

Niue

10 Occupation:	
Mother	
11 Name and Surname:	
12 Age and Race:	
13 Place of Birth and Residence:	
14 Occupation	
Informant	
15 Signature:	
16 Residence:	
17 Occupation:	
18 Relationship to Child:	
19 Date of Registration:	
20 Signature of Registrar:	

I certify that the above particulars are a true record of the birth of recorded this day of 20

Caution – Any person who (1) falsifies any of the particulars on this certificate; or (2) uses it as true knowing it to be false, is liable to prosecution under the Births and Deaths Registration Regulations 1984.

Form 2

Issue No. 001

BIRTHS REGISTRATION REGULATIONS 1984

(Reg 8)

NOTIFICATION FORM

(To be delivered or posted to the Registrar of Births within 14 days after the birth)

The Registration of Births

Alofi, Niue

A TAKE NOTICE that a female/male child was born at Lord Liverpool Hospital on \_\_\_\_\_ / \_\_\_\_\_ /20\_\_

Full name of mother:

Village of residence:

Signature of Nurse/Midwife/Nursing Sister in attendance and date:

\_\_\_\_\_ / \_\_\_\_\_ /20\_\_

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IF CHILD STILLBORN complete the following and delete where not applicable.

- (a) Stillborn – born to \_\_\_\_\_ of \_\_\_\_\_ on \_\_\_\_\_ / \_\_\_\_\_ /20\_\_
- (b) Report pending/Report not required

\_\_\_\_\_  
Signature of Medical Practitioner

C FOR OFFICE USE ONLY

- (a) Registered by: \_\_\_\_\_
- (b) Notice to parents sent on \_\_\_\_\_ / \_\_\_\_\_ /20\_\_ (c) All actions completed on \_\_\_\_\_ / \_\_\_\_\_ /20\_\_
- (d) Registration No.: \_\_\_\_\_

\_\_\_\_\_  
Signature of officer responsible for the final actions

Form 3 Issue No. \_\_\_\_\_  
CERTIFICATE OF REGISTRATION  
(Reg 10)

THIS IS TO CERTIFY that the birth of a male/female child born on \_\_\_\_\_ / \_\_\_\_\_ /20\_\_ has been registered in this office.

Name of Child: \_\_\_\_\_

Registration No: \_\_\_\_\_

Name of mother: \_\_\_\_\_

Name of father: \_\_\_\_\_

Village of residence: \_\_\_\_\_

Date of registration: \_\_\_\_\_ / \_\_\_\_\_ /20\_\_

\_\_\_\_\_  
Deputy Registrar Note:

This is not a birth certificate but it can be used locally for school enrolment purposes, etc.

\_\_\_\_\_  
BIRTHS AND DEATHS REGULATIONS 1984  
(Reg 13) Form 4  
CHANGE OF NAME BY DEED POLL

(Full Name) I, \_\_\_\_\_ (Full Address) of \_\_\_\_\_ (Occupation) \_\_\_\_\_

Niue

am desirous of abandoning and renouncing the use of the name of

(Old Name) \_\_\_\_\_

I hereby absolutely abandon and renounce the use of the name

\_\_\_\_\_ and HEREBY DECLARE that at all times here after

(New Name) I shall use and subscribe the name \_\_\_\_\_

(Old Name) in lieu of the name \_\_\_\_\_ in all deeds and documents and in all acts and proceedings and in all \_\_\_\_\_ transactions and matters and things and upon all occasions, AND I HEREBY AUTHORISE all persons at all times hereafter to \_\_ describe and address me by the name of

(New Name) \_\_\_\_\_

IN WITNESS WHEREOF I have here subscribed the name of

(Old Name) \_\_\_\_\_ and also my assumed name of

(New Name) \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

SIGNED by the said \_\_\_\_\_

hereafter to be known as

\_\_\_\_\_ in the presence of \_\_\_\_\_

\_\_\_\_\_ Signature: \_\_\_\_\_  
Old Name

\_\_\_\_\_ New Name

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

Form 5  
BIRTHS REGISTRATION REGULATIONS 1984  
(Reg 16)

OFFICE OF REGISTRAR OF BIRTHS  
ALOFI  
NIUE

To: \_\_\_\_\_  
\_\_\_\_\_

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The birth of your child which occurred on the \_\_\_\_\_ has not yet been registered at my office.

You are therefore reminded that registration should be effected on or before the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
Registrar

NOTE: If the birth is not registered within 14 days the persons responsible for registration render themselves **LIABLE TO PROSECUTION**.

\_\_\_\_\_  
**REGISTER OF DEATHS**  
Form 6 (Reg 19)  
Registered at Alofi, in the Island of Niue

Entry NO:

DECEASED	
1.	Date of death:
2.	Place of death:
3.	Name:
4.	Residence:
5.	Sex:
6.	Age:
7.	Name of husband or wife (if any):
8.	Number and sex of children living (if any):
9.	Causes of death:
10.	Duration of last illness:
11.	Name of medical practitioner giving certificate and his qualifications (if any):
12.	Date when medical practitioner last saw deceased:
PARENTS OF DECEASED	
Mother	
13.	Name:
14.	Residence:
15.	Description:
Father	
16.	Name:
17.	Residence:
18.	Description:

INFORMANT	
19.	Signature:
20.	Residence and occupation:
21.	Degree of relationship (if any) to deceased:
REGISTRAR	
22.	Date of registration:
23.	Signature of Registrar:

I solemnly declare that to the best of my knowledge and belief the foregoing particulars are true in every respect.

\_\_\_\_\_  
Signature of Registrar

\_\_\_\_\_  
Form 7  
BIRTHS AND DEATHS REGISTRATION REGULATIONS 1984  
(Reg 20)  
MEDICAL CERTIFICATE OF CAUSES OF DEATH

A Particulars as to deceased:

Name of deceased: \_\_\_\_\_

Sex: \_\_\_\_\_ Aged as stated to me: \_\_\_\_\_

Date of death: \_\_\_\_\_, day of \_\_\_\_\_ 20\_\_\_\_ Place of death;

Last seen by me: \_\_\_\_\_, day of \_\_\_\_\_ 20\_\_\_\_

B Causes of death (State clearly in full and not in abbreviated form)

1. Disease, injury or complication (a) \_\_\_\_\_  
directly leading to death: \_\_\_\_\_

due to, or as a consequence of: (b) \_\_\_\_\_

due to, or as a consequence of: (c) \_\_\_\_\_

2. Other significant factors: \_\_\_\_\_

3. Appropriate between onset and death: \_\_\_\_\_

C Additional data (delete box not applicable)

1. Did you see the body after death: Yes No

2. Post mortem (a) not intended to be held Yes No

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(b) held and results available	Yes	No
(c) being or to be held	Yes	No

I, \_\_\_\_\_ certify that I was in medical attendance during the abovenamed deceased's last illness and the particulars quoted above are true to the best of my knowledge and belief.

(1) \_\_\_\_\_ (2) \_\_\_\_\_ (3) \_\_\_\_\_  
Signature of Medical Officer      Qualifications      Date

Note: Form 8 to be completed if Medical Practitioner did not attend the deceased during his/her last illness AND NOT THIS FORM

\_\_\_\_\_  
Form 8  
CERTIFICATE OF DEATH BY MEDICAL OFFICER OF PERSON NOT  
ATTENDED BY A MEDICAL OFFICER  
(Reg 20)

TO THE REGISTRAR OF BIRTHS AND DEATHS, NIUE

I, the undersigned, hereby certify that I have examined the body of \_\_\_\_\_ who is reported to have died at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

To the best of my knowledge and belief the causes of death were:

Primary \_\_\_\_\_

Secondary \_\_\_\_\_

Witness by hand this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_  
Medical Officer

\_\_\_\_\_  
Form 9  
AUTHORITY TO BURY  
(Reg. 25(3))

To \_\_\_\_\_ of \_\_\_\_\_ I  
\_\_\_\_\_, the Registrar of Births and Deaths, Niue hereby  
authorise the burial of the body of \_\_\_\_\_ who died at  
\_\_\_\_\_ on the

Niue

\_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ Witness by hand this

\_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_

Registrar

Please advise the deceased family that this death must be registered within one week.

\_\_\_\_\_  
Form 10  
CERTIFICATE AS TO BURIAL  
(Reg 27)

I, \_\_\_\_\_, of \_\_\_\_\_,

hereby certify that the body of \_\_\_\_\_

was duly buried on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ in my presence

\_\_\_\_\_

Minister and Denomination

\_\_\_\_\_

SCHEDULE 2

Reg 30

FEES TO BE TAKEN BY REGISTRAR

- |  |         |
|--|---------|
| 1. Subject to (2) for every certified copy or certificate relating to an entry in any register | \$10.00 |
| 2. For every "urgent" issue of a certified copy or certificate of birth                        | \$15.00 |
| 3. For registration of a name change including the issue of a birth certificate                | \$15.00 |

FEES TO BE TAKEN BY NIUE CONSULATE GENERAL OFFICE  
IN NEW ZEALAND

- |  |         |
|--|---------|
| 1. For every certified copy or certificate relating to an entry in any register                            | \$25.00 |
| 2. For re-typing worn out copies of any certified copy or certificate relating to an entry in any register | \$15.00 |

## CO-OPERATIVE SOCIETIES REGULATIONS 1953

SR 1953/106 – 20 August 1953

### PART 1

#### PRELIMINARY

**1 Title**

These are the Co-operative Societies Regulations 1953.

**2 –**

**3 Interpretation**

In these Regulations –

“bonus” means a share of the profits of a registered society divided among its members in proportion to the volume of business done with the society by them from which the profits of the society were derived;

“bylaws” means the registered bylaws made by a society in the exercise of any power conferred by these Regulations, and includes a registered amendment to the bylaws;

“committee” means the governing body of a registered society to whom the management of its affairs is entrusted;

“dividend” means a share of the profits of a registered society divided among its members in proportion to the share capital held by them;

“member” includes a person or registered society joining in the application for the registration of a society; and also includes a person or registered society admitted to membership after registration in accordance with the bylaws;

“officer” includes a chairman, secretary, treasurer, member of committee, or other person empowered under these Regulations or under bylaws to give directions in regard to the business of a registered society;

“registered society” means a co-operative society registered under these Regulations;

“Registrar” means the Registrar of Co-operative Societies appointed under regulation 4; and includes any person when exercising such powers of the Registrar as may have been conferred upon him under that regulation;

“Rules” mean rules made under regulation 52.

### PART 2

#### REGISTRATION

**4 Appointment of Registrar and Assistant Registrar**

(1) Under Part VI of the Constitution –

(a) A Registrar of Co-operative Societies;

(b) Such other suitable persons to assist the Registrar as may be deemed necessary.

(2) Cabinet may by notice publicly displayed, confer on any persons appointed under subparagraph (1)(b) all or any of the powers of the Registrar under these Regulations.

**5 Societies which may be registered**

Subject to these Regulations, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under these Regulations with limited liability.



## **6 Conditions of registration**

(1) No society, other than a society of which at least one member is a registered society, shall be registered under these Regulations, unless it consists of at least 10 persons, each of whom is qualified for membership under regulation 22.

(2) No society of which any member is a registered society shall be registered under these Regulations unless it consists of at least two members, each of whom in the case of members other than registered societies is qualified for membership under regulation 22.

(3) The word “co-operative” or its vernacular equivalent shall form part of the name of every society registered under these Regulations.

(4) The word “limited” or its vernacular equivalent shall be the last word in the name of every society registered under these Regulations.

(5) When for the purposes of this regulation any question arises as to age, residence, or occupation of land constituting the qualification of any person, that question shall be decided by the Registrar, whose decision shall be final.

## **7 Application for registration**

(1) For the purposes of registration an application shall be made to the Registrar.

(2) The application shall be signed –

(a) In the case of a society of which no member is a registered society, by at least 10 persons qualified under the requirements of regulation 6(1); and

(b) In the case of a society of which at least one member is a registered society, by a duly authorised person on behalf of every such registered society and, where all the members of the society are not registered societies, by each of the other members.

(3) The application shall be accompanied by copies of the proposed bylaws of the society, and the persons by whom or on whose behalf the application is made shall furnish such information in regard to the society as the Registrar may require.

## **8 Registration**

(1) (a) If the Registrar is satisfied that a society has complied with these Regulations and that its proposed bylaws are not contrary to these Regulations, he may, if he thinks fit, register the society and its bylaws.

(b) An appeal against the refusal of the Registrar to register any society shall lie to Cabinet within one month from the date of that refusal, and the decision of Cabinet on any such appeal shall be final.

(2) On registration the society shall pay such fee as may be prescribed by the rules.

(3) A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered, unless it is proved that the registration of the society has been cancelled.

## **9 Societies to be bodies corporate**

Registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal and with power to acquire, hold, and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings, and to do all things necessary for the purpose of its constitution.

PART 3

DUTIES AND PRIVILEGES OF SOCIETIES

**10 Bylaws of a registered society**

(1) Every registered society shall have bylaws which, subject to these Regulations and the rules, shall provide for the following matters –

- (a) The name of the society;
- (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 become members of the society;
- (e) The mode in which the bylaws may be altered, added to, or rescinded;
- (f) The mode of summoning and holding general meetings of the society and of voting there;
- (g) The appointment of officers of the society;
- (h) The control and use of the common seal of the society;
- (i) Such matters as by these Regulations or the rules are required to be prescribed by the bylaws;
- (j) Such other matters as the Registrar may require to be provided for in any particular instance.

(2) The bylaws of any registered society may contain any other provisions which are not inconsistent with these Regulations or the rules or with law.

**11 Amendment of the bylaws of a registered society**

(1) Any registered society may, subject to these Regulations, amend its bylaws, including the bylaw which declares the name of the society.

(2) No amendment of the bylaws of a registered society shall be valid until that amendment has been registered, for which purpose copies of the amendment shall be forwarded to the Registrar.

(3) (a) If the Registrar is satisfied that any amendment of the bylaws is not contrary to these Regulations, he may, if he thinks fit, register the amendment.

(b) An appeal against the refusal of the Registrar to register any amendment of any bylaw shall lie to Cabinet within one month from the date of that refusal, and the decision of the Cabinet on any such appeal shall be final.

(4) An amendment which changes the name of a society shall not affect any right or obligation of the society or of any of its members or past members, and any legal proceedings pending may be continued by or against the society under its new name.

(5) Where the Registrar registers an amendment of the bylaws of a registered society he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence of the fact that the amendment has been duly registered.

(5) In this regulation “amendment” includes the making of a new bylaw and the variation or rescission of a bylaw.

**12 Address of society**

Every registered society shall have an address within Niue registered under the rules to which all notices and communications may be sent, and shall send to the Registrar notice of every change of that address.

**13 Copy of regulations, rules and bylaws and list of members to be open for inspection**

(1) Every registered society shall keep a copy of these Regulations and the rules and its bylaws and a list of its members open to inspection, free of charge, at all reasonable times at the registered address of the society.

(2) For the purposes of paragraph (1) the copy of the rules and the bylaws of any society shall be deemed to include all amendments thereto, and the society shall cause to be endorsed on the copy of the rules or bylaws so kept a memorandum of every such amendment.

**14 Disposal of produce to or through a registered society**

(1) A registered society which has as one of its objects the disposal of any article produced or obtained by the work or industry of any of its members (whether the article is the produce of agriculture, animal husbandry, forestry, fisheries, handicrafts, or otherwise) may provide in its bylaws, or may otherwise contract with its members –

(a) That every such member who produces any such article shall dispose of the whole or any specified amount, proportion, or description thereof to or through the society; and

(b) That any member who is proved or adjudged, in such manner as may be prescribed by the rules, to be guilty of a breach of the bylaws or contract shall pay to the society as liquidated damages a sum ascertained or assessed in such manner as may be prescribed by the aforesaid rules, and that sum shall be a debt due to the society by the member.

(2) No contract entered into this regulation shall be contested in any court on the ground only that it constitutes a contract in restraint of trade.

**15 Creation of charges in favour of registered societies**

Subject to any prior claim of the Crown on the property of a debtor, and to the claim of the holder of any lien on any property, and to the claim of a landlord in respect of rent or any money recoverable as rent, and, in the case of immovable property, to any prior registered charge thereon and subject also to Niue Amendment Act 1968 (No 2) –

(a) Any debt or outstanding demand payable to a registered society by any member or past member shall be a first charge on all crops or other agricultural produce, felled timber, or other forest produce, marine produce, fish (fresh water and salt water), livestock, fodder, agricultural, industrial and fishing implements, plant, machinery, boats, tackle and nets, raw materials, stock in trade, and generally all produce of labour and things used in connection with production and raised, purchased, or produced in whole or in part from any loan whether in money or in goods given him by the society:

Provided that nothing in this paragraph shall affect the claim of any bona fide purchaser or transferee without notice;

(b) Any outstanding demands or dues payable to a registered society whose primary object is the provision of housing for its members by any member or past member in respect of rent, shares, loans, or purchase money or any other rights of amounts payable to the society shall be a first charge upon his interest in the immovable property of the society.

**16 Charge and set off in respect of shares of interest of members**

A registered society shall have a charge upon the shares or interests in the capital and on the deposits of a member or past member or deceased member, and upon any dividend,

bonus, or profit payable to a member or past member or to the estate of a deceased member, in respect of any debt due to the society from that member or past member or estate, and may set off any sum credited or payable to a member or past member or estate of a deceased member in or towards payment of any such debt.

#### **17 Shares or interest not liable to attachment**

Subject to regulation 16, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of any Court in respect of any debt or liability incurred by the member, and neither his assignee in insolvency or a receiver duly appointed shall be entitled to or have any claim on that share or interest.

#### **18 Transfer of interest on death of member**

(1) (a) On the death of a member, a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with the rules made in that behalf, or, if there is no person so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member, or may pay to that nominee, heir, or legal representative, as the case may be, a sum representing the value of the member's share or interest, as ascertained in accordance with the rules or, where there are no such rules or in so far as the rules do not provide, by the bylaws.

(b) The society may transfer the share or interest of the deceased member to that nominee, heir, or legal representative, as the case may be, being qualified in accordance with the rules for membership of the society, or, where there are no such rules or in so far as the rules do not provide, by the bylaws of the society, or on his application within 6 months of the death of the deceased member to any person specified in the application who is so qualified.

(2) A registered society shall pay to that nominee, heir, or legal representative, as the case may be, all other moneys due to the deceased member of the society.

(3) All transfers and payments made by a registered society in accordance with the provisions of this regulation shall be valid and effectual against any demand made upon the society by any other person.

#### **19 Deposits by or on behalf of minors**

(1) A registered society may receive deposits from or on behalf of minors and it shall be lawful for a registered society to pay to any such minors the interest which may become due on those deposits.

(2) Any deposits made by a minor may, together with the interest accrued thereon, be paid to that minor, and any deposit made on behalf of a minor may, together with the interest accrued thereon, be paid to the guardian of that minor for the use of the minor.

(3) The receipt of any minor or guardian for money paid to him under this regulation shall be a sufficient discharge of the liability of the society in respect of that money.

#### **20 Register of members**

Any register or list of members kept by any registered society shall be prima facie evidence of any of the following particulars entered therein –

- (a) The date at which the name of any person was entered in the register or list as a member;
- (b) The date at which any such person ceased to be a member.

**21 Proof of entries in books of society**

(1) A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified in such manner as may be prescribed by the rules, be received in any legal proceeding in any court (civil or criminal) as prima facie evidence of the existence of that entry, and shall be admitted as evidence of the matters, transactions, and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

(2) No officer of any such society shall, in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books the contents of which can be proved under paragraph (1), or to appear as a witness to prove any matters, transactions, or accounts therein recorded, unless the court for special reasons so directs.

PART 4

RIGHTS AND LIABILITIES OF MEMBERS

**22 Qualifications for membership**

In order to be qualified for membership of a society a person, other than a registered society, must –

- (a) Have attained the age of 18 years; and
- (b) Be resident within or a titleholder by Niue custom within the society's areas of operations as described by the bylaws.

**23 Members not to exercise rights till due payment made**

No member of a registered society shall exercise the rights of a member unless he has made such payment to the society in respect of membership or acquired such interest in the society, as may be prescribed by the bylaws of the society.

**24 Restriction of membership in society**

Except with the sanction of the Registrar, no person shall be a member of more than one registered society whose primary object is to grant loans to its members.

**25 Votes of members**

(1) No member of any registered society shall have more than one vote in the conduct of the affairs of the society.

(2) In the case of an equality of votes the Chairman shall have a casting vote.

(3) In the case of societies the membership of which includes one or more registered societies, each last-mentioned society may have such voting powers as are provided in the bylaws.

**26 Representation by proxy**

A registered society that is a member of any other registered society may appoint any one of its members as its proxy for the purpose of voting in the conduct of the affairs of that other registered society.

**27 Contracts with society of members who are minors**

The minority of any person duly admitted as a member of any registered society shall not debar that person from executing any instrument or giving any acquittance necessary to be executed or given under these Regulations or any rules made thereunder and shall not be a ground for invalidating or avoiding any contract entered into by any such person with the society, and any such contract entered into by any such person with the society, whether as

principal or as surety, shall be enforceable at law or against that person notwithstanding his minority or non-age.

**28 No individual to hold more than one-fifth of share capital of any society**

No member, other than another registered society, shall hold more than one-fifth of the share capital of any registered society.

**29 Restrictions on transfer of share or interest**

The transfer or charge of the share or interest of a member or past member or deceased member in the capital of a registered society shall be subject to such conditions as to maximum holding as may be prescribed by these Regulations or by the rules.

**30 Limitation of liability of members**

(1) In the event of a registered society being wound up, every present and past member of the society shall be liable to contribute to the assets of the society to an amount sufficient for payment of its debts and liabilities, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of those members among themselves, subject to the following qualifications –

- (a) A past member shall not be liable to contribute if he has ceased to be a member for 2 years or upwards before the commencement of the winding up;
- (b) A past member shall not be liable to contribute in respect of any debt or liability of the society contracted after he ceased to be a member;
- (c) A past member shall not be liable to contribute unless it appears to the Registrar that the existing members are unable to satisfy the contributions required to be made by them under these Regulations;
- (d) In the case of a society limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
- (e) In the case of a society limited by guarantee no contribution shall, subject to paragraph (2), be required from any present or past member exceeding the amount undertaken to be contributed by him to the assets of the society in the event of its being wound up.

(2) In the winding up of a society limited by guarantee which has a share capital, every member of the society shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the society in the event of its being wound up, to contribute to the extent of any sums unpaid on the shares in respect of which he is liable as a past or present member.

(3) The personal representatives of the estate of a person who was a member of a registered society at the commencement of the winding up of the society or had ceased to be a member of the society within the period of 2 years preceding the commencement of the winding up shall be liable in a due course of administration to contribute to the assets of the society in discharge of his liability.

PART 5

PROPERTY AND FUNDS OF REGISTERED SOCIETIES

**31 Loans made by a registered society**

(1) (a) A registered society shall not, except as provided by regulation 34 make any loan to any person other than a member.

- (b) With the consent of the Registrar a registered society may make loans to another registered society.



(2) Except with the permission of the Registrar a registered society shall not lend money on the security of any movable property other than produce or goods in which the society is authorised to deal.

(3) Cabinet may, by general or special order publicly notified, prohibit or restrict the lending of money by any registered society on mortgage of any description of immovable property.

### **32 Deposits and loans received by a registered society**

A registered society may receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or, where there are no such rules or in so far as the rules do not provide, by the bylaws of the society.

### **33 Restrictions on other transactions with non-members**

Save as provided in regulations 31 and 32, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions as may be prescribed by the rules.

