

(1) In section 26(b) “legal proceedings” shall be deemed to include arbitration.

(2) For the purposes of section 26, as affected by subsection (1), an arbitration shall be deemed to be commenced when one party to the submission serves on the other party or parties a notice requiring him or them to appoint an arbitrator, or, where the submission provides that the reference shall be to a person named or designated in the submission, requiring him or them to submit the dispute to the person so named or designated.

(3) Any such notice as is mentioned in subsection (2) may be served either

- (a) By delivering it to the person on whom it is to be served; or
- (b) By leaving it at the usual or last known place of abode in Niue of that person; or
- (c) By sending it by post in a registered letter addressed to that person at his usual or last known place of abode in Niue,

as well as in any other manner provided in the submission; and where a notice is sent by post in manner prescribed by paragraph (c) service of it shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

**27 After 90 days warehouse owner may sell goods by public auction**

If the lien is not discharged and no deposit is made as earlier mentioned, the wharf or warehouse owner may, and if required by the shipowner shall, at the expiry of 90 days from the time when the goods were placed in his custody, or, if the goods are of a perishable nature, at such earlier period as may be fixed by Lloyd's Agent or any surveyor to be appointed by such wharf or warehouse owner, sell by public auction either for home use or exportation, the said goods, or so much of them as may be necessary to satisfy the charges earlier mentioned.

**28 Notices of sale to be given**

(1) Before making such sale the wharf or warehouse owner shall give notice of it by advertisement in one newspaper circulating in the neighbourhood, a copy of which shall be kept posted up in some conspicuous part of the said wharf or warehouse.

(2) If the address of the owner of the goods has been stated on the manifest of the cargo, or on any of the documents in the possession of the wharf or warehouse owner, or is otherwise known to him, such wharf or warehouse owner shall give notice of the sale to the owner of the goods by letter sent by post.

(3) But the title of a *bona fide* purchaser of such goods shall not be invalidated by reason of the omission to send notice as earlier mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

**29 Moneys arising from sale, how to be applied**

In every case of any such sale as aforesaid the wharf or warehouse owner shall apply the moneys received from the sale in the following order:

- (a) If the goods are sold for home use, in payment of any Customs or excise duties owing in respect thereof;
- (b) In payment of the expenses of the sale;
- (c) In the absence of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, in payment of the rent, rates, and other charges due to the wharf or warehouse owner in respect of the said goods;
- (d) In payment of the amount claimed by the shipowner as due for freight or other charges in respect of the said goods;
- (e) But in the case of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, then such charges shall have priority according to the terms of such agreement; and
- (f) The surplus, if any shall be paid to the owner of the goods.

**30 Warehouse owner's rent and expenses**

Where goods are placed in the custody of a wharf or warehouse owner under the authority of this Part, the said owner shall be entitled to rent in respect of the same, and shall also have power at the expense of the owner of the goods to do all such reasonable acts as in the judgment of the said wharf or warehouse owner are necessary for the proper custody and preservation of such goods, and shall have a lien on it for the said rent and expenses.

**31 Warehouse owner's protection**

Nothing in this Part shall compel any wharf or warehouse owner to take charge of any goods which he would not be liable to take charge of if this Part has not passed, nor shall he be bound to see to the validity of any lien claimed by any shipowner under this Part.

PART 5

UNPAID VENDORS OF WAREHOUSED GOODS

**32 Interpretation**

In this Part –

“bonded warehouse” means a building approved and appointed by the Minister of Customs for the warehousing of goods without payment of duty on the first entry;

“free warehouse” means a building licensed by the Minister of Customs to be used exclusively for the storage of any goods not liable to the payment of the Customs duties, or whereon such duties have been paid previously to storage;

“goods” includes wares and merchandise of every description;

“pledge” means any deposit and delivery of warrants or certificates with intent that the holder of it may dispose to the goods to which such warrants or certificates relate in the event of the terms of the deposit not being fulfilled by the persons making the same;

“pledgee” means the person in whose favour the deposit or the warrants or certificates is made;

“sale” means any absolute disposition of goods, whether for payment to be made in cash or upon credit;

“subpurchaser” means any person purchasing from or under the person to whom the original bonder or storer of goods in a bonded or free warehouse sold the same and delivered the warrants or certificates relating to it;

“warehouse keeper” means the person having the management of any bonded or free warehouse, whether the warehouseman himself or a person employed by him;

“warehouse keeper's book” means the book in which the warehouse keeper enters a list of all goods received in and delivered out of the warehouse managed by him;

“warehouseman” means the person for whose immediate benefit and under whose control the storage of goods in a bonded or free warehouse is carried on;

“warrants” or “certificates” means any receipt or undertaking issued by or on behalf of the warehouseman, and signed by him or on his behalf, acknowledging the receipt in a specified warehouse of goods to be held on behalf of a person named and described, giving the particulars of the goods stored, the marks or brands (if any) on it, the terms upon which the goods are stored, and containing an undertaking on the part of the warehouseman to deliver the same to the endorsee, holder, or bearer of the warrant or certificate.

**33 Unpaid vendor's lien determined on delivery of bond warrants to *bona fide* holder for value**

In all cases where warrants or certificates for goods liable to the payment of Customs duties are issued, importing a receipt of such goods by or on behalf of any bonded warehouseman and an undertaking to deliver the same to the holder of the warrants or certificates on presentation and demand, and on payment of the duties, rents, and charges lawfully demandable, and such warrants or certificates are delivered over on a sale of the goods by the person to whom the said warrants or certificates are issued by or on behalf of the warehouseman, the rights legal and equitable, of such person, as an unpaid vendor, to stop actual delivery of the goods comprised in and affected by such warrants or certificates shall be deemed at an end when such warrants or certificates are delivered over *bona fide* and for value,

on either a sale or pledge of the said goods by any person purchasing from the original bonder of it.

**34 Possession of warrants *prima facie* evidence of ownership**

On a sale or pledge of goods stored in any bonded warehouse, the possession of warrants or certificates importing a receipt and undertaking to deliver as aforesaid shall be deemed *prima facie* evidence of the ownership of the holder of the said warrants or certificates in the goods and merchandise affected by it.

**35 Holder of warrant entitled to delivery**

Any holder of a warrant or certificate importing the obligations mentioned shall be entitled on request and on compliance with the terms of the contract implied by such warrants or certificates between the warehouseman and the original bonder of the goods, to have delivery of it, or to have his name entered upon the books of the warehouse keeper as the owner of the said goods.

**36 Registered holder of warrant deemed to be owner**

Save in the event of fraud being proved in the procurement of the entry of the name of the holder of the certificates or warrants in the warehouse keeper's books, the person whose name is so entered shall be conclusively deemed the then owner in possession of the said goods, subject to the provisions hereinafter contained.

**37 Lien of registered transferee of warrant determined on delivery of warrant *bona fide* and for value**

In the event of any transfer being entered in the books of the warehouse keeper, and the then owner of bonded goods delivers over the warrants or certificates relating to or affecting the same to any other person on a sale or pledge of the said goods, and such warrants or certificates are afterwards delivered over *bona fide* and for value to any subpurchaser or pledgee by the person receiving the same from the owner whose name is entered as aforesaid, the rights legal and equitable of the said owner as an unpaid vendor to stop the actual delivery of the goods comprised in and affected by such warrants or certificates shall be deemed at an end as from the time of the *bona fide* delivery of the warrants or certificates to the first subpurchaser or pledgee for value.

**38 Warrants of free goods put on the same footing as bond warrants**

Where goods are stored in any free warehouse, and warrants or certificates, importing on behalf of the warehouseman a receipt of the goods and an undertaking to deliver the same on presentation and demand and on payment of the rents and charges lawfully demandable, are delivered to and accepted by the person originally warehousing such goods, the respective rights and liabilities of the warehouseman and warehouse keeper, and of the persons to whom the said warrants or certificates were originally issued, or are afterwards delivered or redelivered upon a resale or pledge *bona fide* and for value of the goods, or in whose name the ownership may be transferred in the books of the warehouse keeper, or who afterwards acquires possession *bona fide* and for value of the said warrants or certificates, shall be the same in all respects as is provided with regard to goods liable to the payment of customs duties and stored in a bonded warehouse.

**39 Provisions same in respect of bonded and free warehouses**

The provisions herein relative to the rights of or incident to the ownership of goods stored in a bonded warehouse shall be as applicable to the ownership of goods stored in a free warehouse as if such provisions had been respectively repeated and expressly applied thereto.



**40 Vendor's lien not prejudiced save as against *bona fide* subpurchaser or pledgee for value**

Nothing herein shall in any way prejudice the rights of an unpaid vendor of goods to stop delivery of it until payment of the price payable to him whenever such rights may be lawfully exercised without detriment or injury to any subpurchaser or pledgee *bona fide* and for value, or to the rights of any trustee in bankruptcy claiming under the purchaser from the unpaid vendor.

**41 Goods not to be transferred in books of warehouseman except on production of warrant**

(1) No entry shall be made in the books of any warehouseman or keeper of any bonded or free warehouse transferring the ownership or possession of any goods, unless the person applying for such entry to be made produces and delivers up the warrants or certificates originally issued.

(2) Thereupon the warehouseman or the keeper of his warehouse may cancel the said warrants or certificates and issue others in lieu and such new warrants or certificates may in like manner be cancelled and others issued in substitution of it.

**42 Special contracts restraining negotiability of warrants**

(1) Notwithstanding anything herein the person originally storing goods in any bonded or free warehouse, and the warehouseman thereof, may enter into a special contract restraining the negotiability of the warrants or certificates issued in respect of the said goods, or providing some special method of transfer of the property in and possession of such goods.

(2) In every such case the terms of such special contract shall be incorporated in and made to appear upon the face of the said warrants or certificates, so that the holder of it may have his attention expressly directed to it.

**43 Warehouseman's lien not prejudiced by sale or transfer of goods**

No transfer of the ownership or possession of the goods stored in any bonded or free warehouse shall in any way prejudicially affect the lien or rights of the warehouseman in respect of any rent or charges previously incurred or become payable on account of the goods the ownership or possession whereof may be so transferred as aforesaid.

PART 6

BOOK PURCHASERS PROTECTION

**44 Validity of agreements for purchase of books**

(1) Every agreement for the purchase of any book or part of a book, or of engravings, lithographs, or pictures, or of any other like matter, whether illustrated or not ("printed matter"), shall be absolutely void in every case where such printed matter is not to be delivered to the purchaser at the date of such agreement in a completed form, and so as to embrace the whole of the volumes or numbers of the printed matter, unless the purchaser of such printed matter first signs an agreement on a form in which, in red capital letters not less than great primer, the following words and figures are printed – namely, "The total liability of the purchaser under this agreement is [inserting the amount in similar printed letters and also printed figures of like size]" and unless such form is printed or written in black, wholly or partly, across and subsequent to the printing of such red letters and figures.

(2) The vendor of such printed matter, or his agent, shall at the time of signing of the agreement aforesaid also hand over to the purchaser a duplicate of the agreement, having printed on it in addition the words "Duplicate to be kept by

purchaser”, and the name and address in full of the vendor; and the vendor shall not be entitled to recover under such agreement unless he produces an acknowledgement by the purchaser that he has received such duplicate of the agreement as aforesaid.

(3) In any action in any court on any contract for the purchase of such printed matter, the court may determine the value of the said printed matter, proof of which shall be on the vendor.



# MERCHANDISE MARKS ACT 1954

1954/43 (NZ) – 15 July 1955

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		25	[Spent]

## To consolidate and amend certain enactments relating to merchandise marks

### 1 Short title

This is the Merchandise Marks Act 1954.

### 2 Interpretation

- (1) In this Act and in any regulation made under this Act—
- “advertisement” means any words, whether written or spoken, or any picture, drawing, or figure –
- (a) Inserted in any newspaper or other periodical publication printed and published in Niue; or
- (b) Brought to the notice of members of public in Niue in other manner whatsoever;
- “certification trademark” includes any mark which is used or on in connection with goods for the purpose of indicating that they are the goods of the proprietor of the mark by virtue of certification;
- “covering” includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper;
- “dealer” includes any servant or employee of a dealer;
- “false trade description” means a trade description which is false or misleading in a material respect as regards the goods to which it is applied; and includes every alteration of trade description, whether by way of addition, effacement, or otherwise where that alteration makes the description false or misleading in a material respect; and also includes a trade description (to whichever of the matters mentioned in the definition of that term in this section it relates) if it is likely to be misunderstood as, or mistaken for, an indication of the same or some other such

matter which would be false or misleading in a material respect as regards the goods to which the description is applied; and the fact that a trade description is a trade mark or part of a trade mark shall not prevent the trade description being a false trade description within the meaning of this Act; but no trade mark or part of a trade mark shall be treated as a false description in relation to any goods to which the trade mark or part of a trade mark is applied if the following conditions are satisfied –

- (a) On the day this Act is passed the trade mark either is registered under the Trade Marks Act 1953 (NZ) or is in use to indicate a connection in the course of trade between those goods and the proprietor of the trade mark; and
- (b) The trade mark as applied is used to indicate connection in the course of trade between the goods and the person who is the proprietor of the trade mark or between the goods and a person who is registered under section 37 of the Trade Marks Act 1953 (NZ) as a registered user of the trade mark; and
- (c) The person who is the proprietor of the trade mark is the same person as, or a successor in title to, the proprietor of the day this Act is passed;

“goods” means anything which is subject of trade, manufacture, or merchandise;

“imported goods” does not include –

- (a) Goods which since the date of their importation have undergone in Niue any treatment or process resulting in a substantial change in the goods; or
- (b) Goods produced or manufactured in Niue which after exportation are brought back into Niue including any such goods which have undergone abroad any treatment or process not resulting in a substantial change in the goods;

“indication of origin” in relation to any goods, means a definite, clear, conspicuous indication in the English language of the country in which the goods were manufactured or produced;

“label” includes any band or ticket;

“manufacturer” includes any servant or employee of a manufacturer;

“mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof;

“name” includes any abbreviation of a name;

“person” includes any servant or employee of a person;

“proprietor” includes any servant or employee of a proprietor;

“sale” –

- (a) Includes, subject as hereinafter provided, sale wholesale as well as sale by retail:

Provided that references to exposure for sale in sections 4 and 7 of this Act or (unless the order expressly provides to the contrary) in any regulations made under this Act shall not include exposure for sale wholesale by a person being a wholesale dealer;

- (b) Does not include –
  - (i) a sale of goods for consignment by the vendor to a person outside Niue; or
  - (ii) a sale of second hand goods; or
  - (iii) the sale of any foodstuffs at any hotel or restaurant or other premises for consumption thereon or the sale of any foodstuffs which have undergone a process of cooking, curing, or preserving in Niue;

“trade description” –

- (a) Means any description, statement, or other indication, direct or indirect, –
  - (i) as to the number, quantity, measure, gauge, or weight of any goods; or

## Merchandise Marks Act

- (ii) as to the standard of quality of any goods according to a classification commonly used or recognised in the trade; or
  - (iii) as to the place or country in which any goods and the material or substance of it were made or produced; or
  - (iv) as to the mode of manufacturing or producing any goods; or
  - (v) as to the material or substance of which any goods are composed; or
  - (vi) as to any goods being the subject of an existing patent, privilege, or copyright; and
- (b) Includes –
- (i) the use of any figure, word, or mark which according to the custom of the trade is commonly taken to be an indication of any of those matters; and
  - (ii) anything likely to be misunderstood as or mistaken for an indication of any of those matters;

“trade mark” means any trade mark within the meaning of the Trade Marks Act 1953 (NZ); and includes a certification trade mark, and any mark which is used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of the mark by virtue of manufacture, selection, certification, dealing with, or offering for sale;

“trader” includes any servant or employee of a trader.

(2) For the purposes of this Act goods shall be deemed to be manufactured or made in any place if they have undergone in that place any treatment or process resulting in substantial change in the goods.

### *Certain Goods to Bear Indication of Origin*

## **3 Power to require indication of origin**

(1) Cabinet may by regulation –

- (a) Direct that goods of any class or description specified in the order shall, in the case of goods intended for importation into Niue at the time of their importation or exposure for sale in Niue, or in the case of goods manufactured in Niue at the time of their manufacture or exposure for sale in Niue, bear an indication of origin;
- (b) Prohibit the sale or the exposure for sale in Niue of goods of any class or description specified in the regulation unless they bear an indication of origin;
- (c) Exclude specified items from any class or description of goods.

(2) A regulation under this section shall specify in every case –

- (a) The manner in which the indication of origin is to be applied to the goods; and
- (b) The date on which the regulation is to come into force (not being a date earlier than 3 months from the date of the making of the regulation, except in the case of a regulation revoking a previous regulation either entirely or as respects some of the goods to which that regulation relates, or a regulation made for amending a previous regulation in consequence of a direction having been given with respect to that regulation under this section relating to provisional exemptions); and
- (c) Whether the goods are to bear the indication of origin at the time of importation or of manufacture or of exposure for sale wholesale.

(3) If, where regulations have been made under this Act with respect to any goods, it is shown to the satisfaction of the Minister by persons appearing to him to have a substantial interest in the matter that the application of the provisions of the regulation or of some of those provisions, to any particular class or description of those goods has caused, or is likely to cause, injury or hardship to the said persons, or any of them, the Minister may, by notice in the *Gazette*, direct that the regulation, or any

particular provisions of the regulation shall cease to apply to goods of that class or description or shall apply to those goods subject only to such modifications and conditions as the Minister thinks fit, and the regulation shall, while the direction is in force, have effect subject to it.

**4 Imported goods bearing name or trade mark of Niue manufacturer or trader not to be sold unless accompanied by indication of origin**

(1) It shall not be lawful to sell, expose for sale, or (by way of advertising goods of some kind) distribute, in Niue any imported goods to which there is applied any name or trade mark or words, being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in Niue or the name of any place or district in Niue or words which would be likely to associate the goods with Niue unless the name, mark, or words are accompanied by an indication of origin.

(2) If the Minister is satisfied, after considering such representations (if any) as may be made to him by any persons appearing to have a substantial interest in the matter, that having regard to the special circumstances of the trade, difficulties would arise if this section applied to goods of any class or description, or goods sold under any particular designation, and that public interests in Niue would not be materially prejudiced by exempting the goods from the operation of this section, he may, by notice in the *Gazette*, direct that this section shall not apply to those goods, or that goods shall not be treated as falling under this section by reason only that they are so designated.

(3) This section shall not have effect in respect of the application of a name or trade mark to articles used or to be used for any of the following purposes as coverings, labels, reels, or otherwise as articles in or with which goods manufactured or produced in Niue or are to be sold or exposed for sale, if –

- (a) The name or trade mark so applied is the name or trade mark of a manufacturer of or a dealer or a trader in those goods in Niue and the name or trade mark was applied with his consent;
- (b) The trade mark is a certification trade mark and it relates or is to relate to those goods, and was so applied by or with the consent of the proprietor of the certification trade mark or by another in accordance with his authorisation under the regulations relating to the certification trade mark.

**5** [Repealed]

**6 Penalty on removal of any required mark from goods**

If any person removes, alters, or obliterates an indication of origin which, in compliance with the requirements of section 4 or a regulation made under section 3, was borne by the goods at the time of their importation or exposure for sale wholesale, he shall be deemed to have acted in contravention of that provision or regulation unless he proves to the satisfaction of the court dealing with the case that the removal, alteration, or obliteration was not for the purpose of concealing the origin of the goods at the time of their sale or exposure for sale.

**7 Offences arising from failure to mark**

(1) Subject to this section, every person who sells, exposes for sale, or distributes by way of advertisement, any goods in contravention of the foregoing provisions of this Act, or acts in contravention of or fails to comply with any such provision or any regulation made under section 3, commits an offence and shall be liable on conviction to a fine not exceeding 1 penalty unit; and the Court may in the case of a second or subsequent offence also order the goods in relation to which the offence has been committed to be forfeited.

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(2) (a) If any person advertises or offers for sale as being goods of a particular brand or make or otherwise under a specific designation, by means of an illustration or by means of any written matter, any goods of a class or description which are required by any regulation under section 3 to bear an indication of origin, he shall, if he does not include in the advertisement or offer an indication of the origin of the goods, and subject to this section, be deemed to have acted in contravention of a regulation made under that section.

(b) This subsection shall not apply in the case of any advertisement made, issued or published before the date on which the regulation was made.

(3) Where any person sells, or exposes for sale, any goods, of which some (being goods to which a regulation under section 3 applies) form a distinguishable part, and that part is reasonably capable of having applied to it an indication of origin in manner required by the regulation he shall, for the purposes of this section, be deemed to have sold, or exposed for sale, that part, and the provisions of this section shall apply accordingly.

(4) It shall not within Niue be lawful to sell or offer for sale by sample goods of a class or description to which a regulation under section 3 applies unless the required indication of origin is applied to the samples or unless particulars corresponding to the particulars which would be contained in such an indication are communicated in writing to the person whom the samples are submitted, and if any person acts in contravention of this subsection he shall, subject to this section, be deemed to have acted in contravention of a regulation made under section 3.

(5) A person shall not be guilty of an offence if he proves –

- (a) That having taken all reasonable precautions against committing such an offence he had at the time of the commission of the alleged offence no reason to suspect that the goods were goods to which the foregoing provisions of this Act or regulation made under section 3 applied, and that on a demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained the goods; or
- (b) That otherwise he had acted innocently.

### **8 Special provisions in respect of blends and mixtures**

(1) Section 4 shall not extend to blends or mixtures, and regulations made under section 3 with respect to goods of any class or description shall not extend to blends or mixtures consisting of or containing those goods unless the regulation expressly so provides, and, where any regulation so provides, the indication of origin to be given in respect of the blends or mixtures shall, notwithstanding anything in this Act, be an indication in such form as the regulation prescribes.

(2) The provisions of this section shall not apply to any blend or mixture produced by a process of manufacture from materials of different kinds.

### *False Trade Descriptions*

### **9 Offences as to trade marks and trade descriptions**

(1) Subject to this Act, and unless he proves that he acted without intent to defraud, every person commits an offence who –

- (a) Forges any trade mark; or
- (b) Falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be likely to deceive; or
- (c) Makes any dye, block, machine, or other instrument for the purpose of forging or of being used for forging a trade mark; or
- (d) Applies any false trade description to goods; or



- (e) Disposes of or has in his possession any dye, block, machine, or other instrument for the purpose of forging a trade mark; or
- (f) Falsely represents that goods offered for sale were manufactured or made in Niue; or
- (g) Uses any word, mark, or sign likely to mislead any person as to the real or actual manufacturer or maker of goods, or the place where the goods were made or manufactured; or
- (h) Causes any of the things specified in this subsection to be done.

(2) Every person commits an offence who sells, or exposes, or has in his possession for any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be likely to deceive is falsely applied unless he proves –

- (a) That, having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description; and that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained the goods or things; or
- (b) That otherwise he acted innocently.

## **10 Application of false trade description**

(1) The provisions of this Act relating to the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination of it, whether including a trade mark or not as are likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(2) The provisions of this Act relating to the application of false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application of goods of any false name or initials of a person and to goods with the false name or initials of a person applied, in like manner as if the name or initials were a trade description; and for the purpose of this enactment the expression “false name or initials” means, as applied to any goods, any name or initials of a person which –

- (a) Are not a trade mark or part of a trade mark; and
- (b) Are identical with or a colourable imitation of the name or initials of a person who carries on business in connection with goods of the same description, and who has not authorised the use of the name or initials; and
- (c) Are either those of a fictitious person or of some person not carrying on business in connection with the goods.

## **11 Forging trade mark**

(1) A person shall be deemed to forge a trade mark who –

- (a) Without the assent of the proprietor of the trade mark, makes that trade mark or a mark so nearly resembling that trade mark as to be likely to deceive; or
- (b) Falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise.

(2) Any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark.

## Merchandise Marks Act

(3) In any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

### 12 Advertisements and other applications of marks and descriptions

(1) A person shall be deemed to apply a trade mark, mark, or trade description to goods who –

- (a) Applies it to the goods themselves; or
- (b) Applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or
- (c) Places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture in , with, or to any covering, label, reel, or other thing to which that trade mark, mark or trade description has been applied; or
- (d) Uses a trade mark, or mark, or trade description in any manner likely to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark, mark, or trade description.

(2) A trade mark, mark or trade description shall be deemed to be applied to goods whether it is woven or impressed or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing in or with the goods.

(3) A person shall be deemed falsely to apply to goods a trade mark or mark who, without the assent of the proprietor, applies that trade mark or mark, or one so nearly resembling it as to be likely to deceive; and in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

(4) For the purposes of subsection (1)(d) goods delivered under a request made by reference to a trade mark or mark or trade description appearing in any sign, advertisement, invoice, wine list, business letter, business paper, or other commercial communication shall be deemed to be goods in connection with which the trade mark, mark or trade description is used.

### *General*

### 13 Exemption of employees in certain cases

(1) Where a defendant is charged with making any dye, block, machine, or other instrument for the purpose of forging or being used for forging a trade mark or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be likely to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves –

- (a) That in the ordinary course of his business he is employed on behalf of other persons to make dyes, blocks, machines, or other instruments for making or being used in making trade marks, or for applying marks of descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in Niue, and was not interested in the goods by way of profit or commission dependent on the sale of goods; and
- (b) That he took reasonable precautions against committing the offence charged; and
- (c) That he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark or trade description; and
- (d) That he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark or trade description was applied –



he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

(2) Nothing in this Act shall be construed so as to render liable to any prosecution of punishment any servant of a master resident in Niue who acts in good faith in obedience to the instructions of that master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

**14 Power of employer to exempt himself from penalty on conviction of actual offender**

(1) Where an employer or principal is charged with the offence of having acted in contravention of, or of having failed to comply with any provision of this Act or any regulation made under this Act he shall be entitled on information duly laid by him and on giving not less than 3 days' notice of his intention to the prosecution to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer or principal proves to the satisfaction of the court that he has used due diligence to enforce compliance with this Act or of the regulation, and that the said other person had committed the offence in question without his consent, connivance, or wilful default, the said other person shall, subject to section 7 (5), be convicted of the offence, and the employer or principal shall be exempt from any penalty.

(2) The person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to proceedings.

(3) The prosecution shall in any such case have the right to cross-examine the employer or principal if he gives evidence, and any witnesses called by him in support of his charge, and to call rebutting evidence.

**15 Description of trade mark in pleading**

In any indictment, pleading, proceeding, or document in which any trade mark or forged trade mark is intended to be mentioned it shall be sufficient, without further description and without any copy or facsimile, to state that mark or forged mark to be a trade mark or forged trade mark.

**16 Punishment of accessories**

Every person who being in Niue procures, counsels, aids, abets, or is accessory to the commission out of Niue of any act which if committed in Niue would under this Act be an offence punishable on indictment shall be guilty of that offence as a principal, and be liable to be indicted, proceeded against, tried, and convicted in Niue as if the offence had been committed there.

**17 Limitation of prosecution**

No prosecution for an offence against this Act shall be commenced after the expiration of 3 years from the date of the commission of the offence, or after the expiration of one year from the first discovery of it by the prosecutor, whichever first happens.

**18 General penalty for offences**

Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section shall be liable on conviction –

- (a) To imprisonment for a term not exceeding 2 years, or to a fine not exceeding 10 penalty units, or to both such imprisonment and such fine; and

- (b) If the court so directs, to forfeit to the Government every chattel, article, instrument, or thing, by means of or in relation to which the offence was committed.

## **19 Forfeiture**

(1) Where any articles (including goods, chattels, instruments, and things) would be liable to forfeiture under section 7 if the owner was convicted of a second offence against this Act, or under section 18 if the owner was convicted of an offence against this Act, and the owner is unknown or cannot be found, an application to the Court may be made for the purpose only of enforcing the forfeiture, and any Judge may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place specified in the notice, the articles will be forfeited; and at that time and place any Judge, unless the owner or any person on his behalf or other person interested in the articles shows cause to the contrary, may order the articles or any of them to be forfeited.

(2) Subject to this section and to any directions of the Court which orders the forfeiture, any such articles which are forfeited under this Act may be sold, destroyed, or otherwise disposed of as the Minister may direct.

(3) Subject to subsection (4)(6), where any such articles which are forfeited under this Act are sold, the proceeds of sale shall be applied in the like manner as if the proceeds were a fine incurred under this Act.

(4) Where any such articles are forfeited under this Act, or under the Customs Act 1966 in consequence of the operation of section 22 of this Act –

- (a) If the articles are not destroyed, all trade marks or trade descriptions which are on the articles in contravention of this Act or of any regulation made under section 3 shall be obliterated before the articles are sold or otherwise disposed of;
- (b) If the Court which orders the forfeiture or any Judge so directs, any innocent party may be reimbursed out of the proceeds of any such sale or disposition any loss he may have innocently sustained in dealing with the articles.

(5) Any such direction may be given by the court which order the forfeiture at the time when it is ordering the forfeiture, or by any Judge on an application made to the High Court in that behalf by any interested person.

## **20 Implied warranty on sale of marked goods**

On the sale or in the contract for the sale of any goods to which a trade mark, mark or trade description has been applied, the vendor shall be deemed to warrant that the trade mark or mark is a genuine one and not forged or falsely applied, and that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the purchaser.

## **21 Provisions as to false description not to apply in certain cases**

(1) Where on the coming into operation of this Act a trade description was lawfully and generally applied to goods of a particular class or manufactured by a particular method, to indicate the particular class or method of manufacture of the goods, the provisions of this Act with respect to false trade descriptions shall not apply to that trade description when so applied.

(2) Where the trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods were not actually made or produced in

that place or country, this section shall not apply unless there is added to the trade description immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods and the material or substance of it were actually made or produced, with a statement that they were made or produced there.

## **22 Importation of certain goods prohibited**

All goods which if exposed for sale in Niue would be liable to forfeiture under section 18(1)(b) are hereby prohibited to be imported into Niue, and shall be deemed to be included among goods prohibited to be imported under section 48 of the Customs Act 1966, subject to the following provisions, that is to say:

- (a) Before detaining any such goods, or taking any further proceeding with a view to their forfeiture under the Customs Act 1966, the Minister of Customs may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy himself, in accordance with those regulations, that the goods are such as are prohibited by this section to be imported;
- (b) Section 19(4) shall apply in connection with any such goods which are forfeited under the Customs Act 1966;
- (c) Cabinet may make regulations, either general or special, respecting the detention and forfeiture of goods that importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by any such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verifying any such evidence;
- (d) Regulations so made may apply to all goods the importation of which is prohibited by this section, or to any class or classes of those goods or of offences in relation to those goods;
- (e) Regulations so made may provide that the informant shall reimburse the Minister of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

**23** [Spent]

## **24 Savings in respect of liabilities**

(1) This Act shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Act, be brought against him.

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence, against that person in any prosecution of an offence against this Act.

**25** [Spent]

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2012/316 – 1 August 2012

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**A Bill for an Act to make provision for the registration of foreign ships; and for purposes incidental thereto and connected therewith**

PART 1

PRELIMINARY

**1 Short title**

This Act may be cited as the Merchant Shipping (Registration of Foreign Vessels) Act 2012.

**2 Commencement**

(1) This Act comes into force on a date to be appointed in an enactment of Cabinet made in accordance with Article 13 of the Constitution of Niue.

(2) One or more enactments may be made under subsection (2) bringing different Parts into force on different dates.

