

# **NIUE LAWS**

## **TAU FAKATUFONO-TOHI A NIUE**

**LEGISLATION AS AT 31 DECEMBER 2019**

**VOLUME 3  
TOHI 3**

**STATUTES N-Z**

Government of Niue  
Alofi 2020

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## **EDITORIAL NOTE**

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

Volumes 1, 2 and 3 presents the consolidated statutes.

Volume 4 presents the consolidated subsidiary legislation.

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

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

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



# NATIONAL DISASTER RELIEF FUND ACT 1980

1980/61 – 10 November 1980

1	Short title	6	Investment of moneys of the Fund
2	Interpretation	7	Expenditure of moneys of the Fund
3	National Disaster Relief Fund established	8	Annual accounts and audit
4	General objects of the Fund	9	Annual report
5	National Disaster Relief Fund Account	10	Delegated authority

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**To establish and control a fund to be used to repair damage suffered by public property during national disasters and to provide assistance to victims of such national disasters**

## 1 Short title

This is the National Disaster Relief Fund Act 1980.

## 2 Interpretation

In this Act –

“Fund” means the National Disaster Relief Fund;

“national disaster” means any storm, tempest, cyclone, flood, earth tremor, drought, fire, disease or act of God from any cause whatsoever as declared a national disaster by Cabinet and includes any public emergency proclaimed under the Public Emergency Act 1979.

## 3 National Disaster Relief Fund established

(1) There is hereby established a fund to be called the National Disaster Relief Fund.

(2) The resources of the Fund shall consist of the following –

- Contributions by the Government of Niue and other governments;
- Contributions by private organisations whether domestic or international with contributions by private individuals;
- Returns from investments made from the Fund.

## 4 General objects of the Fund

The general objects for which moneys in the Fund may be applied are –

- The repair of damage suffered to public property during a national disaster;
- The immediate provision of financial and other assistance to victims of national disasters.

## 5 National Disaster Relief Fund Account

There is hereby established a Fund account with the Treasury Department of Niue to be called the National Disaster Relief Fund Account and all of the Fund’s moneys shall be paid into the Fund Account.

## 6 Investment of moneys of the Fund

The Financial Secretary may invest any moneys of the Fund in accordance with laws, rules and regulations for the time being in force in Niue regarding investments of public funds.

**7      Expenditure of moneys of the Fund**

Subject to section 6, no moneys shall be paid out of the Fund Account except with the approval of the Financial Secretary acting within the objects specified in section 4 for the specific purposes and in the manner approved by Cabinet.

**8      Annual accounts and audit**

(1) At the close of each financial year the Financial Secretary shall cause to be prepared in respect of the Fund a revenue and expenditure account for that year together with a balance sheet showing the assets and liabilities of the Fund.

(2) That account and balance sheet shall be audited as prescribed by article 60 of the Constitution.

**9      Annual report**

The Financial Secretary shall in each financial year cause to be prepared a report of the Fund's operations during the preceding year and such report together with the audited statements and balance sheet mentioned in section 8 shall be laid before the Assembly at its first session after the audited statements and balance sheet are available and shall receive such publicity as the Assembly directs.

**10     Delegated authority**

(1) Where Cabinet has delegated all or any of its authority in times of public emergency or national disaster to persons other than Cabinet under section 3 of the Public Emergency Act 1979 those persons shall have full authority under section 7 of this Act to approve the expenditure of moneys from the Fund, as if such expenditure was approved by Cabinet itself.

(2) Any such expenditure from the Fund and circumstances of that approval shall be brought to the notice of the Cabinet by the Premier at the earliest possible opportunity.

# NEW ZEALAND REPRESENTATIVE ACT 1981

1981/69 – 1 August 1981

1	Short title	8	Premier may determine fiscal privileges
2	Interpretation	9	Proof of status
3	The Government of New Zealand	10	Privileges and immunities
4	Office of the New Zealand Representative	11-12 [Spent]	
5	Diplomatic staff		
6	Members of families of diplomatic staff		SCHEDULE
7	Other staff members and their families		

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## **Relating to the legal status of the representative of the Government of New Zealand in Niue and of designated members of his staff and their families**

### **1 Short title**

This is the New Zealand Representative Act 1981.

### **2 Interpretation**

(1) In this Act –

“diplomatic courier of the Government of New Zealand” means a person (not being ordinarily resident in Niue) to whom the Government of New Zealand has for the time being provided an official document indicating –

- (a) His status as a diplomatic courier of the Government of New Zealand; and
- (b) The number of packages constituting each bag carried by him and used for the official correspondence of the Government of New Zealand;

“diplomatic staff of the Office of the New Zealand Representative” means the New Zealand Representative, and those members of the staff of his office who for the time being hold any of the positions specified in the Schedule;

“New Zealand Representative” means the person who is for the time being recognised by the Government of Niue as the representative of the Government of New Zealand in Niue;

“1968 Act” means the Diplomatic Privileges and Immunities Act 1968.

(2) In this Act a reference to a person ordinarily resident in Niue shall include a reference to –

- (a) Any person belonging to that part of the Polynesian race indigenous to Niue; and
- (b) Any person for the time being living in Niue otherwise than for the sole purpose of –
  - (i) performing his duties as a member of the Office of the New Zealand Representative; and
  - (ii) being a member of family forming part of the household of a person referred to in subparagraph (i).

(3) For the purposes of this Act, every reference in the Schedule to the 1968 Act –

- (a) To the sending state shall be construed as a reference to New Zealand;
- (b) To the receiving state or to the country shall be construed as a reference to Niue;

- (c) To a national of the receiving state shall be construed as a reference to a person who is ordinarily resident in Niue;
- (d) To the Ministry of Foreign Affairs shall be construed as a reference to the Office of the Secretary to the Government of Niue;
- (e) To the head of mission shall be construed as a reference to the New Zealand Representative;
- (f) To the mission shall be construed as a reference to the Office of the New Zealand Representative.

### **3 The Government of New Zealand**

The Government of New Zealand shall be accorded the same privileges and immunities as are accorded to a sending state by the 1968 Act.

### **4 Office of the New Zealand Representative**

(1) The office of the New Zealand Representative shall be accorded the same privileges and immunities as are accorded to a diplomatic mission by the 1968 Act.

(2) (a) The premises, furnishings, means of transport and other property of the Office of the New Zealand Representative; and  
(b) The archives and documents of the Office of the New Zealand Representative; and  
(c) The official correspondence of the New Zealand Representative; and  
(d) Articles for the official use of the Office of the New Zealand Representative, shall be accorded the same privileges and immunities as the case requires as are accorded to those of a diplomatic mission by the 1968 Act.

(3) Without limiting the generality of section 3 and subsections (1) and (2) of this section –

- (a) The 1968 Act shall apply to every bag used for the official correspondence of the Government of New Zealand as if it were a diplomatic bag referred to in that Act; and
- (b) Every diplomatic courier of the Government of New Zealand shall be accorded the same personal inviolability, protection, and immunity as are accorded to diplomatic couriers under the 1968 Act.

### **5 Diplomatic staff**

(1) Every member of the diplomatic staff of the office of the New Zealand Representative shall be accorded the same privileges and immunities as are accorded to a diplomatic agent by the 1968 Act.

(2) The private residence of every member of the diplomatic staff of the Office of the New Zealand Representative shall be accorded the same privileges and immunities as are accorded to that of a diplomatic agent under the 1968 Act.

(3) The papers, correspondence, property and articles for the personal use of each member of the diplomatic staff of the Office of the New Zealand Representative shall be accorded the same privileges and immunities as the case requires as are accorded to those of a diplomatic agent under the 1968 Act.

### **6 Members of families of diplomatic staff**

Every person, being a member of the family and forming part of the household of a member of the diplomatic staff of the Office of the New Zealand Representative and not in any case being ordinarily resident in Niue shall be accorded the same privileges and immunities as are accorded to members of the diplomatic staff of that office by section 5.

**7 Other staff members and their families**

- (1) Every person who is –
- (a) A member of the administrative or technical staff of the Office of the New Zealand Representative; or
  - (b) A member of the family, forming part of the household of a member of the administrative or technical staff of the Office of the New Zealand Representative; or
  - (c) A member of the service staff of the Office of the New Zealand Representative
- 

not in any case being ordinarily resident in Niue shall be accorded the same privileges and immunities as the case requires as would be accorded to that person under the 1968 Act if that office were a diplomatic mission.

(2) Every person, being a member of the administrative, technical, or service staff of the Office of the New Zealand representative who is ordinarily resident in Niue, shall be accorded immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of his functions.

**8 Premier may determine fiscal privileges**

Without prejudice to sections 3 to 7, the Premier with the concurrence of Cabinet, may determine, either generally or in any case or class of case, the fiscal privileges which shall be accorded to the Office of the New Zealand Representative or persons connected with that Office notwithstanding that the determination may extend treatment more favourable than that required by this Act, and may in like manner determine the terms and conditions on which these privileges may be enjoyed.

**9 Proof of status**

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

**10 Privileges and immunities**

Subject to this Act, privileges and immunities conferred by or by virtue of this Act shall be conferred on the same terms and conditions as to commencement and cessation, and as to waiver, as are provided in the 1968 Act.

**11-12 [Spent]**

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SCHEDULE

DIPLOMATIC STAFF OF THE OFFICE OF  
THE NEW ZEALAND REPRESENTATIVE

Deputy New Zealand Representative  
Minister  
Counsellor  
First Secretary  
Second Secretary  
Third Secretary  
Attache

Niue Legislation 2019

# NIUE ACT 1966

1966/38 (NZ) – 1 January 1967

1	Short title	81	Costs
2-3	[Repealed]	82	Security for costs
		83	Court fees
	<b>PART 1</b>	84	Minutes of judgments
	THE EXECUTIVE GOVERNMENT OF NIUE	85	Amendments
4-20	[Repealed]	86	Rehearing of civil proceedings
21	Persons authorised to practise medicine or surgery	87	Rehearing of criminal proceedings
22	Offences		<i>Execution of Judgments</i>
23	Director of Health	88	Wrists of sale and possession
23A	Medical services	89	Effect of writ of possession
24	Medical officers	90	Effect of writ of sale
25	[Repealed]	91	Issue of writs of sale or possession
26-30	[Reprint – see now Criminal Law Code]	92	Charging orders
		93	Stay of execution
	<b>PART 2</b>	94	Judgment summons
	THE LEGISLATIVE GOVERNMENT OF NIUE	95	Enforcement of foreign judgments
31-48	[Repealed]		<i>Absconding Debtors</i>
49	Regulations	96	Order of arrest of absconding debtor
50-52	[Repealed]	96A	Commissioner and Justices' authority
	<b>PART 3</b>	97	Security to be given
	THE HIGH COURT OF NIUE	98	Enforcement of security
	<i>Constitution of the High Court</i>	99	Arrest in actions for penalties
53-59	[Repealed]	100	Enforcement of security in actions for penalties
60	Commissioners of High Court		<i>Contempt of the High Court</i>
61	[Repealed]		Contempt of Court defined
62	Registrar and Deputy Registrar of the High Court	101	Penalty for contempt
63	[Repealed]	102	Jurisdiction in contempt
64	Seal of the High Court	103	Contempt in the face of the Court
65	Records of the High Court	104	Discharge of persons in contempt
	<i>Jurisdiction of the High Court</i>	105	
66-67	[Repealed]		<b>PART 4</b>
68	Habeas corpus		THE HIGH COURT
69	Custody of minors	106	[Repealed]
	<i>Procedure of the High Court</i>	107	Declarations
70	Rules of Court	108	[Repealed]
71	Procedure so far as not governed by rules of Court	109	Cases stated
72	Forms	110	[Repealed]
73	Summons to witnesses		<i>Appeals from the High Court</i>
74	Default of witness	111-112	[Repealed]
75	Commissioners to take evidence	113	Transmission of record
76	Evidence by affidavit sworn out of Niue	114	Dismissal of appeal for nonprosecution
77	Witnesses may be ordered out of Court	115	Procedure on appeal
78	Affidavits in Niue	116	[Repealed]
79	Evidence by affidavit	117	Powers of Court of Appeal
80	Right of audience in the High Court	118	Evidence on appeal
		119	Stay of execution

# Niue Legislation 2019

120	Release of appellant from custody	PARTS 17-18
121	Appeal not to be allowed for irregularities	468-488 [Repealed]
122	Right of audience on appeal	
123	Transmission of order of Court of Appeal	<b>PART 19</b>
124-125	[Repealed]	<b>NIUEAN SUCCESSION</b>
		489-499 [Reprint – see now Family Law Code]
	<i>Enforcement in Niue of Judgments of New Zealand Courts</i>	
126	Judgments of High Court or a District Court in New Zealand may be enforced by the High Court	<b>PART 20</b>
		<b>TRUSTEES FOR NIUEANS</b>
		500 Definition of “person under disability”
		501 Trustee orders
127	Enforcement of judgments of the High Court of New Zealand by High Court by way of proceedings for contempt	502 Matters to be set forth in trustee orders
		503 Appointment of new trustees
128	[Repealed]	504 Orders restricting powers of trustees
		505 Cancellation of trustee orders
		506 Determination of trustee orders
		507 Trust property not to vest in trustee
		508 Administration of property by trustee
		509 Alienation of property by trustee
		510 Powers of trustee
		511 Expenditure of revenues of trust property
		512 Enforcement of trusts
		513 Co-trustees must act jointly
		514 Remuneration of trustees
	<b>PARTS 5- 6</b>	<b>PARTS 21-25</b>
129-287	[Reprint – see now Criminal Law Code]	515-599 [Reprint – see now Family Law Code]
	<b>PART 7</b>	
	<b>LAW OF EVIDENCE</b>	
288	Definitions	<b>PART 26</b>
289	Discretionary power to admit or reject evidence	<b>PERSONS OF UNSOUND MIND</b>
290	All witnesses competent	<i>Orders of Medical Custody</i>
291	Evidence of parties and their spouses	600 Application by Medical Officer to Court
292	Evidence of accused persons and their spouses	601 Medical certificates as to persons of unsound mind
293	Cross-examination as to credit	602 Order of medical custody
294	Criminating questions	603 Renewal of order
295	Evidence of prisoners	604 Cancellation of order
296	Judicial notice of enactments	605 [Repealed]
297	Judicial notice of seals	606 Arrest and detention of persons committed to medical custody
298	Power to administer oaths	607 [Repealed]
299	Form of oath	608 Removal from Niue to New Zealand
300	Absence of religious belief	609 Conditions of removal
301	Affirmation may be made instead of oath	610 Method of removal
302	Form of affirmation	611 Admission to hospital of persons removed to New Zealand
303	Evidence of children without oath	612 [Repealed]
304	Necessity of oath	613 No committee of estate of person of unsound mind
	<b>PARTS 8-15</b>	614 Warrant for arrest of persons of unsound mind
305-460	[Repealed]	615 Arrest without warrant of persons of unsound mind
	<b>PART 16</b>	615A Commissioner and Justices may act for Judge
	<b>LAND DEVELOPMENT</b>	
461	Application of this Part	
462	Cabinet may cultivate land on behalf of owners	
463	Disposal of revenues received by Cabinet	
464	Money to be paid out of or into Niue Government Account	
465	[Repealed]	
466	Interference and obstruction prohibited	
467	[Repealed]	

## Niue Act

<i>Persons of Unsound Mind Charged with Offences</i>	<i>Miscellaneous Rules of Law</i>
616-620 [Reprint – see now Criminal Law Code]	707-708 [Reprint – see now Family Law Code]
PARTS 27-29	709 Joint liability
621-653 [Repealed]	710 Contracts of guarantee
PART 30	711-713 [Repealed]
CUSTOMS	714 Liability of owners of dogs
654-655A [Repealed]	715 Distress for rent abolished
656 Goods may be imported from New Zealand or Cook Islands free of duty	716 Libel and slander
657-658 [Repealed]	717-719 [Repealed]
PART 31	720 Statutory declarations
659-671 [Repealed]	721 [Repealed]
PART 32	722 Taxes on Niuean land
THE LAWS OF NIUE: GENERAL PROVISIONS	723 [Repealed]
<i>Application of the Laws of New Zealand</i>	724 [Reprint – see now Criminal Law Code]
672–677 [Repealed]	725 Trespass <i>ab initio</i>
678 [Reprint – see now Criminal Law Code]	726-727 [Repealed]
679-705 [Repealed]	727A [Reprint – see now Family Law Code]
706 Limitation of actions	728-735 [Repealed]
	736 Contributory negligence
	737 Protection of intellectual property
	738 Aerodromes
	SCHEDULES

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## To consolidate and amend certain enactments relating to the Government and laws of Niue

### 1 Short title

This is the Niue Act 1966.

### 2-3 [Repealed]

### PART 1

#### THE EXECUTIVE GOVERNMENT OF NIUE

### 4-20 [Repealed]

### 21 Persons authorised to practise medicine or surgery

(1) No person shall practise medicine or surgery in Niue, for fee, salary, or other remuneration or reward of any nature whatsoever, unless –

- (a) He is registered as a medical practitioner in New Zealand;
- (b) He holds a certificate issued under the hand of the Secretary to the Medical Council of New Zealand that, in the opinion of that Council, he has attained a standard of practice in medicine and surgery equivalent to that required for registration as a medical practitioner in New Zealand;
- (c) He –
  - (i) is a graduate of the Fiji School of Medicine; or
  - (ii) holds a certificate issued under the hand of the Director of Health that, in the opinion of the Director, he is a graduate of a school of medicine

equivalent in standard to the Fiji School of Medicine, and has attained a competent standard of practice in medicine and surgery.

- (2) Notwithstanding subsection (1) (c) –
  - (a) If no conditions are prescribed by Act and the position of Director of Health is vacant and no acting Director of Health has been appointed; or
  - (b) If no conditions are so prescribed and the Director of Health is absent from Niue or is otherwise incapable of performing his duties, exercising his powers, and carrying out his functions,

any such graduate employee may practise medicine or surgery in Niue, subject to the general control of Cabinet and not otherwise.

## **22 Offences**

- (1) Every person commits an offence who, not being a medical officer –
  - (a) Directly or by implication represents or holds himself out to be a medical officer; or
  - (b) Engages, for or without any fee, salary, or other remuneration or reward, in the practice of medicine or surgery, or any branch of medicine or surgery, under the style or title of physician, surgeon, doctor, licentiate in medicine or surgery, bachelor of medicine, or medical practitioner, or under any name, title, addition, or description implying that he holds any degree or diploma in medicine or surgery or in any branch of medicine or surgery, or is otherwise specially qualified to practise medicine or surgery or any branch of medicine or surgery.
- (2) Every person who commits an offence against this section is liable –
  - (a) On a first conviction, to a fine not exceeding 1 penalty unit, and, where the offence is a continuing one, to a further fine not exceeding 1 penalty unit for each day on which the offence has continued;
  - (b) On a second or subsequent conviction, to imprisonment for a term not exceeding 2 months or to the penalties specified in paragraph (a).

## **23 Director of Health**

(1) The Niue Public Service Commission shall appoint a Director of Health who shall be the administrative head of the Department of Health and responsible in Niue for the administration of all laws relating to public health, mental health, hospitals, medical and surgical services, the quarantine of persons, and all other operations of the Department.

(2) The Niue Public Service Commission in appointing a Director of Health must be satisfied that the appointee has qualifications, proven ability and work experience in medicine or management, or a combination of both, appropriate for the performance of the functions of Director of Health.

(3) An acting Director of Health shall, during the subsistence of his appointment, perform all the duties, exercise all the powers, and carry out all the functions of the Director of Health, whether conferred by this Act or any other enactment.

## **23A Medical services**

(1) Without restricting section 23 (8) it shall be the duty of the Director of Health to provide for all persons in Niue such medical and surgical services as may be reasonably required and reasonably practicable.

(2) Medical and surgical treatment, aid, and attendance provided by any medical officer employed in the Niue Public Service may, in the case of Niueans, be

gratuitous, and shall, in the case of all other persons, be subject to payment of any reasonable and proper fees which may either generally or in any particular instance, be fixed or prescribed by Cabinet and all fees for such treatment, aid, and attendance shall be paid into and shall form part of the public revenues of Niue.

(3) No liability shall be incurred by the Crown in respect of any failure or neglect to provide any services referred to in subsection (1) or any treatment, aid, or attendance referred to in subsection (2) or in respect of any negligence, wrongful act, or wrongful omission on the part of any medical officer employed in the Niue Public Service.

**24 Medical officers**

(1) The Niue Public Service Commission shall appoint medical officers and such other employees as are necessary for the provision of medical services on Niue.

(2) A medical officer so appointed must meet the requirements under section 21.

**25 [Repealed]**

**26-30 [Reprint – see now Criminal Law Code 2007]**

**PART 2**

**THE LEGISLATIVE GOVERNMENT OF NIUE**

**31-48 [Repealed]**

**49 Regulations**

(1) Cabinet may make such regulations as it thinks fit for the purposes of this Act and in such regulations provide for the taking of fees, the imposing of charges, and the imposition of penalties for contravention of regulations.

(2) Such regulations may amend or repeal the Sea Carriage of Goods Act 1940 as promulgated for Niue by the Cook Islands Sea Carriage of Goods Order 1946, and may amend or repeal the Marine Pollution Act 1974 and rules made under it following the original extension to Niue of the Oil in Navigable Waters Act 1965 under the Niue (New Zealand) Laws Regulations 1972.

**50-52 [Repealed]**

**PART 3**

**THE HIGH COURT OF NIUE**  
*Constitution of the High Court*

**53-59 [Repealed]**

**60 Commissioners of High Court**

A Commissioner of the High Court shall possess and may exercise the powers and functions of a Judge of that Court (whether judicial or administrative, but excluding those vested exclusively in the Chief Justice).

**61 [Repealed]**

**62 Registrar and Deputy Registrar of the High Court**

(1) [Repealed]

(2) The Registrar of the Court shall keep the records of the High Court, and shall perform all such administrative duties in respect of that Court as the Chief Justice may direct.

(3) The Deputy Registrar of the Court shall, subject to the control of the Registrar, possess, exercise, and perform the same powers, functions, and duties, as the Registrar; and every reference in this Act to a Registrar of the High Court shall, so far as applicable, extend and apply to the Deputy Registrar accordingly.

**63** [Repealed]

**64 Seal of the High Court**

The High Court shall have in the custody of each Judge and Commissioner and the Registrar a seal of the Court, in such form or forms as Cabinet approves, for the sealing of all orders, warrants, records and other instruments requiring to be sealed.

**65 Records of the High Court**

The Registrar of the High Court shall keep proper books in which shall be entered minutes of all proceedings in the Court, whether in its civil or criminal jurisdiction.

*Jurisdiction of the High Court*

**66-67** [Repealed]

**68 Habeas corpus**

The High Court may, on the application of any person, make an order for the release of any person from unlawful imprisonment or detention, or for the production before the Court of any person alleged to be unlawfully imprisoned or detained, and every person who disobeys any such order shall be guilty of contempt of the High Court.

**69** [Reprint – see now Family Law Code 2007]

*Procedure of the High Court*

**70 Rules of Court**

(1) The Cabinet may, after consultation with the Chief Justice, make rules of court determining –

- (a) The practice and procedure of the High Court (whether in its civil or criminal jurisdiction, including its jurisdiction in relation to land); and
- (b) The practice and procedure of the Court of Appeal.

(2) Rules of court made under subsection (1) may require an appellant to give security for the costs of an appeal, and may provide for the dismissal of an appeal by the High Court or by a Judge of the Court by reason of the failure of the appellant to conform to any such requirement or to prosecute the appellant's appeal under those rules of court, and no appeal to the Court of Appeal lies from any such dismissal of an appeal.

**71 Procedure so far as not governed by rules of Court**

Subject to any enactment, the practice and procedure of the High Court in the exercise of its civil and criminal jurisdiction shall be such as the Court thinks in each case to be most consistent with natural justice and convenience.

**72 Forms**

Subject to any enactment, all statements of claim, informations, summonses, warrants, convictions, orders, recognisances, and other documents required or authorised in the course of the civil or criminal jurisdiction of the High Court may be in such form as the Court or the Judge, Registrar, or other officer by whom they are issued, made, or received thinks sufficient.

**73 Summons to witnesses**

A Judge or Registrar of the High Court may in any proceedings before the Court, whether civil or criminal, issue a summons to any person requiring him to appear before the Court at the time and place mentioned in the summons, there to give evidence in those proceedings or to produce any document to the Court in those proceedings.

**74 Default of witness**

Every person shall be guilty of contempt of the High Court who –

- (a) Having been served with any such summons, neglects or fails without sufficient cause shown by him to appear or to produce any document which he is so required to produce; or
- (b) Whether summoned to attend or not, is present in Court and, being required to give evidence or to produce any document then in his possession, refuses, without sufficient cause shown by him, to be sworn or to give evidence or to produce that document; or
- (c) Having been sworn to give evidence in any proceedings, neglects or fails without sufficient cause shown by him to appear at such time as the Court directs for the purpose of giving further evidence in the proceedings.

**75 Commissioners to take evidence**

The High Court may, in any civil or criminal proceedings where it appears necessary for the purposes of justice, make an order for the examination on oath before any officer of the Court or any other person or persons, and at any place either in or out of Niue, of any witness or person and may order any deposition so taken to be filed in the Court, and may empower any party to the proceedings to give the deposition in evidence.

**76 Evidence by affidavit sworn out of Niue**

In any proceedings in the Court, an affidavit made out of Niue may, with the leave of the Court, be received in evidence if made before a solicitor of the High Court of New Zealand, or in any other manner by which the affidavit would be admissible in civil proceedings in New Zealand.

**77 Witnesses may be ordered out of Court**

The High Court may at any time during any proceedings, whether civil or criminal, order all witnesses other than the witness under examination to go and remain outside the Court until required to give evidence; and any witness who disobeys any such order shall be guilty of contempt of the High Court.

**78 Affidavits in Niue**

(1) Affidavits in the High Court may be sworn in Niue before –

- (a) A Commissioner of the High Court;
- (b) A Solicitor of the High Court of New Zealand;
- (c) The Registrar of the High Court;
- (d) A Postmaster;
- (e) The Financial Secretary;
- (f) [Repealed]
- (g) A medical officer.

(2) The making of such affidavits shall be governed by the same rules as are in force for the time being with respect to affidavits in the High Court of Niue.

**79 Evidence by affidavit**

In any civil proceedings in the High Court evidence may be taken either orally or by affidavit, but in actions and other proceedings *inter partes* affidavits shall not be admissible without the leave of the Court.

**80 Right of audience in the High Court**

In any proceedings in the High Court, whether civil or criminal, any party may be represented either by a barrister or solicitor of the High Court of New Zealand, or, with the leave of the Court, by any other agent, but any such leave may be at any time withdrawn.

**81 Costs**

In any proceedings in the High Court, the Court shall have the power to make such order for the payment of the costs of the proceedings by or to any party.

**82 Security for costs**

(1) In any civil proceedings and at any stage of them, the High Court may require a plaintiff or applicant resident out of the jurisdiction of the High Court to deposit any sum of money as security for costs, and may stay the proceedings pending the making of that deposit.

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

**83 Court fees**

The scale of costs and Court fees to be paid in all civil or criminal proceedings in the High Court shall be as prescribed.

**84 Minutes of judgments**

(1) Every judgment of the High Court shall be deemed to be complete when a minute of it has been made in the record books of the Court and signed by a Judge of the Court.

(2) When necessary, the judgment may at any time after that be drawn up under the seal of the Court.

**85 Amendments**

A Judge of the High Court may amend any minute or judgment of the Court or other record of the Court, in order to give effect to the true intent of the Court in respect of it or truly to record the course of any proceedings.

**86 Rehearing of civil proceedings**

(1) On application made at any time within 14 days after the date of any judgment given by the High Court in its civil jurisdiction, the Court may rehear the matter, and may on the rehearing either affirm, reverse, or vary the judgment.

(2) The Court may rehear the matter on an application made more than 14 days after the date of the judgment, if the Court is satisfied that the application could not reasonably be made sooner.

**87 Rehearing of criminal proceedings**

(1) Where on the hearing of any information the accused has been convicted, the High Court may grant a rehearing of the information, either as to the whole matter or only as to the sentence, upon such terms as the Court thinks fit.

(2) When a rehearing has been granted, the conviction or, as the case may be, the sentence only shall immediately cease to have effect.

(3) If a rehearing is granted in any case where the accused was on conviction sentenced to a term of imprisonment that has not expired, but the hearing is not proceeded with immediately, the Court may remand the accused in custody or admit the accused to bail, with or without sureties until the date appointed for the rehearing.

(4) On any rehearing the Court shall have the same powers and shall follow the same procedure as if it were the first hearing.

(5) If the defendant does not appear on the date set down for the rehearing of any information, the Court may, without rehearing the case direct that the original conviction or sentence, as the case may be, shall be restored.

*Executions of Judgments*

**88 Writs of sale and possession**

(1) Where by any judgment of the High Court in its civil jurisdiction any person is ordered to pay any sum of money, the party to whom the money is payable may cause a writ of sale to be issued.

(2) Where by any judgment of the High Court any person is ordered to deliver possession of land or chattels, the party to whom the land or chattels are ordered to be delivered may cause a writ of possession to be issued.

**89 Effect of writ of possession**

A writ of possession shall authorise the officer to whom it is addressed to deliver to any party named in the writ, possession of any land or of any chattels specified in the writ, and for that purpose to eject any other person from the land, or to seize and take possession of any such chattels.

**90 Effect of writ of sale**

(1) A writ of sale shall authorise the officer to whom it is directed to seize all the chattels (including money, cheques, bills of exchange, and other securities for money) of the person against whom it is issued, except wearing apparel, bedding, tools and implements of trade, not exceeding in the aggregate one hundred dollars in value.

(2) All chattels so seized may, unless the judgment is sooner satisfied, together with the costs of the execution, be sold or otherwise converted into money by the Registrar, and the proceeds of the sale or conversion, after payment from them of the costs of the execution, shall be applied in satisfaction of the judgment.

**91 Issue of writs of sale or possession**

Every writ of sale or writ of possession shall be issued by the Registrar under the seal of the High Court, and shall be addressed to an officer of the Court or to a constable.

**92 Charging orders**

(1) Any judgment of the High Court in its civil jurisdiction for the payment of any sum of money may be enforced by a charging order made by the Court against any real or personal property of the person by whom the money is payable (including debts and other money due or accruing due to that person, but not including the interest of a Niuean in any Niuean land).

(2) Any such charging order shall be made and shall have effect in manner provided by rules of Court.

**93 Stay of execution**

The High Court may in any civil proceedings stay the execution of any judgment for such term as the Court thinks fit.

**94 Judgment summons**

(1) When judgment for the payment of any debt, damages, or other sum of money has been given by the High Court in its civil jurisdiction, the judgment creditor may at any time after judgment file in Court an application for an order under this section.