### **34 Investment of funds**

A registered society may invest or deposits its funds –

- (a) In the Post Office Savings Bank or with any bank approved for this purpose by the Registrar; or
- (b) In any securities issued or guaranteed by the Government or any country that is a member of the Commonwealth; or
- (c) With any other registered society approved for this purpose by the Registrar; or
- (d) In any other manner approved by the Registrar.

### **35 Disposal of profits**

(1) (a) Where a registered society is entitled by its constitution to make a profit it shall carry a reserve fund at least one-fourth of the net profits, if any, made during every year as ascertained by the audit prescribed by regulation 36.

(b) The remainder of those profits and any profits of past years available for distribution may be divided among the members by way of dividend or bonus, or allocated to any fund constituted by the society, to such extent as may be prescribed by the rules or, where there are no such rules or in so far as the rules do not provide, by the bylaws of the society.

(2) Any registered society may, with the sanction of the Registrar after one fourth of the net profits in any year have been carried to a reserve fund, contribute an amount not exceeding 10 per cent of the remaining net profits to any charitable purpose or to a fund established or maintained for the common good.

(3) No society shall pay a dividend or bonus or distribute any part of its accumulated funds before the balance sheet has been certified by the Registrar and the amount of the dividend, bonus, or distribution, as the case may be, has been approved by the Registrar.

## **PART 6**

### **AUDIT, INSPECTION AND INQUIRY**

### **36 Audit**

(1) The Registrar shall audit, or cause to be audited by some person authorised by him by general or special order in writing, the accounts of every registered society at least once in every year.

(2) The audit under paragraph (1) shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the registered society.

(3) The Registrar and every other person appointed to audit the accounts of a society shall have power when necessary –

(a) To summon at the time of his audit any officer, agent, servant, or member of the society who he has reason to believe can give material information in regard to any transaction of the society or the management of its affairs; or

(b) To require the production of any book or document relating to the affairs of, or any cash or securities belonging to, the society by the officer, agent, servant, or member in possession of that book, document, cash or securities.

(4) Every officer, agent, servant, or member of the society shall furnish such information in regard to the transactions of the society and the management of its affairs and shall produce such articles as aforesaid as may be required under paragraph (3) by the Registrar or other person appointed to audit the accounts of the society.

### **37 Power of Registrar to inspect society's books**

The Registrar, or any person authorised by general or special order in writing by the Registrar shall at all times have access to all the books, accounts, papers, and securities of a registered society, and shall be entitled to inspect the cash in hand, and every officer of the society shall furnish such information in regard to the transaction and working of the society as the person making the inspection may require.

### **38 Inquiry and inspection**

(1) The Registrar may of his own motion, and shall on the application of a majority of the committee or of not less than one third of the members of a registered society, hold an inquiry, or direct some person authorised by him by order in writing in this behalf to hold an inquiry, into the constitution, working, and financial condition of a registered society; and all officers and members of the society shall furnish such information in regard to the affairs of the society and produce the cash in hand and such books, accounts, papers, and securities of the society as the Registrar or the person authorised by him may require.

(2) The Registrar shall, on the application of a creditor of the registered society, inspect, or direct some person authorised by him in writing in his behalf to inspect the books of the society, if the applicant –

(a) Proves that an ascertained sum of money is then due to him and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) Deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(3) The Registrar shall communicate the results of any such inspection to the creditor and to the society into whose affairs inquiry has been made.

### **39 Costs of inquiry and inspection**

(1) Where an inquiry is held under regulation 38(1) or an inspection is made under regulation 38 (2) the Registrar may by certificate under his hand apportion the costs, or such part of the costs as he thinks fit, between the registered society, the members demanding the inquiry, the officers or former officers of the society, and the creditor, as the case may be, on whose application the inquiry or inspection was made.

(2) The Registrar of Co-operative Societies may, without any previous process file in the Court the certificate referred to in paragraph (1) and the Registrar of the Court shall enter final judgment in that Court for the sums mentioned in the certificate to be paid by the persons specified therein, and thereupon execution may be



forthwith issued and all other remedies had thereon in the same manner as any other decree of the Court.

PART 7  
WINDING UP

**40 Winding up after inquiry or by consent**

(1) If the Registrar, after holding an inquiry or making an inspection under regulation 38 or on receipt of an application made by three fourths of the members of a registered society, is of opinion that the society ought to be wound up, he may make an order for the winding up of the society.

(2) Any member of a registered society may within 2 months from the date of an order under paragraph (1) appeal from the order to Cabinet and the decision of Cabinet on any such appeal shall be final.

(3) (a) Where no appeal is presented within 2 months from the making of an order for the winding up of a society, the order shall take effect on the expiry of that period.

(b) Where an appeal is presented within 2 months, the order shall not take effect until it is confirmed.

(4) Where the Registrar makes an order under paragraph (1) for the winding up of a society, he may make such further order as he thinks fit for the custody of the books and documents and the protection of the assets of the society until the winding up order takes effect.

(5) No registered society shall be wound up save by an order of the Registrar.

**41 Winding up due to lack of membership or failure to carry on operations**

(1) The Registrar may make an order for the winding up of any registered society if at any time it is proved to his satisfaction that –

(a) The number of members has been reduced to less than 10 or, in the case of a society of which at least one member is a registered society, to less than 2; or

(b) The society is no longer carrying on its operations; or

(c) The society has been registered by reason of a mistake of fact or law.

(2) Every such order shall take effect from the date thereof.

(3) At any time thereafter the Registrar, on being satisfied that the winding up order was made in error and ought to be revoked, may revoke the order by notice publicly notified, and shall thereupon make an entry of the revocation in the Register.

**42 Appointment of liquidator**

Where the Registrar makes a winding up order under regulation 40 or regulation 41, he may appoint one or more persons to be liquidator or liquidators of the society, subject to his direction and control.

**43 Liquidator's powers**

(1) A liquidator appointed under regulation 42 shall, subject to the guidance and control of the Registrar and to any limitations imposed by the Registrar by order under regulation 44, have power to –

(a) Determine the contributions to be made to its assets by members and past members or by the estates of deceased members of the society;

(b) Appoint by notice a day before which creditors whose claims are not already recorded in the books of the society shall state their claims for admission or be excluded from any distribution made before they have proved them;

- (c) Decide any question of priority which arises between creditors;
- (d) Refer disputes to arbitration or institution and defend suits and other legal proceedings on behalf of the society by his name or office;
- (e) Decide by what persons and in what proportions the costs of liquidation are to be borne;
- (f) Give such directions in regard to the collection and distribution of assets as may be necessary in the course of winding up the society;
- (g) Compromise any claim by or against the society provided the sanction of the Registrar has first been obtained;
- (h) Call such general meetings of members as may be necessary for the proper conduct of the liquidation;
- (i) Take possession of the books, documents, and assets of the society;
- (j) Sell the property of the society;
- (k) Carry on the business of the society as far as may be necessary for winding it up beneficially:  
Provided that nothing in this subparagraph shall entitle the liquidator of a credit society to issue any loan;
- (l) Arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Registrar.

(2) Subject to such rules as may be made in this behalf, any liquidator appointed under these regulations shall, in so far as such powers are necessary for carrying out the purposes of this regulation, have power to summon or enforce the attendance of parties and witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of the Court.

#### **44 Power of registrar to control liquidation**

A liquidator shall exercise his powers subject to the control and revision of the Registrar, who may –

- (a) Rescind or vary any order made by a liquidator and make whatever new order is required;
- (b) Remove a liquidator from office;
- (c) Call for all books, documents and assets of the society;
- (d) By order in writing limit the powers of a liquidator under regulation 43;
- (e) Require accounts to be rendered to him by the liquidator;
- (f) Procure the auditing of the liquidator's accounts and authorise the distribution of the assets of the society;
- (g) Make an order for the remuneration of the liquidator;
- (h) Refer any subject of dispute between a liquidator and any third party to arbitration if that party consents in writing to be bound by the decision of the arbitrator.

#### **45 Enforcement of order**

(1) Subject to regulation 51 the decision of an arbitrator on any matter referred to him under regulation 44 shall be binding on all parties, and shall be enforceable in the manner provided in paragraph (2).

(2) An order made by a liquidator or by the Registrar under regulation 43 or 44 may be enforced by the Court in like manner as a decree of that Court.

**46 Appeal against order of liquidator or Registrar**

An appeal against any decision made by a liquidator under regulation 43 or against any decision made by the Registrar under regulation 44 (a), may, with the written consent of the Cabinet be made to the Court in the manner and time prescribed in that written consent.

**47 Completion of liquidation and dissolution of society**

(1) In the liquidation of a society whose registration has been cancelled the funds, including the reserve fund, shall be applied first to the costs of liquidation, then to the discharge of the liabilities of the society (which shall abate rateably if the funds are insufficient), then to the payment of the share capital, and then, provided the bylaws of the society permit, to the payment of a dividend at a rate not exceeding 10 per cent per annum for any period for which no disposal of profits was made.

(2) When the liquidation of a society has been completed, notice of the completion of the liquidation shall be publicly notified by the Registrar in such manner as he thinks proper, and as from the date of that notification the society shall be deemed to be dissolved and shall cease to be a body corporate.

(3) Any surplus remaining after the completion of the liquidation shall be available for use by the Registrar for any co-operative purpose at his discretion.

PART 8

SURCHARGE OF OFFICERS

**48 Power of Registrar to surcharge officers of a registered society**

(1) Where in the course of the winding up of a registered society it appears that any person who has taken part in the organisation or management of the society or any past or present officer of the society has misapplied or retained or become liable or accountable for any money or property of the society or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar may, on the application of the liquidator or of any creditor or contributory, examine the conduct of the first-mentioned person and, notwithstanding that the at is one for which the offender may be criminally responsible and whether or not he has been charged with an offence in respect of the matter, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retainer, dishonesty, or breach of trust as the Registrar thinks just.

(2) Subject to regulation 49 , every person against whom any order is made under paragraph (1) shall forthwith comply with that order.

**49 Appeal to Cabinet**

Any person aggrieved by any order of the Registrar made under regulation 48 may appeal to Cabinet within 21 days from the date of the order, and the decision of Cabinet shall be final and conclusive.

PART 9

DISPUTES

**50 Settlement of disputes**

(1) If any dispute touching the business of a registered society arises –

- (a) Among members, past members, and persons claiming through members, past members, and deceased members; or
- (b) Between a member, past member, or person claiming through a member, past member, or deceased member, and the society, its committee, or any officer of the society; or

- (c) Between the society or its committee and any officer of the society; or
- (d) Between the society and any other registered society,

the dispute shall be referred to the Registrar for decision.

(2) A claim by a registered society for any debt or demand due to it from a member or past member or the nominee, heir, or legal representative of a deceased member shall be deemed to be a dispute touching the business of the society within the meaning of this regulation.

(3) The Registrar, may, on receipt of a reference under paragraph (1) –

- (a) Decide the dispute himself; or
- (b) Refer it for disposal to an arbitrator or arbitrators.

## **51 Appeal**

(1) Any party aggrieved by an award made under regulations 45 or 50 by the Registrar or by an arbitrator or arbitrators appointed by him may appeal therefrom in the manner and time prescribed by the rules to the Court.

(2) On an appeal under paragraph (1) the Court may dismiss the appeal or vary the award of the Registrar or arbitrator or arbitrators to make such other order as may appear just and proper, and shall make such order as to the costs of the arbitration and the appeal as it thinks fit, and the decision of the Court shall be final.

## **PART 10**

### **RULES**

## **52 Rules**

(1) Subject to these regulations, Cabinet may make all such rules as it considers necessary for the purpose of carrying out or giving effect to the principles and provisions of these regulations.

(2) In particular and without prejudice to the generality of the power conferred by paragraph (1), the rules may –

- (a) Prescribe the forms to be used, the fees to be paid, the conditions to be complied with in applying for the registration of a society, and the procedure in the matter of those applications;
- (b) Prescribe the extent to which a registered society may limit the number of its members;
- (c) Provide for the appointment, suspension, and removal of the members of the committee, and for the procedure at meetings of the committee, and for the powers to be exercised and the duties to be performed by the committee;
- (d) Regulate the manner in which funds may be raised by means of shares or debentures or otherwise;
- (e) Prescribe the conditions to be observed by a registered society applying for financial assistance from the Government;
- (f) Prescribe the payments to be made, the conditions to be complied with, and the forms of the bonds, instruments, or other documents to be executed, by members applying for loans or cash credits, the period for which loans may be made or credits granted, and the maximum amount which may be lent and the maximum credit which may be allowed to individual members with or without the consent of the Registrar;
- (g) Provide for the mode in which the value of a deceased member's interest shall be ascertained and for the nomination of a person to whom any such interest may be paid or transferred;
- (h) Provide for the mode in which the value of the interest of a member who has become of unsound mind and incapable of managing himself or his affairs shall

be ascertained and for the nomination of any person to whom any such interest may be paid or transferred;

- (i) Provide for the formation and the maintenance of reserve funds, and the objects to which those funds may be applied, and for the investment of any funds under the control of any registered society;
  - (j) Prescribe the maximum rate of dividend which may be paid by societies;
  - (k) Prescribe the accounts and books to be kept by a registered society, and for the periodical publication of a balance sheet showing the assets and liabilities of a registered society;
  - (l) Provide for the audit of the accounts of registered societies and for the charges, if any, to be made for that audit, and provide for the levy of contributions from all or any registered societies to a fund to be used for the audit and supervision of existing societies and co-operative propaganda and prescribe for the administration of any such fund;
  - (m) Prescribe the returns to be submitted by registered societies to the Registrar and the person by whom and the form in which the returns are to be made;
  - (n) Provide for the persons by whom, and the form in which, copies of entries in books of registered societies may be certified;
  - (o) Provide for the formation and maintenance of a register of members and, where the liability of members is limited by shares, of a register of shares;
  - (p) Prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or the arbitrator or arbitrators;
  - (q) Prescribe the procedure to be followed by a liquidator appointed under regulation 42;
  - (r) Prescribe the forms to be used, the fees to be paid, the procedure to be observed, and all other matters connected with or incidental to the presentation, hearing, and disposal of appeals under these regulations.
- (3) Cabinet shall publicly notify in such manner as it thinks fit rules made by Cabinet under this regulation.

## PART 11

### MISCELLANEOUS

#### **53 Recovery of sums due to Crown**

(1) All sums due to the Crown from a registered society or from an officer or member or past member of a registered society as such may be recovered in the manner provided for the recovery of debts due to the Crown under the law for the time being in force.

(2) Sums due from a registered society to the Crown and recoverable under paragraph (1) may be recovered first from the property of the society, and secondly on the winding up of the society from the members subject to the limit of their liability.

#### **54 Power to exempt from stamp duty and registration fees**

The Cabinet may, by notice in writing in the case of any registered society or class of societies remit –

- (a) The stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society, or by an officer or member, and relating to the business of the society or any class of those instruments are respectively chargeable; or
- (b) Any fee payable for registration for the time being in force.

**55 Prohibition of the use of the word “Co-operative”**

(1) No person other than a registered society shall trade or carry on business under any name or title of which the word “Co-operative” or its vernacular equivalent is part without the consent of Cabinet.

(2) Any person who commits a breach of this regulation is guilty of an offence and is liable to a fine not exceeding 0.5 penalty units and in the case of a continuing offence to a further fine not exceeding 0.5 penalty units for each day during which the offence continues.

**56** [Spent]

**57 Offences**

Every person is guilty of an offence, and is liable to a fine not exceeding 1 penalty unit, who –

- (a) Being a registered society or an officer or member of a society, wilfully neglects or refuses to do any act or to furnish any information required by or for the purposes of these Regulations by the Registrar or by any person authorised by the Registrar in writing in that behalf; or
- (b) Being a registered society or an officer or member of a society, when required to make a return or supply any information for the purposes of these regulations wilfully makes a false return or supplies false information; or
- (c) Wilfully or without reasonable cause disobeys any summons, requisition, or lawful written order issued under these Regulations.

**58 Penalty for soliciting violation of contract**

Any person who, having knowledge or notice of the existence of a contract described in regulation 14, solicits or persuades any person to sell or deliver any article in violation of that contract is guilty of an offence and is liable to a fine not exceeding 0.5 penalty units and shall in addition be ordered to pay to the society concerned such damage as to the court may seem fit.



## DENTAL REGULATIONS 1970

SR 1970/104 – 25 May 1970

### 1 Title

These are the Dental regulations 1970

### 2 Meaning of “practice of dentistry”

In these regulations, “practice of dentistry” includes –

- (a) The performance of any operation, and the treatment of any diseases, deficiencies, or lesions, on or of the human teeth or jaws, and the correction of malpositions thereof and the performance of radiographic work in connection with the human teeth or jaws;
- (b) The giving of any anaesthetic in connection with any operation on the human teeth or jaws;
- (c) The mechanical construction or the renewal of artificial dentures or restorative dental appliances;
- (d) The performance of any operation on, or the giving of any treatment, advice, or attendance to, any person, as preparatory to or for the purpose of or for or in connection with the fitting, insertion, fixing, constructing, repairing, or renewing of artificial dentures or restorative dental appliances;
- (e) The performance of any such operation and the giving of any such treatment, advice, or attendance as is usually performed or given by registered dentists.

### 3 Practice of dentistry

(1) No person shall practise dentistry in Niue or hold himself out, whether directly or by implication, as practising or being entitled to practise dentistry in Niue, unless he is registered in New Zealand as a dentist.

(2) Notwithstanding anything in paragraph (1) –

- (a) A graduate in dentistry of the Fiji School of Medicine, or any person who has such knowledge of and training in dentistry as are in the opinion of Cabinet equal to that of such a graduate, may practise dentistry in Niue as an employee of the Niue Public Service subject to the general control of the Director of Health;
- (b) A medical officer and any other person qualified to practise medicine or surgery in Niue may perform any dental operation, or do any other act that is within the meaning of “practice of dentistry”, in the ordinary course of practice as such or in any case where the services of a person qualified to practise dentistry in Niue are not obtainable;
- (c) Any person may extract a tooth where the case is urgent and no person qualified to practise dentistry in Niue and no person referred to in paragraph (b) and (c) is available, provided the operation is performed without the application of any general or local anaesthetic;
- (d) Any person acting under the direction of a person entitled to practise dentistry in Niue may construct or renew artificial dentures or restorative dental appliances.

(3) Every person commits an offence who does any act in contravention of this regulation, and is liable to a fine not exceeding 0.5 penalty units and in the case of a continuing offence, to a further fine not exceeding 0.5 penalty units for every day on which the offence has occurred.

## GAMING (FEES) REGULATIONS 2005

2005/4 – 24 June 2003

### 1 Title

These are the Gaming (Fees) Regulations 2005.

### 2 Permitted gambling activities

The gambling activities set out in the Schedule are permitted in Niue, subject to the restrictions and payment of fees set out in the Schedule.

### 3 Gambling permit

No person except –

- (a) A society incorporated under the Incorporated Societies Act 1908, and whose objects are principally sport, recreational or purposes of benefit to the community;
- (b) An unincorporated body of persons associating for sporting, recreational or purpose of benefit to the community, and which –
  - (i) is substantially permanent in nature; and
  - (ii) has a standing committee; and
  - (iii) operates a bank account,

shall permit any person to be engaged in on any premises for the time being occupied by it or until its control, any gambling activity except pursuant to and in accordance with the terms and conditions of a permit issued under these Regulations.

### 4 Application for permit

(1) Every application for a permit under these Regulations shall be made in writing to the Chief of Police, and shall be in such form and contain such information as the Chief of Police may require;

(2) On receipt of an application for a gambling permit, the Chief of Police may –

- (a) Approve the application either wholly or in part, and subject to such terms and conditions as the Chief of Police may think fit to impose; or
- (b) Decline the application.

### 5 Offences

Any person who contravenes these Regulations or fails to comply with a term or condition of a permit commits an offence.

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### SCHEDULE

Permitted Activity	Limit	Permit Fee
Raffle (per raffle)	\$500.00	\$10.00
Major raffle (per raffle)	Over \$500.00	\$50.00
Housie or bingo (per session)	\$100.00	\$20.00
Housie or bingo (for a jackpot competed for over a series of games)	\$500.00	\$20.00
Card games (per game per session)	\$50.00	\$20.00
Coin-operated machines (per machine per year)	\$50.00	\$20.00
Break-open, scratch card or other instant prize games	\$50.00	\$20.00



## HIGH COURT RULES 1916

SR 1962/204 – 9 March 1916

- 1 These are the High Court Rules 1916.
- 2 Every civil proceeding shall be instituted either by way of action, or by way of petition, or by way of motion, in accordance with the following Rules.
- 3 The following proceedings shall be instituted by way of action:
  - (a) Every proceeding for the recovery of debt or damages;
  - (b) Every proceeding for the recovery of land or chattels;
  - (c) Every proceeding for injunction, prohibition, or mandamus;
  - (d) [Repealed]
  - (e) Every proceeding which by the law for the time being in force in New Zealand must, if instituted in the High Court, be commenced by writ of summons or originating summons.
- 4 Every proceeding against the Crown shall be commenced by way of petition.
- 5 All other civil proceedings not being proceedings for a decree of divorce or nullity of marriage may be commenced by way of motion.

### *Actions*

- 6 Every action shall be commenced by filing with a Registrar of the Court a statement of claim intituled “In the High Court of Niue” setting forth the names and descriptions of the plaintiff and defendant, the nature of the cause of action, and the relief claimed. Forms similar to those in Schedule 1 may be used.
- 7 On the filing of the statement of claim the Registrar shall thereupon issue, under the seal of the Court, a summons to the defendant in form 1 of Schedule 2, requiring the defendant to appear at the trial of the action at the time and place mentioned in the summons. A copy of the statement of claim shall be annexed to the summons.
- 8 –
- 9 The time and place of the trial of the action shall be determined by the Registrar as he thinks fit, and shall be stated in the summons accordingly.
- 10 As against any defendant who consents to trial without summons, an action duly commenced by the filing of a statement of claim may be tried and determined without the issue or service of any summons.
- 11 No pleadings other than the statement of claim shall be required in any action.
- 12 The Court may require a plaintiff at or before the trial of the action to file a fuller and more explicit statement of his claim, and may stay further proceedings in the action until this has been done.
- 13 A plaintiff may at any time before or during the trial amend his statement of claim with the leave of the Court.

- 14** (1) The summons to a defendant may, as the Registrar thinks fit, be served either by an officer of the Court or by the plaintiff or his agent.  
(2) Proof of service may be made either by affidavit or by a witness at the trial.
- 15** (1) The summons shall be served on the defendant in person.  
(2) Where there are more defendants than one, a separate summons shall, except in the case of a firm of partners, be issued and served on each defendant.
- 16** The summons may be served upon a corporation by leaving the same at any place of business of the corporation.
- 17** When partners are sued as partners they may be sued either in the firm name or in the names of the partners, and in either case the summons may be served by delivering it to any one of the partners or by leaving it at any place of business of the firm.
- 18** When a defendant is not in Niue but has an attorney or agent authorised to defend actions on his behalf, the summons may by leave of the Court be served upon such attorney or agent.
- 19** The summons may be served anywhere in Niue but not elsewhere except in accordance with the provisions of these Rules for service outside Niue.
- 20** If it appears to the Court that reasonable efforts have been made to effect service of the summons, and either that the summons has come to the knowledge of the defendant or that prompt personal service thereof cannot be effected, the Court may order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as the Court thinks fit to impose.
- 21** A summons may be served out of Niue by leave of the Court –  
(a) Where the cause of action or some material part thereof has arisen in Niue;  
(b) Where the subject-matter of the action is property situated in Niue;  
(c) Where it is sought to compel or restrain the performance of any act in Niue.
- 22** Every application for an order for leave to serve a summons out of Niue shall be supported by evidence by affidavit or otherwise, showing in what place or country the defendant is or probably may be found, and whether the defendant is a New Zealand subject or not, and the grounds on which the application is made.
- 23** If in any action a summons has become inoperative by reason of not being served in due time, or if for any other reason it is considered expedient to issue a further summons to the same defendant, a further summons may be issued accordingly in the same manner as if no previous summons had been issued.
- 24** No action shall be deemed improperly constituted because of the joinder of plaintiffs or defendants or of different causes of action; but the Court may, in any case in which such joinder is considered embarrassing or otherwise expedient order any party or cause of action to be struck out.
- 25** Where there are numerous persons having the same interest in an action one or more of them may sue or be sued, or may be authorised by the Court to defend in such action, on behalf of or for the benefit of all persons so interested.