**3 Definitions**

(1) In this Act, unless the context otherwise requires —

"agent" means an agent appointed under section 4(3);

"appropriate tonnage certificate" means —

(a) in the case of a Tonnage Measurement Convention ship, an International Tonnage Certificate as specified in Annex II of the International Convention on Tonnage Measurement of Ships 1969; and

(b) in any other case, a Niue Tonnage Certificate as prescribed;

"authorised officer", in relation to any provision of this Act, means a person designated, under section 143 (b), as an authorised officer for the purpose of this Act, or for the purposes of that provision;

"bareboat charterer" means the contract for the lease or sub-lease of a ship for a stipulated period of time by virtue of which the charterer acquires full control and complete possession of the ship, including the right to appoint the master and crew for the duration of the charter but excluding the right to sell or mortgage the ship;

"bankruptcy" includes insolvency;

"certificate of competency" means a certificate issued to a person under section 77 which entitles the person to be employed in the capacity stated in the certificate;

"certificate of registry" means a certificate by that name granted under section 16;

"Court" means the High Court of Niue or as defined in the context of this Act;

"crew", "crewman" or "crewmen", in relation to a ship, means the person employed on board and in the business of the ship but does not include a pilot or a person temporarily employed on board the ship while the ship is at a port;

"crew agreement" means an agreement entered into under section 87;

"employer", in relation to a seafarer, means the person who has entered into a crew agreement with the seafarer for the employment of the seafarer on a ship;

"equipment", in relation to a ship, includes every thing or article belonging to or used in connection with, or necessary, for the navigation, safety and working of the ship;

"exemptions" refer to any power conferred by this Act to provide for or grant an exemption includes power to provide for or grant the exemption subject to conditions;



- "fishing vessel" means a vessel used or intended to be used for catching whales, seals, walrus or other living resources of the sea but excluding any vessel that is —
- (a) engaged in harvesting or transporting algae or aquatic plants; or
  - (b) primarily a carrier or mothership;
- "foreign owner" means a person or legal entity having the legal capacity to own a ship as the Cabinet may by regulations prescribe who, if a person, is not a resident of Niue and if a legal entity is not established under the laws of Niue; and in both instances, may not ordinarily reside or have a place of business in Niue, except that an international business company registered under the Companies Act may be a foreign owner;
- "foreign trade" means between Niue and a foreign country or between one foreign country and another and includes transportation of goods between the ports of Niue and ports of foreign countries and between the ports of one foreign country and another;
- "foreign vessel" means a sea-going ship of any type, class, size or weight, including any exempt ship, engaged in any kind of trade, service or international maritime activity, including a ship for leisure and recreation, owned by a foreign owner;
- "foreign vessel administrator" means the Authority appointed by the Niue Public Service Commission to administer the registration of foreign vessels under this Act;
- "going to sea" in relation to a ship shall, for the purpose of this Act, be deemed to have —
- (a) gone to sea; or
  - (b) been taken or sent to sea;
- if the ship has got under way for the purpose of —
- (c) going to sea;
  - (d) plying or running; or
  - (e) proceeding on a voyage;
- except if by reason only that the ship has been got under way for the purpose of moving the ship from one berth or place in a port to another berth or place in the port;
- "Government ship" means a ship that belongs to the Government or to an authority or instrumentality of the Government, or that is held by any person on behalf of, or for the benefit of, the Government;
- "gross tonnage", in relation to a ship having alternative gross tonnages, shall be taken to be the larger of those tonnages;
- "inspector" means a person designated under section 143(a) as an inspector;
- "International Maritime Conventions" has the meaning given in section 47;
- "international voyage" means a voyage from a port or place in Niue to a port or place outside Niue, or conversely;
- "length", in relation to a ship, means —
- (a) the length shown in the ship's certificate of registry or tonnage certificate; or
  - (b) where the ship does not possess either of those certificates or where the length is not shown on either of those certificates, the length as determined by an inspector;



## Merchant Shipping (Registration of Foreign Vessels) Act

- "load line" means a line marked on a ship indicating the depth to which the ship may safely be loaded;
- "master", in relation to a ship, means the person having lawful command or charge of the ship, but does not include a pilot;
- "Minister" means the Minister responsible for the Registrar of Foreign Ships and Registrar of Seafarers (Foreign Ships) within the meaning of this Act;
- "mortgage" means an instrument of security of the kind referred to in section 30(1);
- "National Flag" means the National Flag of Niue;
- "near coastal voyages" means voyages and trade within coastal waters up to 30 nautical miles from the coastlines of any land;
- "Official Log Book", in relation to a ship, means the Official Log Book kept under section 116;
- "owner" means a person or legal entity having the legal capacity to own a ship as the Cabinet may by regulations prescribe and shall include "foreign owner" as defined in the Act;
- "passenger" means a person carried on board a ship with the knowledge or consent of the owner or master of the ship but does not include -
- (a) a person engaged in any capacity on board the ship in the business of the ship;
  - or
  - (b) a child under the age of one year;
- "pilot", in relation to a ship, means any person not belonging to the ship who has the lawful conduct of the ship;
- "prescribed fees" means all fees in relation to the registration of foreign ships;
- "proper return port", in relation to a seafarer, means such port or place as is agreed upon by the master and the seafarer and is named in a crew agreement;
- "qualified person" means a person of the kind referred to in section 8(4);
- "Register" means the Register of Ships referred to in section 5;
- "Registrar" means the person holding the office of Registrar of Ships;
- "Registrar of Seafarers" means the person holding the office of Registrar of Seafarers;
- "Regulations" means the regulations made under this Act;
- "seafarer", "seafarers", "seaman" or "seamen", in relation to a ship, means a person, other than —
- (a) the master or a pilot or
  - (b) a person temporarily employed on board a ship while the ship is at port, being a person who is engaged or employed in any capacity on board the ship and in the business of the ship;
- "ship" includes —
- (a) in relation to the ownership of a ship, a share in the ship and any interest in the ship or share; and
  - (b) every description of vessel used, or capable of being used, in navigation by water, but does not include -
  - (c) a vessel ordinarily propelled by oars or paddles;
  - (d) a vessel belonging to the defence force of any other country; or
- "STCW" means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, as amended;

- "suspended person" means a person whose name is included in the list of suspended persons kept under section 108;
- "surveyor" means a surveyor of ships appointed under section 142 and includes a person in respect of whom a notification given under section 142 (4) has been notified and has not been cancelled;
- "this Act" means the Merchant Shipping (Registration of Foreign Vessels) Act 2012 and any amendment thereof and includes the Regulations;
- "Tonnage Measurement Convention" means the International Convention on Tonnage Measurement of Ships 1969;
- "Tonnage Measurement Convention ship" means a ship that is —
- (a) of a kind to which the Tonnage Measurement Convention applies; and
  - (b) registered in a country the government of which has accepted or acceded to the Tonnage Measurement Convention and has not denounced that Convention;
- "traditional build" in relation to a ship, means a ship built of traditional materials to a traditional local design;
- "Niue waters" means the internal waters, territorial sea and, where applicable, archipelagic waters of Niue, all as defined by or under the Territorial Sea and Exclusive Economic Zone Act 1996;
- "underlying registry" means the registry of the State in which the owners of a ship are registered as owners and to which jurisdiction and control will revert upon termination of the bareboat charter registration, and 'underlying register' and 'underlying registration' shall be construed accordingly.
- "vessel" means a sea-going ship of any type, class, size or weight engaged in any kind of trade, service or international maritime activity, including a ship for leisure and recreation, owned by an owner and shall include any ship and foreign vessel as defined in this Act.

## PART II

### REGISTRATION OF SHIPS

#### *Division 1 — Establishment of the Niue Foreign Vessel Administration*

#### **4 Establishment of the Niue Foreign Vessel Administration**

- (1) There is hereby created the Niue Foreign Vessel Administration to be headed by the Foreign Vessel Administrator who shall be appointed by the Niue Public Service Commission.
- (2) The Foreign Vessel Administrator shall have the powers and functions of the Registrar and Registrar of Seafarers in relation to the registration of foreign vessels.
- (3) The Foreign Vessel Administrator may from time to time appoint such persons, as he may think fit, as agents.
- (4) The Foreign Vessel Administrator or his or her agent is authorised —
- (a) to issue all such licences, certificates or other documents as are necessary or proper for carrying out the purposes of this Act or of any international convention to which Niue is or may become a party;
  - (b) to suspend or to revoke any license, certificate, permit or document issued under this Act if their provisions are violated; and

## Merchant Shipping (Registration of Foreign Vessels) Act

(c) to operate the Register which shall be kept in an office at the place where the Foreign Vessel Administrator is located and also at the homeport.

(5) The Foreign Vessel Administrator or an agent shall not be liable to damages or otherwise for any loss accruing to any person by reason of any act done or default by them in their official capacity.

(6) The Foreign Vessel Administrator's office shall maintain all of the following documents –

- (a) certificates of permanent and provisional registry and licences;
- (b) bill of sale and other instruments of conveyance of vessel;
- (c) mortgages of vessel;
- (d) assignments of mortgages; and
- (e) all other documents relating to a vessel which are entitled to be recorded.

### *Division 2 - The Registrar and Register of Ships*

#### **5 The Registrar and Register of Ships**

(1) There shall be an office of Registrar of Ships which shall be a public office.

(2) The Registrar of Ships shall be appointed by the Niue Public Service Commission.

(3) Subject to section 4 (4) (c), the Registrar shall cause to be kept at Alofi and at the place where the Foreign Vessel Administrator is located a Register (to be known as the Register of Ships), in such form as the Registrar determines.

(4) The Registrar shall cause to be entered in the Register particulars of all ships registered under this Act, the other entries which are required by this Act to be entered in the Register and particulars of such other matters as he thinks fit.

### *Division 3 — Registration of Ships*

#### **6 Provisions relating to registration**

The following provisions apply to, and in relation to, the registration of ships under this Act, namely –

- (a) The property in a ship shall be divided into 64 shares;
- (b) Subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than 64 persons shall be entitled to be registered at the same time as owners of any ship, but this provision shall not affect the beneficial title of any number of persons or of a company represented by or claiming under or through any registered owner or joint owner;
- (c) A person shall not be entitled to be registered as owner of a fractional part of a share in a ship, but any number of persons not exceeding 5 may be registered as joint owners of a ship or of any share or shares in the ship;
- (d) Joint owners shall be considered as constituting one person only as regards the person entitled to be registered, and shall not be entitled to dispose severally of any interest in a ship, in respect of which they are jointly registered;
- (e) A corporation shall be registered as owner by its corporate name.

#### **7 Port of registry**

The port of registry of every ship registered under this Act shall be Alofi, and the port of registry shall be shown on the Certificate of Registry.

## **8 Registration of ships**

- (1) Where a ship, other than an exempt ship –
- (a) is owned by –
    - (i) a person who is a qualified person; or
    - (ii) persons each of whom is a qualified person; and
  - (b) is not registered in any other country, the owner or those owners shall apply for registration of the ship under this Act.
- (2) Where a ship, other than an exempt ship –
- (a) is a foreign vessel engaged in foreign trade as defined in this Act; and
  - (b) is not registered in any other country, and
  - (c) is owned by a person defined as a foreign owner or any legal entity having the legal capacity to own a vessel as the Cabinet may by regulations prescribe, the owner or owners of the ship may apply for registration of the ship under this Act.
- (3) A vessel registered in accordance with this Act shall be entitled to fly the Niue flag.
- (4) In this section –
- "exempt ship" means a ship –
- (a) that is, in the opinion of the Registrar, of traditional build; or
  - (b) that is engaged solely in domestic commerce;
- "qualified person" means –
- (a) a person who is not a resident of Niue;
  - (b) a corporation not established by an Act of Niue;
  - (c) a corporation, except for an international business company incorporated under the Companies Act;
  - (d) not established or registered in Niue; and
  - (e) not having a place of business in Niue.

## **9 Restriction on registration of ship**

- (1) No vessel engaged in foreign trade shall be documented under the laws of Niue or be accorded the rights and privileges of a Niue vessel unless such vessel shall be registered in accordance with the provisions of this Act.
- (2) A foreign vessel which is not registered under section 8 shall not be recognised –
- (a) in Niue or for the purposes of this Act as a Niue ship; or
  - (b) as being entitled to the rights and privileges accorded to Niue ships.

## **10 Ship not entitled to be registered**

- (1) Where the Minister has reasonable cause to believe, and does believe, that any ship registered under this Act should not continue to be so registered he may direct the Registrar to require the master and owner of the ship, or either of them, to produce evidence to the satisfaction of the Minister that the ship should continue to be so registered.
- (2) If within such time as may be determined by the Minister, not being less than 60 days, the evidence referred to in subsection (1) is not produced, the ship is liable to forfeiture.

**11 Survey and measurement of ship**

(1) Subject to subsection (4), a ship shall, before registry, be surveyed by a surveyor and, subject to subsection (3), its tonnage shall be ascertained by the surveyor in the prescribed manner, and the surveyor shall grant the appropriate tonnage certificate specifying the ship's tonnage and build and such other particulars as may be prescribed.

(2) The appropriate tonnage certificate granted under subsection (1) in respect of a ship shall, before the ship is registered, be delivered to the Registrar.

(3) Subject to subsection (4), where a ship which is not registered under this Act has been measured and registered under the law of a foreign country, or has already been measured without having been so registered, the surveyor may, for the purposes of subsection (1), accept and use any suitable figures of measurement contained in the latest register relating to that ship or, in the case of an unregistered ship, in the latest certificate of measurement relating to that ship.

(4) Before acting under subsection (3), a surveyor shall satisfy himself that there have been no changes of measurement since the making of the register or certificate which he proposes to use, and where any such changes have been made, he shall remeasure the ship to the extent made necessary by those changes.

**12 Names, numbers and marking of ship**

(1) Every registered ship shall have her name marked upon each bow and upon the stern. The homeport of the ship shall also be carved upon the stern. These names shall be painted or gilded, or consist of cut or carved or cast Roman letters in light colour on a dark background, or in a dark colour on a light background, secured in place and distinctly visible. The smallest letter used shall not be less than one hundred millimetres in height.

(2) The draft of every registered vessel shall be marked on each side of her stem and upon the sternpost, in metres or in decimetres, in either Arabic or Roman numerals. The bottom of each numeral shall indicate the draft to that line.

(3) Upon initial registration of a vessel, the Registrar shall assign to the vessel an official number.

(4) A ship in respect of which an application for registration is made shall not be registered unless the ship has first been marked permanently and conspicuously in the prescribed manner.

(5) The marks required by this section to be placed on a ship shall be permanently continued and no alteration shall be made to those marks except as provided by this Act.

(6) An owner or master of a ship registered under this Act who fails to keep permanently continued the marks placed on a ship under this section is guilty of an offence.

(7) A person who conceals, removes, alters, defaces or erases any mark required by this section to be placed or kept on a ship, except as provided by this Act or for the purposes of escaping from an enemy, is guilty of an offence.

(8) An owner or master of a ship registered under this Act who suffers or permits the ship to be described by a name other than that by which the ship is for the time being registered is guilty of an offence.

(9) The Minister may, by notice, exempt the owner or master of any ship or class of ships from complying, either in whole or in part, with the requirements of this section.

### **13 Application for registration**

(1) An application for the registration of a ship under this Act shall be made by the owner or owners of the ship to the Registrar in prescribed form.

(2) An application under subsection (1) shall be made —

- (a) where the owner is a corporation, by the agent of the corporation; or
- (b) where the owner is not a corporation, by the person or persons seeking the registration of the ship or by his or their agent.

(3) The authority of an agent referred to in subsection (2) shall be in writing, and —

- (a) in the case of an agent appointed by a corporation, under the common seal of the corporation; and
- (b) in the case of an agent otherwise appointed, under the hand of the person or persons appointing the agent.

(4) The Registrar may require proof, to his satisfaction,

- (a) of the ownership; and
- (b) of the seaworthiness,

of a ship before proceeding with the registration of the ship under this Act.

(5) An application for the registration of a ship under this Act shall be accompanied by such evidence in respect of the ship as may be prescribed.

### **14 Declaration of ownership on registry**

(1) A person shall not be entitled to be registered as owner of a ship until he, or in the case of a corporation, a person authorised under the common seal of the corporation to make declarations on behalf of the corporation, has made and signed a declaration of ownership referring to the ship, as described in the appropriate tonnage certificate, and containing the prescribed particulars.

(2) This section does not apply in relation to the registration of a Government ship.

### **15 Registration of ships procedure**

(1) Where the requirements of this Act relating to a ship before registry have been complied with, the Registrar shall, on payment of the prescribed fee, register the ship by allotting to the ship an official number and by entering in the Register the name of the ship, the official number allotted to the ship and such other particulars in respect of the ship as are prescribed.

(2) The Registrar shall not register a ship by a name by which a ship is already registered under this Act or, except in accordance with the direction of the Minister, by a name that is, in the opinion of the Registrar, undesirable.

(3) Where a ship has been registered under subsection (1), the Registrar shall retain those of the documents submitted in connection with the application for registration as are prescribed.



**16 Certificate of registry**

- (1) The vessel's document shall be called the "Certificate of Registry".
- (2) The Registrar or his or her duly authorised agent shall prescribe and furnish forms of Provisional and Permanent Certificate of Registry.
- (3) The Registrar may prescribe endorsements that may be made on vessel documents from time to time with or without issuance of a new document or surrender of the old document.
- (4) As soon as practicable after the registration of a ship the Registrar shall grant to the owner or owners a certificate of registry in the prescribed form.
- (5) The certificate of registry of a ship -
  - (a) shall be kept in a safe place on the ship;
  - (b) shall be used only for the lawful navigation of the ship; and
  - (c) shall not be subject to detention by reason of any title, lien, charge or interest had or claimed by any owner, mortgagee or other person to, on or in the ship.
- (6) A master or owner of a ship who used for the navigation of a ship, a certificate of registry not legally granted in respect of the ship is guilty of an offence.
- (7) A person -
  - (a) who has in his possession or under his control the certificate of registry of a ship; and
  - (b) who refuses, or fails without reasonable cause, to deliver the certificate on demand to —
    - (i) the person entitled to its custody for the purposes of the lawful navigation of the ship;
    - (ii) any other person entitled by law to require its delivery,is guilty of an offence.
- (8) The Certificate of Registry shall be used only for the lawful navigation of the vessel.
- (9) The Certificate of Registry shall not be subject to detention by reason of any title, lien, charge or interest whatsoever had or claimed by an owner, mortgagee or another person to, on or in the vessel.
- (10) Except as otherwise provided therein, section 19 (4) shall apply where the Certificate of Registry of a Niue vessel is mislaid, lost or destroyed.
- (11) The owner of a Niue vessel may make written application to close its registry if there is no:
  - (a) unsatisfied mortgage entered in its register;
  - (b) unpaid fees under this Act with respect to the vessel; and
  - (c) outstanding claims of the master or seamen of the vessel in respect of wages which have been notified to the Registrar or the agent.
- (12) The application shall specify the name of the vessel, the intended port and country of registry (if applicable) or otherwise the reason for the closure. On receipt of the application, and satisfied of the matters mentioned above, the Registrar or the Agent shall close the registry of the vessel.
- (13) Any officer designated by the Registrar may at all times inspect the Certificate of Registry. A Master who fails to exhibit the same, when required by such officer, shall be liable to a penalty of ten penalty units, and if his failure is wilful shall



be liable to a penalty of not more than 1,000 penalty units or imprisoned for not more than one year, or both.

**17 Power to grant new certificate**

The Registrar may, upon the delivery to him of a certificate of registry of a ship, grant a new certificate in its place.

**18 Provisional and permanent registration**

(1) Where, at a place outside Niue, a ship becomes wholly owned by a qualified person, or by persons each of whom is a qualified person, or becomes a Government ship, a person authorised by the Minister for that purpose, may grant to the master of the ship, on his application, a provisional certificate of registry stating –

- (a) the name of the ship;
- (b) the best particulars respecting the ship's tonnage, build and description which the representative or person is able to obtain.

(2) A person granting a provisional certificate of registry shall forward a copy of any provisional certificate of registry granted by him under subsection (1) to the Registrar at the first convenient opportunity.

(3) A provisional certificate of registry granted under subsection (1) is deemed to be a certificate of registry granted under section 16 until the expiry of up to 180 days after the date on which it was granted.

(4) The Registrar may, by instrument in writing, grant to the master of a ship, on his application, an extension of the period referred to in subsection (3) for up to another 180 days,

(5) An application for permanent registration of a vessel under this Act shall be submitted to the Registrar who may issue a permanent Certificate of Registry for the vessel provided that the owner furnishes satisfactory proof to the issuing officer –

- (a) as to the vessel's ownership;
- (b) that any foreign marine document for the vessel has been surrendered with the consent of the government that issued it or has been legally cancelled;
- (c) that the vessel, if it is over fifteen years old, has passed an inspection report and meets the highest classification requirements of one of the Classification Societies under section 142(1);
- (d) that the owner has paid to the Registrar or his or her designee a sum equal to the initial registration fee;
- (e) that the markings of name, official number, homeport and draft required by this Act have actually been made; and
- (f) a certificate of measurement has been issued.

(6) There shall be no documents granted or papers issued to a vessel until all applicable provisions of this Act and regulations have been complied with.

(7) Any person who wilfully and with intent to defraud destroys makes or concurs in making any false entry in or omits or alters or concurs in omitting or altering any particulars under this Act shall be liable to a fine of 50 penalty units, and in the case of a continuing offence, to further fine of 20 penalty units for each day, subsequent to the days on which he is convicted, during which the offence continues.

**19 Oaths and Loss of certificate of registry**

(1) In order to register a vessel under this Act, the owner shall declare, in the prescribed manner, the name of the vessel, its tonnages, the place where built, the date when built, the name and residence of any other owner and his citizenship, each owner's proportion, and the name of the affiant and his citizenship.

(2) The oath shall be taken before a notary public or an officer authorised to administer oaths pursuant to the oaths and statutory declarations laws of the place where the oath is administered.

(3) The oath of any other person interested and concerned in the vessel shall not be required. An agent or attorney who purchases any vessel shall take oath as to the ownership of the vessel and that he is the agent or attorney for the owner and in such capacity has made such purchase in good faith.

(4) If the document of a vessel is lost or destroyed, the Master, or other person in command, may take the following oath at or nearest to the port where the vessel is first located after such loss or destruction before any person as prescribed in subsection (2):

"I, (insert name of the person swearing) being Master or in command of the (insert type of vessel) or vessel called the (insert name of the vessel) Official No. (insert No.) owned by (insert name of the owner) of (insert domicile of the owner) do swear (or affirm) that the said vessel has been, as I verily believe, registered according to the laws of Niue by the name of (insert again name of vessel), and that a Permanent (or Provisional) Certificate of Registry bearing No. (insert No. of lost Certificate) was issued for such vessel pursuant to the laws of Niue at (insert date of issuance of lost certificate), which certificate has been lost (or destroyed); and that the same, if found, and within my power, will be delivered up to the Registrar of Ships."

(5) Where an oath is taken in the foregoing form, the officer or person administering such oath shall grant to the vessel a temporary Provisional Certificate of Registry and insert therein that it is issued in lieu of the one lost or destroyed. The officer or person shall forthwith send to the Registrar a written notice, accompanied by a copy of the oath, advising that such oath has been taken and such temporary Provisional Certificate issued. Upon receipt of such notice the Registrar, upon being satisfied that the vessel is entitled to a Certificate of Registry, may grant a new Certificate of Registry, identical with that which was lost or destroyed. As soon as practicable after the issuance of such a Certificate of Registry, the temporary Provisional Certificate hereinbefore referred to must be surrendered to the Registrar.

**20 Loss of ship or change in ownership**

(1) Where –

(a) a ship registered under this Act is either actually or constructively lost, taken by the enemy, burnt or broken up;

(b) there is such a change in the ownership or in the qualification of any owner, the owner or, if there is more than one owner, each owner, of the ship shall, immediately on obtaining knowledge of the event give notice to the Registrar.

(2) The Registrar shall, on receipt of a notice specifying that an event referred to in subsection (1) has occurred in relation to a ship, make or cause to be made

an entry in the Register of the event, and the registry of the ship in the Register shall be deemed to be closed except in so far as relates to any undischarged mortgage entered in the Register.

(3) Where, at the time when the Registrar receives notice that a circumstance referred to in subsection (1) (b) is applicable in relation to the owner or owners of a ship, or in relation to a ship, registered under this Act, the ship is subject to an undischarged mortgage entered in the Register, the Registrar shall give to the mortgagee a notice in writing specifying the circumstances so applicable.

(4) If, within 60 days after notice is given to the mortgagee under subsection (3), an application is not made to the Court for an order under subsection (5), the registry of the ship in the Register shall, subject to subsection (7), be deemed to be closed on the expiration of that period.

(5) If, before the expiration of the period of 60 days referred to in subsection (4), or within such further time as the Court, on an application made either before or after the expiration of that period allows, an application is made to the Court for an order under this subsection, the Court may order the sale of the ship and direct that the proceeds of the sale, after deducting the expenses of the sale, be paid first to the mortgagee or, if there are two or more mortgages, to the mortgagees in order of priority and, after satisfaction of the mortgage or mortgages, to the owners of the ship.

(6) Where the Court grants an application for an extension of time within which an application for an order under subsection (5) may be made, it may grant the extension on such terms and conditions as to costs and otherwise as it thinks just.

(7) On an application for an order under subsection (5), the Court may give such directions with respect to the closure of the registry of the ship as it thinks fit, and the Registrar shall give effect to any directions given by the Court.

(8) A person who refuses, or fails without reasonable cause, to comply with subsection (1) is guilty of an offence.

## **21 Change of ship particulars**

(1) Where a ship registered under this Act is so altered as not to correspond with the particulars relating to the appropriate tonnage certificate or to the description of the ship contained in the Register, the owner of the ship shall, within 21 days, make, or cause to be made, to the Registrar an application in writing to register the alteration.

(2) An owner of a ship who refuses or fails to comply with the provisions of subsection (1) is guilty of an offence.

(3) An application made under subsection (1) shall be accompanied by the appropriate tonnage certificate.

(4) The Registrar, upon receipt of an application under subsection (1) and upon receipt of the prescribed fee (if any), shall cause the alteration to be registered.

(5) In causing the alteration of a ship to be registered, the Registrar shall cancel the certificate of registry and shall grant a new certificate of registry.

(6) The Registrar may change the name of a Niue vessel on application of the owner and the payment of the prescribed fee. In the event of change of the vessel name the Registrar shall issue a new Certificate of Registry to the owner.

(7) The Registrar shall establish necessary rules and procure necessary evidence as to age, condition, where built, and pecuniary liability of the vessel so as to

prevent injury to public or private interests. The person desiring the change of name shall pay the prescribed fee of procuring evidence.

(8) If the name of a Niue vessel is changed by any device or contrivance with intent to deceive as to its true name or character such vessel shall be liable to be struck off from the Register.

## **22 Bareboat charters**

(1) This section applies to any ship which —

- (a) is registered under the law of a country other than Niue; and
- (b) is chartered on bareboat charter terms to a bareboat charterer who is a qualified person.

(2) Subject to subsection (3), a ship to which this section applies may be registered as a foreign vessel upon application from the charterer.

(3) No ship to which this section applies may be registered as a foreign vessel without the prior approval in writing of the underlying registry.

(4) The registration of a ship registered under this section shall remain in force (unless terminated earlier under this Act) until the end of the charter period and shall then terminate.

(5) During the period of registration under this section, no title, deed, mortgage or other document shall be registered with the Registrar, and all such documents shall be registered at the vessel's underlying registry.

(6) Where —

- (a) a foreign vessel registered under this Act is chartered on bareboat charter terms; and
- (b) the Registrar receives a request in writing from the owner or owners of such ship for the Registrar's consent to such ship being registered in a country other than Niue in a manner similar to that provided for under this section, the Registrar may give his consent in writing.

### *Division 4 - Transfers and Transmission*

## **23 Transfers by Bill of Sale**

(1) The ownership of a ship registered under section 8 (1) or 8 (2) shall be transferred by a bill of sale followed by the delivery of the vessel to the purchaser.

(2) A bill of sale shall —

- (a) be in the prescribed form;
- (b) be executed by the transferor and the transferee in the presence of, and be attested by, a witness or witnesses; and
- (c) be authenticated by a notary public in the place where the bill of sale is executed before the bill of sale can be registered at the office of the Registrar.

(3) The execution by the purchaser of a protocol of delivery and acceptance shall be deemed sufficient evidence that the vessel has been delivered to the purchaser.

(4) The registration of the title to the vessel at the office of the Registrar shall be necessary to complete the vessel's registration and the permanent registration of a mortgage thereon.

**24 Declaration of transfer**

(1) Where a ship registered under this Act is transferred, the transferee is not entitled to be registered as owner of the ship until he or in the case of a corporation, a person authorised by this Act to make declarations on behalf of the corporation, has made and signed a declaration of transfer in the prescribed form referring to the ship and

(a) containing –

(i) statements that show that the transferee is a qualified person, or, where there is more than one transferee, that each transferee is a qualified person; and

(ii) a statement that to the best of his knowledge and belief, only a qualified person, or persons each of whom is a qualified person, is or are entitled as owner to any legal or beneficial interest in the ship or a share in the ship; or

(b) as the case may be, containing a statement that paragraphs (a) and (b) of section 8 (2) apply in relation to the ship.

(2) This section does not apply in relation to a ship registered under this Act which, on transfer, becomes a Government ship.

**25 Registration of transfer**

(1) Every bill of sale for the transfer of a ship registered under this Act, when duly executed, shall be produced to the Registrar with the declaration of transfer referred to in section 24 for sighting and entry into the Register.

(2) Bills of sale of a ship registered under this Act shall be entered in the Register in the order of their production to the Registrar.

**26 Transmission of ship without bill of sale to qualified person**

(1) Where the property in a ship registered under this Act is transmitted to any person on the death or bankruptcy of any registered owner, or by any lawful means other than by a transfer made under this Act, then, subject to section 27, that person shall authenticate the transmission by making and signing a declaration of transmission in the prescribed form identifying the ship, and the declaration of transmission shall contain such statements and shall be accompanied by such documents as are prescribed.

(2) The Registrar, on receipt of the declaration of transmission under subsection (1), accompanied by the statements and documents referred to in that subsection, shall enter in the Register the name of the person entitled under the transmission as owner of the ship the property in which has been transmitted, and where there is more than one such person, the Registrar shall enter the names of all such persons, but those persons, however numerous, shall, for the purposes of any provision of this Act relating to the number of persons entitled to be registered as owners, be considered as one person.

**27 Transmission of ship without bill of sale to unqualified person**

(1) Where the property in a ship registered under this Act is transmitted on death or bankruptcy or otherwise and as a result the ship would not if application were then made, qualify for registration under section 8 (1) or 8 (2), the Court may, on

application by or on behalf of that person or one or more of those persons, order a sale of the property so transmitted and direct that the proceeds of the sale, after deducting the expenses of the sale, be paid to the person or persons entitled under the transmission or otherwise as the Court directs.

(2) The Court may require any evidence it thinks fit in support of the application and may make the order on any terms and conditions it thinks just or may refuse to make the order, and generally may act in the case as the justice of the case requires.

(3) An application under this section shall be made within 60 days after the occurrence of the event on which the transmission has taken place, or within such further time (not exceeding in the whole one year from the date of the occurrence) which the Court allows.

(4) If the application is not made within the time specified in subsection (3) or if the Court refuses an order for sale, the ship transmitted is liable to forfeiture.

**28 Transmission of ship due to Court sale**

(1) Where the Court orders the sale of a ship registered under this Act, the order shall contain a declaration vesting in a person or persons specified in the order the right to transfer the ship, and that person is entitled to transfer the ship in the manner and to the same extent as if he was the registered owner of the ship.

(2) The Registrar shall obey the requisition of the person named in a declaration under subsection (1) in respect of any such transfer to the same extent as if that person were the registered owner.

**29 Transmission of ship prohibited by Court**

(1) The Court may, if it thinks fit, and without prejudice to any other of its powers, on the application of a person claiming an interest in a ship registered under this Act make an order prohibiting for the time specified in the order any dealing with that ship.

(2) The Court may make an order under subsection (1) on any terms or conditions it thinks just, or may refuse to make the order, and generally may act in the case as the justice of the case requires.

(3) The Registrar, after being served with a copy of an order made under this section, shall not register any dealings prohibited by the order.

*Division 5 - Mortgages*

**30 Record of mortgage**

(1) The vessel registered under this Act may be made a security for a loan or other valuable consideration or to meet any lawful obligation in the present or future, and the instrument creating the security (in this Act referred to as "a mortgage") shall be in the prescribed form.

(2) The mortgage, duly executed by the owner or his or her authorised representative, shall be registered at the office of the Registrar in order to create in rem rights against the vessel.

(3) The Registrar, on the production to him of a mortgage, shall register the mortgage by making an entry of the mortgage in the Register.



(4) The Registrar shall register mortgages in the order in which they are produced to him for that purpose and he shall endorse and sign a memorial on each mortgage, stating the date and time that it was produced to him.

(5) The deed of the mortgage may be executed in the form prescribed by the Registrar made hereunder and shall contain the following information –

- (a) names and addresses of the mortgagor and the mortgagee;
- (b) maximum amount secured by the mortgage, including (in addition to the capital) all interest accrued, costs, collection expenses, any amounts resulting from currency fluctuations and other sums agreed between the parties;
- (c) maturity dates of both capital and interest or the manner of determining these dates, unless the mortgage has been executed as security for obligations repayable on demand or as security for future obligations or for obligations which have not arisen at the date of execution of the mortgage;
- (d) rate of interest payable (in cases where the parties have agreed on the payment of interest), or the manner of determining such rate of interest;
- (e) full description of the vessel, including its tonnage, dimensions, registrations number and radio call sign; and
- (f) any other provisions that may be agreed between the parties.

(6) The signature(s) on the deed of mortgage shall be authenticated in like manner as provided under section 23 (2) (c) before the deed can be registered at the office of the Registrar.

(7) The mortgage deed, and/or the underlying loan agreement between the mortgagor and the mortgagee, and/or the deed of covenants or other equivalent document collateral to the mortgage deed between the mortgagor and the mortgagee may stipulate:

- (a) that the mortgagee may proceed to the private sale of the vessel in the event of default by the mortgagor; and
- (b) that the legal relationship, rights and obligations of the mortgagor and mortgagee shall be governed by the laws of a state other than Niue to the extent that the laws of the designated state are not contrary to good morals, public order or public policy in Niue.

(8) A vessel which is subject to a registered mortgage in its previous registry shall deliver the mortgagee's written consent to the transfer of flag not later than sixty calendar days after its provisional registration with the Registrar. A notary public shall notarise such document.

(9) The mortgagee's written consent, duly notarised, shall also be required for the issue of new certificate of registry due to the transfer of ownership, or the change of name of the vessel or its owner, as well as for the vessel's deregistration.

### **31 Discharge of mortgage**

The Registrar, after production to him/her of a discharge of mortgage in the prescribed form, shall make an entry in the Register that the mortgage has been discharged, and on that entry being made the estate (if any) which passed to the mortgagee vests in the person in whom (having regard to intervening acts and circumstances, if any) it would have vested if the mortgage had not been made.



**32 Priority of mortgages**

(1) Where there are more mortgages than one registered in respect of the same ship registered under this Act, the mortgagees are, notwithstanding any express, implied, or constructive notice, entitled in priority one over the other, according to the date and time at which each mortgage is produced to the Registrar and not according to the date of each mortgage itself.

(2) A registered mortgage shall not be affected by any act of bankruptcy committed by the mortgagor after the date of registration of the mortgage, notwithstanding that the mortgagor, where he is adjudicated to be insolvent, at the commencement of his insolvency had the ship in his possession, order or disposition, or was the reputed owner of the ship, and the mortgage shall be preferred to any right, claim or interest in the ship of the other creditors of the insolvent or any trustee or assignee on their behalf.

**33 Powers of mortgagee**

(1) Except as may be necessary for making a mortgaged ship available as a security for the mortgage debt, a mortgagee shall not, by reason of the mortgage, be deemed to be the owner of the ship nor shall a mortgagor be deemed to have ceased to be the owner of the ship.

(2) Subject to subsections (3) and (4), a registered mortgagee shall have power absolutely to dispose of the ship in respect of which he is registered and to give effectual receipts for the purchase money.

(3) Where there are more persons than one registered as mortgagees of the same ship, a subsequent mortgagee shall not, except under an order of the Court, sell the ship without the concurrence of every prior mortgagee.

(4) A mortgagee shall not sell the ship subject to the mortgage without the leave of the Court.

(5) For the purposes of this section, "Court" shall mean any court of competent jurisdiction in a place where a registered mortgagee has filed legal proceedings for the disposal of a vessel or enforcement of a mortgage.

**34 Transfer of mortgage**

(1) A registered mortgage of a ship may be transferred to any person by registration of the instrument of transfer in the prescribed form.

(2) On the production to the Registrar of an instrument of transfer of a registered mortgage and of the mortgage to which the instrument of transfer relates, the Registrar shall register the transfer by making an entry of the transfer in the Register and shall endorse and sign on the mortgage and on the instrument of transfer a memorial stating the date and time of the production to him of the instrument of transfer and mortgage.

**35 Transmission of interest in mortgage**

(1) Where the interest of a mortgagee in a ship is transmitted to any person on the death or bankruptcy of the mortgagee, or by any lawful means, other than by a transfer under this Act the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted.