(2) A Judge or the Registrar of the Court may thereupon issue a summons (a judgment summons) to the judgment debtor to show cause why an order should not be made against him for the payment of the amount of the judgment.

(3) On the hearing of the application, the Court may make an order that the judgment debtor pay to the judgment creditor the amount of the judgment debt forthwith, or at such time or by such instalments as the Court thinks fit.

(4) Except where the judgment debtor fails to appear in Court in pursuance of the judgment summons, no such order shall be made, unless the Court is satisfied either –

- (a) That the judgment debtor is of sufficient ability to pay the judgment debt under the terms of the order; or
- (b) That the liability in respect of which judgment was given against him was incurred by fraud; or
- (c) That before or after the date of the judgment the judgment debtor has made away with any property for the purpose of evading payment of the liability.

(5) If any judgment debtor disobeys any order made against him under this section, he shall be guilty of contempt of the High Court.

(6) Nothing in this section shall exclude any other lawful method of executing any such judgment.

**95 Enforcement of foreign judgments**

(1) In this section –

“final decision” means a judgment from which there is no appeal in the courts of the country where the judgment was originally made or, when the judgment is executory, because the time for appealing the judgment has expired;

“judgment” means a final decision of a court other than a court of Niue, in criminal or civil proceedings, for the payment of a sum of money as compensation or damages, and includes arbitral awards and maintenance orders but excludes sums payable in respect of a fine or other penalty;

“judgment creditor” means the person in whose favour a judgment was given and any person who has rights under a judgment.

(2) A judgment may be enforceable in Niue if –

- (i) the foreign court had jurisdiction to decide the matter; and
- (ii) it is for a definite sum of money; and
- (iii) enforcement would not be contrary to the public policy of Niue; and
- (iv) a certified copy of the judgment has been filed for registration in the High Court within 2 years from the date on which it was made or became executory.

(3) After receiving an application to register a judgment, the High Court shall issue a summons –

- (i) calling upon the person against whom the judgment was obtained to show within 30 days why execution should not issue on the judgment; and
- (ii) giving notice that in default of appearance an order for execution of the judgment will be issued.

(4) In default of appearance within 30 days, or if the person served with such summons fails to show sufficient cause against it, the judgment will be registered.

(5) No order of registration shall be issued where a judgment creditor has shown that the judgment –

- (i) has been wholly satisfied; or
- (ii) could not be enforced in the courts of the country where the judgment was originally made.

(6) Where a judgment has been partially satisfied, it shall be registered only in respect of a sum remaining unpaid under it.

(7) After registration the judgment may be enforced in the same manner as if it were a judgment originally given in the High Court on the date of registration.

(8) No foreign judgment shall be enforced in Niue other than by way of registration under this section.

(9) A judgment shall be recognised by a court of Niue as conclusive between the parties in a case founded on the same cause of action and as a defence or counter-claim if it satisfies subsection (2) (i) (ii) and (iii).

#### *Absconding Debtors*

### **96 Order of arrest of absconding debtor**

Where in any action in the High Court for the recovery of any debt, damages, or other sum of money the plaintiff proves to the satisfaction of the Court, at any time before final judgment, that he has a good cause of action against the defendant to the amount of 0.5 penalty units or upwards, and that there is probable cause for believing that the defendant is about to leave Niue unless he is apprehended, and that his absence from Niue will materially prejudice the plaintiff in the prosecution of his action, the Court may order the defendant to be arrested and imprisoned for a period not exceeding 3 months unless and until he sooner give security to the satisfaction of the Court that he will not leave Niue without the leave of the Court.

### **96A Commissioner and Justices’ authority**

Any power conferred by this Act on the Court to make an order under section 96 may be exercised by a Commissioner of the High Court or any 2 Justices of the Peace if when the power is exercised there is not present in Niue a Judge who is able to exercise it.

### **97 Security to be given**

The security to be so given shall, as the Court directs, be either the payment into Court of a sum not exceeding the amount claimed in the action or a bond executed by the defendant with one or 2 sureties in favour of Her Majesty in the like amount.

**98 Enforcement of security**

If after such security has been given the defendant leaves Niue without the leave of the Court, all money so paid into Court or recovered in pursuance of the bond shall become available as the Court directs for the satisfaction of any sum recovered in the action.

**99 Arrest in actions for penalties**

Where the action is for a penalty at the suit of the Crown, it shall not be necessary to prove that the absence of the defendant as aforesaid will materially prejudice the Crown in the prosecution of the action, and the security to be given shall be security that any sum recovered against the defendant in the action will be paid or that the defendant will be rendered to prison.

**100 Enforcement of security in actions for penalties**

If, after such security has been given, any sum recovered in the action remains unpaid and the defendant is not rendered to prison, all money so paid into Court or recovered in pursuance of the bond shall become available as the Court directs for the satisfaction of the sum recovered in the action.

*Contempt of the High Court*

**101 Contempt of Court defined**

Every person is guilty of contempt of the High Court who –

- (a) Disobeys any judgment or order of that Court, or of any Judge, otherwise than by making default in the payment of a sum of money (other than a penalty) or compensation payable under the judgment or order; or
- (b) Uses any abusive, insulting, offensive, or threatening words or behaviour in the presence or hearing of the Court; or
- (c) Assaults, resists, or obstructs, or incites any other person to assault, resist, or obstruct, any constable or officer of the Court in serving any process of the Court, or executing any warrant of the Court or of a Judge or executing any judgment or order of the Court or of a Judge; or
- (d) By words or behaviour obstructs in any manner the proper and orderly administration of justice in the Court; or
- (e) Does any other thing which elsewhere in this Act or in any other Act is declared to be a contempt of the High Court; or
- (f) Aids, abets, counsels, procures, or incites any other person to commit contempt of the High Court.

**102 Penalty for contempt**

Every person who commits contempt of the High Court is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding 1 penalty unit.

**103 Jurisdiction in contempt**

The offence of contempt of the High Court shall be punishable by the High Court either

- 
- (a) In the ordinary course of the criminal jurisdiction of that Court; or
- (b) Under section 104.

**104 Contempt in the face of the Court**

(1) If the contempt is committed in the presence or hearing of the Court, any Judge then and there sitting in Court may, without order or warrant, direct any constable, officer of the Court, or other person to arrest the person so guilty of contempt and to bring him before the Court.

(2) The Court may thereupon, after giving the person so arrested a reasonable opportunity of being heard in his defence, either commit him to prison for a term not exceeding 6 months or order him to pay a fine not exceeding 1 penalty unit.

**105 Discharge of persons in contempt**

A person imprisoned for contempt, or for default in payment of a fine imposed upon him for contempt, may be at any time discharged, and any fine so imposed may be at any time remitted in whole or in part by order of the Court.

PART 4  
THE HIGH COURT

**106 [Repealed]**

**107 Declarations**

A person may apply to the High Court for a declaration where the applicant –

- (a) has done or desires to do an act the validity, legality, or effect of which depends on the construction or validity of an enactment or of any document; or
- (b) claims to have acquired any rights under any such enactment or document, or in any other manner to be interested in its construction or validity; or
- (c) wishes to have a formal statement as to the existence or non-existence of a marriage or the validity of a dissolution of marriage.

**108 [Repealed]**

**109 Cases stated**

(1) The High Court may in any proceedings before it, either on the application of a party or of its own motion, state a case on a question of law for determination by the Court of Appeal.

(2) In the order of the Court of Appeal which determines the case stated, the Court of Appeal may fix the costs of the argument and determination of the case stated.

**110 [Repealed]**

*Appeals from the High Court*

**111-112 [Repealed]**

**113 Transmission of record**

Where an appeal is made to the Court of Appeal against a final judgment of the High Court, a copy of the record of the proceedings in which the judgment appealed against was given (including the reasons for the judgment, and, where necessary, a statement of the facts or of the evidence) shall be prepared by the appellant and transmitted to the Registrar of the Court of Appeal.

**114 Dismissal of appeal for non-prosecution**

If the appellant does not prosecute his appeal with due diligence, the respondent may apply to the High Court for an order dismissing the appeal for non-prosecution; and, if such an order is made, the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as that Court may direct.

**115 Procedure on appeal**

The procedure on the hearing of any such appeal and in all matters incidental to any such appeal, whether in the High Court or in the Court of Appeal shall, subject to this Act, be determined by the rules of the High Court or the Court of Appeal and in default of such rules, or so far as they do not extend, shall be determined in such manner as the Court thinks fit.

**116 [Repealed]**

**117 Powers of Court of Appeal**

(1) On any appeal from the High Court, the Court of Appeal may affirm, reverse, or vary the judgment appealed from, or may order a new trial, or may make any such order with respect to the appeal as the Court of Appeal thinks fit, and may award such costs as it thinks fit to or against any party to the appeal.

(2) Without limiting the general powers conferred by subsection (1), the Court of Appeal on any appeal against sentence, if it thinks that a different sentence should have been passed, shall quash the sentence passed and pass such other sentence warranted by law (whether more or less severe) in substitution therefore as the Court thinks ought to have been passed, and in any other case shall dismiss the appeal.

**118 Evidence on appeal**

Every such appeal shall, so far as it relates to any question of fact, be determined by the Court of Appeal by reference to the evidence heard at the trial as certified to the Court of Appeal under the seal of the High Court, and no further evidence shall, without the leave of the Court of Appeal be heard or admitted.

**119 Stay of execution**

An appeal to the Court of Appeal shall not operate as a stay of execution, unless the High Court or the Court of Appeal otherwise orders.

**120 Release of appellant from custody**

(1) When an appeal is made to the Court of Appeal from any conviction in the High Court, the High Court may release the appellant from custody on bail pending the determination of the appeal.

(2) Any person so released on bail may be at any time, and for any reason which the High Court thinks sufficient, arrested by warrant and committed to prison, there to undergo his sentence.

(3) Any period during which an appellant has been so at large on bail shall not be computed as part of the term of imprisonment to which he has been sentenced.

**121 Appeal not to be allowed for irregularities**

No judgment of the High Court shall, on appeal to the Court of Appeal, be set aside on the ground of any error or irregularity in the proceedings of the High Court, or on the ground of any defect of form or substance in the judgment, unless the Court of Appeal is of opinion that the proceedings of the High Court were not in conformity with natural justice or that a substantial miscarriage of justice has taken place.

**122 Right of audience on appeal**

On every case stated for the Court of Appeal and in every appeal to that Court, the parties may either appear in person or be represented by a person who has right of audience in the High Court, or may submit their arguments to the Court of Appeal in writing.

**123 Transmission of order of Court of Appeal**

The determination of the Court of Appeal on any appeal from the High Court shall be entered in the High Court in conformity with that determination, or such other proceedings by way of a new trial or otherwise shall be taken in the High Court as are required by the determination.

**124-125 [Repealed]**

*Enforcement in Niue of Judgments of New Zealand Courts*

**126 Judgments of High Court or a District Court in New Zealand may be enforced by the High Court**

(1) Any person in whose favour any judgment whereby any sum of money is made payable has been obtained in the High Court of New Zealand or in a District Court in New Zealand in civil proceedings may cause a memorial of it, authenticated by the seal of the High Court of New Zealand or of the District Court, as the case may be, to be filed in the High Court of Niue.

(2) Judicial notice may be taken by the High Court of Niue of the seal of the New Zealand Court so affixed to any such memorial.

(3) Every such memorial shall set forth the names and additions of the parties to the proceedings in which the judgment was given, the form or nature of the proceedings, the date on which the judgment was given, and the amount payable under it.

(4) Every such memorial being so filed shall thenceforth be a record of the judgment, and execution may issue on it with the leave of the High Court in the same manner as if the like judgment had been given by the High Court, subject to such terms and conditions as the High Court may impose.

(5) Leave to issue such execution may be given by the High Court on the application of the party by whom the memorial was filed, and either *ex parte* or on notice to the party against whom execution is to be issued, as the High Court thinks fit.

**127 Enforcement of judgments of the High Court of New Zealand by High Court by way of proceedings for contempt**

(1) When by any judgment of the High Court of New Zealand any person has been ordered to do or abstain from doing any act in Niue other than the payment of money, the High Court of New Zealand may then or at any time thereafter direct a memorial of the judgment under the seal of the court to be filed in the High Court of Niue.

(2) On the filing of such a memorial, any disobedience to the judgment, whether before or after the filing of the memorial, shall be deemed to be a contempt of the High Court of Niue.

**128 [Repealed]**

PARTS 5-6

**129-287 [Reprint – see now Criminal Law Code 2007]**

PART 7  
LAW OF EVIDENCE

**288 Definitions**

In this Part –

“Court” includes any person acting in any judicial capacity or having by law or by consent of parties authority to hear, receive, and examine evidence;

“proceedings” includes any action, trial, inquiry, cause, or matter, whether civil or criminal, depending or to be inquired of or determined in or by any Court.

**289 Discretionary power to admit or reject evidence**

(1) Subject to this Act, a Court may in any proceedings admit and receive such evidence as it thinks fit, and accept and act on such evidence as it thinks sufficient, whether that evidence is or is not admissible or sufficient at common law.

(2) A Court may in any proceedings refuse to receive any evidence, whether admissible or not at common law, which it considers irrelevant, or needless, or unsatisfactory as being hearsay or other secondary evidence.

**290 All witnesses competent**

Subject to this Part no witness in any proceedings shall be deemed incompetent by reason of interest or on any other ground whatever.

**291 Evidence of parties and their spouses**

In any civil proceedings the parties and the persons on whose behalf the proceedings are brought or defended, and the husbands and wives of those parties or persons respectively, shall be competent and compellable to give evidence on behalf of either or any of the parties to the proceedings.

**292 Evidence of accused persons and their spouses**

(1) Every person charged with any offence shall be a competent but (except where the contrary is expressly provided by any enactment) not a compellable witness upon his trial for that offence.

(2) The wife or husband of any person charged with an offence shall be a competent witness on the trial of that person, but shall not be a compellable witness, except in the following cases –

(a) When called as a witness by the accused;

(b) When the offence of which the accused is charged is an offence against the wife or husband of the accused or against a child of the accused.

(3) If any witness who under this section is competent but not compellable gives evidence on any such trial, he shall be liable to cross-examination in the same manner as if he were a compellable witness, whether the matter on which he is so cross-examined arises out of his examination in chief or not.

**293 Cross-examination as to credit**

In any proceedings the Court may limit in any manner and to any extent which it thinks fit the cross-examination of any witness as to credit, and shall refuse to permit any such cross-examination which is needlessly offensive or injurious to the witness, having regard to the nature or gravity of the imputations made against him, to the importance of his evidence, and to the effect of those imputations upon his credibility.

**294 Criminating questions**

Nothing in this Part shall take away or affect the privilege of any witness to refuse to answer any question which may tend to criminate him.

**295 Evidence of prisoners**

(1) On application made in that behalf by any person who states on oath that any prisoner can give material evidence in any proceedings in any Court, a Judge of the High Court may, by order under his hand, require the prisoner to be brought up for examination as a witness in the proceedings.

(2) In every such case the Judge may, before making such an order, require the applicant to deposit a sum sufficient to pay the expense of bringing up the prisoner, maintaining him while out of prison, and returning him thither, including the expense of his custody in the meantime.

**296 Judicial notice of enactments**

In all proceedings the Court shall take judicial notice of all enactments.

**297 Judicial notice of seals**

In every proceeding the Court shall take judicial notice of the Seal of Niue and of the seal of any Court, officer, or other person authorised or required by law to use any such seal, and of the signature of any Judge or any officer, whether judicial or not, of the Niue Public Service, and of the Public Seal of New Zealand, and of the signature of the Governor-General.

**298 Power to administer oaths**

All Courts are hereby empowered to administer an oath to all such witnesses as are lawfully called or voluntarily come before them, or to take the affirmation of any such witness instead of an oath.

**299 Form of oath**

Except when the person making the oath consents to any other form of oath, an oath shall, whether in judicial or other proceedings, be made in the following form:

The officer administering the oath shall address to the person making the oath the following words: "Do you swear by Almighty God that the evidence you are about to give touching the matter now before the Court shall be the truth, the whole truth, and nothing but the truth?", or words to the like effect, and the person making the oath shall thereupon, while holding in his hand a copy of the Bible, Old Testament, or New Testament, indicate his assent to the oath so administered by uttering the words "I do", or other words to the like effect.

**300 Absence of religious belief**

Where an oath has been duly made, the fact that the person making it had at the time of making it no religious belief shall not for any purpose affect the validity of the oath.

**301 Affirmation may be made instead of oath**

Every person shall be entitled as of right to make his solemn affirmation instead of an oath in cases in which an oath is required or allowed by law, and that affirmation shall be of the same force and effect as an oath.

**302 Form of affirmation**

The officer administering an affirmation shall address to the person making the affirmation the following words: "Do you solemnly, sincerely, and truly declare and affirm that the evidence you are about to give touching the matter before the Court shall be the truth, the

whole truth, and nothing but the truth?" or words to the like effect, and the person making the affirmation shall thereupon indicate his assent to the affirmation so administered by uttering the words "I do" or other words to the like effect.

**303 Evidence of children without oath**

In any proceedings all witnesses who are or appear to be under the age of 12 years may be examined without oath, but any such witness shall in that case be required before being examined to make the following declaration: "I promise to speak the truth, the whole truth, and nothing but the truth", or a declaration to the like effect; and such a declaration shall be of the same force and effect as if the witness had taken an oath.

**304 Necessity of oath**

Subject to this Act, all witnesses in any judicial proceedings, civil or criminal, shall be examined on oath.

PARTS 8-15

**305-460 [Repealed]**

PART 16  
LAND DEVELOPMENT

**461 Application of this Part**

(1) The Court may, with the consent of the *Leveki Magafaoa* or a majority of the owners, by order declare that any Niuean land shall be subject to this Part for such period as may be defined in that order, and the period fixed by the order may be extended by the Court.

(2) The Court may by order direct that any land shall be no longer subject to this Part, and thereupon the Cabinet shall cease to have any right of control in respect of it, but without releasing the land or any of the parties from any antecedent liability incurred to or by the Cabinet and the Cabinet may, notwithstanding the order of the Court, continue to exercise the Cabinet's powers of creation and enforcement of charges hereunder so long as any such liability remains.

**462 Cabinet may cultivate land on behalf of owners**

(1) Where any land has been declared by the Court to be subject to this Part, the Cabinet may, subject to any lease, licence, or other alienation to which the land is subject, cultivate, use, and manage the whole or any part or parts of the land, and may carry on any agricultural business or any other business or occupation connected with the land and the produce of it on behalf of and for the benefit of the *Leveki Magafaoa* or the owners or such Niueans as may be interested in the business carried on.

(2) For the purpose of such business, the Cabinet may –

- (a) Purchase or otherwise acquire implements or other personal property as the Cabinet thinks expedient, and may also sell or otherwise dispose of all crops or other personal property acquired, held, grown, or produced by the Cabinet in the course of the business;
- (b) Provide, erect, maintain, and equip stores, factories, sheds, offices, or buildings of any kind;
- (c) Do all other things reasonably necessary for the development and operation of the business, and for the improvement of the land.

(3) The Public Service Commission may employ all such servants or agents as the Cabinet thinks necessary for this section.

(4) (a) The Cabinet may enter into an agreement in writing with any *Leveki Magafaoa* for farming, or farming on shares, or cropping on shares with reference to any land being administered or dealt with under this Part, for such period and upon such conditions as to remuneration or otherwise as the Cabinet thinks fit.

(b) Any such agreement shall be in the name of the Cabinet and shall be as effective as if the Cabinet were the legal owner of the land mentioned in it.

(5) The Cabinet may retain any part of the revenue derived from the operation of any business as a reserve fund for expenditure in the management of the business and may, as the Cabinet thinks fit, either expend the reserve fund accordingly or may apply it or any part of it in any other manner under this Part.

(6) The Cabinet may expend such sum or sums as the Cabinet considers expedient for the purposes of carrying on any business.

(7) The Cabinet shall be entitled to make a reasonable charge for administration, and all expenses and liabilities (including administration expenses) incurred by the Cabinet in the conduct of any business shall be a charge upon the revenue received by the Cabinet from the business as well as upon the lands on which the business is conducted.

(8) The Cabinet may make advances to the *Leveki Magafaoa* or any Niuean beneficiary in respect of the Cabinet's share or interest in the profits of the business, either by way of anticipation or otherwise.

(9) (a) All sums of money advanced by the Cabinet whether on account of the business generally or to the *Leveki Magafaoa* or any owner, shall constitute a charge upon the land and shall bear interest at such rate as the Cabinet shall determine.

(b) The High Court may make separate orders evidencing any charge in respect of different pieces of land or in respect of different parts of or interests in any piece of land, and for that purpose may apportion, in such manner and in such proportions as it thinks just and equitable, any money secured or proposed to be secured by any charge.

(10) (a) The provisions of any enactment prohibiting the assignment of rents or profits shall apply to all advances or other money which are or may become payable to the *Leveki Magafaoa* or any owner in respect of his share or interest in the profits of the business.

(b) No person other than the *Leveki Magafaoa* or a Niuean beneficiary shall be capable of acquiring any beneficial interest except by will or by order of the Court in any crops or chattels held by the Cabinet or in any revenue derived or to arise therefrom, nor shall the interest of the *Leveki Magafaoa* or the beneficial interest of any Niuean beneficiary be liable to be taken in execution or attached or become assets in the bankruptcy of a Niuean beneficiary.

(11) Nothing in any Act prohibiting alienation by way of security shall apply to any land that is subject to this Part.

#### **463 Disposal of revenues received by Cabinet**

All revenues received by the Cabinet from any land subject to this Part or from any business carried on under this Part shall be applied as follows –

- (a) In defraying the cost of the administration of the land or business;
- (b) In paying all rates, taxes, and other assessments and outgoings payable by the Cabinet in respect of the land or business;
- (c) In the discharge, to such extent as may be required or as the Cabinet thinks fit, of any mortgage, charge, encumbrance, or liability to which the land or business is subject;

- (d) In payment of sums (if any) set apart to meet any charge for improvements made upon the land;
- (e) For any other purposes in connection with the administration, improvement, and settlement of the land from which the revenues are derived, or for any other purposes of general utility to the *Leveki Magafaoa* or the Niuean owners of that land;
- (f) In paying at the times and in the manner prescribed the residue of the revenues to the *Leveki Magafaoa* or the Niuean owners or other persons having any estate or interest in the land or business in accordance with their respective interests.

**464 Money to be paid out of or into Niue Government Account**

- (1) All money expended or advanced by the Cabinet under this Part shall be paid out of the Niue Government Account.
- (2) All money received by the Cabinet under this Part shall be paid into the Niue Government Account.

**465 [Repealed]**

**466 Interference and obstruction prohibited**

- (1) Except with the consent of Cabinet, no person shall be entitled to exercise any rights of ownership in respect of any land that is subject to this Part.
- (2) Every person is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding 0.5 penalty units who –
  - (a) Wilfully trespasses on any such land, and neglects or refuses to leave the land after being warned to do so by any person authorised in that behalf by the Cabinet;
  - (b) Wilfully obstructs, hinders, or delays any officer, servant, or workman in the performance or intended performance of his duties under this Part, or otherwise obstructs or interferes with the carrying out of any works under this Part.
- (3) In any proceedings for an offence against this section in respect of any land, the fact that the defendant has an interest in the land shall not be a defence.
- (4) No proceedings shall be commenced under this section except with the consent of the Cabinet.

**467 [Repealed]**

**PARTS 17-18**

**468 –488 [Repealed]**

**PART 19**

**NIUEAN SUCCESSION**

**489-499 [Reprint – see now Family Law Code 2007]**

**PART 20**

**TRUSTEES FOR NIUEANS**

**500 Definition of “person under disability”**

In this Part, “person under disability” means any person who is a minor, or of unsound mind, or in prison, or who is subject to any physical or mental infirmity which in the opinion of the Court renders him unfit to have the management of his property.

**501 Trustee orders**

If any Niuean, being a person under disability, is entitled to any interest in any property (other than an interest in Niuean land), the Court may on the application of that person or of any other person, make an order (a trustee order) appointing any person or persons to be the trustee or trustees of the person so under disability in respect of the property or any part of it to which he is so entitled (the trust property).

**502 Matters to be set forth in trustee orders**

(1) Every trustee order shall state the nature of the disability of the beneficiary and, if that disability consists in minority, the order shall state the age of the beneficiary.

(2) Except where the order states the day of the birth of the beneficiary, any such statement as to his age shall be construed as meaning that he attained that age on the date of the order, but it shall not be necessary for the Court in making any such order to make any inquiry as to the day of the birth of the beneficiary.

(3) Any such statement as to the age of the beneficiary may be amended, but, notwithstanding any error in that statement, every act done at any time by the trustee shall be as valid as if the statement for the time being contained in the trustee order was correct, and no act done by the beneficiary in respect of the property comprised in the order after the date indicated in it as the date of his majority shall be invalidated on the ground that the beneficiary was not in fact of the age of 21 years.

(4) Every trustee order shall define the nature of the property in respect of which it was made and the nature of the interest of the beneficiary in it.

**503 Appointment of new trustees**

(1) Where it is made to appear to the Court that it is expedient to appoint a new trustee, the Court may, by a trustee order, appoint a new trustee or new trustees either in substitution for or in addition to any existing trustee, and whether there is any existing trustee or not at the time of making the order.

(2) Any person so appointed shall, unless otherwise provided by the order, have the same powers as if appointed by the original order.

**504 Orders restricting powers of trustees**

By a trustee order or by any subsequent order, the Court may prohibit or restrict the exercise by the trustee of any powers which would otherwise be vested in him under this Act, and the Court may remove or vary any such prohibition or restriction.

**505 Cancellation of trustee orders**

The Court may make an order cancelling or varying a trustee order.

**506 Determination of trustee orders**

When a trustee order has been made on the ground of the minority of the beneficiary, the powers of the trustee shall cease and determine, without any order in that behalf, so soon as the beneficiary attains his majority, and the trustee order shall thereupon cease to be in force.

**507 Trust property not to vest in trustee**

Notwithstanding anything to the contrary in any rule of law or equity, the trust property shall not vest in a trustee appointed by a trustee order, but shall remain vested in the beneficiary for the same estate and interest as if no such order had been made.

**508 Administration of property by trustee**

Subject to this Part and to any order of the Court to the contrary, every such trustee shall be entitled to the possession, receipt, and administration of the trust property and of all revenues to be derived from it, and he shall in the exercise of all powers conferred upon him by this Act be deemed to be the agent of the beneficiary.

**509 Alienation of property by trustee**

(1) Except so far as expressly provided by order of the Court, any such trustee shall, in respect of the alienation or other disposition of any property included in the trust (other than an alienation or disposition by will), represent the beneficiary, and may accordingly exercise in the name and on behalf of the beneficiary all powers in respect of the alienation or other disposition of any such property which the beneficiary might himself have exercised had he been under no disability and had no such trustee been appointed.

(2) So long as any trustee order remains in force, the beneficiary shall not be capable of exercising any powers in respect of the alienation or disposition of the trust property, other than a disposition by will if he is possessed of testamentary capacity.

**510 Powers of trustee**

Except so far as otherwise provided by order of the Court, any such trustee may do, in the name and on behalf of the beneficiary, all things in relation to the trust property which he considers necessary or expedient for the advantageous administration of that property in the interests of the beneficiary, and which the beneficiary could himself have done had he been under no disability and had no such trustee been appointed.

**511 Expenditure of revenues of trust property**

(1) The Court may make such orders as it thinks fit for the payment or expenditure of any of the revenues of the trust property to or for the benefit of the beneficiary, or for the maintenance of the children, adopted children, wife, or husband of the beneficiary.

(2) The right of the beneficiary to the receipt or expenditure of any such money, and his right in any other respect to control the administration of the trust, shall at all times while the trustee order remains in force be subject to the discretion of the trustee and to the order of the Court.

**512 Enforcement of trusts**

The Court shall have jurisdiction to enforce, by injunction or otherwise, as against any trustee under this Part, the obligations of his trust, and to hear and determine as against any such trustee any pecuniary claim arising out of a breach of trust.

**513 Co-trustees must act jointly**

When two or more trustees hold office under any trustee order in respect of the same property, those trustees must act jointly in the exercise of the trust, and no such powers shall be exercisable by less than the full number of trustees so appointed, notwithstanding the existence of any vacancy in that number.

**514 Remuneration of trustees**

Any such trustee may be allowed out of the revenues or proceeds of the trust property, by way of remuneration for his services in administering that property, such reasonable sums as the Court orders, in addition to all costs, charges, and expenses incurred by him in the execution of his trust.

PARTS 21-25

MARRIAGE

**515-599** [Reprint – see now Family Law Code 2007]

PART 26

PERSONS OF UNSOUND MIND

*Orders of Medical Custody*

**600 Application by Medical Officer to Court**

Any Medical Officer may make application to the Court for an order committing any person to medical custody under this Part on the ground that that person is of unsound mind.

**601 Medical certificates as to persons of unsound mind**

No such order shall be made except on examination of the person alleged to be of unsound mind, and upon production to the Court of a certificate by the Director of Health or by two Medical Officers that the person in respect of whom the order is to be made is of unsound mind and that his detention in medical custody is necessary in his own interests or for the safety of other persons.

**602 Order of medical custody**

If the Court is satisfied on the examination of the person so alleged to be of unsound mind, and on hearing such further evidence (if any) as the Court thinks necessary, that he is of unsound mind and that his detention in medical custody is necessary in his own interests or for the safety of other persons, the Court may make an order (hereinafter called an order of medical custody) committing him to medical custody for such period as the Court thinks fit, not exceeding 6 months.

**603 Renewal of order**

Any such order may, whether before or after the expiry of it, be renewed for such further period, not exceeding 6 months, as the Court on a further application and certificate as aforesaid thinks fit.

**604 Cancellation of order**

Any such order may be at any time cancelled by the Court.

**605** [Repealed]

**606 Arrest and detention of persons committed to medical custody**

Any person against whom an order of medical custody has been so made may thereupon be arrested by any constable or Medical Officer, and shall, while the order remains in force, be detained at such hospitals or other places in Niue, and in the custody of such Medical Officer, as may be determined in that behalf by the Director of Health, either generally or in respect of any particular case or class of cases.

**607** [Repealed]

**608 Removal from Niue to New Zealand**

When an order of medical custody has been so made against any person, the High Court may, at the same time or at any time after it while the order remains in force, issue under the seal of the Court a warrant for the removal of that person from Niue to New Zealand.

**609 Conditions of removal**

No such warrant shall be issued unless the Court is satisfied, on the certificate by the Director of Health or by two Medical Officers, and on the examination of the person alleged to be of unsound mind, that his removal from Niue to New Zealand is necessary in his own interests or for the safety of other persons.