- 26** The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as appear to the Court to be just, order that the name of any party, whether a plaintiff or a defendant, improperly joined be struck out, and that the name of any person who ought to have been joined, or whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added, whether as plaintiff or defendant.
- 27** No person shall be added as a plaintiff without his own consent.
- 28** Infants and lunatics may sue and be sued by a guardian *ad litem* admitted for that purpose by the Court.
- 29** A guardian *ad litem* may be removed by the Court upon sufficient cause being shown.
- 30** In the case of the death, retirement, or removal of an *ad litem* a fresh guardian shall be appointed by the Court.
- 31** A guardian *ad litem* shall not be permitted to retire without the leave of the Court.
- 32** The guardian *ad litem* shall be liable for the costs of the action.
- 33** In an action against an infant or a lunatic the statement of claim may be filed before the appointment of a guardian *ad litem*, but no further steps in the action shall be taken until such appointment has been made.
- 34** A summons to a witness in any civil proceeding may be in form 2 in Schedule 2.
- 35** Any such summons may be served either by the proper officer of the Court or by the party at whose instance the witness is summoned or his agent.
- 36** –
- 37** Witnesses in civil proceedings, whether summoned or not, shall be entitled to such payment in respect of their expenses and loss of time as the Court awards.
- 38** If the claim in any action is for a sum of money the defendant may, before trial of the action, pay into Court a sum of money by way of satisfaction, and give notice of such payment to the plaintiff.
- 39** Any money paid into Court as aforesaid may be paid out to the plaintiff or his duly authorised agent, but the receipt thereof shall not affect the right of the plaintiff to proceed with the action for the recovery of any further sum claimed and not so paid into Court.
- 40** The fact that money has been so paid into Court shall be taken into consideration in the award of costs as between the plaintiff and defendant.
- 41** The plaintiff may at any time before trial discontinue his action, either wholly or as to any cause of action, by filing in Court a memorandum of discontinuance.
- 42** A copy of such memorandum shall be served upon the defendant.
- 43** On any such discontinuance the Court may award to the defendant such costs of the action as it thinks fit.

44 The discontinuance of an action shall not be a defence to any subsequent action on the cause of action discontinued, provided that the costs of the previous action so awarded have been paid.

45 No judgment shall be given in any action by default, and every action shall be heard and determined in the ordinary course whether the defendant appears on the trial or not.

46 If on the trial of any action the plaintiff does not appear, the Court may either adjourn the trial, or give judgment for the defendant, or nonsuit the plaintiff.

47 The plaintiff in any action may at any time before judgment elect to be nonsuited, and the Court may nonsuit the plaintiff without his consent.

48 After a nonsuit the plaintiff shall not be debarred from commencing a further action on the same cause of action, all the costs of the first action having been first paid.

49 No action shall be tried by a jury.

50 The parties to any action may concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court.

51 Every such special case shall concisely state such facts and documents as may be necessary for the decision of the questions raised therein.

52 On the argument of the special case the Court shall be at liberty to draw from the facts and documents so stated any inference of fact which might have been drawn therefrom if proved at the trial.

53 On the argument of the questions of law raised in such special case the Court may give judgment in the action, or may order the issues of fact or any of them to be tried before giving judgment.

54 Every judgment debt in excess of \$200 shall carry interest at the rate of 6 per cent per annum from the time of judgment being given until the same is satisfied, and such interest may be levied under any writ of execution upon such judgment.

#### *Executions*

55 A writ of sale may be in form 3 in Schedule 2.

56 A writ of possession may be in form 4 in Schedule 2.

57 A charging order under section 92 of the Niue Act 1966 may be made by the Court *ex parte* on the application of the judgment creditor, and shall specify the property to which it relates.

58 So long as any such order remains in force the amount of the judgment debt shall constitute an equitable charge upon the property specified in the order.

59 For the purpose of enforcing any such charge the Court may, and either on the making of the charging order or any time thereafter, on the *ex parte* application of the judgment creditor, make such order or orders as it thinks fit against all persons concerned –

- (a) For the appointment of a receiver of the rents, profits, or revenues of any property so charged; or
- (b) For the payment into Court in satisfaction of the judgment of any such rents, profits, or revenues, or of any moneys subject to the charge; or
- (c) For the sale of any such property by an officer of the Court, disobedience to any order so made shall constitute a contempt of Court.

**60** Any charging order, or any order so made in pursuance of a charging order, may be at any time cancelled or varied on the application either of the judgment debtor or the judgment creditor, or of any other person concerned.

**61** An application for an order against a judgment debtor under section 94 of the Niue Act 1966 may be in form 5 in Schedule 2.

**62** A judgment summons under section 95 of the Niue Act 1966 may be in form 6 in Schedule 2.

**63** Every such judgment summons shall be served in the same manner as a summons to a defendant on the commencement of an action, and all the provisions of these Rules as to the place and time of the hearing of an action shall apply also to the hearing of the application in respect of which such judgment summons is issued.

#### *Motions*

**64** Every civil proceeding not required to be commenced by way of action or petition may be commenced by way of motion.

**65** Every interlocutory motion may be made either verbally in open Court or by filing with a Registrar an application setting forth briefly the nature and grounds of the relief sought by the applicant.

**66** Every originating motion shall be made by filing with a Registrar an application setting forth briefly the nature and grounds of the relief sought by the applicant.

**67** Motions may be made in the forms set forth in Schedule 3 or in forms to the like effect.

**68** (1) Except where otherwise provided, or where the Court is satisfied that the nature of the motion is such that it may properly be made and determined *ex parte*, every motion shall be heard and determined only after due notice has been given to such persons as the Court may consider entitled thereto.

(2) All persons to whom notice has been given by the direction of the Court, or who appear on the hearing of the motion, shall be deemed to be parties to the proceeding.

**69** Every proceeding which may be commenced by originating motion may, if the applicant thinks fit, be commenced by way of action instead.

**70** Applications under section 13 of the Niue Amendment Act (No 2) 1968 for the assessment of compensation shall be made by motion of the Cabinet or by any person claiming such compensation or any share thereof, and notice of such application shall be given to such persons interested as the Court directs.

**71** Applications under Part 7 of the Family Law Code 2007 for an affiliation order or maintenance order may be made by motion, with notice thereof to the defendant, except in cases in which the Court is authorised to hear the application *ex parte* under section 101 of the Family Law Code 2007.

*Probate and Letters of Administration*

**72** Probate of any will may be granted by the Court in form 7 in Schedule 2.

**73** Letters of administration of the estate of an intestate may be granted by the Court in form 8 in Schedule 2.

**74** Letters of administration with the will annexed may be granted by the Court in form 9 in Schedule 2.

**75** The security to be given by an administrator may be in form 10 in Schedule 2.

**76** In the case of a person residing out of Niue, administration, with or without a will annexed, may be granted to his attorney acting under a power of attorney.

**77** (1) Every executor or administrator shall, within 12 months after the grant of probate or letters of administration, or within such further period as the Court on application may direct, lodge with the Registrar a full and distinct account in writing of his administration of the estate.

(2) The account shall be verified by affidavit.

**78** If an executor or administrator makes default in filing such an account within the time aforesaid, or if any account so filed is insufficient, the Court may on the application of any person interested, or on the application of the Registrar, order the executor or administrator to file an account or a further account within such time as the Court in such order appoints, and disobedience to such order shall be a contempt of Court.

*Proceedings Under the Customs Act 1966*

**79** (1) Every penalty imposed by the Customs Act 1966 and recoverable in the High Court may be recovered by action in the name and on behalf of the Government of Niue as a debt due to the Crown.

(2) The High Court may give leave to serve out of Niue the summons in any action for the recovery of any such penalty or any duty under the Customs Acts.

(3) The judgment in an action for the recovery of any such penalty may be enforced by way of proceedings for contempt of the Court, and the failure of the defendant to satisfy such judgment shall constitute a contempt of Court accordingly.

(4) Any person imprisoned for such contempt shall be released from custody on satisfaction of the judgment.

(5) Proceedings for contempt shall not preclude any other method of execution which would otherwise be available.

**80** Every prosecution in the High Court for an offence against the Customs Act 1966 shall be commenced by an information laid by an officer of Customs in accordance with the ordinary criminal procedure of the High Court.

**81** Every person arrested in Niue for an offence against the Customs Act 1966 under section 267 of that Act shall be brought before a Judge or Commissioner of the High Court.



- 82** (1) Proceedings in the Court under the Customs Act 1966 for the condemnation of goods seized as forfeited shall be instituted by way of motion by an officer of customs, anything in the Customs Act 1966 to the contrary notwithstanding.
- (2) Notice of the proceedings shall be given to such persons and in such manner as the Court directs, and it shall be sufficient if public notice is given by advertisement or otherwise at or near the place of seizure.
- (3) Any person claiming to be interested in the goods may appear to oppose the application, and shall thereby become a party to the proceedings.
- (4) If any person appears to oppose the application the Court shall hear and determine the matter and acquit or condemn the goods, but if no person so appears judgment of condemnation shall be given.
- (5) In this regulation “goods” includes any boat, vehicle, or other thing forfeited under the Customs Acts.

*Jurisdiction of Commissioners*

- 83** A Commissioner of the High Court shall have jurisdiction –
- (a) In actions for the recovery of any debt or damages not exceeding \$1,500 in amount;
  - (b) In actions for the recovery of chattels not exceeding \$1,500 in value;
  - (c) In criminal proceedings for any offence punishable by fine only;
  - (d) In criminal proceedings for any offence specified in Schedule 6;
  - (e) In civil proceedings under Part 7 of the Family Law Code 2007.
- 84** A Commissioner of the High Court shall not have power to impose any fine exceeding 2 penalty units or to impose any term of imprisonment exceeding one year, whatever may be the maximum fine or term of imprisonment provided by law for the offence.
- 84A** (1) A Commissioner and two Justices of the Peace sitting together shall have jurisdiction for the purpose of entering a conviction and imposing sentence only in criminal proceedings in charges, other than those specified in rule 83 (c) and (d) punishable by imprisonment for terms not exceeding ten years and in respect of which a plea of guilty has been entered by any defendant.
- (2) No such sentence imposed shall have any effect unless and until the same is either confirmed or varied by the Chief Justice under rule 84B.
- 84B** (1) The Chief Justice shall within one month of the receipt by him of a copy of the sentence imposed under rule 84A duly verified by the Registrar of the seal of the Court together with such information as he may require –
- (a) Confirm the sentences as imposed; or
  - (b) Vary the sentence either by reducing or increasing the same in which case the sentence as varied shall become the sentence of the Court; or
  - (c) Order a rehearing of the proceedings in respect of which the sentence has been imposed.
- (2) The Chief Justice shall report in writing his decision on the certified copy of the sentence and transmit the same to the court of origin which will either cause the sentence as so confirmed or varied to be executed or grant a hearing if so ordered.
- (3) Any sentence fixed under this rule shall be deemed to be a final judgment of the High Court for the purposes of article 55A of the Constitution.

**84C** (1) Pending sentence by the Court under rule 84A, the Court may remand the defendant at liberty or release him on bail subject to such conditions as it deems fit to appear for sentence when called upon by notice given not earlier than 48 hours of the date fixed for such purpose or remand him in custody pending sentence.

(2) Any period of remand in custody shall not be greater than 2 months.

**85** Save as aforesaid, a Commissioner or a Commissioner and two Justices of the Peace sitting together shall not exercise any of the powers or functions, whether judicial or administrative, of a Judge of the Court.

**86** In these Rules “Judge” includes a Commissioner of the High Court in respect of all matters within the jurisdiction of a Commissioner.

*Criminal Proceedings*

**87** An information of a criminal offence may be in form 1 in Schedule 4.

**88** The summons to the defendant in a criminal proceeding may be in form 2 in Schedule 4.

**89** The summons to a witness in a criminal proceeding may be in form 3 in Schedule 4.

**90** A warrant issued by a Judge for the arrest of any person suspected of a criminal offence may be in form 4 in Schedule 4.

**91** A warrant issued by a Judge of the Court for the arrest of an accused person may be in form 5 in Schedule 4.

**92** A Judge’s warrant for the committal for trial or the release on bail of a person arrested on suspicion of a criminal offence may be in form 6 in Schedule 4.

**93** The recognisance to be entered into by a prisoner admitted to bail by a Judge may be in form 7 in Schedule 4.

**94** Assessors in a criminal trial may be appointed by warrant in form 8 in Schedule 4.

**95** A conviction may be formally drawn up and sealed in form 9 in Schedule 4.

**96** A warrant of commitment to prison for default in the payment of a fine may be in form 10 in Schedule 4.

**97** A search warrant may be in form 11 in Schedule 4.

**98** The remuneration and allowances payable to an assessor in a criminal trial shall be such as the Court in each case thinks fit and directs, but shall not exceed \$3 per day in addition to travelling expenses actually incurred and paid.

**99** The expenses of a witness at a criminal trial, to be certified by the Judge for payment out of Treasury, shall be such as the Judge thinks fit, not exceed \$3 a day in addition to travelling expenses actually incurred and paid.



*Miscellaneous*

**100** There shall be payable in respect of proceedings in the Court the fees set forth in Schedule 5.

**101** If it appears to the satisfaction of the Court that any party is unable or ought not to be called upon to pay any of the fees mentioned in Schedule 5, the Court may dispense with the payment or may reduce the amount .

**101A** In any appeal from the judgment of a Commissioner of the High Court to a Judge of the High Court –

- (a) If it appears to any Commissioner or Registrar of the Court, or to any Justices of the Peace acting together, that the appellant is unable to pay the fees payable in respect of the appeal, the Commissioner or Registrar or Justices of the Peace may dispense with the payment of the fees or may reduce the amount thereof;
- (b) If the appellant succeeds in his appeal, the fees paid by him shall be returned to him.

**102** The Court or the proper officer thereof may refuse to take any step in the course of any proceedings until the proper fee therefor, together with all other fees already due and unpaid in respect of the same proceedings, have been fully paid.

**103** Such variations in the forms prescribed in the Schedules may be made as the circumstances of any particular case may require.

**104** All documents filed in or issued from the Court may be either in English or in Niuean.

**105** Non-compliance with any of these Rules shall not render the proceedings void, but the proceedings may be set aside, either wholly or in part, as irregular, or amended, or otherwise dealt with in such manner and on such terms as the Court may deem just.

**106** The jurisdiction of the Court in any proceeding may be exercised from time to time by any of the Judges of the Court and at any time or place, notwithstanding that the proceeding may not have been duly continued by adjournment from time to time or from place to place.

**107** (1) If at the time and place of trial stated in any summons or notice to a defendant or other party in any civil or criminal proceeding, or in any summons to a witness, or at the time and place to which the trial or hearing of any action, prosecution, or other proceeding has been adjourned, a Judge of the High Court is not present, a Registrar, if present, may adjourn the Court to another time and to the same or any other place.

(2) If within one hour after the time so stated in any such summons or notice, or appointed by any adjournment, a Judge is not present and no adjournment by the Registrar has taken place, the Court shall be deemed to be adjourned to the same place on the next succeeding day at the hour stated in the summons or notice, or at any other hour so appointed by adjournment, and so on.

(3) On every such adjournment the summons or notice shall have the same effect as if the time and place to which the Court is adjourned had been set forth in the summons or notice.

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SCHEDULE 1

In the High Court of Niue  
Between A.B., of Niue, Plaintiff, and C.D., of Niue, Defendant

The plaintiff claims the sum of \$20 due to him as the price of goods sold and delivered by him to the defendant, particulars whereof are as follows:

[Or]

The plaintiff claims \$100 as damages for an assault committed against him by the defendant on the ..... day of .....20 ....., at .....

[Or]

The plaintiff claims possession of certain chattels wrongfully detained by the defendant – namely,  
. . . . .

[Or]

The plaintiff claims the sum of \$200 as damages for a breach of contract committed by the defendant under the following circumstances: [Setting out the facts].

---

SCHEDULE 2

Form 1

SUMMONS TO A DEFENDANT

In the High Court of Niue  
Between A.B., of....., Plaintiff, and C.D., of..... Defendant

You are hereby summoned to appear and defend this action at the trial thereof before the High Court on ....., the ..... day of ....., 20....., at .....o'clock in the .....noon, at [*Place of trial*]. A copy of the statement of claim is annexed.

To the above-named defendant.

[SEAL]

.....  
Registrar.

---

Form 2

SUMMONS TO WITNESS

In the High Court of Niue  
Between A.B., of ....., Plaintiff, and C.D., of ....., Defendant

You are hereby summoned to appear before the High Court at .....on ....., the ..... day of ....., 20....., at ..... o'clock in the .....noon, there to give evidence as to the matters in question in this action; and you are further required to bring with you and produce to the Court the following documents, namely:  
Herein fail not at your peril.

[SEAL]

.....  
Registrar.

To.....

Niue

Form 3  
WRIT OF SALE

In the High Court of Niue  
Between A.B., of ..... Plaintiff, and C.D., of....., Defendant

You are hereby directed to make of the chattels of ....., the above-named defendant, the sum of ....., which the above-named plaintiff has recovered against him in this Court by virtue of a judgment given on the ..... day of ....., 20....., (together with interest upon the said sum at the rate of \$12 for every \$200 by the year from the said ..... day of ....., 20.....), and cause that money (with such interest as aforesaid) immediately after the execution hereof to be rendered to the said plaintiff.

Dated this.....day of ....., 20.....

[Seal]  
To [*Officer of the Court or a constable*].

.....  
Registrar.

---

Form 4  
WRIT OF POSSESSION

In the High Court of Niue  
Between A.B., of ....., Plaintiff, and C.D., of ..... Defendant

You are hereby directed to deliver to ....., the above-named plaintiff, possession of all that parcel of land being [*Here describe the land so as to identify it*], in pursuance of a judgment obtained in this Court by the said plaintiff against the said defendant on the ..... day of ....., 20.....

Dated the .....day of ....., 20 .....

[Seal]  
To [*Officer of the Court or a constable*]

.....  
Registrar.

---

Form 5  
MOTION FOR ORDER FOR PAYMENT OF JUDGEMENT DEBT

In the High Court of Niue  
Between A.B., of ....., Judgment creditor, and C.D., of..... Judgment debtor.

The above-named judgment creditor makes application for an order under section 94 of the Niue Act 1966 for the payment by the above-named judgment debtor of the sum of ....., for which judgment was obtained in this Court on the .....day of ....., 20....., and which is still unpaid.

Niue Legislation 2019

Form 6  
JUDGMENT SUMMONS

In the High Court of Niue

Between A.B., of ....., Judgment creditor, and C.D., of ....., Judgment debtor.

Take notice that you are hereby summoned to appear before this Court at .....on .....the .....day of ....., 20....., at .....o'clock in the .....noon, to show cause why an order under section 94 of the Niue Act 1966 should not be made against you for the payment of the sum of ..... due by you to the above-named judgment creditor under a judgment obtained against you in this Court on the .....day of ....., 20.....

For disobedience to any order which may be so made against you, you will be liable to imprisonment.

[SEAL]

To the above-named judgment debtor.

.....  
Registrar

---

Form 7  
PROBATE

In the High Court of the Niue

In the matter of the will of ....., deceased. Be it known to all men that on this .....day of ....., in the year 20....., the last will and testament of ....., deceased, a copy of which is hereunto annexed; has been exhibited, read, and proved before this Court and administration of the estate of the deceased has been and is hereby granted to ....., the executor in the said will and testament named, being first sworn faithfully to execute the same.

Given under the seal of the High Court of Niue at ....., this ..... day of .....20 .....

[SEAL]

.....  
Registrar.

---

Form 8  
LETTERS OF ADMINISTRATION WITHOUT A WILL

In the High Court of Niue

In the matter of the estate of ....., deceased intestate.

To....., widow [*or as the case may be*] of deceased.

Whereas the said .....lately departed this life intestate: You are therefore by these presents constituted administrator of the estate of the said deceased, you having been first sworn well and faithfully to administer the same.

Given under the seal of the High Court of Niue at ....., this .....day of ..... 20.....

[SEAL]

Niue

Form 9

LETTERS OF ADMINISTRATION WITH THE WILL ANNEXED

In the High Court of Niue

In the matter of the will ....., deceased. To....., widow [or as the case may be] of deceased.

Whereas the said .....lately departed this life leaving a will which has been duly proved in this Court and a coy of which is annexed: and whereas no executor is named in that will [or the executors named in that will have not applied for probate]: you are therefore by these presents constituted administrator with the will annexed of the estate of the said deceased, you having been first sworn well and faithfully to administer the same.

Given under the seal of the High Court of Niue at ....., this ..... day of ....., 20.....

[SEAL]

Form 10

ADMINISTRATION BOND

In the High Court of Niue

In the matter of the estate of ....., deceased. Know all men by these presents that we .....are held and firmly bound unto the Registrar of the High Court at Niue in the sum of ....., for which payment well and truly to be made to the said Registrar we do and each of us does bind ourselves and each of us, and the executors and administrators of us and of each of us, jointly and severally, firmly by these presents.

Whereas by order of this Court of the ..... day of .....20....., it is ordered that letters of administration of the estate of ....., deceased, be granted to the said ..... on his giving security for the due administration thereof: and whereas .....has sworn that to the best of his knowledge and belief the said estate is under the value of \$.....

Now, the condition of the above-written bond is that if the above-bounden .....well and truly administers the said estate according to law and renders to this Court a true and just account of his administration on or before the .....day of .....20....., then this bond shall be void and of none effect, but otherwise shall remain in full force.

Signed the ..... day of ....., 20....., in the presence of –  
.....

SCHEDULE 3

FORMS OF MOTIONS

In the High Court of Niue

In the matter of the will of A.B., of ..... deceased. The applicant, C.D., of ....., claims probate of the will of the above-named deceased, who died at .....on the .....day of ....., 20....., on the ground that he is the executor named in the said will.

[Or]

In the High Court of Niue

In the matter of A.B., a minor. The applicant, C.D., of ....., claims the custody of A.B., a minor, on the ground that the minor is the child of the applicant and that possession of the minor is wrongfully detained by E.F. of .....

[Or]

In the High Court of Niue

In the matter of A.B., a prisoner. The applicant, A.B., of ....., claims release from detention in the prison at ....., on the ground that he is there detained unlawfully under a warrant issued without jurisdiction.

[Or]

In the High Court of Niue

In the matter of A.B., a person of unsound mind. The applicant, C.D., Chief Medical Officer of Niue, claims an order committing the said A.B. to medical custody on the ground that he is of unsound mind.

[Or]

The applicant, A.B. of ....., claims a maintenance order against the defendant in favour of the applicant and her children, on the ground that the defendant, being the husband of the applicant, has failed to provide her and her children with adequate maintenance.