(2) A declaration referred to in subsection (1) shall be in the prescribed form and shall contain a statement of the manner in which, and the person to whom, the interest has been transmitted, and shall be accompanied by such evidence as is prescribed.

(3) The Registrar after receipt of the declaration and accompanying evidence, shall enter the name of the person entitled under the transmission in the Register as the mortgagee of the ship.

*Division 6 - National Character and Flag*

**36 Unduly assuming Niue character**

(1) If a person uses the National Flag or assumes the Niue national character for or on board a ship which is not registered under this Act for the purpose of making the ship appear to be a ship registered under this Act, the ship is liable to forfeiture unless the use or assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.

(2) In any proceeding for the enforcement of the forfeiture of a ship under subsection (1), the burden of proving a right to use the National Flag or to assume the Niue national character lies on the person using that flag or assuming that character.

**37 Concealment of Niue character**

A master or owner of a ship registered under this Act who —

- (a) does anything or permits anything to be done; or
- (b) carries or permits to be carried on a ship any papers or documents, with intent to —
  - (i) conceal the Niue character of the ship from a person entitled by law to inquire into the character of the ship;
  - (ii) deceive a person referred to in paragraph (c); or
  - (iii) assume a foreign character,

is guilty of an offence.

**38 Forfeiture for offence under section 37**

Where the master or owner of a ship is convicted of an offence under section 37 the ship is liable to forfeiture.

**39 National colours**

(1) The National Flag shall be the proper national colours for a ship registered under this Act.

(2) A Niue vessel shall hoist the proper national colours on entering or leaving any port.

(3) A master of a ship registered under this Act who, except where it would be unreasonable having regard to all the circumstances to do so, fails to cause the National Flag to be hoisted at all times on the ship, is guilty of an offence.

(4) Where, except with the consent of the Minister or as a courtesy flag when in the waters of a foreign country, any distinctive national colours other than the National Flag are hoisted on board a ship registered under this Act -

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- (a) the master of the ship;
  - (b) the owner if he is on board the ship; and
  - (c) any person hoisting those colours,
- are each guilty of an offence.

### *Division 7 - Miscellaneous*

#### **40 Registrar's right to request for information**

(1) The Registrar may, where he has reason to believe that the Register does not contain accurate particulars in respect of a ship registered under this Act direct the owner of the ship, or any other person in possession of information relating to the ship, to furnish him/her with information in respect of the ship.

(2) A person who, after having been given a direction under subsection (1), fails, to the extent to which he is able to do so, to comply with that direction is guilty of an offence.

#### **41 Notice of trust**

(1) No notice of any trust express, implied or constructive, shall be entered in the Register or shall be received by the Registrar.

(2) Subject to this Act, and subject to any rights and powers appearing on the face of the Register to be vested in any other person, the registered owner of a ship has absolute power to dispose of the ship and to give effectual receipts for any money paid or advanced by way of consideration.

#### **42 Beneficial interest**

(1) The expression "beneficial interest" where used in this Act includes interests, and the intention of this Act is that without prejudice to —

- (a) the provisions of this Act for preventing notice of trusts from being entered in the Register or received by the Registrar: and
- (b) the powers of disposition and of giving receipts conferred by this Act on registered owners and mortgagees; and
- (c) the provisions of this Act relating to the exclusion of unqualified persons from the ownership of ships registered under this Act,

interests arising under contract or other equitable interests may be enforced by or against the owner or mortgagee of any ship in respect of his interest in the ship in the same manner as in respect of any other personal property.

(2) Subject to subsection (3), where a person has a beneficial interest in a ship registered under this Act and that ship is registered in the name of some other person as owner, the person having the interest shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this Act on the owners of ships, and proceedings may be taken for the enforcement of any such penalties against both or either of those persons, with or without joining the other of them.

(3) Subsection (2) does not apply to a person having a beneficial interest by way of mortgage, except in the case of a mortgagee in possession of a ship.

**43 Managing owner**

(1) The name and address of the managing owner for the time being of every ship registered under this Act shall be registered with the Registrar.

(2) Where there is not a managing owner, there shall be registered the name of the ship's master or other person to whom the management of the ship is entrusted by or on behalf of the owner, and any person whose name is so registered shall, for the purposes of this Act, be under the same obligations and subject to the same liabilities as if he were the managing owner.

(3) This section does not apply in relation to a Government ship.

**44 Punishment for offences**

Unless otherwise stated, any person who is convicted by a court of competent jurisdiction of a violation of any of the provisions of this Act shall, upon conviction, be liable to a fine up to the sum of US\$50,000 or to imprisonment for a term not exceeding five years or both.

**45 Registration fees**

(1) The owner of a vessel shall pay the prescribed fee upon first registration and an annual fee.

(2) The Minister, on the recommendation of the Foreign Vessel Administrator, may by notice amend the prescribed fee.

**46 Annual tonnage tax**

(1) The owner of a vessel shall pay the prescribed fee as an annual tonnage tax on his or her vessel on the anniversary of the date of its registration.

(2) If the owner fails to pay the tonnage tax as provided under subsection (1), the Registrar may cancel the Certificate of Registry of the vessel with respect to which such tax has not been paid.

(3) An unpaid tonnage tax and any other charges including penalties owing under this Act due to Foreign Vessel Administrator shall constitute a maritime lien on the vessel and such lien shall have priority over all others save those for wages and salvage.

**PART III**

**INTERNATIONAL MARITIME CONVENTIONS**

**47 International maritime conventions**

(1) Subject to this Act, the following International Maritime Conventions shall have the force of law in Niue:

- (a) IMO Convention 48;
- (b) IMO Convention amendments 91;
- (c) IMO Convention amendments 93;
- (d) International Convention on Maritime Search and Rescue, 1979 (SAR Convention 1979);
- (e) International Convention on Salvage, 1989 (SALVAGE Convention 89);
- (f) Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC Convention 1976);

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- (g) Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims (LLMC) 1976;
- (h) International Convention for the Safety of Life at Sea 1974 (SOLAS 1974);
- (i) Protocol of 1978 relating to the International Convention for the Safety of Life at Sea 1974 (SOLAS Protocol 1978);
- (j) Protocol of 1988 relating to the International Convention for the Safety of Life at Sea 1974 (SOLAS Protocol 1988);
- (k) International Convention on Load Lines, 1966, as amended (LOAD LINES Convention 1966);
- (l) Protocol of 1988 relating to the International Convention on Load Lines 1966 (LOAD LINES Protocol 1988);
- (m) International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE Convention 1969);
- (n) International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention 1978), as amended;
- (o) Convention on the international Regulations for Preventing Collisions at Sea, 1972 (COLREGS Convention 1972);
- (p) International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) for Annex I to V;
- (q) Protocol of 1997 relating to the International Convention for the Prevention of Pollution from Ships 1973, as Modified by the Protocol of 1978 Relating Thereto (MARPOL Protocol 1997) (Annex VI);
- (r) Protocol of 1992 relating to the International Convention on Civil Liability for Oil Pollution Damage (CLC Protocol 1992);
- (s) Protocol of 1992 relating to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND Protocol 1992);
- (t) International Convention on the Control of Harmful Anti-Fouling Systems on ships, 2001 (ANTI-FOULING 2001);
- (u) International Convention for the Control and Management of Ship's Ballast Water and Sediments, 2004 (BALLASTWATER 2004);
- (v) International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001;
- (w) Nairobi International Convention on the Removal of Wrecks 2007.

(2) Where under the Convention the countries which are parties to the Convention, as listed in subsection (1) have a discretion as to whether any, and if so what, action should be taken under it, that discretion may be exercised by the Minister.

(3) Where under the Convention the countries which are parties to the Convention, as listed in subsection (1), are required to do any act or thing that act or thing shall be done by the Minister.

### **48 Regulations**

(1) Cabinet may make regulations for the purposes of the implementation of any or all of the Conventions referred to in section 47 of this Act.

(2) Regulations made under this section may, to the extent required by the convention to which the regulations relate, prescribe offences and penalties (other than imprisonment) in respect of the contravention of, or non-compliance with, the regulations.

#### **49 Transitional**

For the avoidance of doubt, where any of the International Conventions referred to in section 47 of this Act has been purportedly brought into effect by regulations made under this Act, then that Convention shall be deemed to have been given the force of law from that date, and all actions taken pursuant to the terms of that Convention shall be deemed to have been validly taken, and any such regulations shall be deemed to have been validly promulgated.

#### **50 Compliance with International Conventions and Agreements**

(1) It shall be the duty of the owner and the Master to ensure that their vessel is in compliance with the requirements of the International Maritime Organisation Conventions, the International Labour Organisation Conventions and other relevant International Instruments as may be specified under this Act.

(2) It shall be the duty of the owner and the Master to ensure that their vessel's personnel are provided with publications, instruction booklets and manuals or other information sufficient to enable their vessel to be operated in accordance with the Conventions referred to in subsection (1).

(3) In the event of failure to comply with subsection (1) or any Conventions or Agreements entered into by Niue, the Registrar may suspend or cancel a vessel's Certificate of Registry and impose a monetary penalty not to exceed US\$50,000, and such other conditions as may be necessary to bring about compliance with maritime or maritime-related Conventions and others which are in force, or the provisions of which are applied by Niue in advance of entry into force.

### **PART IV**

#### **SAFETY**

##### *Division 1 - Unsafe Ships*

#### **51 Survey and Safety**

(1) Surveyors of ships are appointed under section 142.

(2) Every ship shall be surveyed or inspected in accordance with section 11 of the Act.

(3) No Niue vessel shall proceed to sea unless the required safety certificates are carried on board.

(4) The Master of a Niue vessel shall produce to the Port Officer at the port from which clearance for the ship is sought for an international voyage the certificate required by the foregoing conventions to be in force when the ship proceeds to sea. A clearance shall not be granted, and the ship may be detained, until the said certificate or certificates are so produced.

#### **52 Detention of unsafe ships**

(1) This section applies in relation to –

(a) a ship registered under this Act; and



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(b) a ship not so registered which is at a port or place in Niue.

(2) Where, whether on complaint or otherwise, the Harbour Master or an inspector has reason to believe that a ship in relation to which this section applies is unsafe, he may cause the ship to be detained until he is satisfied that the ship can go to sea without serious danger to the crew or any passenger on the ship, having regard to the voyage proposed.

(3) A ship is deemed to be unsafe for the purposes of this section if, by reason of –

- (a) the defective condition of the hull, machinery or equipment;
- (b) under-manning;
- (c) overloading or improper loading; or
- (d) any other matter,

the ship cannot proceed to sea without serious danger to the crew or any passengers on the ship, having regard to the voyage proposed.

(4) In considering for the purposes of this section whether or not a ship is unsafe, regard shall be had to the requirements of -

- (a) any International Maritime Convention implemented in Niue under regulations made for the purposes of section 48, or otherwise having effect in Niue, and applying in relation to the ship; and
- (b) any of the regulations so applying.

### **53 Notice for detention of unsafe ships**

(1) Where a ship is detained under section 52, the Harbour Master or, as the case may be, the inspector shall give notice in writing to the Master setting out the reasons for the detention.

(2) Where a ship that is registered in a foreign country is detained under section 52, the Harbour Master or, as the case may be, the inspector shall so inform the Minister and the Minister shall –

- (a) if that foreign country has diplomatic relations with Niue, cause the Consul or other diplomatic representative of that foreign country; or
- (b) in any other case, cause the Government of that foreign country to be informed of the detention and of the reasons for the detention.

(3) Where a ship is detained under section 52, the Master may make written representation to the Minister with respect to the release of the ship, and the Minister may, if he considers that in all the circumstances he is justified in doing so, either order the release of the ship or refuse to do so.

### **54 Offences in relation to unsafe ships**

(1) This section applies in relation to –

- (a) a ship registered under this Act; and
- (b) a ship not so registered which is at a port or place in Niue.

(2) Where –

- (a) a ship referred to in subsection (1) (a) goes to sea, whether from a port or place in Niue or not, on any voyage; or
- (b) a ship referred to in subsection (1) (b) goes to sea on any voyage, and the ship is unsafe —



any person who has knowingly sent, or attempted to send, and the master of the ship who has knowingly taken, or attempted to take, the unsafe ship to sea, are each guilty of an offence.

(3) It is a defence to the prosecution for an offence under subsection (2) if the accused person proves that —

- (a) he used all reasonable means to ensure that the ship was being sent or taken to sea in a safe state; or
- (b) having regard to the circumstances, the sending or taking, or attempted sending or taking, of the ship to sea was reasonable and justifiable.

(4) The provisions of section 52 (3) and (4) apply for the purposes of this section as they apply for the purposes of section 52.

## **55 Failure to carry equipment**

(1) This section applies in relation to a ship registered under this Act.

(2) Where a ship referred to in subsection (1) —

- (a) does not carry the equipment which is required to be carried on or fitted to the ship on the voyage by —
  - (i) any International Maritime Convention implemented in Niue under regulations made for the purposes of section 48, or otherwise having effect in Niue, and applying in relation to the ship; or
  - (ii) any of the Regulations so applying; or
- (b) carries any such equipment which is not in good order and ready for use,

the master and owner of the ship are each guilty of an offence.

### *Division 2 - General Safety and Precautions*

## **56 Reporting of danger to Navigation**

(1) The master of a ship, not being an exempt ship, shall make a report of any serious danger to navigation on or near the course of the ship in accordance with this section.

(2) A report under subsection (1) shall -

- (a) be given —
  - (i) as soon as possible by radio; and
  - (ii) to any ship in the vicinity of the danger, to the nearest land earth station in the vicinity of the danger; and
- (b) give details of the position and nature of the danger.

(3) The master of a ship who refuses, or fails without reasonable cause, to comply with subsection (1) is guilty of an offence.

(4) The Minister may, by order, exempt any ship, or class of ships, from the requirements of subsection (1), and the reference in subsection (1) to "an exempt ship" shall be construed accordingly.

(5) In this section —

"land earth station" means a facility that routes calls from mobile stations via satellite to and from terrestrial telephone networks.

## **57 Obligation to provide assistance**

(1) This section applies in relation to —

- (a) a ship registered under this Act; and
- (b) a ship not so registered which is within Niue waters.

(2) The master of a ship in relation to which this section applies shall render assistance to any person who is found at sea in danger of being lost.

(3) A master of a ship in relation to which this section applies who, without reasonable cause (the burden of proof of which is on him/her), fails to comply with subsection (2) is guilty of an offence.

(4) It is a defence in a prosecution for an offence under subsection (3) if the master proves that compliance with the requirement of subsection (2) would have caused serious danger to his ship or to any person in his ship.

**58 Duty to provide assistance in case of collision**

(1) This section applies in relation to –

- (a) a ship registered under this Act; and
- (b) a ship not so registered which is within Niue waters.

(2) In every case of collision between two ships it shall be the duty of the person in charge of a ship in relation to which this section applies –

- (a) to render to the other ship, her master, crew and passengers (if any) such assistance as is practicable and necessary in order to save them from collision;
- (b) to stay by the other ship until he has ascertained that she has no need for further assistance; and
- (c) to give the person in charge the name of his own ship and of the port to which she belongs and the ports from which she comes and to which she is bound, if and in so far as he can do so without danger to his own ship, crew or passengers (if any).

(3) Any person who without reasonable cause fails to comply with subsection (2) is guilty of an offence.

**59 Right to salvage**

Compliance by the master of a ship with the requirements of section 57 or 58 shall not affect his right, or the right of any other person, to salvage.

*Division 3 - Carriage of Dangerous Goods*

**60 Definitions for the purposes of Division 3**

In this Division –

- (a) "dangerous goods" means any goods listed as such for the purposes of the IMDG code;
- (b) "IMDG Code" means the International Maritime Dangerous Goods Code published by the International Maritime Organisation, as amended from time to time.

**61 Power to deal with goods suspected of being dangerous**

The master or owner of a ship registered under this Act may –

- (a) refuse to take on board any package which he suspects may contain dangerous goods;
- (b) open and inspect any package which on reasonable grounds he suspects may contain dangerous goods; and
- (c) discharge, destroy, render innocuous or otherwise deal with any goods which
  - (i) in his opinion are dangerous goods; and
  - (ii) have been shipped on board the ship without his knowledge and consent,and shall not be subject to any liability of any kind for doing so.

**62 Restriction on carriage of dangerous goods**

(1) A person who sends or attempts to send by any ship, or (not being the owner or master of the ship) carries or attempts to carry in any ship any dangerous goods without –

- (a) distinctly marking their nature on the outside of the package containing the goods; and
- (b) giving written notice –
  - (i) to the Harbour Master not less than 24 hours before the goods are to be shipped; and
  - (ii) to the Master or owner of the ship at or before the time of sending the goods to be shipped, of the –
    - (I) correct technical name of the goods; and
    - (II) the name and address of the shipper;

is guilty of an offence.

(2) Any person who knowingly sends or attempts to send by, or carries or attempts to carry in, any ship any dangerous goods under a false description, or falsely describes the shipper of any dangerous goods, is guilty of an offence.

(3) Where any dangerous goods have been sent or carried, or an attempt has been made to send or carry any dangerous goods, on board any ship in contravention of this Act, the Court may order them, and any packages or container in which they are contained, to be forfeited.

(4) The Court may exercise the power conferred by subsection (3) notwithstanding –

- (a) that the owner of the goods has not committed any offence in respect of the goods, or is not before the Court, or has no notice of the proceedings; or
- (b) that there is no evidence as to the ownership of the goods,

but the Court may require such notice as it may direct to be given to the owner or shipper of the goods before they are forfeited.

**63 Packing of dangerous goods**

(1) Subject to subsection (2), the requirements with respect to the packing, storage and carriage of dangerous goods in ships are those prescribed in the IMDG Code.

(2) For the case of a ship that is engaged on a voyage other than an international voyage, the Harbour Master or an inspector may permit such modifications to the requirements referred to in subsection (1) as he considers reasonable having regard to –

- (a) the type of ship concerned; and
- (b) the trade in which the ship is, or is about to be, engaged.

*Division 4 - Carriage of Bulk Cargoes and Grain Cargoes*

**64 Definitions for the purposes of Division 4**

In this Division –

- (a) "bulk cargo" means a cargo prescribed in the International Maritime Solid Bulk Cargoes (IMSBC) code;

- (b) "IMSBC Code" means the International Maritime Solid Bulk Cargoes Code, as amended from time to time;
- (c) "grain" includes wheat, maize, oats, rye, barley, rice, pulse and processed forms thereof, whose behaviour is similar to that of grain in its natural state.

**65 Storage and carriage of bulk and grain cargoes**

(1) Subject to subsection (2), the requirements for —

- (a) the storage and carriage of bulk cargo in a ship shall be those prescribed in the Bulk Cargoes Code; and
- (b) the storage and carriage of grain in a ship shall be those prescribed in the IMSBC Code.

(2) In the case of a ship that is engaged on a voyage other than an international voyage, the Harbour Master or an inspector may permit such modifications to the requirements referred to in subsection (1) (a) or 1 (b) as he considers reasonable having regard to -

- (a) the type of ship concerned;
- (b) the trade in which the ship is, or is about to be, engaged.

*Division 5 - Marine Casualties and Marine Incidents*

**66 Definitions for the purposes of Division 5**

In this Division —

"Casualty Investigation Code" means the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident;

"marine casualty" means an event, or a sequence of events, that has resulted in any of the following which has occurred directly in connection with the operations of a ship:

- (a) the death of, or serious injury to, a person;
- (b) the loss of a person from a ship;
- (c) the loss, presumed loss or abandonment of a ship;
- (d) material damage to a ship;
- (e) the stranding or disabling of a ship, or the involvement of a ship in a collision;
- (f) material damage to marine infrastructure external to a ship, that could seriously endanger the safety of the ship, another ship or an individual; or
- (g) severe damage to the environment, or the potential for severe damage to the environment, brought about by the damage of a ship or ships.

However, a marine casualty does not include a deliberate act or omission, with the intention to cause harm to the safety of a ship, an individual or the environment.

"marine incident" means an event, or sequence of events, other than a marine casualty, which has occurred directly in connection with the operations of a ship that endangered, or, if not corrected, would endanger the safety of the ship, its occupants or any other person or the environment.

However, a marine incident does not include a deliberate act or omission, with the intention to cause harm to the safety of a ship, an individual or the environment.

"marine safety investigation" means an investigation or inquiry, into a marine casualty or marine incident, conducted with the objective of preventing marine casualties

and marine incidents in the future. The investigation includes the collection of, and analysis of, evidence, the identification of causal factors and the making of safety recommendations as necessary.

"ship" means a ship which, when a casualty occurs in relation to the ship —

- (a) is registered under this Act; or
- (b) is within Niue waters.

**67 Investigations and inquires**

Where a casualty occurs in relation to a ship, the Minister may cause —

- (a) a preliminary investigation to be carried out; and
- (b) a Marine Inquiry to be held; or
- (c) a preliminary investigation to be carried out and a Marine Inquiry to be held.

**68 Preliminary investigation**

Where the Minister causes a preliminary investigation to be carried out under section 67 the person carrying out the preliminary investigation —

- (a) may —
  - (i) go on board any ship involved in the casualty;
  - (ii) require any person to answer questions relating to the casualty, and
  - (iii) require the production to him/her of any certificate relating to any ship involved in the casualty;
- (b) shall, upon conclusion of the investigation, send to the Minister a report containing a full statement of the case and of his opinion on the case, accompanied by such report on, or extracts from, the evidence and such observations as he thinks fit.

**69 Marine Inquiry**

(1) Where the Minister causes a Marine Inquiry to be held under section 67 he shall —

- (a) appoint a person to conduct the Marine Inquiry, and
- (b) may nominate assessors to assist the person.

(2) In any such case where a question as to the cancellation or suspension of a certificate of competency is likely to arise, the assessors nominated under subsection (1)(b) shall hold certificates of equivalent or higher rank to those held by the person whose certificate may be cancelled or suspended; but the proceedings before a Marine Inquiry shall not be challenged on the ground of any alleged failure to comply with the requirement of this subsection.

(3) The person appointed and any assessor nominated under subsection (1) may —

- (a) go on board any ship;
- (b) require any person to answer questions relating to the casualty; and
- (c) require the production to him/her of any document or certificate relating to any ship involved in the casualty.

(4) On the conclusion of an inquiry under section 67, the person appointed under subsection (1) shall make a full report in writing to the Minister setting out the results of the inquiry.

(5) Regulations may make provisions with respect to proceedings in any Marine Inquiry.

**70 Power of Marine Inquiry as to certificates**

(1) Where, as a result of a Marine Inquiry, the Inquiry is satisfied that a master or a qualified officer or seafarer –

- (a) is unfit to discharge his duties because of —
  - (i) incompetence;
  - (ii) misconduct; or
  - (iii) any other reason;
- (b) has been seriously negligent in the discharge of his duties, or
- (c) has failed to give assistance and information as required by section 58, and, in a case coming under paragraph (a) or (b), is further satisfied that the unfitness or negligence caused or contributed to the casualty, the Marine Inquiry may —
  - (i) order the cancellation or suspension of any certificate of competency or certificate of endorsement, in accordance to STCW Regulation 1/10, of the master, qualified officer or other seafarer; or
  - (ii) censure the master, qualified officer or other seafarer.

(2) Where a cancellation or suspension is ordered under subsection (1)(c)(i) the master, qualified officer or seafarer concerned shall forthwith deliver the certificate to the Registrar of Seafarer for cancellation or suspension.

**71 Failure to deliver certificate for cancellation**

Where a certificate is ordered to be cancelled or suspended or is cancelled or suspended and the holder fails to deliver up the certificate as required under this Division, he is guilty of an offence.

**72 Restoration of certificates**

(1) Where a Marine Inquiry has been held under this Division the Minister may order the whole or part of a case to be reheard, and shall do so if –

- (a) new and important evidence which could not be produced at the inquiry has been discovered; or
- (b) there appears to the Minister to be other grounds for suspecting that a miscarriage of justice may have occurred.

(2) Where a certificate has been cancelled or suspended under this Division by a Marine Inquiry under section 70 the Minister may –

- (a) on the recommendation of the Marine Inquiry, or
- (b) if he is of the opinion that the circumstances of the case require it, cause the issue of a new certificate of a lower grade in place of the cancelled or suspended certificate.

**73 Appeals**

(1) Subject to subsection (2), where under this Division —

- (a) the certificate of a master, qualified officer or other seafarer is cancelled or suspended;
- (b) any such person is censured;
- (c) the costs or part of the costs of an inquiry are awarded by a Marine Inquiry against any person; or

(d) the Marine Inquiry has found that the casualty has been caused or contributed to by the wrongful act of any person, the master, qualified officer or other seafarer in the case of (a) or (b), and in the case of (c) or (d) any person who has appeared at the hearing and is affected by the decision of the Marine Inquiry, may appeal to the Court and the Court may make such order as the justice of the case requires.

(2) Where a rehearing has been ordered under section 72, no appeal may be made until the decision of the rehearing has been given.

## PART V

### MASTERS AND SEAFARERS

#### *Division 1 - Introductory*

#### **74 Application**

Subject to this Part and to any exception granted under section 75 –

- (a) the provisions of this Part apply in relation to a ship registered under this Act;
- (b) the provisions of section 76 apply in relation to such vessels as may be prescribed.

#### **75 Exemptions**

(1) Subject to subsection (3), the Minister may, by order, exempt a particular ship or a particular class or description of ships, from any requirement of this Part which would otherwise apply in relation to the ship.

- (2) An exemption under subsection (1) may be given in respect of —
- (a) a particular period;
  - (b) one, or more than one, particular voyage; or
  - (c) generally.

(3) No exemption shall be given under subsection (1) in relation to any prohibition in the Regulations against employing any identified class of persons.

#### *Division 2 - Manning and Certification*

#### **76 Manning**

(1) A ship shall be manned by such number and grades of persons as Regulations may prescribe.

(2) An owner or master of a ship who suffers or permits the ship to go to sea without being manned in the manner prescribed is guilty of an offence.

#### **77 Certificate of competency**

(1) Subject to this Act the prescribed authority may issue a certificate of competency in the prescribed manner to a person attaining such standard as may be prescribed.

(2) A certificate of competency issued under this section is evidence that the person to whom the certificate is issued is of the qualification or grade specified in the certificate.



**78 Unqualified person going to sea as qualified officer or seafarer**

A person who goes to sea as a master, or a qualified officer or a seafarer of a particular grade and who is not a master, or an officer, or a seafarer of that grade is guilty of an offence.

**79 Production of certificate of competency**

Any person serving or engaged to serve in a ship and holding a certificate of competency or other document which is evidence that he is a master, a qualified officer or other qualified seafarer, who fails, without reasonable excuse on demand to produce the certificate or other document to –

- (a) his employer;
- (b) the master of the ship on which he is employed; or
- (c) an authorised officer,

is guilty of an offence.

**80 Disqualification of officer or seafarer**

(1) Where, in the opinion of the Minister, a master or a qualified officer or seafarer –

- (a) is unfit to discharge his duties because of —
  - (i) incompetence;
  - (ii) misconduct; or
  - (iii) any other reason;
- (b) has been seriously negligent in the discharge of his duties; or
- (c) has failed to give assistance and information after a collision,

the Minister may cause an inquiry to be held and —

- (i) shall appoint a person to conduct the inquiry; and
- (ii) may, if he thinks fit, suspend the certificate of competency of the master, officer or seafarer pending the outcome of the inquiry.

(2) Where a certificate is suspended under subsection (1), the Registrar of Seafarers may direct the master, officer or seafarer to deliver up the certificate to him/her.

(3) A master or an officer or seafarer who refuses or fails without reasonable cause, to comply with a direction given under subsection (2) is guilty of an offence.

**81 Inquiry under section 80**

(1) Where the Minister has caused an inquiry to be held under section 80, the person appointed for the purpose of that inquiry, may —

- (a) go on board any ship;
- (b) require any person to answer questions relating to the subject of the inquiry; and
- (c) require the production to him/her of any document or certificate which, in his opinion is relevant to the inquiry.

(2) A person appointed for the purpose of an inquiry —

- (a) may, if satisfied as to any of the matters referred to in section 80 —
  - (i) order the cancellation or suspension of any certificate of competency of the master, officer or other seafarer; or

- (ii) censure the master, officer or other seafarer.
  - (b) may make such order with regard to the costs of the inquiry as he thinks fit; and
  - (c) shall make a report on the inquiry to the Minister.
- (3) Where a person appointed for the purpose of an inquiry orders the cancellation or suspension of a certificate of competency, the Minister may –
- (a) cancel or suspend the certificate, as the case requires; or
  - (b) if the Minister considers the administration of a censure more appropriate, censure the master, officer or other seafarer.
- (4) Where, under this section –
- (a) a certificate of competency is cancelled or a censure is administered; or
  - (b) costs of an inquiry are awarded against a master, officer or other seafarer,
- the master, officer or other seafarer concerned may, within 30 days, appeal to the Court which shall make such order as the justice of the case requires.
- (5) A person, in holding an inquiry –
- (a) may be assisted by one or more assessors with such qualifications as are prescribed; and
  - (b) shall be assisted, in such circumstances as are prescribed, by two or more such assessors, nominated by the Minister.

## **82 Regulations for certificates of competency**

Cabinet may make regulations to make provision for and in relation to -

- (a) the standards of competence to be attained by a master, an officer or other seafarer and other conditions to be satisfied in order for the master, the officer or other seafarer to be a master or a qualified officer or other seafarer of a particular grade;
- (b) the manner in which the attainment of any standard or the satisfaction of any other condition is to be evidenced;
- (c) the manner and conduct of any examinations and the conditions for admission to examinations;
- (d) the appointment and remuneration of examiners;
- (e) the issue, form and recording of certificates of competency and other documents; and
- (f) the endorsement of certificates of competency and other documents.

## **83 Recognition of certificates**

Where a certificate is issued by –

- (a) a member country in accordance with the provisions of the STCW relating to certification of seafarers;
- (b) a party to the STCW in accordance with national legislation giving effect to that Convention; or
- (c) a party to a bilateral or regional treaty, or other arrangement, in accordance with its national legislation,

the Registrar of Seafarers may recognise the certificate for the purpose of issuing a Niue certificate of equivalent or lower grade and validity, and may issue an appropriate certificate of endorsement without the necessity of the applicant for the certificate having to meet the

various requirements of that section other than medical fitness in accordance with the provisions of STCW Regulation 1/10.

**84 Seafarers to hold proper certificates**

(1) Every person serving on a Niue ship registered under this Act shall hold the appropriate certificate or other qualification for his position in accordance with the provisions of this Act and any regulations made thereunder.

(2) Where subsection (1) is contravened, the owner of the ship, its master and the person contravening that subsection each commits an offence and shall be liable on conviction -

- (a) in the case of the owner, to a fine not exceeding US\$10,000 or to a term of imprisonment not exceeding 2 years or to both such fine and imprisonment;
- (b) in the case of the master, to a fine not exceeding US\$5,000 or to imprisonment for a term not exceeding 1 year or to both such fine and imprisonment; and
- (c) in the case of the person referred to in subsection (1), to a fine not exceeding US\$1,000 or to a term of imprisonment not exceeding 6 months or to both such fine and imprisonment.

(3) Certificates and endorsements under this Act shall be in the English language and shall be in such forms as may be prescribed.

(4) The Registrar of Seafarers may issue a certificate of endorsement under section 83 –

- (a) subject to such conditions as he considers appropriate; and
- (b) for any period of validity not exceeding 3 years as he considers appropriate.

**85 Continuing fitness and competence**

(1) The holder of a certificate of competency to be a master or officer who is serving at sea, or who intends to return to sea after a period ashore, shall, in accordance with regulations made under this Act, satisfy the Registrar of Seafarers at regular intervals not exceeding 5 years as to his continuing medical fitness and professional competence for the capacity in which the holder of such certificate intends to serve.

(2) Where more than 5 years have elapsed since the certificate holder referred to in subsection (1) has –

- (a) satisfied the Registrar of Seafarers to his continuing fitness and competence as required by subsection (1); or
  - (b) performed in a substantial manner, sea-going service,
- then without prejudice, but in addition, to subsection (1), the Registrar of Seafarers may require that person to produce evidence that he has performed sea-service, pass tests, oral or otherwise, or attend courses, before certifying that the holder is qualified for sea-going service.

(3) Where the Registrar of Seafarers is satisfied that the holder is fit and competent as required by subsections (1) or (2) for the position, he shall certify that the holder is qualified for sea-going service in the capacity in which the holder intends to serve, and the Registrar of Seafarers may only certify to that effect if satisfied that it will not adversely affect safety of life at sea or harm the public interest.

**86 Dispensations**

(1) Subject to the conditions specified in subsection (2), the Registrar of Seafarers may issue a dispensation, to the extent and on such conditions he considers appropriate, permitting a seafarer to serve in a capacity for which he is not properly certificated.

(2) The conditions referred to in subsection (1) are as follows –

- (a) a dispensation shall only be issued in circumstances of exceptional necessity;
- (b) the Registrar of Seafarers must be of the opinion that granting the dispensation will not cause danger to persons, property or the environment;
- (c) a dispensation shall only be issued to a named individual seafarer to serve on a named specified ship for a fixed period or voyage not exceeding 6 months;
- (d) where a dispensation is to be granted to a radio officer or to a radio-telephone operator, the dispensation shall be granted in accordance with the relevant Radio Regulations of the STCW;
- (e) the Registrar of Seafarers must be of the opinion that the person to whom the dispensation is to be granted is otherwise suitably qualified to fill the vacant post in a safe manner;
- (f) where the dispensation will allow a person to serve as master or chief engineer officer, it shall only be granted in circumstances of force majeure, and only for the shortest possible period;
- (g) subject to paragraph (h), a dispensation shall be granted to a person who is properly certificated to fill the post immediately below the vacant one; and
- (h) where a certificate is not required for a lower post, the applicant for the dispensation shall satisfy the requirements of subsection (3) before he is granted the dispensation.

(3) For the purposes of subsection (2) (h), the applicant for the dispensation shall possess the qualifications and experience that, in the opinion of the Registrar of Seafarers, are of a clear equivalence to the requirements of the post to be filled, and where the person holds no appropriate certificate, he shall pass a test, oral or otherwise, accepted by the Registrar of Seafarers as demonstrating that the dispensation may be safely issued.

(4) The post referred to in subsection (3) shall be filled by a properly certificated person as soon as possible.