**610 Method of removal**

On the issue of any such warrant for the removal of any person to New Zealand, he may be taken to New Zealand in the custody of any person appointed in that behalf by a Medical Officer in any ship belonging to Her Majesty or in any Commonwealth ship or in any aircraft which is approved by the Director of Health or two Medical officers as suitable for the purpose.

**611 Admission to hospital of persons removed to New Zealand**

*[This section is not Niue law.]*

**612 [Repealed]**

**613 No committee of estate of person of unsound mind**

The High Court may appoint a committee of the person or estate of a person of unsound mind.

**614 Warrant for arrest of persons of unsound mind**

Any person against whom an application has been made for an order of medical custody may be arrested by any constable or other person under a warrant issued by a Judge or the Registrar of the High Court.

**615 Arrest without warrant of persons of unsound mind**

Any person believed on reasonable grounds to be of unsound mind and to be dangerous to himself or others may be arrested without warrant by a constable, and shall be forthwith brought before a Judge or the Registrar of the High Court, who may make such order for his custody as is thought fit, pending the making and determination of an application for an order of medical custody.

**615A Commissioner and Justices may act for Judge**

(1) Any power conferred by this Act on the Court to make an order under sections 602, 603, 604 or 608 may be exercised by a Commissioner of the High Court or any two Justices of the Peace if at the time when the power is exercised there is not present in Niue a Judge who is able to exercise it.

(2) In any such order made by the Commissioner or two Justices of the Peace, a statement that, or to the effect that, to the best of his or their knowledge and belief, at the time of making of the order there is not present in Niue a Judge who is able to make it shall be conclusive proof of the jurisdiction of the Commissioner or Justices as the case may be so far as the requirements of this section are in question.

(3) Any proceedings commenced before a Commissioner or two Justices of the Peace under this section may be continued and completed before a Judge.

(4) No Commissioner or Justice shall exercise any power under this section in any matter in which he has signed an application for a reception order or a medical certificate.

*Persons of Unsound Mind Charged with Offences*

**616-620** [Reprint – see now Criminal Law Code 2007]

PARTS 27-29

**621-653** [Repealed]

PART 30  
CUSTOMS

**654-655A** [Repealed]

**656 Goods may be imported from New Zealand or Cook Islands free of duty**

(1) All goods imported into Niue from New Zealand or the Cook Islands, whether the produce or manufacture of New Zealand or the Cook Islands or not, shall be admitted into Niue free of duty.

(2) Nothing in this section shall apply to—

- (a) Goods in respect of which on their exportation from New Zealand or the Cook Islands any claim for drawback of duty has been made and allowed;
- (b) Goods which by reason of warehousing or for any other reason have been exported from New Zealand or the Cook Islands without payment of duty on their importation into New Zealand or the Cook Islands;
- (c) Goods produced in a manufacturing warehouse in New Zealand or the Cook Islands, unless they have been entered in New Zealand or the Cook Islands for home consumption and the duty (if any) paid on it;
- (d) Goods subject to any excise duty in New Zealand under the Customs Acts (as defined in section 3 of the Customs Act 1966) or in the Cook Islands under the law in force in the Cook Islands, unless such duty has been paid on it as if they had not been exported;
- (e) Goods on which a rate of duty has been paid in New Zealand or the Cook Islands lower than that to which the goods are subject in Niue at the time of their importation into Niue.

**657-658** [Repealed]

PART 31

**659-671** [Repealed]

PART 32

THE LAWS OF NIUE: GENERAL PROVISIONS

*Application of the Laws of New Zealand*

**672-677** [Repealed]

**678** [Reprint – see now Criminal Law Code 2007]

**679-705** [Repealed]

**706 Limitation of actions**

(1) The law of Niue as to prescription and the limitation of actions shall be the same as that which is in force for the time being in New Zealand.

(2) For the purposes of the law as to prescription and the limitation of actions, New Zealand shall in Niue be deemed to be parts beyond the seas, and Niue shall in New Zealand be deemed to be parts beyond the seas.

(3) No right, title, estate, or interest in Niuean land shall be acquired or lost by prescription or limitation.

*Miscellaneous Rules of Law*

**707-708** [Reprint – see now Family Law Code 2007]

**709 Joint liability**

A judgment against one or more of several persons jointly or jointly and severally liable shall not operate as a bar or defence to an action or other proceeding against any of those persons against whom judgment has not been recovered, except to the extent to which the judgment has been satisfied, any rule of law notwithstanding.

**710 Contracts of guarantee**

No special promise by any person to answer for the debt, default, or miscarriage of another person, being in writing and signed by the party to be charged with it or some other person lawfully authorised by him, shall be deemed invalid to support an action or other proceedings to charge the person by whom the promise was made by reason only that the consideration for the promise does not appear in writing or by necessary inference from a written document.

**711–713** [Repealed]

**714 Liability of owners of dogs**

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

**715 Distress for rent abolished**

(1) Notwithstanding anything to the contrary in any Act, or in any rule of law or in any lease to the contrary, it shall not be lawful for any person to distrain for rent.

(2) This section shall extend and apply to leases granted by the Crown.

**716 Libel and slander**

In any action in the Court for defamation (whether libel or slander), it shall not be necessary to allege or prove special damage.

**717-719** [Repealed]

**720 Statutory declarations**

(1) Any Judge of the Court, any Commissioner, the Registrar of the Court, the Controller of Customs, or any law practitioner entitled to practice in the courts of Niue may take and receive the declaration of any person, in the form in the Schedule 2.

(2) If any person wilfully makes a declaration that is false in any material particular, he is liable to imprisonment for a term not exceeding 2 years.

**721** [Repealed]

**722 Taxes on Niuean land**

All taxes imposed by any Act, or other lawful authority upon Niuean land or upon any person in respect of the ownership or occupation of Niuean land shall constitute a charge upon that land.

**723** [Repealed]

**724** [Reprint – see now Criminal Law Code 2007]

**725 Trespass *ab initio***

No lawful entry, seizure, arrest, or other act shall by reason of any unlawful act subsequent to it be deemed to have been a trespass *ab initio*.

**726-727** [Repealed]

**727A** [Reprint – see now Family Law Code 2007]

**728-735** [Repealed]

**736 Contributory negligence**

Where a person suffers loss or damage as the result partly of personal fault and partly of the fault of any other person, a claim in respect of that loss or damage shall not be defeated by reason of the fault of the person suffering the loss or damage, but the compensation recoverable shall be reduced to the extent the Court thinks just and equitable having regard to the claimant's share in the responsibility for the loss or damage.

**737 Protection of intellectual property**

(1) A copyright, design, patent, or trademark protected by New Zealand law shall be accorded the same protection by the courts of Niue as that available in New Zealand under the laws of New Zealand for the time being in force. [See also Act 2006/280/section 12]

(2) However, the courts of Niue must not protect a copyright, design, patent, or trademark if it would be offensive to Niue culture to do so.

(3) The courts of Niue must not protect a copyright, design, patent, or trademark which affects traditional knowledge or expression of culture unless the requirements in relation to prior and informed consent under the Tāoga Niue Act 2012 are satisfied in relation to that traditional knowledge or expressions of culture.

(4) In this section, "expression of culture", "prior and informed consent", and "traditional knowledge" have the same meaning as in section 3(1) of the Tāoga Niue Act 2012.

**738 Aerodromes**

(1) For the purposes of ensuring the safety of flight operations into, out of, and in the vicinity of any aerodrome, Cabinet may, by notice published in the *Gazette* –

- (a) Prohibit, either absolutely or beyond a height specified in the notice, the erection or placing or extension of any building, pole, mast, or other structure of any kind on the land described in the notice;
- (b) Limit the height to which trees, shrubs, vegetation, or foliage may be permitted to grow on the land described in the notice;

(c) Limit and specify the purposes for which land described in the notice may be used, and the species and varieties of trees, shrubs, vegetation, or foliage which may be grown or permitted to grow on any land described in the notice.

(2) Where any land, building, pole, mast, or other structure interferes in any way with the use by aircraft of any aerodrome, Cabinet may, by notice in writing served on the *Leveki Magafaoa* and the occupier of the land and on all other persons known to have any right or estate in it, require the removal or lowering of the land or of the building, pole, mast, or other structure to the satisfaction of the Cabinet within 2 months after service of the notice.

(3) Cabinet may, if there is a failure to comply with any notice served under subsection (2) take any steps Cabinet considers necessary to ensure compliance with the terms of the notice.

(4) Cabinet may take any steps the Cabinet considers necessary to remove, top, or trim any tree, shrub, vegetation, or foliage on any land for the purpose of ensuring the safety of flight operations into, out of, and in the vicinity of any aerodrome. Before exercising the powers conferred by this subsection Cabinet shall give not less than one month's notice in writing to the *Leveki Magafaoa* and to the occupier of the land.

(5) Every person having any right or interest in any land injuriously affected, or suffering any damage, from the exercise of any powers given by this section shall be entitled to compensation, which shall be determined by the Court in the same manner as is prescribed by section 13 of the Niue Amendment Act (No2) 1968 in the case of land taken under that Act.

(6) In the case of any claim to compensation for restrictions placed upon the use of land, the Court shall, in assessing compensation, take into account not only the loss caused by the restrictions but also the cost of labour reasonably incurred by any *Leveki Magafaoa* or occupier in ensuring compliance with the restrictions.

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#### SCHEDULE 1

[Repealed by 1974/43 (NZ)]

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#### SCHEDULE 2

##### FORM OF DECLARATION

I,A.B. [*Insert place of abode and occupation or description*], solemnly and sincerely declare that [*Insert facts*]. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Niue Act 1966.

A.B.

Declared at                   in Niue this                   day of                   20                   before me -

C.D.

Judge of the High Court of Niue, or Commissioner of the High Court, Registrar of the High Court, member of Cabinet, Finance Secretary of Customs, Justice of the Peace, Medical Officer of Niue, Solicitor of the Supreme Court of New Zealand, as the case may be.

# NIUE AMENDMENT ACT (No 2) 1968

1968/132 (NZ) – 1 November 1969

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## 1 Short title

This is the Niue Amendment Act (No 2) 1968, and shall be read together with and deemed part of the Niue Act 1966 (the principal Act).

## 2 Interpretation

For the purposes of the principal Act (including this Act) –

“alienation”, in relation to Niuean land, means the making or grant of any transfer, sale, gift, lease, licence, easement, profit, mortgage, charge, encumbrance, trust, or other disposition, whether absolute or limited, and whether legal or equitable; and includes a contract to make any such alienation; and also includes the surrender or variation of a lease, licence, easement, or profit and the variation of the terms of any other alienation as hereinbefore defined;

“Church purposes” means the provision for the benefit of the adherents of some Christian denomination of a site for a place of worship, or for a pastor’s house, or for a school conducted by the denomination, or for houses for pupils or teachers of such a school, or for a plantation for the support of pupils or teachers of such a school, or for any one or more of such purposes;

“Crown land” means land in Niue vested in the Government, being land that is free from Niuean custom;

“customary title” means title under the customs and usages of Niue;

“Land Court” means the Land Division of the High Court;

“Leveki Magafaoa” means a trustee or guardian of a family having any right, title, estate, or interest in Niuean land;

“Niuean land” means land in Niue held by Niueans according to the customs and usages in Niue;

“public purpose” means all purposes for which money is appropriated by the Assembly and all lawful purposes and functions of the Government and includes naval, military, and air defence, education, public health, fisheries, public buildings, wharves, jetties, harbours, prisons, water supply, sites for villages, housing purposes, public recreation, land development, and the burial of the dead.

PART 1  
LAND TENURE

**3 Classification of land in Niue**

All land in Niue is Crown land or Niuean land.

**4 [Repealed]**

**5 [Repealed]**

**6 Administration and tenure of land**

(1) [Repealed]

(2) The Registrar of the High Court shall proceed to register the title to all land in accordance with this Act and any other relevant enactment.

**7 [Repealed]**

PART 2  
CROWN LAND

**8 Grants of Crown land**

(1) Subject to any enactment, the Cabinet may, by warrant, grant in respect of Crown land any lease, licence, easement, or other limited estate, right, or interest, or may accept a surrender of any estate, right, or interest in such land.

(2) In the case of Crown land reserved or set apart for any public purpose, no such grant shall be made except so far as consistent with that purpose.

**9 Crown land may be declared Niuean land**

(1) The Cabinet may, by warrant, declare that any Crown land which is not subject to any lease or to any other right, title, estate, or interest vested in any person shall be Niuean land, and may in the warrant indicate with what particularity it thinks fit the Leveki Magafaoa, the person, or the family or group of Niueans by whom or on whose behalf it shall be held.

(2) The Land Court shall have jurisdiction to hear and determine any dispute between Niueans affecting land which has become Niuean land under subsection (1), and may vary or describe with further particularity the Leveki Magafaoa, the person, or the family or group of Niueans by whom or on whose behalf the land or any part of it shall be held.

**10 Reserves of Crown land for public purposes**

Any Crown land may, by warrant of the Cabinet, be set aside as a reserve for any public purpose, and shall be reserved and used for that purpose accordingly, but any such warrant may be at any time revoked.

**11 Taking of land for public purposes**

(1) The Cabinet may by warrant, take any land in Niue for any public purpose specified in the warrant, and it shall thereupon become absolutely vested in the Crown as from the date of the warrant, or from any later date specified therein in that behalf, free from all estates, rights, and interests of any other person therein, save so far as any such estates, rights, or interests are expressly saved by the warrant.

(2) Nothing in this section shall authorise the taking of any land occupied by any building, yard, cemetery, burial ground, or in bona fide occupation as an

ornamental park or pleasure ground, except with the prior consent in writing of the Leveki Magafaoa or of the owner or of the Assembly.

(3) The procedure for taking land for public purposes under this section shall be prescribed by Act.

## **12 Revocation of warrant taking land**

(1) If any warrant under section 11 is made in error, or if the land so taken or any part of it is found not to be required for the purpose for which it was taken, Cabinet may, by warrant, at any time before compensation has been paid in respect of it, revoke the warrant either wholly or as to any part of the land so taken.

(2) A warrant so revoked shall, so far as revoked, be deemed never to have been made, and the land shall accordingly be deemed to have remained vested in the persons formerly entitled to it or to their successors in title.

(3) Any person interested in the land and suffering loss or damage by the making and revocation of any such warrant taking it shall be entitled to compensation in the same manner, with all necessary modifications, as in the case of compensation for land taken.

## **13 Compensation for land taken**

(1) When any land has been so taken for a public purpose, all persons having in respect of that land any right, title, estate, or interest which is extinguished or divested by the taking of the land shall be entitled to compensation for it from the Crown.

(2) Cabinet may within 60 days after the date when the land taken has vested in the Crown, offer to the persons entitled to share in the compensation such sum by way of compensation as it thinks fit, and, if the offer is not accepted by all such persons within 30 days after it has been communicated to them, or if no such offer is made within the 60 days aforesaid, the compensation shall be assessed and awarded by the Land Court, either on the application of Cabinet or on application of any person claiming the compensation or share in it.

(3) The compensation so awarded to any person shall constitute a debt due to him by the Crown, and shall be payable out of the Niue Government Account.

(4) In awarding any such compensation, the Court may direct that the compensation, or any part of it, be paid to the Registrar of the Court for distribution to the persons entitled to it.

(5) The receipt of the Registrar of the Court shall be a sufficient discharge for any money so paid in the same manner as if that money had been then paid to the persons entitled to it.

## **14 Resumption of Crown land for public purposes**

(1) The Cabinet may, by warrant, resume for any public purpose specified in the warrant any Crown land held under lease or otherwise subject to any right, title, or interest in any other person, and every such lease, right, title or interest shall in accordance with the tenor of the warrant determine accordingly, save so far as expressly preserved by it.

(2) All persons entitled to any lease, right, title, or interest so determined shall be entitled to compensation in the same manner as in the case of land taken for public purposes.

## **15 [Repealed]**

**16 Acquisition of land for public purposes**

Cabinet may, for public purposes, purchase or otherwise acquire any Niuean land or any undivided interest or acquire by grant, assignment, or otherwise any lease, easement, *profit à prendre*, or other limited right, title, estate, or interest of or in any such land.

**17 Public purpose for which land held may be altered**

Where any land has under this Part or the corresponding provisions of any former Act been set aside as a reserve or taken or resumed or purchased or otherwise acquired for any public purpose, the public purpose for which the land is held may be varied or cancelled by Cabinet by warrant.

**18 Control of Crown land by Cabinet**

Cabinet may exercise on behalf of the Crown all rights of suit, entry, reentry, receipt of rents and profits, use, management, control, and possession vested in the Crown in respect of any Crown land.

**19 [Spent]**

**20 [Repealed]**

**PART 3**  
**NIUEAN LAND**

**21 Ownership in Niuean land**

All land in Niue which at 1 November 1969 is held by Niueans under Niuean custom is hereby vested in the Crown as the trustee of owners of it, and shall be held by the Crown subject to Niuean custom, and all such land is hereby declared to be Niuean land accordingly, but shall remain subject to any right which may have been lawfully acquired in respect of it before 1 November 1969 otherwise than under Niuean custom.

**22 Investigation of title to Niuean land**

The Land Court shall have exclusive jurisdiction to investigate the title to Niuean land and to determine the relative interests of the owners or occupiers of any such land under this Act or any other enactment.

**23 Niuean customs to be recognised**

Every title to and estate or interest in Niuean land shall be determined under Niuean custom and any Act of the Assembly or other enactment affecting Niuean custom.

**24 No alienation of Niuean land**

No person shall be capable of making any alienation of Niuean land or of any interest in it, except as provided by Part 2 or under any other enactment.

**25 For certain purposes Niuean land to be deemed Crown land**

(1) For the purpose of preventing trespass or injury to Niuean land the title to which has not been registered, or of recovering damages for any such trespass or injury, or for the purpose of recovering possession of any such land from any person in wrongful occupation of it, an action or other proceeding may be brought by or on behalf of the Crown as if the land were Crown land.

(2) Nothing in this section shall be so construed as to take away or affect any jurisdiction conferred upon the Land Court by this Act.

**PART 4**  
**LAND FOR CHURCH PURPOSES**

**26 Vesting of land for Church purposes**

(1) The Land Court, if it is satisfied that any Niuean land has been at any time given or set aside by the Leveki Magafaoa, or, where there is no Leveki Magafaoa, the owners exclusively for Church purposes for the benefit of the adherents of some Christian denomination, and that the Leveki Magafaoa or the owners, as the case may be, are willing that the land shall be exclusively so used in perpetuity, and that no sufficient alienation or disposition of the land by way of lease or otherwise has been made in pursuance and furtherance of the said gift or setting aside, may make an order under this section vesting that land in any body corporate to hold and administer it for such Church purposes as are specified in the order.

(2) On application being made under this section, the Court may make one or more orders, subject to such terms and conditions as the Court thinks fit to impose, vesting the land in such body corporate as may be nominated by the applicant.

(3) Every order made under this section shall take effect according to its tenor, and the land affected by it shall vest in the body corporate without any transfer or other instrument of assurance.

**27 Land vested for Church purposes may be acquired by the Crown**

Where any land vested in any body corporate or persons under section 26 is no longer required for the Church purposes specified in the vesting order, the land may be acquired by the Crown under Part 2 and no compensation shall be payable to any person in respect of it.

**28 Existing records and instruments**

All records, instruments, reservations, and generally all acts of authority relating to the giving or setting aside of land for Church purposes subsisting and in force at 1 November 1969 may be accepted by the Land Court as evidence in support of any application under section 26.

**PART 5**  
**THE LAND COURT**

**29 Qualifications of Judges**

(1) Subject to articles 41(1) and 43 of the Constitution no person other than a barrister or solicitor of not less than 7 years practice in Niue or in a country with substantially identical land tenure system to that of Niue, or as a Judge of the Land Court of such other country and can demonstrate an appreciation of the customary land rules and practices of the Niuean people, may be appointed as a Judge of the Land Court.

(2) With the exception of the Chief Justice who shall be the superior Judge of the Land Court, other Judges of the Court shall have seniority among themselves according to the dates of their appointments as judges. If two or more of them are appointed on the same day, they shall have the seniority according to the precedence as such judges or, failing any such assignment, according to the order they take the official oath under article 55C of the Constitution.

(3) Every permanent judge shall have seniority over every temporary Judge.

**30 Qualifications of Commissioners of the Land Court**

(1) Subject to articles 46(2) and 47 of the Constitution and to this section any barrister or solicitor with less than 7 years practice in Niue or any other persons or officers of the Government of Niue (except the Registrar) possessing the desired qualities and a good appreciation of Niuean customs in relation to land and other land

related matters and of good standing in the community, may be appointed a Commissioner of the Land Court.

(2) Notwithstanding subsection (1), none of the following persons shall be qualified to be appointed as a Commissioner of the Land Court, namely –

- (a) A member of the Assembly;
- (b) An officer of a political organisation;
- (c) An undischarged bankrupt;
- (d) A person with a criminal record (except for minor traffic offences); and
- (e) Ministers of religion.

(3) The rules of seniority of judges laid down in section 29 shall apply to Commissioners as if the reference to judges in that section were a reference to Commissioner.

### **31 Salaries and other remuneration**

Subject to articles 44 and 49 of the Constitution there shall be paid to the Chief Justice, Judges and Commissioners out of the Niue Government Account, without further appropriation than this section the salaries and allowances set out in the Schedule.

### **32-37 [Repealed]**

### **38 Registrar and Deputy Registrar of Land Court**

(1) There shall be a Registrar of the Court.

(2) The Registrar shall keep or cause to be kept such records of and in relation to proceedings in the Land Court as may be prescribed.

(3) There may also be appointed a Deputy Registrar who shall, subject to the control of the Registrar, possess, exercise, and perform the same powers, functions, and duties as the Registrar, and every reference in any enactment to the Registrar shall, so far as applicable, extend and apply to the Deputy Registrar accordingly.

### **39 Administrative officers**

There shall be appointed in respect of the Land Court such clerks, interpreters, and other administrative officers as may be necessary.

### **40 Records of Land Court**

The records, plans, and documents relating to the business of the Land Court shall be kept, and the administrative work of the Land Court shall be carried on, at such places as the Chief Justice directs.

### **41 Registers**

Registers shall be kept by the Registrar, in which shall be recorded minutes of all applications made to the Court and of all orders and proceedings made or had thereon.

### **42 Seal of the Land Court**

(1) The Land Court shall have in the custody of each Judge and the Registrar a seal which shall be the seal of the Court, and shall be used for sealing documents which require to be sealed.

(2) The form or forms of seal shall be such as Cabinet determines.

**43 Rules of Land Court**

(1) The practice and procedure of the Land Court in all matters within its jurisdiction shall be as prescribed by enactment.

(2) So far as the Rules of the Land Court do not extend, but subject to this Act, the Court shall in all matters proceed in such manner as seems just and convenient in that particular case.

**44 Applications to Land Court**

(1) The jurisdiction of the Land Court in any matter may be exercised on the application of any person claiming to be interested in it, or on the application of Cabinet of any person authorised by Cabinet in that behalf.

(2) In the course of the proceedings on any application, the Land Court may, subject to this Act, Rules of Court, and any other enactment, without further application and upon such terms as notice to parties and otherwise as the Court thinks fit, proceed to exercise any other part of its jurisdiction the exercise of which in those proceedings the Court thinks necessary or advisable.

**45 Rehearings**

(1) On the application of any person interested, the Land Court may grant a rehearing of any matter either wholly or as to any part of it.

(2) On any such rehearing the Court may either affirm, vary, or annul its former determination, and may exercise any jurisdiction which it might have exercised on the original hearing.

(3) When a rehearing has been so granted, the period allowed for an appeal shall not commence to run until the rehearing has been disposed of by a final order of the Court.

(4) Any such rehearing may be granted on such terms as to costs and otherwise as the Court thinks fit, and the granting or refusal of it shall be in the absolute discretion of the Court.

(5) No order shall be so varied or annulled at any time after the signing and sealing of it.

**46 Sittings of Land Court**

(1) The times and places of the sittings of the Land Court shall be determined by Rules of Court.

(2) The dates of the commencement of the ordinary sittings of the Court for the period of 12 months commencing on 1 April in each year shall be published in the *Gazette* before the commencement of that period or as soon as practicable after the commencement of it.

(3) Special sittings may be held at such times and places as may be appointed by the Chief Justice.

*General Jurisdiction of the Land Court*

**47 Jurisdiction of the Land Court**

(1) In addition to any jurisdiction specifically conferred upon the Land Court by any enactment other than this section, the Land Court shall have exclusive jurisdiction –

(a) To hear and determine any application to the Land Court relating to the ownership, possession, occupation, or utilisation of Niuean land, or to any right, title, estate or interest in Niuean land or in the proceeds of any alienation of it;

- (b) To determine the relative interests of the owners or the occupiers in any Niuean land;
- (c) To hear and determine any application for the appointment of a Leveki Magafaoa in respect of any Niuean land;
- (d) To hear and determine any claim to recover damages for trespass or any other injury to Niuean land;
- (e) To grant an injunction against any person in respect of actual or threatened trespass or any other injury to Niuean land;
- (f) To grant an injunction prohibiting any person from dealing with or doing any injury to any property which is the subject-matter of any application to the Land Court;
- (g) To create easements in gross over Niuean land;
- (h) To make any order recording the determination of any matter relating to land or any interest in it, whether provided for in this Act or other enactment;
- (i) To authorise the survey of any land.

(2) The grant of an easement under subsection (1)(g) may, if the Court thinks fit, be made subject to the payment of compensation in respect of it, or to any other conditions that the Court may impose.

#### **47A Jurisdiction of Commissioners**

(1) Subject to this section, Commissioners shall be empowered to exercise any or all of the jurisdiction conferred upon the Land Court under section 47 in addition to any other jurisdiction (whether judicial or administrative) conferred upon the Judges or Commissioners by any enactment, but excluding those vested exclusively in the Chief Justice.

(2) Notwithstanding subsection (1) and for the purposes of exercising the jurisdiction conferred on the Land Court under section 47(1) the following provisions shall apply –

- (a) For the purposes of exercising the jurisdiction under section 47 (1) (a), (b) and (i) not less than 5 Commissioners sitting together may exercise such powers;
- (b) In every other case (whether arising out of the remaining provisions of the said section 47(1) or of any other enactment) not less than 2 Commissioners sitting together may exercise such other powers, except where an enactment expressly empowers a Commissioner sitting alone to exercise any of the powers.

(3) All references in this Act or any enactment (including any rules of the Land Court, regulations, orders or by-laws) to a Judge of the Land Court shall be construed as applying to the Commissioners of the Land Court within the limits of the jurisdiction conferred upon them under this section.

#### **47B Commissioners may adjourn or decline jurisdiction**

(1) Where proceedings has been commenced before Commissioners, the Commissioners may, at any time before a final decision has been made –

- (a) Decline to deal further with the matter and require that it shall be dealt with by a Judge; or
- (b) Where a question of law has arisen and it is necessary for such question to be referred to a Judge, the Commissioners may adjourn the proceedings until such question of law has been dealt with by a Judge.

(2) Where the Commissioners decline to deal further with the matter, a Judge shall deal with such matter by way of a rehearing.

**47C Decision of majority to be decision of Land Court**

(1) In any proceedings before Commissioners, the decision of the Land Court shall be in accordance with the opinion of the majority of the Commissioners present.

(2) If the Commissioners present are equally divided in opinion then the Court shall decline from making a final decision and the opinions of all the Commissioners present shall be referred to the Chief Justice and whichever opinion the Chief Justice endorses that opinion shall form the decision of the Court.

**47D Appeals from decisions of Commissioners**

(1) Any party to any proceedings before Commissioners of the Land Court may appeal from the judgment of the Commissioners to a Judge of the Land Court.

(2) Every such appeal shall be by way of rehearing and section 45 of this Act and rule 39 of the Land Court Rules 1969 shall apply accordingly.

**47E Attendance of Commissioners at Court**

(1) The Registrar shall keep and update a list of Commissioners.

(2) Where the attendance of Commissioners are required at any sitting of the Court, the Registrar shall summon as many Commissioners as he thinks necessary to attend.

**47F Legality of acts done by person no longer a Commissioner**

The legality of anything done by a person while he is a Commissioner shall not be affected by his ceasing to be a Commissioner, but anything done by any person after he has ceased to be a Commissioner in purported exercise of any of the powers or duties of such office shall be void.

**47G Action against a Commissioner**

No action shall be brought against any Commissioner for any act done by him in the course of exercising his duties.

**48 Jurisdiction conferred on Land Court**

(1) In addition to the jurisdiction elsewhere in this Act conferred upon the Land Court, Cabinet may confer upon that Court, as effectually as if it were conferred by this Act, jurisdiction in any matter or question affecting exclusively the rights of Niueans in any property, and thereupon the Land Court shall have full jurisdiction to determine that matter or question.

(2) Any order of the Land Court in any such matter or question shall be valid and binding in law, and may be dealt with as nearly as may be in the same manner as an order or determination of a similar nature made by the Court in the exercise of the jurisdiction conferred upon it by this Act.

**49 Powers of Judges**

A Judge sitting alone or any two or more Judges sitting together may exercise all the powers of the Land Court.

**50 Proceedings in Land Court before different Judges**

Proceedings in the Land Court may be continued before a Judge or Judges other than the Judge or Judges before whom the proceedings were commenced.

*Orders of Land Court*

**51 Procedure with respect to the making of orders**

(1) (a) The substance of every final order of the Land Court shall be pronounced orally in open court.

(b) Subject to subsection (5), every such order shall take effect according to its tenor as from the commencement of the day on which it is so pronounced.

(c) A minute of the order shall forthwith be entered in the records of the Land Court.

(2) As soon as practicable after the entry in the records of a minute, the order shall be drawn up in writing under the seal of the Land Court and shall be signed as hereinafter provided.

(3) Any such order may be signed by the Judge by whom it was made or by any other Judge of the Land Court.

(4) (a) The order drawn up, sealed, and signed as hereinbefore provided shall be dated as of the date of the minute and shall relate back to that date.

(b) The validity and operation of all intermediate orders, instruments, proceedings, and transactions shall be determined accordingly.

(5) No order shall be questioned or invalidated on the ground of any variance between the order as so drawn up, sealed, and signed and the minute thereof; and in the case of any variance the order shall prevail over and supersede the minute.

(6) Any order may be made subject to the performance of conditions within such time as may be limited in that behalf in the order and, in any such case, the Land Court, without further application but subject to the giving of such notices (if any) as the Land Court may direct, may amend or cancel the order on the failure to comply with the conditions within the time limited as aforesaid.

(7) No order made under Part 4 shall be sealed and signed until and unless there has been drawn or endorsed on it a plan of the land affected by it sufficient to identify the land and the boundaries.