SCHEDULE 4

Form 1

INFORMATION

In the High Court of Niue

Between A.B. Informant, and C.D., Defendant

INFORMATION

A.B., of ....., comes before me ....., a Judge of this Court, and informs me (on oath) that he has just cause to suspect and does suspect that C.D., of ....., did on the ..... day of ....., 20....., at ....., steal [*Describe the article stolen*], being the property of E.F. and of a value not exceeding \$4 [or not exceeding \$100, or exceeding \$100]; and also that the said C.D. did, on the .....day of ....., 20....., at ....., break and enter the dwellinghouse of E.F. with intent to commit theft therein. [*Signature of Informant.*]

Taken before me, at ..... this ..... day of ....., 20.....

A Judge of the High Court.

Form 2

SUMMONS TO ACCUSED

In the High Court of Niue

Between A.B., Informant, and C.D., Defendant

Whereas an information has been laid against you by the above-named informant that on the ..... day of ....., 20....., at ..... you did [*Setting our charge as stated in information*]:

You are therefore summoned to appear before this Court on ....., the ..... day of ....., 20....., at ..... o'clock in the ..... noon, at [*Place of trial*], there to answer the charge so made against you.

Dated this ..... day of ..... 20.....

[Seal]

Judge of the High Court.

To the above-named defendant.

Niue

Form 3

SUMMONS TO WITNESS IN CRIMINAL PROCEEDINGS

In the High Court of Niue  
Between A.B., Informant, and C.D., Defendant

Whereas an information has been laid against the above-named defendant that on the ..... day of ....., 20....., at ....., he did [*Setting out charge as in information*]: And whereas it has been made to appear to me that you are able to give evidence relative to the charge so made.

You are therefore hereby summoned to appear before the High Court on ....., the ..... day of ....., 20....., at ..... o'clock in the ..... noon, at [*Place of trial*], there to testify what you know concerning the said charge [and you are hereby required to bring with you and produce to the Court the following documents, namely .....].

Herein fail not at your peril.

.....  
Judge [*or Registrar*] of the High Court.

[SEAL]

To [*Name and description of witness*]

Form 4

MAGISTRATE'S WARRANT FOR ARREST OF ACCUSED

Whereas it has been made to appear to me that C.D., of ....., is justly suspected of the murder of E.F. [*or of having stolen the goods of E.F., or otherwise setting out the offence*]:

You are therefore hereby authorised and directed forthwith to arrest the said C.D. and bring him before a Judge of the High Court of Niue, there to be dealt with according to law; and for so doing this shall be your warrant.

Dated this..... day of ..... 20.....

.....  
Cabinet [*or Registrar of the High Court, or Medical Officer, or as the case may be*]

To all constables in Niue.

Form 5

JUDGE'S WARRANT FOR ARREST OF ACCUSED

In the High Court of Niue  
Between A.B., Informant and C.D., Defendant

Whereas information has been laid against the above-named defendant that on the ..... day of ....., at....., he did [*Setting out charge as in information*]:

You are hereby required and authorised to arrest the said defendant and bring him forthwith before a Judge of this Court, there to answer the charge so made against him, and for so doing this shall be your warrant.

Dated this ..... day of ....., 20.....

.....  
Judge of the High Court.

[SEAL]

To all constables in Niue.

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Form 6

WARRANT FOR COMMITTAL TO PRISON OR RELEASE ON BAIL

Whereas A.B. has been brought before me in custody charged with the offence of stealing the goods of C.D. [or as the case may be]:

Now, therefore, I hereby commit the said A.B. to the prison at ....., there to await his trial for the said offence before the High Court of Niue.

[Or]

Now, therefore, I hereby admit the said A.B. to bail, with two sureties [or as the case may be] in the sum of \$..... to appear before the High Court of Niue at the next sitting of that Court held by a Judge thereof [or by a Commissioner thereof] in the place of..... for trial for the said offence.

Dated this ..... day of ....., 20.....

.....  
Cabinet [or Registrar of the High Court, or Medical Officer, or as the case may be.]

Form 7

RECOGNISANCE OF PRISONER ADMITTED TO BAIL

Know all men by these presents that we [Defendant and his sureties] are held and firmly bound unto the Government of Niue in the sum of \$....., for which payment to be well and truly made to the Government of Niue we do and each of us doth bind ourselves and each of us, and the executors and administrators of us and of each of us, jointly and severally, firmly by these presents.

Whereas the above-named defendant has been arrested on a charge of ....., and has been admitted to bail to await his trial for that offence before the High Court of Niue.

Now, therefore, the condition of this bond is that if the said defendant appears before the said Court in due course for trial for the said offence at the next sitting of the said Court held by a Judge thereof [or by a Commissioner thereof] in the place of ....., then this bond shall be void and of no effect, but otherwise shall remain in full force.

Signed this .....day of ....., 20.....

[SEAL]

.....  
Judge.

Form 8

WARRANT OF APPOINTMENT OF ASSESSORS

In the High Court of Niue  
Between A.B., Informant, and C.D., Defendant

Whereas C.D. is accused in this Court of the murder of E.F. [or as the case may be]: And whereas (in pursuance of an order made by this Court in that behalf) the trial of the said accused must take place before assessors:

Now, therefore, I do hereby appoint as assessors for the said trial the persons following, being duly qualified by law in that behalf.....

Dated this .....day of ....., 20.....

[SEAL]

.....  
Judge.



Niue

Form 9  
CONVICTION

In the High Court of Niue  
Between A.B., Informant, and C.D., Defendant

Be it remembered that on the ..... day of ....., 20....., at .....,  
C.D., ....., is convicted before this Court ..... on the information of A.B.,  
....., for that on the ..... day of ....., 20....., at  
....., he did [*Set out the offence*]; and it is adjudged that the said C.D. for his said offence  
shall be imprisoned in the prison at ..... for the space of .....  
Given under my hand and the seal of the said Court, the day and year first above written.

[SEAL]

.....  
Judge of the High Court.

---

Form 10

WARRANT OF COMMITMENT FOR DEFAULT IN PAYMENT OF FINE In the  
High Court of Niue

Between A.B., Informant, and  
C.D., Defendant.

Whereas on the ..... day of ....., 20....., the above-named defendant was  
convicted in this Court of the offence of ....., and sentenced to pay a fine of  
.....: And whereas the said fine remains unpaid:  
It is ordered that the said defendant be imprisoned for the term of ..... from the date of  
this order, or until the said fine shall be sooner paid.  
Dated this ..... day of ....., 20.....

[SEAL]

.....  
Judge.

---

Form 11

SEARCH WARRANT

Whereas it has been made to appear to me, on the oath of A.B., that there is reasonable ground for  
believing that there are in the dwellinghouse of C.D. (*or as the case may be*) at ..... certain  
goods in respect of which an offence has been committed against the Customs Act 1966 (*or as the case  
may be*):  
Now therefore, I hereby authorise you to search such dwellinghouse for such goods and to seize the  
same and bring them before me; and for so doing this shall be your warrant.  
Dated this ..... day of ....., 20.....

.....  
Officer of Customs [*or as the case may be*]

To E.F., Constable.

# Niue Legislation 2019

## SCHEDULE 5

### COURT FEES

#### *Civil Proceedings*

1 In actions where a sum of money or any property is claimed—

	Sum of Money or Value of the Land or Chattel Claimed					
	Not Exceeding \$20	Not Exceeding \$40	Not Exceeding \$100	Not Exceeding \$200	Not Exceeding \$500	Not Exceeding \$500
(1) Filing statement of claim and issue of summons	0.30	0.50	1.00	1.50	2.00	2.00
(2) Filing counterclaim (on amount of counterclaim)	0.20	0.30	0.50	0.76	1.00	1.25
(3) Hearing or rehearing and judgment (on claim or counterclaim)	0.30	0.50	1.00	1.50	2.00	2.50

2 In all other actions and proceedings	\$
(1) Filing and hearing statement of claim and issue of summons	1.00
(2) Service of any summons, notice, or other process	0.20
(3) For each additional summons in any proceedings	0.20
(4) Sealing of any judgment, order, writ of execution, or other document (other than a summons)	0.30
(5) Copy of any document or notes of evidence – per folio of 72 words (minimum 3 folios)	0.10
(6) Filing of any notice or motion, affidavit, petition (other than a petition for divorce), or other document	0.30
(7) Hearing of any motion or petition (other than a petition for divorce)	0.50
(8) Filing petition for divorce or nullity of marriage and supporting affidavit	1.00
(9) Hearing of petition for divorce or nullity of marriage	2.00
(10) Stating case for High Court	2.00
(11) Hearing application for leave to appeal to High Court	1.00
(12) Sealing order granting leave to appeal to High Court	2.00
(13) Filing motion for probate or letters of administration	1.00
(14) Sealing any probate or letters or administration	
Where the net value of the estate does not exceed \$1,000	2.00
Where the net value of the estate exceeds \$1,000 but does not exceed \$2,000	2.10
Where the net value of the estate exceeds \$2,000	4.00
(15) Execution of any writ of execution or warrant	0.30

No fees shall be payable in proceedings under Part 7 of the Family Law Code 2007.

#### *Criminal Proceedings*

No fees shall be payable in any criminal proceedings commenced by the information of a constable or any other employee of the Niue Public Service.

In all other cases a fee of \$1 shall be payable on the information. If the accused is convicted, the fee so paid shall be refunded to the informant.

Niue

*Appeals from Commissioners of the High Court (Whether in Civil or Criminal Proceedings)*

	\$
(1) Filing notice of appeal	0.50
(2) Hearing of appeal	1.00

No fees shall be payable in respect of appeals in proceedings commenced by a constable or any other employee of the Niue Public Service.

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SCHEDULE 6

Rule 83(d)

Commissioners of the High Court shall have jurisdiction in all or any of the following criminal offences specified in the following sections of the Criminal Law Code 2007:

2	74	110
22	78	111
24	80	112
25	84	113
27	85	
29	86	
33	87	
39	88	
40	89	
41	93	
46	97	
47	98	
51	100	
52	101	
53	102	
55	103	
56	104	
57	105	
68	106	
69	107	
71	108	
72	109	

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**HIGH COURT RULES AMENDMENT NO. 2**

APPEALS FROM COMMISSIONERS

- 1 Any party to any proceedings, whether civil or criminal, before a Commissioner of the High Court may appeal from the judgment of the Commissioner to a Judge of the High Court.
- 2 (1) Notice of appeal shall be filed in Court within 21 days after the delivery of the judgment appealed from.  
(2) Any written notice which shows an intention or desire to appeal shall be sufficient.
- 3 Upon the filing of such notice, the Commissioner shall, unless a Judge makes an order to the contrary, grant a stay of execution of the judgment appealed from, and if the appellant is in custody shall release him therefrom on bail pending the determination of the appeal.
- 4 Any person so released on bail may at any time and for any reason that a Judge thinks sufficient be arrested by warrant and committed to prison there to undergo his sentence.
- 5 Any period during which an appellant has been so at large on bail shall not be computed as part of any term of imprisonment to which he has been sentenced.
- 6 Every such appeal shall be by way of rehearing.
- 7 Before hearing any appeal a Judge may impose such conditions as he shall think fit as to security for costs of the appeal or for performance of the judgment thereon.
- 8 If the appellant does not with due diligence prosecute his appeal, or perform or observe any of the conditions imposed by a Judge as mentioned in clause 7, a Judge may dismiss the appeal and the costs thereof, and any security entered into by the appellant, shall be dealt with in such manner as the Judge directs.
- 9 (1) The appellant may at any time before hearing discontinue his appeal, either wholly or as to any ground thereof, by filing in Court a notice of discontinuance.  
(2) If the appeal is wholly discontinued, the judgment appealed from may immediately be carried into effect.
- 10 The Commissioner may at any stage of the proceedings adjourn any case for hearing and determination by a Judge.

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**HIGH COURT RULES AMENDMENT NO. 3**

- 1 These are the High Court Rules 1916 Amendment No 3 and shall be read together with and deemed part of the High Court Rules 1916 (the principal rules).
- 2 [Spent]

PROCEEDINGS FOR DIVORCE OR NULLITY OF MARRIAGE

- 3 In these Rules “respondent” includes all co-respondents so far as the provision in which the term occurs is applicable to them.
- 4 (1) Every proceeding for a decree of divorce or nullity of marriage shall be commenced by filing a petition in the Court.  
(2) The petition shall be in accordance with form 1 in the Schedule and shall set out the grounds for divorce or nullity of marriage.

- 5 Every person seeking a decree of divorce or of nullity of marriage shall append to the petition an affidavit in form 2 in the Schedule, verifying the same so far as the deponent is able to do so.
- 6 (1) There shall be annexed to every petition and every copy thereof a summons to the respondent in accordance with form 3 in the Schedule and the original shall be filed in the Court.  
(2) (a) The summons shall specify, *inter alia*, the sitting of the Court fixed by the Registrar for the hearing of the petition.  
(b) In making that fixture the Registrar shall take into account the distance of the place of residence of the respondent from the place where the petition is to be heard and all other relevant circumstances, and the sitting so fixed shall not without leave of the Court be on a date less than 21 days from the date of filing of the petition.
- 7 (1) Service of a petition shall be effected by personally delivering to each respondent a copy of the petition under seal of the Court with a copy, signed by the Registrar, of the summons to the respondent required by these Rules to be annexed to the petition.  
(2) Personal service shall in no case be effected by the petitioner, but the petitioner may be present when such service is effected.  
(3) A petition for a decree of divorce or nullity of marriage may be served out of Niue by leave of the Court.
- 8 (1) Each respondent who resides within Niue may, within 14 days after service of the petition on him or her, file an answer thereto. Where a respondent resides beyond Niue, the time after service within which he or she may file an answer to the petition shall, on application by the petitioner, be fixed by the Court.  
(2) An answer shall be in accordance with form 4 in the Schedule.
- 9 A respondent who fails to file an answer within the time hereinbefore prescribed, or within any extended time allowed for that purpose, shall not be entitled to be heard on the petition, without leave of the Court, granted on such terms as the Court thinks fit, except on questions of costs, custody of children, or maintenance.
- 10 (1) Where a respondent intends to apply for relief, the answer of that respondent shall conclude with a prayer for the relief to which he or she claims to be entitled.  
(2) An answer may be amended by leave of the Court, by adding such a prayer at or before the trial.
- 11 The Court may at any time order further particulars to be given of any matters pleaded.
- 12 (1) (a) Every application for custody of children or for maintenance shall be to the Court by notice under form 5 in the Schedule.  
(b) Any such application may be made by a respondent, whether or not he or she has filed or intends to file an answer to the original petition.  
(2) An order for custody of children may be made upon the hearing of any petition in which a prayer for such custody is contained, without the necessity of complying with the requirements of subclause (1).  
(3) Where the parties are agreed upon the terms of any order granting custody of children or maintenance, the order may, by consent of the parties, be included in the decree, without the necessity of complying with the requirements of subclause (1).
- 13 Any application to the Court, or to a Judge, whether in Court or Chambers, not required to be made by petition or by notice of application for custody of children or for maintenance, may be made by motion.

- 14 In matters for which no specific provision is made in this Part in respect of matrimonial causes, the general provisions of the principal Rules providing for the conduct of actions before the High Court, as far as they are applicable and with the necessary modifications shall apply.

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SCHEDULE

FORMS IN PROCEEDINGS FOR DIVORCE OR NULLITY OF MARRIAGE

Rule 4

Form 1

In the High Court of Niue

(In Divorce)

Between A.B., of .....[Occupation], Petitioner, and C.D., of  
.....[Occupation], Respondent

PETITION

The petitioner prays for a divorce from the respondent on the following grounds:

[Here state the grounds for divorce.]

Dated this .....day of .....20.....

.....  
Signature of Petitioner

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Rule 5

Form 2

In the High Court of Niue

(In Divorce)

Between A.B., of .....[Occupation], Petitioner, and C.D., of  
.....[Occupation], Respondent

I, A.B., of .....[Occupation], make oath and say –

- 1 I am applying for a divorce from my wife (husband) named: [Full name].
- 2 We were married at ..... by ..... of the .....Church, on the  
.....day of .....19.....
- 3 There are .....children of the marriage, namely: [Full names].
- 4 The grounds upon which I am applying for the divorce are: [Set out grounds], and the following are  
the facts concerning the same: [Set out proof fully].
- 5 I am a native of .....and the said .....is a native of .....

Sworn at .....by the above-named A.B. this .....day of  
.....20.....

A Solicitor of the High Court  
(or A Registrar of the High Court)  
(or A Postmaster)  
(or A collector of customs)  
(or A medical officer)

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Rule 6 (1)

Form 3

In the High Court of Niue

(In Divorce)

Between A.B., of ..... [Occupation], Petitioner, and C.D., of  
.....[Occupation], Respondent.

Niue

SUMMONS

You are hereby summoned, if you wish to defend these proceedings, to appear at the trial thereof before the High Court at .....at the first sitting of this Court for the trial of civil proceedings after the expiration of ..... days from but exclusive of the date of service upon you of the petition in these proceedings.

A copy of the petition and of the supporting affidavit in these proceedings is annexed hereto.

Dated this..... day of .....20.....

(SEAL)

.....  
Registrar. To the above-named Respondent.

Rule 8 (2)  
In the High Court of Niue

Form 4

(In Divorce)

Between A.B., of .....[Occupation], Petitioner, and C.D., of .....[Occupation], Respondent

Answer

I, C.D., .....of .....[Occupation], the above-named respondent, make oath and say –

- 1 I was this day served with a petition for divorce and affidavit in support thereof.
- 2 I admit (or deny) the charges made against me in the petition and affidavit. [*Or set out which are admitted or denied.*]
- 3 I (do not) object to a divorce being granted.
- 4 I wish the children to remain the custody of .....

Sworn at ..... by the above-named A.B. this ..... day of .....20.....

A Solicitor of the High Court  
(or A Registrar of the High Court)  
(or A Postmaster)  
(or A collector of customs)  
(or A medical officer)

Form 5

In the High Court of Niue

(In Divorce)

Between A.B., of .....[Occupation], Petitioner, and C.D., of .....[Occupation], Respondent. Application for Custody of Children (or Maintenance)

Take notice that the Petitioner (Respondent) intends to apply to the Court for an order for the custody of the children of the marriage (or for a maintenance order against the Respondent (Petitioner)).

Dated this .....day of .....20.....

.....  
Petitioner (Respondent). To the above-named Respondent (Petitioner).



**HIGH COURT RULES AMENDMENT No. 5**

**1** These are the High Court Rules 1916, Amendment No. 5 and shall be read together with and deemed part of the High Court Rules 1916 and its amendments.

**2** The Commissioner of the High Court shall have jurisdiction in all or any of the offences specified hereunder –

- (a) The Criminal Law Code 2007, 74 (in cases to which s78(1)(a) and (b) apply) and s79(1);
- (b) Section 39 of the Transport Act 1965;
- (c) Any other offences contained in any law for which the maximum term of imprisonment provided does not exceed 3 years.

**3** (1) In any proceeding commenced before a Commissioner exercising jurisdiction conferred on him by rule 2 the Commissioner may, at any time before the defendants have been sentenced or otherwise dealt with, decline to deal further with the offence and require that it shall be dealt with by a Judge and may endorse on the information a certificate to that effect.

(2) If the defendant is being convicted or has pleaded guilty the Commissioner shall remand him for sentence by a Judge and for that purpose, if it is expedient and in the interest of justice so to do, may make an order accordingly under these Rules.

In any other case, the Judge will deal with the case in all respects as a rehearing.

**LAND COURT RULES 1969**

SR 1969/126 – 1 November 1969

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3	[Spent]	28	Expenses of witnesses
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8	Court office	33	Amendment of defects
9	Court records	34	Amendment of records
10	Times and places of sittings	35	Costs
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13	Register of applications	38	Powers and duties of Chief Justice in relation to notices of appeal
14	Annexure of documents to applications	39	Appeal from Commissioner
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17	Guardian <i>ad litem</i>	42	Court of Appeal
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20	No notice required for <i>ex parte</i> applications	45	Reduction and remission of fees
21	Court may direct that notice be given	46	Certified and sealed copies
22	Attendance of Clerk of the Court	47	Arrangement of business
23	Persons affected by applications	48	Matters not provided for
24	Senior Judge to preside at sitting of Land Court		
25	Recording proceedings		

SCHEDULES

**1 Title**

These are the Land Court Rules 1969.

**2 Interpretation**

(1) In these Rules –

“Act” means the Niue Act 1966;

“applicant” includes an appellant;

“application” includes a notice of appeal;

“Court” means the High Court or the Court of Appeal as the case may require;

“Commissioner” means a Commissioner of the High Court;

“Judge” means a Judge of the High Court or a Judge of the Court of Appeal as the case may require;

“party” means any person who has made an application to the Court; and includes any person whose rights or interests are affected by an application or by any order made pursuant to an application; and also includes any *Leveki Magafaoa* or trustee in respect of any such person;

“Registrar” means a Registrar of the High Court or of the Court of Appeal as the case may require, and includes a Deputy Registrar.

(2) A reference to a numbered form is a reference to the form so numbered in Schedule 1.

3 [Spent]

**4 Forms**

(1) The forms set out in Schedule 1 shall be used with such modifications as the case may require, and, if no form is prescribed by these rules, such form shall be used as a Judge or the Registrar may direct or approve.

(2) In any case an equivalent form in the Niuean language may be used, and shall be sufficient.

**5 Attestation**

Where these rules require that the signature of any person to any application or other document shall be attested, that signature must be attested by any person mentioned in section 720 of the Act.

**6 Failure to comply with rules**

A failure to comply with these rules shall not render any proceedings void unless the Court so directs; but any such proceedings may be set aside, either wholly or in part, as irregular, or may be amended or otherwise dealt with in such manner and upon such terms as the Court may direct.

**7 Service of notices**

(1) (a) Subject to rules 12(5)(f), 23(2) and 29(4) a notice or other document required or authorised by these Rules to be served on any person may be delivered to him either personally or, where that person is in Niue, by posting it by letter to that person at his last-known place of abode or business in Niue.

(b) A notice or other document so posted shall be deemed to have been served at the time when the letter would in the ordinary course of post be delivered.

(2) (a) If the person is absent from Niue, the notice or other document may be delivered as aforesaid to his agent in Niue.

(b) If he is deceased, the notice may be delivered as aforesaid to his personal representative in Niue.

(3) If the person is not known, or is absent from Niue and has no known agent in Niue, or is dead and has no personal representative in Niue, the notice or other document shall be delivered in such a manner as may be directed by an order of a Judge.

(4) Notwithstanding rule 7(1)-(3), a Judge may in any case make an order directing the manner in which a notice or document (other than a summons to a witness to show cause) is to be delivered, or dispensing with the delivery.

**8 Court office**

(1) There shall be an office of the Court situated at such place in Niue as Cabinet appoints.

(2) The Court office shall be open for business from 10am to 3pm on every day, not being a Saturday, Sunday, or Court holiday.

(3) The administration work of the Court shall be carried out at the Court office.

**9 Court records**

The records and other documents of the Court shall be deposited and kept at the Court office in the custody of the Registrar and, except as provided in these rules, none of those records or other documents shall be taken out of the Court office save with the leave or pursuant to the direction of a Judge.

**10 Times and places of sittings**

- (1) The Court shall sit at such times and places as the Chief Justice appoints.
- (2) The Registrar shall cause the times and places of the sittings of the Court to be duly and conveniently advertised in the *Gazette*.
- (3) Notwithstanding paragraphs (1) and (2), a sitting of the High Court may be held at any time and place appointed by a Judge, without notice of that sitting being given in the *Gazette* by the Registrar, but no matter shall be heard or determined at any such sitting other than a matter of which due notice has been given to the parties or which, under the Act or these Rules, may be heard and determined *ex parte*.