(5) The Registrar of Seafarers may issue a dispensation in such form as he thinks fit and, where he considers it appropriate, require an applicant for a dispensation to provide evidence of qualification in relevant subjects.

*Division 3 - Crew Agreements*

**87 Crew agreements**

(1) Where a person is employed as a seafarer on a ship there shall be a crew agreement between the employer, or someone acting on his behalf, and the seafarer.

(2) A crew agreement shall be in writing and executed by the parties to the agreement.

(3) A crew agreement may be with respect to employment in one or more ships and may be for —

- (a) a particular period not exceeding 2 years; or

(b) one, or more than one, particular voyage.

(4) In every crew agreement, notwithstanding any express provision in the agreement to the contrary, there is an implied term that the employer and the owner of the ship shall use all reasonable means to ensure that the ship in which the crewman is, or is to be, employed, is seaworthy for, and during any voyage which may take place during the currency of the agreement and any consent or purported consent by the crewman to waive the benefit of that implied term is void and of no effect.

**88 Prohibition on seeking rewards for employment**

A person who demands or receives, directly or indirectly, from another person seeking employment as a seafarer any remuneration or reward, whether in cash or otherwise, for providing employment to that other person is guilty of an offence.

**89 Regulations for crew agreements**

Cabinet may make regulations to make provision for and in relation to —

- (a) the conditions and particulars to be included in a crew agreement including a requirement that the agreement receive the approval of the Minister;
- (b) the form of a crew agreement and the manner in which an agreement shall be made;
- (c) the manner in which a crew agreement shall be —
  - (i) added to;
  - (ii) amended; or
  - (iii) lodged with the Registrar of Seafarers;
- (d) the circumstances in which a crew agreement or a copy of an agreement, shall be carried in a ship;
- (e) the requirements for a crew agreement, or a copy of an agreement, to be delivered to an authorised officer;
- (f) the requirement for a crew agreement or a copy of an agreement, to be made available for perusal by an authorised officer;
- (g) the notice required to be given to the Register of Seafarers before a crew agreement is entered into or terminated;
- (h) the procedures and practices to be followed on the termination of a crew agreement; and
- (i) the circumstances under which, other than by reason of termination of a crew agreement, a seafarer may be left behind from a ship.

*Division 4 - Wages*

**90 Agreements as to wages**

Subject to this Act, a seafarer shall be paid wages in accordance with the terms of a crew agreement.

**91 Account of wages**

An employer who refuses, or fails without reasonable cause, to deliver to a seafarer an exact account of the —

- (a) wages due to the seafarer under a crew agreement; and
- (b) deductions (if any) made from those wages,

is guilty of an offence.

**92 Right of seafarer to wages**

- (a) The lien of a seafarer for his wages and for reimbursement of any expenditure or disbursements properly incurred or made by him/her on behalf of the ship, have priority over all other liens irrespective of the date of that lien or those other liens.
- (b) The right of a seafarer to wages does not depend on the earnings of freight.

**93 Seafarer cannot waive protection of Act**

A provision in a crew agreement, whether express or implied, which purports to modify, vary or negative the rights of a seafarer under this Division is void and of no effect.

**94 Regulations relating to wages**

Cabinet may make regulations to make provision for and in relation to -

- (a) the deductions which may be made from the wages due to a crewman;
- (b) the manner in which deductions may be made;
- (c) the manner in which wages are to be paid;
- (d) the manner in which wages are to be accounted for where a seafarer leaves a ship otherwise than on termination of an agreement;
- (e) the form and manner in which accounts of wages are to be prepared by an employer and delivered to a seafarer;
- (f) the form of allotment notes; and
- (g) the circumstances in which allotments may be made.

*Division 5 - Crew Accommodation*

**95 Crew accommodation**

- (1) A ship shall have accommodation exclusively reserved for the use of the crew and known as the crew accommodation.
- (2) The crew accommodation of a ship shall be of the prescribed standard.
- (3) An owner or master of a ship who suffers or permits the ship to go to sea without crew accommodation of the prescribed standard is guilty of an offence.

**96 Regulations for crew accommodation**

Cabinet may make regulations to make provision for and in relation to —

- (a) the crew accommodation requirements;
- (b) the minimum space per man which must be provided by way of sleeping accommodation for crewmen and the maximum number of persons by whom a specified part of such sleeping accommodation may be used;
- (c) the position in a ship in which the crew accommodation or any part of the crew accommodation is to be located;
- (d) the standards to be observed in the construction, equipment, ventilation, lighting, heating and furnishing of crew accommodation;
- (e) the provision of washing, sanitary, toilet, messing and hospital facilities for crewmen;
- (f) the standards of maintenance of crew accommodation; and
- (g) the prohibition or restriction of the use of crew accommodation for purposes other than those for which it is designed.



*Division 6 - Welfare*

**97 Provisions and water**

(1) An employer or master of a ship shall ensure that the provisions and water supplied for the use of seafarers are as prescribed.

(2) Where three or more seafarers are of the opinion that the provisions or water supplied for the use of seafarers are not as prescribed, they may complain to the master and if they are dissatisfied with the action if any taken by the master or with the master's failure to act they may complain to the Registrar of Seafarers.

(3) Where a complaint is made the Registrar of Seafarers shall forthwith cause the complaint to be investigated.

(4) For the purposes of an investigation under this section the Registrar of Seafarers may cause the provisions or water to be examined.

(5) Where, after an investigation under this section, the Registrar of Seafarers is of the opinion that the provisions or water are not as prescribed he shall direct the employer or the master to replace them.

(6) An employer or a master shall comply with a direction given under this section.

**98 Medical stores**

An owner or master of a ship who suffers or permits the ship to go to sea without carrying the prescribed number of qualified first-aid attendants, medicines and medical and surgical stores is guilty of an offence.

**99 Complaints**

(1) Where, in the opinion of a seafarer, the seafarer has cause to complain about —

- (a) the master;
- (b) any other seafarer on a ship: or
- (c) the conditions on board a ship.

he may complain to the master.

(2) Where a seafarer —

- (a) has made a complaint under subsection (1); and
- (b) is dissatisfied with —
  - (i) the action taken by the master on that complaint: or
  - (ii) the failure of the master to take any action,

the seafarer may state his dissatisfaction to the master; and may request the master to make adequate arrangements for the seafarer to complain to the Registrar of Seafarers, as soon as the service of the ship permits.

(3) A master to whom a request has been made under subsection (2) who refuses, or fails without reasonable cause, to make the adequate arrangements referred to in that subsection is guilty of an offence.

**100 Regulations for welfare**

Cabinet may make regulations to make provision for and in relation to —

- (a) the quality and quantity of the provisions and water to be supplied for the use of seafarers;



- (b) the manner of checking and inspecting provisions and water supplied for the use of seafarers;
- (c) the manner and conduct of medical examinations of seafarers and of persons seeking employment as seafarers;
- (d) the medicines and medical and surgical stores (including books containing instructions and advice) to be carried in a ship and the manner in which such medicines and stores are to be carried, stored and used in a ship;
- (e) the appointment and certification of first-aid attendants and the circumstances in which first-aid attendants are to be carried on a ship;
- (f) the manner in which medical expenses incurred in respect of a seafarer while at a place outside the country may be recovered from an employer;
- (g) the circumstances and the manner in which the Minister shall make provision for the relief, maintenance and return to a proper return port of a seafarer;
- (h) the manner in which any wages due to a distressed seafarer and any property left on board a ship by a distressed seafarer are to be dealt with;
- (i) the manner in which any expense incurred in bringing ashore a seafarer who has been ship-wrecked, or in maintaining him/her after he has been brought ashore, may be recovered from the person who last employed him/her as a seafarer; and
- (j) the manner in which the property of a deceased seafarer is to be –
  - (i) held in custody; or
  - (ii) sold, converted into cash or otherwise disposed of.

*Division 7 - Discipline*

**101 Misconduct endangering ship or persons on board**

- (1) This section applies where a seafarer –
  - (a) does any act which causes, or is likely to cause –
    - (i) the loss or destruction, or serious damage to; or
    - (ii) the death of, or serious injury to, a person on board, a ship; or
  - (b) fails to do anything required to be done by him/her to preserve –
    - (i) a ship from loss, destruction, or serious damage; or
    - (ii) any person on board the ship from death or serious injury.
- (2) Where the act, or failure to act, by the seafarer referred to in subsection (1) –
  - (a) is deliberate;
  - (b) amounts to a breach or neglect of duty or disobedience to a lawful command;  
or
  - (c) occurs when the seafarer is under the influence of alcohol or a drug,  
the seafarer is guilty of an offence.

**102 Continued or concerted disobedience, neglect of duty**

- Where a seafarer on a ship –
- (a) persistently and wilfully –
    - (i) neglects his duty; or
    - (ii) disobeys a lawful command; or
  - (b) combines with other seafarers to

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(i) neglect his duty; or  
(ii) disobey a lawful command; or  
(iii) impede the navigation of the ship or the progress of a voyage,  
he is guilty of an offence.

### **103 Absence without leave**

Where a seafarer on a ship -

(a) is absent without leave from a ship at a time when he is required to be on board; and  
(b) his absence is –  
(i) due to his recklessness; or  
(ii) deliberate and without reasonable cause; and  
(c) a ship –  
(i) is thereby delayed; or  
(ii) goes to sea without him/her;  
the seafarer is guilty of an offence.

### **104 Persons deemed to be seafarers**

Notwithstanding any other provision of this Act, where –

(a) a person is carried unintentionally to sea in a ship without the consent of the master or of any other person authorised to give consent to his being so carried; or  
(b) a distressed seafarer is carried on a ship for the purpose of being returned to his proper return port,  
he is, for the purposes of this Division, deemed to be a seafarer on the ship.

### **105 Defence of drugs taken for medical purposes**

It is a defence to a charge for an offence against section 101 if the person charged proves that –

(a) at the time of the alleged act or failure to act, he was under the influence of a drug taken by him/her for medical purposes; and  
(b) either —  
(i) he took that drug on medical advice and complied with any direction given as part of that advice; or  
(ii) he had no reason to believe that the drug might have the influence it had.

### **106 Disciplinary offences**

(1) The master of a ship who finds that a seafarer has committed a disciplinary offence must make a report of his findings in the prescribed form to the Registrar of Seafarers.

(2) Where –  
(a) two or more reports under subsection (1) have been made within the prescribed time in respect of a seafarer; or  
(b) a seafarer has committed an offence under section 101, 102, or 103,  
the Registrar of Seafarers may declare the seafarer to be a suspended person.

**107 Appeal**

- (1) Where –
- (a) the Registrar of Seafarers has declared a seafarer to be a suspended person; and
  - (b) the period of suspension exceeds 12 months,
- the seafarer may within 30 days of receiving the prescribed notification of his suspension, appeal to the Court.
- (2) Where an appeal is made under subsection (1), the Court shall make such orders as the justice of the case requires.

**108 List of suspended persons**

- (1) The Registrar of Seafarers shall keep a list known as the list of suspended persons.
- (2) Where a seafarer is suspended for a period —
- (a) of 12 months or less; or
  - (b) exceeding 12 months and –
    - (i) no appeal to the Court is made within the period of 30 days referred to in section 107; or
    - (ii) an appeal is made under that section and the Court orders that the appeal be dismissed,
- the Registrar of Seafarers shall include the name of the seafarer in the list of suspended persons.

**109 Regulations for disciplinary offences**

- Cabinet may make regulations to make provision for and in relation to –
- (a) misconduct on board a ship which is a disciplinary offence;
  - (b) the procedures under which a master may find that a seafarer has committed a disciplinary offence;
  - (c) the manner in which a declaration of suspension shall be made and the manner in which that declaration shall be notified to –
    - (i) a suspended person; and
    - (ii) the person who last employed him/her as a seafarer;
  - (d) the manner in which the name of a suspended person shall be included in a list of suspended persons; and
  - (e) the manner in which a list of suspended persons is –
    - (i) to be kept; and
    - (ii) to be made available for inspection by any person appearing to the Registrar of Seafarers to be interested.

*Division 8 - General*

**110 Stowaways and Unauthorised persons**

- (1) A person who, without the consent of —
- (a) the master of a ship; or
  - (b) a person authorised by the master to give that consent,
- goes to sea or attempts to go to sea in a ship is guilty of an offence.
- (2) A person, not being an authorised person or an inspector, who –

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- (a) without the consent of the master of a ship or of a person authorised by the master to give that consent goes on board a ship; or
  - (b) remains on board a ship after being requested to leave by the master, a police officer or a customs officer,
- is guilty of an offence.

### **111 Master's power of arrest**

The master of a ship may cause any person on board the ship to be put under restraint if and for so long as it appears to him/her necessary or expedient in the interest of safety or for the preservation of good order or discipline on board the ship.

### **112 Report of births and deaths**

- (1) In this section, "ship" means a ship registered under this Act.
- (2) The master of a ship who refuses, or fails without reasonable cause, to make a report in the prescribed form to the Registrar of any –
  - (a) birth occurring in the ship; or
  - (b) death occurring, or presumed to have occurred in, the shipis guilty of an offence.

### **113 Registrar of Seafarers**

- (1) There shall be an office of Registrar of Seafarers which shall be a public office.
- (2) The Registrar of Ships shall be appointed by the Niue Public Service Commission.
- (3) The same person may, but need not, hold the offices of Registrar of Seafarers under this section and Registrar of Ships under section 5.

### **114 Register of Seafarers**

- (1) Subject to Section 4 (4) (c), the Registrar of Seafarers shall cause to be kept at Alofi and at the place where the Foreign Vessel Administrator is located a book to be known as the Register of Seafarers.
- (2) The Registrar of Seafarers shall cause to be entered into the Register of Seafarers —
  - (a) particulars of any Seaman's Book issued under section 115;
  - (b) particulars of any period during which a person is a suspended person; and
  - (c) such other particulars as may be prescribed.

### **115 Seaman's Book**

- (1) The Registrar of Seafarers may issue to a person a book to be known as a Seaman's Book.
- (2) A Seaman's Book shall be in the prescribed form.

### **116 Official Log Book**

- (1) The master of a ship shall keep a record book relating to the ship to be known as the Official Log Book.

(2) Subject to this Act, the master of a ship who fails without reasonable cause —

- (a) to keep the Official Log Book in the prescribed manner; and
- (b) to carry the Official Log Book in the ship,

is guilty of an offence.

(3) A person who wilfully destroys or mutilates or renders illegible any in an Official Log Book is guilty of an offence.

#### **117 Crew and Passenger lists**

(1) An employer or the master of a ship shall make and, in the prescribed manner, maintain separate lists of -

- (a) the crew of the ship, to be known as a Crew List; and
- (b) the passengers on the ship, to be known as a Passenger List.

(2) Up-to-date copies of the lists referred to in subsection (1) are to be maintained ashore by or on behalf of the managing owner of a ship.

#### **118 Inquiries into death or serious injury**

(1) Where –

- (a) a person dies or suffers a serious injury in a ship; and
- (b) the master of the ship fails, without reasonable cause, to notify the Registrar of the death or serious injury,

the master of the ship is guilty of an offence.

(2) Where –

- (a) a person dies or suffers a serious injury in a ship; or
- (b) a seafarer belonging to a ship dies or suffers a serious injury away from the ship,

an inquiry into the circumstances surrounding the death or serious injury shall, unless the Minister otherwise directs, be held by a person authorised by the Minister at the next port at which the ship calls.

#### **119 Holding of inquiry**

(1) For the purpose of holding an inquiry under section 118, the person authorised under that section may –

- (a) go on board a ship at any time and inspect the ship or any article on board the ship;
- (b) summon any person to appear before him/her; and
- (c) require the production of any document which in his opinion is relevant to the inquiry.

(2) Where an inquiry has been held the person who held it shall make a report in writing of the findings to the Minister who may make a copy of the report available —

- (a) in the case of a person who has died —
  - (i) to the next of kin of the deceased person; or
  - (ii) to any other person who requests such a copy and who appears to the Minister to be interested; and
- (b) in the case of a person who has suffered a serious injury –

- (i) to that person or to a person acting on his behalf; or
- (ii) to any other person who requests such a copy and who appears to the Minister to be interested.

**120 Absence without official leave**

(1) In this section, "seafarer" means a seafarer who is absent from a ship at a time when, under a crew agreement he is required to be on board.

(2) Where a seafarer proves –

(a) that his absence from a ship was due to –

- (i) accident;
- (ii) mistake; or
- (iii) some cause beyond his control; and

(b) that he took all reasonable precautions to avoid being absent, his absence is not a breach of contract.

(3) Where, in an action for breach of contract arising from the absence of a seafarer from a ship, a seafarer fails to prove the matters referred to in subsection (2), if special damages are –

- (a) not claimed by his employer, his civil liability is limited to US\$ 5,000; or
- (b) claimed by his employer, his civil liability is limited to US\$ 5,000 dollars.

**121 Apprehension of seafarers**

(1) Where it appears to the Minister that due facilities will be given by the government of a country for apprehending and receiving seafarers who desert in that country from ships registered under this Act, the Minister may, by order, declare that this section shall apply in relation to that country, subject to any conditions stated in the order.

(2) Where a seafarer deserts from a ship registered under this Act, the master of the ship may apply to the Court for aid in apprehending the deserter, and the Court and its officers shall give all aid within their power, and for that purpose the Court may, on information given on oath, issue a warrant for the deserter to be conveyed on board the ship, or delivered to the master, or owner of the ship or his agent, to be so conveyed.

**122 Detention of ships**

(1) Where the Registrar or inspector is of the opinion that the owner or the master of the ship or an employer, has failed to comply with a requirement of this Act, the ship may be detained.

(2) Where a ship is detained under subsection (1), the ship may be detained until such time as the Registrar issues a certificate showing that —

- (a) the Harbour Master is satisfied that the owner, the employer and the master have complied with the provisions of this Act; and
- (b) the ship may go to sea without a contravention of any provision of this Act.

**123 Regulations with regards to Seafarers**

Cabinet may make regulations to make provision for and in relation to –

- (a) the issue and form of Seaman's Book;

- (b) entries to be made in the Register of Seafarers;
- (c) endorsements to be made in Seaman's Books;
- (d) the particulars required to be entered in an Official Log Book;
- (e) the persons by whom entries in an Official Log Book are to be made, signed or witnessed;
- (f) the procedure to be followed in the making of entries in an Official Log Book;
- (g) the production, or delivery of an Official Log Book to such person, in such circumstances and within such times as may be specified;
- (h) the particulars to be entered in the Crew List and in a Passenger List;
- (i) the time during which a Crew List or a Passenger List may remain in force;
- (j) the manner of notification to specified persons of changes in a Crew List or a Passenger List;
- (k) the places and manner in which a Crew List and a Passenger List and copies of these Lists are to be maintained; and
- (l) the manner in which a Crew List or a Passenger List or copies are to be made available on demand to specified persons.

## PART VI

### DIVISION OF LIABILITY

#### **124 Rules for division of liability**

(1) Where by the fault of two or more ships damage or loss is caused to one or more of those ships, any of their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was in fault, but -

- (a) if having regard to all the circumstances of the case, it is not possible to establish different degrees of fault the liability shall be apportioned equally;
- (b) nothing in this section operates so as to render any ship liable for loss or damage to which the fault of the ship has not contributed; and
- (c) nothing in this section affects the liability of any person under a contract of carriage or any contract, or shall be construed as imposing upon any person any liability from which he is exempted by any contract or by any law, or affecting the right of any person to limit his liability in the manner provided by law.

(2) In this section, "freight" includes passage money and hire, and reference to damage or loss caused by the fault of a ship includes a reference to any salvage or other expenses consequent upon that fault recoverable at law by way of damages.

#### **125 Joint and several liability**

(1) Where loss of life or personal injury is suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships shall be joint and several.

(2) Subsection (1) shall not be construed as depriving any person of any right of defense on which, independently of this section, he might have relied in any action brought against him/her by the person injured, or any person entitled to sue in respect of the loss of life, nor shall it affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.



**126 Right of contribution**

(1) Where loss of life or personal injury is suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, and a proportion of the damage is recovered against the owners of one of the ships that exceeds the proportion in which the ship was in fault, they may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault.

(2) No amount shall be recovered if, by reason of any statutory or contractual limitation of or exemption from liability or for any other reason, it could not have been recovered in the first instance as damages by the person entitled to sue for that amount.

**127 Additional rights of person entitled to contribution**

In addition to any other remedy provided by law, the person entitled to any contribution under section 126 shall have, for the purpose of recovering contribution subject to this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

PART VII

LEGAL PROCEEDINGS

*Division 1 - Offences and Limitations*

**128 Penalties**

(1) An offence under a provision of this Act specified in column 1 of the Schedule is punishable as indicated in column 3 (where a period of time indicates the maximum term of imprisonment, and a monetary amount indicates the maximum fine for the offence in question).

(2) Where both a period of time and a monetary amount are indicated in column 3 of the Schedule both a fine and imprisonment, not exceeding the maximum indicated in that column, may be imposed in respect of an offence.

(3) The description of an offence given in column 2 of the Schedule is illustrative only and not definitive or exhaustive.

**129 Limitation of actions**

(1) No action shall be maintained to enforce any claim or lien against a ship or her owners in respect of any damages or loss to another ship, her cargo or freight, or any property on board her, or damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former ship, whether such ship be wholly or partly in fault, unless proceedings in the action are commenced within two years from the date when the damage or loss or injury was caused.

(2) No action shall be maintained under this Act to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings in the action are commenced within one year from the date of payment.

(3) Any court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court, extend any such period, to such extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant ship

within the jurisdiction of the court, or within the territorial sea of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

**130 Interpretation for purposes of section 129**

For the purposes of section 129 -

- (a) the expression "freight" includes passage money and hire; and
- (b) references to damage or loss caused by the fault of a vessel shall be construed as including reference to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

*Division 2 - Jurisdiction*

**131 Jurisdiction in case of offences**

For the purpose of giving jurisdiction under this Act, every offence under this Act shall be deemed to have been committed either in the place in which the same actually was committed or in any place in which the offender may be.

**132 Jurisdiction over ship lying off coast**

(1) A court which has jurisdiction in any part of the coast of Niue shall have jurisdiction over any vessel being on or lying or passing off that part, and overall persons on board the vessel, in the same manner as if the vessel or persons were within the limits of the original jurisdiction of the court.

(2) The jurisdiction conferred by subsection (1) is in addition to and not in derogation of any jurisdiction or power of a court under any other law.

**133 Jurisdiction in case of offence on board ship**

(1) A person who does an act or makes an omission on board a ship registered under this Act is liable to be prosecuted for any offence for which he could be prosecuted in respect of an act or omission if it were done or made in Niue and, in any such prosecution, it is not a defence to prove that the act was done or the omission made beyond the territorial limits of Niue.

(2) For the purposes of a prosecution under subsection (1), any court of competent jurisdiction as the Minister may appoint shall have jurisdiction in respect of the offence.

**PART VIII**

**GENERAL**

**134 Mode of declaration**

(1) A declaration required by this Act, except under sections 106 and 121, may be made before the Registrar of Ships, a magistrate, a notary public, a Commissioner for Oaths or a diplomatic representative of Niue.

(2) A declaration required by this Act, except under sections 106 and 121, may be made on behalf of a corporation by any person authorised in that behalf under the common seal of the corporation.

**135 Waiver of declaration**

When under this Act, except under sections 106 and 121, any person is required to make a declaration on behalf of himself or of any corporation, or any evidence is required to be produced to the Registrar of Ships and it is shown to the satisfaction of the Registrar of Ships that for any reasonable cause that person is unable to make the declaration, or that the evidence cannot be produced, the Registrar of Ships, may, on the production of such other evidence and subject to such terms as he may see fit, dispense with the declaration or evidence.

**136 False declaration**

(1) A person who, in a declaration made under or for the purposes of this Act, except under sections 106 and 121, or in any document or other evidence produced to the Registrar of Ships or the Registrar of Seafarers –

- (a) wilfully makes or assists in making, or procures to be made a false statement concerning the title to, or ownership of, or the interest existing in, a ship registered under this Act, or
- (b) utters, produces or makes use of any declaration or document containing any false statement, knowing the same to be false,

is guilty of an offence.

(2) Where, in a declaration made under or for the purposes of this Act, except under sections 106 and 121, a person wilfully makes a false statement in relation either to his being a qualified person, the ship in respect of which that false statement has been made is liable to forfeiture to the extent of the interest in the ship of the declarant or, unless it is proved that the declaration was made without authority, of a person on behalf of whom the declaration was made.

**137 Proof of documents**

(1) All certificates or other documents (including endorsements on certificates or other documents) to which this section applies are admissible in evidence in the manner provided by section 138.

(2) This section applies to -

- (a) a certificate or other document issued, granted, given or made under this Act or purporting to be issued, granted, given or made under this Act and signed, or purporting to be signed, by any person required or authorised by this Act to issue, grant, give or make any such certificate or document;
- (b) an endorsement made, or purporting to be made, under this Act and signed, or purporting to be signed, by any person required or authorised by this Act to make any such endorsement; and
- (c) a certificate given or made by the Registrar of Ships asserting the negative of any circumstance, fact or thing.

**138 Admissibility of documents in evidence**

(1) Where a certificate or other document is by this Act declared to be admissible in evidence, it shall on its production from proper custody, be admissible in evidence in any court, and, subject to all just exceptions, shall be conclusive evidence of the matters stated in it.

(2) A copy of any certificate or other document referred to in subsection (1) or extract from any such certificate or document is also admissible in evidence if proved to be an examined copy or extract, or if it purports to be signed and certified as a true copy or extract by the officer or person to whom custody of the certificate or other documents entrusted.

(3) Any person who is by this Act required or authorised to issue, grant give or make any certificate or other document shall furnish a certified copy of the certificate or document to any person applying at a reasonable time for such certified copy or certified extract.

### **139 Proceedings on forfeiture of ship**

(1) Where a ship has become liable to forfeiture under this Act the Minister may cause the ship to be seized and may detain the ship and may bring the ship for adjudication before the Court.

(2) The Court may, where a ship has been brought before it for adjudication under subsection (1), on such terms and conditions as it thinks just order that the ship be forfeited.

### **140 Recovery of penalties**

Where a court adjudges a person convicted of any offence against this Act to pay any penalty or other moneys and the penalty or other moneys are not paid within the time and in the manner limited by the conviction or specified in the order of the court the court may, in addition to any other power it may have to compel payment, direct the amount remaining unpaid to be levied by distress or by the sale of the ship or the equipment of the ship, as the case requires.

### **141 Inspections**

(1) For the purpose of seeing that the provisions of this Act and of any International Maritime Convention implemented in Niue under regulations made for the purposes of section 48, or otherwise having effect in Niue, are complied with, the Foreign Vessel Administrator, an inspector or an authorised officer in relation to any of those provisions or any such Convention may exercise all or any of the powers specified in subsection (7).

(2) for the purpose of the effective exercise or performance of his functions under this Act or for the purposes of any Convention referred to in subsection (1), the Foreign Vessel Administrator, an inspector or an authorised officer may exercise all or any of the powers specified in subsection (7).

(3) The Foreign Vessel Administrator or an inspector may, if he considers it necessary in consequence of an accident or for any other reason, require a ship to be taken into dock for a survey of its hull or machinery.

(4) The powers under subsection (1), (2) or (3) may be exercised by the Foreign Vessel Administrator or an authorised officer in respect of a ship registered under this Act, notwithstanding that the ship is outside the jurisdiction of Niue.

(5) A person exercising a power under subsection (1) or (2) shall not unnecessarily delay a ship.

## Merchant Shipping (Registration of Foreign Vessels) Act

(6) Any person who obstructs a person in the exercise of his powers under this section or who fails to comply with a requirement made under subsection (3) is guilty of an offence.

(7) For the purposes of subsections (1) and (2), the specified powers are powers -

- (a) at all reasonable times, to go on board a ship and inspect the ship or any part of the ship, or any part of the machinery, boats, equipment of the ship, or any articles on board the ship;
- (b) to require the production of, and to inspect, any document or certificate carried in the ship in pursuance of this Act or any Convention referred to in subsection (1); or
- (c) to require any person to answer questions relevant to the exercise of a power, being exercised under paragraph (a) or (b) for a purpose referred to in subsection (1) or (2).

### **142 Surveyors of ships**

(1) The Foreign Vessel Administrator may by notice, appoint surveyors of ships for the purposes of this Act, from societies which are members of the International Association of Classification Societies (IACS) and any other Classification Societies of reasonable standards.

(2) The appointment of a surveyor of ships under this section may be restricted to either or both certain types or classes of ship or certain kinds of survey.

(3) Where a corporation or an unincorporated body of persons is appointed under subsection (1), it may nominate a person to carry out surveys, issue certificates and do all other things necessary on its behalf.

(4) A nomination under subsection (3) shall be notified to the Foreign Vessel Administrator and on receiving such notification the Foreign Vessel Administrator shall cause to be published a notice of the matter in the notification.

(5) The power under this section includes a power to appoint persons, including corporations and unincorporated bodies of persons, outside Niue to be surveyors of ships.

### **143 Inspectors and authorised officers**

The Minister may delegate the Foreign Vessel Administrator to designate any person

- (a) as an inspector for the purposes of this Act;
- (b) as an authorised officer for the purposes of this Act or of any provision of this Act.

### **144 Regulations**

(1) Cabinet may make regulations prescribing all matters that are required or permitted by this Act to be prescribed for the carrying out or giving effect to this Act and in particular for prescribing -

- (a) the manner of doing and the fees payable in respect of any matter or thing that is required or permitted to be done under this Act;
- (b) forms to be used for or in connection with this Act and;
- (c) the means by which, and the conditions subject to which, a ship or a class of ship may be exempted from compliance with the regulations or any provisions of the regulations.

(2) Cabinet may make regulations to prescribe the manner in which the tonnage of any ship shall be ascertained and may -

## Niue Legislation 2019

- (a) make different provision for different descriptions of ships or for the same description of ships in different circumstances;
  - (b) make any provision in the regulations dependent on compliance with such condition, to be evidenced in such manner, as may be specified in the Regulations; and
  - (c) prohibit or restrict the carriage of goods or stores in spaces not included in the registered tonnage of a ship.
- (3) Cabinet may make regulations to make provision -
- (a) prescribing safety requirements and providing for the issue of non-convention safety certificates in prescribed cases;
  - (b) prescribing matters relating to load lines and providing for the issue of local load line certificates in prescribed cases;
  - (c) prescribing the period during which any such certificate is to remain in force, and providing for the renewal and cancellation of any such certificate.
- (4) Regulations made under subsection (3) may make provision for and in relation to –
- (a) the requirements with which the hull, machinery and equipment of ships shall comply;
  - (b) the appliances to be carried, and the measures to be observed, on ships for the saving of life at sea and for the prevention, detection and extinction of fires on ships;
  - (c) the requirements for the holding and recording of musters and drills for crew and passengers;
  - (d) the requirements with respect to the equipping of ships with radio telephones and radio navigational aids, the operation, maintenance and use of radio telephones and radio navigational aids in ships, and the number and qualifications of the radio telephone operators to be carried on ships;
  - (e) the measures and procedures to be followed and the equipment to be carried on ships to ensure safety of navigation;
  - (f) the requirements which must be complied with in respect of the stowage and carriage of livestock, deck cargo, grain, dangerous goods and hazardous cargoes in ships;
  - (g) the observance of safety standards and procedures on board ships;
  - (h) safety and safe-working practices on board ships;
  - (i) the measures to be observed for the prevention of collisions;
  - (j) requirements related to the provision and use on ships of lights and signals;
  - (k) the requirements which must be complied with in respect of lights and signals from the shore to ships;
  - (l) the manner of determining freeboards to be assigned to ships;
  - (m) the manner of determining, in relation to a ship, the deck which is to be the freeboard deck and for requiring the position of that deck to be indicated on each side of the ship by a mark;
  - (n) the manner of determining, by reference to a mark, the freeboards assigned to a ship and the position in which each side of a ship is to be marked with a line indicating the maximum depths to which the ship may be loaded;
  - (o) the requirements in respect of hull, superstructure, fittings and appliances which are relevant to the assignment of freeboards to ships;
  - (p) the manner of recording particulars of the requirements under paragraph (o) and the methods of determining the extent of compliance with the conditions of assignment; and



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(q) the information relating to the stability of a ship required to be provided by the owner of the ship to the master of the ship.

(5) Cabinet may make regulations, in relation to a ship carrying passengers, to make provision for and in relation to –

- (a) the accommodation of passengers;
- (b) the manner of notification of the carriage of unberthed passengers;
- (c) provisions, water, medical stores and medical inspection;
- (d) the carriage of medical staff and the provision of hospital accommodation;
- (e) sanitary facilities;
- (f) sale of alcohol;
- (g) passenger lists;
- (h) the cargo which may be carried and the method of stowing cargo;
- (i) the maintenance of good order in respect of the passengers;
- (j) the prevention of wilful damage and injury to the machinery or equipment of a ship by a passenger;
- (k) the prevention of any obstruction to any crewman in the execution of his duty;
- (l) the prevention of the molesting of or interference with any person on board the ship.

(6) Regulations made under this section shall apply only in relation to a ship registered under this Act.

(7) Cabinet may make regulations to make provision with respect to non-convention vessels employed in navigation on near coastal voyages and manning of such vessels.

(8) Cabinet may make regulations to make provision for and in relation to

- (a) the extent of the ownership of a ship or class of ships eligible to be registered under this Act; and
- (b) the proper administration and management of the registration of ships owned by any person other than a resident of Niue; and
- (c) the appointment of a person or a corporation not registered in Niue, to administer the registration of foreign ships.