(8) Except with the leave of the Land Court, no order from which there is a right of appeal shall issue from the office of the Land Court before the time allowed for appeal has expired or, in the event of an appeal, before the appeal has been duly disposed of.

(9) (a) The Land Court may at any time cause duplicates of any order to be sealed and signed.

(b) Every such duplicate shall have the word "Duplicate" written or stamped on it, and shall have the same evidentiary value as the order of which it is a duplicate.

(10) Where by any enactment provision is made for production of an order of the Land Court for purposes of registration or otherwise, it shall be sufficient compliance with that provision if a duplicate of the order, or a copy of it issued under the seal of the Court and certified by a Judge or the Registrar as a correct copy, is so produced.

**52 Orders bind all persons interested**

Every order of the Land Court determining or affecting the title to Niuean land or to any estate or interest in it shall bind all persons having any interest in that land, whether or not they are parties to or have notice of the proceedings in which the order is made, and whether or not they are subject to any disability.

**53 Validity of orders**

(1) No order of the Land Court shall be invalid because of any error, irregularity, or defect in the form thereof or in the practice or procedure of the Court

even though by reason of that error, irregularity, or defect the order was made without or in excess of jurisdiction.

(2) Nothing in subsection (1) shall apply to any order which in its nature or substance and independently of its form or of the practice or procedure of the court was made without or in excess of jurisdiction.

(3) Every order made by the Land Court shall be presumed in all courts and in all proceedings to have been made within the jurisdiction of the court, unless the contrary is proved or appears on the face of the order.

**54 Annulment of orders obtained by fraud**

The Land Court may at any time annul any order obtained by fraud.

**55 [Repealed]**

**56 Enforcement of charges**

(1) When any charge is imposed either by this Act or by the Land Court upon any Niuean land or upon any interest in it, that Court may at any time for the purpose of enforcing that charge appoint a receiver in respect of the property so charged.

(2) A receiver so appointed shall be entitled, unless the Land Court otherwise orders, to the possession of the property and to the receipt of the rents and profits.

(3) Any person who obstructs any such receiver in the execution of his office shall be guilty of contempt of the Land Court.

**57 Registration of orders affecting title to land**

(1) Any order of the Land Court affecting or relating to the title to land may be registered against the title to that land.

(2) For the purposes of registration the order shall be filed in the Land Registry Office, and the Registrar shall thereupon, subject to the provisions of any enactment, register the order accordingly.

(3) Nothing in this section shall affect or modify any special provisions made in any other enactment for the registration of any such order.

*Contempt of Court*

**58 Contempt of Court defined**

(1) Every person is guilty of contempt of the Land Court who –

- (a) Knowingly disobeys any order of that Court or of a Judge of it, otherwise than by making default in the payment of any sum of money payable under such an order; or
- (b) Uses any abusive, insulting, offensive, or threatening words or behaviour in the presence or hearing of the court; or
- (c) Assaults, resists, or obstructs, or incites any other person to assault, resist, or obstruct, any constable or officer of the court in serving any process of the court or in executing any warrant or order of the court or of a Judge of it; or
- (d) By any words or behaviour in the presence or hearing of the court, obstructs in any manner the proper and orderly administration of justice in the court; or
- (e) Does any other thing which elsewhere in this Act or in any other enactment is declared to be a contempt of the Land Court; or
- (f) Aids, abets, counsels, procures, or incites any other person to commit contempt of the Land Court.

- (2) Every person shall be guilty of contempt of the Land Court who –
- (a) Having been served with a summons requiring him to appear before the Land Court at a time and place mentioned in the summons, neglects or fails without sufficient cause shown by him to appear or to produce any document which he is so required to produce; or
  - (b) Whether summoned to attend or not, is present in court and, being required to give evidence or to produce any document then in his possession, refuses, without sufficient cause shown by him, to be sworn or to give evidence or to produce that document; or
  - (c) Having been sworn to give evidence in any proceedings, neglects or fails without sufficient cause shown by him to appear at such time as the Court directs for the purpose of giving further evidence in the proceedings.

**59 Penalty for contempt**

Every person who commits contempt of the Land Court is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding 1 penalty unit.

**60 Jurisdiction in contempt**

The offence of contempt of the Land Court shall be punishable either –

- (a) By the Land Court in the ordinary course of its criminal jurisdiction; or
- (b) By the Land Court under sections 61 to 64.

**61 Contempt in face of the Court**

(1) If the contempt is committed in the presence or hearing of the Land Court, any Judge there and then sitting in that Court may without order or warrant direct any constable, officer of the court, or other person to arrest the person so guilty of contempt, and to bring him before the court.

(2) The Court may thereupon, after giving the person so arrested a reasonable opportunity of being heard in his defence, by warrant under the seal of the Court, either commit him to prison for a term not exceeding 6 months or order him to pay a fine not exceeding 1 penalty unit.

**62 Arrest on warrant**

If contempt of the Land Court is committed otherwise than in the sight or hearing of the Court, any Judge of that Court may issue his warrant for the arrest of the offender or may summon him to appear before the Court.

**63 Conviction by Land Court**

On the appearance of the offender before the Land Court, the Court may, after giving him a reasonable opportunity to be heard in his defence, by warrant under the seal of the Court, either commit him to prison for a term not exceeding 6 months or order him to pay a fine not exceeding 1 penalty unit.

**64 Enforcement of fine**

If a fine imposed by the Court for contempt under the foregoing provisions is not paid, the Court may, by warrant under its seal, commit the offender to prison for a term not exceeding 6 months.

**65 Discharge of persons in contempt**

Any person so committed to prison for contempt or for default in payment of a fine may be at any time discharged, and any fine so imposed may be at any time remitted in whole or in part, either by order of the Land Court or by warrant under the hand of Cabinet.

**66 Jurisdiction in contempt may be exercised at any time or place**

Notwithstanding this Act, the jurisdiction hereby conferred upon the Land Court in respect of contempt of court may be exercised by any Judge of that court sitting at any time and place which he thinks fit.

**67-68 [Repealed]**

**PART 6**  
**THE COURT OF APPEAL**

**69-74 [Repealed]**

**75 Appeals from Land Court**

(1) Except as expressly provided to the contrary in this Act, the Court of Appeal shall have jurisdiction to hear and determine appeals from any final order of the Land Court, whether made under the principal Act or this Act or under any other authority in that behalf.

(2) Any such appeal may be brought as of right at the suit of any party to the proceedings in which the order is made, or at the suit of any person bound by the order or interested in it.

(3) Every such appeal shall be commenced by notice of appeal given in the prescribed manner within 2 months after the date of the minute of the order appealed from.

**76 Appeals from provisional determination as to title to Niuean land**

(1) By leave of the Land Court, an appeal shall lie to the Court of Appeal from any provisional or preliminary determination of the Land Court made in the course of any proceedings for the ascertainment of any right, title, or interest in Niuean land.

(2) Any such appeal may be brought at the suit of any person who is interested in the determination appealed from, or who would be bound by a partition order made under it.

(3) When leave to appeal is so given, the Land Court may either stay further proceedings in the matter or continue the proceedings, but no final order shall be made until the appeal has been finally disposed of or dismissed.

(4) When any such appeal has been determined by the Court of Appeal, no further appeal shall lie as of right at the suit of any person from any final order thereafter made in those proceedings by the Land Court so far as that order conforms to the determination of the Court of Appeal.

**77 Successive appeals in respect of same matter**

Successive appeals to the Court of Appeal may be brought in respect of the same order at the suit of different persons, but no matter determined on appeal shall be again brought in question in any other appeal.

**78 Powers of Court of Appeal on appeal**

On any appeal, the Court of Appeal may do any one or more of the following things –

- (a) Affirm the order appealed from;
- (b) Annul that order, with or without the substitution of any other order therefor;
- (c) Vary that order;
- (d) Direct the Land Court to make such other or additional order as the Court of Appeal thinks fit;
- (e) Direct a new trial or rehearing by the Land Court;
- (f) Make any order which the Land Court might have made in the proceedings;
- (g) Dismiss any appeal.

**79 Dismissal of appeal for non-prosecution**

If the appellant in any case does not prosecute his appeal with due diligence, the respondent or any other person bound by or interested in the order appealed from may apply either to the Land Court or to the Court of Appeal for an order dismissing the appeal for non-prosecution; and, if such an order is made by either court, the costs of the appeal and the security entered into (if any) by the appellant shall be dealt with in such manner as that court may direct.

**80 Variation deemed part of original order**

(1) When an order of the Land Court is varied by the Court of Appeal, it shall, as so varied, be deemed to remain and be an order of the Land Court and the variation shall take and be deemed to have taken effect from the same date as if the order had been originally made by the Land Court in that form.

(2) When an order of the Land Court is varied by the Court of Appeal, the order as so varied shall be drawn up as an order of the Land Court and shall be sealed with the seal of that Court and signed by the presiding Judge or by the Chief Justice, and shall bear the same date as if no such appeal and variation had taken place; and the order as so drawn up shall supersede and take the place of the order as originally made, whether or not that order has been already drawn up, sealed, and signed.

**81 Orders of Court of Appeal**

(1) If on appeal the Court of Appeal makes (otherwise than by way of variations as aforesaid) any order which the Land Court might have made in the proceedings, a minute of the order shall be entered in the records of the Court of Appeal and the order shall take effect as an order of the Court of Appeal as from the commencement of the day of the making of it.

(2) As soon as practicable after the making of the order, it shall be drawn up in writing under the seal of the Court of Appeal and the hand of the presiding Judge or of the Chief Justice, and shall be dated as of the date of the minute.

(3) Subject to this section, section 51 with respect to orders drawn up, sealed, and signed in the Land Court shall extend and apply to orders so drawn up, sealed, and signed in the Court of Appeal.

(4) Sections 52 and 53 shall extend and apply to orders of the Court of Appeal in the same manner as to orders of the Land Court.

**82 Contempt**

Sections 58 to 66 shall extend and apply to the Court of Appeal in the same manner as to the Land Court.

**83 Court of Appeal may order surveys**

The Court of Appeal shall have the same powers with respect to the authorisation of surveys as are conferred upon the Court and by section 47(1)(i).

PART 7

ROADS

**84 Definition of “road”**

(1) In this Part “road” means any land which under this Part or the corresponding provisions of any former Act has been declared as a road.

(2) Upon the declaration of any land as a road, it shall, subject to the public right of way on it, vest in the Crown, together with all materials and things of which the road is composed, or which are capable of being used for the purpose of the road and are placed or laid upon the road.

**85 Public rights over roads**

(1) Subject to the provisions of any enactment, the public shall have full rights to pass and repass over any road.

(2) All roads shall be under the control of and may be formed, maintained, and repaired by the Crown.

**86 Warrant declaring existing roads**

As soon as practicable after the commencement of this Act, the Registrar shall prepare and deposit in the Land Registry Office a plan showing all land which in his opinion has been used as of right by the public and ought to be constituted as a road, and Cabinet shall by warrant, declare to be roads all land shown on that plan as roads.

**87 Warrants declaring new roads**

(1) Cabinet may, by warrant, declare any Crown land or Niuean land as a road.

(2) For the purpose of this Part, it shall not be necessary to define the boundary of any unsurveyed Crown land or Niuean land affected by any such road.

**88 Warrants as to roads to be gazetted**

Every warrant of Cabinet under this Part shall be under its hand and the seal of Niue, and shall be published in the *Gazette*, and shall take effect according to its tenor upon that publication or upon any later date specified in that behalf in the warrant.

**89 Access to land**

(1) The Land Court may, by order, at any time declare any land to be subject to a right of the public or of any person or class of persons to traverse that land for the purpose of gaining access or improved access to any other land, subject to any conditions which may be prescribed by the Court.

(2) The rights of any person under such an order shall be subject to an obligation not to cause any damage to the land affected by the order or any crops or improvements on it.

(3) The Court may, at the time of making the order, or at any time thereafter, define by reference to a plan or map the route to be followed over the land; and, in any case where the route is defined subsequent to the making of the order, the Court may impose additional conditions or vary any conditions already made.

(4) No order shall be made declaring a right of access over Crown land except with the consent in writing of the Cabinet.

(5) The declaration of any right of access over any land shall not affect the ownership of the land.

(6) Any order made under this section may at any time be amended or cancelled, if the Court thinks fit.

**90 Closing of roads**

(1) (a) Cabinet may, by warrant, close in whole or in part any road.

(b) No road or part of any road shall be closed under this section, if –

(i) The area comprising the closed road or part will be left without access to a road, either directly or by being added to adjoining land which has direct access to some other road; or

(ii) Any land having direct access to that road or part will be left having no direct access to any road.

(2) Where any road or part of any road has been closed under this section, the Land Court may, on application by Cabinet, make an order vesting the whole or any portion of the land comprised in the road or part that has been closed in the Leveki Magafaoa or, where there is no Leveki Magafaoa, the owners of any adjoining land which, when the road was constituted, was Niuean land.

(3) Any land vested under this section shall become subject to any reservation, trust, right, title, interest or encumbrance to which the land with which it is incorporated is then subject.

(4) By the same or a subsequent order, the Court may amend any existing title to include in it the land comprised in the road or part of it that has been closed as aforesaid; and the Registrar is hereby authorised to make all necessary entries or amendments in the Land Register.

**PART 8**

**ADOPTION**

**91-92 [Reprint – see now Family Law Code 2007]**

**93 Adoption by Niuean custom before 1 April 1916 by parent dying before 5 December 1921**

Notwithstanding anything in section 30 of the Family Law Code, in any case where before 1 April 1916 any child was adopted by Niuean custom and since that date and before 5 December 1921 the adopting parent has died, the adoption shall for all purposes have the same operation and effect as that which is attributed by Niuean custom to adoption by Niuean custom.

**94 Validity of adoption registered before 1 April 1916**

Any adoption lawfully made and registered in the Cook Islands Land Titles Court in the exercise of its jurisdiction in Niue before and subsisting on 1 April 1916 and continuing to subsist at 1 November 1969, shall continue to have the same force and effect as if lawfully made by an order of adoption under this Part.

**95-100 [Reprint – see now Family Law Code 2007]**

**101 Adoption orders under Cook Islands Amendment Act 1921**

(1) Every adoption order duly made under section 9 of the Cook Islands Amendment Act 1921 and in force at 1 November 1969 shall for all purposes have the same force and effect as an order of adoption lawfully made under this Part, and the

person named in it as the adopted child shall be deemed to have been lawfully adopted as from the date of his adoption by Niuean custom, or, where that date has not been proved to the satisfaction of the Court, from such date as may be specified in the order made under the said section 9.

(2) Section 36 of the Family Law Code shall apply to every adoption under the said section 9.

## PART 9

**102-103** [Spent]

**104** [Repealed]

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### SCHEDULE 1 [Repealed]

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### SCHEDULE 2 CLASSIFICATION AND REMUNERATION SCALE FOR JUDICIARY

Class	Step	Daily Rate	Hourly Rate	Annual Allowance	Designation
JO 04	15	\$500	\$160	\$5,000	Chief Justice
	14	\$450	\$160	\$4,700	Appeal Judge
JO 03	13	\$400	\$150	\$4,100	High Court Judge
	12	\$375	\$150	\$4,000	
JO 03	11	\$350	\$150	\$3,900	
	10		\$36	\$1,100	
	09		\$33	\$1,000	
	08		\$30	\$900	
	07		\$27	\$800	
	06		\$24	\$700	
	05		\$21	\$600	
	04		\$19	\$500	
	03		\$17	\$400	
JO 02	02		\$15	\$300	Commissioners
JO 01	01		\$13	\$200	Justice of the Peace

(1) Excepting the Chief Justice and any full time judiciary appointee, all fee payments together with the annual allowance shall be paid quarterly in arrears provided however, the full

## Niue Amendment Act (No 2)

annual allowance shall only be payable if the judiciary member has earned fee payments of four times the annual allowance. If less than four times the annual allowance has been earned in fees then the judiciary member shall be paid an equivalent proportion of the annual allowance.

### (2) Justices of the Peace –

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Legally qualified	Steps 3-6

Commissioners –	
Lay person	Steps 2-8
Legally qualified	Steps 6-11

Judges	
High Court	Steps 11-13

Chief Justice/Appeal Court Judges	Steps 14-15
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The gradings are not related to the Niue Public Service grading system nor to the previous judiciary gradings.



# NIUE ASSEMBLY ACT 1966

1966/33 – 1 February 1966

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- 2 Interpretation

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## SCHEDULE

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**To provide for the qualifications and disqualifications of electors and candidates, the mode of electing members of the Assembly and the terms and conditions of their membership**

### 1      Short title

This is the Niue Assembly Act 1966.

### 2      Interpretation

#### (1)     In this Act –

“announce” means make generally known in Niue by word of mouth or by any other practicable means;

“candidate” means any registered elector capable of being elected and nominated for election;

“Chief Electoral Officer” means the Chief Electoral Officer appointed under section 3, and includes any person authorised to exercise the powers, duties and functions of the Chief Electoral Officer;

“Common Electoral Roll” means the roll comprising the several village constituencies;

“constituency” means a constituency specified in section 5;

“corrupt practice” means any of the offences defined by this Act to be a corrupt practice;

“election” means an election of a member of the Niue Assembly;

“elector” in relation to any constituency means a person registered, or qualified to be registered, as an elector of that constituency;

“electoral officer” means any officer appointed under sections 3 and 4;

“general election” means an election which takes place after the dissolution or expiration of the Niue Assembly;

“member” means a member of the Assembly;

“nomination day”, in relation to any election, means the day appointed by public notice as the latest day for the nomination of candidates;

“notice in writing” includes notice by telegram or radio or other similar means;

“official mark”, in relation to any document, means any mark enabling the identification of the polling booth or office in which that document was issued;

“polling day”, in relation to any election, means the day appointed by public notice for that election for the polling to take place if a poll is required;

“presiding officer” means an electoral officer appointed to preside and actually presiding at any polling booth on the day of polling;

“public notice”, in relation to any act, matter, or thing required to be publicly notified, means the making of the act, matter, or thing generally known in Niue by any practicable means in addition to publication in the *Gazette*;

“registered elector” means an elector whose name is entered on any electoral roll;

“Registrar” and “Registrar in charge” means any person appointed as the Registrar under section 4, and includes any person authorised to exercise the powers, duties and functions of the Registrar;

“resident”, in relation to any constituency, means any resident of Niue who resides in that constituency and has resided there for at least 3 months immediately preceding the date of his application for registration pursuant to section 14;

“resident of Niue”, in relation to any applicant for registration as an elector under section 14, means a person who is deemed to be ordinarily resident in Niue and has been ordinarily resident throughout the period of 3 months immediately preceding his application for enrolment or, as the case may be, his nomination as a candidate, and has at some period resided continuously in Niue for not less than 12 months;

“reside” in relation to any constituency has the meaning assigned to it under section 15;

“Returning Officer” means a Returning Officer appointed under this Act and includes any person authorised to exercise the powers, duties and functions of a Returning Officer;

“roll” means an electoral roll or a supplementary roll made in the manner provided by this Act containing the names of electors;

“transmit” means pass on by telegram, radio or other similar means.

(2) In this Act a reference to a numbered form is a reference to the form so numbered in the Schedule.

## PART 1

### ELECTORAL OFFICERS

#### 3 Chief Electoral Officer

- (1) The Niue Public Service Commission shall appoint –
- (a) A Chief Electoral Officer, who shall have and exercise the powers and duties conferred on him by this Act; and

(b) A Deputy Chief Electoral Officer, to act in the case of the illness, absence, death, or removal of the Chief Electoral Officer.

(2) Every Deputy Chief Electoral Officer, while so acting, shall exercise the duties and shall have the powers and authorities of the Chief Electoral Officer and the fact that he so acts shall be sufficient evidence of his authority to do so.

#### **4      Electoral Officers**

(1) The Niue Public Service Commission shall appoint –

- (a) A Registrar for each electoral roll, who shall be in charge of the roll in respect of which he is appointed;
- (b) A Returning Officer for each constituency, who shall be in charge of the election in the constituency for which he is appointed;
- (c) Such clerks and other officers as, in the opinion of the Cabinet, are required to implement this Act;
- (d) A substitute for any officer appointed under this section to act in the case of the illness, absence, death, or removal of that officer. The substitute, while so acting, shall exercise the duties and have the powers and authorities of the officer for whom he is acting, and the fact that any substitute so acts shall be sufficient evidence of his authority to do so.

(2) Any reference in this Act to one of the officers appointed under this section shall be deemed to include any substitute appointed for that officer.

(3) Every person appointed as aforesaid shall exercise his duties and functions subject to the control of the Chief Electoral Officer, and shall comply with any directions received from him.

(4) With the approval of the Chief Electoral Officer, every Returning Officer may appoint as many deputies and poll clerks as he deems necessary for the effective taking of the poll at every polling booth, and every such deputy shall have and may exercise in and about the polling booth for which he is appointed all the powers and duties of a Returning Officer, subject to the control of the Returning Officer by whom he is appointed.

(5) No Returning Officer shall hold any official position in connection with any political organisation.

(6) Any person may be appointed to hold two or more offices under this section and section 3.

(7) No candidate shall act as a scrutineer and no person holding any office in or being a member of any political organisation shall be an officer appointed under this section.

#### **5      Constituencies**

(1) There shall be 14 constituencies for the election of members of the Niue Assembly and each constituency shall have the name and comprise each of the villages of Alofi North, Alofi South, Avatele, Hakupu, Hikutavake, Lakepa, Liku, Makefu, Mutalau, Namukulu, Tamakautoga, Toi, Tuapa and Vaiea.

(2) Each constituency shall consist of the electors entitled under section 13 to have their names entered on the roll for that constituency.

**PART 2**  
**QUALIFICATIONS OF MEMBERS**

**6 Registered electors may be members unless disqualified**

(1) Subject to this Act every person registered as an elector of any constituency, but no other person, is qualified to be a candidate and to be elected a member for that or any other constituency.

- (2) A person shall not be so elected –
- (a) If he is disqualified for registration as an elector under any provision of this Act; or
  - (b) If he is an undischarged bankrupt.

**7 Removal of name from roll without cause**

Any person duly qualified as an elector who has been registered on any electoral roll but whose name has become removed from that roll through no fault of his own shall not, by reason only of not being registered as an elector, be disqualified from becoming a candidate and being elected for any constituency, but in every such case he shall forward to the Chief Electoral Officer, at the time when he sends his consent to be nominated, a statutory declaration to the effect that he is not disqualified as an elector for the constituency in respect of which he was previously registered under this Act, that he still retains that qualification and that his name has been removed from the roll of that constituency through no fault of his own.

**8 Effect of registration on wrong roll**

The nomination of any person as a candidate for election, or his election as a member shall not be questioned on the ground that, though entitled to be registered as an elector of any constituency, he was not in fact registered as an elector of that constituency but was registered as an elector of some other constituency.

**9 How vacancies created**

The seat of a member shall be declared to be vacant by the Chief Electoral Officer by public notice under his hand –

- (a) If he fails to take the Oath of Allegiance as prescribed by the Constitution or to make an affirmation instead of that Oath; or
- (b) If on an election petition the Court declares his election void; or
- (c) If he dies; or
- (d) If he resigns his seat; or
- (e) If, on 3 consecutive sitting days, the member fails, without the permission of the Speaker, to attend the meetings of the Assembly or of any committee of the Assembly; or
- (f) If he ceases to reside in Niue; or
- (g) If he becomes a bankrupt within the meaning of the bankruptcy laws in force in Niue; or
- (h) If he is convicted in Niue or any other part of the Commonwealth of any offence punishable by death or imprisonment for a term of one year or upwards or is convicted in Niue of a corrupt practice; or
- (i) If he becomes of unsound mind and is so certified by two Medical Officers or by one Medical Officer and a graduate of the Fiji School of Medicine; or
- (j) If he becomes a national of or adheres to any state with which Her Majesty is at war.

**10 Tenure of office**

(1) Every member who has been elected under this Act shall take office on the day on which the warrant declaring his election is signed by the Chief Electoral Officer under sections 41 and 70.

(2) The seat of a member, unless previously vacated, shall become vacant at the end of the day next preceding the day on which the members elected at the next ensuing general election take office.

**11 Form of resignation**

A member who is not a Minister may resign his seat by writing under his hand addressed and delivered to the Clerk of the Assembly.

**PART 3**

**ELECTORS AND ELECTORAL ROLLS**

**12 Qualifications of electors**

(1) Subject to this Act, a person shall be qualified to be registered as an elector of any constituency if that person –

- (a) Is either –
  - (i) a New Zealand citizen; or
  - (ii) a permanent resident of Niue as defined by the Immigration Act 2011; and,
- (b) Has at some period resided continuously in Niue for not less than three years; and
- (c) Has been ordinarily resident in Niue throughout the period of 12 months immediately preceding application for enrolment as an elector or, as the case may be, nomination as a candidate;
- (d) He is of or over the age of 18 years; and
- (e) He has not been convicted in Niue or in any other part of the Commonwealth of any offence punishable by death or by imprisonment for a term of one year or upwards, or has been convicted in Niue of a corrupt practice, unless in each case he has received a free pardon or has undergone the sentence or punishment to which he was adjudged for the offence; and
- (f) He is not of unsound mind; and
- (g) He is a resident of that constituency.

(2) For the purposes of this section a person shall be deemed to be ordinarily resident in Niue if, and only if –

- (a) He is actually residing in Niue; or
- (b) Having been actually resident in Niue with the intention of residing there indefinitely, he is outside Niue but has, and has ever since he left Niue an intention to return and reside there indefinitely.

(3) Any person who has been outside Niue continuously for any period of more than 3 years, otherwise than for the purpose of undergoing a course of education or of technical training or instruction during the whole or substantially the whole of that period, shall be deemed not to have been actually resident in Niue during that period with the intention of residing there indefinitely.

**13 Constituency Electoral rolls**

(1) There shall be a constituency electoral roll for each constituency and the Registrar in charge of that roll shall compile and keep, as provided herein, a constituency electoral roll for the constituency for which he is appointed.

(2) (a) Every person qualified to be registered as an elector shall, subject to this Act, be entitled to have his name entered upon the roll of the constituency of which he is a resident.

(b) Every person who is so qualified but is not a resident of any constituency shall be entitled to register in such constituency as the Chief Electoral Officer determines.

### **13A Common Electoral roll**

There shall be a common electoral roll to be kept and compiled by the Chief Electoral Officer which shall comprise the rolls of the several village constituencies established under this Act.

### **14 Compulsory registration of electors**

(1) Every person who is or becomes qualified to be registered as an elector shall make application in the prescribed form to the Registrar in charge of the roll for the constituency for registration as an elector –

- (a) –
- (b) Within one month after the date on which he first becomes qualified to be registered as an elector;
- (c) Being an elector registered on the roll for any constituency, within one month after the date on which he becomes qualified to be registered on the roll of another constituency.

(2) No person shall be entitled to be registered as an elector on more than one constituency electoral roll.

### **15 Place of residence**

A person shall be deemed to reside where he has his usual place of abode at any material time or during any material period, notwithstanding his occasional absence from it, and notwithstanding his occasional absence on leave from his occupation or employment.

### **16 Application for enrolment by electors**

Every person required to apply for registration as an elector shall deliver or send by post to the Registrar in charge of the roll on which the applicant is entitled to have his name entered an application and declaration in form 1.

### **17 Procedure for registration**

(1) Every applicant shall sign his application in the presence of any elector or electoral officer or a postmaster, who shall add his signature in witness of it.

(2) If the Registrar in charge of the roll is satisfied after due inquiry that any claim for registration as aforesaid is valid, he shall forthwith enter the name of the applicant on the roll.

(3) If the Registrar is not so satisfied, he shall, within 3 working days following the receipt of the application, notify the applicant in writing of his objection to enter the applicant's name on the roll; and the applicant may, within 3 days of receipt of that notice, apply to the Niue Public Service Commission to determine his claim; and the Niue Public Service Commission, whose decision shall be final, shall order the name of the applicant either to be entered on the roll or not to be so entered, and the Registrar shall comply with the order accordingly.

(4) Every Registrar who enters the name of any applicant on any roll shall forthwith give notice in form 2 to the Registrar of the constituency (if any) for which the applicant has stated that he was previously registered, and the Registrar receiving

the notice shall forthwith remove from his roll the name of the applicant or, as the case may be, inform the Registrar giving the notice that the applicant was not registered on that roll.

(5) It shall be the duty of every Registrar to make the roll of which he is in charge as complete as possible, and with that object to place on it the name of every person who has transmitted an application to the Registrar and of whose qualifications he is satisfied.

(6) It shall further be the duty of every Registrar to assure himself of the right of every registered elector to have his name retained on the roll, and to remove from the roll of which he is in charge the name of every person who –

- (a) Has died; or
- (b) Is no longer possessed of the qualifications for an elector; or
- (c) Ceases to reside within the constituency.

(7) When the Registrar removes any name from the roll under subsection (6)(b) or (c) he shall, within 3 working days, notify the elector that his name has been so removed and thereupon the provisions of subsection (3) shall, as far as applicable and with the necessary modifications, apply.

(8) Every registered elector shall give notice in writing to the Registrar in charge within one month of any change of his or her name by marriage or otherwise; and the Registrar shall, after verification of the particulars contained in the notice, amend the roll accordingly.

## **18 Objections to registration**

Any name on any roll may be objected to either by the Registrar in charge of that roll or by an elector whose name appears on that roll, on the ground that the person whose name is objected to is not qualified to be registered or is not qualified to be registered on the roll on which his name appears.

## **19 Objection by an elector**

If the objection is by an elector, the following provisions shall apply –

- (a) The objection shall be in writing lodged with the Registrar in charge setting forth the grounds thereof, and may be in form 3;
- (b) On receipt of the objection, the Registrar in charge shall forthwith give notice in writing to the person objected to, setting forth the objection and the grounds thereof;
- (c) If the person objected to does not, within 5 clear days after the service of the notice, cause his name to be removed from the roll on which his name appears, or satisfy the Registrar that he is entitled to have his name retained on that roll, the Registrar shall transmit the objection with the reply (if any) received from the person objected to and with any comments or recommendations the Registrar may wish to make, to the Niue Public Service Commission.

## **20 Objection by Registrar**

If the objection is by the Registrar in charge of any roll, the following provisions shall apply –

- (a) The Registrar shall give notice in writing to the person objected to of the grounds of the objection and intimate in the notice that, unless notice of appeal is given within a time stated (being not less than 4 clear days), the name of the person objected to will be removed from the roll without further proceedings;
- (b) The notice of objection shall be in form 4, and the form of notice of appeal set out in that form shall be annexed to it;

- (c) If the person objected to does not, within the time stated in the notice, satisfy the Registrar that he is entitled to have his name retained on the roll, or fails to give notice of appeal, the Registrar shall remove the name forthwith;
- (d) If notice of appeal is duly given, the Registrar, if he is satisfied that the appellant is entitled to have his name retained on the roll, shall withdraw his objection and notify him accordingly, but, if he is not so satisfied, he shall transmit his objection and the appeal, together with any comments on it he may wish to make, to the Niue Public Service Commission.