**11 Cancelling, opening, and adjourning sittings**

- (1) The Chief Justice may, at any time before the commencement of any sitting of the Court, cancel the sitting.
- (2) Any Judge, or any person authorised in that behalf by a Judge, may open a sitting of the Court.
- (3) After the opening of any sitting of the Court, the presiding Judge or, in his absence, any person authorised in that behalf by him, may adjourn the sitting or any part of the business notified to be dealt with at the sitting, either *sine die* or to some other time or place.
- (4) The Registrar shall give notice of any cancellation or adjournment made under this rule to such persons and in such manner as a Judge may direct.
- (5) Any matter adjourned *sine die* may be heard at such time and place and upon such notice to the parties and others as a Judge may direct.

**12 Commencement of proceedings**

- (1) All proceedings in the High Court shall be commenced by application.
- (2) An application to the High Court shall be in form 1.
- (3) All proceedings in the Court of Appeal shall be commenced by notice of appeal.
- (4) A notice of appeal shall be in form 2, and shall be attested.
- (5) Every application shall be in writing, and shall set forth, in a legible fashion –
  - (a) The full names, address, and occupation of the applicant;
  - (b) Each statutory provision, section of the Act and rule in reliance upon which the application is made;
  - (c) The nature of the order sought by the applicant;
  - (d) The grounds on which the application is made;
  - (e) The full names of the person filing the application;
  - (f) An address, in Niue, at which notices and other documents relating to the application may be served on the applicant, which address shall, for the purposes of rule 7(1) be deemed to be the last-known place of business in Niue of the applicant.
- (6) Every application shall be signed by the applicant or his duly authorised agent.
- (7) Every *ex parte* application shall be marked “*ex parte*”.
- (8) An application shall be filed by delivering it at the Court office to the Registrar, or to some other officer of the Court duly authorised in writing by the Registrar to receive it.

(9) No application for the partition of Niuean land shall be heard or determined by the Court until all previous partition orders made with respect to the same land have been sealed and signed.

(10) Every application shall have annexed thereto all documents that are, by the provisions of any Act required to be filed with the application.

(11) An application for an interlocutory injunction may be made *ex parte*.

(12) Any party to any proceedings may apply *ex parte* to the Court for an interlocutory order for directions or with reference to any other interlocutory matter in the proceedings.

(13) If, in the opinion of the Registrar, an application is not properly made, he may refuse to accept it, unless he is directed by a Judge to accept it.

### **13 Register of applications**

(1) The Registrar shall keep a register of applications.

(2) The Registrar shall cause to be recorded in the register and upon each application accepted by him –

(a) The date on which the application was filed;

(b) The date on which any fee payable in respect of the filing of the application was paid.

(3) The Registrar shall cause a distinctive number to be inscribed on each application, and that number shall correspond with the number of the application in the register.

### **14 Annexure of documents to applications**

The Registrar shall cause to be endorsed on or annexed to each application all such particulars and extracts from the records of the Court as may be necessary, in his opinion, to enable the Court to deal effectively with the application at the hearing of the application.

### **15 Definition of person under disability**

In this rule and in rules 16 and 17, “person under disability” means –

(a) Any person who is under the age of 16 years; or

(b) Any person who is unable, wholly or partly to manage his own affairs by reason of –

(i) his age; or

(ii) his physical or mental infirmity; or

(iii) his intemperate or recklessly extravagant habits; or

(iv) his improvidence; or

(c) Any person who is of unsound mind; or

(d) Any person who is in prison or other place of detention; or

(e) Any other person who is, or whose interests are, in the opinion of a Judge, in need of special care and protection which that person is unable himself personally to provide.

### **16 Application on behalf of a person under disability**

(1) (a) Any person who desires to make an application to the Court on behalf of a person under disability may apply *ex parte* to a Judge for an order that the applicant be appointed the agent of the person under disability to make the application on behalf of the person under disability.

- (b) With any application for such an order there shall be filed a draft of the application which the agent (if appointed) desires to make on behalf of the person under disability.

(2) On the hearing of any such application for appointment, the Judge may, by order –

- (a) Refuse the application; or
- (b) Grant the application upon such conditions as to the liability of the agent for the costs of the person under disability, the giving of security for those costs, or otherwise, as the Judge thinks fit, and the agent shall not act on behalf of the person under disability contrary to those conditions and shall, on filing any application on behalf of the person under disability, be bound by those conditions.

(3) Where –

- (a) An application has been filed by an agent duly appointed under this rule on behalf of a person under disability; and
- (b) That person, on ceasing to be a person under disability, elects himself to proceed with the application –

that person shall be liable for all the costs of the proceedings in the same manner as if he himself had commenced them after ceasing to be a person under disability.

(4) An application made by an agent on behalf of a person under disability shall be attested and shall be made in the name of the agent, but the agent shall state, in the application, that he is making it on behalf of the person under disability.

#### **17 Guardian *ad litem***

(1) A Judge may (whether on application made to him *ex parte*, or of his own motion, or otherwise) make an order appointing a guardian *ad litem* for any person under disability whose interests are affected by any application not filed by or on behalf of the person under disability.

(2) A guardian *ad litem* so appointed shall not be personally liable for costs unless they are occasioned by his person negligence, dishonesty, or other misconduct.

(3) No person shall be appointed a guardian *ad litem* without his written consent.

#### **18 Restrictions on persons under 16 years and on persons of unsound mind**

No person who is under the age of 16 years or of unsound mind shall, otherwise than with the leave of a Judge –

- (a) Make any application to the Court or act as a party to any proceedings in the Court, otherwise than by and through an agent or guardian *ad litem* appointed pursuant to rule 16 or rule 17; or
- (b) Act as an agent or representative in or with respect to any proceedings in the Court on behalf of any other person.

#### **19 Registrar to give notice**

(1) Subject to any directions of a Judge, the Registrar shall give in the *Gazette* at least 14 clear days' notice of the hearing of an application.

(2) The Registrar shall also give, in writing, at least 3 clear days' notice of the date of the commencement of the sitting of the Court at which an application is intended to be heard to –

- (a) The applicant; and
- (b) Every person who has filed a notice of intention to appear; and

(c) Such other persons as the Registrar thinks fit; and

(d) Such other persons as a Judge may direct.

(3) All such notices shall be in a form and contain such particulars as a Judge or the Registrar thinks necessary.

**20 No notice required for *ex parte* applications**

Notwithstanding any other provision of these Rules, an application which may be made *ex parte* may, in his discretion, be heard and determined by a Judge, without notification, at any time and place specified by a Judge.

**21 Court may direct that notice be given**

The Court may, before hearing or proceeding further with the hearing of an application, require the Registrar or the applicant or any other party to the proceedings to give such notice as the Court thinks necessary to any persons who appear to the Court to be affected by the application.

**22 Attendance of Clerk of the Court**

(1) The Registrar shall arrange for the attendance, at every sitting of the Court, of a Clerk of the Court.

(2) The Clerk of the Court shall, unless the Court otherwise directs, be a skilled interpreter of the Niuean language into the English language and vice versa.

(3) The Registrar shall transmit all applications, to be heard at a sitting of the Court, together with all other documents ancillary thereto and the necessary Court records, to the Clerk of the Court, who shall be responsible for their custody and safety and shall, as and when required, produce them to the Court.

**23 Persons affected by applications**

(1) Any person interested in or who may be affected by any application shall be entitled to appear and be heard on the application.

(2) (a) Any person who is not named in an application and who wishes to be a party to and be heard on the application shall, before the commencement of the hearing of the application, file in the Court office or in the Court a written notice in form 3 of his intention to appear, stating whether he supports or opposes the application and setting forth the grounds of any such support or opposition, and specifying an address in Niue at which notices and other documents relating to the application may be served on him, which address shall, for the purposes of rule 7(1) be deemed to be his last-known place of business in Niue;

(b) No such person shall be debarred from appearing and being heard on an application by reason only of his failure to file a notice of intention to appear; but any person who has so failed shall be allowed to appear and be heard on the application subject to such reasonable and proper conditions as the Court thinks fit to impose.

(c) The Crown, the Minister, or the Registrar shall be entitled to appear and be heard on any application without filing or giving any notice of intention to appear.

(3) (a) Subject to rule 18 any person entitled to appear in any proceedings in the Court may appear either personally or, with the leave of the Court, by an agent or representative;

(b) Such leave may be given on such terms as the Court thinks fit, and may at any time be withdrawn.



**24 Senior Judge to preside at sitting of Land Division**

If more than one Judge is present at a sitting of the Court, the senior Judge present shall preside.

**25 Recording proceedings**

The Judge or, if more than one Judge is present, one of the Judges nominated by the presiding Judge, shall record the proceedings of the Court in a minute book, which book shall be a record of the Court.

**26 Powers of Court**

(1) The Court may dismiss or grant any application, in whole or in part, or, upon such terms as the Court thinks fit, give leave to extend, amend, or withdraw an application, in whole or in part.

(2) The Court may dismiss an application on the grounds of the nonappearance of the applicant or for want of proper prosecution, but any such dismissal shall be without prejudice to the right of the applicant to make a fresh application in respect of the same matter, or to the power of the Court to reinstate an application so dismissed.

(3) Every order or decision made by the Court shall be recorded in the minute book referred to in rule 25.

**27 Evidence of witnesses**

(1) Unless the Court otherwise directs, the evidence of witnesses at the hearing of an application shall be given orally and upon oath or affirmation.

(2) The Court may accept evidence given by affidavit or declaration.

(3) Affidavits to be filed in the Court shall –

(a) If made in Niue, be made under section 78(1) of the Act as if they were affidavits in the High Court;

(b) If made outside Niue, be made under the same rules as are in force for the time being with respect to affidavits in the High Court of New Zealand.

(4) Declarations to be filed in the Court shall –

(a) If made in Niue, be made in accordance with section 720 of the Act;

(b) If made outside Niue, be made in accordance with the Oaths and Declarations Act 1957 of New Zealand relating to declarations.

(5) The Court, in its discretion and on such terms as it thinks fit as to costs or otherwise, may in any proceedings where it appears necessary make an order for the examination on oath or affirmation before any officer of the Court or before the Maori Land Court of New Zealand or a Judge thereof or before any other person or persons, and at any place either in or out of New Zealand, of any witness or other person, and may order any deposition so taken to be filed in the Court as evidence in the proceedings.

**28 Expenses of witnesses**

A witness shall be allowed such reasonable expenses and allowances as the Court thinks fit to award.

**29 Summons to witness**

(1) Any party to any proceedings shall be entitled to apply *ex parte* to a Judge for an order that a summons to a witness be issued by the Court.

(2) A summons to a witness shall be in form 4, and may be addressed to any number of persons not exceeding three.

(3) Every such summons shall be signed by a Judge or the Registrar and shall be dated and shall be under the Seal of the Court.

(4) (a) Notwithstanding anything in these rules, service of any such summons shall be personal.

(b) A Judge may direct that service of a summons (other than service of a summons to show cause) in any particular case may be made in such other manner as will, in his opinion, be sufficient to bring the summons to the knowledge of the person to be served.

(5) Personal service of such a summons may be effected by leaving with the witness a true copy of the summons, sealed with the Seal of the Court, and it shall not be necessary to produce the original summons to the person served.

(6) Such a summons shall be served by –

(a) An officer of the Court; or

(b) A constable; or

(c) A person duly authorised in writing in that behalf by the person who applied for the order under which the summons was issued; or

(d) Such other person as a Judge or the Registrar specifies in writing.

(7) Unless the Judge otherwise directs in writing, there shall be paid or tendered to a witness at the time of the service of a summons (other than a summons to show cause) upon him, or at a reasonable time before the day on which he is ordered to attend the Court, such reasonable sum of conduct money as is specified in the summons by the Judge making the order granting the issue of the summons, to enable the witness to go to, stay at, and return from the place of hearing.

(8) Service of a summons may be proved on affidavit or, at the hearing, on oath.

(9) A summons to a witness to show cause shall be in form 5.

(10) Notwithstanding the foregoing provisions of this rule, a Judge may, without application and of his own motion, direct that a summons to a witness shall be issued.

### **30 Application for rehearing**

No application under section 45 of the Niue Amendment Act (No 2) 1968 for a rehearing shall be made after the expiration of 14 clear days after the making of the order or determination in the matter in respect of which the rehearing is sought.

### **31 Submission of drafts of orders**

The Court or the Registrar may require any party in whose favour an order has been made to submit a draft of the order to the Registrar.

### **32 Form of order**

(1) An order shall be in form 6, unless the Court otherwise directs.

(2) The form of an order shall be finally settled by a Judge or the Registrar.

(3) Every order shall have annexed thereto such plans and other documents as the Court may require.

(4) Every order shall be under the hand of a Judge or the Registrar and the Seal of the Court.

(5) Duplicates of all orders shall be kept in and form part of the records of the Court, and all duplicates of orders shall be marked “duplicate”.

(6) No order shall be issued out of the Court to the person entitled, other than an order in favour of the Crown, the Minister, Cabinet or the Registrar until all Court fees, other fees, duties, charges, and other money payable in respect thereof have been duly paid.

(7) It shall be the duty of the Registrar, without any unnecessary delay, to draw up and complete as far as possible all orders made by the Court.

(8) Nothing in these Rules shall restrict the power of the Court to make interlocutory orders in respect of any matter as to which the Court is empowered to make a final order.

(9) Where any order of the Court of Appeal makes provision for the payment of any sum of money or for the imposition of any charge, then, for the purposes of enforcing that provision or charge, the order shall be deemed to be an order of the High Court.

### **33 Amendment of defects**

(1) The Court shall have power in the course of any proceedings, and whether with or without the application of any party, to amend all defects or errors in the proceedings, whether there is anything in writing to amend or not, and whether or not the defect or error is that of a party applying to amend.

(2) All such amendments may be made on such terms as the Court thinks fit, and all amendments shall be made which are necessary for exercising as fully and beneficially as possible the jurisdiction of the Court.

### **34 Amendment of records**

(1) A Judge may at any time make or authorise to be made in any order, warrant, record or other document made, issued, or kept by the Court all such amendments as he considers necessary to give effect to the intended determination or decision of the Court or to record the actual course and nature of any proceedings in the Court.

(2) Any such amendment shall take effect as at the date of the order, warrant, record, or other document amended, but no such amendment shall take away or affect any right, title, or interest acquired in good faith and for value before the making of the amendment.

### **35 Costs**

In any proceedings the Court may make such order as it thinks fit for the payment of the costs thereof, or of any matters incidental or preliminary thereto, by or to any person who is a party to the proceedings, whether the parties by and to whom all costs are so made payable are parties in the same or different interests.

### **36 Security for costs**

(1) In any proceedings and at any stage the Court may require any party to deposit with the Registrar or the Clerk of the Court or any other person specified by the Court any sum of money as security for costs, and, in default of that deposit being made, the Court may stay the proceedings, either wholly or in respect of the party so in default.

(2) When any sum has been so deposited as security for costs, it shall be disposed of in such manner as the Court directs.

(3) Notwithstanding any other provision of these Rules, neither the Crown, nor the Minister, nor Cabinet, nor the Registrar shall in any case be liable to give security for costs in respect of any application to or proceeding in the Court.

**37 Charging orders for costs**

(1) Where in any proceedings any order is made by the Court affecting or relating to Niuean land, the Court may, in addition to or instead of making an order under rule 35 make an order charging the whole or any part of those costs on the rents, revenues, income, or profits arising or to arise from the land or upon the share of any person in any such rents, revenues, income, or profits.

(2) Any such order shall be deemed to be a deed of assignment, valid and effectual in all respects, enuring for the person in whose favour the order is made.

**38 Powers and duties of Chief Justice in relation to notices of appeal**

(1) (a) The Registrar, on receiving a notice of appeal, shall forthwith transmit it, or a true copy thereof duly certified by the Registrar as being such a copy, to the Chief Justice.

(b) On receipt thereof, the Chief Justice may, in his discretion and without the necessity of hearing parties, if he is of the opinion that the grounds of appeal are insufficiently stated in the notice, direct that a more explicit statement of such grounds be lodged by the appellant with the Registrar within a time to be fixed by the Chief Justice, to be computed from and including the day on which notice of the direction is given to the appellant.

(c) The Registrar shall forthwith give notice in writing of the direction to the appellant accordingly.

(2) (a) On the receipt of a notice of appeal or a true copy thereof, the Chief Justice shall, in his discretion and without hearing parties, decide whether security for the costs of the appeal shall be given by the appellant.

(b) If he decides that such security shall be given, he shall fix the amount thereof and the time within which the security shall be given, that time to be computed from and including the day on which notice of the requirement of security is given to the appellant.

(c) The Registrar shall forthwith give notice in writing of the requirement to the appellant accordingly.

(3) Security for the costs of an appeal shall in all cases be given by depositing the amount in money with the Registrar, or any other person specified by the Chief Justice.

(4) (a) Should the appellant fail to lodge a more explicit statement of grounds of appeal or fail to give security for costs under this rule, the Chief Justice may, on application by any person interested in the appeal or of his own motion, make an order dismissing the appeal or an order enlarging the time in which the appellant shall lodge a more explicit statement of grounds of appeal or give security for costs.

(b) The Registrar shall give notice in writing of any such order to the appellant accordingly.

(5) (a) If, within the time enlarged as aforesaid, the appellant fails to lodge a more explicit statement of grounds of appeal or fails to give security for costs paragraph (4) shall apply;

(b) Should an appellant not lodge a more explicit statement of the grounds of appeal or give security for costs within a period of 2 years computed from and including the date on which he was first given notice in that regard by the Registrar, the appeal shall be deemed to have been heard and finally dismissed by the Court.

**39 Appeal from Commissioner**

(1) Any party to any proceedings before a Commissioner may appeal from any order or decision of the Commissioner to a Judge of the High Court.

(2) Every such appeal shall be by way of an application in form 1 to the High Court, and shall be filed in the Court office within 28 clear days after the date of the order or decision appealed from.

(3) On the filing of such an appeal, the Commissioner shall, unless a Judge otherwise orders, stay further proceedings on the order or decision appealed from.

(4) Every such appeal shall be by way of rehearing.

(5) Before hearing an appeal, a Judge may impose such conditions on the appellant as the Judge thinks fit as to security for costs or otherwise.

(6) If the appellant fails to prosecute the appeal with due diligence, or fails to observe or perform any of the conditions imposed on him under paragraph (5), the Judge may dismiss the appeal.

(7) (a) The appellant may, at any time before the hearing of the appeal, discontinue his appeal, either wholly or in part, by filing in the Court a notice of discontinuance.

(b) If an appeal is wholly discontinued, the order or decision may be immediately carried into effect and the appeal shall be deemed to have been dismissed under paragraph (6) and the Court shall give directions as to the disposal of any sum deposited as security for costs.

(8) A Commissioner may at any stage of any proceedings before him adjourn the proceedings for hearing and determination by a Judge.

(9) No appeal from an order or decision of a Commissioner shall, save with the leave of the Court or the Court of Appeal, be brought in the Court of Appeal.

**40 Withdrawal of appeal**

(1) Without limiting rule 39, an appellant may before the hearing of his appeal by notice in writing given to the Registrar, or at any time after the hearing has begun by oral application made in open Court, apply to the Court for leave to withdraw his appeal.

(2) Leave to withdraw an appeal may be given on such terms as the Court thinks fit to impose, and the Court shall, in granting such leave, give directions as to the disposal of any sum deposited as security for costs.

(3) Any appeal so withdrawn shall be deemed to have been finally dismissed by the Court.

(4) This rule shall apply to –

(a) Any appeal from an order or decision of a Commissioner;

(b) Any appeal to the Court of Appeal.

**41 Appeals to be by way of rehearing**

(1) All appeals to the Court of Appeal shall be by way of rehearing.

(2) (a) On the hearing of any appeal the parties shall be restricted to the evidence adduced at the hearing upon which the order or decision appealed from was made.

(b) The Court of Appeal may allow such further evidence to be adduced as may in its opinion be necessary to enable it to come to a just decision upon the matters in issue.

(c) The Court of Appeal may refer to any record or other document filed or held in the records of the Court although the same may not have been produced or referred to at the hearing in the High Court.

(3) The evidence adduced at the hearing upon which the order or decision appealed from was made shall be proved by the records of the High Court, and no other proof thereof, except by leave of the Court of Appeal shall be admitted.

**42 Court of Appeal**

(1) On the hearing of an appeal to the Court of Appeal no person other than the appellant shall, except with the leave of the Court, be heard in support of the appeal or put forward any claim contrary to the order or decision appealed from, and no other person shall be heard save a person who satisfies the Court that he is a person interested in the proceedings.

(2) No appeal shall be allowed on any ground not set out in the notice of appeal, or in a more explicit statement of the grounds of appeal, or in an amended statement of the grounds of appeal, unless the Court is of the opinion that the appeal may be so allowed without injustice to all other parties interested in the appeal.

**43 Exemptions from payment of fees**

(1) No fee shall be payable on any application by the Crown, the Minister, Cabinet, or the Registrar.

(2) No fee shall be payable on the filing of a notice of intention to appear referred to in rule 23.

**44 Scale of fees**

(1) Subject to rule 43, there shall be paid in respect of the matters described in Schedule 2 the fees set out there.

(2) Subject to rule 45, no document shall be filed in the Court without the leave of a Judge or the Registrar unless the prescribed fee has been paid.

**45 Reduction and remission of fees**

The Court or a Judge may reduce or remit any fee.

**46 Certified and sealed copies**

Unless otherwise directed by a Judge, the Registrar, upon payment of the fee prescribed in Schedule 2, shall furnish to any person applying for the same a certified or sealed copy of any order or document made by or filed or lodged in the Court.

**47 Arrangement of business**

The Court may arrange the order of its business as it thinks fit.

**48 Matters not provided for**

In any matter for which no provision is made by these Rules, the Court may proceed as it thinks fit, and shall dispose of the matter as nearly as may be in accordance with any rules affecting any similar case or, if there be no such rules, in such manner as the Court thinks best calculated to promote the ends of justice.

Niue

SCHEDULE 1

FORM 1

(EX PARTE) APPLICATION TO THE HIGH COURT

Rule 12 (1)

Number \_\_\_\_\_

IN THE HIGH COURT OF NIUE

IN THE MATTER OF

I, \_\_\_\_\_ of

HEREBY APPLY for an ORDER UPON THE GROUNDS:

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20

This application is made in reliance upon

\_\_\_\_\_ Applicant  
(Agent for Application).

Witness (where rule 16(4) applies) \_\_\_\_\_

Fee: \$ \_\_\_\_\_

This application was filed by

And notices and other documents relating to this application may be served on the applicant at

For Court use only.

Initials

1. Date of filing of application: \_\_\_\_\_

2. Date fee paid: \_\_\_\_\_

3. Notes: \_\_\_\_\_

\_\_\_\_\_

Rule 12 (4)

FORM 2

NOTICE OF APPEAL

Number \_\_\_\_\_

IN THE COURT OF APPEAL OF NIUE

IN THE MATTER OF

I, \_\_\_\_\_ of

GIVE NOTICE that I hereby APPEAL from the order or decision of the High Court, which order or decision is set out in the Schedule herein enforced or hereto annexed, UPON THE GROUNDS:

AND upon those grounds,

I HEREBY APPLY to the Court of Appeal for an ORDER

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20

This notice of appeal is given in reliance upon

Schedule

Appellant (Agent for Appellant)

Fee: \$15.00

Witness: \_\_\_\_\_

This notice of appeal was filed by

And notices and other documents relating to this appeal may be served on the appellant at

For Court use only.