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### SCHEDULE (Section 128) PENALTIES

1	2	3
Section	Description of Offence	Penalty Imprisonment or Fine (in US\$)
12(6)	Failure to keep marks	\$1 000
12(7)	Concealing, Removal, Aleration of marks etc	\$1,000
12(8)	Illegal change of ship name	\$1,000
16(6)	Using an illegal certificate of registry	2 years; \$5,000
16(7)	Failing to deliver certificate of registry person entitled	\$1,000



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20(8)	Failing to give notice on loss of ship or change of ownership	\$1,000
21(2)	Failing to report alteration of ship	\$1,000
37	Concealing Niue character	2 years; \$5,000
39(3)	Failing to hoist National Flag	\$1,000
39(4)	Using improper national colors	\$1,000
40(2)	Failing to provide information to Registrar of Ships	\$1 000
54(2)	Taking unsafe ship to sea	2 years; \$5,000
55(2)	Failure to carry equipment by convention	\$1 000
56(3)	Failing to report danger to navigation	2 years; \$5,000
57(3)	Failure to provide assistance to person lost at sea	2 years; \$5,000
58(3)	Failure to provide assistance after collision	2 years; \$5,000
62(1)	Unauthorised carriage of dangerous goods	2 years; \$5,000
62(2)	Falsely describing dangerous goods	\$1,000
71	Failure to deliver suspended certificate	\$1,000
76(2)	Failure to ensure proper manning	\$1,000
78	Operating in the wrong capacity	2 years; \$5,000
79	Failure to produce certificate of competence	\$1,000
80(3)	Failure to return suspended certificate	2 years; \$5,000
88	Seeking rewards for employment	2 years; \$5,000
91(b)	Failure to provide account of wages	\$5 000
95(3)	Failure to provide proper crew accommodation	\$5,000
98	Failure to provide proper medical stores	\$5,000
99(3)	Master failure to make arrangement for complaints	\$1,000
101(2)	Misconduct endangering ship	2 years; \$5,000
102	Continued or concerted disobedience	2 years; \$5,000
103	Absence without leave	3 months; \$3,000
110(1)	Stowing away on ship	3 months; \$3,000
110(2)	Unauthorised presence on ship	3 months; \$3,000
112(2)	Failure to make report of birth or death on ship	\$1,000
116(2)	Failure to carry or keep Official Log Book	\$1,000
116(3)	Destroying of Official Log Book	\$1,000
118(1)	Master failure to notify death or serious injury	\$1,000
136(1)	Making false declaration	2 years; \$5,000
140(6)	Obstructing an inspector	\$5,000

# METEOROLOGICAL SERVICES ACT 2013

2013/326 – 24 September 2013

1	Title	PART 4
2	Commencement	PROTECTION OF ASSETS
	PART 1	10 Powers to protect assets and operations
	PRELIMINARY	11 Department may remove obstructions etc
3	Interpretation	12 Rules and operating procedures
4	Act binds the government	PART 5
	PART 2	ENFORCEMENT OF THIS ACT
	FUNCTIONS AND POWERS OF THE DEPARTMENT	13 Appointment of authorised officers
5	Functions of the department	14 Powers of officers
6	Issuing weather bulletins and other warnings	15 Restitution orders
7	Specific powers of the Minister in relation to meteorology	16 Offences and penalties
	PART 3	PART 6
	IMPLEMENTING CERTAIN REGIONAL AND INTERNATIONAL CONVENTIONS	MISCELLANEOUS PROVISIONS
8	Conventions to which this Part applies	17 Protection from liability
9	Functions of the department in relation to certain conventions	18 Forms and fees
		19 Regulations

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## **An Act to make comprehensive provision in relation to the provision of meteorological and climate related services in Niue, and for all related purposes.**

- 1 Title**  
This Act is the Meteorological Services Act 2013.
- 2 [Spent]**

### PART 1 PRELIMINARY

- 3 Interpretation**  
In this Act, unless a contrary intention appears—  
“authorised officer” means any officer appointed in accordance with section 13;  
“climate change” means any change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere, and which affects the hydrosphere, biosphere, cryosphere and lithosphere, and which is in addition to natural climate variability observed over comparable time periods; and when referring to responses to the impacts of climate change, includes addressing adverse affects arising from climate change or the possibility of change on any part of the environment (such as the water resources and rainfall, coastal and foreshore areas, reefs and marine habitats), or from harmful weather events, exposure to

damaging sunlight, and any other event or impact on the environment or human health;

“climate related services” means any service or activity involving the dissemination of information about climate change, climate variability, trends and impacts assessed on local, national, regional, and global scales, and includes all of the following—

- (a) managing meteorological and related data collected in Niue or for use by the government of Niue;
- (b) developing products from the data that describe Niue's climate;
- (c) developing techniques for applying the data in a range of social, economic and environmental contexts;
- (d) providing information and advice to the general public and specialist users about the nature of climate in general, and Niue's climate in particular;

“convention” includes any meteorology or climate related treaty, instrument, protocol, agreement, project or programme undertaken or implemented on an international or regional basis, to which Niue is a party or participant;

“department” means the department that, with the authority of the Niue Public Service Commission, is established in accordance with article 64 of the Constitution, to be responsible for the administration of meteorology;

“Director” means the person holding office within the Niue Public Service as head of the department, and includes any person acting in that position;

“disaster management authorities” means the Disaster Management Council, and all other agencies having lawful responsibilities under the Niue National Disaster Plan approved by Cabinet;

“geohazard” means any geological state that represents or has the potential to develop further into a situation leading to damage or risk, and includes volcanic activity or eruptions, tsunamis, earthquakes, and other seismic events, and submarine or surface landslides;

“Minister” means the Minister who is responsible for the administration of meteorology and climate matters.

#### **4 Act binds the government**

This Act binds the government.

### **PART 2**

#### **FUNCTIONS AND POWERS OF THE DEPARTMENT**

#### **5 Functions of the department**

(1) The functions of the department in relation to meteorology and climate matters include all of the following—

- (a) the taking and recording of meteorological observations and other observations required for the purposes of meteorology;
- (b) establishing and maintaining meteorology stations and other observation and research stations, and all other necessary technical installations and equipment;
- (c) forecasting weather, and monitoring the state of the atmosphere;
- (d) advising the government and its agencies on all matters relating to meteorology and supporting the roles and responsibilities of the disaster

## Meteorological Services Act

management authorities in relation to disaster management response and risk reduction;

- (e) making arrangements to secure the safety and welfare of staff of the department who are performing their duties during times of disaster or potential disaster;
- (f) collecting, collating, archiving, and making available meteorological data and information in accordance with this Act, and developing an observations data strategy;
- (g) publishing meteorological reports, bulletins, advisories, and data;
- (h) promoting the effective use of meteorological information, and arranging for programmes of public awareness and education;
- (i) promoting the advancement of meteorological science, by means of meteorological research, investigation, and by any other means;
- (j) providing general advice on meteorological and climate matters, and providing meteorological data and advice in support of specific national development projects and other important weather sensitive economic activities;
- (k) setting and applying standards for all observations used for aviation, maritime, and other general forecasts (and where such observations are used for legal purposes), and ensuring that all such standards conform to appropriate international specifications;
- (l) implementing policies international conventions, programmes, projects and initiatives in accordance with Part 3;
- (m) co-operating with the authorities administering the meteorological services of other countries, and with the World Meteorological Organisation, the International Civil Aviation Organisation, and any other relevant international organisations in relation to any of the functions and powers stated in this Part, and in particular, supporting the principle of free and unrestricted exchange of meteorological data between national meteorological services;
- (n) subject to government contracting procedures, entering into contracts or arrangements with any department, agency, or person in Niue or outside Niue to compile, record, or disseminate meteorological reports and information;
- (o) developing, facilitating, and providing training and instruction for persons whose duties and responsibilities concern matters relevant to meteorology or climate;
- (p) promoting the understanding and recognition of traditional practices and knowledge related to weather and climate through the observation of weather indicators occurring in nature, and by other means;
- (q) developing an effective communications strategy to ensure that advisories, bulletins, warnings, and alerts, and general meteorological information are broadcast and disseminated;
- (r) doing any other act which contributes to the capacities within Niue to provide effective and applicable meteorological and climate services, and to diminish the risks arising from adverse weather conditions.

**6 Issuing weather bulletins and other warnings**

(1) Subject to any law relating to disaster management, and in consultation with the Regional Specialised Meteorological Centre and other appropriate agencies, the department has principal responsibility for both—

- (a) issuing advisories, special weather bulletins, or warnings of strong winds, gales, storms, hurricanes, cyclones, and other weather conditions likely to endanger life or property (including weather conditions likely to give rise to floods or storm surges); and
- (b) determining when any such warnings are to be downgraded or terminated.

(2) The department is responsible for issuing alerts of tsunamis and the possible impacts of other geohazards when they are communicated to the department by regional monitoring agencies.

(3) Following the issue of a warning under subsections (1) and (2), the department must provide all necessary advice and assistance in accordance with the Niue National Disaster Plan, and if applicable, provide all necessary advice to the Disaster Management Council in relation to the issue of the appropriate Cyclone Alert.

(4) Any person who—

- (a) issues a false warning of a gale, storm, hurricane or cyclone, or of any tsunami or other geohazard; or
- (b) issues an advisory, special weather bulletin or warning of strong winds, gales, storms, hurricanes, cyclones and other weather conditions —
  - (i) in the name of the department, when not authorised by the department to do so; or
  - (ii) which purports to be issued with the authority of the department or the government of Niue, when no such authority has been given—

commits an offence against section 16(1)(a).

**7 Specific powers of the Minister in relation to meteorology**

(1) The Minister may exercise all the powers conferred by this Act, and all such other powers as may be necessary or convenient for the performance of the functions of the department stated in this Act.

(2) The Minister may delegate to the Director, officers of the department and to any authorised officer, such powers and functions conferred by this Act as the Minister considers appropriate.

(3) In addition to the powers conferred by subsection (1), the Minister has power to do any of the following—

- (a) to require aircraft or ships within Niue's territory that operators of make use of the meteorological services provided by the departments, and act in accordance with any warning issued by the department;
- (b) to restrict the rights of any other person or agency to undertake meteorological activities unless they are registered, licensed, or otherwise expressly approved to do so by the department;
- (c) to determine and apply standards, codes of ethics, or operating procedures in relation to any research or other activity related to meteorology and climate, which may be enforced by agreement, conditions placed upon any registration, licence, or approval, or by any other lawful means;

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- (d) to require that any data or information relevant to meteorology and climate that is obtained by any person by research activities or otherwise on Niue, be provided to the department;
- (e) to restrict the publication or dissemination of any meteorological report or bulletin if the Minister is of the opinion that is false, misleading, or not in accordance with the accepted science to which it relates;
- (f) to assert the rights of the department as the owner of all intellectual property rights in relation to all information and data generated by or on behalf of the department, and in relation to all publications made by or on the authority of the department;
- (g) to appoint committees to discharge any function related to the implementation of this Act, and specify and delegate in writing the powers, duties and responsibilities of such committees;
- (h) to determine and apply fees for any meteorological or climate related services provided by the department, where no such fees are imposed by regulations made under this Act.

(4) Any person who acts in any manner so as to breach any requirement imposed by the Minister in the exercise of a power under subsection (1), commits an offence against section 16(1)(a).

### PART 3

#### IMPLEMENTING CERTAIN REGIONAL AND INTERNATIONAL CONVENTIONS

#### **8 Conventions to which this Part applies**

(1) The provisions of this Part apply to any meteorology or climate related regional or international convention to which Niue is a party and for which the government of Niue has vested responsibility in the department.

(2) This Part also applies to any programme, project, or initiative relating to meteorology or climate undertaken on a regional or international basis with which the government of Niue has agreed to be involved.

(3) Nothing in this Part affects or restricts the lawful role of any other government department or agency in relation to a convention, programme, project, or initiative to which this Act applies, and the Director must ensure that the provisions of this Part are implemented in association with all other relevant department or agency.

#### **9 Functions of the department in relation to certain conventions**

(1) The functions, duties and responsibilities of the department in relation to a convention, programme, project, or initiative to which this Part applies include any of the following—

- (a) making arrangements for the attendance at any meeting of the Parties of a convention and other relevant meetings, of suitably qualified persons to represent the interests of the government of Niue;
- (b) liaising with relevant regional or international bodies to ensure that the representation of the government of Niue at any meeting concerning a convention, programme, project, or initiative is informed and effective;
- (c) appointing technical experts to represent the interests of Niue in relation to negotiations relating to conventions and ensuring that the rights of Niue are



- exercised in accordance with the conventions, including approving processes for the accreditation of such experts, and exercising controls over them;
- (d) accessing and utilising available funds and resources by preparing and submitting project proposals and undertaking programmes to implement the conventions;
  - (e) assisting all other government departments and agencies, and any government appointed committee, to implement any aspect of a convention, programme, project or initiative;
  - (f) preparing any necessary Report, and reporting on a regular basis to the Minister and the Cabinet in relation to the implementation of any convention, programme, project, or initiative;
  - (g) sharing information and otherwise providing such cooperation as is required by any convention, programme, project, or initiative;
  - (h) recommending that any law of Niue be amended or enacted in order to effectively implement any requirement of a convention, programme, project, or initiative;
  - (i) doing any other act or thing (in conjunction with all other relevant departments and agencies of government) to implement any obligation under a convention, programme, project, or initiative.

(2) In addition to the roles of the department under this Part, the department may act as the designated national authority or focal point for the purposes of any convention, programme, project, or initiative to which this Part applies.

(3) As the designated national authority or focal point, the department has responsibility and authority for performing such roles and duties as are necessary to implement any convention, programme, project, or initiative to which this Part applies.

## PART 4

### PROTECTION OF ASSETS

#### **10 Powers to protect assets and operations**

(1) If the Director is of the opinion that there is occurring, or may occur, an act or activity which involves an immediate threat or risk to an installation, facility or equipment relevant to the functions of the department under this Act, the Director may issue a notice under this section.

(2) A notice issued under this section must—

- (a) be directed to any person, organisation or body whom the Director believes is carrying out the act or activity, or apparently has some control over it; and
- (b) specify the act or activity and the nature of its effect upon the operations of the department; and
- (c) require that the act or activity cease, or not be done, until the Director is satisfied that the threat or risk no longer exists.

(3) A notice may be served under this section even if an approval, licence or permit has been granted in relation to the activity, but does not have the effect of preventing any department, agency or person from exercising any lawful function or power in accordance with law.



## Meteorological Services Act

(4) The Director, the department and the government are not liable in respect of any loss or damage arising from, or in any way connected with the issuing of a notice under this section.

(5) A person who—

- (a) having been served with a notice issued under this section, fails to comply with any of its requirements; or
- (b) having been served with a notice issued under this section, causes or permits any other person to act in breach of its requirements; or
- (c) knowingly acts in breach of the requirements of a notice given under this section, whether or not that person has been served with the notice—

commits an offence against section 16(1)(a).

### **11 Department may remove obstructions etc**

(1) Subject to subsection (2), the Director may issue a notice to be affixed to any structure, object, matter, or thing requiring its removal within the period stated in the notice, and in a manner required by the Director, if the structure, object, matter, or thing causes an obstruction to, or otherwise affects the operation of, any installation, facility, or equipment installed or used by the department for the purposes of this Act.

(2) If a notice issued and affixed under subsection (1) is not complied with in accordance with its terms, the department may remove the structure, object, matter, or thing and deal with it in a manner approved by the Director.

### **12 Rules and operating procedures**

(1) Regulations made under this Act may apply rules and operating procedures relevant to the management and operation of any installation, facility or equipment, and in relation to any other function under this Act.

(2) Without limiting the generality of subsection (1), the rules and operating procedures may prescribe any of the following—

- (a) controls over access to certain areas of the department's premises or lands;
- (b) measures to protect the department's assets and facilities;
- (c) requirements applying to the operation and management of any installation, facility, or equipment installed or used for a purpose under this Act.

(3) The department may display signs at its premises, lands, installations, facilities, and equipment, and on its vehicles, which give directions to be observed by all persons within the premises, lands, facilities or equipment, or in the vicinity of the vehicles.

(4) Officers of the department and authorised officers may give directions to any person within the premises, lands, installations, or facilities of the department, or within the vicinity of its equipment, for the purpose of ensuring compliance with any rule or operating procedure, or any sign made or displayed in accordance with this section.

(5) A person who—

- (a) interferes with the operation of any installation, facility, or equipment installed or operated by the department in accordance with this Act; or
- (b) does any act which adversely impacts upon the ability of the department to perform its functions under this Act; or

- (c) breaches any rule or operating procedure made under this section; or
- (d) fails to comply with any requirement or direction given under this section; or
- (e) fails to comply with a requirement stated in any sign displayed under this section—

commits an offence against section 16(1)(a).

## PART 5

### ENFORCEMENT OF THIS ACT

#### **13 Appointment of authorised officers**

(1) For the purposes of effectively implementing this Act, the Niue Public Service Commission may appoint persons who are not officers of the department to be authorised officers for any purpose related to the implementation or enforcement of this Act.

(2) All appointments made under this section must be in writing, and the powers, duties and responsibilities of any person appointed to be an authorised officer are those stated in the relevant instrument of appointment signed by the Niue Public Service Commission.

#### **14 Powers of officers**

(1) The powers provided for under subsection (2) may be exercised

- (a) the Director and any officer of the department; or
- (b) authorised officers appointed under section 13.

(2) For the purposes of implementing and enforcing the provisions of this Act, the persons referred to in subsection (1) may, for any lawful and necessary purpose, do any of the following—

- (a) enter upon any land for any purpose necessary under this Act, after obtaining permission from the owner of the land to do so;
- (b) conduct such investigations and examinations as are necessary to undertake any activity, matter, or thing in accordance with this Act, or to determine whether any offence has been committed;
- (c) install, operate and maintain observation stations, facilities, installations, and related equipment and instruments on all government land, and on private lands with the consent of the owner of the land;
- (d) erect public notice boards and information or warning signs on any government land, and on private land with the consent of the owner of the land;
- (e) take samples for the purpose of analysis and testing;
- (f) take photographs or measurements;
- (g) require any person who is believed to have committed an offence against this Act to state his or her full name, occupation and usual place of residence;
- (h) require the production of any document, data or information obtained from research into any matter to which this Act relates, or which is relevant to an activity, matter, or thing under investigation, including any licence or permit required by law;

## Meteorological Services Act

- (i) require the removal or seize any item which interferes with or obstructs any station, facility, installation, or equipment installed in accordance with this Act;
- (j) seize any item which has been used in the commission of an offence against this Act.

### **15 Restitution orders**

In addition to imposing a fine for any offence against this Act, the court may order that the offender is to pay compensation arising from the loss of or damage to any equipment or property belonging to the department, or to any person or agency acting on behalf of the department.

### **16 Offences and penalties**

(1) A person who—

- (a) commits an offence provided for in this Act; or
- (b) otherwise acts in contravention of any provision of this Act, or who acts in contravention of any requirement imposed under this Act; or
- (c) aids or abets any person in contravening any provision or requirement of this Act; or
- (d) conspires with any person to do any act in contravention of any provision or requirement of this Act—

commits an offence and is liable on conviction—

- (i) in the case of an individual, to a fine not exceeding 5 penalty units, or imprisonment for a term not exceeding 3 months, or both; or
- (ii) in any other case, to a fine not exceeding 20 penalty units.

(2) A person who—

- (a) hinders or obstructs a person exercising powers provided for under this Act in the performance of his or her duties; or
- (b) induces or incites any other person to hinder or obstruct a person exercising powers provided for under this Act; or
- (c) by words or conduct falsely represents that he or she is entitled to exercise powers under this Act, or who otherwise impersonates an officer of the department or an authorised officer; or
- (d) provides false or misleading information in any application made under this Act or to an officer of the department or an authorised officer who is exercising a power under this Act —

commits an offence and is liable on conviction—

- (i) in the case of an individual, to a fine not exceeding 10 penalty units, or imprisonment for a term not exceeding 3 months, or both; or
- (ii) in any other case, to a fine not exceeding 50 penalty units.

(3) If a corporation commits an offence under this Act, any officer, director, or agent of the corporation who authorised, assented to or participated in, or by his or her neglect or omission contributed to the commission of the offence, is a party to and may be found guilty of the offence, and is to be liable to the penalty provided for the offence.

PART 6

MISCELLANEOUS PROVISIONS

**17 Protections from liability**

(1) The government and the department are not subject to any civil or criminal liability arising from the lawful exercise of a function or the performance of a power in accordance with this Act.

(2) Any person who lawfully exercises any power or performs any function under the authority of this Act is not liable for any loss or damage, or subject to any criminal prosecution, in relation to the reasonable exercise of that power or the performance of that function.

**18 Forms and fees**

(1) The Minister may approve any form to be used for any purpose under this Act.

(2) In the absence of any fee prescribed by regulations made under this Act, the Cabinet may determine and apply any fee for any matter under this Act, and any charge for the provision of any service by the department in accordance with this Act.

(3) The Director may enter into arrangements for the collection by any other person or agency, of fees and charges due under this Act.

(4) Any fees which are prescribed by regulations made under this Act are automatically adjusted for each financial year by the addition of 5% of the fee payable in the previous financial year, unless the regulation imposing a specific fee provides otherwise.

**19 Regulations**

(1) Cabinet may make all such regulations as may be necessary or expedient for giving effect to the provisions of this Act, and for its due administration.

(2) Without limiting the generality of subsection (1), regulations may be made in relation to any of the following matters—

- (a) to provide for the classification and issuing of weather related warnings and alerts (including declarations of drought conditions and warnings of high fire danger), and prescribe the consequences of such warnings, alerts and declarations, including necessary restrictions, prohibitions, and obligations applying during the period that they are current;
- (b) to require any person, operation or project undertaking any activities related to meteorology or climate related matters to be licensed, registered, or permitted in accordance with any prescribed procedures and conditions;
- (c) to provide for additional roles, responsibilities, and powers of authorised officers, and to otherwise deal with any matter related to their involvement in the implementation and enforcement of this Act;
- (d) to clarify the roles, functions, and powers of any advisory or technical committee to which this Act relates, and to make any other necessary provision for such committees to contribute to the effective implementation of this Act;
- (e) to facilitate the implementation of any policy, convention, programme, project, or initiative to which this Act applies;

## Meteorological Services Act

- (f) to address any issue or matter related to responses to climate change, including any mitigation or adaptation measure or requirement, and any other process, system, or financial mechanism to be implemented in Niue as part of any international or regional scheme, policy or programme approved by Cabinet;
- (g) to facilitate or regulate the implementation of any project or programme relating to any function under this Act, including matters dealing with the involvement of the department and its officers in such projects and programmes, and the terms and conditions applying to such involvement;
- (h) to secure the protection of any installation, facility, and equipment used by the department in accordance with this Act, or any data collected for any purpose under this Act;
- (i) to implement the department's communications strategies for the broadcast and publication of advisories, bulletins and warnings, including requirements and procedures for such broadcasts and publications to be made.

(3) Regulations made under this section may prescribe offences and impose penalties being fines not exceeding 10 penalty units, or imprisonment for a period not exceeding 3 months, or both.



# MINING ACT 1977

1977/30 – 5 August 1977

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## To make provision for mining for minerals in Niue, and for incidental or connected matters

	PART 1
	PRELIMINARY
<b>1</b>	<b>Short title</b> This is the Mining Act 1977.
<b>2</b>	<b>Interpretation</b> In this Act – “access licence” means any licence granted under section 20;



- “alienation” means alienation as defined in section 2 of the Niue Amendment (No 2) Act 1968;
- “Chief Mining Inspector” means the Chief Mining Inspector appointed under section 5;
- “Crown land” means Crown land as defined in section 2 of the Niue Amendment (No 2) Act 1968;
- “licence” means any access licence, mining licence or prospecting licence;
- “mine” means any mine, quarry, tunnel, excavation, working or any other place where any mining is being carried on or has been carried out;
- “miner” means any person, including a body corporate holding a valid and subsisting mining licence;
- “minerals” means all minerals, mineral substances, gold, silver, precious metals, ferrous metals, non-ferrous metals, bauxite, phosphate, phosphate rock, diatomaceous earth, marble, coal, bitumen, lignite, precious stones, and petroleum existing in their natural state on or under the surface of any land, and includes any prescribed substance within the meaning of the Atomic Energy Act 1945, but does not include any coral, common clay, common sand, common gravel, common stone or common earth;
- “mining” means mining operations;
- “Mining Inspector” means:
- (a) The Chief Mining Inspector; or
  - (b) A Mining Inspector duly appointed and holding office, under this Act, as a Mining Inspector;
- “mining licence” means a mining licence issued under this Act;
- “mining operations” and “mining purposes” means operations in connection with mining for any mineral, and includes –
- (a) The removal of overburden by mechanical or other means, and the stacking, deposit, storage, and treatment of any substance considered to contain any mineral;
  - (b) The deposit or discharge of any mineral, material, debris, tailings, refuse, or waste-water produced from, or consequent on, any such operations or purposes;
  - (c) The erection, maintenance, and use of plant and machinery, and the construction or use of roads, races, dams, railways, channels, batteries, buildings, dwellings, and other works connected with such operations or purposes; and
  - (d) The lawful use of land, water, pools and natural depositories of water (whether containing water or not) and the doing of all lawful acts incidental or conducive to any such operations or purposes;
- “Niuean land” has the same meaning as in section 2 of the Niue Amendment (No 2) Act 1968;
- “prescribed substances” means uranium, thorium, plutonium, neptunium, or any of their respective compounds, or any such other substance as Cabinet may prescribe by notice in the *Gazette*, being a substance which in its opinion is or may be used for the production of atomic energy or research into matters connected with it;
- “prospecting” means searching for minerals in the soil or substrata of any land to assess whether the soil or substrata is suitable for the mining of any mineral, or to test the mineral bearing qualities of any soil or substrata, but does not include mining;
- “prospecting licence” means a prospecting licence issued under section 18;
- “prospector” means any person holding a valid and subsisting prospecting licence;
- “Registrar” means the Registrar of the Court.

3 [Repealed]

**4 Atomic Energy Act 1945**

Nothing in this Act shall affect or derogate from the Atomic Energy Act 1945 or be deemed to affect or derogate from its provisions, and should there be any conflict between that Act and this Act, that Act shall prevail.

PART 2

ADMINISTRATION

**5 Mining Inspectors**

(1) There may be appointed, under Part 6 of the Constitution a Chief Mining Inspector and such number of other Mining Inspectors as may be required for the purpose of this Act.

(2) The Chief Mining Inspector shall have all the powers of and be deemed to be a Mining Inspector.

**6 Duties of Mining Inspectors**

It shall be the duty and function of a Mining Inspector –

- (a) To inspect mines;
- (b) When he has reason to believe that any mining or other operation or activity being carried on at any mine, or that the state or condition of any mine, constitutes a hazard or danger to any person, livestock or building, to give to any miner or to the duly authorised agent or servant of the miner, or to any person engaged in mining at the mine, reasonable directions for, or with a view to, removing, preventing or alleviating the hazard or danger; and
- (c) To ensure that the provisions of this Act are duly observed.

**7 Failure to comply with directions**

Where any miner, or the duly authorised agent or servant of any miner, or any person engaged in mining to whom any directions are given under section 6(b) knowingly and wilfully fails to comply with the directions, he commits an offence and, on conviction, shall be liable to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 2 months or, where the offender is a body corporate, to a fine not exceeding 10 penalty units.

**8 Special powers of Mining Inspectors**

(1) A Mining Inspector may in the exercise of duties, functions or powers under this Act enter any mine or any place where minerals obtained by mining are stored or kept, or any place where he has reason to believe that any such minerals, are or may be stored or kept.

(2) Save with the prior written consent of a Judge or of a Commissioner, a Mining Inspector shall not exercise any of the powers conferred by this subsection –

- (a) At any time between the hours of sunset and sunrise; or
- (b) In or upon any private dwelling or private garden, except with the permission of the occupier.

(3) A Mining Inspector may take and retain on behalf of the Crown from any mine or any place where minerals that are obtained, or apparently obtained, by mining are stored or kept, reasonable samples of any minerals, soil or earth.

**9 Obstruction prohibited**

(1) Any person who obstructs, hinders, disobeys, assaults, threatens, or abuses any Mining Inspector while the Inspector is performing any duty, exercising any power or carrying out any function imposed or conferred upon the Inspector by this Act, commits an offence, and, on conviction, shall be liable to a fine not exceeding 1 penalty unit or to imprisonment for a term not exceeding 1 month, or, where the person is a body corporate, to a fine not exceeding 5 penalty units.

(2) Nothing in this section shall derogate from section 7.

**10 Mining Office**

(1) There shall be a Mining Office which shall be situated in Alofi at such place as Cabinet shall specify.

(2) The Mining Office shall be under the control of the Chief Mining Inspector.

(3) At the Mining Office there shall be kept copies of all licences, documents, notices and other writings and instruments issued under this Act, which shall comprise the public records of the Mining Office.

(4) The public records of the Mining Office shall be open to inspection, without fee, by members of the public on any day except a Saturday, or a holiday at all reasonable hours fixed by the Chief Mining Inspector.

(5) (a) None of the public records of the Mining Office shall, without the prior consent of the Cabinet, or a Judge or Commissioner of the Court, or the Chief Mining Inspector be removed from the Mining Office.

(b) Any such Judge or Commissioner may order the Chief Mining Inspector to cause any of such public records to be produced in any court.

(6) Any person who knowingly and wilfully removes any of such public records, contrary to subsection (5) from the Mining Office, commits an offence and, on conviction, shall be liable to a fine not exceeding 1 penalty unit, or to imprisonment for a term not exceeding one month or, if the removal was made with any fraudulent or other dishonest intent, to a fine not exceeding 3 penalty units or to imprisonment for a term not exceeding 9 months.

**11 Office of miner**

(1) Every miner shall have, in Niue, an office and shall, in writing, inform the Chief Mining Inspector at the Mining Office of the location of that office or any change in the location of that office.

(2) Any miner who, for more than 7 clear days, is in breach of subsection (1) commits an offence and, on conviction, shall be liable to a fine not exceeding 0.5 penalty units.

(3) Any notice or other document which any person may wish to serve upon or deliver to any miner shall be deemed to have been validly served upon or delivered to the miner if it be delivered at the office referred to in subsection (1) of the miner as the same is recorded in the records of the Mining Office.

(4) Nothing in subsection (3) shall preclude the service or delivery of any notice or other document in any manner sanctioned by law.

**PART 3**

**ACQUISITION OF LAND**

**12 Acquisition of Niuean land**

Cabinet shall have the authority to investigate and acquire Niuean land by way of lease or purchase for the following purposes –

## Mining Act

- (a) For mining and for all purposes necessary effectually to carry on mining operations in or on the land for any mineral;
- (b) For cutting and constructing on the land water races, drains, dams, and roads, to be used in connection with such mining;
- (c) For the erection on it of any buildings and machinery to be used in connection with any such mining;
- (d) For boring, sinking for, pumping or raising water;
- (e) For residence on it in connection with any or all such purposes.

### **13 Crown land open for mining**

All Crown land shall be open for mining, subject to and in accordance with this Act or regulations made under this Act.

### **14 Niuean land open for mining**

Without limiting this Act, if minerals are discovered on or under Niuean land, the land shall, with the written consent of the owner or occupier, be open for mining, subject to and under this Act.

### **15 Niuean land may be declared open for mining without consent of owner**

(1) If the owner or occupier of any Niuean land fails or refuses to consent to the acquisition of land for mining, the Assembly may by resolution direct Cabinet to declare the land to be open for mining as if it were Crown land.

(2) Where the Assembly resolution is passed under subsection (1) Cabinet shall cause to be served on the owner or occupier of the land a notice in writing stating that unless, within a period of 6 months after the date on which the notice was served, the owner or occupier consents to the land being open for mining, the land may be declared to be open for mining as if it were Crown land.

(3) No owner or occupier of land who has had served on him a notice under subsection (2) shall, within the period of one year after the date of receipt of the notice, enter into any arrangement with any other person for the mining of any mineral on or under the land to which the notice relates.

(4) If satisfactory arrangements (including, if necessary, an agreement to grant a right of way) have not been made by the owner or the occupier within the period of 6 months referred to in subsection (2), Cabinet within 3 months after the expiry of the said period of 6 months, shall declare the land in respect of which the notice was served or any part of it to be open for mining if Cabinet considers it to be in the national interest to do so.

(5) Where any land is required under this section is proven by the owner or occupier to be their only land that owner or that occupier shall be provided with alternative land of an equal value at some other place in Niue.

### **16 Agreement with owner for mining**

Instead of recommending that any land be declared to be open for mining under section 15, Cabinet may agree in writing with the owner or occupier of the land that it shall be open for mining in the same manner as Crown land.

### **17 Area of mining lease**

(1) The area of any land comprised in a mining lease shall not exceed 40 acres and the length of the area, as far as practicable, shall not exceed twice its width.

(2) Nothing in subsection (1) shall restrict the area of land required for the purpose of mining for a prescribed substance within the meaning of the Atomic Energy Act 1945.

#### PART 4

##### GRANT OF LICENCES

### **18 Prospecting licences**

(1) Cabinet shall have the authority to grant prospecting licences.

(2) Cabinet shall make regulations under this section to regulate the granting of prospecting licences.

### **19 Mining licences**

(1) Cabinet shall have the authority to grant mining licences under this Act or under any regulations made under this Act.

(2) No person shall engage in mining in, upon or under any land unless, in relation to that land, the person holds a mining licence issued to the person under subsection (1).

(3) Any person who engages in mining contrary to subsection (2) commits an offence and, on conviction, shall be liable to a fine of 5 penalty units or to imprisonment for a term not exceeding 2 months or, where the person is a body corporate, to a fine not exceeding 20 penalty units.

(4) Where any person is convicted of an offence contrary to subsection (2) the Court may, on convicting or sentencing the person, make an order vesting in the Crown all or any vehicles, machinery, equipment, tools or other things used by the person in the commission or in furtherance of the offence and upon the making of any such order, the vehicles, machinery, equipment, tools or other things so vested shall be forfeited to and become the absolute property of the Crown and shall be dealt with or disposed of in such manner as the Cabinet may direct.

(5) No person shall, as of right, be entitled to the grant of a mining licence.

(6) Subject to section 27, where, in respect of any piece or area of land, there is in existence a subsisting mining licence, no mining licence shall be granted in respect of the piece or area of land without first consulting the miner holding the subsisting licence.

(7) No mining licence shall be granted for a period in excess of 50 years commencing on the date of issue.

### **20 Access licence**

(1) Where a miner is unable to obtain reasonable access to any area or piece of land mentioned in the mining licence held by the miner, the miner may apply in writing to Cabinet for a grant to the miner of an access licence to that area or piece of land over any other area or piece of land to be specified in the licence.

(2) On the receipt of any such application and if Cabinet considers the application to be reasonable in the circumstances, Cabinet shall grant the access licence sought subject to any reasonable conditions that it may specify.

(3) Every access licence shall be effectual only during the subsistence of the mining licence to which it relates.