**21 Determination of objections**

The Niue Public Service Commission shall determine any objection transmitted to it, after such investigation as it deems necessary, and shall direct the Registrar in charge to retain the name objected to on the roll on which it appears or, as the case may be, to remove it therefrom, or to transfer it through the Chief Electoral Officer to any other roll, or to make such amendment of any roll as may be necessary to give effect to the determination, and every such determination of the Niue Public Service Commission shall be final.

**22 Closing of rolls**

- (1) (a) Before every general election all electoral rolls shall be closed on a date to be fixed for each roll by the Chief Electoral Officer.  
(b) Different dates may be so fixed for different rolls.
- (2) The Chief Electoral Officer shall give public notice of the date fixed for the closing of each roll at least 10 clear days before the date so fixed.

**23 Printing of copies**

(1) As soon as practicable after the closing of any roll the Registrar in charge shall cause the roll to be printed, containing the names, residences, occupations and sex of the persons included in it, arranged and numbered consecutively in alphabetical order of surnames, of all persons whose names are lawfully entered on it.

(2) Each roll shall be in form 5, and shall be issued under the hand of the Registrar in charge.

**24 Supplementary rolls**

The Registrar in charge may prepare a supplementary roll containing names added to the roll after the printing of the main roll and an indication of names removed from the main roll, and may cause the same to be printed, and every supplementary roll shall be deemed to be a part of the main roll to which it refers.

**25 Inspection of rolls and supply**

(1) Not later than 21 days before each general election, a printed copy of each main roll shall be made available for inspection by the public without payment during office hours at the office of the Registrar in charge and at such other places in each constituency as the Registrar in charge directs.

(2) The Registrar in charge shall supply printed copies of the roll issued under his hand to the Chief Electoral Officer, who shall supply each Returning Officer with copies as they are required for the purpose of conducting any election.

**26 Closing of roll for by-election**

(1) Before any by-election, the relevant roll shall be closed on a date to be fixed by the Chief Electoral Officer and at least 10 clear days before the date so fixed the Chief Electoral Officer shall give public notice of it.

(2) Unless the Chief Electoral Officer thinks fit, a complete roll shall not be printed for use at a by-election but a supplementary roll may, if the Chief Electoral Officer thinks fit, be so printed and the provisions of this Part, as far as they are applicable, shall apply accordingly.

**27 Effect of closing of rolls**

(1) The printed rolls compiled, issued, added to, or altered as herein provided shall for the time being be the electoral rolls.

(2) (a) It shall not be lawful for the Registrar in charge to enter on or remove from the roll the name of any person after the date fixed under this Act for the closing of the roll until after the general election or by-election in connection with which the roll has been closed.

(b) The Registrar in charge, on being satisfied that the name of any person has been omitted or removed from the roll by mistake or clerical error, or through false information, may add or restore the name of that person to the roll at any time not later than 7 clear days before the day appointed for an election.

(3) Any Registrar commits an offence who offends against this section, and is liable to a fine not exceeding 0.5 penalty units for every name improperly entered on or removed from the roll.

**28 Offences in relation to enrolment**

(1) Every person commits an offence, and is liable to a fine not exceeding 0.5 penalty units or to imprisonment for a term not exceeding 3 months, who knowingly makes a false statement in any claim, application, or declaration referred to in this Part.

(2) Every person commits an offence, and is liable to a fine not exceeding 1 penalty unit, who –

- (a) Wilfully misleads the Registrar in the compilation of any electoral roll, or wilfully enters or causes to be entered in it any false or fictitious name or qualification or the name of any person whom he knows to be dead; or
- (b) Signs the name of any other person, whether requested to do so or not, or any false or fictitious name, to any form of claim, application or objection for the purpose of this Part, either as claimant, applicant, objector, or witness; or
- (c) Signs his name as witness to any signature upon any such form of claim or objection without either having seen that signature written or hearing the person signing declare that the signature is his own hand-writing and that the name so signed is his own proper name.

(3) Every person commits an offence, and is liable to a fine not exceeding 0.5 penalty units who, having obtained possession of a claim for enrolment signed by any other person for the purpose of being delivered to the Registrar for enrolment, fails to so deliver it so that the claimant's name is not placed on any roll.

**29 Effect of registration**

Subject to this Act, every person registered on an electoral roll shall be entitled –

- (a) Either –
  - (i) to nominate any other person registered on an electoral roll as a candidate for election as a representative for the constituency in respect of which the nomination is registered; or
  - (ii) to nominate any other person registered on an electoral roll as a candidate for election as a representative for the common electoral roll;
- (b) To vote in the manner prescribed in article 16 of the Constitution.

PART 4  
CONDUCT OF ELECTIONS  
*General Elections and By-Elections*

**30 Clerk of the Assembly gives notice to Chief Electoral Officer**

For every general election and every by-election the Clerk of the Assembly shall give notice in writing to the Chief Electoral Officer not less than 30 clear days before the polling day fixed for that election.

**31 Chief Electoral Officer to give public notice of election and nomination day**

(1) The Chief Electoral Officer shall, not less than 28 clear days before polling day give public notice of that day, and shall in the notice appoint a place in Alofi and a day, being not less than 15 clear days (exclusive of polling day) before polling day, for receiving nominations of candidates.

(2) After giving any public notice, the Chief Electoral Officer shall satisfy himself that the requirements of the notice are in fact known in all constituencies concerned.

**32 By-elections**

(1) If the seat of a member becomes vacant 6 months or more before the expiration of 3 years from the date of the last preceding general election, the Chief Electoral Officer upon receipt of notice in writing from the Clerk of the Assembly under section 30, shall forthwith, by public notice, appoint a day for a by-election to fill the vacancy.

(2) If the seat of a member becomes vacant less than 6 months before the expiration of 3 years from the date of the last preceding general election the seat shall remain vacant until the next general election.

(3) Except as provided by this Act the proceedings in a by-election shall be the same as in the case of a general election.

*Nominations*

**33 Nomination of candidates**

(1) A person registered on an electoral roll and otherwise qualified to be a candidate at an election of members of the Assembly may with his consent be nominated in the manner prescribed in form 6, by not less than 2 other persons registered on an electoral roll and otherwise qualified to be electors at an election of members of the Assembly –

(a) Either as a candidate for election as a representative for the constituency in respect of which the nominators are registered; or

(b) As a candidate for election as a representative for the common electoral roll.

(2) (a) Every nomination paper and every consent shall be lodged with or given to the Chief Electoral Officer not later than noon on nomination day.

(b) The Chief Electoral Officer shall give a receipt in writing for every nomination accepted by him.

(3) Every candidate shall be nominated by a separate nomination paper in such manner as, in the opinion of the Chief Electoral Officer, is sufficient to identify the candidate.

(4) No elector may nominate more than one candidate.

(5) A person registered on an electoral roll may inspect any nomination paper or consent at the office of the Chief Electoral Officer without payment at any time when the office is open for the transaction of business.

**34 Consent to nomination**

(1) No person shall consent to more than one nomination as a candidate at any one election.

(2) Consent to the nomination of any person as a candidate shall be given by him in form 6 and delivered to the Chief Electoral Officer but need not be signified on the nomination paper or given at the time the nomination paper is lodged.

(3) Where the Chief Electoral Officer has reasonable grounds to suspect that consent has been given by any candidate who is not a resident of Niue, he shall reject that consent and advise the candidate accordingly.

(4) If any dispute arises as to whether a candidate has or has not been in residence in Niue that question shall be decided, after due inquiry into the facts of the case, by the Chief Electoral Officer whose decision shall be final.

**35 Deposit by candidate**

(1) Every candidate or some person on his behalf, shall deposit with the Chief Electoral Officer such sum as Cabinet may prescribe by regulation not later than noon on nomination day.

(2) The deposit shall be paid in the form of money, a money order, a money order telegram, or a bank draft.

(3) If the total number of votes received by any unsuccessful candidate is less than one-fourth of the total number of votes received by the successful candidate the deposit of the unsuccessful candidate shall be forfeited and paid into the Niue Government Account, but in every other case the deposit shall be returned to the person who paid it.

**36 Acceptance or rejection of nomination**

(1) The Chief Electoral Officer shall reject the nomination of any candidate

- 
- (a) If the nomination paper and the consent of the candidate are not lodged with him by noon on nomination day; or
- (b) If the nomination paper does not state that the candidate is registered on a specified electoral roll; or
- (c) If the nomination paper is not signed by at least 2 other persons registered on the electoral roll in respect of which the nomination is made; or
- (d) If the required deposit is not paid as required by section 35.

(2) In every other case the Chief Electoral Officer shall accept the nomination.

(3) Nothing in subsection (2) shall limit the jurisdiction of the Court hearing an election petition.

**37 Withdrawal of nomination**

(1) (a) Every candidate at any election may sign and deliver to the Chief Electoral Officer, not later than 7 clear days before polling day, a paper in form 7 stating that the candidate withdraws his nomination.

(b) The Chief Electoral Officer shall give public notice of it.

(2) No withdrawal of nomination which does not comply with subsection (1) shall have any effect.

(3) If any candidate withdraws his nomination under subsection (1), he shall not be capable of being elected at any poll which it may still be necessary to hold.

(4) Where a candidate has duly withdrawn his nomination under subsection (1), his deposit shall be returned to the person who paid it.

**38 Advertisement of nominations**

At the hour of noon on the day appointed for the nominations of candidates, or as soon as thereafter practicable, the Chief Electoral Officer shall cause the names of all candidates so nominated to be posted in a conspicuous place outside the place named in the said public notice, and shall in each constituency give public notice of the nominations in respect of every electoral roll.

**39 Insufficient number of nominations**

Where at any election any vacancy remains unfilled by nominations as aforesaid, the Chief Electoral Officer shall report accordingly to the Clerk of the Niue Assembly who shall, not later than 3 months after nomination day, declare the seat for which no candidate was nominated to be vacant, and thereupon section 32 shall apply.

**40 Unlawful nominations**

(1) Every elector who nominates more than one candidate at any election commits an offence and is liable to a fine not exceeding 0.5 penalty units.

(2) Every person who consents to more than one nomination as a candidate at any election or wilfully makes a false statement in his consent in respect of his residential qualification commits an offence, and is liable to a fine not exceeding 1 penalty unit or to imprisonment for a term not exceeding 3 months.

**41 Procedure where election not contested**

If only one candidate is nominated, or if any candidate who has been nominated duly withdraws his nomination and there remains only one candidate, the Chief Electoral Officer shall, by public notice on or before polling day, declare that candidate to be duly elected and thereupon the Clerk of the Assembly shall, by warrant under his hand, declare such candidate to be elected and shall publicly notify the date of the warrant.

*Contested Elections*

**42 If necessary, poll to be taken**

If more than one candidate is nominated, and a sufficient number do not withdraw their nominations so as to leave only one candidate, a poll for deciding between the candidates shall be taken by secret ballot and the Chief Electoral Officer shall forthwith give a second public notice of polling day, and public notice of the names of the candidates.

**43 Form of ballot papers**

(1) Forthwith after nomination day the Chief Electoral Officer shall cause ballot papers to be printed in form 8 in sufficient number for the election.

(2) The ballot papers shall contain a list of all the persons nominated as candidates who have not withdrawn their nomination (each name being inserted once only, whether nominated in one or more nomination papers), and of no other persons, arranged alphabetically in order of their surnames in large characters; and where 2 or more candidates have the same surname, or for any other reason the Chief Electoral Officer considers that confusion may arise, the candidates shall be distinguished on the ballot papers by the addition in smaller characters of their Christian names and such other matter as may be necessary to distinguish them.

(3) The ballot papers to be used at any election shall be printed on paper of uniform colour.

(4) Every ballot paper shall have a counterfoil in form 9.

(5) If the Returning Officer so decides, there may also be printed on the top right-hand corner of every ballot paper and in the space provided in the counterfoil attached to it, a number one in the case of the first ballot paper printed, and on all succeeding ballot papers printed the numbers shall be consecutive, so that no 2 ballot papers shall bear the same number.

(6) If a candidate withdraws his nomination after the ballot papers have been printed the Chief Electoral Officer shall, before the poll, erase his name from every ballot paper.

*Death of Candidate*

**44 Death before close of nominations**

(1) Where a candidate who has been nominated and has not withdrawn his nomination dies before the close of nominations his nomination shall be treated in all respects as if it had not been made, and his deposit shall be returned to his personal representatives or, as the case may be, to the person who paid it.

(2) Where in any such case the candidate dies on nomination day or on the day before nomination day the time for the close of nominations for that constituency or for the Common Electoral Roll, as the case may be, shall be deemed to be postponed by two days.

**45 Death after close of nominations**

(1) If any candidate dies after the close of nominations and before the close of the poll or if the successful candidate dies after the close of the poll and before the declaration of the result of the poll, this section shall apply.

(2) The election shall be deemed to have failed and the seat shall be deemed to be vacated.

(3) Where the candidate dies before polling day the Chief Electoral Officer shall, upon being satisfied of the fact of the death, countermand the notice of the poll in respect of that candidate.

(4) Where the candidate dies on polling day before the close of the poll the Chief Electoral Officer shall, on being satisfied of the fact of the death, immediately close the poll and declare it to be null and of no effect.

(5) Where the candidate dies after the close of the poll and before the declaration of the result of the poll, and it is found on the completion of the count of votes or on a recount that the candidate, if still living, would have been elected, the Chief Electoral Officer shall, on being satisfied of the fact of the death, endorse on the record the result of every election, the fact of the death and that the candidate, if still living, would have been elected.

(6) The provisions of this Act as to an equality of votes between candidates shall apply notwithstanding the death of one of those candidates after the close of the poll.

(7) Where the poll is interrupted in consequence of the death of a candidate all ballot papers placed in the several ballot boxes shall be taken out by the presiding officers and, being made up into secured packages, shall be sent unopened to the Chief Electoral Officer, who shall forthwith destroy them in the presence of an officer appointed for the purpose by Cabinet.

(8) A fresh public notice shall be issued by the Chief Electoral Officer forthwith for a new election and, except as otherwise provided, all proceedings in connection with the new election shall be had and taken anew.

(9) The main roll and supplementary rolls which were to be used at the election which has failed shall be used at the new election without any amendment or addition.

(10) (a) It shall not be necessary to nominate afresh any candidate who at the time of the countermand or close of the poll was a duly nominated candidate.

(b) Any such candidate may withdraw his nomination not later than 7 clear days before the new polling day.

(11) All appointments of polling places made in respect of the election which has failed shall continue in respect of the new election.

*Polling at Elections*

**46 Polling places**

The Chief Electoral Officer shall by public notice, given at least 7 days before polling day, appoint a sufficient number of polling places in each constituency where an election is being held for the taking of the poll.

**47 Allocation of Officers**

(1) The Chief Electoral Officer shall prescribe the constituency in which Returning Officers, poll clerks, and interpreters shall exercise their functions.

(2) A Returning Officer shall have the powers and may perform any of the duties of the Chief Electoral Officer in the constituency to which he is appointed and shall be subject to the authority and control of the Chief Electoral Officer.

(3) The Chief Electoral Officer shall exercise supervision over the functions of Returning Officers, poll clerks and interpreters and may give any such officers directions as to the performance of their duties.

**48 Polling booths, ballot boxes, ballot papers**

The Chief Electoral Officer shall provide the following things for taking the poll –

- (a) One or more rooms for polling booths at each polling place, and in each booth one or more inner compartments, separate from but opening into the booth and having no other opening;
- (b) In each inner compartment pencils for the use of the voters or other suitable facilities for the marking of ballot papers;
- (c) In each booth one or more ballot boxes having a lock and key and as lit in the upper side by which the ballot papers may be put into the box;
- (d) In each booth one or more copies of the main and supplementary rolls and a sufficient number of ballot papers.

**49 Returning Officers, poll clerks, and interpreters**

(1) The Chief Electoral Officer shall appoint for each polling booth a Returning Officer to conduct the poll at that booth and one or more poll clerks to assist the Returning Officer, and may appoint such additional poll clerks and such interpreters as he considers necessary.

(2) Any Returning Officer may at any time on polling day appoint in writing a substitute to act for him in respect of that election in case of his absence from duty.

(3) If the Returning Officer fails to open the polling at any booth, or if he is absent from duty and has not appointed a substitute, the poll clerk at the booth may act for him and in that event shall be deemed to be his substitute.

(4) Every substitute while acting for any Returning Officer shall have all the powers, duties, and functions of that Returning Officer.

**50 Returning Officers, poll clerks and interpreters to make declaration**

Every Returning Officer and poll clerk and interpreter shall before the poll, and every substitute for a Returning Officer shall before acting, make a declaration in form 10 before the Chief Electoral Officer, or another Returning Officer.

**51 Scrutineers**

(1) Each candidate may, by writing under his hand, appoint one scrutineer for each polling booth at any election.

(2) Every scrutineer shall, before being allowed to act, make a declaration in form 10 before the Chief Electoral Officer or a Returning Officer.

(3) Any scrutineer who during the hours of polling leaves the polling booth to which he is appointed, without having first obtained the permission of the Returning Officer at that polling booth, shall not be entitled to re-enter the booth or to resume his scrutiny.

(4) Nothing in this Act shall render it unlawful for a scrutineer to communicate to any person information as to the names of persons who have voted.

**52 Hours of polling**

(1) The poll at every election shall commence at nine o'clock in the morning of polling day, and, except as otherwise provided in this Act, shall finally close at 6pm of the same day.

(2) Every elector who at the close of the poll is present in a booth for the purpose of voting shall be entitled to receive a ballot paper and to mark and deposit it in the same manner as if he had voted before the close of the poll.

**53 Place of ordinary voting**

Every person registered on an electoral roll unless he is a special voter, shall be entitled to vote at any place in that constituency appointed for the taking of the poll and at no other place.

*The Ballot*

**54 Ballot box to be kept locked during poll**

(1) The Presiding Officer shall, before the opening of the poll, and in the sight of any of the scrutineers present, see that the ballot box is empty, and shall close and lock it, and retain the key in his possession; and the ballot box shall not again be opened until after the close of the poll.

(2) If the lock of a ballot box is damaged or defective so that the box cannot be locked, the Presiding Officer shall securely seal the box instead of locking it.

**55 Persons not to remain in polling booth**

(1) Not more than so many voters as the Presiding Officer determines shall be allowed in a polling booth at one and the same time, and not more than one voter shall be allowed in any inner compartment at one and the same time.

(2) No person shall be allowed to remain in any polling booth after having recorded his vote, except the Presiding Officer and his clerks, any of the scrutineers, an interpreter, and as many constables as the Presiding Officer thinks necessary to keep the peace.

**56 Voters not to be spoken to in booth**

(1) No scrutineers or other official or unofficial person shall speak to any voter in a polling booth either before or after the voter has given his vote, except only

the Presiding Officer or poll clerk (with an interpreter if necessary), who may ask the questions he is authorised to put, and give such general directions as may assist any voter to give his vote, and in particular may on request inform a voter orally of the names of all the candidates in alphabetical order.

(2) Every person who offends against this section commits an offence, and is liable to a fine not exceeding 0.5 penalty units and may be at once removed from the booth by order of the Presiding Officer.

**57 Questions may be put to voter**

(1) The Presiding Officer may, and if so required by any scrutineers shall, before allowing any person to vote, put to him the following questions –

- (a) Are you the person whose name appears as A B in the electoral roll now in force for the (Name) constituency?
- (b) Are you 18 years of age or over?
- (c) Are you still possessed of the qualification in respect of which you are registered?
- (d) Have you already voted at this election?

(2) Any person to whom these questions are put who does not answer the same, or does not answer the first 3 in the affirmative and the fourth in the negative, shall not be permitted to vote.

(3) Every person who wilfully and knowingly makes a false answer to any of the questions that the Presiding Officer may put to him under this section shall be liable to a fine not exceeding 0.5 penalty units.

**58 Issue of ballot papers**

(1) Every Presiding Officer shall, under this section, issue ballot papers to all electors who apply to vote at the booth in respect of which he is appointed.

(2) The elector shall state his name to the Presiding Officer and shall give such particulars as may be necessary to identify the entry in the printed rolls relating to the elector.

(3) If the name of the elector appears in the rolls a line shall be drawn through his name and number.

(4) If the name of the elector appears in the rolls, the Presiding Officer shall then issue to the elector a ballot paper after he has prepared it in the following manner –

- (a) Unless a consecutive number has been printed on the ballot paper and on the counterfoil, he shall enter on both the counterfoil and the ballot paper in the spaces provided a number (called a consecutive number), beginning with the number one in the case of the first ballot paper issued by him, and on all succeeding ballot papers issued by him the numbers shall be consecutive, so that no two ballot papers issued in the same booth shall bear the same number;
- (b) He shall then fold over the corner of the ballot paper on which the consecutive number appears and shall firmly fix a piece of gummed paper over that corner so as effectively to conceal the consecutive number;
- (c) On the counterfoil of the ballot paper he shall write his initials, and the number appearing in the roll against the name of the elector;
- (d) He shall place his official booth stamp on the perforation between the ballot paper and the counterfoil so that the booth in which the ballot paper was issued may be identified.

- (5) (a) Every Presiding Officer who fails faithfully to perform the duty imposed on him by this section, by reason whereof any of the requirements of this section are not effectively fulfilled, shall be liable to a fine not exceeding 0.5 penalty units;
- (b) In so far as the failure relates to the duty of fixing a piece of gummed paper over the consecutive number so as to conceal it effectively, it shall be a sufficient defence if he satisfies the Court that he took all reasonable precautions to secure the same.

**59 Method of voting**

(1) The voter, having received a ballot paper, shall immediately retire into one of the inner compartments provided for the purpose, and shall there alone and secretly exercise his vote by marking his ballot paper by striking out the name of every candidate except the one for whom he wishes to vote.

(2) Every voter shall, before leaving the inner compartment, fold his ballot paper so that the contents cannot be seen, and shall then deposit it so folded in the ballot box.

**60 Spoilt ballot papers**

(1) Any voter who, not having deposited his ballot paper in the ballot box, satisfies the Presiding Officer that he has spoilt it by inadvertence may be supplied with a fresh ballot paper, but only after the spoilt one has been returned to the Presiding Officer.

- (2) The Presiding Officer shall –
- (a) Cancel every such spoilt ballot paper by writing across the face of it the words “Spoilt by voter and a fresh ballot paper issued” and writing his initials on it;
  - (b) If any ballot paper is inadvertently spoilt by the Presiding officer or any other official, cancel it by writing across the face of it the words “Spoilt by official” and also the words “and a fresh ballot paper issued” if that is the case, and writing his initials on it;
  - (c) Retain all spoilt ballot papers in his possession until the close of the poll.

(3) The Presiding Officer shall make up into separate packets and shall deliver to the Chief Electoral Officer as soon as practicable after the close of the poll all spoilt ballot papers at the polling booth at which he presided.

(4) The provisions of section 73(1) providing for the disposal of ballot papers shall apply with respect to the disposal of spoilt ballot papers.

**61 Blind or disabled voters**

(1) Any elector who is wholly or partially blind, or is unable to read or write (whether because of physical handicap or otherwise), may vote under this section.

(2) At the request of any such voter who has received a ballot paper the Presiding Officer shall accompany him into one of the inner compartments provided for the marking of ballot papers, and the ballot paper may there be marked by the voter with the assistance of the Presiding Officer or may be marked by the Presiding Officer under the instructions of the voter.

(3) The person assisting the voter shall sign his name on the back of the ballot paper and shall add the words “Witness for blind or partially blind person” or “Witness for person unable to read or write”, as the case may be, and shall fold the ballot paper so that its face cannot be seen before depositing it in the ballot box.

(4) A poll clerk or some other person nominated by the voter shall also accompany him into the inner compartment and may, if so desired by the voter, inspect the ballot paper before it is deposited in the ballot box.

(5) Any elector voting as a special voter may vote in the manner prescribed by this section, with any necessary modifications, or in any manner prescribed by regulations made under this Act.

(6) If any elector is precluded by reason of illness or infirmity from attending at any polling booth, the Presiding Officer shall make such arrangements as are in his opinion reasonably practicable to enable the voter, if he so desires, to vote.

(7) Every person who is present under this section or with any regulations when an elector votes and who communicates at any time to any person any information obtained as to the candidate for whom the voter is about to vote or has voted, or as to the number on the ballot paper given to the voter commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 months.

## **62 Procedure when second vote given in same name**

(1) If any person representing himself to be a voter at any election gives as his name the name of any person to whom a ballot paper has already been given at the same election, the voter shall, upon giving satisfactory answers to any questions put to him by the Presiding Officer, be entitled to receive a ballot paper in the same manner as any other voter, but that ballot paper (hereinafter referred to as a tendered ballot paper), instead of being put into the ballot box, shall be given to the presiding officer who shall place it in an envelope, seal the envelope and then endorse the envelope with the name of the voter and his number in the electoral roll.

(2) (a) The name of the voter and his number in the electoral roll shall be entered by the Presiding Officer on a list to be called the tendered votes list, and that list shall be admissible as evidence in any legal proceedings arising out of the election.

(b) The tendered votes list shall be in form 11.

(3) The envelope containing the tendered ballot paper shall be placed by the Presiding Officer in the ballot box but shall not be counted.

### *Special Voting*

## **63 Voting by special voters**

(1) Any registered elector may vote as a special voter if, on polling day, he will not be in the constituency of which he is a resident.

(2) Any such elector who desires to vote as a special voter shall, not later than 7 days before polling day, apply to the Chief Electoral Officer for a certificate enabling the applicant to vote in the constituency in which he will be present on polling day, and the Chief Electoral officer if satisfied that the application is made in good faith shall issue the certificate in form 12.

(3) On polling day, on delivery by the special voter of the certificate issued to him as aforesaid, the Presiding Officer at the place named in the certificate shall supply the special voter with a ballot paper containing the names of the candidates nominated for election.

(4) Subject to this section, all the provision of this Part shall, as far as applicable and with the necessary modifications, apply with respect to voting by special voters and to their votes.

(5) Notwithstanding anything to the contrary in this Part, the consecutive number of special ballot papers in any polling booth shall be in a different series from that used in that booth for ordinary voting.

**64 Voting in advance of poll**

(1) Any registered elector who is entitled to vote as a special voter may instead of applying for a certificate under section 63(2) vote in advance of polling day.

(2) Application for leave to vote in advance shall be made to the Chief Electoral Officer at any time during office hours not earlier than 3 working days after nomination day and not later than the day immediately preceding the day fixed for taking the poll.

(3) Every applicant shall sign and deliver to the Chief Electoral Officer a declaration in form 13 and the Chief Electoral Officer, if satisfied that the application is made in good faith, shall issue to the applicant –

- (a) A ballot paper; and
- (b) An envelope marked “Vote in Advance of Poll” and addressed to the Returning Officer in charge of the constituency.

(4) (a) Before giving the ballot paper to the applicant, the Chief Electoral Officer shall proceed as provided in section 58;

- (b) He shall also enter the date of voting in advance on the counterfoil and the top right-hand corner of the back of the ballot paper, and also against the name of the applicant on the master roll.

(5) The applicant shall then alone and secretly on the ballot paper indicate the candidate for whom he desires to vote, place the ballot paper duly folded in the envelope, and deliver the envelope, after sealing it, to the Chief Electoral Officer.

(6) The Chief Electoral Officer shall hold for production on polling day the sealed envelope, together with the declaration form on which the consecutive number shall be entered, and shall be personally responsible for their safe custody.

(7) (a) On polling day the Chief Electoral Officer shall deliver the sealed envelopes to the Presiding Officer in charge of each of the polling booths where votes have been made in advance of the poll.

- (b) The Presiding Officer shall give a receipt to the Chief Electoral Officer for the envelopes and shall record the number of envelopes received by him on the form provided for this purpose.

(8) The Presiding Officer shall during the hours of polling open all the envelopes delivered to him, extract from them any ballot papers and deposit the ballot papers, without unfolding them, in the ballot box.

(9) Any person who, with intent to offer to exercise more votes than are lawfully permitted at the same election, after having applied for a certificate enabling him to vote as a special voter under section 63, applies for leave to vote in advance of polling day, or, after having voted in advance of polling day, applies for a certificate as a special voter, commits an offence and is liable to imprisonment for a term not exceeding 3 months.

*Preliminary Count of Votes*

**65 Procedure after close of poll**

(1) At each polling booth the Presiding Officer shall, as soon as practicable after the close of the poll, in the presence of such of the scrutineers as choose to be present, and the poll clerks, but of no other person, perform the following duties –

- (a) He shall make up into separate parcels –
  - (i) the certified copies of the main roll and supplementary rolls on which the fact of any person having received a ballot paper has been noted; and
  - (ii) all the counterfoils of ballot papers that have been issued to voters; and
  - (iii) all the spoilt ballot papers; and
  - (iv) all the unused ballot papers.

- (b) He shall then open the ballot boxes and, taking therefrom all the ballot papers in it, proceed to ascertain the number of votes received by each candidate;
- (c) He shall set aside as informal all ballot papers which do not clearly indicate the candidate for whom the voter desired to vote;
- (d) He shall announce the result of the voting at the polling booth at which he presides and arrange for the result of the voting to be transmitted as soon as possible to the Chief Electoral Officer;
- (e) He shall make up into separate parcels –
  - (i) the used ballot papers, together with (but in separate enclosures) the ballot papers set aside as informal, and the ballot papers set aside under section 62; and
  - (ii) a certificate signed by himself and by such of the scrutineers as are present and consent to sign it of the number of votes received by each candidate; the number of ballot papers set aside as informal, the number of ballot papers set aside under section 62; the number of spoilt ballot papers, the number of ballot papers delivered to special voters, the number of unused ballot papers, and the number of ballot papers originally delivered to him.

(2) Each parcel made up under this section shall be endorsed by the Presiding Officer with a description of its contents, the name of the constituency, the name of the polling place, the number of the booth and the date of the polling; and the endorsement shall be signed by the Presiding Officer and by such of the scrutineers as are present and desire to sign it; and the parcel shall be enclosed in paper or similar material and shall be properly secured.

(3) The Presiding Officer shall forthwith forward all the parcels mentioned in this section to the Chief Electoral Officer.

#### *Scrutiny of the Rolls*

#### **66 Scrutiny of the rolls**

(1) The Chief Electoral Officer shall make arrangements for a scrutiny of the rolls as soon as practicable after the close of the poll, and shall give notice in writing to each of the candidates or their scrutineers of the time and place at which he will commence the scrutiny.

(2) No person other than the Chief Electoral Officer and his assistants, and one person appointed as scrutineer by each candidate for the purpose, shall be present at the scrutiny.

(3) No candidate shall act as scrutineer under this section.