Initials

1. Date of filing of notice of appeal: \_\_\_\_\_

2. Date fee paid: \_\_\_\_\_

3. Notes: \_\_\_\_\_



Niue Legislation 2019

Rule 23 (2)

FORM 3

NOTICE OF INTENTION TO APPEAR

Number \_\_\_\_\_

IN THE COURT OF APPEAL OF NIUE

IN THE MATTER of Rule 23 of the Land Rules 1969

AND

IN THE MATTER of an application (appeal)

by

for

I,

of

claiming to be interested in or affected by the above-mentioned application (appeal) HEREBY GIVE NOTICE that I intend to appear in support of (opposition to) the same UPON THE GROUNDS:

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Claimant.

Address for service:

No fee.

For Court use only.

Initials

1. Date of filing of notice: \_\_\_\_\_

2. Notes: \_\_\_\_\_

\_\_\_\_\_

Rule 29 (2)

FORM 4

SUMMONS TO WITNESS

Number \_\_\_\_\_

IN THE COURT OF APPEAL OF NIUE

IN THE MATTER of Rule 29 of the Land Rules 1969

AND

IN THE MATTER of an application (appeal)

by

for

To: \_\_\_\_\_ of \_\_\_\_\_

YOU ARE HEREBY SUMMONED to attend the \_\_\_\_\_ Court at \_\_\_\_\_ on the \_\_\_\_\_ day of 20\_\_\_\_ at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon,

and from day to day until required, to give evidence in the above matter and YOU ARE HEREBY REQUIRED then and there to have and produce to the Court all the documents mentioned in the Schedule hereto, and all other documents of whatsoever nature relating to that matter in your possession, custody, or control. Should you fail to obey this summons, you will be liable, for that failure, to such punishment or penalty as is by law provided, if there was paid or tendered to you, in accordance with the abovementioned rule, conduct money in the sum of \$ \_\_\_\_\_

THIS SUMMONS was issued at the request of \_\_\_\_\_

AS WITNESS the hand of the Judge (Registrar) (Deputy Registrar) and the Seal of the

Court this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Niue

Schedule

Judge (Registrar) (Deputy Registrar)

a Judge of the above-mentioned

I,

Court hereby direct, pursuant to rule 29(4) of the Rules of the Court, that service of this summons may be effected in the following manner, namely, by

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20

\_\_\_\_\_  
Judge

I,

\_\_\_\_\_ of

make oath and say that I served the above-named \_\_\_\_\_ with a summons, of which the copy of the summons upon which this affidavit is endorsed is a true copy, by delivering it to him (her) personally at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ at o'clock in the \_\_\_\_\_ noon and that at the same time I paid (tendered) to him (her) the amount of the conduct money specified in the summons.

SWORN by the above-mentioned

\_\_\_\_\_ at \_\_\_\_\_ this \_\_\_\_\_ day of 20

before me:

Rule 29 (5)

FORM 5

SUMMONS TO WITNESS TO SHOW CAUSE

IN THE COURT OF APPEAL OF NIUE

IN THE MATTER of Rule 29 of the Land Rules 1969

AND

IN THE MATTER of an application (appeal)

by  
for

To:

\_\_\_\_\_ of

YOU ARE HEREBY SUMMONED to attend the \_\_\_\_\_ Court at \_\_\_\_\_ on the \_\_\_\_\_ day of 20 \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, to SHOW CAUSE why you should not be dealt with according to law for your failure to observe the provisions of a summons dated the \_\_\_\_\_ day of 20 \_\_\_\_\_

Issued in the matter of the above-mentioned application and duly served upon you: AND TAKE NOTICE that if you fail to observe this summons the matter may be determined in your absence.

AS WITNESS the hand of the Judge (Registrar) (Deputy Registrar) and the Seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
Judge (Registrar) (Deputy Registrar)

I,

\_\_\_\_\_ of

make oath and say that I served the above-named \_\_\_\_\_ with a \_\_\_\_\_ summons, of which the copy of the summons upon which this affidavit is endorsed is a true copy by delivering the same to him (her) personally at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon

SWORN by the above-mentioned at..... this \_\_\_\_\_ day of 20 \_\_\_\_\_ before me:

Niue Legislation 2019

FORM 6

Rule 32 (1)

ORDER

Number

IN THE COURT OF APPEAL OF NIUE

IN THE MATTER of

At a sitting of the Court held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, Before \_\_\_\_\_ Chief Judge, Judge(s) \_\_\_\_\_ (Commissioner)

UPON HEARING the application (appeal) of \_\_\_\_\_ dated \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ in the matter of IT IS HEREBY ORDERED, pursuant to the provisions of THAT

AS WITNESS the hand of the Chief Judge (Judge) (Commissioner) (Registrar) (Deputy Registrar) and the Seal of the Court.

\_\_\_\_\_  
Chief Judge (Judge) (Commissioner)  
(Registrar) (Deputy Registrar) Court of

Appeal

Minute Book References

Volume(s) \_\_\_\_\_ Folio(s) \_\_\_\_\_

SCHEDULE 2

FEEs

	\$
1 On filing of application to the High Court which may be made <i>ex parte</i>	10.00
2 On filing an application to a Judge of the High Court by way of appeal from a decision of a Commissioner	35.00
3 On filing of any other application to the High Court	
(1) Determination of Title	10.00
(2) <i>Leveki Mangafaoa</i>	5.00
4 On filing a notice of appeal to the Court of Appeal	55.00
5 On filing of any application not mentioned before in this Schedule	10.00
6 On furnishing a certified or sealed copy under rule 46	
(1) Of any application or order	10.00
(2) Of any other document	10.00
7 For registering any instrument	10.00
8 For entry of any memorial of registration	5.00
9 For any power of attorney deposited	15.00
10 For revocation of any power of attorney	15.00
11 For registering any caveat	15.00
12 For cancellation or withdrawal of caveat for any notice to any caveat	10.00
13 For any instrument deposited for safe custody	20.00
14 For registering or noting anything not otherwise provided	20.00
15 For every single search	2.00
16 For every general search	5.00

## Niue

17	Certified copies	
	(1) Of any instrument or extract from Register	10.00
	(2) Of any page or part thereof supplied by photocopy or any processed reproduction	
	A4	1.00
	Foolscap	2.00
18	Provisional and final plans	
	Prov A3	5.00
	Final A2	10.00
19	Survey charge deposit – for redefining boundaries of titled land, missing posts, etc.	30.00
20	Registration of incorporated societies	30.00

## LAND REGISTRATION REGULATIONS 1969

SR 1969/169 – 1 November 1969

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### SCHEDULES

#### 1 Title

These are the Land Registration Regulations 1969.

#### 2 Interpretation

(1) In these Regulations –

“Act” means the Niue Act 1966;

“dealing” means every transfer, transmission, charge, lease, encumbrance, or other alienation or transaction affecting any land or interest in any land under these Regulations;

“endorsement” in addition to its ordinary meaning, includes anything written on or at the foot of any document for giving effect to any of the purposes of these Regulations;

“instrument” means any printed or written document, map, plan or other dealing affecting any land or interest in any land;

“register” means enter in the Land Register under these Regulations;

“Registrar” means the Registrar of the High Court, and includes a Deputy Registrar.

(2) A reference to a numbered form is a reference to a form so numbered in Schedule 1.

(3) Expressions defined in this Act have the meanings so defined.

## PART 1

### ADMINISTRATION

#### **3 Duties of Registrar**

The Registrar shall be responsible for the work to be carried out in the Land Registry.

#### **4 Land Registry**

There shall be a Land Registry established in the High Court Office, which shall be open daily for public business from 10am to 3pm except on Saturdays and public holidays.

#### **5 Land Register**

(1) The Registrar shall keep books comprising and to be called the Land Register.

(2) The number of parcels or subdivisions of land which may be included in one folium of the Land Register shall be at the absolute discretion of the Registrar.

(3) The Registrar shall record on each folium the particulars of all instruments, dealings, and other matters by these Regulations required to be registered or entered on the Land Register.

#### **6 Journal and index to be kept**

In addition to the Land Register provided for by regulation 5, the Registrar shall keep the following –

(a) A journal, in which shall be entered particulars of all instruments received for registration, referring to them by number in the order in which they are so received for registration, the volume and folio of the Land Register against which such instrument is to be registered and such other particulars and references as he thinks fit;

(b) An alphabetical index, in which shall be entered appropriate references to every power of attorney or other instrument deposited in the Land Registry.

#### **7 Instruments**

(1) All instruments for registration or entry on the Land Register must be legibly and clearly written, typewritten or printed on sheets of paper of foolscap size of good quality. Carbon copies of instruments shall not be filed. A margin of not less than one-eighth of the width of the paper shall be on the left side.

(2) The Registrar may waive the requirements of this regulation in whole or in part.

#### **8 Correction of errors in Land Register**

(1) Where a mistake has been made in the Land Register, the Registrar shall rectify the mistake by a new entry in such form as may be convenient, specifying the day and hour of each correction, and initialling the correction.

(2) The erroneous entry shall in no case be erased or obliterated.

PART 2  
REGISTRATION

**9 Presentation of instruments for registration**

(1) Every instrument presented for registration shall have endorsed thereon

—

- (a) The names of the parties; and
- (b) The nature of the instrument; and
- (c) A reference to the appropriate volume and folio of the Land Register; and
- (d) Such other particulars as the Registrar may consider necessary.

(2) No registration of any instrument shall be invalidated by non-compliance with this regulation.

**10 Registrar may refuse to register any instrument**

The Registrar may refuse to register any instrument on the grounds –

- (a) That it is invalid according to law; or
- (b) That it is subject to any material defect, error or omission; or
- (c) That it is not made subject to any existing registered encumbrance, estate, or interest; or
- (d) That for any other reason it is incapable of complete registration.

**11 Registration as to part of land affected**

(1) Notwithstanding anything in regulation 10, an instrument may be accepted for registration as to part only of the land affected if a request for such partial registration is endorsed thereon and signed by the person presenting the instrument for registration.

(2) A partially registered instrument may, at the like request and on payment of the requisite fees, be re-registered as to the remainder or any other part of the land affected thereby.

**12 Alterations or erasures in instruments**

(1) The Registrar may refuse to register any instrument containing an erasure or alteration.

(2) Mistakes should be corrected by deleting the words or figures written in error and writing the correct words or figures above them.

(3) Where any correction, interlineation, or addition affects or could affect the interests of the persons executing the instrument, it should be initialled by those persons and by the attesting witnesses. Where it affects or could affect the interests of the persons receiving the benefit under the transaction, it should be initialled by those persons.

**13 Instrument not to be altered**

(1) Except where authorised by the Registrar or a Judge of the High Court, no alteration whatever shall be allowed to be made to any application or instrument during retention thereof in the Land Registry.

(2) No alteration whatever may be made in any instrument after it has been registered.

**14 Instruments executed by an attorney or representative**

(1) Any instrument executed by one person on behalf of another as his attorney or authorised representative shall be accompanied by a statutory declaration to



the effect that he has not received any notice or information of the revocation of his power of attorney or certificate of representation by death or otherwise.

(2) That statutory declaration shall be made immediately before or immediately after the execution of the instrument.

(3) No such declaration shall be necessary in the case of a legally irrevocable power of attorney, unless the power is irrevocable for a fixed time therein specified and that time has expired at the date of execution of this instrument.

**15 Procedure for registration of instruments**

(1) Upon the acceptance of any instrument for registration, the Registrar shall number the instrument and make a note thereon of the day and hour of the receipt, and enter the same in the journal.

(2) The Registrar shall thereupon cause a memorial thereof to be entered in the appropriate volume and folio of the Land Register. The memorial shall state –

- (a) The number and nature of the instrument; and
- (b) The name of each person taking any benefit under the instrument; and
- (c) The date and hour of the production of the instrument for registration; and
- (d) Such other particulars as the Registrar considers expedient.

(3) Every memorial shall be signed by the Registrar.

(4) The original instrument shall, wherever possible, be filed and retained in the Land Registry.

**16 Priority according to time of presentation for registration**

Every instrument shall be registered in the order of time in which it is presented for registration.

**17 Instruments to be in duplicate**

Every instrument presented for registration shall (except in the case of an order of the High Court or the Court of Appeal) be in duplicate.

**18 Memorial to be recorded on duplicate instrument**

(1) Whenever a memorial of any instrument has been entered in the Land Register, the Registrar shall record the like memorial on the duplicate lease or other instrument evidencing title to the estate or interest intended to be dealt with or in any way affected, unless the Registrar, as hereinafter provided, dispenses with the production of that duplicate.

(2) The Registrar shall endorse on every instrument so registered a certificate of the date and hour on which the said memorial was entered in the Land Register, and shall authenticate each such certificate by signing his name and affixing his seal thereto.

(3) Every such certificate shall be received in all courts as conclusive evidence that the instrument has been duly registered.

**19 Registrar may dispense with production of duplicate instruments**

(1) The Registrar may dispense with the production of any duplicate of any instrument.

(2) (a) Where production has been dispensed with as aforesaid, then, upon the registration of any dealing, the Registrar shall notify in the memorial in the Land Register that no entry of that memorial has been made on the duplicate instrument, and every other dealing shall thereupon be as valid and effectual as if the memorial had been so entered.

- (b) Before registering any such dealing the Registrar shall give at least 28 clear days' notice in the *Gazette* of his intention to register the dealing.

**20 Receipt may be given for instruments presented for registration or deposit**

Every person by whom any instrument is brought or sent to the Land Registry for the purpose of registration or deposit may require a receipt for the instrument, which receipt shall be signed by the Registrar or some officer of the Land Registry duly authorised in writing in that behalf by the Registrar, and shall specify the nature and number of the instrument and the day and hour when it was received by the Registrar.

**21 Persons having an estate or interest in land may be required to register any instruments**

Any person having an estate or interest in land through any instrument authorised to be registered by these Regulations or any other enactment may require any person having possession of that instrument to cause it to be registered. If he fails or refuses to do so, any Judge of the High Court may, on application to him, make such order respecting the registration of the instrument and the costs thereof as he thinks fit.

**22 Certified copies of instruments to be evidence**

The Registrar, upon payment of the prescribed fee, shall furnish to any person applying for the same a certified copy of any registered instrument affecting land, and every such certified copy signed by him and sealed with his seal, shall be received in evidence for all purposes for which the original instrument might be put in evidence.

PART 3

POWER OF ATTORNEY

**23 Power of attorney may be deposited with Registrar**

(1) The proprietor of any land or any person claiming any estate or interest in any land may, by power of attorney in form 1, and either in general terms or specially, authorise and appoint any person on his behalf to execute instruments therewith, or to make an application to the Registrar or to a Judge of the High Court in relation thereto.

(2) Every power of attorney intended to be used under these Regulations, or a duplicate or attested copy thereof, verified to the satisfaction of the Registrar, shall be deposited with the Registrar.

(3) Any power of attorney made or used under these Regulations shall not be invalidated by reason of the power not having been created under seal.

(4) No memorial shall be made in the Land Register in respect of any power of attorney deposited in the Land Registry.

**24 Revocation of power of attorney**

(1) The donor of any revocable power of attorney may, by notice to the Registrar in form 2, revoke the power of attorney, either wholly or as to the land specified in the notice.

(2) No power of attorney shall be deemed to have been revoked by reason only of a subsequent power of attorney being deposited without express notice as aforesaid, nor shall any such revocation take effect as to instruments executed before the reception of the notice by the Registrar.

(3) No power of attorney shall be deemed to have been or to be revoked by the bankruptcy or insolvency of the grantee or by the marriage of a female grantee.

(4) When any instrument of revocation is deposited, the Registrar shall thereupon note on the power of attorney a minute of the revocation and record the same in the alphabetical index.

PART 4  
SEARCHES

**25 Searches**

(1) On payment of the prescribed fees any person may search the Land Register, the journal, the alphabetical index, and all registered and deposited instruments and plans at any time when the Land Registry is open for public business.

(2) (a) For the purpose of assessing such fees, every search shall be deemed to be completed on the day on which it is commenced.

(b) The Registrar may allow a search not completed on one day to be completed on the following or a subsequent day without further fee.

**26 Single search**

A single search shall be deemed to include –

(a) The inspection of any one folium of the Land Register and of all registered instruments and plans referred to therein.

(b) The inspection of any one registered or deposited instrument or plan without reference to any particular folium of the Land Register.

**27 General search**

A general search shall be deemed to include inspection of any number of folios of the Land Register in the name of one proprietor with the relative instruments and plans.

**28 Assistance to persons searching**

Reasonable assistance may be afforded by the Registrar and his staff to any person searching, but no search may be made by the Registrar or his staff except by special arrangement previously approved by Cabinet and no responsibility shall be incurred by the Registrar or his staff for the accuracy of any information obtained by any such search.

PART 5  
CAVEATS

**29 Caveats to be signed by caveator, attorney, or authorised representative**

(1) Every caveat shall be signed by the caveator or by his attorney or duly authorised representative, and shall state with sufficient certainty the nature of the right, title, estate, or interest claimed by the caveator, and shall appoint a place or give an address in Niue at which notices and proceedings relating to the caveat may be served or addressed.

(2) Every caveat shall be entered on the appropriate folium of the Land Register as of the day and hour of the reception thereof by the Registrar.

(3) A caveat shall be in form 3 or form 4, as the case may require.

(4) The Registrar may enter a caveat –

(a) To protect the rights of any person beneficially interested under any trust, the existence of which trust is known to the Registrar; or

(b) To protect the rights of any person where consent is required to any dealing with land, the existence of which rights is known to the Registrar; or

(c) To protect the rights of any person who is an infant, or of unsound mind, or who is absent from Niue; or

(d) To protect the rights of the Crown; or

(e) To prevent any fraudulent or improper dealing.

(5) So long as a caveat remains in force, the Registrar shall not register any instrument presented for registration after the lodging of the caveat and affecting the estate or interest (at law or in equity) protected by the caveat.

(6) Upon the receipt of any caveat, the Registrar shall (if possible) notify in writing the existence of the caveat to the proprietor against whose estate or interest the caveat has been lodged.

(7) (a) Any such proprietor may make an application to the High Court for an order that the caveat be removed.

(b) The High Court shall not make any such order unless it is satisfied that under the rules of the Court, the caveator or his attorney or duly authorised representative has been served with a copy of the application.

(8) On the hearing of any such application, the proprietor shall be entitled to such an order unless the caveator establishes to the satisfaction of the Court, that the caveat should not be removed.

(9) On making any such order, the Court may direct that the caveat be wholly or partly removed, or removed only for certain purposes, and either unconditionally or subject to such conditions as the Court considers proper.

### **30 Caveator may except certain instruments**

A caveator may except from the operation of a caveat any instrument or class of instruments, and such a caveat shall not prevent the registration of any instrument or class of instruments so specifically excepted.

### **31 Service of notice as to caveats**

Every notice relating to a caveat and any proceedings in respect thereof, if served at the place appointed in the caveat or forwarded through the Post Office by registered letter addressed as aforesaid, shall be deemed duly served.

### **32 Person lodging caveat without due cause liable for damages**

(1) Any person lodging any caveat without reasonable cause is liable to make to any person who may have sustained damage thereby such compensation as may be just.

(2) Such compensation shall be recoverable in an action in the Court by the person who has sustained damage from the person who lodged the caveat.

(3) This regulation shall not apply to a caveat lodged by the Registrar.

### **33 Caveat may be withdrawn**

Any caveat may be withdrawn by the caveator or by his attorney or duly authorised representative under a written authority, and either as to the whole or any part of the land affected, or the consent of the caveator or of his attorney or authorised representative may be given for the registration of any particular dealing expressed to be made subject to the rights of the caveator.

## **PART 6**

### **MISCELLANEOUS PROVISIONS**

### **34 Mergers**

(1) The Registrar, upon being satisfied that any estate or interest shown on the Land Register has merged according to the rules of law and equity with any other estate or interest, may, upon the written application of the person in whom those estates or interests are shown on the Land Register as being vested, or of his duly authorised attorney, solicitor or agent make such entries in the Land Register as may be necessary to give effect to the merger.

(2) The same fees shall be payable as for the registration of an instrument

**35 Registrar to have and use seal of office**

The Registrar shall have and use a seal of office, which shall be in such form as Cabinet approves, and every imprint of such a seal and purporting to be signed or issued by the Registrar, or by his deputy, shall be received in evidence, and shall be deemed to be signed or issued by or under the direction of the Registrar, without further proof, unless the contrary is shown.

**36 Forms**

(1) The forms prescribed by these Regulations for use in the Land Registry are set out in Schedule 1 and indicated by the corresponding numbers therein.

(2) The forms may be used with such modifications as may be required, and, if no form is prescribed by these Regulations, then such form may be used as Cabinet may direct or approve.

**37 Fees**

(1) The fees set out in Schedule 2 are hereby prescribed as the fees to be paid for the registration or deposit of any instrument and any search under these Regulations.

(2) No fee shall be payable in respect of the following transactions –

- (a) The bringing of land and any relevant documents relating to the registration of the first title to land under these Regulations; or
- (b) The filing or registration of any instrument or any search on behalf of the Crown or by the Registrar.

(3) Subject to paragraph (2), no instrument shall, without the leave of the Registrar, be registered or deposited, unless the prescribed fee has been paid.

---

SCHEDULE 1

Form 1

Reg 23 (1)

POWER OF ATTORNEY

I, A.B. of [*Address and occupation*], being the proprietor of an estate [Here state nature of the estate or interest] subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten or endorsed hereon, in [*Here refer to Schedule for description and contents of the several parcels of land intended to be affected, which Schedule must contain reference to the existing volume and folio of the Land Register*], hereby appoint C.D., of [*Address and occupation*], attorney on my behalf to [*Here state the nature and extent of the powers intended to be conferred, as whether to sell, lease, mortgage*] the lands in the said Schedule described, and to execute all such instruments and do all such acts, matters and things as may be necessary for carrying out the powers hereby given, and for the recovery of all rents and sums of money that may become or are now due or owing to me in respect of the said lands, and for the enforcement of all contracts, covenants, or conditions binding upon any lessee or occupier of the said lands or upon any other person in respect of the same, and for the taking and maintaining possession of the said lands, and for protecting them from waste, damage, or trespass.

In witness whereof I have hereunto subscribed my name this day of 20 .

A.B.

Signed by the above-named A.B, in the presence of –

G.H.

[*Occupation and address*]

Niue Legislation 2019

Form 2

Reg 24 (1)

REVOCATION OF POWER OF ATTORNEY

I, A.B. of [Address and occupation], being the proprietor of an estate [Here state the nature of the estate] in all that piece of land [Here describe the land, referring to the volume and folio of the Land Register], hereby revoke the power of attorney given by me to C.D., of

[Address and occupation], dated the day of

20 .

In witness whereof I have hereunto subscribed my name this \_\_\_\_\_ day

of 20 .

A.B.

Signed by the above-named A.B, in the presence of –

G.H.

[Occupation and address]

Form 3

Reg 29 (3)

CAVEAT FORBIDDING REGISTRATION OF DEALING

To the Registrar of the High Court, Niue

Take notice that I, A.B. of [Occupation and address], claiming estate or interest [Here state the nature of the estate or interest claimed, and the ground on which claim is founded] in [Here describe land], forbid the registration of any instrument affecting the said estate or interest until this caveat is withdrawn by me, or by order of the High Court.

And I appoint [Here state an address in Niue] as the place at which notices relating hereto may be served,

Dated this \_\_\_\_\_ day of 20 .

A.B.

Signed by the above-named [Name of caveator], as caveator, in the presence of –

C.D.

[Occupation and address]

Form 4

Reg 29 (3)

CAVEAT BY REGISTRAR FORBIDDING REGISTRATION OF DEALING

Take notice that the Registrar hereby forbids the registration of any instrument affecting the estate or interest described in Schedule 1, upon the grounds set out in Schedule 2 until this caveat is withdrawn by him, or by order of the High Court or a Judge thereof, or by order of the Court of Appeal.