### **21 Form of licence**

(1) Every licence shall be in writing and in triplicate and shall –

- (a) Contain the full names, occupation and address in Niue of the person in whose favour it is granted;

## Mining Act

- (b) Specify each and every area or piece of land in relation to which it is granted;
- (c) Specify the term of the licence;
- (d) Specify each and every species of minerals in respect of which the licence is granted;
- (e) Set forth the consideration, whether the payment of a lump sum or otherwise, that the miner is to pay to the Crown for the grant of the licence;
- (f) Contain such other conditions, not inconsistent with this Act, as are agreed upon between the miner concerned and Cabinet, being conditions to which the licence is to be subject; and
- (g) Be dated with the date of issue.

(2) Every licence shall be executed by the Premier in the presence of a witness who shall, on the licence, duly attest the signature of the Premier.

(3) Every licence shall be signed by the miner concerned, or by the duly authorised agent of such miner, in the presence of a Cabinet Minister or of a Mining Inspector who shall, on the licence, duly attest the signature of the miner or agent.

(4) There shall be payable to the Crown on the issue of a licence the sum of one hundred dollars.

(5) Every such sum shall be paid by the person in whose favour the licence is granted.

(6) On the payment of any such fee, a receipt for the same shall be endorsed upon each copy of the licence by the person duly authorised to receive the fee.

### **22 Validity of licence**

No licence shall be valid or effectual for any purpose whatsoever until, in relation to it, there has been compliance with this Act.

### **23 Licence deemed to have been confirmed**

Every licence issued or granted under this Act affecting or relating to Niuean land, and every suspension, revocation or surrender of any such licence shall be deemed to have been duly confirmed by the Court under the Land Act 1969.

### **24 Registration of licence**

(1) Every licence and every assignment, transmission, surrender or revocation of any licence shall, for the purpose of Part 1 of the Land Act 1969, be deemed to be an instrument within the meaning of section 2 of that Act and shall be subject to Part 1 of that Act.

(2) Nothing in section 7 of the Land Act 1969 shall apply to a licence or to the assignment, transmission, surrender or revocation of the licence.

### **25 Destruction of licence**

(1) No person shall destroy or mutilate any licence or make any unauthorised entry upon any licence.

(2) Any person who knowingly and wilfully acts contrary to subsection (1) commits an offence and, on conviction, shall be liable to a fine not exceeding 1 penalty unit or, if the act was done with any fraudulent or other dishonest intent, to a fine not exceeding 2.5 penalty units or to imprisonment for a term not exceeding 6 months.

### **26 Licence to constitute contract**

Every licence issued under this Act shall, subject to this Act, constitute a contract between the Crown and the miner.



**27 Surrender, cancellation and suspension of licence**

Cabinet may suspend, cancel or cause the surrender of a licence if it is in the national interest to do so.

PART 5

COMPENSATION

**28 Compensation**

Where land is acquired for the purposes of this Act, there shall be paid to the owner or occupier entitled to the land acquired compensation.

**29 Claims for compensation against the Crown**

Subject to this Act, every claim against the Crown for compensation in respect of any matter for which compensation is expressly provided for by this Act, whether for injurious affection of land, the value of improvements, or otherwise, shall be made in the Court.

**30 Payment of compensation**

All compensation payable by the Crown under this Act shall be paid from the Government Account out of money appropriated by the Assembly for that purpose.

**31 Compensation not payable in respect of minerals**

Compensation shall in no case be payable in respect of the value of any mineral on, in, under, or forming the surface of any land.

**32 Compensation not payable unless expressly provided for**

No person shall have any right or claim to compensation against the Crown in respect of any matter arising under this Act except where provision for compensation is expressly made by this Act.

**33 Owner and occupier of land entitled to compensation**

The owner or occupier of any land in respect of which a mining licence has been granted shall be entitled to compensation (according to their respective interests) for all loss and damage suffered or likely to be suffered by that owner or occupier as a result of the grant of the mining licence or the exercise of the rights conferred by that licence.

**34 Amount of compensation**

(1) The amount of compensation claimed under this Act against the holder of a mining licence or against any person exercising any of the rights conferred by this Act shall, in default of agreement, be determined by the Court.

(2) In fixing the amount of compensation to be paid to the owner or occupier of land in respect of damage to the land, the Court shall take into consideration the extent to which the whole of the land comprised in the holding of which the land damaged forms part will be detrimentally affected by reason of any reduction in the area usable for other than mining purposes.

PART 6

REGULATIONS

**35 Regulations relating to mines**

The Cabinet may make regulations for –



## Mining Act

- (a) Regulating the working of mines and machinery and providing for the health and safety of persons working, and the safety of property used, in connection with mining operations;
- (b) Providing for the fencing off and filling up of shafts, pits, holes, and excavations;
- (c) Requiring owners of mines to provide such appliances, works, and structures, for safety purposes, as may be specified in the regulations, and requiring the owners to keep them in good repair and condition;
- (d) Regulating the use of cyanide and concentrating plants in or about mines;
- (e) Regulating the storage and use of explosives in or about mines;
- (f) Regulating the use of electricity, and the installation and use of electrical wiring and equipment, in or about mines;
- (g) Providing for the safety of persons employed in drives and excavations;
- (h) Providing for the examination and inspection of mines and machinery in or about mines;
- (i) Requiring the use by persons employed in or about mines of protective clothing, covering, or equipment of a prescribed kind to be used in such work as may be specified;
- (j) Requiring the provision of bathhouses, change-houses, toilets, and other sanitary appliances at mines, and regulating their construction, equipment, control and use;
- (k) Requiring the provision in or about mines of supplies of drinking water and facilities for the consumption of meals, and regulating the construction, equipment and control, and use of such facilities;
- (l) Providing for the supply and maintenance of fire extinguishing appliances, ambulance appliances, and other appliances for use in rescue work, and for the formation and training of rescue and first aid teams;
- (m) Requiring the installation of telephone communications between mines and the nearest places where medical assistance is obtainable;
- (n) Prescribing forms of returns, and the nature of any information and particulars, to be supplied in respect of mines under this Act;
- (o) Defining the duties of Mining Inspectors and conferring on those Inspectors all such powers as may be necessary for the efficient performance of their duties;
- (p) Requiring copies of regulations made under this section to be displayed at mines.

### **36 General regulations**

- (1) Cabinet may make regulations for giving full or fuller effect to this Act.
- (2) Without restricting subsection (1), Cabinet may under this section, make regulations –
  - (a) Prescribing powers, functions, and duties of any officer or other person appointed under this Act or employed or acting in the administration of this Act;
  - (b) Prescribing forms to be used in conjunction with this Act;
  - (c) Prescribing the persons or class or classes of persons on whom copies of applications for mining licences are to be served;
  - (d) Prescribing the fees payable in respect of applications for mining licences and prospecting licences;
  - (e) Prescribing the rent payable in respect of mining operations;
  - (f) Prescribing the times at which rents shall be paid and the manner in which they are to be paid;

- (g) Prescribing the manner in which money payable under this Act is to be collected, accounted for, and distributed;
- (h) Providing for the compilation of mining statistics.

PART 7

MISCELLANEOUS PROVISIONS

**37 Levies may be imposed**

(1) (a) The Niue Assembly may, by resolution published in the *Gazette*, impose on all or any minerals mined in, upon or under any land, a levy or levies on the value of the minerals.

(b) The rate of any such levy shall not exceed 5 percent of the market value of the minerals of the mine at which the same were mined on the date of the mining.

(2) Every such levy shall be paid, by the miner who mined the minerals, prior to the expiration of a period of 9 months from the date of mining of the minerals.

(3) No minerals shall be exported from Niue, without the prior written consent of Cabinet, until the levy payable in respect thereof has been paid under subsections (1) and (2).

(4) Any such consent may be given either unconditionally or subject to such conditions as Cabinet may impose.

(5) Any person who exports, or attempts to export, from Niue any minerals contrary to subsection (3) commits an offence and, on conviction, shall be liable to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 6 months, or to both such a fine and such imprisonment, or, where the person is a body corporate, to a fine not exceeding 40 penalty units.

(6) Nothing contained earlier in this section shall apply to any minerals obtained by a prospector consequent upon any prospecting of land made, under this Act or regulations made under this Act, by the prospector.

**38 Moneys payable to the Financial Secretary**

(1) Subject to subsection (4), all moneys payable by any miner under this Act or any licence held by the miner shall constitute a debt due to the Crown, and shall be paid to the Financial Secretary by the miner, or by any person receiving the same under this Act from the miner or any agent of the miner.

(2) Should any such moneys not be duly and punctually paid, the same may be recovered, on behalf of the Crown, by proceedings commenced and prosecuted by the Financial Secretary or the Cabinet.

(3) All moneys received under subsection (1) by the Financial Secretary become part of the general revenue of Niue.

(4) Nothing contained in this section shall apply to any fine payable or paid by any person, as a penalty or punishment for any offence committed against this Act by the person.

**39 Money paid for Niuean land**

Money paid for Niuean land acquired under this Act shall be paid to the Registrar whereupon the Registrar shall dispose of the same to the owner or occupier entitled.

**40 Disputes**

(1) (a) Any dispute arising under this Act shall be referred to a single arbitrator chosen by the parties, or, if they are unable to agree, to an arbitrator chosen by the Chief Justice.

## Mining Act

(b) Each party shall have power to appoint an assessor to sit with the arbitrator, but the arbitrator alone shall have the power to decide and the award shall be his alone.

(2) Every arbitration shall take place within Niue as a single arbitrator shall decide, and the procedure shall be governed by the Arbitration Act 1908.

### **41 Appeals**

(1) Subject to subsection (5), any person claiming to be adversely affected by any ruling, decision, instruction or direction made, given or issued under this Act by Cabinet may appeal to the Court against the ruling, decision, instruction or direction.

(2) No such appeal shall be made after the expiration of a period of 42 clear days from and after the date of the making, giving or issuing of the ruling, decision, instruction or direction concerned.

(3) On the hearing of any such appeal the Court may –

(a) Dismiss the appeal;

(b) Allow the appeal;

(c) Allow the appeal in part and dismiss it in part;

(d) Modify the ruling, decision, instruction or direction, in such manner and to such extent as it considers just; or

(e) Grant such further or other relief to the appellant as, in the circumstances, it considers reasonable.

(4) –

(5) Nothing contained in this section shall empower any person to appeal against –

(a) Any refusal by Cabinet to grant a mining licence;

(b) Any refusal by Cabinet to consent to any assignment of a mining licence;

(c) Any suspension by Cabinet of a mining licence.

### **42 Records to be kept**

(1) Every miner shall keep in Niue complete, comprehensive, full, proper and accurate records and books of account relating to all mining carried on by the miner; and shall, on demand being made of the miner at any reasonable hour by Cabinet or the Chief Mining Inspector, produce the same to the person making the demand for inspection by that person; and that person shall be entitled, on behalf of the Crown, to make and retain copies of the whole or any parts of the records and books.

(2) Any miner who fails to comply with all or any of the provisions of subsection (1) commits an offence and, on conviction, shall be liable to a fine not exceeding 2 penalty units.

### **43 Disused mines**

(1) Where any mine has, in the opinion of the Chief Mining Inspector, become disused, the Chief Mining Inspector may give to any person who is lawfully entitled to engage in mining at the mine such reasonable directions as the Chief Mining Inspector considers necessary in order to render the mine safe and harmless to any person, livestock or property.

(2) Any person to whom any directions are lawfully given under subsection (1), and who fails within a reasonable time after the giving of them, fully to comply with the same, commits an offence, and, on conviction, shall be liable to a fine not exceeding 1 penalty unit.

(3) Notwithstanding subsection (1), the Chief Mining Inspector may take such steps and measures to render any disused mine safe and harmless to any person, livestock or property.

(4) The reasonable costs of taking any such steps and measures shall constitute a debt due to the Crown by the person who would have been responsible for rendering the disused mine safe and harmless, if the person had been lawfully given directions in that behalf under subsection (1), and such costs may be recovered by action brought, on behalf of the Crown, by the Chief Mining Inspector or by the Treasurer.

**44 Cabinet may delegate**

Cabinet may, by notice in the *Gazette*, delegate to the Chief Mining Inspector all or any of Cabinet's functions, duties and powers under this Act and may in like manner revoke, vary or amend any such delegation.

**45 Personal liability of officers**

No person shall be personally liable for any act done by him in good faith in the exercise of any duties, powers, or authorities imposed or conferred on him by this Act.

**46 [Spent]**

# MINORS' CONTRACTS ACT 1969

1969/41 (NZ) – 1 January 1970

1	Short title		<i>Miscellaneous Provisions</i>
2	Interpretation	10	Guarantees and indemnities
3	Act to bind the Crown	11	Contracts to marry
		12	Settlement of claims by minors
	<i>Contractual Capacity of Minors</i>	13	Variation of certain orders made under section 12
4	Married minors		
5	Contracts of minors of or over the age of 18 years, certain contracts concerning life insurance and contracts of service	14	Jurisdiction of Court
6	Contracts of minors below the age of 18 years	15	Act to be a code
7	Compensation or restitution	16	Trusts not affected
8	Applications under section 5 or section 6	17-19	[Spent]
9	Minor may enter into contract with approval of the Court		

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## To restate and reform the law relating to minors' contracts

### 1 Short title

This is the Minors' Contracts Act 1969.

### 2 Interpretation

(1) In this Act –  
“property” means land, money, goods, things in action, goodwill, and every valuable thing, whether real or personal, and whether situated in Niue or elsewhere; and includes obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property.

(2) In sections 5, 6, 9, 10 and 12, “minor” does not include a minor who is or has been married.

### 3 Act to bind the Crown

This Act shall bind the Crown.

### *Contractual Capacity of Minors*

### 4 Married minors

(1) Subject to section 16, a minor who is or has been married shall have the same contractual capacity as if he were of full age.

(2) Subject to section 16, any compromise or settlement of a claim agreed to, and any discharge or receipt given for any purpose, by any such minor shall have effect as if the minor were of full age.

### 5 Contracts of minors of or over the age of 18 years, certain contracts concerning life insurance, and contracts of service

(1) Subject to this section, every contract which is –

(a) Entered into by a minor who has attained the age of 18 years; or

(b) [Repealed]

(c) A contract of service entered into by a minor;

shall have effect as if the minor were of full age.

(2) If the Court is satisfied in respect of any contract to which subsection (1) applies that, at the time the contract was entered into –

- (a) The consideration for a minor's promise or act was so inadequate as to be unconscionable; or
- (b) Any provision of any such contract imposing an obligation on any party thereto who was a minor was harsh or oppressive,

it may, in the course of any proceedings or on application made for the purpose, cancel the contract, or decline to enforce the contract against the minor, or declare that the contract is unenforceable against the minor, whether in whole or in part, and in any case may make such order as to compensation or restitution of property under section 7 as it thinks just.

(3) For the purposes of subsection (2), the Court may receive evidence of commercial practice in contracts of the same kind.

(4) [Repealed]

(5) Nothing in this section shall apply to –

- (a) Any contract approved under section 9, or
- (b) The compromise or settlement of any claim for money or damages made by or on behalf of any minor (whether alone or in conjunction with any other person).

## **6 Contracts of minors below the age of 18 years**

(1) Subject to this section, every contract other than a contract to which section 5(1)(b) or (c) applies entered into by a minor who has not attained the age of 18 years shall be unenforceable against the minor but otherwise shall have effect as if the minor were of full age.

(2) The Court may, in the course of any proceedings or on application made for the purpose, inquire into the fairness and reasonableness of any contract to which subsection (1) applies at the time the contract was entered into and –

- (a) If it finds that any such contract was fair and reasonable at that time it shall not be obliged to make any order but it may –
  - (i) enforce the contract against the minor;
  - (ii) declare that the contract is binding on the minor, whether in whole or in part;
  - (iii) Make such order entitling the other parties to the contract, on such conditions as the Court thinks just, to cancel the contract;
  - (iv) Make such order as to compensation or restitution of property under section 7 as it thinks just, and
- (b) If it finds that any such contract was not fair and reasonable at that time it shall not be obliged to make any order but it may –
  - (i) cancel the contract;
  - (ii) make such order entitling the minor, on such conditions as the Court thinks just, to cancel the contract;
  - (iii) make such order as to compensation or restitution of property under section 7 as it thinks just.

(3) In exercising its discretion under subsection (2) the Court shall have regard to –

- (a) The circumstances surrounding the making of the contract;
- (b) The subject-matter and nature of the contract;
- (c) In the case of a contract relating to property, the nature and the value of the property;

- (d) The age and the means (if any) of the minor;
- (e) All other relevant circumstances.
- (4) Nothing in this section shall apply to –
  - (a) Any contract approved by the Court under section 9; or
  - (b) The compromise or settlement of any claim for money or damages made by or on behalf of any minor (whether alone or in conjunction with any other person).
- (5) Nothing in this section shall limit or affect section 20 of the Trustee Act 1956.

**7 Compensation or restitution**

(1) Where the Court exercises any of the powers conferred on it by section 5(2) or where it may exercise any of the powers conferred on it by section 6(2) (whether or not it exercises any of those powers), the Court may grant to –

- (a) Any party to the contract; or
- (b) A guarantor or indemnifier under a contract of guarantee or indemnity relating to a contract to which section 5(1) or section 6(1) applies; or
- (c) Any person claiming through or under or on behalf of any such party, guarantor, or indemnifier,

such relief by way of compensation or restitution of property as the Court thinks just.

(2) The Court may by any order made under section (1) vest the whole or any part of any property that was the subject of, or the whole or any part of the consideration for, the contract in any party to the proceedings or may direct any such party to transfer or assign any such property to any other party to the proceedings.

**8 Applications under section 5 or section 6**

(1) An application under section 5(2) or section 6(2) may be made by –

- (a) Any person to whom the Court may grant relief under section 7; or
- (b) Any other person where it is material for that person to know whether the Court will exercise the powers granted to it by the subsection.

(2) Any order made under section 5(2) or section 6(2) or under section 7 or any provision of any such order, may be made upon and subject to such terms and conditions as the Court thinks fit.

**9 Minor may enter into contract with approval of the Court**

(1) Every contract entered into by a minor shall have effect as if the minor were of full age if, before the contract is entered into by the minor, it is approved under this section by the Court.

(2) An application to the Court under this section may be made –

- (a) By the minor or any other person who will be a party to the proposed contract; or
- (b) By a guardian of the minor.

(3) The Court may refer any such application to a guardian of the minor, or, where the Court deems it necessary for the purposes of the application, to a solicitor nominated by the Court, or to any other person, and may make such order for the payment of the reasonable costs and expenses of any person to whom the application is so referred.

(4) Any person to whom any such application is referred under subsection (3) may file a report in the Court setting out the results of his consideration and examination of the application and making in respect of it such recommendations as he thinks proper, and may appear and be heard at the hearing of the application; but no



such person shall be under any obligation to consider or examine any such application until his reasonable costs and expenses have been paid or secured to his satisfaction.

(5) The Court shall not approve a contract under this section where the contract relates to property held on trust and the Court is of the opinion that it is a case in which it would be more appropriate for an application to be made under section 64 or section 64A of the Trustee Act 1956.

*Miscellaneous Provisions*

**10 Guarantees and indemnities**

Every contract of guarantee or indemnity where any person (other than a minor) undertakes to accept liability in the event of the failure of a minor to carry out his obligations under a contract shall be enforceable against that person (in this section referred to as “the surety”) to the extent that it would be if the minor had been at all material times a person of full age, and that liability shall not be affected by any other provision of this Act or by any order made under any other provision of this Act; but the liability of the minor to the surety and the surety’s right of subrogation against the minor may be affected by the other provisions of this Act or by any order made under section 5(2) or section 6(2) or section 7.

**11 Contracts to marry**

No contract to marry any person entered into by a minor (other than a minor who has been married) shall be binding on either party, and nothing in section 5 or section 6 shall apply to any such contract.

**12 Settlement of claims by minors**

(1) Where any money or damages are claimed by or on behalf of a minor (whether alone or in conjunction with any other person) then –

- (a) If the claim is not the subject of proceedings before any Court in Niue, any agreement for the compromise or settlement of the claim entered into by the minor, or on his behalf by a person who in the opinion of a Court of competent jurisdiction is a fit and proper person to do so, shall be binding on the minor if it or a release of the claim is in writing and is approved by a Court of competent jurisdiction; and
- (b) If the claim has not been compromised or settled in accordance with paragraph (a) and has become the subject of proceedings before any court in Niue, no settlement, compromise, or payment and no acceptance of money paid into Court, whenever entered into or made, shall so far as it relates to that minor’s claim be valid without the approval of the Court.

(2) An application for the approval of the Court under subsection (1) may be made by or on behalf of the minor or any other party to the agreement or proceedings.

(3) The Court may refuse any application for its approval under subsection (1) or may grant its approval either unconditionally or upon or subject to such conditions and directions as it thinks fit, whether as to the terms of the agreement or of the compromise or settlement, or as to the amount, payment, securing, application, or protection of the money paid, or to be paid or otherwise.

(4) Without limiting subsection (3), where the Court directs that the whole or any part of any money or damages awarded to a minor in any cause or matter or of any money to which a minor is entitled under an agreement, compromise, or settlement approved under subsection (1) shall be held on trust for the minor under this subsection by a person then, except so far as the Court directs any immediate payment therefrom or otherwise orders, and subject to any directions or conditions given or imposed by the Court –

- (a) The amount shall be invested and held by the trustee upon trust –
  - (i) to make such payment (if any) to the minor out of the income and capital of the amount as the Court may specify; and
  - (ii) to apply the income and capital of the amount or so much thereof as the trustee thinks fit for or towards the maintenance or education (including past maintenance or education) or the advancement or benefit of the minor;
- (b) The minor shall have no power, either by himself or in conjunction with any other person or persons, to terminate the trusts upon which the amount is held or to modify or extinguish those trusts;
- (c) The interest of the minor in the income and capital of the amount shall not, while it remains in the hands of the trustee, be alienated, or pass by bankruptcy, or be liable to be seized, sold, attached, or taken in execution by process of law.

(5) (a) Upon any minor attaining the age of 20 years or marrying under that age while any amount is held on trust for his benefit under subsection (4), the balance of that amount and of the income therefrom remaining in the hands of the trustee shall be paid to the minor except in so far as the Court may have ordered before the payment is made that the whole or any part of that amount shall continue to be held on trust under that subsection.

- (b) Where the trustee has made an application or received notice that an application has been made to the Court for such an order he shall not make any payment under this subsection until the application has been disposed of.

(6) [Repealed]

(7) For the purposes of this section “court of competent jurisdiction” means a court in which proceedings could be taken to enforce the claim or, in the case of a claim that could not be the subject of proceedings in Niue, a court in which proceedings could be taken to enforce a similar claim in Niue.

(8) Nothing in this section shall limit or affect the Deaths by Accidents Compensation Act 1952.

### **13 Variation of certain orders made under section 12**

(1) The Court may vary any order made under section 12 insofar as the order relates to the payment, investment, or application of money held on trust or the income from such trust.

(2) Any order under this section may be made by the Court of its own motion or on an application made by –

- (a) The minor; or
- (b) The trustee; or
- (c) Any other person who adduces proof of circumstances which in the opinion of the Court make it proper that he should make the application.

### **14 Jurisdiction of Court**

The Court may exercise any of the powers conferred by sections 5 to 7 where –

- (a) The occasion for the exercise of the power arises in civil proceedings (other than an application for the purposes of section 5(2) or section 6(2)) before the Court; or
- (b) The value of the consideration for the promise or act of any minor under the contract is no more than 2,000 dollars.

**15 Act to be a code**

(1) The provisions of this Act shall have effect in place of the rules of the common law and of equity relating to the contractual capacity of minors and to the effect, validity, avoidance, repudiation and ratification of contracts entered into by minors and to any contract of guarantee or indemnity in respect of any such contract.

(2) –

(3) Nothing in this Act shall limit or affect any provision of any other enactment whereby a contract is made binding on a minor and nothing in section 5 or section 6 shall apply to any such contract.

(4) Nothing in this Act shall limit or affect the rule of law whereby a minor is not liable in tort for procuring a contract by means of fraudulent representations as to his own age or any other matter, but the Court shall take any such representations into account in deciding whether to exercise any of its powers under section 5(2) or section 6(2) or section 7.

**16 Trusts not affected**

Nothing in this Act shall entitle –

- (a) A trustee to pay money or deliver property to a minor otherwise than under the terms of the trust;
- (b) A minor to enter into an agreement whereby a trust is extinguished or the terms of a trust are varied but nothing in this section shall prevent any contract approved under section 9 from having effect according to its tenor.

**17-19** [Spent]

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# MISUSE OF DRUGS ACT 2007

2007/288 – 7 November 2007

1	Short Title	15	Controlled drug analogues
2	Interpretation	16	Powers of Director
3	Act to bind the Government	17	Arrest by Customs Officers
4	Dealing with controlled drugs	18	Search and seizure and drugs concealed in the body
5	Possession and use of controlled drugs	19	Obstruction of officers
6	Exemptions to section 5 and 6	20	Burden of proof
7	Use of premises or vehicle	21	Penalty
8	Equipment, material, and substances used in production or cultivation	22	Forfeiture
9	Knowingly importing or exporting precursor substances	23	Protection of persons acting under authority of Act
10	Importing or exporting precursor substance without reasonable excuse	24	Extradition treaties
11	Offences outside Niue	25	Regulations
12	Miscellaneous offences	26	Repeals and consequential amendments
13	Production of records and inspection of stocks		SCHEDULES
14	Restrictions on supply		

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## **An Act to amend the law relating to the misuse of drugs in Niue and to maintain general consistency with the New Zealand law on the misuse of drugs**

### **1 Short Title**

This is the Misuse of Drugs Act 2007.

### **2 Interpretation**

(1) In this Act –

“Class A controlled drug” means a controlled drug specified or described in Schedule 1;

“Class B controlled drug” means controlled drug specified or described in Schedule 2;

“Class C controlled drug” means controlled drug specified or described in Schedule 3 and includes any controlled drug analogue;

“controlled drug” means any substance, preparation, mixture, or article specified or described in Schedule 1, Schedule 2, or Schedule 3, and includes any controlled drug analogue;

“cultivate” includes sow or plant;

“dependent” means being in a state of periodic or chronic intoxication, produced by the repeated consumption, smoking, or other use of a controlled drug detrimental to the person in relation to whom the word is used, and involving a compulsive desire to continue consuming, smoking, or otherwise using the drug or a tendency to increase the dose of the drug;

“Director” means the Director of Health;

“person authorised to practice medicine” has the same meaning as in section 21 of the Niue Act 1966;

“precursor substance” means any substance specified or described in Part 1 or Part 2, or Part 3 of Schedule 4;

“produce” includes compound;

“prohibited plant” means—

- (a) any plant of the genus *Cannabis*;
- (b) any plant of the species *Papaver somniferum*;
- (c) *Erythroxylon coca* and *Erythroxylon novagranatense* (syn *E truxillense* ) and every other species of the genus *Erythroxylon* from which a controlled drug can be produced;
- (d) any plant of the species *Lophophora williamsii* or *Lophophora lewinii*;
- (e) any fungus of the genera *Conocybe*, *Panaeolus*, or *Psilocybe* from which a controlled drug can be produced or which contains a controlled drug;

“property” means property of any description, whether situated in Niue or elsewhere;

“supply” includes distribute, give, and sell.

(2) In this Act –

- (a) the things which a person has in their possession include any thing subject to their control which is in the custody of another;
- (b) the percentage of any substance present in a preparation, the percentage in the case of a liquid preparation shall, unless otherwise prescribed, be calculated on the basis that a preparation containing one part percent of any substance means a preparation in which one gram of the substance, if a solid, or one millilitre of the substance, if a liquid, is contained in every hundred millilitres of the preparation and so in proportion for any greater or less percentage;
- (c) the percentage of morphine present in a preparation shall be calculated as in respect of anhydrous morphine;
- (d) a salt of any controlled drug shall be deemed to contain that drug.

### **3 Act to bind the Government**

This Act binds the Government.

### **4 Dealing with controlled drugs**

(1) Except as provided in section 7, or pursuant to a licence under this Act, or as permitted by regulations made under this Act, no person shall—

- (a) import into or export from Niue any controlled drug, other than a controlled drug specified or described in Part 6 of Schedule 3; or
- (b) produce or manufacture a controlled drug; or
- (c) supply or administer, or offer to supply or administer, a Class A controlled drug or Class B controlled drug to any other person, or otherwise deal in any such controlled drug; or
- (d) supply or administer, or offer to supply or administer, a Class C controlled drug to a person under 18 years of age; or
- (e) sell, or offer to sell, any Class C controlled drug to a person of or over 18 years of age; or
- (f) have any controlled drug in their possession for any of the purposes set out in paragraphs (c), (d), or (e).

(2) Every person who contravenes subsection (1) commits an offence.

(3) For the purposes of subsection (1)(f), a person is presumed until the contrary is proved to be in possession of a controlled drug for any of the purposes in subsection (1)(c), (d), or (e) if the amount, level, or quantity possessed of the controlled drug, is a substantial amount at or over which the controlled drug is presumed to be for supply.

## **5 Possession and use of controlled drugs**

(1) Except as provided in section 7, or as permitted by regulations made under this Act, no person shall—

- (a) procure or have in their possession, or consume, smoke, or otherwise use, any controlled drug; or
- (b) supply or administer, or offer to supply or administer, any Class C controlled drug to any other person, or otherwise deal in any such controlled drug.

(2) Without prejudice to any liability under section 5 every person who contravenes subsection (1) commits an offence.

(3) In any proceedings for an offence against this section in respect of the possession of a controlled drug, in which it is proved that the defendant had a controlled drug in their possession, it shall be a defence to prove—

- (a) that, knowing or suspecting it to be a controlled drug, the defendant took possession of it for the purpose of preventing another from committing or continuing to commit an offence in connection with that drug and that as soon as possible after taking possession of it took all reasonable steps to destroy the drug or to deliver it into the possession of a person lawfully entitled to have possession of it; or
- (b) that, knowing or suspecting it to be a controlled drug, the defendant took possession of it for the purpose of delivering it into the possession of a person lawfully entitled to have possession of it and that as soon as possible after taking possession of it took all reasonable steps to deliver it into the possession of such a person.

## **6 Exemptions to section 5 and 6**

(1) Notwithstanding sections 5 or 6 –

- (a) The Director or any person authorised by the Director may prescribe, produce, manufacture, supply or administer, import or export controlled drugs while acting in the course of his or her practice or employment;
- (b) Any person for whom a controlled drug is supplied by a person authorised by the Director may administer that drug to himself in accordance with the advice of the authorised person who supplied or prescribed it;
- (c) Any person having the care of a patient for whom a controlled drug is supplied by any person authorised by the Director may administer that drug to that patient in accordance with the advice of the authorised person who supplied or prescribed it;
- (d) Any person who is permitted by or under this Act to import, export, supply, or administer a controlled drug may procure that drug from a person lawfully entitled to supply it and may possess that drug in the manner and for the purposes expressed or implied in that authority;

- (e) Any person who is permitted by or under this Act to possess a controlled drug may procure that drug from a person lawfully entitled to supply it, and may supply or use that drug in the manner and for the purposes expressed or implied in that authority;
- (f) A person may, while entering or leaving Niue, possess a controlled drug required for treating the medical condition of the person or any other person in his or her care or control, if the quantity of drug is no greater than that required for treating the medical condition for one month, and the drug was supplied by a person authorised by the Director.

(2) Subject to section 17(1) and to any regulations under this Act and to any other enactment or rule of law prohibiting, restricting, or regulating the import, export, supply, or administration of drugs, any person may import, export, supply, or administer any controlled drug specified or described in Schedule 3 Part 6.

## **7 Use of premises or vehicle**

Every person commits an offence against this Act who knowingly permits any premises or any vessel, aircraft, hovercraft, motor vehicle, or other mode of conveyance to be used for the purposes of the commission of an offence against this Act.

## **8 Equipment, material, and substances used in production or cultivation**

(1) Every person commits an offence against this Act who supplies, produces, or manufactures—

- (a) any equipment or material that is capable of being used in, or for, the commission of an offence against section 4(1)(b) knowing that the equipment or material is to be used in, or for, the commission of an offence under that provision; or
- (b) any precursor substance, knowing that substance is to be used in, or for, the commission of an offence against section 4(1)(b).

(2) Every person commits an offence against this Act who has in his or her possession—

- (a) any equipment or material that is capable of being used in, or for, the commission of an offence against section 4(1)(b), knowing that the material or equipment is to be used in, or for, the commission of an offence under that provision; or
- (b) any precursor substance, knowing that the substance is to be used in the commission of an offence against section 4(1)(b).

## **9 Knowingly importing or exporting precursor substances**

(1) Every person commits an offence who—

- (a) imports into Niue any precursor substance knowing that it will be used to commit an offence under section 4(1)(b); or
- (b) exports from Niue any precursor substance knowing that it will be used to commit an offence under the law of the country to which the precursor substance is being exported that corresponds to an offence under section 4(1)(b).



**10 Importing or exporting precursor substance without reasonable excuse**

(1) Every person commits an offence who, without reasonable excuse, imports into, or exports from, Niue any precursor substance.

(2) Without limiting the circumstances under subsection (1) in which a person may have a reasonable excuse, a person has a reasonable excuse if—

- (a) he or she imports a precursor substance into Niue in order that—
  - (i) a person authorised to practise medicine, produce or manufacture a controlled drug from the precursor substance; or
  - (ii) the precursor substance be used for a lawful purpose; or
- (b) the precursor substance that he or she is importing into, or exporting from, Niue has been lawfully supplied to that person for his or her own medical use; or
- (c) he or she exports a precursor substance from Niue in order that the precursor substance be used for a purpose that is authorised or lawful under the law of the country to which it is being exported.

**11 Offences outside Niue**

(1) Subject to subsection (2), every person commits an offence against this Act who, outside Niue, does or omits to do any act that would, if done or omitted in Niue, constitute an offence against this Act.

(2) No proceedings for an offence against subsection (1) may be brought unless—

- (a) the person to be charged is a New Zealand citizen; or
- (b) the person to be charged is present in Niue.

(3) Every person who commits an offence against this section is liable on conviction to the same penalty to which the person would have been liable had that person committed the offence in Niue.

(4) Subsection (1) does not apply if the doing or omission of the act to which the charge relates was not an offence under the law of the place where the act was done or omitted.

(5) Despite subsection (4), if a person is charged with an offence against this section, it is to be presumed, unless the person charged puts the matter at issue, that the doing or omission of the act to which the charge relates was an offence under the law of the place where the act was done or omitted.