#### **67 Marked copies of rolls to be compared**

(1) The Chief Electoral Officer shall, in the presence and hearing of his assistants (if any) and such scrutineers as are entitled to be present under this Act, but of no other person, compare one with another all the certified copies of the main roll and the supplementary rolls on which the fact of any person having received a ballot paper has been noted and all records of special votes exercised, and shall on an unmarked copy of the main roll and every supplementary roll (called the master roll) draw a line through the number and name of any elector who is shown on any of the certified copies of the rolls or in any record of special votes issued as having received a ballot paper.

(2) (a) If on that comparison, or from the checking of declarations in respect of special votes, or from the report of the Presiding Officer on the ballot papers set aside under section 62 and after such inquiry as the Chief Electoral Officer deems necessary, it appears that the same voter has received more ballot papers than is lawful,

the Chief Electoral Officer shall, in the presence of his assistants (if any) and such scrutineers as choose to be present, but of no other person, open the parcel or parcels of ballot papers used at the polling booth or polling booths at which that voter appears to have received a ballot paper, and shall select from it the ballot papers which appear from their consecutive numbers and counterfoils to have been issued to that voter, and shall disallow every vote appearing to have been given by means of the ballot papers so selected.

(b) If the Chief Electoral Officer is satisfied that the ballot papers were lawfully received by the voter entitled to it the Chief Electoral Officer shall allow those votes to which the voter is entitled.

(3) For the purposes of subsection (2), every ballot paper issued to a special voter shall be deemed to have been issued at a polling booth.

(4) Except in the case of the ballot papers so selected therefrom, the Chief Electoral Officer shall inspect only the consecutive numbers on the ballot papers in the several parcels so opened, and shall so cover the ballot papers that no person present shall have the opportunity of determining the candidate for whom any particular voter has voted.

## **68 Parcels to be secured after scrutiny**

(1) When the Chief Electoral Officer has selected from any parcel all the ballot papers he is required to select therefrom, he shall forthwith in the presence of his assistants (if any) and such scrutineers as are present, but of no other person close and secure the parcel, and shall endorse on it a memorandum of the fact of the ballot papers having been selected from that parcel, specifying the same by the name of the person to whom the same appear to have been delivered, and shall sign the endorsement with his name.

(2) The Chief Electoral Officer shall set aside all ballot papers selected by him from any parcel as herein provided, and shall in the presence of his assistants (if any) and such scrutineers as are present, but of no other person, secure those ballot papers in a separate parcel and shall endorse the parcel with a description of the contents of it and shall sign the endorsement with his name.

### *Official Count and Declaration of Poll*

## **69 Counting the votes**

(1) (a) On completion of the scrutiny hereinbefore directed the Chief Electoral Officer, with such assistants as he deems necessary, and in the presence of such of the scrutineers appointed under section 66 as are present, but of no other person, shall select and open one of the parcels of used ballot papers referred to in section 65 (1)(e) and shall mark each ballot paper in it with a number in consecutive order, beginning with the number one, so that no two ballot papers in that parcel shall bear the same number.

(b) The procedure set out in this subsection need not be delayed until the inquiries under section 66(2) have been completed, but the ballot papers from any particular polling booth shall not be counted until any inquiries in respect of ballot papers from that booth have been completed.

(2) When the ballot papers from the parcel so selected have been marked as aforesaid the Chief Electoral Officer shall make a record of the last number marked, and shall then, in the presence of his assistants (if any) and the scrutineers as aforesaid, but of no other person, deal with the ballot papers as follows –

(a) (i) He shall reject as informal any ballot paper –

- (I) That does not bear the official mark if there is reasonable cause to believe that it was not issued to a voter by any Presiding Officer; or
  - (II) That purports to vote for more candidates than the number of candidates elected; or
  - (III) That has anything not authorised by this Act written or marked on it by which the elector can be identified; or
  - (IV) That does not clearly indicate the candidate for whom the voter desired to vote;
- (ii) no ballot paper shall be rejected as informal by reason only of some informality in the manner in which it has been dealt with by the voter if it is otherwise regular, and if in the opinion of the Chief Electoral Officer the intention of the voter in voting is clearly indicated;
  - (ii) no ballot paper shall be rejected as informal by reason only of some error or omission on the part of an official, if the Chief Electoral Officer is satisfied that the voter was qualified to vote at the election;
- (b) The Chief Electoral Officer shall then count the number of votes received by each candidate, and the number of votes rejected as informal, and compare the result of that count with the certificate of the Presiding Officer in respect of the preliminary count, and shall, where necessary, amend that certificate; and every such certificate shall be initialled by the Chief Electoral Officer;
  - (c) The Chief Electoral Officer shall then make up and secure the parcel anew, and endorse on it a memorandum specifying the number of ballot papers contained in the parcel, the number of votes received by each candidate, the number of informal ballot papers, and the number of the booth at which the votes were recorded; and the endorsement shall be signed by the Chief Electoral Officer.
- (3) After the ballot papers from one parcel have been dealt with in the manner aforesaid, those from the remaining parcels shall be successively dealt with in like manner, the marking of the ballot papers to commence with the number one in the case of each parcel.
- (4) The ballot papers of special voters shall be dealt with in like manner, after which they shall be made up together into a parcel which shall be properly secured and shall be endorsed in the manner described in this section.

## 70 Declaration of result of poll

(1) When all the ballot papers have been dealt with as aforesaid the Chief Electoral Officer, having ascertained the total number of votes received by each candidate, shall declare the result of the poll by giving public notice of it in form 14.

(2) Where there is an equality of votes between candidates and the addition of a vote would entitle one of those candidates to be declared elected, the Chief Electoral Officer shall forthwith apply to a Judge of the High Court for a recount under section 71 and that section shall apply accordingly, except that no deposit shall be necessary.

(3) In any case where on any recount under section 71 there is an equality of votes between candidates and the addition of a vote would entitle one of those candidates to be declared elected, the Chief Electoral Officer shall determine by lot which candidate shall be elected.

(4) The Chief Electoral Officer shall report the result of every election to the Clerk of the Assembly who shall by warrant under his hand declare the successful candidate to be elected and shall publicly notify the date of the warrant.

*Recount*

**71 Application to Judge for recount**

(1) Where any candidate has reason to believe that the public declaration by the Chief Electoral Officer of the number of votes received by each candidate is incorrect, and that on a recount of it the first-mentioned candidate might be found to be elected, he may within 3 days after the public declaration apply to a Judge for a recount of the votes.

(2) Every such application shall be accompanied by a deposit of such sum as Cabinet may prescribe by regulation.

(3) The Judge shall cause a recount of the votes to be commenced within 3 days after receiving the application, and shall give notice in writing to the Chief Electoral Officer and to each of the candidates or their scrutineers of the time and place at which the recount will be made.

(4) (a) The recount shall be made in the presence of the Judge or of an officer appointed by him for the purpose, and shall as far as practicable be made in the manner provided in the case of the original count;

(b) No person shall be present at the recount except the Judge or the officer appointed by him, his assistants (if any), the Chief Electoral Officer and his assistants (if any) and the scrutineers appointed under section 66.

(5) The Judge shall have all the powers that the Chief Electoral Officer had on the original count, and may reverse any decision made by the Chief Electoral Officer in the exercise of those powers.

(6) If on the recount the Judge finds that the public declaration was incorrect he shall order the Chief Electoral Officer to give an amended declaration of the result of the poll.

(7) The Judge may make such order as to the costs of and incidental to the recount as he deems just, and, subject to any such order, shall direct the deposit made under this section to be returned to the person who paid it.

**72 Ballot papers and certificate to be compared on recount**

(1) At any recount made as aforesaid the Chief Electoral Officer shall produce to the Judge all the used ballot papers, together with the certificate stating the total number of ballot papers used at the election.

(2) (a) If on comparing the number of ballot papers stated in the certificate with the ballot papers used at the election the Judge finds that any of the ballot papers have been lost, stolen, or in any way interfered with during the interval between the official count and the recount, the official count made by the Chief Electoral Officer shall be deemed to be correct, and the result of the poll declared accordingly.

(b) Where in any such case there is an equality of votes between candidates and the addition of a vote would entitle one of those candidates to be declared elected, the Chief Electoral Officer shall determine by lot which candidate shall be elected.

*Disposal of Ballot Papers*

**73 Disposal of ballot papers, rolls**

(1) As soon as practicable after polling day the Chief Electoral Officer shall enclose in separate packets in the following manner all the parcels transmitted to him by the several Presiding Officers or made up and secured by himself –

(a) He shall enclose in one or more separate packets all the parcels of used ballot papers, including the special voters' ballot papers and all counterfoils corresponding to those ballot papers; in one or more other separate packets all

parcels of unused and spoilt ballot papers; in another all parcels of ballot papers set aside under sections 62 and 68 and in one or more other separate packets all parcels containing ballot paper accounts, copies of rolls (except the master roll), books, or other papers, as in this Act provided, and all letters, and other papers received from any Chief Electoral Officer in respect of the votes of special voters;

(b) He shall properly secure the said several packets, and endorse them with a description of the contents of it respectively; and the name of the constituency and the date of the polling, and shall sign the endorsement; and shall forthwith forward the said packets to the Registrar of the High Court;

(c) He shall also at the same time properly secure and transmit to the Registrar of the Court a parcel containing all ballot papers printed for the election and not used by the Chief Electoral Officer or distributed for use to any Presiding Officer.

(2) The Registrar of the Court shall forthwith give or send to the Chief Electoral Officer a receipt under his hand for the said packets and parcel.

(3) The Chief Electoral Officer shall send the master roll to the Registrar of Electors and the Registrar shall keep it until the next general election.

(4) Any registered elector of the constituency may inspect any master roll at the Registrar's office without payment of any fee at any time when the office is open for the transaction of business.

#### **74 Disposal of packets**

(1) The packets and parcel shall be safely kept for one year unopened, unless the Court orders them, or any of them, to be opened.

(2) At the end of one year the packets and parcel shall be destroyed unopened in the presence of the Clerk of the Assembly and the Registrar of the Court.

#### **75 Papers taken from parcels as evidence in certain cases**

(1) Any ballot paper and any copy of a roll, and any book purporting to be taken from any such parcel as aforesaid, and having written on it respectively, under the hand of the Registrar of the Court a certificate of the several particulars by this Act required to be endorsed on the parcel shall be conclusive evidence in any Court that it was so taken and that it, if a ballot paper, was deposited and, if a roll or book, was kept or used at the election and booth to which the endorsement and writing relate.

(2) Every ballot paper so certified shall be evidence of a vote given at the poll, and of the correspondence of the number appearing on the ballot paper with the number appearing on any roll so certified as of the same election and booth, according to the tenor of the said ballot paper.

(3) But in the case of the ballot papers set aside or selected by a Presiding Officer or by the Chief Electoral Officer, the correspondence shall be evidence only of some person having voted in the name appearing on the roll.

#### *Maintenance of Order at Elections*

#### **76 Presiding Officer to maintain order**

Every Presiding Officer shall have power to enforce order and keep the peace at any election and may, without any other warrant than this Act, cause to be arrested and taken before a Judge or Commissioner of the High Court any person reasonably suspected of knowingly and wilfully making a false answer to any of the questions the Presiding Officer is authorised to put, or who attempts to personate any voter or to vote more than once at the same election, or

who obstructs the approaches to any polling booth, or who otherwise behaves in a disorderly manner or causes disturbances at any election; and all constables shall aid and assist the Presiding Officer in the performance of his duty.

**77     Adjournment of poll**

(1) Where the polling at any polling place cannot start or has to be suspended whether by reason of riot or open violence, natural disaster, or any other cause, the Presiding Officer shall adjourn the taking of the poll at that polling place to the following day, and if necessary from day to day until the poll can be taken, and shall forthwith give public notice of the adjournment in such manner as he thinks fit.

(2) The poll shall not be kept open for more than 9 hours in all at any polling place.

*Custody of Ballot Papers*

**78     Prevention of irregularities**

In order to prevent the commission at any election of irregularities in respect of the improper possession of ballot papers the following shall apply –

- (a) The Chief Electoral Officer shall give to the person printing the ballot papers a receipt specifying the total number of ballot papers received by him, and it shall be the duty of the printer to see that all copies of the ballot paper other than those delivered to the Chief Electoral Officer are immediately destroyed;
- (b) Every Presiding Officer shall give to the Chief Electoral Officer a receipt specifying the total number of ballot papers received by him, and shall be personally responsible for the safe custody of all such ballot papers from the time they are received by him until they are issued or otherwise disposed of under this Act;
- (c) Every Presiding officer shall be personally responsible for the safe custody of all ballot papers used at the polling booth at which he presides from the time each ballot paper was placed in the ballot box by the voter until the parcel of used ballot papers has been delivered to the Chief Electoral Officer as in this Act provided and the Presiding Officer obtained from the Chief Electoral Officer a receipt in writing for the parcel, which receipt the Chief Electoral Officer is in all cases required to give on such delivery;
- (d) In like manner the Chief Electoral Officer shall be personally responsible for the safe custody of all ballot papers used at the polling booth at which he presides until they have been sent to the Registrar of the Court as hereinbefore provided, and also for the safe custody of all parcels of used ballot papers for which he has given a receipt to a Presiding Officer, until they have been sent by him to the Registrar of the Court as aforesaid;
- (e) Every person who fails to take reasonable steps to secure the safe custody of all ballot papers for which he is responsible, with the result that any such ballot paper is removed from his custody, shall be liable to a fine not exceeding 1 penalty unit or to imprisonment for a term not exceeding 6 months;
- (f) Every person shall be liable to a fine not exceeding 1 penalty unit who wilfully or negligently allows any copy of a ballot paper printed by him to come into the possession of any person other than the Chief Electoral Officer;
- (g) Every person shall be liable to a fine not exceeding 1 penalty unit who except under any regulations made under this Act in relation to special voters, obtains

possession of or has in his possession any ballot paper other than the one given to him by the Chief Electoral Officer or Presiding Officer for the purpose of recording his vote, or retains any ballot paper in his possession after leaving the polling booth.

*Offences at Elections*

**79 Interfering with voters**

- (1) Every person commits an offence and shall be liable to a fine not exceeding 0.5 penalty units who at an election –
- (a) In any way interferes with any elector, either in the polling booth or while on his way to it, with the intention of influencing him or advising him as to his vote;
  - (b) At any time on polling day before the close of the poll in or in view or hearing of any public place holds or takes part in any demonstration or procession having direct or indirect reference to the poll by any means whatsoever;
  - (c) At any time on polling day before the close of the poll makes any statement having direct or indirect reference to the poll by means of any loudspeaker or public address apparatus or cinematograph apparatus;
  - (d) At any time on polling day before the close of the poll, or at anytime on any of the 3 days immediately preceding polling day, prints or distributes or delivers to any person anything being or purporting to be in imitation of any ballot paper to be used at the poll and having on it the names of the candidates or any of them, together with any direction or indication as to the candidate for whom any person should vote, or in any way containing any such direction or indication, or having on it any matter likely to influence any vote;
  - (e) At any time on polling day before the close of the poll exhibits in or in view of any public place, or publishes or distributes, or broadcasts, any statement advising or intended or likely to influence any elector as to the candidate or party for whom he should vote:  
Provided that this paragraph shall not apply to any statement in a newspaper published before six o'clock in the afternoon of the day before polling day;  
Provided also that where any statement is so exhibited before polling day in a fixed position not in view of a polling place it shall not be an offence to leave it so exhibited on polling day;  
Provided further that the Chief Electoral Officer may at any time on polling day cause to be removed or obliterated any statement to which this paragraph applies which is exhibited within half a mile of a polling place, and may recover all expenses incurred in so doing from the persons by whom or by whose direction the statement was exhibited, as a debt due by them jointly and severally to the Government;
  - (f) At any time on polling day before the close of the poll prints or distributes or delivers to any person any card or paper (whether or not it is an imitation ballot paper) having on it the names of the candidates or any of them;
  - (g) Exhibits or leaves in any polling booth any card or paper having thereon any direction or indication as to how any persons should vote or as to the method of voting;
  - (h) At any time on polling day before the close of the poll, within, or at the entrance to, or in the vicinity of, any polling place –
    - (i) gives or offers to give to any person any written or oral information as to any name or number of the main roll or any supplementary roll being used at the election;

(ii) permits or offers to permit any person to examine any copy of the main roll or any supplementary roll being used at the election.

(2) It shall not be an offence against this section for any person to wear or display (whether on his person or not) any party emblem.

(3) Nothing in this section shall apply to any official statement or announcement made or exhibited under the authority of this Act.

## **80 Publishing defamatory matter at election time**

Every person shall be liable to a fine not exceeding 1 penalty unit or to imprisonment for a term not exceeding 3 months who at any time after public notice has been given of any election and before the close of the poll publishes or exposes, or causes to be published or exposed, to public view any document or writing or printed matter containing any untrue statement defamatory of any candidate and calculated to influence the vote of any elector.

## **81 Erasing and altering official mark**

Every person shall be liable to a fine not exceeding 1 penalty unit who erases, obliterates, or alters any official mark, stamp, or writing on any ballot paper, or places on it any writing, print, or other matter which might lead persons to believe that it was put on it by any official or person duly authorised in that behalf.

## **82 Offences**

(1) Every person commits an offence against this section who –

- (a) Forges, or counterfeits, or fraudulently defaces, or fraudulently destroys any ballot paper, or the official mark on any ballot paper;
- (b) Without due authority supplies any ballot paper to any person;
- (c) Fraudulently puts into any ballot box any paper other than the ballot paper that he is authorised by law to put in there;
- (d) Fraudulently takes out of a polling booth any ballot paper;
- (e) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box, or box or packet or parcel of ballot papers, then in use for the purposes of an election, or in course of transmission by post or otherwise, or thereafter whenever the same may be kept as a record of the election.

(2) Every person who commits an offence against this section shall be liable on conviction –

- (a) If an officer appointed under this Act to imprisonment for a term not exceeding 2 years;
- (b) If any other person, to imprisonment for a term not exceeding 6 months.

(3) Every person who attempts to commit any offence against this section shall be liable on conviction to imprisonment for a term not exceeding one half of the longest term to which a person committing the offence may be sentenced.

## **83 Property in Chief Electoral Officer**

In any prosecution for an offence in relation to any ballot boxes, ballot papers, or making instruments at an election, the property in the boxes, papers, and instruments may be stated as being in the Chief Electoral Officer.

## **84 Infringement of secrecy**

(1) Every official, clerk, scrutineer, interpreter, and constable in attendance at a polling booth shall maintain and aid in maintaining the secrecy of the voting in the booth, and shall not communicate to any person, except for some purpose authorised by law, any information likely to defeat the secrecy of the ballot.

(2) No person, except for some purpose authorised by law, shall –

- (a) Interfere with or attempt to interfere with a voter when marking his vote;
- (b) Attempt to obtain in a polling booth information as to the candidate for whom any voter in a booth is about to vote or has voted;
- (c) Communicate at any time to any person any information obtained in a polling booth as to the candidate for whom any voter at the booth is about to vote or has voted, or as to the consecutive number on the ballot paper given to any voter at the booth.

(3) Every person in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not communicate any information obtained at the counting as to the candidate for whom any vote is given in any particular ballot paper.

(4) No person shall directly or indirectly induce any voter to display his ballot paper after he has marked it, so as to make known to any person the name of any candidate for or against whom he has voted.

(5) Every person who offends against this section shall be liable to imprisonment for a term not exceeding 3 months.

## PART 4 CORRUPT PRACTICES

### 85    **Corrupt practices**

Every person is guilty of a corrupt practice, and is liable to imprisonment for a term not exceeding one year, who, in connection with any election, is convicted of bribery, treating, undue influence, or personation as defined in this Part.

### 86    **Bribery**

Every person commits the offence of bribery who, in connection with any election –

- (a) Directly or indirectly gives or offers to give to any elector any money or valuable consideration or any office or employment in order to induce the elector to vote or refrain from voting; or
- (b) Directly or indirectly makes any gift or offer as aforesaid to any person in order to induce that person to procure or endeavour to procure the return of any candidate or the vote of any elector; or
- (c) Upon or in consequence of any such gift or offer, procures or endeavours to procure the return of any candidate or the vote of any elector; or
- (d) Advances any money to any person with the intent that that money or any part of it shall be expended in bribery within the meaning of this section; or
- (e) Being an elector, directly or indirectly receives or agrees to receive any gift, money, valuable consideration, office, or employment as aforesaid in return for voting or refraining from voting or for agreeing to it.

### 87    **Treating**

Every person commits the offence of treating who, being a candidate at any election, by himself or any other person on his behalf, corruptly gives or provides any meat, drink, entertainment, or other provision to or for any person for the purpose of procuring his own election or on account of his having been elected or for any other purpose calculated to influence the vote of that person.

### 88    **Undue influence**

Every person commits the offence of undue influence who, by himself or any other person on his behalf, uses or threatens to use any force, violence or restraint, or inflicts or

threatens to inflict any injury, damage, harm, or loss upon or against any person in order to induce or compel that person to vote or refrain from voting or on account of that person having voted or refrained from voting, or who by abduction, duress, or any fraudulent device or contrivance in any way interferes with the free exercise of the franchise by an elector.

**89 Personation**

Every person commits the offence of personation who at any election applies for a voting paper in the name of some other person, living or dead, or of a fictitious person, or who, having voted once at any such election, applies again at the same election for a voting paper in his own name.

**PART 5**  
**DISPUTED ELECTIONS**

**90 Election petitions**

(1) Where any candidate and 5 electors, or where any 10 electors, are dissatisfied with the result of any election held in respect of which that candidate is nominated, or in which those electors are registered, they may, within 14 days after the declaration of the result of the election, by petition filed in the High Court as hereinafter mentioned, demand an inquiry as to the conduct of the election or of any candidate or other person at it.

(2) Every such petition shall be accompanied by a deposit of \$20.

(3) The petition shall be in form 15 and shall be filed in the Court, and shall be heard and determined before a Judge of the Court.

(4) The petition shall allege the specific grounds on which the complaint is founded, and no grounds other than those stated shall be investigated except by leave of the Judge and upon reasonable notice being given, which leave may be given on such terms and conditions as the Judge deems just.

(5) Evidence may be given to prove that the election of any rejected candidate would be invalid in the same manner as if the petition had complained of his election.

**91 Candidate may oppose petition**

Any candidate may, at any time before the commencement of the inquiry, file in the Court a notice in writing of his intention to oppose the petition, and thereupon the candidate shall be deemed to be the respondent to the petition.

**92 Time for holding inquiry**

The inquiry shall be commenced within 14 days after the filing of the petition, but not earlier than 14 days after the day on which the poll was closed, and not less than 7 days' public notice shall be given of the time and place at which the inquiry will be held.

**93 Powers of Judge on inquiry**

For the purposes of the inquiry, the Judge shall have and may exercise all the powers of citing parties, compelling evidence, adjourning from time to time and from place to place, and maintaining order that he would have in this ordinary jurisdiction, and, in addition, may at any time during the inquiry direct a recount or scrutiny of the votes given at the election, and shall disallow the vote of every person who –

- (a) Has voted, not being entitled to vote; or
- (b) Has given more votes than he was entitled to give.

**94 Certain irregularities**

No election shall be declared void by reason of any irregularity in any of the proceedings preliminary to the polling or by reason of any failure to hold a poll at any place appointed for holding a poll, or to comply with the directions contained or incorporated in this Act as to the taking of the poll or the counting of the votes or by reason of any mistake in the use of the forms contained or incorporated in this Act, if it appears to the Judge that the election was conducted under the principles laid down in and by this Act and that the irregularity, failure, or mistake did not affect the result of the election.

**95 Result of inquiry**

(1) The Judge shall determine whether, by reason of some irregularity that in his opinion materially affected the result of the election, the election is void; or whether the candidate whose election is complained of, or any and what other candidate, was duly elected.

(2) The Judge shall cause any determination under this section to be transmitted to the Clerk of the Assembly, who shall forthwith –

- (a) Publicly notify any such determination;
- (b) Where any election is determined to be void, declare the seat vacant under section 10;
- (c) Where any other candidate is determined to be elected, declare that candidate to be elected under section 70 and revoke any warrant previously issued by him under that section which is not consistent with the determination.

**96 Persons committing irregularities to be prosecuted**

Where on any such inquiry the Judge is of the opinion that any irregularity has been wilfully committed by any person, he shall direct the officer in charge of the Police to take proceedings for the prosecution of that person, who on conviction shall (unless some other penalty is elsewhere prescribed) be liable –

- (a) To a fine not exceeding 2 penalty units where the irregularity, in the opinion of the Judge, materially affected the result of the election; or
- (b) To a fine not exceeding 0.5 penalty units, where the irregularity did not, in the opinion of the Judge, materially affect the result but defeated the fairness of the election; or
- (c) To a fine not exceeding 0.5 penalty units, where the irregularity did not, in the opinion of the Judge, either materially affect the result or defeat the fairness of the election.

**97 Costs of inquiry**

(1) (a) The Judge may order that the expenses of and incidental to the inquiry shall be borne either by any party to the inquiry, or, where he declares the election void on the ground or partly on the ground of any negligence or misfeasance of any electoral officer or other person exercising any functions at the election under this Act, may order that those expenses or any part of it shall be borne by that officer or other person; and that order shall have the same effect and may be enforced in like manner as it if were a judgment for a sum of money obtained in the Court;

(b) No such order shall be made against any person other than a party to the inquiry, unless he has been summoned to attend and give evidence at the inquiry.

(2) Subject to any such order, the Judge shall direct that the deposit accompanying any petition shall be returned to the person or persons who paid the same, unless the Judge is of opinion that the petitioners have failed to establish the

grounds specified in their petition, or any other grounds investigated by leave of the Judge, in which case the deposit or the surplus remaining after satisfying the order shall be deemed to be forfeited to Her Majesty, and shall form part of the public revenue of Niue.

**98 Determination by Court final**

Every determination or order by the Judge in respect of or in connection with an election petition shall be final.

PART 6

MISCELLANEOUS PROVISIONS

**99 Notification of bankruptcy and death**

(1) The Registrar of the Court shall forthwith after adjudication as a bankrupt of a member, or after his conviction of an offence under section 102(2) or of any offence described in section 12(1)(e) notify the fact to the Clerk of the Assembly.

(2) The Registrar of Births and Deaths by whom the death of any member is registered shall, within one working day of making that registration, notify the fact to the Clerk of the Assembly.

**100 Printing and forms**

(1) Any requirement of printing under this Act shall be satisfied by typewriting and any mechanical process of reproducing typewritten copies, and the term "printed" shall, where necessary, be construed accordingly.

(2) Where any form prescribed by or referred to in this Act is not available, a form may be improvised, and any electoral officer using or issuing any such form improvised shall affix his initials or official mark to it.

**101 Form and transmission of documents**

(1) Every person making or giving any claim, application, declaration, or notice under this Act shall sign the same with his own hand, or, if he cannot write, his mark shall be attested by a postmaster, an officer of the Court, or any electoral officer.

(2) Save as otherwise provided in this Act, every such document may be delivered to any electoral officer appointed in any constituency for the purposes of this Act who shall transmit it to the Chief Electoral Officer, the Court, or the appropriate electoral officer, as the case may be, by mail or telegram as circumstances require, and the expenses of any such transmission of any such bona fide document shall be paid out of the public revenues of Niue.

**102 Offences**

(1) Every person commits an offence and is liable to a fine not exceeding 0.5 penalty units, who –

- (a) Procures himself to be nominated as a candidate for election as a member knowing himself to be incapable under any provisions of this Act holding that office; or
- (b) Signs any nomination paper purporting to nominate to that office a person who is, to the knowledge of the person so signing, incapable as aforesaid; or
- (c) Signs any nomination paper knowing himself not to be qualified to nominate a candidate.

(2) Every member who sits or votes in the Assembly, being disqualified under any provisions of this Act and knowing himself to be so disqualified, or being liable to have his seat declared vacant under any provisions of this Act and knowing

himself to be so liable, commits an offence and is liable to a fine not exceeding 0.5 penalty units for every day on which he so sits or votes.

**103 General penalty for offences**

(1) Every person appointed to carry the provisions of this Act into execution commits an offence, and is liable to a fine not exceeding 1 penalty unit or to imprisonment for a term not exceeding one month who is guilty of any wilful or negligent act of commission or omission contrary to this Act in respect of any election, and for which no other penalty is provided by this Act.

(2) Any other person who commits a breach of this Act for which no other penalty is provided by this Act is liable to a fine not exceeding 1 penalty unit.

**104 Validation of irregularities**

Where anything is omitted to be done or cannot be done at the time required by or under this Act, or is done before or after that time, or is otherwise irregularly done in matter of form, or sufficient provision is not made by or under this Act, the Chief Electoral Officer may, by public notice, at any time before or after the time within which the thing is required to be done, extend that time, or validate anything so done before or after the time required or so irregularly done in matter of form or make other provision for the case as he thinks fit.

**105 Regulations**

(1) Cabinet may make such regulations as may be deemed necessary or expedient for the purpose of giving full effect to this Act and for the due administration of it.

(2) Regulations made under this section may prescribe penalties for offences against the regulations, not exceeding imprisonment for a term of 3 months or a fine of 1 penalty unit, or both.

(3) Any regulations made under this section shall be laid before the Assembly within 14 days after the date of the making of it if the Assembly is then in session, or if not, within 14 days after the commencement of the next ensuing session.

---

SCHEDULE

Form 1

APPLICATION FOR REGISTRATION AS AN ELECTOR

I hereby claim to have my name entered upon the Electoral Roll for the Constituency, and I declare that the answers to the following questions are true and correct in every particular:

1 (a) Your full name:

.....

(Surname)

(First Name)

(Middle Name)

(b) Your father's name:

.....

(Surname)

(First Name)

(Middle Name)

## Niue Legislation 2019

(c) Your husband's/wife's name:

.....  
(Surname) (First Name) (Middle Name)

2. Your present occupation: .....

3. Your present residential address:.....

.....

4. Have you resided in Niue throughout the period of 12 months immediately before the making of this application?

.....

5. Have you lived at your present address throughout that 12 month period?

.....

6. If not, list the addresses, with the length of time, at which you have lived during that 12 month period.

.....  
Address Length of time

7. Put a cross (X) in the space which applies to you:

Are you Male .....

Are you Single .....

Female.....

Married .....

8. Write in these spaces:

Your date of birth .....  
(Day) (Month) (Year)

Your age today ..... years

9. Are you a New Zealand citizen?.....

10. If you are not a New Zealand citizen, do you have the status of a Permanent Resident of Niue?

.....

11. On what grounds do you claim that status?

.....

Niue Assembly Act

12. Have you at some time resided continuously in Niue for not less than 3 years?

.....  
Signed and declared by the applicant this              day of        20       .

Signature of applicant: .....

Signature of witness: .....