As witness the hand of the Registrar (Deputy Registrar) and the seal of office of the Registrar this \_\_\_\_\_ day of \_\_\_\_\_ 20 .

SCHEDULE 2

Signed by the Registrar (Deputy Registrar) and sealed with the Registrar's  
 .....  
 seal of office in the presence Registrar (Deputy Registrar) of:

Witness:

Occupation:

Address:

Notices relating hereto must be addressed to the Registrar at the Land Registry in Niue.

## Niue

	FEES	Reg. 37
		\$
1. For registering an instrument .....		1.00
2. For every entry of a memorial of registration .....		0.20
3. For every power of attorney deposited .....		1.00
4. For depositing every revocation of a power of attorney .....		1.00
5. For registering any caveat .....		1.00
6. For cancelling or withdrawal of caveat and for every notice relating to any caveat .....		0.50
7. For any instrument deposited for safe custody .....		1.00
8. For registering or noting anything not otherwise provided for .....		1.00
9. For every single search .....		0.20
10. For every general search.....		0.50
11. Certified copies –		
(a) Of any instrument or extract from the Land Register – for every 100 words or part thereof .....		0.05
(b) Of any page or part thereof supplied by photocopy or other reproduction processes .....		0.20



## MARRIAGE REGULATIONS 1970

SR 1970/249 – 1 April 1971

1	Title	13	Issue of certified copies of entries for official purposes
2	Interpretation	14	Certified copy of any entry in Registers to be received in Court
3	Solemnisation of marriage	15	Correction of errors
4	Notice of marriage	16	Discretion of Registrar
5	Consent to marriage of minors	17	Endorsement of marriage entry where marriage dissolved
6	Marriage Registers	18	Fees
7	Record of marriage		
8	Transmission of record to Registrar		
9	Marriage certificate		
10	Custody of Registers		
11	Registers open to public		
12	Registrar may issue certified copies or certificates of any entry		

### SCHEDULES

#### **1 Title**

These are the Marriage Regulations 1970.

#### **2 Interpretation**

- (1) In these Regulations –  
“Code” means the Family Law Code 2007;  
“marriage officer” means a marriage officer as defined in section 2 of the Code;  
“Register” means the Marriage Register kept under regulation 6;  
“Registrar” means the Registrar of the High Court, and includes the Deputy Registrar.
- (2) Other expressions defined in the Code have the meanings so defined.
- (3) A reference to a numbered form is a reference to a form so numbered in Schedule 1.

#### **3 Solemnisation of marriage**

- (1) All marriages must be solemnised between the hours of 8am and 5pm.
- (2) At the time of solemnisation of a marriage, the doors of the building (if any) shall be kept open to allow of the admission of the public.
- (3) The two witnesses to a marriage shall be of or over the age of 21 years.

#### **4 Notice of marriage**

The notice of marriage required under section 4 of the Code shall be in form 1.

#### **5 Consent to marriage of minors**

The consent required under section 10 of the Code shall be in form 2.

#### **6 Marriage Registers**

Every marriage officer shall keep for the purpose of recording marriages a Marriage Register in form 3 supplied for the purpose by the Registrar.

#### **7 Record of marriage**

- (1) Every marriage officer by whom a marriage is solemnised shall forthwith record on the original and copies of the Register the several particulars relating to the marriage required by form 3.

(2) If a marriage officer is called upon to solemnise a marriage and at the time no Register is available, he shall enter the particulars of the marriage on a blank form instead of in the Register, and shall, as soon as practicable, affix the form in the Register and that form shall be deemed part of the Register.

(3) No marriage shall be invalidated by any error or defect in form 3 or in the particulars so required to be recorded.

## **8 Transmission of record to Registrar**

The duplicate copy of the Register shall be transmitted to the Registrar under section 8 of the Code.

## **9 Marriage certificate**

Every marriage officer by whom any marriage is solemnised shall, without fee, deliver to one of the parties to the marriage a marriage certificate in form 3.

## **10 Custody of Registers**

(1) The Registers shall be safely kept by the marriage officers in whose custody they are placed, and shall be deemed to be the property of the Crown.

(2) Upon the death, dismissal, transfer, or resignation of any marriage officer, the custody of those Registers shall pass to his successor in office.

## **11 Registers open to public**

The Registers to be kept under these Regulations shall at all reasonable times be open to the public on payment of the prescribed fee.

## **12 Registrar may issue certified copies or certificates of any entry**

(1) The Registrar shall, on the application of any person, and on payment of the appropriate fee prescribed in Schedule 2, issue in form 4 certified copies or certificates of any entry made in the Registers.

(2) Notwithstanding this regulation, the Registrar may dispense with the payment of any fee payable under these Regulations in cases of genuine hardship.

## **13 Issue of certified copies of entries for official purposes**

Notwithstanding regulation 12, where a certified copy of any entry in a Register kept under these Regulations or a certificate as to any such entry is required for any official purpose, the Registrar shall issue the certified copy or special certificate in the prescribed form, free of any charge.

## **14 Certified copy of any entry in Registers to be received in Court**

A certified copy of any entry in a Register, made or given and purporting to be signed by the Registrar and stamped with his seal, or made or purporting to be signed by any Deputy Registrar and stamped with the seal of the Registrar, shall be received in any court as prima facie evidence of the marriage to which it relates.

## **15 Correction of errors**

(1) Any clerical error or any error of fact or substance or any omission of any material fact in any Register may be corrected by the Registrar.

(2) For the purpose of this regulation, the Registrar may require to be produced a statutory declaration and such other evidence as to the facts as he considers necessary.

(3) Any person having custody of a Register shall, upon the direction of the Registrar, make corrections of any errors or omissions in the Register.

(4) Except as provided in this regulation, no alteration shall be made in any entry in any Register after the entry has been completed.

**16 Discretion of Registrar**

Where for any sufficient cause shown to the satisfaction of the Registrar any act, matter, or thing required by these Regulations cannot be done within the time limited by or in strict compliance with the conditions imposed by these Regulations, it shall be sufficient if that act, matter, or thing is done within a reasonable time thereafter, or if the conditions imposed are complied with so far as is reasonably possible.

**17 Endorsement of marriage entry where marriage dissolved**

(1) Upon the making of a decree of divorce, or a decree of presumption of death and of dissolution of marriage, or a decree of nullity of marriage, or a decree of dissolution of a voidable marriage in respect of any marriage solemnised in Niue, the Registrar shall cause a memorandum to be entered on the record of the marriage entry.

(2) The Registrar shall forward a notice of the memorandum referred to in paragraph (1) to the marriage officer (if any) having lawful custody of the Marriage Register in which the marriage is registered, and the marriage officer shall enter the particulars disclosed in the notice on the entry in the Marriage Register.

(3) Every certified copy of an entry in a Marriage Register issued after any memorandum has been entered as provided by this regulation shall contain the particulars disclosed in the memorandum.

**18 Fees**

(1) There shall be paid to the Registrar for various matters specified in Schedule 2 the respective fees specified in that Schedule.

(2) Every marriage officer is hereby empowered to receive and take on behalf of the Registrar the several fees specified in Schedule 2.

---

SCHEDULE 1

FORM 1

*Niue*

NOTICE OF INTENDED MARRIAGE

Reg 4

To \_\_\_\_\_, a marriage officer of Niue.

Notice is hereby given that the undermentioned parties intend to marry at

[*Church or other place where marriage is to be solemnised*] on 20

	Bridegroom	Bride
Name and surname		
Age		
Occupation		

Niue

Status (ie bachelor, spinster, widower, widow, or divorced)		
Birthplace		
Usual residence		
Father's name and surname		
Father's occupation		
Mother's name and surname		

I solemnly declare that to the best of my knowledge and belief the foregoing particulars are true in every respect; and that there is not any impediment to the intended marriage (\*and that the consent required under section 10 of the Code has been obtained).

\_\_\_\_\_  
[Signature of party giving notice]

\*Delete if not applicable

Declared before me, the undersigned, this

\_\_\_\_ day of \_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Marriage officer.

Reg 5

Form 2  
Niue

CONSENT TO MARRIAGE OF MINOR

I, \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_ being the [State: "*Father or Mother*"] of [*Full name of party to marriage who is under age*] who was born on the \_\_\_\_\_

hereby consent to his (her) marriage with [*Full name of other party to marriage*]

\_\_\_\_\_  
[Signature of parent]

Signed before me, the undersigned, at \_\_\_\_\_  
20\_\_\_\_ .

this \_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Marriage officer.

Niue Legislation 2019

Reg 6

FORM 3  
Niue  
MARRIAGE REGISTER

No. \_\_\_\_\_

	Bridegroom	Bride
Name and surname		
Age		
Occupation		
Status (ie bachelor, spinster, widower, widow, or divorced)		
Birthplace		
Usual residence		
Father's name and surname		
Father's occupation		
Mother's name and surname		

Married, after notice duly given to me as required by section 520 of the Niue Act 1966, this day of \_\_\_\_\_ 20\_\_\_\_\_

*[Signature of marriage officer]*

This marriage was solemnised between us:

Signatures of parties married \_\_\_\_\_  
\_\_\_\_\_

In the presence of us: \_\_\_\_\_

Signatures, places of abode, and calling of witnesses  
\_\_\_\_\_  
\_\_\_\_\_

Reg. 12

Form 4  
Niue  
CERTIFIED COPY OF ENTRY IN MARRIAGE REGISTER

Number	
When married	
Where married	

Niue

		Bridegroom	Bride
Name and surname			
Age			
Occupation			
Status (ie bachelor, spinster, widower, widow, or divorced)			
Birthplace			
Usual residence			
Father's name and surname			
Father's occupation			
Mother's name and surname			

Certified to be a true copy of the above particulars included in an entry in the Marriage Register in my lawful custody.

Dated at                      this                      day of                      20                      .

\_\_\_\_\_  
Registrar.

Reg. 18

SCHEDULE 2

FEES TO BE PAID TO REGISTRAR OF THE HIGH COURT

	\$
For every notice of intended marriage	0.50
For every marriage solemnised	4.00
For every certified copy of any entry in a Marriage Register, including search	1.00
Search or inspection of Marriage Register, in respect of each name or entry	0.20

**PENAL MANUAL 2006**

2006/3 – 26 September 2006

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PART 1  
GENERAL

**1 Short title**

This manual may be cited as the Penal Manual 2006.

**2 Definitions**

In this Manual –

“Controller” means the person appointed as Controller of Prisons for Niue;

“inmate” means a person confined in a prison to serve a sentence upon conviction;

“Judge” in relation to the High Court, means any Judge of that Court;

“night” or “night-time” means the interval between half past six o’clock in the evening and half past six o’clock in the morning”;

“offender on remand” means a person detained by any agency of the Government of Niue, authorized to arrest and detain offenders;

“Superintendent” means the person appointed as superintendent of a prison.

**3 Principles and purposes and of the penal system**

(1) The purpose of the corrections system is to improve public safety and contribute to the maintenance of a just society by –

- (a) Ensuring that the community-based and custodial sentences and related orders that are imposed by the courts and the Parole Board are administered in a safe, secure, humane, and effective manner; and
- (b) Providing for corrections facilities to be operated in accordance with these regulations and the United Nations Standard Minimum Rules for the Treatment of Prisoners; and
- (c) Assisting in the rehabilitation of offenders and their reintegration into the community, where appropriate, and so far as is reasonable and practicable in the circumstances and within the resources available, through the provision of programmes and other interventions; and
- (d) Providing information to the courts and the Parole Board to assist them in decision-making.

(2) The principles that guide the operation of the corrections system are that—

- (a) The maintenance of public safety is the paramount consideration in decisions about the management of persons under control or supervision;
- (b) Victims’ interests must be considered in decisions related to the management of persons under control or supervision;
- (c) In order to reduce the risk of reoffending, the cultural background, ethnic identity, and language of offenders must, where appropriate and to the extent practicable within the resources available, be taken into account—
  - (i) in developing and providing rehabilitative programmes and other interventions intended to effectively assist the rehabilitation and reintegration of offenders into the community; and
  - (ii) in sentence planning and management of offenders;
- (d) Offenders must, where appropriate and so far as is reasonable and practicable in the circumstances, be provided with access to any process designed to promote restorative justice between offenders and victims;
- (e) An offender’s family must, so far as is reasonable and practicable in the circumstances and within the resources available, be recognised and involved in –



- (i) decisions related to sentence planning and management, and the rehabilitation and reintegration of the offender into the community; and
  - (ii) planning for participation by the offender in programmes, services, and activities in the course of his or her sentence;
- (f) The corrections system must ensure the fair treatment of persons under control or supervision by –
- (i) providing those persons with information about the rules, obligations, and entitlements that affect them; and
  - (ii) ensuring that decisions about those persons are taken in a fair and reasonable way and that those persons have access to an effective complaints procedure;
- (g) Sentences and orders must not be administered more restrictively than is reasonably necessary to ensure the maintenance of the law and the safety of the public, corrections staff, and persons under control or supervision;
- (h) Offenders must, so far as is reasonable and practicable in the circumstances within the resources available, be given access to activities that may contribute to their rehabilitation and reintegration into the community;
- (i) Contact between prisoners and their families must be encouraged and supported, so far as is reasonable and practicable and within the resources available, and to the extent that this contact is consistent with the maintenance of safety and security requirements.
- (3) Persons who exercise powers and duties under these regulations must take into account the principles set out in paragraph (2) that are applicable, so far as is practicable in the circumstances.

#### **4 General instructions**

- (1) There shall be a Controller who shall have the prime responsibility for the application of the purposes and principles set out in regulation 3.
- (2) (a) Except with the express permission of the Controller no person (including any officer or employee of the Department of Police or of Justice, Lands and Survey) is permitted to enter the prison compound at any time.
- (b) This rule does not apply to a person with whom the Controller has made arrangements to conduct spiritual devotionals for the welfare of inmates.
- (3) (a) The Superintendent may refuse to admit to the prison any visitor whose conduct is improper, and may for that purpose use or authorize the use of such force as may be necessary.
- (b) Incidents of such nature shall be reported immediately to the Controller or appropriate authority.
- (4) The prison cells for the detention of inmates shall be secured by locks and keys retained by the Superintendent or his substitute who is on duty.
- (5) The Niue Public Service Commission on advice of the Controller shall set the hours of duty to be observed by the Superintendent and other prison officers each day of the week or month, as the case may be and in accordance with regulation 31.

#### **5 Admission and discharge of prisoners**

- (1) There shall be an admission register, in which there shall be entered in respect of each inmate the following particulars –
- (a) Information concerning his identity (name, sex, village or home address, telephone number);
  - (b) Authority for his committal and offence committed;
  - (c) Admission and discharge dates;

(d) Other particulars as may be directed by the Controller.

(2) Every inmate upon admission shall be searched, and all property taken from him shall be recorded and returned to him on the date of his release.

(3) The Superintendent shall be responsible for the safekeeping of inmates' property while in prison custody.

(4) The Record Property Sheet shall be signed by the inmate, as acknowledgement of receipt his property.

## **6 General provisions as to discipline and control**

(1) Discipline and order shall be maintained with firmness and fairness.

(2) Treatment of inmates shall have regard to the aim of rehabilitation, encouragement of self-respect and a sense of personal responsibility.

(3) Prison officers shall exercise the utmost care and vigilance in the custody and surveillance of the inmates under his charge and shall not part with the custody of an inmate.

(4) No prison officer shall use force in dealing with any inmate except in self-defence or in defence of another person or in the case of escape or attempted escape or active or passive physical resistance to a lawful order.

(5) Any prison officer who uses force subject to paragraph (4) shall report the incident to the Controller as soon as possible.

(6) Every inmate must promptly obey every lawful order that is given to him.

(7) Any inmate who considers himself aggrieved by an order must nevertheless obey, but may on the first convenient occasion complain to the Controller.

(8) Every inmate must keep their person, sleeping quarters, eating materials and furniture in the highest state of cleanliness and tidiness.

## **7 Constables**

(1) Any constable may visit any inmate provided the Superintendent is present at the time of interview.

(2) If an inmate express unwillingness to see the Police the visit may be terminated forthwith.

## **8 Legal adviser**

(1) The legal adviser of any inmate may, with the prior permission of the Controller interview the inmate on any legal business not pertaining to the discipline of the prison.

(2) Any abuse of this privilege by the legal adviser or any assistant will result in the approval being withdrawn automatically.

## **9 Visits**

(1) Inmates shall be permitted to receive visitors on Saturdays and Sundays or any week day provided the Superintendent is satisfied that the reason(s) given are valid and may not affect the security or discipline of the Prison.

(2) The time allocated for each visitor shall be at the discretion of the Superintendent and in special cases the approval of the Controller must be sought.

(3) Prison cells are out of bounds to visitors, except as provided under paragraph (1).

**10 Release**

(1) The Controller may in special circumstances apply the following general provisions –

- (a) A weekend release may be granted for inmates serving a sentence of 6 months or more and who is known to be a family man with a spouse rearing a large or young family but such a release shall be considered a privilege and can be taken away at any time;
- (b) Temporary release to attend the wake and funeral of any local member of the family may be granted to any inmate provided a request is made to the Controller;
- (c) Inmates on a weekend or temporary release are responsible for their own transport to and from the prison custody;
- (d) In every other case the application by inmates for a temporary release shall be considered on merits.

(2) The Controller alone shall be responsible for dealing with the application of paragraph (1).

PART 2

WELFARE OF INMATES

**11 Religion**

(1) The Controller may enter into arrangements with any church or organization for the appointment of a Minister of religion to conduct services and religious observances once a week.

(2) With the approval of the Controller, services may be held at the prison compound on Sundays, Good Friday or Easter holiday and Christmas Day.

(3) Any Minister of religion may at convenient times, visit any inmate for whom he or she has pastoral responsibility, subject however to prior arrangements with the Controller or the Superintendent.

(4) The Controller may exempt any inmate from working on any day of his recognized days of religious observances.

**12 Education and library**

(1) Inmates interested in furthering their education by correspondence or other means may be permitted to do so by special arrangements with the Controller.

(2) There shall be a prison library providing reading materials for inmates and to be opened at times and dates approved by the Superintendent.

**13 Health**

(1) Notwithstanding regulation 4(2) the medical officer shall visit the prison at such periods as may be specified by the Controller or any other time as requested by the Superintendent.

(2) This condition also applies to the professional services provided by the Dental Officer in the case of dental problems.

(3) The Superintendent or any prison officer on duty shall provide the medical or dental officer any information relevant to the cause of health problems of any inmate.

(4) Inmates suffering from any contagious or infectious disease may be removed from the prison on the recommendation of the medical officer provided that the Controller is informed prior to the inmate's removal from custody.

(5) The Superintendent shall immediately notify the Controller, and where practicable, the next of kin of the deceased whenever any inmate –

- (a) Becomes seriously ill or suffers injury;
- (b) Removed to the hospital; or
- (c) Suffers death.

(6) The Superintendent shall at once inform an inmate of any intimation he receives of the death or serious illness of any near relative of the inmate.

#### **14 Accommodation, bedding and clothing**

(1) Prison cells are provided to accommodate no more than four inmates at any one time and such arrangements must comply with the prevailing health standard.

(2) A separate bunk bed is provided for each inmate in each of the cells, and following the usual practice, inmates are expected to supply their own personal bedding as well as outdoor working clothes, except in special cases where circumstances demand the prison authority may supply the needs of an inmate but not otherwise.

(3) Washing facilities are also available for inmates to wash their own clothes at times approved by the Superintendent.

#### **15 Food**

(1) Every inmate shall be supplied with a sufficient quantity of wholesome food, but generally the diet shall on each day consist of –

Bread or hard biscuits	1/2 loaf or 1/2 dozen biscuits per inmate per day.
Tin of meat/fish	1/2 tin of meat/fish per inmate per day.
Sugar, milk and tea	sufficient supply per day.
Rice or any substitute	sufficient for an evening meal or 1 bowl of rice per day per inmate.
Local food/vegetable	when available

(2) (a) Provisions for special diet can be arranged on recommendation of a medical officer.

(b) Basic cooking facilities and utensils are available for inmates to cook their own food.

(c) Cooking utensils, plates and cups used for serving food and drink must be washed and kept clean at all times.

(3) Notwithstanding the standard supply of food and diet listed above every effort shall be made by the prison authority to initiate and foster planting programmes under supervision that would eventually lead to the prison being self-sufficient in local food supplies both in vegetables and fresh local meat.

#### **16 Inmates awaiting trial**

(1) An offender awaiting trial must not under any circumstances be placed in a cell which has already been occupied by an inmate and shall, as far as practicable be kept apart from other inmates.

(2) The expression offender awaiting trial means an offender detained only by reason of fact that he is awaiting trial or is in remand during the trial or before sentence.

(3) Any interview between an offender awaiting trial and his legal adviser may be held in sight, but not within the hearing of a prison officer.

(4) Every offender awaiting trial shall be permitted to procure at his own expense or receive from his friends reasonable quantities of food and other necessities for his own use.

(5) An offender awaiting trial is not required to work unless he volunteers to do so.

**17 Inmates under the age of twenty-one**

Except during working hours, library or income working projects an offender(s) awaiting trial or an inmate under the age of 21 years shall be kept in a cell separately from other inmates over that age.

**18 Inmates good behaviour and remission**

(1) An inmate serving an imprisonment sentence of 3 to 6 months maximum shall be allocated marks on the basis of good behaviour and diligence.

(2) The maximum number of marks which an inmate may be allocated per day is limited to five only.

(3) (a) For the purpose of the partial remission of sentences, every 15 marks allocated shall represent one day's remission.

(b) The Controller may, in recommending or granting any such remission, take into account any other matter he considers relevant to an assessment of the inmates good conduct and diligence during his sentence.

(4) An inmate shall be notified of the number of marks (if any) of any remission represented by those marks at the end of each month.

**19 Inmates hours of work**

The following is the standard working hours:

Monday to Friday	6am to 5.00pm with 1 hour break for lunch.
Saturday	7:30am to 12.00pm. Afternoon for general clean up and laundry needs.
Sunday	rest day but confined to prison compound.
Christmas/New Year/ Constitution Day	free but confined to prison compound.

**20 Provision as to earning of inmates**

Income earning projects are subject to separate and special arrangements as determined by the Controller.

**21 –**

**PART 3**

**DUTIES AND RESPONSIBILITIES OF PRISON OFFICERS**

**22 Management and control**

(1) The Superintendent is charged with the control, management, order, and discipline of the prison, safe custody of inmates, and all Government property.

(2) At least once a week and on uncertain hours he shall visit the prison at night and satisfy himself that all is in order.

(3) The Superintendent shall not be away from the vicinity of the prison for more than 24 hours at a time without previously notifying the Controller.

(4) Before leaving the prison on any occasion he shall transfer charge to his deputy or to the prison officer whom under these instructions is answerable to the Controller for the control and supervision duties.

(5) If he is unable through sickness to perform his duties he shall transfer charge to his deputy and report absence to the Controller.

(6) In the absence of the Superintendent, the Deputy shall have charge of the prison and responsible in the same manner as the Superintendent.

(7) The Deputy Superintendent shall have such other powers to carry out duties as delegated by the Superintendent.

**23 Overall supervision**

(1) The Superintendent shall exercise a close and constant personal supervision of the whole prison, and shall see as far as practicable that each inmate is known to him.

(2) He shall at reasonable intervals inspect all parts of the prison and shall give special attention to any inmate who is sick or under restraint or undergoing confinement in a cell or upon restricted intake of food or diet.