**12 Miscellaneous offences**

Every person commits an offence against this Act who—

- (a) has in their possession any pipe or other utensil (not being a needle or syringe) for the purpose of the commission of an offence against this Act; or
- (b) has in that person's possession for the purpose of committing an offence against this Act any needle or syringe –
  - (i) that he or she obtained from a person (a “supplier”) who he or she could not have reasonably believed at the time of the acquisition was an authorised person by the Director; or
  - (ii) that another person (an “acquirer”) obtained on his or her behalf from a supplier who the acquirer could not have reasonably believed at the time

the needle or syringe was obtained was an authorised person but the Director; or

- (iii) other than a needle or syringe that he or she obtained in accordance with any regulations made under this Act; or
  - (iv) other than a needle or syringe that the acquirer obtained on his or her behalf in accordance with any regulations made under this Act; or
- (c) Except as may be provided by regulations made under this Act, has in their possession the seed or fruit (not in either case being a controlled drug) of any prohibited plant which he or she is not authorised under this Act to cultivate.

### **13 Production of records and inspection of stocks**

(1) A constable or any other person authorised by the Director may for the purposes of the enforcement of this Act enter the premises of any person who carries on the business of a producer, manufacturer, seller, or distributor of any controlled drug, or who otherwise undertakes the supply or administration of any controlled drug, and demand the production of and inspect any books or documents relating to dealings in any controlled drug, and to inspect, weigh, measure, and record the stocks of controlled drugs.

(2) If in the opinion of the Director there is reasonable ground for suspecting that any person is in possession of any controlled drug for the purpose of sale, or for the purpose of manufacturing any preparation for sale, or for use in or in connection with his profession, trade, or calling, or any occupation whether paid or unpaid, in breach of this Act or of any regulations made under this Act, the Director may require that person to produce for his inspection or to produce to any person specially authorised by the Director in that behalf, any books or documents dealing with the reception, possession, purchase, sale, or delivery of the controlled drug.

(3) Any person acting under, or pursuant to an authority under, subsection (1) or (2) may make copies of or extracts from any such books or documents, and the copies or extracts, certified as such by that person, shall be deemed to be true and correct copies or extracts, unless the contrary is proved.

(4) Every person commits an offence against this Act who refuses or neglects to comply with any demand or requisition made pursuant to this section.

### **14 Restrictions on supply**

(1) In this section “restricted person” means a person who is the subject of a notice given under subsection (3).

(2) Every person commits an offence against this Act who—

- (a) In contravention of a notice which has been served on him pursuant to subsection (3) or (4), or which has otherwise come to his attention, prescribes for or supplies to a restricted person, knowing him to be a restricted person, any controlled drug; or
- (b) knowing himself to be a restricted person, procures or attempts to procure a prescription or a controlled drug from a person who is for the time being prohibited, by a notice under subsection (3) or (4) from issuing the prescription or supplying the controlled drug to him.

(3) Where the Director is satisfied that any person has been obtaining a controlled drug over a prolonged period and is likely to seek further supplies of a controlled drug, or prescriptions for the supply of a controlled drug, he or she may from time to time, by notice in such form as he or she thinks fit, given generally or to any person authorised by or under this Act to supply controlled drugs, prohibit every person authorised in accordance with section 7(1)(a) from issuing prescriptions for the supply of, and every person from supplying any controlled drugs to the first-mentioned person, subject to such exceptions, relating to particular persons authorised to practice medicine, or sources of supply, or particular controlled drugs, or the frequency or quantity of prescriptions or supply, as may be specified in the notice.

(4) The Director may at any time by a like notice revoke, or vary, or modify any prohibition, condition, or exception contained in a notice given by him under this section.

(5) A copy of any notice under subsection (3) or (4) shall be served, either personally or by registered post, on the restricted person, but failure to comply with this requirement shall not invalidate the notice.

## **15 Controlled drug analogues**

It shall be a defence to a charge relating to the possession of any controlled drug analogue in contravention of any of this Act if the defendant proves that he or she had the substance—

- (a) For some purpose other than—
  - (i) consuming, smoking, snorting, or injecting by any person, or using in any other manner intended to have a pharmacological effect on the user; and
  - (ii) supplying or administering it to any other person; or
- (b) For the purpose of supplying it or administering it to any other person in accordance with any procedure approved by the Director.

## **16 Powers of Director**

(1) The Director may carry out or authorise any person in writing to carry out any act reasonably necessary to ensure compliance with this Act.

(2) At any time the Director may revoke a notice given under subsection (1).

(3) Without prejudice to the liability of any person under any other provision of this Act, every authorised person under section 7(1)(a) who prescribes any controlled drug in contravention of a notice under subsection (1) commits an offence.

## **17 Arrest by Customs Officers**

If a Customs Officer has reasonable cause to believe or suspect that any person, in contravention of this Act, has imported into or exported from Niue any controlled drug, or has been concerned in such import or export, the customs officer may arrest that person without a warrant.

## **18 Search and seizure and drugs concealed in the body**

(1) Where a search warrant is issued under section 170 of the Criminal Law Code in respect of an offence which has been or is suspected to have been committed

against this Act or which is believed to be intended to be so committed, any constable executing the warrant or any of his assistants may search any person found in or on the building, aircraft, ship, hovercraft, carriage, vehicle, premises, or place which may be entered and searched under the authority of the warrant.

(2) Where any Constable has reasonable ground for believing that there is in or on any building, aircraft, ship, hovercraft, carriage, vehicle, premises, or place any controlled drug specified or described in Schedule 1 or in Schedule 2 Part 1 or in Schedule 3 Part 1 or any precursor substance specified or described in Schedule 4 Part 3 and that an offence against this Act has been or is suspected of having been committed in respect of that drug or precursor substance, he or she, and any assistants who accompany him or her, may enter and search the building, aircraft, ship, hovercraft, carriage, vehicle, premises, or place and any person found there as if authorised to do so by a search warrant issued under section 170 of the Criminal Law Code and by subsection (1).

(3) Where any Constable has reasonable ground for believing that any person is in possession of any controlled drug specified or described in Schedule 1 or in Schedule 2 Part 1 or in Schedule 3 Part 1 or any precursor substance specified or described in Schedule 4 Part 3 and that an offence against this Act has been or is suspected of having been committed in respect of that drug or precursor substance, he or she may search and detain that person for the purpose of search and may take possession of any controlled drug or precursor substance found.

(4) (a) Every Constable exercising the power of entry and search conferred by subsection (2) or the power conferred by subsection (3) shall identify him or herself to every person searched, and also to any person in or on the building, aircraft, ship, hovercraft, carriage, vehicle, premises, or place who questions his right to enter and search the same, and shall also tell those persons that the search is being made pursuant to the authority of that subsection.

(b) The Constable shall also, if not in uniform and if so required, produce evidence that he is a constable.

(5) Notwithstanding section 170(5) of the Criminal Law Code, the Director or Constable or any with such assistants as he thinks necessary, may seize and destroy any prohibited plant except where it is being cultivated either in accordance with the conditions of a licence granted under this Act or in accordance with regulations made under this Act, and may also seize and destroy the seed of any prohibited plant except where that seed is in the possession of any person who is either authorised under this Act to cultivate the plant or who is permitted by regulations made under this Act to have the seed in his possession.

(6) Any Constable who exercises the power of entry and search conferred by subsection (2) or the power conferred by subsection (3), shall, within 3 days after the day of the exercise of power, furnish to the Commissioner of Police a written report on the exercise of the power and the circumstances in which it came to be exercised.

(7) (a) No Constable shall conduct an internal search of any part of the body of any person nor, except under this Act shall he cause any other person to conduct such a search;

(b) A Constable may search that person's mouth with the consent of the person concerned.

(8) Where any person (in this section referred to as the suspect) is arrested for any offence against section 5 or 6 of this Act or section 78 of the Criminal Law Code, a Constable who has reasonable ground for believing that the suspect has secreted within his body any property that may be evidence of the offence with which the suspect is charged, or any property the possession of which by the suspect constitutes any other offence against any of the said provisions, may require the suspect to permit a person authorised to practise medicine, nominated for the purpose by the officer, to conduct an internal examination of any part of the suspect's body by means of an X-ray machine or other similar device, or by means of a manual or visual examination (whether or not facilitated by any instrument or device) through any body orifice.

(9) Notwithstanding subsection (8) or the terms of any requirement made under that subsection, no person authorised to practise medicine shall conduct any such internal examination if he considers that to do so may be prejudicial to the suspect's health, or if he is satisfied that the suspect is not prepared to permit an internal examination to be conducted.

(10) Notwithstanding anything in this Act, where the suspect fails to permit an internal examination to be conducted under this section and subsequently applies for bail, the Court may (without limiting its discretion to refuse bail) decline to consider the application until the expiry of 2 days after the day on which the requirement to do so was made or until the suspect sooner permits such an examination to be conducted, if the Court is satisfied that the requirement was properly made on reasonable grounds; and, in any such case, the Court may order that the suspect shall continue to be detained in police custody until the expiry of that period or until the suspect sooner complies, as the case may be.

(11) A search carried out under this section that involves bodily contact or a strip-search of the person, or both, may be carried out only by a person of the same sex as the person to be searched, and no strip-search may be carried out in view of any person who is not of the same sex as the person to be searched.

(12) A person who carries out a search that involves bodily contact or a stripsearch of the person, or both, must conduct the search with decency and sensitivity and in a manner that affords to the person being searched the greatest degree of privacy and dignity consistent with the purpose of the search.

(13) No member of the Police or Customs officer may conduct a strip search unless another member or officer is also present.

(14) A strip search of a person must not be carried out in view of any person who is detained or being searched.

- (15) Any person who exercises a power of search under this section must –
- (a) identify himself or herself to any person he or she intends to search; and
  - (b) advise that person that the search is being undertaken under the authority of this Act.

## **19 Obstruction of officers**

Every person commits an offence against this Act who wilfully obstructs, hinders, resists, or deceives any other person in the execution of any powers conferred on that other person by or pursuant to this Act.

**20 Burden of proof**

In any proceedings against any person in respect of any offence against this Act or against any regulations made under this Act in which it is proved that the person had in his possession any controlled drug, or did any act in relation to a controlled drug which would have amounted to that offence if such act were not done pursuant to section 7 or as permitted by regulations under this Act, the burden of proving that he had such controlled drug in his possession, or did such act, pursuant to section 7 or as so permitted shall lie on him or her.

**21 Penalty**

(1) Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this Act is liable to imprisonment for a term not less than 3 months or to a fine not less than 5 penalty units or to both and not more than 14 years imprisonment and not more than 1000 penalty units in a fine.

(2) Where any person is convicted of an offence relating to a Class A controlled drug—

(a) against section 5(1)(c) or (f); or

(b) against 5(1)(a) or (b) committed in circumstances indicating to the Court an intention to offend against paragraph (c) of that subsection the Court shall impose a sentence of imprisonment unless, having regard to the particular circumstances of the offence or of the offender, including the age of the offender if under 20 years of age,

the Court is of the opinion that the offender should not be so sentenced.

(3) The Court in using its discretion to impose a penalty shall award a lesser penalty where the defendant is convicted for an offence against this Act relating to possession and use of a controlled drug and greater penalty where the defendant is convicted for an offence against this Act for dealing with a controlled drug.

(4) If the defendant is found in possession of substantial amount of a prohibited controlled drug then the defendant shall be deemed to be dealing with a prohibited controlled drug.

**22 Forfeiture**

(1) Every person convicted of an offence against this Act shall, in addition to any penalty imposed pursuant to this Act, by order of the Court forfeit to the Government, all articles in respect of which the offence was committed and in the possession of such person.

(2) Articles forfeited under subsection (1) shall be sold, destroyed, or otherwise disposed of as the Court directs.

(3) If, on the conviction of any person for an offence against section 5, the Court is satisfied that money found in the possession of that person was received by that person in the course of or consequent upon the commission of that offence, or was in the possession of that person for the purpose of facilitating the commission of an offence against that section, the Court may, in addition to any other penalty imposed, order that that money be forfeited to the Government.

(4) If, on the conviction of any person for an offence against section 5, the Court is satisfied that any motor vehicle, aircraft, or ship or boat or other vessel owned by the convicted person (whether solely or as joint tenant or tenant in common with any



other person or persons) or in which he or she has any interest (whether pursuant to a hire purchase agreement, leasing agreement, or otherwise) at the time of his conviction was used by the convicted person in the commission of that offence (whether or not he was the driver or person in charge), the Court shall, unless in the circumstances of the case the Court considers that it would be unjust to do so, order, in addition to any other penalty imposed, that the motor vehicle, aircraft, or ship or boat or other vessel be forfeited to the Government.

**23 Protection of persons acting under authority of Act**

(1) A person who does any act in pursuance or intended pursuance of any of the functions conferred on him by or under this Act shall not be under any civil or criminal liability, whether on the ground of want of jurisdiction, or mistake of law or fact, or on any other ground, unless he or she has acted in bad faith or without reasonable care.

(2) No prosecution for an offence against this Act, or against any regulations made under this Act, shall be commenced or continued against any Constable in respect of any act committed by him at a time or during a period when he was acting in his duties, except with the leave of Cabinet.

**24 Extradition treaties**

(1) For the purposes of the Extradition Act 2006, and extradition offence includes –

- (a) attempting or conspiring to commit that crime; or
- (b) aiding, abetting, inciting, counselling, or procuring any person to commit that offence.

(2) Subsection (1) applies to any treaty concluded before June 1977 and for the time being in force between Niue and any country which is a party to the Single Convention on Narcotic Drugs 1961, as amended by the Protocol amending that Convention, done at Geneva on 25 March 1972, or to the Convention on Psychotropic Substances 1971.

(3) For the purposes of the Extradition Act 1965, every offence described in this Act if not already described in the treaty, is to be treated as being an offence described in any extradition treaty concluded before the commencement of this section and for the time being in force between Niue and any foreign country which is a party to the Vienna Convention.

(4) In this section, “foreign country” includes any territory for whose international relations the Government of a foreign country is responsible and to which the extradition treaty and the Vienna Convention extend or to which the extradition treaty and the Single Convention on Narcotic Drugs as amended by the Protocol amending that Convention or, as the case may be, the Convention on Psychotropic Substances, extends.

**25 Regulations**

(1) Cabinet may make regulations for the purposes of this Act and in such regulations provide for the taking of fees, the imposing of charges, create offences, and the imposition of penalties for contravention of the regulations.



(2) Cabinet may by regulation amend the Schedules as necessary from time to time.

**26 Repeals and consequential amendments**

(1)-(5) [Spent]

(6) The Misuse of Drugs 1977 regulations (Niue law by virtue of section 2(1) of the Misuse of Drugs Act 1998) shall be deemed to have been made under this Act and shall be adapted with the necessary modifications to apply to Niue.

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**SCHEDULE 1**

**CLASS A CONTROLLED DRUGS**

[Schedule not reproduced. For the full list, refer to <http://www.gov.nu>]

**SCHEDULE 2**

**CLASS B CONTROLLED DRUGS**

[Schedule not reproduced. For the full list, refer to <http://www.gov.nu>]

**SCHEDULE 3**

**CLASS C CONTROLLED DRUGS**

[Schedule not reproduced. For the full list, refer to <http://www.gov.nu>]

Misuse of Drugs Act

SCHEDULE 4  
PRECURSOR SUBSTANCES

Section 2(1)

PART 1

1. The following substances

ACETIC ANHYDRIDE

N-ACETYLANTHRANILIC ACID

EPHEDRINE

ERGOMETRINE

ERGOTAMINE

ISOSAFROLE

LYSERGIC ACID

3, 4,-METHYLENEDIOXYPHENYL-2 PROPANONE

1-PHENYL-2-PROPANONE

PIPERONAL

POTASSIUM PERMANGANATE

PSEUDOEPHEDRINE

SAFROLE

2. The salts of the substances listed in clause 1 whenever the existence of such salts is possible.

PART 2

1. The following substances:

ACETONE

ANTHRANILIC ACID

ETHYL ETHER

HYDROCHLORIC ACID

METHYL ETHYL KETONE

PHENYLACETIC ACID

PIPERIDINE

SULPHURIC ACID

TOLUENE

2. The salts of the substances listed in clause 1 (other than the salts of hydrochloric acid and of sulphuric acid) whenever the existence of such salts is possible.

PART 3

1. The following substances:

EPHEDRINE

PSEUDOEPHEDRINE

2. The salts of the substances listed in clause 1 whenever the existence of such salts is possible.

SCHEDULE 5

AMOUNT, LEVEL, OR QUANTITY AT AND OVER WHICH CONTROLLED DRUGS ARE PRESUMED TO BE FOR SUPPLY

1	The controlled drugs listed in the first column are presumed to be for supply at and over the amount, level, or quantity listed in the second column.
[[Amphetamine]] Amphetamine	5 grams or 100 flakes, tablets, capsules, or other drug forms each containing some quantity of the drug
Morphine	5 grams, whether or not contained in a substance, preparation, or mixture
Cocaine	half a gram, whether or not contained in a substance, preparation, or mixture
Heroin	half a gram, whether or not contained in a substance, preparation, or mixture
Lysergide	2 and a half milligrams or 25 flakes, tablets, capsules, or other drug forms each containing some quantity of the drug
DOB (2-amino-1-(4-bromo-2,5-dimethoxyphenyl)propane) (also known as bromo-DMA)	100 milligrams or 25 flakes, tablets, capsules, or other drug forms each containing some quantity of the drug
MDMA (2-methylamino-1-(3,4-methylenedioxyphenyl)propane)	5 grams or 100 flakes, tablets, capsules, or other drug forms each containing some quantity of the drug
N-ETHYL MDA (2-ethylamino-1-(3,4-methylenedioxyphenyl)propane)	5 grams or 100 flakes, tablets, capsules, or other drug forms each containing some quantity of the drug
MDA (2-amino-1-(3,4-methylenedioxyphenyl)propane)	5 grams or 100 flakes, tablets, capsules, or other drug forms each containing some quantity of the drug
Tetrahydrocannabinol (as described in Schedule 2)	250 milligrams, whether or not contained in a substance, preparation, or mixture
Any cannabis preparation (as described in Schedule 2)	5 grams or 100 cigarettes containing the drug
Cannabis plant (as described in Schedule 3)	28 grams or 100 cigarettes containing the drug
Methamphetamine	5 grams, whether or not contained in a substance, preparation, or mixture
2	Any controlled drug not specified in clause 1 is presumed to be for supply at and over the level of 56 grams.

# MOSQUITO CONTROL ACT 1980

1980/63 – 10 November 1980

1	Short title	7	Continuing non-compliance
2	Interpretation	8	Absent persons with mosquito control responsibilities
3	Duty to keep land and premises clear of mosquitoes	9	Offences
4	Littering and dumping prohibited	10	[Spent]
5	Duties and powers of Health Inspectors		
6	Non-compliance with a Mosquito Control Order		

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## To provide for the enforcement of mosquito control measures for the protection of the public health from diseases transmitted by mosquitoes

### 1 Short title

This is the Mosquito Control Act 1980.

### 2 Interpretation

In this Act –

“building” means any construction whatsoever and includes any shop, school, hospital, hall, church, house, outside kitchen or out-house, but does not include a shed constructed in the bush for storage purposes;

“dwelling” means any building used for the purpose of human habitation;

“Health Inspector” means any Inspector of Health appointed under section 7 of the Public Health Act 1965;

“mosquito control order” means an order made by a Health Inspector under section 5.

### 3 Duty to keep land and premises clear of mosquitoes

Every person who uses the land belonging to any dwelling or building or who is responsible for the care and management of such dwelling or building, is under a duty to ensure that –

- (a) All land around any building or dwelling shall be kept clear of mosquito breeding and nesting places as hereinafter provided;
- (b) No water shall be stored (except in appropriate quantities for domestic use) in any receptacle capable of holding water, unless adequately protected against mosquitoes;
- (c) Any such land shall be kept clear of bush, scrub and any mass of rotting vegetation likely to harbour mosquitoes within a radius of 60 metres from any dwelling or building;
- (d) Any such land shall be kept clear of any bottle (whole or broken), tin, coconut shell, or any other article whatsoever likely to retain water and so become a breeding place for mosquitoes.

### 4 Littering and dumping prohibited

Every person who litters or dumps on any land whatsoever (not being land designated for that purpose by Cabinet), any bottle (whole or broken), tin, coconut shell, shell or any other article whatsoever likely to retain water commits an offence.

**5 Duties and powers of Health Inspectors**

(1) Any duly appointed Health Inspector may enter on and inspect any land or premises at any reasonable time for the purpose of ensuring compliance with section 3.

(2) Whenever a Health Inspector ascertains –

(a) The presence of mosquitoes or mosquito larvae;

(b) The location of breeding or resting places of mosquitoes,

he shall make an order prescribing necessary and practical measures for the eradication of those mosquitoes and mosquito larvae.

(3) Whenever a Health Inspector makes an order under subsection (2) and that order is not complied with within 7 days he shall begin prosecution under this Act.

**6 Non-compliance with a Mosquito Control Order**

Every person who fails to perform his or her mosquito control duty as defined under section 3 and who fails to abide by an order of a Health Inspector within 7 days of such order commits an offence.

**7 Continuing non-compliance**

Every person who has been convicted of an offence against section 6 and who fails to comply with the Health Inspector's order within 7 days after such conviction commits a further offence.

**8 Absent persons with mosquito control responsibilities**

In any case where –

(a) Any person having responsibilities under section 3 has departed from Niue without appointing an agent to act in his stead in performing those responsibilities; and

(b) A Health Inspector has made an order in respect of land for which that person is responsible,

the court, on application by the Director of Health may make an order for the Director of Works to enter on the land and at the expense of the responsible person carry out the work as specified in the Court order, and all such expenses shall be recoverable from that person as a debt to the Crown.

**9 Offences**

Every person who commits an offence against this Act shall on conviction be liable to a fine not exceeding 2 penalty units and save in exceptional circumstances not less than 0.5 penalty units.

**10 [Spent]**

# MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 1998

1998/244 – 16 December 1998

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**For the provision and obtaining of international assistance in criminal matters**

**PART 1**

**PRELIMINARY**

**1 Short title**

This is the Mutual Assistance in Criminal Matters Act 1998.

**2 [Spent]**

**3 Interpretation**

In this Act –

“Attorney-General” has the same meaning as in the Proceeds of Crime Act 1998;

“Commissioner” means a Commissioner of the Court;

“confiscation order” means a confiscation order within the meaning of the Proceeds of Crime Act 1998;

“criminal matter” means an offence against a provision of –

(a) Any law of Niue that is a serious offence; or

(b) A law of a foreign country, in relation to acts or omissions, which had they occurred in Niue, would have constituted a serious offence;

“criminal proceeding”, in relation to an offence, means a trial of a person for the offence or a proceeding in respect of the offence to determine whether a person should be tried for the offence (whether or not a particular person is specified at the commencement of that proceeding as the person in relation to whom the determination is to be made);

“facsimile copy” means a copy obtained or sent by facsimile transmission;

“foreign confiscation order” means an order made under the law of a foreign country for a person to pay to the foreign country an amount representing the value (or part thereof) of the person’s benefits from an offence against the law of that country;

“foreign forfeiture order” means an order, made under the law of a foreign country, for the forfeiture of property in respect of an offence against the law of that country;

“foreign law immunity certificate” means a certificate given, or a declaration made, by a foreign country or under a law of a foreign country, certifying or declaring that, under the law of the foreign country, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required –

(a) To answer a specified question; or

(b) To produce a specified document;

“foreign prisoner” means a person who is being held in custody pending trial for, or sentence for, or is under a sentence of imprisonment for an offence against a law



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- of a foreign country, but does not include a person who is at large after having escaped from lawful custody;
- “foreign restraining order” means an order, made under the law of a foreign country, restraining a particular person, or all persons, from dealing with property, being an order made in respect of an offence against the law of that country;
- “forfeiture order” means a forfeiture order within the meaning of the Proceeds of Crime Act 1998;
- “money laundering offence” means an offence within the terms of sections 64 and 65 of the Proceeds of Crime Act 1998;
- “offence” includes an offence against a law relating to taxation, customs duties or other revenue matters or relating to foreign exchange control;
- “prisoner” means a person who is being held in custody pending trial for, or sentence for, or is under a sentence of imprisonment for, an offence against a law of Niue, but does not include a person who is at large after having escaped from lawful custody;
- “prison” includes a jail, lock-up or other place of detention;
- “proceeds” has the same meaning as in the Proceeds of Crime Act 1998;
- “proceeding” in relation to a criminal matter, includes a proceeding before a judicial officer or a jury of the purpose of –
- (a) Gathering evidential material that may lead to the laying of a criminal charge;
  - or
  - (b) Assessing evidential material in support of the laying of a criminal charge;
- “property” has the same meaning as in the Proceeds of Crime Act 1998;
- “property-tracking document” has the same meaning as in the Proceeds of Crime Act 1998;
- “restraining order” means a restraining order within the meaning of the Proceeds of Crime Act 1998;
- “serious offence” means an offence the maximum penalty for which is death, or imprisonment for not less than 12 months;
- “tainted property” has the same meaning as in the Proceeds of Crime Act 1998;
- “trial”, in relation to an offence in a foreign country, includes any proceeding to determine whether a person should be convicted of the offence;
- “video link” means a video and sound system that enables persons assembled in a place in a country to see, hear and talk to persons assembled in a place in another country.

### **4 Object of Act**

The objects of this Act are –

- (a) To regulate the provision by Niue of international assistance in criminal matters when a request is made by a foreign country for any of the following –
  - (i) the taking of the evidence, or the production of any document or other article, for the purposes of a proceeding in the foreign country;
  - (ii) the issue of a search warrant and the seizure of any thing relevant to a proceeding or investigation in the foreign country;
  - (iii) the forfeiture and confiscation of property in respect of a serious offence against the law of the foreign country;
  - (iv) the restraining of dealings in property that may be forfeited or confiscated because of the commission of a serious offence against the law of the foreign country;
  - (v) the giving of assistance in locating, or in identifying and locating, a person believed to be in Niue and believed to be a person who is or might

be concerned in, or who could give or provide evidence or assistance relevant to, a criminal matter in the foreign country; and

- (b) To facilitate the provision and obtaining by Niue of international assistance in criminal matters when a request is made by a foreign country for the making of arrangements for a person who is in Niue to travel to the foreign country to give evidence in a proceeding or to give assistance in relation to an investigation; and
- (c) To facilitate the obtaining by Niue of international assistance in criminal matters.

## **5 Act not to limit other provision of assistance**

This Act does not prevent the provision or obtaining of international assistance in criminal matters other than assistance of a kind that may be provided or obtained under this Act.

## **6 Application**

This Act applies to all foreign countries.

## **7 Refusal of assistance**

A request by a foreign country for assistance under this Act may be refused if, in the opinion of the Attorney-General, the provision of the assistance would –

- (a) Prejudice the national, essential or public interests of Niue; or
- (b) Result in manifest unfairness or a denial of human rights; or
- (c) It is otherwise appropriate, in all the circumstances of the case, that the assistance requested should not be granted.

## **8 Assistance may be provided subject to conditions**

Assistance under this Act may be provided to a foreign country subject to such conditions as the Attorney-General determines.

## **9 Requests by Niue**

(1) A request for international assistance in a criminal matter that Niue is authorised to make under this Act may be made only by the Attorney-General.

(2) Subsection (1) does not prevent the Attorney-General on behalf of Niue from requesting international assistance in a criminal matter of a kind that may not be requested under this Act.

## **10 Request by foreign country**

(1) A request by a foreign country for international assistance in a criminal matter may be made to the Attorney-General or a person authorised by the Attorney-General to receive requests by foreign countries under this Act.

(2) A request must be in writing and must include or be accompanied by the following information –

- (a) The name of the authority concerned with the criminal matter to which the request relates;
- (b) A description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
- (c) A description of the purpose of the request and of the nature of the assistance being sought;

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(d) Any information that may assist in giving effect to the request, but failure to comply with this subsection is not a ground for refusing the request.

(3) Where a request by a foreign country is made to a person authorised under subsection (1), the request shall be taken, for the purposes of this Act, to have been made to the Attorney-General.

(4) If a foreign country makes a request to a court in Niue for international assistance in a criminal matter –

(a) The court must refer the request to the Attorney-General; and

(b) The request is then to be taken, for the purposes of the Act, to have been made to the Attorney-General.

### PART 1A

#### ASSISTANCE IN IDENTIFYING AND LOCATING PERSONS

#### **10A Requests by Niue**

(1) This subsection applies if the Attorney-General is satisfied that there are reasonable grounds for believing that there is, in a foreign country, a person who –

(a) Is or might be concerned in, or affected by, any criminal matter in Niue; or

(b) Could give or provide evidence or assistance relevant to any criminal matter in Niue.

(2) If subsection (1) applies, the Attorney-General may request the foreign country –

(a) To assist in locating the person; or

(b) If the person's identity is unknown, to assist in identifying and locating the person.

#### **10B Requests by foreign countries**

(1) A foreign country may request the Attorney-General to assist in locating, or identifying and locating, a person who is believed to be in Niue.

(2) The Attorney-General may authorise assistance in accordance with this section if satisfied that –

(a) The request relates to a criminal matter in the foreign country; and

(b) There are reasonable grounds for believing that the person to whom the request relates is in Niue and –

(i) is or might be concerned in the criminal matter; or

(ii) could give or provide evidence or assistance relevant to the criminal matter.

(3) If the Attorney-General authorises assistance in accordance with this section, the Attorney-General must forward the request to the appropriate authority in Niue, and that authority must –

(a) Use its best endeavours to locate or, as the case may be, identify and locate the person to whom the request relates; and

(b) Advise the Attorney-General of the outcome of those endeavours.

(4) On receiving advice from the appropriate authority under subsection (3)(b), the Attorney-General must inform the requesting country of the result of the inquiries made pursuant to the request concerned.

PART 2

ASSISTANCE IN RELATION TO TAKING OF EVIDENCE AND PRODUCTION OF  
DOCUMENTS OR OTHER ARTICLES

**11 Requests by Niue**

(1) The Attorney-General may request the appropriate authority of a foreign country to arrange for –

- (a) Evidence to be taken in the foreign country under the law of that country; or
- (b) A document or other article in the foreign country to be produced in accordance with the law of that country;

for the purposes of a proceeding or investigation in relation to a criminal matter in Niue.

(2) When making a request under subsection (1) the Attorney-General may also request that an opportunity be given for the person giving the evidence, or producing the document or other article, to be examined or cross-examined, through a video link, from Niue by –

- (a) Any party to the proceeding or that person's legal representative; or
- (b) Any person being investigated or that person's legal representative.

**12 Requests by foreign countries**

(1) Where a request is made by a foreign country (requesting country) that –

- (a) Evidence be taken in Niue ; or
- (b) Documents or other articles in Niue be produced; for the purposes of a proceeding or investigation in the requesting country or another foreign country, the Attorney-General may authorise the taking of the evidence or the production of the documents or other articles, and the transmission of the evidence, documents or other articles to the requesting country.

(2) Where the Attorney-General authorises the taking of evidence or the production of documents or other articles under subsection (1) –

- (a) In the case of the taking of evidence, a Commissioner may take the evidence on oath of each witness appearing before the Commissioner to give evidence in relation to the matter, and a Commissioner who takes any such evidence shall –
  - (i) cause the evidence to be put in writing and certify that the evidence was taken by the Commissioner; and
  - (ii) cause the writing so certified to be sent to the Attorney-General; or
- (b) In the case of the production of documents or other articles, a Commissioner may, subject to subsection (6), require the production of the documents or other articles and, where the documents or other articles are produced, the Commissioner shall send the documents, or copies of the documents certified by the Commissioner to be true copies, or the other articles, to the Attorney-General.

(3) The evidence of such a witness may be taken in the presence or absence of the person to whom the proceeding in the requesting country relates or of his or her legal representative (if any).

(4) The Commissioner conducting a proceeding under subsection (2) may permit –

- (a) The person to whom the proceeding in the requesting country relates;
- (b) Any other person giving evidence or producing documents or other articles at the proceeding before the Commissioner; and
- (c) The relevant authority of the requesting country;

to have legal representation at the proceeding before the Commissioner.

## Mutual Assistance in Criminal Matters Act

(5) If the requesting country has so requested, the Commissioner conducting a proceeding under subsection (2) may permit –

- (a) Any person to whom the proceeding in the requesting country relates or that person's legal representative; or
- (b) The legal representative of the relevant authority of the requesting country; to examine or cross-examine, through a video link, from the requesting country any person giving evidence or producing a document or other article, at the proceeding.

(6) The certificate by the Commissioner under subsection (2) shall state whether, when the evidence was taken or the documents or other articles were produced, any of the following persons were present –

- (a) The person to whom the proceeding in the requesting country relates or his or her legal representative (if any);
- (b) Any other person giving evidence or producing documents or other articles or his or her legal representative (if any).

(7) Subject to subsections (8) and (9), laws with respect to the compelling of persons to attend before a Commissioner, and to give evidence, answer questions and produce documents or other articles, upon the hearing of a charge against a person for an offence against the law of Niue apply, so far as they are capable of application, with respect to the compelling of persons to attend before a Commissioner, and to give evidence, answer questions and produce documents or other articles, for the purposes of this section.

(8) For the purposes of this section, the person to whom the proceeding in the requesting country relates is competent but not compellable to give evidence.

(9) For the purposes of this section, a person who is required to give evidence, or produce documents or other articles, for the purposes of a proceeding in relation to a criminal matter in the requesting or another foreign country, is not compellable to answer a question, or produce a document or article, that the person is not compellable to answer or produce, as the case may be, in the proceeding in that country.

(10) A duly authenticated foreign law immunity certificate is admissible in proceedings under this section as prima facie evidence of the matters stated in the certificate.

### PART 3

#### ASSISTANCE IN RELATION TO SEARCH AND SEIZURE

#### **13 Requests by Niue for search and seizure**

(1) This section applies to a proceeding or investigation relating to a criminal matter involving a serious offence against the law of Niue if there are reasonable grounds to believe that a thing relevant to the proceeding or investigation may be located in a foreign country.

(2) If this section applies to a proceeding or investigation, the Attorney-General may request the appropriate authority of the foreign country to obtain a warrant or other instrument that, in accordance with the law of the foreign country, authorises –

- (a) A search for a thing relevant to the proceeding or investigation; and,
- (b) If such a thing, or any other thing that is or may be relevant to the proceeding or investigation is found as a result of the search, the seizure of that thing.