(Witness must be a registered elector, or Electoral Officer, or a postmaster)

Section 17(4)

Form 2

NOTICE OF TRANSFER

To the Registrar for the..... Constituency.

PLEASE remove from your electoral roll the name of (Surname), (Christian name), (Address on former roll), (Occupation on former roll), (Sex), as the elector was registered in this constituency on (Date).

.....  
Registrar for the..... Constituency

Section 19(a)

Form 3

NOTICE OF OBJECTION BY ELECTOR

To the Registrar for the..... Constituency.

I, (Name in full), of (postal address in full), hereby give notice that I object

- \* to the registration on any roll of (name in full), of (postal address in full)
- \* to the retention of the name of (name in full) of (postal address in full),

on the roll for the.....Constituency.

The grounds of my objection are the following: .....

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

Signature: .....

\*Delete words that do not apply

Section 20(b)

Form 4

NOTICE OF OBJECTION BY REGISTRY

To Take notice that I object

- \* to your registration on any electoral roll
- \* to the retention of your name on the roll for the.....Constituency on the following grounds:

Unless the annexed notice of appeal is signed by you and returned to me within days from this date, your name will be removed from the roll without further proceedings.

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

Registrar: .....

Constituency:.....

\*Delete words that do not apply

NOTICE OF APPEAL

To the Registrar for the.....Constituency

Take notice that I appeal from your objection to my registration

- \* on any electoral roll
- \* on the roll for the.....Constituency on the following grounds:

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

Signature and address:.....

\*Delete words that do not apply

---

Section 23(2)

Form 5

ELECTORAL ROLL FOR.....CONSTITUENCY

Roll of Persons Entitled to Vote for a Representative for the  
.....Constituency

---

Number on Roll

Name in Full, Residence,  
Occupation, Sex

---

.....Registrar

Niue Assembly Act

Section 33

Form 6  
NOMINATION PAPER

To the Chief Electoral Officer:

WE (name), and (name), being registered on the Electoral Roll for the .....Constituency hereby nominate (name, residence, occupation), registered on the roll for the.....Constituency, with his consent, as a candidate at the election of a Representative for the..... Constituency, the holding of which election is appointed for the..... day of .....20.....

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

To the best of our knowledge, on nomination day, namely the.....day of 20.....(name) will have been ordinarily resident (within the meaning of that expression as it is defined in section 12 of the Niue Assembly Act 1966) in Niue throughout the period of 3 months immediately preceding that date and will have at some period resided continuously in Niue for not less than twelve months.

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

A.B. C.D. (Full names, residences and occupations)

CONSENT

I, (name) hereby consent

\*to the above nomination

\*to my nomination as a candidate at the election of a.....representative for the .....Constituency for the Common electoral role by A.B. and C.D.

And I solemnly declare that throughout the period of three months immediately preceding nomination day, namely the.....day of.....20.....I have been ordinarily resident (within the meaning of that expression as it is defined in section 12 of the Niue Assembly Act 1966) in Niue. (Full name, residence & occupation) \*Delete words that do not apply.

Section 37

Form 7

NOTICE OF WITHDRAWAL OF NOMINATION

To the Chief Electoral Officer :

I hereby give notice that I withdraw my name as a candidate at the election of a representative for the .....Constituency for the Common electoral role, the holding of which election is appointed for the.....day of.....20.....

Signature of candidate: .....

Received at the hour of .....on the.....day of.....20.....

Signature of Chief Electoral Officer

Niue Legislation 2019

Section 43

Form 8

Election of a Representative of the .....Constituency Ballot Paper

Directions

Strike out the name of every candidate except the one for whom you wish to vote.

You must not vote for more than one candidate.

After voting, fold this paper and place it in the ballot box.

You must not take it out of the polling booth.

If you spoil this paper, return it to the Presiding Officer and obtain another.

Lipitoa

Makaola

Sisipi

Tusini, Mose

Tusini, Sione

---

Form 8A

Election of Representatives for the  
Common Electoral Roll

DIRECTIONS

1. Strike out the name of every candidate except those for whom you wish to vote.
  2. You must not vote more than once.
  3. After voting fold this paper and place it in the ballot box.
  4. You must not take it out of the polling booth.
  5. If you spoil this paper, return it to the Presiding Officer and obtain another.
- 

Section 43(4)

Form 9

COUNTERFOIL FOR BALLOT PAPER Consecutive  
No.....

To be entered here and also on the top right-hand corner of the back of the ballot paper.

.....  
Designation of Roll:  
(To be entered here only)  
.....

Niue Assembly Act

Stamp across the perforation so that the official booth stamp of the polling appears on both the counterfoil and the ballot paper.

[Official Booth Stamp]

Initials of Presiding Officer:

Sections 50, 51

Form 10

DECLARATION BY RETURNING OFFICER, POLL CLERKS, SCRUTINEERS AND OTHER OFFICERS

I, A.B, solemnly declare that I will faithfully and impartially according to the best of my skill and judgment, exercise and perform all the powers or duties reposed in or required of me by the Niue Assembly Act 1966, and I solemnly promise that I will not, except as provided by the said Act directly or indirectly disclose any fact coming to my knowledge at any election.

Signature .....

Declared and signed at.....this.....day of..... 20.....

Before me:

Signature: .....

Capacity of witness:.....

NOTE: The witness, in the case of a Returning Officer, must be the Chief Electoral Officer. In the case of any other electoral officer or of any scrutineer, the witness must be the Chief Electoral Officer or a Returning Officer.

Section 62

Form 11

TENDERED VOTES LIST

Name of Voter

Number in Roll

- |          |       |
|----------|-------|
| 1. ..... | ..... |
| 2. ..... | ..... |
| 3. ..... | ..... |

Each of the above named persons, representing himself to be a voter, applied for a ballot paper after another person has voted as that voter. Each applicant gave satisfactory answers to the questions in section 62 of the Niue Assembly Act 1966, and I therefore entered on this list his name and his number in the electoral roll.

Constituency.....

Polling Booth at:.....

..... Presiding Officer

..... 20.....

---

Section 63(2)

Form 12

CERTIFICATE FOR SPECIAL VOTES

To the Returning officer for the.....Constituency.

Whereas (name, occupation, address) is an elector registered on the electoral roll for the..... Constituency and has duly applied for a certificate enabling him to vote in the..... Constituency pursuant to the provisions of section 63 of the Niue Assembly Act 1966.

I hereby certify that the said (name) is entitled to vote in the..... Constituency at the election appointed to be held on

the.....day..... of.....20.....

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

Chief Electoral Officer

..... 20.....

---

Section 64

Form 13

DECLARATION ON VOTING IN ADVANCE OF POLL

I hereby declare that to the best of my knowledge and belief the following statements are true:

1. My surname and Christian names are:

Surname:.....

Full Christian name: .....

2. My address is: .....

3. My occupation is: .....

4. I am registered as an elector of the ..... Constituency.

5. I am still possessed of the qualification in respect of which I am registered.

6. I have not already voted at this election.

Niue Assembly Act

7. I have not applied for a certificate as a special voter pursuant to Section 63 of the Niue Assembly Act 1966.

Signature of elector:..... Date:.....

.....  
Chief Electoral Officer

---

Section 70

Form 14

Declaration of Result of Poll .....Constituency

I hereby declare the result of the poll taken on the.....

.....day of.....20..... For the election of a representative for the Constituency of to be as follows:

Candidates	Votes received
C.D.	.....
E.F.	.....
G.H.	.....
K.L.	.....
Total number of valid votes	.....
Number of votes rejected as informal	.....

I thereby declare the said C.D. to be elected. ....

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

A.B. Chief Electoral officer

---

Form 14A

Declaration of Result of Poll:  
Common Electoral Roll

I hereby declare the result of the poll taken on the.....day of.....20..... for the election of six (6) representatives for the common electoral roll to be as follows:

Candidates	Votes Received
1	
2	
3	
4	
5	
6	
7	
8	

Total number of valid votes ..... Number of votes rejected as informal .....

I therefor declare the candidates numbered from 1 to 6 inclusive to be elected as representatives of the common electoral roll.

Dated at Alofi this.....day of.....20.....

Chief Electoral Officer

---

Section 90

Form 15

PETITION FOR INQUIRY

In the matter of an election of members of the Niue Assembly held on.....the.....day of.....20.....

To....., Judge of the High Court in Niue.

The Petition of the undersigned, namely –

(name, occupation, address), Candidate (name, occupation, address), Elector humbly shows:

1. Your petitioners state that the said election was held on the ..... day of 20 ..... and that A.B. was declared to be elected as a representative for the Constituency for the common electoral roll:
2. And your petitioners say that (state the facts and grounds on which the petitioners rely).

Wherefore your petitioners pray that it may be determined that the said A.B.\* was not duly elected (or that the election was void)\* (or) that (name) was duly elected, and ought to have so been declared.

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

Signatures:.....  
.....  
.....

\*Delete words which do not apply

# NIUE ASSEMBLY PRIVILEGES ACT 2013

No. 324

1	Name	6	Unauthorised disclosure of evidence
2	Interpretation	7	Immunities from arrest and attendance before courts
3	Parliamentary privilege	8	Penalty
4	Contempt		
5	Protection of witnesses		

## An act to provide for the protection of Parliamentary privileges

### 1 Name

This is the Niue Assembly Privileges Act 2013.

### 2 Interpretation

"Assembly" means the Niue Assembly and the committees of the Niue Assembly;  
"Contempt" means —

- (a) any act or omission in the Assembly or in the precincts of the Assembly which obstructs or impedes the Assembly in the performance of its functions, or which obstructs or impedes any Member or officer of the Assembly in the discharge of the duties of that person or affronts the dignity of the Assembly, or which tends either directly or indirectly to produce such a result;
- (b) assaulting, obstructing or insulting a member or the Speaker in the member's coming to or going from the Assembly, or anywhere else because of the member's or Speaker's performance of his or her parliamentary duties;
- (c) attempting to compel a member by force, insult or menace to take a particular position in relation to a proposition or matter pending, or expected to be brought, before the Assembly;
- (d) sending a threat to a member because of the member's performance of his or her parliamentary duties;
- (e) offering of a bribe to a member;
- (f) creating or joining in any disturbance in the Assembly or in the precincts of the Assembly while it is sitting that may interrupt its proceedings;
- (g) improperly influencing a person, in relation to any evidence to be given by the person to the Assembly;
- (h) the failure without reasonable cause of a member of the Public Service to attend a meeting of a committee of the Assembly when given notice to do so by the Speaker;

"precincts of the Assembly" means the offices of the Assembly and includes, while the Assembly is sitting, the designated area where any sitting or committee meeting is held;

"proceedings of the Assembly" means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of the Assembly, and includes —

- (a) the giving of evidence to the Assembly, and evidence so given;
- (b) the presentation or submission of a document to the Assembly;
- (c) the preparation of a document for the purposes of or incidental to the transacting of any business of the Assembly;

- (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of the Assembly and the document so formulated, made or published.

**3 Parliamentary privilege**

(1) Article 24 of the Constitution provides for privileges of the Assembly and its members.

(2) Subject to Article 24 of the Constitution, a court may require the production, or admit as evidence in court any proceedings of the Assembly if the proceedings in question relate to the prosecution for an offence against this Act.

(3) The Assembly shall in all its proceedings have due regard to matters of personal privacy, matters likely to prejudice the security or defence of Niue or the international relations of the Government of Niue, and matters of commercial sensitivity.

**4 Contempt**

(1) A person who commits a contempt commits an offence.

(2) Proceedings for contempt may be initiated only by the Speaker and in the High Court according to the rules for summary proceedings.

**5 Protection of witnesses**

(1) A person commits an offence who, by fraud, intimidation, force or threat, by the offer or promise of any inducement or benefit, or by other improper means, influences another in respect of any evidence given or to be given before the Assembly, or induces another to refrain from giving any such evidence.

(2) A person commits an offence who inflicts any penalty or injury on another, or deprives another of any benefit on account of:

- (a) the giving or proposed giving of any evidence before the Assembly; or
- (b) any evidence given or to be given before the Assembly.

**6 Unauthorised disclosure of evidence**

A person commits an offence who, without the authority of the Assembly notified in writing by the Speaker, publishes or discloses:

- (a) a document that has been prepared for the purpose of submission, and submitted, to the Assembly or has been directed by the Assembly to be treated as evidence taken with the public excluded; or
- (b) any oral evidence taken by the Assembly with the public excluded, or a report of any such oral evidence.

**7 Immunities from arrest and attendance before courts**

(1) Subject to Article 24 of the Constitution and to this Act, a member, an officer of the Assembly and a person required to attend before the Assembly has no immunity from compulsory attendance before a court or from arrest or detention in a civil cause by reason only of being a member or such an officer or person.

(2) A member –

- (a) shall not be required to attend before a court; and
- (b) shall not be arrested or detained in a civil cause;

on any day on which the Assembly meets being a day on which that member is entitled to attend the Assembly.

- (3) An officer of the Assembly –  
(a) shall not be required to attend before a court; and  
(b) shall not be arrested or detained in a civil cause,  
on any day on which that officer is required to attend the Assembly.
- (4) A person who is required to attend before the Assembly on a given day  
—  
(a) shall not be required to attend before a court; and  
(b) shall not be arrested or detained in a civil cause,  
on that day.

**8 Penalty**

- (1) A person who commits an offence against this Act shall be liable on conviction to—  
(a) a penalty of imprisonment for a period not exceeding 6 months, or  
(b) a fine –  
(i) in the case of a natural person, not exceeding 5 penalty units;  
(ii) in the case of a body corporate, not exceeding 250 penalty units.  
(2) Proceedings for contempt may be initiated only by the Speaker and in the High Court according to the rules for summary proceedings.



# NIUE BANK ACT 1994

1994/177 – 28 March 1994

## PART 1

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- 2 Interpretation
- 3 Act to bind the Government

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- 5 Branches and agencies

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**To establish the Niue Bank and to confer certain functions and powers on the Niue Bank**

PART 1  
PRELIMINARY

**1 Short title**

This is the Niue Bank Act 1994.

**2 Interpretation**

In this Act –

“acquiring services” means services that enable merchants to do either or both of the following things:

- (a) receive payment for goods or services provided to the holder of a payment device;
- (b) be reimbursed for cash advanced to the holder of a payment device;

“Bank” means the Niue Bank constituted under this Act;

“Board” means the Board of Directors of the Bank constituted by section 21;

“document” means a document in any form, whether signed or initialled or otherwise authenticated by its maker or not, and includes –

- (a) Any writing on any material;
- (b) Any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored;
- (c) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means;
- (d) Any book, map, plan, graph, or drawing;
- (e) Any photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

“foreign exchange” means –

- (a) The bank notes or other currency, postal notes or money orders of any country other than Niue, the Cook Islands and New Zealand;
- (b) Promissory notes and bills of exchange payable otherwise than in New Zealand currency;
- (c) A right to receive payment otherwise than in New Zealand currency;
- (d) An obligation to make payment otherwise than in Niue currency;
- (e) A security in respect of which any amount is payable in a country other than Niue or is payable otherwise than in New Zealand currency;

“issue”, in relation to a payment device, (but not for the purposes of the expression “issuing services”) means give, lend, or rent (or otherwise provide on the basis of the periodic payment of a charge);

“issuing services” means services that enable the holder of a payment device to do any or all of the following things:

- (a) pay for goods or services;
- (b) withdraw cash from a bank account;
- (c) borrow cash;

“Minister” means the Minister of Finance;

“payment device” –

- (a) means a credit card, debit card, or EFTPOS card (however described by its issuer) that enables its holder to do either or both of the following things:

- (i) obtain goods or services on the basis of payment made or to be made by means of the card;
  - (ii) obtain cash (whether by withdrawal from an account or as an advance); and
- (b) includes any device or program issued to a person that performs some or all of the functions of a payment device within the meaning of paragraph (a);
- “registered bank” means a person whose name is entered in the register maintained under section 39;
- “security” means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person, and includes –
- (a) Any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a charge over any property); and
  - (b) Any renewal or variation of the terms or conditions of any existing security.

### **3 Act to bind the Government**

This Act shall bind the Government.

## PART 2

### THE NIUE BANK

### **4 Establishment of Bank**

- (1) There is hereby established a Bank to be called the Niue Bank.
- (2) The Bank shall be a body corporate with perpetual succession and a common seal.
- (3) Without limiting any other provision of this Act, the Bank shall, in the exercise of its functions and powers under this Act, have the rights, powers and privileges of a natural person.
- (4) The common seal of the Bank shall be judicially noted in all courts and for all purposes.
- (5) The common seal shall be used only with the authority of the Board and every instrument to which the seal is affixed shall be signed by the Minister or a person appointed by the Board for that purpose.

### **5 Branches and agencies**

The Bank may establish branches and agencies and appoint agents in Niue or elsewhere.

## PART 3

### FUNCTIONS AND POWERS OF NIUE BANK

### **6 Functions of the Bank**

The Bank shall have the following functions and purposes –

- (a) To act as a Central Bank under Parts 5 to 8;
- (b) To act as an International Commercial Bank under Part 9; and
- (c) To administer the Acts prescribed by regulations made under this Act.

### **7 Dealing in foreign exchange**

For the purposes of performing its functions and fulfilling its obligations under this Act or any other Act, the Bank may deal in foreign exchange with such persons, including the Crown, and on such terms and conditions as the Bank thinks fit with the concurrence of Cabinet.

**8 Foreign exchange gains and losses**

(1) The Bank shall pay into the Niue Government Account any exchange gains (whether realised or unrealised) made by the Bank as a result of dealing in foreign exchange under section 7.

(2) The Minister shall upon the appropriation of the Assembly, pay to the Bank out of the Niue Government Account the amount of any exchange losses (whether realised or unrealised) incurred by the Bank as a result of dealing in foreign exchange under section 7.

**9 Foreign exchange**

The Bank shall advise the Minister and Cabinet on –

- (a) Foreign exchange rate systems;
- (b) The management of foreign reserves;
- (c) The operation of the foreign exchange market;
- (d) Any other matters relating to foreign exchange.

**10 Foreign reserves**

(1) The Minister in concurrence with Cabinet shall in consultation with the Bank, determine the level at which, or the levels within which, foreign reserves shall be maintained for the purpose of enabling the Bank to exercise the powers conferred by this Act.

(2) The Bank shall hold and maintain foreign reserves of that level or within those levels and, for that purpose, but without limiting the power of the Bank under this Act, may in concurrence with Cabinet –

- (a) Acquire and deal in foreign currency;
- (b) Deal in foreign currency on behalf of the Crown;
- (c) Appoint any person to acquire and deal in foreign currency on behalf of the Crown or the Bank.

**11 Bank may raise loans**

The Bank may, if it appears to be necessary or expedient in the public interest to do so, raise loans from any person, organisation, or government, either within or outside Niue, upon such terms and conditions as may be prescribed by Act.

**12 Lender of last resort**

The Bank shall, if the Bank considers it necessary for the purpose of maintaining the soundness of the Niue financial system, and only with the prior approval of Cabinet, act as lender of last resort for the financial system.

**13 Settlement account services**

The Bank may provide settlement account services for financial institutions on such terms and conditions as may be determined by agreement.

**14 Financial sector policy advice**

The Bank shall advise Cabinet and the Minister on matters relating to the operation of the Niue financial system.

**15 Government banking business**

(1) The Bank may, under an agreement with the Minister, undertake all or part of the banking business of the Government.

(2) Any such agreement may provide for the Bank to charge for the provision of banking services.

**16 Securities registry services**

(1) The Bank may provide securities registry services for any person including services in connection with –

- (a) The issue, registration, exchange, transfer, or replacement of securities;
- (b) The calling and acceptance of tenders or applications for securities;
- (c) The making or receiving of payment in respect of any security.

(2) Securities registry services may be provided for such remuneration, and on such terms and conditions, as may be agreed by the Bank and the person for whom they are provided.

**17 Bank may require financial institution to supply information**

(1) For the purposes of enabling the Bank to carry out the functions and exercise the powers conferred on it by this Part, the Bank may, by notice in writing to any financial institution, or by notice in the *Gazette*, require the institution or, as the case may be, institutions of a certain class, to supply to the Bank such information and data relating to the business of the institution or institutions of the relevant class for such periods, and in such form, as may be specified in the notice.

(2) Without limiting subsection (1), a notice may require information and data to be supplied relating to the assets and liabilities, income and expenditure (including interest rates charged and payable), fees and charges, obligations and commitments, and risk exposures of, and classes of transactions entered into by, that institution or class of institutions and any associated person and, where specified, in consolidated form, in respect of business carried on in Niue or elsewhere and whether as principal, broker, agent, or intermediary.

(3) Any notice given under this section may, by a subsequent notice, be revoked, varied, or amended by the Bank.

(4) Information and data required to be supplied under this section shall be supplied to the Bank at such place in Niue and at such time as are specified in the notice.

(5) A financial institution shall not be required to supply data or information under this section relating to the affairs of a particular customer or client.

**18 Failure to supply information**

Every financial institution commits an offence if, without lawful justification or excuse, it –

- (a) Fails to comply in any respect with any of the provisions of section 17 or of any requirements of the Bank under that section; or
- (b) Supplies any information or data which it is required to supply under section 17 which is false or misleading in any material particular.

**19 Requirement that information be audited**

(1) Where the Bank believes that any information or data supplied by a financial institution under section 17 is, or may be, inadequate or inaccurate, it may, by notice in writing to that financial institution, require that information or data to be audited by an auditor approved by the Bank.

(2) Every financial institution commits an offence if without lawful justification or excuse, it fails to comply with a requirement under subsection (1).

**20 Powers**

Without limiting section 4 or any other provision of this Act, the Bank, has power, whether in Niue or elsewhere, to –

- (a) Carry on the business of banking;
- (b) Issue securities;
- (c) Give a fixed or floating charge over all or any part of the undertaking or property of the Bank;
- (d) Enter into agreements or arrangements and obtain assurances necessary or desirable for carrying out its functions and exercising its powers;
- (e) Carry on any business or exercise any powers, not inconsistent with any other function of the Bank, which can be conveniently carried on, or exercised in conjunction with its functions and the exercise of its powers;
- (f) Do any act or perform any function or duty imposed upon it or required to be done under any other Act.

**PART 4**  
**MANAGEMENT OF NIUE BANK**

**21 Board of Directors**

There shall be a Board of Directors of the Bank.

**22 Duties of Board**

Subject to this Act, the Board of the Bank shall –

- (a) Keep under constant review the performance of the Bank in carrying out its functions;
- (b) Ensure that the Bank carries out the functions imposed on it by this Act;
- (c) Ensure that the resources of the Bank are properly and effectively managed;
- (d) Direct the exercise of powers granted to the Bank by this Act.

**23 Membership of Board**

(1) The Board shall consist of 3 members.

(2) The Board shall comprise –

- (a) The Minister;
- (b) Two non-executive directors to be appointed by Cabinet.

(3) The validity of the acts of the Board is not affected by any vacancy in its membership.

**24 Term of office of non-executive directors**

(1) Every non-executive director appointed under this Act shall be appointed for terms not exceeding 2 years.

(2) A non-executive director may be reappointed.

(3) A non-executive director may, at any time, resign office by notice in writing to the Minister.

**25 Appointment of non-executive directors**

In considering the appointment or reappointment of a person to the office of non-executive director of the Bank, Cabinet shall have regard, in relation to that office, to –

- (a) That person's knowledge, skill and experience; and

- (b) The likelihood of any conflict between the interests of the Bank and any interests which that person has or represents.

**26 Extraordinary vacancies**

(1) If a non-executive director dies, or resigns or is removed from office, that office shall become vacant and the vacancy shall be deemed to be an extraordinary vacancy.

(2) A non-executive director shall be deemed to have resigned from office if that director –

- (a) Is prohibited by section 27 from holding office as a director; or
- (b) Fails, without the Board's consent, to attend 3 consecutive meetings of the Board.

(3) The manner of filling an extraordinary vacancy shall be the same manner as prescribed by section 23.

(4) A person who is appointed to fill an extraordinary vacancy shall be appointed for the residue of the term of the vacating director.

**27 Disqualification of non-executive directors**

No person shall be appointed, or reappointed to the office of non-executive director of the Bank, or hold that office, if that person –

- (a) Is an employee of a registered bank; or
- (b) Is an undischarged bankrupt; or
- (c) Has been convicted of any offence of dishonesty or any other offence if that other offence is punishable by imprisonment for a term of 3 years or more; or
- (d) Is a mentally disordered person.

**28 Removal from office of non-executive directors**

Cabinet may, on the advice of the Minister, remove a non-executive director of the Bank from office if Cabinet is satisfied that the director –

- (a) Is unable, or has failed, to perform the duties of a director of the Bank ; or
- (b) Has been guilty of misconduct; or
- (c) Has obstructed, hindered, or prevented the Board from discharging the responsibilities of the Board.

**29 Meetings of Board**

(1) The Board of the Bank shall meet at least 3 times in each year.

(2) The Minister shall convene and preside at meetings of the Board.

(3) If the Minister is absent from a meeting, the non-executive directors shall convene a meeting in the Minister's absence.

(4) (a) Decisions of the Board shall be made by a majority of the votes of the directors present.

(b) If only two of the directors are present, the decision must be unanimous.

(5) Subject to this section, the Board may regulate its own procedure.

**30 Directors to disclose interests**

(1) A director who is interested in a contract or proposed contract with the Bank, or in the exercise or proposed exercise by the Bank of a power, shall declare that interest at every meeting of the Board at which that contract or proposed contract, or the exercise or proposed exercise of the power is considered by the Board.

(2) A director who is interested in a contract or proposed contract or in the exercise or proposed exercise of a power shall not be entitled to vote on a resolution that relates to the contract or proposed contract or the exercise or proposed exercise of the power.

**31 Fees and expenses of non-executive directors**

The Bank shall pay the non-executive directors such fees as the Minister after considering any recommendation by the Board, determines.

**PART 5**  
**CENTRAL BANK**

**32 Bank to act as Central Bank**

The Bank shall act as the Central Bank of Niue under Parts 6 to 8.

**33 Powers of Central Bank**

In discharging its functions under section 32, the Bank shall have the powers prescribed in sections 7 to 19.

**PART 6**

USE OF WORDS “BANK”, “BANKER” AND “BANKING”

**34 “Bank”, “banker” and “banking”**

(1) Except as otherwise provided in this Part, no individual or body (whether incorporated or not) shall be formed or registered, carry on any business, trade, or occupation under any name or title that includes the words “bank”, “banker” or “banking”, or any of those words as part of any other word.

(2) Every person or body who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units in the case of an individual or to a fine not exceeding 50 penalty units in the case of a body corporate.

(3) For the purposes of this section and section 35, a reference to the words “bank”, “banker” or “banking” includes a reference to a translation of those words in another language.

**35 Certain persons exempt from section 34**

(1) Nothing in section 34 applies to –

- (a) The Bank;
- (b) A registered bank under this Act;
- (ba) An approved agent, in respect of the provision of any authorised agency banking service;
- (bb) A designated bank, in respect of the provision of any authorised direct banking service;
- (c) Any body (whether incorporated or not) that is formed or registered in a country other than Niue under a name or title that includes the words “bank”, “banker” or “banking”, or any of those words as part of any other word, that is authorised for the time being by the Bank to use those words, or any of those words as part of any other word, in connection with the establishment or operation of a representative office in Niue;
- (d) A subsidiary of a registered bank that is authorised for the time being by the Bank to use those words, or any of those words as part of any other word;

- (e) A person that –
    - (i) does not carry on banking business in Niue; but
    - (ii) does either or both of the things stated in section 40A(1)(a) and (b);
  - (f) Any bank carrying on business in Niue at the time this provision is enacted.
- (2) Nothing in section 34 prevents a body (whether incorporated or not) being formed or registered, or carrying on any business, trade or occupation, under a name or title that includes the words “bank”, “banker” or “banking” where those words signify –
- (a) Any geographic place name; or
  - (b) The name of any town or road; or
  - (c) The surname of any person.
- (3) An authorisation or consent under this section may be given subject to such conditions as the Bank thinks fit.
- (4) The Bank may, by notice in writing to the person to whom the authorisation or consent has been given –
- (a) Revoke the authorisation or consent;
  - (b) Vary, alter, or remove any condition of the authorisation or consent or add a further condition to it.
- (5) In paragraphs (ba) and (bb) of subsection (1), “approved agent”, “designated bank”, “provision of any authorised agency banking service”, and “provision of any authorised direct banking service” have the meanings given to those expressions by section 84A.

**36 Power to require change of name or title**

(1) Where the Bank is satisfied that a person has contravened, or is contravening, section 34 it may, by notice in writing to that person and whether or not that person has been convicted of an offence against that section, require that person to change its name or title.

(2) Every person to whom a notice has been given under subsection (1) shall comply with the notice within 4 weeks after receiving it or within such longer period as the Bank may allow.

**PART 7**

**REGISTRATION OF BANKS AND PRUDENTIAL SUPERVISION OF REGISTERED BANKS**

**37 Registration and prudential supervision**

The Bank shall under this Part –

- (a) Register banks; and
- (b) Undertake prudential supervision of registered banks.

**38 Exercise of powers under this Part**

The powers conferred on the Cabinet, the Minister and the Bank by this Part shall be exercised for the purposes of –

- (a) Promoting the maintenance of a sound and efficient financial system; or
- (b) Avoiding significant damage to the financial system that could result from failure of a registered bank.

**39 Register**

(1) The Bank shall maintain a register of persons to be known as “registered banks”.

(2) The register shall be available for public inspection at the head office of the Bank during normal business hours.

**40 Application for registration**

(1) No person who is not registered as a bank under this Act shall carry on banking business in Niue.

(2) A person may apply to the Bank to be registered as a registered bank.

(3) Applications to be registered as a registered bank shall be –

(a) Made in such manner as may be specified by the Bank; and

(b) Accompanied by payment of such fee as may be determined by the Bank and approved by the Minister by notice in the *Gazette*.

(4) Every person who makes an application under this section shall furnish to the Bank such information as may be required by the Bank to assist in determining the application.

**40A Provision of acquiring services and issuing services**

(1) For the purposes of section 40(1), a person does not carry on banking business in Niue just because the person does any or all of the following:

(a) provides acquiring services in Niue, or to customers in Niue;

(b) provides issuing services in Niue, or to customers in Niue;

(c) offers to do, or advertises, markets, or otherwise makes known the person's ability to do, either or both of the things stated in paragraphs (a) and (b).

(2) For the purposes of the law in Niue, acquiring services or issuing services provided in Niue by any person (whether directly, or with the help or involvement of an approved agent (within the meaning of section 84A)) must be treated as having been supplied —

(a) in New Zealand, and

(b) subject to the rules that apply to those services in New Zealand (including the payments standards that the person is subject to in New Zealand and those imposed by any applicable credit card schemes).