(3) He shall satisfy himself that all occupied prison cell are locked at appropriate times, and keys are kept at the authorised place or in possession of the officer of duty.

(4) He shall require reports accounting for all inmates to be made to him at the hour of final lock-up, at such times as inmates go and return from work and at such times as he considers necessary.

(5) The Superintendent shall report promptly to the Controller whenever any inmate –

- (a) Escapes; or
- (b) Is captured after an escape; or
- (c) Is placed under mechanical restraint; or
- (d) Involved in an accident.

(6) The Superintendent may at any time refuse to allow any person access to the prison compound if there is cause to suspect that liquor or any prohibited item is to be brought into the compound.

**24 Keeping and maintaining official records**

The Superintendent shall cause to be kept the following record books and such other books and records as may from time to time be directed by the Controller:

- (a) Admission register including information on discharge;
- (b) Inmates Property Record book;
- (c) File containing Warrants;
- (d) Lock-up Report book;
- (e) Punishment Record book;
- (f) Official Visitors' book; and
- (g) Visitors' book.

**25 Prison Officers and performance of duties**

(1) Every prison officer shall perform such duties as the Superintendent directs from time to time, and carry out any extra or special duty when directed.

(2) Unless the Controller directs otherwise, the control of the prison shall in the absence of the Superintendent and his Deputy fall on the next senior prison officer.

(3) Any prison officer who is in charge of the prison under paragraph (2) shall for the time being be responsible as if he were the Superintendent, and shall exercise all powers vested by this Penal Manual in the Superintendent.

**26 Instructions in the event of an emergency**

(1) The Superintendent shall cause to be prepared a set of instructions to be followed in the event of any emergency such as fire or hurricanes and shall note these instructions and any change subsequently made to him in his order book.

(2) He shall see that all inmates are fully instructed in their duties in the event of fire or hurricanes, and shall ensure that appropriate authorities are informed promptly.



**27 In cases of emergency and lawful orders**

(1) In any case of emergency every prison officer under the control of the Superintendent is expected to act promptly, to use his own judgment, and to exercise initiative.

(2) Every officer shall obey without question any lawful order given by the Superintendent or his substitute, but he may afterwards appeal to the Controller if he by any reason disagrees with the order given at the time.

**28 Association other than performance of duties with inmates prohibited**

(1) Except in the performance of his official duties no prison officer shall associate in any way with any of the inmates under his charge.

(2) No officer at any time shall receive any money, reward, trades, enter into an agreement or benefit of any kind from or on behalf of any inmate.

(3) Unless authorized in writing by the Controller no officer shall purchase any article from, belonging or made in prison, or have work done for him by an inmate.

**29 Personal visitors - alcohol prohibited**

(1) Except with the permission of the Controller, no officer shall be permitted to receive or take personal visitors within any part of the prison other than the officer's quarters.

(2) No officer shall have or use intoxicating liquor within any part of the prison compound or within close proximity to the inmates' quarters.

**30 Employment grievances**

(1) Any officer wishing to bring any matter before the Controller may make a written statement to the Superintendent, who shall forthwith forward the statement with his comments to the Controller.

(2) Any officer may elect to join the Niue Public Service Association and may either alone or in company with any other officer make representation to the Association on any matter relating to the salaries, wages, allowances, uniforms or condition of employment of officers.

**31 Prison officers hours of work**

(1) The Superintendent is required to work standard working hours each day or week days as prescribed by the Commission under regulation 40 of the Public Service Regulations 2004.

(2) For any other prison officer the Commission on the advice of the Controller shall prescribe the hours of work each day but generally under a weekly or monthly roster system as deemed appropriate.

PART 4

PAROLE SYSTEM

**32 Parole Board**

The Parole Board established under section 172 of the Criminal Law Code 2007 and shall together with Parole Officers administer the parole system.

**33 Eligibility for parole**

(1) Every offender shall be eligible for consideration by the Minister for Justice for release on parole upon recommendation by the Controller or upon the expiry of the following periods since serving the prison sentence –

- (a) –
- (b) 8 years in the case of every offender undergoing imprisonment for life;
- (c) one year after the expiration of one half of the term of the sentence, whatever period is longer in the case of every offender undergoing a sentence of one year or more than a sentence of life imprisonment.

(2) In considering any case under parole the Minister shall not be required to interview the offender.

### **34 Jurisdiction of the Controller**

The Chief of Police through the Parole Officer shall have jurisdiction in respect of persons released on parole after serving a sentence in prison.

### **35 Term of parole**

Where any offender who is detained under sentence of imprisonment for a year or more, not being imprisoned for life, is released from detention before the expiry of the minimum term for which he is liable to be detained under sentence, he shall be on parole, from the time of release, until the expiry of the term of his sentence, or for one year if the unexpired part of that term is less than a year.

### **36 Term of parole to be deemed part of sentence**

Whenever any person detained under any sentence is released on parole before the expiry of the sentence, the term of the sentence shall continue to run while he is on parole as if he were still serving the sentence.

### **37 Conditions of parole**

(1) Where any offender is released on parole the following general conditions shall apply –

- (a) He shall report in person to the Parole Officer whose office is located as appointed by the Commission, within 24 hours after his release on parole;
- (b) He shall give the Parole Officer under whose supervision he is for the time being, reasonable notice of his intention to move from his village of residence to any other village or district, together with the nature and place of his employment;
- (c) He shall not reside at an address that is not approved by the Parole Officer;
- (d) He shall not continue in any employment that is not approved by the Parole Officer;
- (e) He shall not associate with any specified person, or with persons of any specified class, with whom the Parole Officer has, in writing, warned him not to associate; and
- (f) He shall be of good behaviour and shall not commit any offence against the law.

(2) Every paroled offender shall be under the direct supervision of a Parole Officer.

(3) Any paroled offender through the Parole Officer may at any time apply to the Controller for the remission, suspension or variation of any general or special condition of parole, and the Controller may, and in writing, suspend the condition until the application has been heard by the Court.

(4) The Parole Officer may apply to the Court through the Controller for the imposition of any additional condition of parole in respect of any paroled offender under his supervision.



**38 Breach of conditions of parole**

(1) Every paroled offender who contravenes or fails to comply with any condition of his parole shall be dealt with in accordance with regulation 38(1).

(2) Where any Parole Officer or any constable believes on reasonable grounds that any paroled offender had committed a breach of a condition of his parole, he may arrest the offender without a warrant and to dealt with in accordance with section 101 of the Niue Act 1966.

**39 Recall of offender released on parole**

(1) (a) The Controller may, at any time while an offender is released on parole, direct that the offender be recalled.

(b) On the giving of the direction, the parole shall be deemed to be cancelled and the offender may be arrested without warrant by any constable, and shall be detained and shall continue to serve his sentence unless he is again released on the recommendation of some reputable person or persons of the village where the parole offender resided.

(c) Such a release shall not operate to extend term of the offender's parole, beyond the date on which that term would have expired had he not been recalled.

(2) The authority conferred in paragraph (1) above may be exercised on such grounds as the Controller thinks fit, and whether or not the offender has committed a breach of the conditions of his parole.

**40 Appointment of parole officers**

The Niue Public Service Commission may appoint any person or the holder for the time being of any office or appointment in the Niue Public Service as a Parole Officer.

**41 Duties and responsibilities**

(1) The Parole Officer may, and shall when required by the Controller, report on the character and personal history of any person released on parole or undergoing a sentence of imprisonment with a view of assisting the Controller in determining the most suitable method of dealing with his case; and may in such report advise the Controller whether the offender would be likely to respond satisfactory to parole and whether special condition of parole should be imposed.

(2) Every Parole Officer shall –

(a) Supervise all persons placed under his supervision, with a view of assisting their social rehabilitation and preventing the commission of further offences; and

(b) Perform such other duties as directed by the Court or the Controller.

PART 5

PROBATION SERVICE

**42 Administration**

Regulations 42 to 49 shall be administered by the Controller under the jurisdiction of the High Court.

**43 Probation orders issued by Court**

(1) Any person convicted by Court of any offence punishable by imprisonment, may in its discretion, instead of sentencing him to prison, release the offender on probation for a period specified by the Court, being generally a period not less than 1 year and not more than 3 years.

(2) Where an offender is released on probation, the Court may also at the same time make an order to pay any fine authorized by law and impose any additional orders as it thinks fit.

(3) (a) Any offender sentenced to imprisonment for a term less than 1 year may be considered for release on probation for a period not exceeding 1 year upon terms and conditions specified by the Court.

(b) In any such case the offender released on probation shall be under the supervision of the Probation Officer.

(4) In the event of any appeal or an application for leave to appeal, a release on probation shall be deemed to be a sentence, or if a fine is imposed, to be part of the sentence.

(5) Where any person is released on probation it is the duty of the Registrar to notify the Probation Officer accordingly.

(6) Where any person is released on probation the Probation Officer shall issue the probationer with a written notice setting out the conditions subject to which he has been released.

#### **44 Conditions of release**

Where any person is released on probation, the following general conditions shall be used as guidelines –

- (a) To report to the Probation Officer immediately upon his release on probation and shall further report to endorse the probation register if and when he is required to do so by the Probation Officer;
- (b) To give to the Probation Officer reasonable notice of his intention to move away from his usual place of residence and his new address, the nature and place of employment;
- (c) Not to reside at an address that is not approved by the Court or Probation Officer;
- (d) Not to continue in any employment or continue to engage in any occupation that is not approved by the Court or Probation Officer;
- (e) Not to associate with any specified person or persons of any specified group, with whom the Court or Probation Officer has, in writing, warned him not to associate;
- (f) He shall be in good behaviour and commit no further offence against the law;
- (g) To be engaged on approved community service or national projects or any other work considered to be of some benefit to the people or island as a whole.

#### **45 Additional conditions may be imposed by Court**

The High Court in releasing any person on probation may impose additional conditions as it thinks fit or on the basis of the following –

- (a) Direct the probationer to remain within his usual place or residence or village throughout the entire period of the term of his probation;
- (b) Direct the probationer not to attend social gatherings or night spots within or outside of his usual place of residence or village;
- (c) Direct the probationer to make good the loss or damage to the property for which he was convicted for or pay full restitution or compensation for loss suffered by any person through or by means of any such offence for which he was found guilty and conviction ordered accordingly;
- (d) Direct the probationer to abstain from the use of intoxicating liquor or drugs;
- (e) Direct the probationer not to associate with any specified person or with persons of any specified group or class;

- (f) Direct the probationer to undergo any specified course of education or training, including regular attendance to any specified church organisation;
- (g) For ensuring his good conduct or for preventing the commission of further offences.

**46 Breach of conditions of probation**

(1) Every probationer who fails to abide by the terms and conditions of his probation is liable to be prosecuted under section 101 of the Niue Act 1966.

(2) Where any probationer is convicted under the provision specified in paragraph (1), the Court may, in addition to or instead of sentencing the offender, do all or any of the following things, namely –

- (a) Extend the term of probation by any specified period expiring not more than 3 years;
- (b) Vary any condition of the probation imposed earlier by the Court;
- (c) Impose additional conditions.

(3) Where any probationer or any constable believes on reasonable grounds that any probationer has committed a breach of any condition of his probation, he may arrest the probationer without warrant, to be dealt with in accordance with section 101 of the Niue Act 1966.

**47 Probation Officer's report**

(1) Where a written report is made to the Court by a Probation Officer, a copy of the report shall be given to the counselor or public defender appearing for the offender, or if the offender is not represented by counsel or public defender, to the offender.

(2) The offender or his counsel or public defender, may tender evidence on any matter referred to in any report whether in written form or otherwise, by the Probation Officer.

(3) The prosecution, in the like manner, is also entitled to receive a copy of every report submitted by a Probation Officer to the Court.

(4) Every report submitted by the Probation Officer shall generally cover the following –

- (a) Full Christian and family names of the offender including alias (if any);
- (b) Age and date of birth and marital status (married/single);
- (c) Brief details of the offence(s) committed by the offender together with the relevant sections of the Code to which the charge(s) are made against him;
- (d) Maximum penalty stipulated by law;
- (e) Details of previous offences and penalties imposed;
- (f) Father/mother's names and their current address;
- (g) Names of children (if any) and their birth dates;
- (h) Detailed education background of the offender;
- (i) Employment (if any);
- (j) Religion;
- (k) Financial status;
- (l) Health; and
- (m) General observation and comments.

**48 Procedure for sentence on original sentence**

(1) Any probationer, including a probationer who, in addition to being released on probation, was also sentenced to pay a fine is convicted of an offence

committed during the period of probation, the Court may, sentence him for the offence for which he was originally charged and released on probation.

(2) Every application filed by the Probation Officer in terms of regulation 45(3) shall be served on the probationer followed by a summons unless the probationer is already in custody.

(3) Any application made under this section shall be disposed of in the following manner:

- (a) In the case of the offender released on probation by the Justice of the Peace the application shall be dealt with by the Commissioner of the High Court;
- (b) In the case of the offender released on probation by the Commissioner of the High Court, the application shall be dealt with by the Judge;
- (c) In the case of the offender released on probation by the Judge of the High Court the application shall be dealt by the Chief Justice; or
- (d) In case of the offender released on probation by the Chief Justice, the application shall be dealt with by the Court of Appeal.

(4) The Commissioner or Judge or Chief Justice by whom an application is heard under this section, may if he thinks fit, deal with the offender for the offence for which he was released on probation in any way, other than releasing him again on probation.

#### **49 Effect of subsequent sentence on probation**

(1) Where any person released on probation is sentenced in respect of any offence for a term of one year or more, the probation shall be deemed terminated.

(2) Where any person released on probation is sentenced in respect of any offence to imprisonment less than one year the term of his probation shall continue to run while he is detained under sentence, and on his release from detention, he shall continue to be on probation for the then unexpired residue of that term, unless he is sooner discharged from probation by an order of the Court.

#### **50 Discharge on expiry of probation**

Every probationer shall at the expiry of the term of his or her probation be deemed to be discharged in respect of the offence for which he or she was released on probation as if he or she had been sentenced and had served the term of his or her sentence.

#### **51 Appointment of Probation Officers**

(1) The Niue Public Service Commission shall be responsible for the appointment of any person, or the holder for the time being of any office or appointment in the Niue Public Service, as a Probation Officer.

(2) Any appointment made under the Public Service Regulations 2004 may be held in conjunction with any office or appointment that is not deemed inconsistent with other employment being held.

(3) Any person appointed subject to this section shall be responsible to the Controller.

#### **52 Duties and responsibilities**

(1) It is the duty of the Probation Officer, when so required by any Court or the Controller, to report on the character and personal history of any person convicted of any offence punishable by imprisonment, with a view of assisting the Court in determining the most suitable method of dealing with his case, and may in such report advise the Court whether the offender would be likely to respond satisfactory to probation and whether any special probation condition should be imposed.

- (2) Generally it shall be the duty of every Probation Officer to –
- (a) Supervise all persons placed under his supervision, with a view to assisting their social rehabilitation and preventing the commission of further offences;
  - (b) Perform such other duties as may be specified elsewhere under these instructions or directed by the Court or the Controller; and
  - (c) Appear in any proceedings in any Court and make presentation when called upon to do so.
- (3) In the exercise of his duties, every probation officer shall have the same general power, protection and privilege of a constable.

**53 Discretionary powers**

(1) For proper control and supervision purposes the Probation Officer in the exercise of his duties pursuant to regulation 51 or any other provisions shall, in consultation with the Controller, cause to centralize the probation in small groups depending on the nature of the project or an approved work programme.

(2) Every application by recognized sports, church or social organizations, local government bodies or government departments for service under probation system shall be determined according to its merits and by reference to regulation 44(f) provided requests are made in writing to the Controller.

PART 6

PRISON DISCIPLINE

**54 Offences against discipline**

- (1) The following are offences against prison discipline –
- (a) Disobedience of lawful orders given by any officer of the prison;
  - (b) Disobedience of any rules of the prison;
  - (c) Using obscene or improper language;
  - (d) Indecent behaviour;
  - (e) Creating a disturbance;
  - (f) Using insulting or threatening language to any officer or other prisoner;
  - (g) Wilfully injuring or destroying any article belonging to the prison;
  - (h) Receiving or using articles prohibited by rules;
  - (i) Refusal to work, or negligence or idleness at work;
  - (j) Disrespect towards any prison officer, or towards the Medical Officer, chaplain or visiting priests or any visitor, or person employed in connection with the prison;
  - (k) Committing a nuisance;
  - (l) Refusing or neglecting to use, take, or apply the medicines or remedies ordered by the Medical Officer;
  - (m) Making repeated groundless complaints; and
  - (n) Wilfully giving or causing unnecessary trouble.
- (2) Punishment in respect of a prison offence may be imposed by the Superintendent of the prison.
- (3) The Superintendent may handcuff or place and keep in separate confinement any prisoner whose conduct is so violent as to render that necessary.
- (4) The Superintendent shall report each case of restraint of a prisoner and the imposition of a punishment of a disciplinary offence in writing to the Controller as soon as possible after that event.
- (5) A prisoner who has been ordered to be punished for a disciplinary offence may appeal against that punishment to the controller.

(6) Where an appeal is made to a Controller under paragraph (5), the Controller shall consider the report provided by the Superintendent and any evidence the prisoner presents.

(7) The decision of the Controller on the appeal shall be final.

**55 Offences by inmates relating to drugs and alcohol**

(1) Every inmate commits an offence against discipline who without the authority of a medical officer, uses any drug or consumes alcohol (whether inside or outside a prison).

(2) Every person commits an offence against discipline who, without the authority of a medical officer, uses any drug or consumes alcohol during any period while the person is on temporary release from custody under regulation 10.

**56 Attempting or aiding commission of offence against discipline**

Every inmate or person on temporary release from custody under regulation 10 who attempts to commit any offence against discipline, or who aids, counsels or procures the commission of any such offence, is liable to be dealt with and punished in the same manner as if he had committed the offence.

**57 Minor or unintentional breaches of discipline**

(1) As far as practicable in the circumstances and if appropriate, an officer must deal with a minor or an unintentional breach of discipline by a prisoner in the following manner –

- (a) By stopping the breach of discipline and explaining the nature of the breach to the prisoner committing the breach;
- (b) By instructing the prisoner to correct his or her behaviour;
- (c) By allowing the prisoner to make amends to any person aggrieved by the breach.

(2) If a minor or an unintentional breach of discipline is not dealt with under paragraph (1), does not prevent an inmate from being charged with a disciplinary offence.

PART 7

COMPLAINTS PROCEDURE

**58 Purpose and objectives of complaints procedure**

The inmates complaints procedure has the following objectives –

- (a) To enable complaints by a person who are or were under control of supervision to be dealt with internally on a formal basis;
- (b) To ensure that all persons under control or supervision are aware of the complaints system and are able to make a complaint if and when they choose to do so, without fear of adverse consequences;
- (c) To ensure that all reasonable steps are to taken to investigate complaints in a fair, timely, and effective manner;
- (d) To ensure that, if possible in the circumstances, complaints are dealt with reasonably promptly and at the lowest and most informal level;
- (e) To ensure that complainants are advised of the progress in investigating their complaints.



**59 Prison, parole office and probation office must have internal complaints procedure**

(1) In the prison, parole office and probation office, there must be an internal complaints procedure that enables complaints to be dealt with internally on a formal basis.

(2) The Controller or controlling officer of the parole and probation office must ensure that the internal complaints procedure for that place complies with the objectives set out in regulation 27.

(3) Notices must be prominently displayed in each cell in the prison, in each parole and probation office, that explain –

- (a) The complaints investigations process generally; and
- (b) How persons under control or supervision may request interviews or making formal complaints; and
- (c) The right of persons under control or supervision to request, at any time, assistance from the Superintendent or Controller.

**60 Assistance to make complaints**

(1) The Superintendent must ensure that a person under control or supervision is given the opportunity to –

- (a) Obtain assistance to enable the person to make a complaint; or
- (b) Verify any information recorded on a form or other document outlining a complaint.

(2) The Superintendent must ensure that any person who is under control or supervision who has difficulties with verbal or written communication is provided with assistance –

- (a) To complete any required documents; and
- (b) To prepare or present his case.

**61 Persons under or previously under control or supervision may seek assistance from Controller**

A person who is or was under control or supervision may, at any time, seek assistance from the Controller for the purpose of making a complaint.

**62 Investigation of complaints by Controller**

(1) The Controller may investigate a complaint in any manner that he considers appropriate (which may include, without limitation, referring the complaint to another person for consideration).

(2) While investigating a complaint, the Controller must be given access to –

- (a) Any person within the prison, parole or probation office, or to any person at any other place (including a dwelling house) at which the complainant is or was detained or required to attend, work, or live; and
- (b) Any other person who is or was responsible for –
  - (i) the supervision of a complainant while the complainant carries or carried out his sentence or order; or
  - (ii) the performance of any escort or courtroom custodial duties in relation to the complaint; and
- (c) Any records held by an employee of the department or any other person referred to in subparagraph (a) or (b) that are relevant to the complaint.

(3) If the Controller investigates a complaint, he must conduct the investigation reasonably promptly, and must inform the complainant and the other

person concerned, promptly after the conclusion of the investigation, in a matter that he considers appropriate of –

- (a) The result of the investigation; and
  - (b) Any further action that the inspector proposes to take in respect of the complaint.
- (4) The Controller must keep records of every complaint that he receives and deals with.

### **63 Powers of entry and access by Controller**

(1) For the purpose of performing any functions as the Controller, he may at any time, enter the prison, parole or probation office, or any other place (including a dwelling house) at which a person under control of supervision is or was detained or required to attend, work, live, and gain access to –

- (a) All parts of that place;
- (b) All persons under control or supervision in that place;
- (c) All persons with responsibility for the control or supervision of those persons in that place, and visitors to that place;
- (d) If the place is the prison, parole or probation office, all records stored in that place that relate to –
  - (i) the place;
  - (ii) a person who is or was under control or supervision; or
  - (iii) an officer employed at that place.

(2) For the purpose of performing any functions as the Controller, he may at any time, enter any vehicle that is or was being used for the transportation of any person under control or supervision during any period of that person's detention.

(3) Despite regulation 62 (2) (a) and paragraphs (1) and (2) of this regulation, the Controller –

- (a) Must not enter a dwelling house without the consent of any person who appears to be the occupier of the dwelling house;
- (b) Must not enter any part of a place at which a person under control or supervision is required to live, work, or attend (other than the actual part of the place in or at which the person is required to live, work, or attend) without the consent of the person who appears to be the occupier of that place;
- (c) Must not enter a vehicle that is not owned by the department, unless the owner or driver of the vehicle consents to that entry.

### **64 Interviews with Controller**

(1) If the Controller visits the prison, parole or probation office, or any other place for the purpose of interviewing persons under control or supervision, all the persons under control or supervision at that place are entitled to an interview with the Controller.

(2) If the Controller visits the prison, parole or probation office, or other place for a purpose other than to interview persons under control or supervision, a person under control or supervision at that place may ask for an interview with the inspector and that inspector may agree to the interview.

(3) No person under control or supervision may be required to disclose to any person with responsibility for the control or supervision of that person the reason why the person asked for an interview with the Controller.



**65 Recommendations and directions of Controller**

(1) The Controller may, either during or following the completion of an investigation –

- (a) Make any recommendations that he considers appropriate about practices or procedures to any person who he considers is the appropriate person to receive the recommendation;
- (b) Issue any direction to a person with responsibilities for the control or supervision of any person that he considers necessary to avoid or reduce any immediate danger to the complainant or any other person.

(2) A direction given under paragraph (1)(b) may be revoked at any time by the Superintendent.

(3) If the Superintendent revokes a direction given under paragraph (1)(b) he must promptly inform the Minister of that revocation and the reasons for it.