(3) If the appropriate authority of the foreign country has obtained any thing relevant to the proceeding or investigation by means of a process authorised by the law of that country other than the issue (as requested by Niue) of a warrant or other instrument authorising the seizure of the thing, the thing –

- (a) Is not inadmissible in evidence in the proceeding; or

(b) Is not precluded from being used for the purposes of the investigation; on the ground alone that it was obtained otherwise than under the request.

#### **14 Requests by foreign countries for search and seizure**

(1) Where –

- (a) A proceeding or investigation relating to a criminal matter involving a serious offence has commenced in a foreign country;
- (b) There are reasonable grounds to believe that a thing relevant to the investigation or proceeding is located in Niue; and
- (c) The foreign country requests the Attorney-General to arrange for the issue of a search warrant under this section in relation to that thing;

the Attorney-General may authorise a constable to apply to a Commissioner for the search warrant requested by the foreign country.

(2) A constable authorised under subsection (1) may apply to a Commissioner for the issue of a warrant to search land or premises for the thing to which the request relates.

(3) Where an application is made under subsection (2) for a warrant to search land or premises in Niue for a thing relevant to an investigation or proceeding in a foreign country the Commissioner may issue a warrant of that kind.

(4) If, in the course of searching, under a warrant issued under this section, for a thing of a kind specified in the warrant, the constable finds another thing that the constable believes on reasonable grounds–

- (a) To be relevant to the proceeding or investigation in the foreign country or to afford evidence as to the commission of a Niue criminal offence; and
- (b) Is likely to be concealed, lost or destroyed if it is not seized,

the warrant shall be deemed to authorise the constable to seize the other thing.

(5) Where a constable finds, as a result of a search under a warrant issued under this section, a thing which the constable seizes wholly or partly because he or she believes the thing on reasonable grounds to be relevant to the proceeding or investigation in the foreign country, the constable shall deliver the thing into the custody and control of the Chief of Police.

(6) Where a thing is delivered into the custody and control of the Chief of Police under subsection (5), the Chief of Police shall inform the Attorney-General that the thing has been so delivered and arrange for the thing to be kept pending a direction in writing from the Attorney-General as to the manner in which the thing is to be dealt with (which may include a direction that the thing be sent to an authority of a foreign country).

### **PART 4**

#### **ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS**

##### *Requests by Niue*

#### **15 Requests for removal of certain persons to Niue**

(1) Where –

- (a) A proceeding relating to a criminal matter has commenced in Niue; and
- (b) The Attorney-General is of the opinion that a person who is in a foreign country –
  - (i) is a foreign prisoner;
  - (ii) is capable of giving evidence relevant to the proceeding; and
  - (iii) has given his or her consent to being removed to Niue for the purpose of giving evidence in the proceeding;



## Mutual Assistance in Criminal Matters Act

the Attorney-General may request the foreign country to authorise the attendance of the person at a hearing in connection with the proceeding.

(2) Where –

- (a) An investigation relating to a criminal matter has commenced in Niue; and
- (b) The Attorney-General is of the opinion that a person who is in a foreign country –
  - (i) is a foreign prisoner;
  - (ii) is capable of giving assistance in relation to the investigation; and
  - (iii) has given his or her consent to being removed to Niue for the purposes of giving assistance in relation to the investigation,

the Attorney-General may request the foreign country to authorise the removal of the person to Niue for the purpose of giving assistance in relation to the investigation.

(3) Where the Attorney-General makes a request under subsection (1) or (2), the Attorney-General may make arrangements with an appropriate authority of the foreign country for the purposes of –

- (a) The removal of the person to Niue;
- (b) The custody of the person while in Niue;
- (c) The return of the person to the foreign country; and
- (d) Other relevant matters.

### **16 Custody of certain persons**

Where –

- (a) A person is to be brought to Niue from a foreign country pursuant to a request under section 15; and
- (b) The foreign country requests that the person be kept in custody while he or she is in Niue,

the person shall, while the person is in Niue or travelling to or from Niue pursuant to the request, be kept in such custody as the Attorney-General directs in writing.

### **17 Immunities**

(1) Where a person is in Niue –

- (a) Pursuant to a request under section 15; or
- (b) To give evidence in a proceeding, or to give assistance in relation to an investigation, pursuant to a request made by or on behalf of the Attorney-General (not being a request under section 15) for international assistance in a criminal matter;

the person, subject to subsection (2), shall not –

- (c) Be detained, prosecuted or punished in Niue for any offence that is alleged to have been committed, or that was committed, before the person's departure from the foreign country pursuant to the request;
- (d) Be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred or that occurred, before the person's departure from the foreign country under the request, being a civil suit to which the person could not be subjected if the person were not in Niue;
- (e) Be required to give evidence in any proceeding in Niue other than the proceeding to which the request relates (if any);
- (f) Be required, in the proceeding to which the request relates (if any), to answer any question that the person would not be required to answer in a proceeding in the foreign country relating to a criminal matter; or



- (g) Be required, in the proceeding to which the request relates (if any), to produce any document or article that the person would not be required to produce in a proceeding in the foreign country relating to a criminal matter.
- (2) A duly authorised foreign law immunity certificate is admissible in proceedings as prima facie evidence of the matters stated in the certificate.
- (3) Subsection (1) ceases to apply to a person if –
  - (a) The person has left Niue; or
  - (b) The person has had the opportunity of leaving Niue and has remained in Niue otherwise than for –
    - (i) the purpose to which the request relates;
    - (ii) the purpose of giving evidence in a proceeding in Niue certified by the Attorney-General, in writing, to be a proceeding in which it is desirable that the person give evidence; or
    - (iii) the purpose of giving assistance in relation to an investigation in Niue certified by the Attorney-General, in writing, to be an investigation in relation to which it is desirable that the person give assistance.
- (4) A certificate given by the Attorney-General for the purposes of subsection (2)(b)(ii) or (iii) has effect from the day specified in the certificate (which may be a day before the day on which the certificate is given).

**18 Status of person prosecuted for offence committed after departure from foreign country**

- (1) Where a person has come to Niue pursuant to a request under section 15, the person shall be taken, for the purposes of this Act, to be in Niue pursuant to the request during any period during which the person remains in Niue for the purpose of being tried for a criminal offence against the law of Niue that the person is alleged to have committed after the person's departure from the foreign country.
- (2) Without limiting the generality of subsection (1), the person shall be kept in such custody as the Attorney-General directs under section 16.

**19 Limitation on use of evidence given by certain persons**

- (1) Where –
  - (a) A person is in Niue to give evidence in a proceeding –
    - (i) because of a request under section 15(1); or
    - (ii) because of a request (other than a request under section 15(1)) made by the Attorney-General for international assistance in a criminal matter; and
  - (b) The person has given evidence in the proceeding to which the request related or in a proceeding certified by the Attorney-General under section 17(3)(b)(ii) in relation to the person,that evidence shall not be admitted or otherwise used in any prosecution of the person for an offence against Niue law, other than the offence of perjury in relation to the giving of that evidence.
- (2) If –
  - (a) A person is in Niue to give assistance in relation to an investigation –
    - (i) because of a request under section 15(2); or
    - (ii) because of a request (other than a request under section 15(2)) made by the Attorney-General for international assistance in a criminal matter; and
  - (b) The person has given assistance in relation to the investigation to which the request related or in relation to an investigation certified by the Attorney-General under section 17(3)(b)(ii) in relation to the person,

anything said or done by the person when giving the assistance is not to be admitted or otherwise used in any prosecution of the person for an offence against Niue law.

**20 Conditions of imprisonment**

The laws of Niue with respect to –

- (a) The conditions of imprisonment of persons imprisoned for offences against the law of Niue; and
- (b) The treatment of any such persons during imprisonment; and
- (c) The transfer of any such persons from prison to prison,

apply, so far as they are capable of application, in relation to a person who is in Niue in pursuance of a request under section 15 and who has been committed to prison in Niue under a direction of the Attorney-General under this Act.

**21 Release of certain persons upon request by foreign country**

Where –

- (a) A person is being held in custody under a direction of the Attorney-General under section 16; and
- (b) The foreign country from which the person has been brought requests the release of the person from custody,

the Attorney-General shall direct that the person be released from custody.

**22 Arrest of person who has escaped from custody**

(1) Any constable, without warrant, may arrest a person, if the constable has reasonable grounds to believe that the person –

- (a) Has been brought to Niue pursuant to a request under section 15; and
- (b) Has escaped from lawful custody while in Niue pursuant to the request.

(2) The constable must, as soon as practicable, take the person before a Commissioner.

(3) If the Commissioner is satisfied that the person has escaped from lawful custody, the Commissioner may issue a warrant authorising any constable to return the person to lawful custody.

**23 Aiding person to escape**

The laws of Niue in relation to –

- (a) Aiding a prisoner to escape from custody;
- (b) Rescuing a prisoner from custody;
- (c) Permitting escape; and
- (d) Harboursing an escapee,

apply in respect of a person who is in custody in Niue under a request to a foreign country by Niue under this Act.

*Requests by Foreign Countries*

**24 Requests for giving of evidence at hearings in foreign countries**

(1) Where –

- (a) A proceeding relating to a criminal matter has commenced in a foreign country;
- (b) The foreign country requests the attendance at a hearing in connection with the proceeding of a prisoner who is in Niue (whether or not in custody);
- (c) There are reasonable grounds to believe that the prisoner is capable of giving evidence relevant to the proceeding; and

- (d) The Attorney-General is satisfied that –
  - (i) the prisoner has consented to giving evidence in the foreign country; and
  - (ii) the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may –

- (I) In a case where the prisoner is being held in custody, direct that the prisoner be released from prison for the purpose of travelling to the foreign country to give evidence at the proceeding and, subject to the making or giving of any necessary directions or approvals in relation to the release of the prisoner, make arrangements for the travel of the prisoner to the foreign country in the custody of a constable or prison officer appointed by the Attorney-General for the purpose; or
- (II) In a case where the prisoner, having been released from custody on a parole or other order or licence to be at large, is not being held in custody, approve the travel of the prisoner to the foreign country to give evidence at the proceeding and obtain such approvals, authorities, permissions or variations to the parole or other order or licence to be at large as may be required and, subject to the obtaining of any necessary approvals, authorities, permissions or variations of the parole or other order or licence to be at large, make arrangements for the travel of the prisoner to the foreign country.

(2) Where –

- (a) A proceeding relating to a criminal matter has commenced in a foreign country;
- (b) The foreign country requests the attendance at a hearing in connection with the proceeding of a person (not being a prisoner) who is in Niue;
- (c) There are reasonable grounds to believe that the person is capable of giving evidence relevant to the proceeding; and
- (d) The Attorney-General is satisfied that the person has consented to giving evidence in the foreign country, and the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may make arrangements for the travel of the person to the foreign country.

(3) The matters in relation to which undertakings are to be given by a foreign country for the purpose of a request that a person give evidence in the foreign country are –

- (a) That the person shall not –
  - (i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from Niue;
  - (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from Niue, being a civil suit to which the person could not be subjected if the person were not in the foreign country; or
  - (iii) be required to give evidence in any proceeding in the foreign country other than the proceeding to which the request relates; unless the person has left the foreign country or the person has had the opportunity of leaving the foreign country and has remained in that country otherwise than for the purpose of giving evidence in the proceeding to which the request relates;

- (b) That any evidence given by the person in the proceeding to which the request relates will be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign country other than the offence of perjury in relation to the giving of that evidence;
- (c) That the person will be returned to Niue under arrangements agreed by the Attorney-General;
- (d) In a case where the person is being held in custody in Niue and the Attorney-General requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country –
  - (i) the making of appropriate arrangements for that purpose;
  - (ii) that the person will not be released from custody in the foreign country unless the Attorney-General notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under Niue law; and
  - (iii) if the person is released in the foreign country as mentioned in subparagraph (ii), that the person's accommodation and expenses pending the completion of the proceeding to which the request relates will be paid for by the foreign country; and
  - (iv) such other matters (if any) as the Attorney-General thinks appropriate.

**25 Requests for assistance in relation to investigations in foreign countries**

(1) Where –

- (a) An investigation relating to a criminal matter has commenced in a foreign country;
- (b) The foreign country requests the removal of a prisoner who is in Niue (whether or not in custody) to the foreign country for the purpose of giving assistance in relation to the investigation;
- (c) There are reasonable grounds to believe that the prisoner is capable of giving assistance in relation to the investigation; and
- (d) The Attorney-General is satisfied that –
  - (i) the prisoner has consented to being removed to the foreign country for the purpose of giving assistance in relation to the investigation; and
  - (ii) the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may –

- (I) In a case where the prisoner is being held in custody, direct that the prisoner be released from prison for the purpose of traveling to the foreign country to give assistance in relation to the investigation and, subject to the making or giving of any necessary directions or approvals in relation to the release of the prisoner, make arrangements for the travel of the prisoner to the foreign country in the custody of a constable or prison officer appointed by the Attorney-General for the purpose; or
- (II) In a case where the prisoner, having been released from custody on a parole or other order or licence to be at large, is not being held in custody, approve the travel of the prisoner to the foreign country for the purpose of giving assistance in relation to the investigation and obtain such approvals, authorities, permissions or variations to the parole or other order or licence to be at large as may be required and, make arrangements for the travel of the prisoner to the foreign country.

(2) Where –

- (a) An investigation relating to a criminal matter has commenced in a foreign country;
- (b) The foreign country requests that a person (not being a prisoner) who is in Niue travel to the foreign country to give assistance in relation to the investigation;
- (c) There are reasonable grounds to believe that the person is capable of giving assistance in relation to the investigation; and
- (d) The Attorney-General is satisfied that –
  - (i) the person has consented to travel to the foreign country for the purpose of giving assistance in relation to the investigation; and
  - (ii) the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may make arrangements for the travel of the person to the foreign country.

(3) The matters in relation to which undertakings are to be given by a foreign country for the purpose of a request that a person be removed to, or travel to, the foreign country for the purpose of giving assistance in relation to an investigation are –

- (a) That the person shall not –
  - (i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from Niue;
  - (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from Niue, being a civil suit to which the person could not be subjected if the person were not in the foreign country; or
  - (iii) be required to give evidence in any proceeding in the foreign country; unless –
    - (iv) the person has left the foreign country; or
    - (v) the person has had the opportunity of leaving the foreign country and has remained in that country otherwise than for the purpose of giving assistance in relation to the investigation to which the request relates;
- (b) That the person will be returned to Niue under arrangements agreed by the Attorney-General;
- (c) In a case where the person is being held in custody in Niue and the Attorney-General requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country –
  - (i) the making of appropriate arrangements for that purpose;
  - (ii) that the person will not be released from custody in the foreign country unless the Attorney-General notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under Niue law; and
  - (iii) if the person is released in the foreign country as mentioned in subparagraph (ii) that the person's accommodation and expenses pending the completion of the investigation to which the request relates will be paid for by the foreign country; and
- (d) Such other matters (if any) as the Attorney-General thinks appropriate.

**26 Effect of removal to foreign country on prisoner's term of imprisonment**

Where a prisoner who is serving a term of imprisonment for an offence against a law of Niue is released from a prison pursuant to a request by a foreign country under section 24 or 25, the prisoner shall, while in custody in connection with the request (including custody outside Niue), be deemed to be continuing to serve that term of imprisonment.

PART 5

CUSTODY OF PERSONS IN TRANSIT

**27 Transit**

(1) If a person is to be transported in custody from a foreign country through Niue to another foreign country for the purposes of –

- (a) Giving evidence in a proceeding; or
- (b) Giving assistance in relation to an investigation;

relating to a criminal matter in the other foreign country, the person –

- (c) May be transported through Niue in the custody of another person; and
- (d) If an aircraft or ship by which the person is being transported lands or calls at a place in Niue, shall be kept in such custody as the Attorney-General directs in writing until his or her transportation is continued.

(2) Where a person who is being held in custody under a direction under subsection (1)(d) and the person's transportation is not, in the opinion of the Attorney-General, continued within a reasonable time, the Attorney-General may direct that the person be transported in custody to the foreign country from which the person was first transported.

**28 Arrest of person in transit**

(1) Any constable may, without warrant, arrest a person if the constable has reasonable grounds to believe that the person was being kept in custody under direction under section 29(1)(d) and has escaped from that custody.

(2) The constable must, as soon as practicable, take the person before a Commissioner.

(3) If the Commissioner is satisfied that the person has escaped from lawful custody, the Commissioner may issue a warrant authorising any constable to return the person to lawful custody.

**29 Aiding person to escape**

The laws of Niue in relation to –

- (a) Aiding a prisoner to escape from custody;
- (b) Rescuing a prisoner from custody;
- (c) Permitting escape; and
- (d) Harbours an escapee,

apply in respect of a person who is in custody in Niue pursuant to a request to a foreign country by Niue under this Act.

PART 6

PROCEEDS OF CRIME

*Requests by Niue*

**30 Requests for enforcement of orders**

Niue may request an appropriate authority of a foreign country to make arrangements for the enforcement of –

- (a) A forfeiture order made in Niue against property that is believed to be located in that foreign country;



- (b) A confiscation order made in Niue where some or all of the property available to satisfy the order is believed to be located in that foreign country; or
- (c) A restraining order made in Niue against property that is believed to be located in that foreign country;

if the order was made in respect of a serious offence.

### **31 Requests for issue of orders in foreign countries**

Where a criminal proceeding or investigation has commenced in Niue in relation to a serious offence, Niue may request an appropriate authority of a foreign country to obtain the issue, in respect of the offence, of a warrant, order or other instrument similar in nature to any of the following warrants and orders under the Proceeds of Crime Act 1998 –

- (a) A search warrant for tainted property;
- (b) A restraining order;
- (c) A production order in respect of a property-tracking document;
- (d) A search warrant in respect of a property-tracking document.

#### *Requests by Foreign Countries*

### **32 Requests for enforcement of orders**

(1) Where –

- (a) A foreign country requests the Attorney-General to make arrangements for the enforcement of –
  - (i) A foreign forfeiture order, made in respect of a serious offence, against property that is believed to be located in Niue; or
  - (ii) a foreign confiscation order, made in respect of a serious offence, where some or all of the property available to satisfy the order is believed to be located in Niue; and
- (b) The Attorney-General is satisfied that –
  - (i) a person has been convicted of the offence; and
  - (ii) the conviction and the order are not subject to further appeal in the foreign country;

the Attorney-General may apply for the registration of the order in the Court.

(2) Where a foreign country requests the Attorney-General to make arrangements for the enforcement of a foreign restraining order, made in respect of a serious offence, against property that is believed to be located in Niue, the Attorney-General may apply for the registration of the order in the Court.

(3) Where the Attorney-General applies to the Court for registration of a foreign order under this section, the Court shall register the order accordingly.

(4) A foreign forfeiture order registered in the Court under this section has effect, and may be enforced, as if it were a forfeiture order made by the Court under the Proceeds of Crime Act 1998 at the time of registration.

(5) A foreign confiscation order registered in the Court under this section has effect, and may be enforced, as if it were a confiscation order made by the Court under the Proceeds of Crime Act 1998 at the time of registration and requiring the payment to the Crown of the amount payable under the order.

(6) A foreign restraining order registered in the Court under this section has effect, and may be enforced, as if it were a restraining order made by the Court under the Proceeds of Crime Act 1998 at the time of registration.

(7) Where a foreign confiscation order or a foreign restraining order is registered in the Court under this section, a copy of any amendments made to the order (whether before or after registration) may be registered in the same way as the order



and the amendments do not, for the purposes of this Act and the Proceeds of Crime Act 1998, have effect until they are registered.

(8) An order or an amendment of an order shall be registered in the Court by registration under the rules of the Court, of –

- (a) A copy of the appropriate order or amendment sealed by the court or other authority making that order or amendment; or
- (b) A copy of that order or amendment duly authenticated under section 49(2).

(9) A facsimile copy of a sealed or authenticated copy of an order or an amendment of an order shall be regarded for the purposes of this Act as the same as the sealed or authenticated copy but registration effected by means of the facsimile copy ceases to have effect at the end of 42 days unless the sealed or authenticated copy has been registered by then.

(10) The Attorney-General may apply to the Court for cancellation of the registration of a foreign confiscation order or a foreign restraining order that has been registered in the Court.

(11) Where the Attorney-General applies to the Court for cancellation of a registration under subsection (10), the Court shall cancel the registration accordingly.

(12) Section 68 of the Proceeds of Crime Act 1998 does not apply to an order registered under this section.

### **33 Requests for search and seizure warrants in respect of tainted property**

Where –

- (a) A criminal proceeding or investigation has commenced in a foreign country in respect of a serious offence;
- (b) There are reasonable grounds to believe that tainted property in relation to the offence is located in Niue; and
- (c) The foreign country requests the Attorney-General to obtain the issue of a search warrant in relation to the tainted property,

the Attorney-General may authorise a constable to apply to a Commissioner under the Proceeds of Crime Act 1998 for a search warrant in relation to that tainted property.

### **34 Requests for restraining orders**

Where –

- (a) A criminal proceeding has commenced, or there are reasonable grounds to believe that a criminal proceeding is about to commence, in a foreign country in respect of a serious offence;
- (b) There are reasonable grounds to believe that property that may be made or is about to be made the subject of a foreign restraining order is located in Niue; and
- (c) The foreign country requests the Attorney-General to obtain the issue of a restraining order against the property,

the Attorney-General may apply to the Court for a restraining order under the Proceeds of Crime Act 1998 against that property in respect of the offence.

### **35 Requests for information gathering orders**

Where –

- (a) A criminal proceeding or investigation has commenced in a foreign country in respect of a serious offence;
- (b) A property-tracking document in relation to the offence is reasonably believed to be located in Niue; and

- (c) The foreign country requests the Attorney-General to obtain the issue of –
  - (i) an order requiring the documents to be produced or made available for inspection under the law of Niue; or
  - (ii) a search warrant in respect of the offence,

the Attorney-General may apply to a Commissioner for a production order under the Proceeds of Crime Act 1998 in respect of the offence for the purpose of obtaining possession of the property-tracking document or a search warrant under that Act in relation to the property-tracking document as the case requires.

### **35A Cabinet may approve proposals for sharing certain property**

- (1) In this section –
  - “qualifying property” means property –
    - (a) That is vested in the Government by virtue of a forfeiture order and that can no longer be made the subject of an application under section 13 or section 14 of the Proceeds of Crime Act 1998 or section 23 of the Terrorism Suppression and Transnational Crimes Act 2006 by a person who claims to have, or to have had, an interest in the property; or
    - (b) That has been paid to the Government under section 15 of the Proceeds of Crime Act 1998 (payment instead of forfeiture order); or
    - (c) That has been paid to the Government under a confiscation order.
  - (2) The Cabinet may approve proposals for sharing specified qualifying property with a foreign country that has provided assistance to Niue under this Act or the Proceeds of Crime Act 1998.
  - (3) For the purposes of subsection (2) –
    - (a) The specified qualifying property need not have become property of the Government as a result of the assistance provided by the foreign country; and
    - (b) The proposals may, but need not, involve that country reciprocally sharing with Niue property realised under laws of the foreign country that correspond to the Proceeds of Crime Act 1998.
  - (4) The Attorney-General may enter into arrangements with the competent authorities of the foreign country in order to give effect to any sharing proposal approved by the Cabinet under subsection (2).

## PART 7

### REQUESTS BY OR ON BEHALF OF A DEFENDANT

#### **36 Requests by Attorney-General on behalf of a defendant**

- (1) If a defendant in a proceeding (original proceeding) relating to a criminal matter thinks that it is necessary for the purposes of the proceeding that –
  - (a) Evidence should be taken in a foreign country; or
  - (b) A document or other article in a foreign country should be produced; or
  - (c) A thing located in a foreign country should be seized; or
  - (d) Arrangements should be made for a person who is in a foreign country to come to Niue (under a request to a foreign country by Niue under this Act) to give evidence relevant to the proceeding,
 the defendant may apply to the Court for a certificate that it would be in the interests of justice for the Attorney-General to make any appropriate request to the foreign country under Part 2, 3 or 4 so that –
  - (i) The evidence may be taken; or
  - (ii) The document or article may be produced; or
  - (iii) The thing may be seized; or

## Mutual Assistance in Criminal Matters Act

(iv) The arrangements may be made.

(2) Before making a decision on the application, the Court must give an opportunity to –

- (a) All parties to the original proceeding; and
- (b) The Attorney-General,

to appear before the Court and be heard on the merits of the application.

(3) In deciding whether to issue a certificate, the Court must have regard to the following matters –

- (a) Whether the foreign country is likely to grant such a request made by the Attorney-General on behalf of the defendant;
- (b) The extent to which the material (whether it is evidence, a document, an article or a thing) that the defendant seeks to obtain from the foreign country would not otherwise be available;
- (c) Whether the court hearing the original proceeding would be likely to admit the material into evidence in the proceeding;
- (d) The likely probative value of the material, if it were admitted into evidence in the proceeding, with respect to any issue likely to be determined in the proceeding;
- (e) Whether the defendant would be unfairly prejudiced if the material were not available to the Court.

(4) Subsection (3) does not prevent the Court from having regard to any other matter that it considers relevant.

(5) If the Court issues a certificate –

- (a) The Court must, send a copy of the certificate to the Attorney-General; and
- (b) The Attorney-General must in accordance with the certificate, make a request on behalf of the defendant to the foreign country, for international assistance unless he or she is of the opinion, having regard to the special circumstances of the case, that the request should not be made.

### **37 Certificate by Attorney-General if foreign country refuses request made under section 36**

(1) If a foreign country refuses a request made under section 36(5), the Attorney-General must give a certificate in writing to that effect.

(2) A certificate under subsection (1) is prima facie evidence of the facts stated in it.

## PART 8

### ADMISSIBILITY OF FOREIGN EVIDENCE

#### *Preliminary*

### **38 Interpretation**

In this Part –

“civil proceeding” means a proceeding other than a criminal proceeding;

“criminal proceeding” includes –

- (a) A prosecution for an offence;
- (b) A proceeding for the committal of a person for trial for an offence; and
- (c) A proceeding for the sentencing of a person convicted of an offence;

“foreign law” means a law (whether written or unwritten) of, or in force in, a country other than Niue;

“foreign material” means –

- (a) The testimony of a person that –

(i) was obtained as a result of a request of a kind referred to in section 40; and

(ii) complies with the requirements of section 42; and

(b) Any exhibit annexed to any such testimony; and

(c) Any part of any such testimony or exhibit;

“Niue court” means –

(a) The Court; or

(b) A Commissioner; or arbitrator acting under Niue law; or

(c) A person or body authorised by a Niue law, or by consent of parties, to hear, receive and examine evidence;

“related civil proceedings”, in relation to a criminal proceeding, means any civil proceedings arising from the same subject-matter from which the criminal proceeding arose.

### **39 Proceedings to which this Part applies**

This Part applies to a proceeding, before a Niue court, that is –

(a) A criminal proceeding for an offence against the law of Niue; or

(b) A related civil proceeding.

#### *Obtaining Foreign Material*

### **40 Requests for foreign material**

This Part applies to –

(a) Testimony, obtained as a result of a request made by or on behalf of the Attorney-General to a foreign country for the testimony of a person; and

(b) Any exhibit annexed to any such testimony.

### **41 Requirements for testimony**

(1) The testimony must be taken before a court –

(a) On oath or affirmation; or

(b) Under such caution or admonition as would be accepted, by courts in the foreign country concerned, for the purposes of giving testimony in proceedings before those courts.

(2) The testimony may be taken in camera.

### **42 Form of testimony**

(1) The testimony may be recorded in any of the following manners –

(a) In writing;

(b) On audio tape;

(c) On video tape.

(2) The testimony need not –

(a) Be in the form of an affidavit; or

(b) Constitute a transcript of a proceeding in a foreign court.

(3) The testimony must be endorsed with, or be accompanied by, a certificate to the effect that –

(a) It is an accurate record of the evidence given; and

(b) It was taken in the manner specified by section 41.

(4) The certificate must –

(a) Purport to be signed or certified by a judge, magistrate or court officer of the foreign country to which the request was made; and

- (b) Purport to bear an official or public seal of –
  - (i) the country; or
  - (ii) an authority of the country responsible for matters relating to justice, being a Minister of State, a Ministry or Department of Government, or an officer of the Government.

*Using Foreign Material*

**43 Foreign material may be adduced as evidence**

- (1) Subject to subsection (2) and to section 44, foreign material may be adduced as evidence in a proceeding to which this Part applies.
- (2) The foreign material is not to be adduced as evidence if –
  - (a) At the hearing of the proceeding, it appears to the Court’s satisfaction that the person who gave the testimony concerned is present in Niue and is able to testify at the hearing; or
  - (b) The evidence would not have been admissible had it been adduced from the person at the hearing.

**44 Direction to prevent foreign material being adduced**

- (1) The Court may direct that foreign material not be adduced as evidence if it appears to the Court’s satisfaction that the interests of justice would be better served if the foreign material were not adduced as evidence.
- (2) Without limiting the matters that the Court may take into account in deciding whether to give such a direction, it must take into account –
  - (a) The extent to which the foreign material provides evidence which would not otherwise be available; and
  - (b) The probative value of the foreign material with respect to any issue that is likely to be determined in the proceedings; and
  - (c) The extent to which statements contained in the foreign material could, at the time they were made, be challenged by questioning the persons who made them; and
  - (d) Whether exclusion of the foreign material would cause undue expense or delay; and
  - (e) Whether exclusion of the foreign material would prejudice –
    - (i) the defence in criminal proceedings; or
    - (ii) any party to related civil proceedings.

*Miscellaneous*

**45 Certificates relating to foreign material**

- (1) The Attorney-General may certify that specified foreign material was obtained as a result of a request made to a foreign country by or on behalf of the Attorney-General.
- (2) It is presumed (unless evidence sufficient to raise reasonable doubt is adduced to the contrary) that the foreign material specified in the certificate was obtained as a result of that request.

**46 Effect of Part on right to examine witnesses**

- (1) Subject to this section, nothing in this Part shall be taken to limit the right of the defendant in any criminal proceedings to which this Part applies (in this section referred to as “the defendant”) to examine in person or by his legal

representative any witness whose testimony is admitted in evidence in those proceedings.

(2) If the defendant requests that the person who gave the testimony concerned be present at the hearing in Niue for the purposes of cross-examination, the court shall warn the defendant that he may be ordered to pay any expenses incurred by the Crown in making the person available before the Court.

(3) If –

- (a) As a result of the request, the person appears before the Court as a witness; and
- (b) It appears to the court that the cross-examination of the person was unnecessary, of a trivial nature or irrelevant to the matters in issue in the proceedings,

the Court may order that the defendant pay any expenses incurred by the Crown in obtaining the attendance of the person as a witness.

(4) A certificate signed by the Attorney-General shall be evidence of the expenses incurred by the Crown for the purposes of subsection (3).

(5) An amount payable by a person to the Crown under an order under subsection (3) is a civil debt due by the person to the Crown.

(6) An order against a person under subsection (3) may be enforced as if it were an order made in civil proceedings instituted by the Crown against the person to recover a debt due by the person to the Crown and the debt arising from the order shall be taken to be a judgment debt.

#### **47 Operation of other laws**

This Part does not limit the ways in which a matter may be proved, or evidence may be adduced, under any other Niue law.

### **PART 9**

#### **MISCELLANEOUS**

#### **48 Delegation**

The Attorney-General may, delegate to an officer of the Attorney-General's Department all or any of his or her powers under this Act.

#### **49 Authentication of documents**

(1) In a proceeding under this Act or a proceeding under or pursuant to the Proceeds of Crime Act 1998 arising directly or indirectly from a request made under this Act, any document that is duly authenticated is admissible in evidence.

(2) A document is duly authenticated for the purposes of subsection (1) if –

- (a) It purports to be signed or certified by a judge, magistrate or officer in or of a foreign country; and
- (b) It purports to be sealed with an official or public seal of the foreign country or of a Minister of State, or of a Department or officer of the Government, of the foreign country.

(3) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, in accordance with any other law of Niue.

#### **50 Restriction on use of information**

(1) If, as a result of a request made by the Attorney-General under this Act, any material (whether it is evidence, a document, an article or a thing) has been sent to Niue by a foreign country for the purposes of a proceeding or investigation in relation



to a criminal matter, the material is not to be used intentionally for any other purpose without the approval of the Attorney-General.

(2) The material is inadmissible in evidence in any proceeding other than the proceeding in respect of which it was obtained unless the Attorney-General has approved its use for the purposes of that other proceeding.

(3) Any information, document, article or thing obtained directly or indirectly from a person by making use of the material –

(a) Otherwise than for the purpose of the proceeding or investigation in respect of which it was obtained; and

(b) Without the approval of the Attorney-General;

is inadmissible in evidence in any other proceeding and may not be used for the purposes of any other investigation.

(4) A person who contravenes subsection (1) is guilty of an offence punishable, on conviction –

(a) If the person is a natural person, by a fine not exceeding 120 penalty units or imprisonment for a period not exceeding 2 years, or both; or

(b) If the person is a body corporate, by a fine not exceeding 600 penalty units.

(5) For the purposes of this section, disclosure of any material is taken to be a use of that material.

## **51 Requests for international assistance not to be disclosed**

(1) A person who, because of his or her office or employment, has knowledge of –

(a) The contents of a request for international assistance made by a foreign country to Niue under this Act; or

(b) The fact that such a request has been made; or

(c) That fact that such a request has been granted or refused,

must not intentionally disclose those contents or that fact except if –

(d) It is necessary to do so in the performance of his or her duties; or

(e) The Attorney-General has given his or her approval to the disclosure of those contents or that fact.

(2) A person who contravenes subsection (1) is guilty of an offence punishable, on conviction –

(a) If the person is a natural person, by a fine not exceeding 120 penalty units or imprisonment for a period not exceeding 2 years, or both; or

(b) If the person is a body corporate, by a fine not exceeding 600 penalty units.

## **52 Regulations**

The Cabinet may make regulations, not inconsistent with this Act, prescribing matters

–

(a) Required or permitted by this Act to be prescribed; or

(b) Necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and, in particular, prescribing the practice and procedure in relation to the performance by Commissioners of functions under this Act, including the summoning of witnesses, the production of documents, the taking of evidence on oath, the administering of oaths, the payment of expenses and allowances of witnesses and the protection and immunity of Commissioners, of barristers and solicitors appearing before Commissioners and of witnesses.