**41 Voluntary removal of name from register**

(1) A registered bank may, by notice in writing, require the Bank to remove the name of that registered bank from the register on a date specified in the notice, not being a date earlier than 14 days, or such shorter period as the Bank may agree to, after the date the notice is given.

(2) The registered bank shall, within 7 days of giving that notice, give public notice of the fact that it had given the notice to the Bank.

(3) The Bank shall remove the name of the registered bank from the register on the date specified in the notice and shall give notice of the removal in the name in the *Gazette*.

(4) Except with the consent of the Bank, a registered bank shall not give notice under subsection (1) if –

(a) A notice has been given to that registered bank under section 67(1)(c)(i); or

(b) A person has been appointed under section 67(1)(c)(ii) to exercise, in relation to that registered bank, the powers conferred by that paragraph; or

(c) A person has been appointed under section 69 to carry out an investigation of the affairs of that registered bank; or

(d) A notice is in force under section 79 in relation to that registered bank.

(5) The Bank may refuse to remove the name of a registered bank from the register if –

(a) A notice has been given to the registered bank under section 67(1)(c)(i); or

- (b) A person has been appointed under section 67(1)(c)(ii) to exercise, in relation to that registered bank, the powers conferred by that paragraph; or
- (c) A person has been appointed under section 69 to carry out an investigation into the affairs of that registered bank; or
- (d) A notice is in force under section 79 in relation to that registered bank.

**42 Offence**

(1) No person other than a registered bank shall carry on banking business in Niue or use any name, title, style, or designation or use any description which represents or implies that that person is a registered bank.

(2) Every person who contravenes subsection (1) commits an offence and is liable on summary conviction –

- (a) In the case of an individual, to a fine not exceeding 50 penalty units; and
- (b) In the case of a body corporate, to a fine not exceeding 500 penalty units.

(3) No person referred to in section 35(1) can be guilty of an offence under this section.

**43 Determination of applications**

(1) The Bank shall not register any person as a registered bank unless it is satisfied that the business carried on, or proposed to be carried on, by the applicant consists of, or to a substantial extent consists of, or will to a substantial extent, consist of, the borrowing and lending of money, or the provision of other financial services, or both.

(2) In determining an application under section 40, the Bank shall have regard to –

- (a) The incorporation and ownership structure of the applicant;
- (b) The size of the applicant's business or proposed business;
- (c) The ability of the applicant to carry on its business or the proposed business in a prudent manner;
- (d) The standing of the applicant in the financial market;
- (e) In any case where the applicant is a body corporate incorporated outside Niue or an unincorporated body having its head office or principal place of business outside Niue, the law and regulatory requirements relating to the licensing, registration or authorisation of banks of the country in which that body is incorporated or in which that unincorporated body has its head office or principal place of business and their application to any registered bank having its head office or principal place of business in Niue;
- (f) In any case where the applicant is a subsidiary of any body corporate incorporated outside Niue, the law and regulatory requirements relating to the licensing, registration, or authorisation of banks of the country in which the body corporate which the Bank considers exercises ultimate control of the applicant is incorporated and their application to any registered bank having its head office or principal place of business in Niue;
- (g) Such other matters as may be prescribed in regulations.

(3) For the purposes of subsection (2)(g), Cabinet may on the advice of the Minister given under a recommendation of the Bank, make regulations prescribing additional matters to which the Bank shall have regard in considering applications for registration.

(4) The Bank shall give notice in the *Gazette* of the registration of any person as a registered bank under this section.

**44 Conditions of registration**

(1) A person may be registered as a registered bank unconditionally, or subject to such conditions as the Bank may specify.

(2) The Bank may by notice in writing to a registered bank –

- (a) In a case where the bank has been registered unconditionally or has been deemed to have been registered, impose conditions of registration;
- (b) Vary or remove any condition, whether imposed on the registration of the bank or under paragraph (a), or add to any such condition.

(3) The Bank shall not –

- (a) Impose conditions of registration under subsection (2)(a); or

(b) Vary or add to conditions of registration under subsection (2)(b) –

unless the registered bank is given notice in writing of the Bank's intention to do so, has a reasonable opportunity to make submissions to the Bank, and the Bank has regard to those submissions.

(4) The Bank may specify conditions that relate to any of the following matters –

- (a) The matters to which the Bank is required to have regard under section 43 in determining an application for registration including any matters prescribed by regulations made under that section; and
- (b) The matters referred to in section 43 including any matters prescribed by regulations made under that section.

**45 Publication of principles**

The Bank shall publish the principles on which it acts, or proposes to act –

- (a) In determining applications for registration; and
- (b) In imposing, varying, removing, or adding to conditions of registration.

**46 Cancellation of registration**

(1) Cabinet may on the advice of the Minister given in accordance with a recommendation of the Bank, cancel the registration of a registered bank.

(2) The Bank shall not make a recommendation under subsection (1) unless it is satisfied –

- (a) That the registered bank was registered on information that was false or misleading in a material particular; or
- (b) That the registered bank has suffered a material loss of standing in the financial market since being registered; or
- (c) If the registered bank is a body corporate –
  - (i) that an order has been made for the winding up of that body corporate; or
  - (ii) that a resolution has been passed for the voluntary winding up of that body corporate; or
  - (iii) that a receiver has been appointed in respect of that body corporate; or
- (d) If the registered bank is a partnership –
  - (i) that the partnership is dissolved; or
  - (ii) that, if a member of the partnership is a body corporate, an event referred to in paragraph (c) has occurred in relation to that member; or
  - (iii) that a member of the partnership is adjudged bankrupt or has made a composition or arrangement with that member's creditors; or
- (e) That a condition of registration has not been complied with; or
- (f) That the registered bank has not carried on its business in a prudent manner;

- (g) That the registered bank has been involved in any illegal activity or has been knowingly involved in the laundering of the proceeds of sale of any prohibited narcotic substances or the laundering of the proceeds gained from any other serious criminal activity, whether that sale or laundering or other serious criminal activity occurred in Niue or elsewhere; or
  - (h) That the registered bank has failed to comply with an obligation imposed under this Act.
- (3) The Bank shall not make a recommendation under subsection (1) unless
- (a) The registered bank is given not less than 14 days' notice in writing of the Bank's intention to consider making the recommendation; and
  - (b) The registered bank has a reasonable opportunity to make submissions to the Bank; and
  - (c) The Bank has regard to those submissions.
- (4) A copy of any written submission made by the registered bank shall be sent to the Minister together with any recommendation by the Bank.
- (5) The Bank shall, as soon as practicable after the making of an order in Cabinet cancelling the registration of a registered bank, give notice in writing to the bank stating the grounds on which the Bank's recommendation was made.

**47 Carrying on business in a prudent manner**

- (1) In –
  - (a) Having regard, under section 43(2)(c) to the ability of an applicant for registration as a registered bank to carry on its business or proposed business in a prudent manner; or
  - (b) Determining under section 46(2)(f) that a registered bank has not carried on its business in a prudent manner, the Bank shall confine its consideration to the following matters –
    - (i) Capital in relation to the size and nature of the business or proposed business;
    - (ii) Loan concentration or proposed loan concentration and risk exposures or proposed risk exposures;
    - (iii) Separation of the business or proposed business from other business and from other interests of any person owning or controlling the applicant or registered bank;
    - (iv) Internal controls and accounting systems or proposed internal controls and accounting systems;
    - (v) Such other matters as may be prescribed in regulations.
- (2) Cabinet may, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations prescribing additional matters for the purposes of subsection (1).
- (3) The Board shall issue, in such manner as the Board may determine, guidelines for the purpose of interpreting any of the matters referred to in subsection (1)(b)(i).

**48 Annual fee**

- (1) Every registered bank shall pay to the Bank an annual fee of such amount as may be determined by the Bank, approved by the Minister, and notified in the *Gazette*.
- (2) Without limiting subsection (1) –
  - (a) Different fees may be determined for different classes of registered banks;

- (b) In determining fees the Bank may have regard to the anticipated costs of the Bank in exercising the powers conferred by this Part.

**49 Credit assessment of registered banks**

(1) The Bank may by notice in writing to all registered banks or to all members of any class of registered banks, require each of those banks –

- (a) To undergo an independent assessment of its credit worthiness or financial stability by a person or organisation nominated or approved by the Bank; and
- (b) To publish the results of that assessment in such manner as the Bank directs.

(2) Every registered bank shall comply with a notice given under this section.

**50 Public disclosure of financial and other information by registered banks**

(1) The Bank shall, by notice in the *Gazette*, prescribe the information which, on the approval of the notice by Cabinet under subsection (5), shall be published by all registered banks or any specified class of registered banks.

(2) The information shall be contained in a document to be known as a “disclosure statement” and shall be published in the manner and on such occasions as shall be specified in the notice.

(3) Without limiting the information which may be prescribed, a notice under subsection (1) may prescribe information relating to –

- (a) Directors, principal officers, secretaries, auditors, bankers, and solicitors;
- (b) Incorporation and ownership structure;
- (c) Financial and accounting systems and controls;
- (d) Assets and liabilities including asset and liability maturities;
- (e) Income and expenditure;
- (f) Fees and charges including interest rates charged and payable;
- (g) Capital structure;
- (h) Loan concentrations and risk exposures;
- (i) Liquidity;
- (j) Obligations and commitments including contingent liabilities;
- (k) Foreign exchange and interest rate exposures;
- (l) Pending proceedings and arbitrations;
- (m) Acquisitions.

(4) Without limiting subsection (1) or subsection (3), a notice under subsection (1) may –

- (a) Prescribe information that is required to be contained under normal accounting principles in financial statements;
- (b) Require the publication of financial statements and notes to those statements for any period or periods specified in the notice;
- (c) Require financial statements and information to be published in consolidated form;
- (d) Require financial information which is required to be published to be taken from audited financial statements;
- (e) Require financial statements and information which are required to be published to be audited and to be accompanied by an auditor’s report.

(5) The Cabinet may, by order –

- (a) In a case where a notice under subsection (1) prescribes information to be published by all registered banks, approve that notice, and on the coming into

force of that order, every registered bank shall publish that information in the form and in the manner prescribed;

- (b) In a case where a notice under subsection (1) prescribes information to be published by a specified class of registered banks, approve that notice, and on the coming into force of that order, every registered bank which is a member of that class shall publish that information in the form and in the manner prescribed.

(6) A registered bank shall not be required to publish information relating to the affairs of any particular customer or client of the bank.

(7) The Bank shall consult with the Government before it prescribes information which shall be published and the manner in which it shall be published, under this section, by registered banks or any specified class of registered banks.

(8) If the auditor's report required under subsection (4)(e) is qualified in any way, this may constitute a reasonable ground for the exercise of those powers conferred on the Bank by sections 79 to 84.

## **51 Disclosure statements to be signed**

Every disclosure statement which a registered bank is required to publish under section 50 shall be dated and shall be signed –

- (a) In the case of a body corporate, by every director of the body corporate or by that director's agent authorised in writing; and
- (b) In the case of a partnership, by every member of the partnership or by that member's agent authorised in writing.

## **52 Bank may require disclosure statement to be corrected**

Where the Bank considers that a disclosure statement published by a registered bank –

- (a) Contains information that is false or misleading; or
- (b) Does not contain information which it is required to contain, whether or not the information contained in the disclosure statement is false or misleading as a result of the omission;

the Bank may, by notice in writing to the registered bank, require the registered bank to –

- (i) publish a disclosure statement that does not contain false or misleading information; or
- (ii) publish a disclosure statement that contains the information that was omitted; or
- (iii) take such other corrective action as the Bank may specify in the notice.

## **53 Interpretation**

For the purposes of sections 54 to 60 –

“advertisement” means a form of communication –

- (a) That is to be, or has been, distributed to any person by any means; and
- (b) That is authorised or instigated by or on behalf of a registered bank or prepared with the co-operation of, or by arrangement with, a registered bank; and
- (c) That contains, or refers to, an offer of debt securities by a registered bank, or is reasonably likely to induce persons to subscribe for debt securities of the registered bank;

“debt security” in relation to a registered bank, means any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, that registered bank (whether or not the interest or right is secured by a charge over any property), and includes –

- (a) A debenture, debenture stock, bond note, certificate of deposit, and convertible note; and
- (b) Any renewal or variation of the terms or conditions of any existing debt security; and
- (c) Any security that is declared by Cabinet, to be a debt security for the purposes of this Act.

**54 Content of advertisements by registered banks**

- (1) Every advertisement by a registered bank shall comply with the requirements prescribed by regulations made under this Act.
- (2) This section shall come into force on a date to be appointed by order of Cabinet.

**55 Regulations**

- (1) Cabinet may, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations for the following purposes –
  - (a) Regulating advertising and advertisements by registered banks including –
    - (i) prescribing the information, statements, certificates, documents, or other matters that shall or shall not be contained in, or endorsed on, or attached to, advertisements;
    - (ii) prohibiting or restricting the use in advertisements of prescribed words, information, statements, sounds and images, graphics, or other matters;
    - (iii) prescribing requirements as to the layout or presentation of advertisements and the size of printing used in advertisements – and different matters may be prescribed, prohibited, restricted, specified, or required in respect of different classes of advertisements;
  - (b) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under paragraph (a), and prescribing the fines, not exceeding, in the case of an individual 50 penalty units, and in the case of a body corporate, 500 penalty units, that may be imposed in respect of any offence.
- (2) The Bank shall consult with Cabinet before it makes a recommendation under subsection (1).

**56 Offence to advertise in contravention of regulations**

- (1) If an advertisement that does not comply with the requirements prescribed by regulations made under this Act is distributed to any person –
  - (a) The registered bank; and
  - (b) Every person holding office as a director of the registered bank at the time the advertisement was distributed – commits an offence.
- (2) A registered bank that commits an offence against this section is liable on conviction to a fine not exceeding 500 penalty units.
- (3) An individual who commits an offence against this section is liable on conviction to a fine not exceeding 50 penalty units.
- (4) It is a defence to a prosecution for an offence against this section by a person referred to in subsection (1)(b) if the defendant proves that the advertisement was published without the defendant's knowledge and consent.
- (5) This section shall come into force on a date to be appointed by order by Cabinet.

**57 Bank may prohibit advertisements by registered banks**

- (1) Where, at any time, the Bank is of the opinion that an advertisement –
- (a) Is likely to deceive, mislead, or confuse with regard to any matter that is material to an offer of debt securities by a registered bank to which it relates; or
  - (b) Is inconsistent with the most recent disclosure statement published by the registered bank; or
  - (c) Does not comply with regulations made under this Act –
- the Bank may make an order prohibiting the distribution of that advertisement or any advertisement which relates to the offer of those securities.
- (2) Any order may be made on such terms and conditions as the Bank thinks fit.
- (3) Where the Bank makes an order under this section –
- (a) It shall forthwith notify the registered bank that the order has been made and the reasons for making it; and
  - (b) It may notify any other person that the order has been made and the reasons for making it.
- (4) Every person who contravenes an order made under this section commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.
- (5) It is a defence to a charge under subsection (4) if the defendant proves that the advertisement was distributed –
- (a) Without the defendant's knowledge; or
  - (b) Without the defendant's knowledge of the order.
- (6) At any time after an order has been made under this section, the registered bank shall be entitled to appear and be represented before the Bank and the Bank, if it is satisfied that the order should not continue in force, may revoke the order.
- (7) This section shall come into force on a date to be appointed by order by Cabinet.

**58 Offences in relation to disclosure statements and advertisements**

- (1) Every registered bank commits an offence if, without lawful justification or excuse, it fails to publish information that is required to publish in a disclosure statement under section 50.
- (2) Where a disclosure statement that includes information that is false or misleading is published by a registered bank, the registered bank and every person holding office as a director of the registered bank at the time of publication of the disclosure statement, commits an offence.
- (3) Where an advertisement that contains information that is false or misleading is distributed, the registered bank and every person holding office as a director of the bank at the time of distribution of the advertisement, commits an offence.
- (4) A registered bank that commits an offence against this section is liable on conviction to a fine not exceeding 500 penalty units.
- (5) An individual who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 2 years, or to a fine not exceeding 50 penalty units.
- (6) It is a defence to a prosecution for an offence against subsection (2) or subsection (3), if the defendant proves that the information was immaterial or, in the case of an individual, that the defendant had reasonable grounds to believe and did, up

to the publication of the disclosure statement, or the distribution of the advertisement, as the case may be, believe that the information was true.

(7) This section shall come into force on a date to be appointed for the order by Cabinet.

**59 Civil liability**

(1) Subject to section 60, the following persons are liable to pay compensation to any person who sustains a loss by reason of subscribing for any debt security issued by a registered bank in reliance on false or misleading information contained in a disclosure statement or an advertisement, namely –

- (a) The registered bank; and
- (b) Every person holding office as a director of the registered bank at the time of publication of the disclosure statement or the distribution of the advertisement, as the case may be.

(2) This section shall come into force on a date to be appointed by order by Cabinet.

**60 Defences**

(1) A person is not liable under section 59 in relation to false or misleading information that is included in a disclosure statement or an advertisement if that person proves that –

- (a) The disclosure statement was published or the advertisement was distributed without his or her knowledge or consent, and on becoming aware of the publication or distribution he or she forthwith gave notice to the Bank that it was published or distributed without his or her knowledge or consent, and also gave reasonable public notice that it was published or distributed without his or her knowledge or consent; or
- (b) After publication of the disclosure statement or the distribution of the advertisement and before the securities were subscribed for, he or she, on becoming aware of the false or misleading information, withdrew his or her consent to the disclosure statement or the advertisement, forthwith gave notice to the Bank of the withdrawal of that consent, and also gave reasonable public notice of the withdrawal of the consent; or
- (c) He or she had reasonable grounds to believe and did, up to the time of the subscription for the securities, believe that the statement was true.

(2) This section shall come into force on a date to be appointed by order by Cabinet.

**61 Supply of information for purposes of prudential supervision**

(1) For the purposes of this Part, the Bank may, by notice in writing to any registered bank or by notice in the *Gazette* applying to any specified class of registered banks, require the bank, or as the case may be, banks of that class, to supply to the Bank such information, data, and forecasts relating to the business, operation, or management of the bank or banks of that class and for such periods and in such form as may be specified in the notice.

(2) Without limiting subsection (1), a notice may require information and data to be supplied relating to the financial and accounting systems and controls, assets and liabilities, income and expenditure (including interest rates charged and payable), fees and charges, obligations and commitments and risk exposures of, and transactions entered into by, that registered bank or class of registered banks and any associated

person and, where specified, in consolidated form, in respect of business carried on in Niue, or elsewhere and whether as principal, broker, agent or intermediary.

(3) A notice given under this section may, by a subsequent notice, be revoked, varied or amended by the Bank.

(4) Information, data, and forecasts required to be supplied under this section shall be supplied to the Bank at such place in Niue and at such time as may be specified in the notice.

(5) Every registered bank commits an offence if, without lawful justification or excuse it –

(a) Fails to comply in any respect with any of the provisions of this section or with any of the requirements of the Bank under this section; or

(b) Supplies any information or data which it is required to supply under this section which is false or misleading in a material particular.

**62 Requirement that information be audited**

(1) The Bank may, by notice in writing to a registered bank, require any information and data which that bank is required to supply under section 61 to be audited by an auditor approved by the Bank.

(2) Every registered bank commits an offence if, without lawful justification or excuse, it fails to comply with this section.

**63 Bank may require report on financial and accounting systems**

(1) The Bank may, by notice in writing to a registered bank, require that registered bank to supply the Bank with a report, prepared by a person approved by the Bank, on the financial and accounting systems and controls of that registered bank.

(2) Every registered bank commits an offence if, without lawful justification or excuse, it fails to comply with this section.

**64 Disclosure of information to Bank by auditors**

Every person who holds, or at any time has held, office as required by any enactment, as an auditor of a registered bank, shall disclose to the bank information relating to the affairs of that registered bank obtained in the course of holding that office if, in the opinion of that person –

(a) The registered bank is insolvent or is likely to become insolvent or is in serious financial difficulties; and

(b) The disclosure of that information is likely to assist, or be relevant to, the exercise by the Bank of its powers under this Part.

**65 Auditor to inform registered bank of intention to disclose**

Every auditor shall, before disclosing any information to the Bank under section 64 take reasonable steps to inform the registered bank of the intention to disclose the information and the nature of the information.

**66 Protection of auditors**

(1) No civil, criminal, or disciplinary proceedings shall lie against any auditor arising from the disclosure in good faith of information to the Bank under section 64.

(2) No tribunal, body, or authority, having jurisdiction in respect of the professional conduct of any auditor, shall make any order against, or do any act in relation to, that person in respect of such disclosure.

(3) No information received by the Bank under section 64 shall be admissible in evidence in any proceedings against the auditor concerned.

(4) Nothing in subsection (3) shall limit the admissibility of any information obtained in any other way.

**67 Powers to obtain information and documents**

(1) Where the Bank has reasonable cause to believe –

- (a) That any information or data supplied to the Bank by a registered bank under section 61 is false or misleading in a material particular; or
- (b) That a registered bank has failed to comply with any requirement to supply information, data, or forecasts under section 61; or
- (c) That a registered bank has failed to comply with section 63, it may –
  - (i) by notice in writing to that registered bank, require that registered bank to supply to the Bank, within the time specified in the notice, such information and data relating to the business, operation and management of that registered bank as may be specified in the notice; or
  - (ii) appoint, in writing, any person to enter and search any premises and inspect, remove, and take copies of, any documents or extracts from documents relating to the business, operation, and management of that registered bank in the possession, or under the control, of any person, and, where necessary, require the reproduction in usable form of any information recorded or stored in those documents.

(2) Every person commits an offence who, without lawful justification or excuse, hinders, obstructs, or delays, in the conduct of any inspection under this section, any person duly authorised to make such inspection.

(3) Every registered bank commits an offence if, without lawful justification or excuse –

- (a) It fails to comply with any requirement of the Bank under subsection (1)(c)(i); or
- (b) It supplies any information or data required to be supplied under subsection (1)(c)(i) which is false or misleading in a material particular.

**68 Requirements on entering and searching premises**

(1) No person appointed under section 67(1)(c)(ii) shall enter and search any premises, or inspect, remove, or take copies of any documents, or extracts from documents, in the possession of, or under the control of, any person, or require the reproduction in usable form of any information recorded or stored in any documents, unless –

- (a) The occupier of the premises, or the person who has possession of the documents, agrees; or
- (b) That person obtains a warrant under section 74.

(2) Every person authorised to enter and search any premises under a warrant obtained under section 74 on first entering those premises, and, if requested, at any subsequent time, produce –

- (a) Evidence of that person's authority to enter the premises; and
- (b) Evidence of that person's identity.

**69 Investigation of affairs of registered bank**

Where the Bank is satisfied that it is necessary or desirable for the purpose of determining whether or not to exercise the powers conferred under section 79 that an investigation of the affairs of any registered bank should be carried out, the Bank may appoint, in writing, any person to carry out an investigation of the affairs of that registered bank.

**70 Powers of person appointed to carry out investigation**

(1) Any person appointed under section 69 may, for the purposes of carrying out an investigation of the affairs of a registered bank –

- (a) By notice in writing, require that registered bank, or any officer or employee of that registered bank, or any other person, to –
    - (i) supply any information or data relating to the business, operation, and management of the registered bank;
    - (ii) produce for inspection any documents of, or relating to, the business, operation and management of that registered bank in the custody, or under the control, of that registered bank, officer, employee, or person;
    - (iii) where necessary, reproduce in usable form any information recorded or stored in such documents;
  - (b) Take copies of any documents produced for inspection under paragraph (a);
  - (c) Require any officer or employee of that registered bank, or any other person, to answer any question relating to the business, operation, and management of that registered bank.
- (2) Subject to section 72, any person appointed under section 69 may, for the purposes of carrying out an investigation of the affairs of the registered bank, at any time –
- (a) Enter and search any premises;
  - (b) Inspect, remove and take copies of any documents, or extracts from documents, relating to the business, operation and management of that registered bank in the possession, or under the control, of any person;
  - (c) If necessary, require any person to reproduce in usable form any information recorded or stored in those documents.

**71 Offences in relation to investigations**

(1) Every person commits an offence who, without lawful justification or excuse –

- (a) Hinders, obstructs, or delays any person appointed to carry out an investigation under section 69, in carrying out that investigation; or
- (b) Refuses to answer any question put to him or her by that person under section 70; or
- (c) Supplies any information required to be supplied under section 70 which is false or misleading in a material particular.

(2) Every registered bank commits an offence if, without lawful justification or excuse –

- (a) It fails to comply with any requirement of a person appointed to carry out an investigation under section 69; or
- (b) It supplies any information or data required to be supplied under section 70(1) which is false or misleading in a material particular.

(3) A statement made by any person in answer to any question by a person appointed under section 69 to carry out an investigation into the affairs of a registered bank shall not be admissible in criminal proceedings against the maker of the statement.

**72 Requirements to be complied with by person carrying out investigation**

(1) Any person who exercises any powers conferred by section 70(1) shall, if requested, produce the instrument of that person's appointment under section 69.

(2) No person who exercises any powers conferred by section 70(2) shall enter and search any premises, or inspect, remove and take copies of any documents or

extracts from documents, or require the reproduction in usable form of any information recorded or stored in documents, unless –

- (a) The occupier of the premises, or the person who has possession of the documents, agrees; or
- (b) That person obtains a warrant under section 74.

(3) Every person authorised to enter and search any premises under a warrant obtained under section 74 shall, on first entering those premises and, if requested, at any subsequent time, produce –

- (a) Evidence of that person's authority to enter the premises; and
- (b) Evidence of that person's identity.

### 73 Confidentiality of information

(1) This section applies to –

- (a) Information, data, and forecasts supplied or disclosed to, or obtained by –
  - (i) the Bank;
  - (ii) a person appointed under section 67(1)(c)(ii) or section 69 – under, or for the purposes of, or in connection with the exercise of powers conferred by this Part;
- (b) Information and data derived from or based upon information, data, and forecasts referred to in paragraph (a);
- (c) Information relating to the exercise, or possible exercise, of the powers conferred by this Part.

(2) Information, data, and forecasts to which this section applies shall not be published or disclosed by the Bank, any officer or employee of the Bank, or a person appointed under section 67(1)(c)(ii) or section 69, except –

- (a) With the consent of the person to whom the information relates;
- (b) To the extent that the information is available to the public under any Act, or in a public document;
- (c) In statistical or summary form arranged in such a manner as to prevent any information published or disclosed from being identified by any person as relating to any particular person;
- (d) For the purposes of, or in connection with, the exercise of powers conferred by this Part;
- (e) In connection with any proceedings for an offence against this Act;
- (f) To any central bank, authority, or body in any other country which exercises functions corresponding to or similar to those conferred on the Bank under this Part for the purposes of the exercise by that central bank, authority, or body of those functions;
- (g) To any person whom the Bank is satisfied has a proper interest in receiving such information.

(3) No information, data, or forecasts shall be published or disclosed under subsection (2)(f) or (g) unless the Bank is satisfied that satisfactory provision exists to protect the confidentiality of the information, data, or forecasts published or disclosed.

(4) No officer or employee of the Bank and no person appointed under section 67(1)(c)(ii) or section 69 shall use any information, data, or forecasts to which this section applies for a purpose not connected with the purpose for which such information, data, or forecasts was, or were, supplied, disclosed, or obtained.

(5) No person to whom any information, data, or forecasts to which this section applies is or are published or disclosed under subsection (2)(d) shall publish, disclose, or use such information, data, or forecasts except –

- (a) For the purposes of, or in connection with the exercise of powers conferred by, this Part; and

- (b) Under such conditions as may be specified by the Bank.

(6) No person to whom any information, data or forecasts to which this section applies is or are published or disclosed under subsection (2)(a) or subsection (2)(g) shall publish, disclose or use such information, data, or forecasts unless the publication, disclosure, or use is –

- (a) Authorised by the Bank; or

- (b) Necessary or desirable in connection with the exercise of any function or power conferred by any enactment.

(7) Every person who contravenes this section commits an offence.

(8) Nothing in any other Act applies to information, data and forecasts to which this section applies whether or not such information, data, and forecasts has or have been published or disclosed to any person under this section.

#### **74 Procedure for obtaining warrants**

(1) If the Court is satisfied, on application in writing, made on oath, that there are reasonable grounds for believing –

- (a) That any information or data supplied to the Bank by a registered bank under section 61 is false or misleading in a material particular; or
- (b) That a registered bank has failed to comply with any requirement to supply information, data, or forecasts under section 61; (c) That a registered bank has failed to comply with section 63 –

it may issue a warrant, in terms of section 75, to a person appointed under section 67(1)(c)(ii).

(2) If the Court is satisfied, on application in writing made on oath, that there are reasonable grounds for believing that it is necessary for the purpose of determining whether to exercise the powers conferred under section 79 that an investigation of the affairs of a registered bank should be carried out, it may issue a warrant, in terms of section 75, to a person appointed under section 69.

(3) Every warrant issued under subsection (1) shall state whether it is issued under paragraph (a) or paragraph (b).

#### **75 Effect of warrant**

(1) Every warrant issued under section 74 authorises the person named in it, at any time and, if necessary, by force, to –

- (a) Enter and search the premises named in it;
- (b) Inspect, remove, and take copies of, documents or extracts from documents relating to the business, operation and management of the registered bank in the possession, or under the control, of any person;
- (c) Where necessary, require any information recorded or stored in those documents to be reproduced in usable form.

(2) The warrant shall continue in force for a period of 6 months or until the purpose for which it was granted has been satisfied, whichever is the lesser.

(3) Every person named in the warrant shall, as soon as practicable after removing any documents or extracts from documents from any premises, supply a copy of the documents or extracts to the person from whom the documents or extracts were removed.

**76 Effect of proceedings**

(1) Where any proceedings in any court in respect of the exercise of any powers conferred by section 67 or section 69 or section 70, until a final decision in relation to those proceedings is given, the powers may be, or may continue to be exercised as if no such proceedings had been commenced, and no person shall be excused from fulfilling any obligation under those sections by reason of those proceedings.

(2) This section shall apply notwithstanding any other Act or rule of law.

**77 Effect of final decision that exercise of powers unlawful**

In any case where it is declared in a final decision given in any proceedings in respect of the exercise of powers conferred by section 67 that the exercise of any powers conferred by that section is unlawful, to the extent to which the exercise of those powers is declared unlawful –

- (a) The Bank shall ensure that forthwith after the decision of the Court is given –
  - (i) any information and data supplied by the registered bank under section 67(1)(c) is destroyed;
  - (ii) any documents or extracts from documents obtained under an inspection made under section 67(1)(c)(i) are returned to the person previously having possession of those documents or previously having them under his or her control and any copies of such documents or extracts are destroyed;
  - (iii) any information derived from or based upon any such information and data or documents or extracts is destroyed;
- (b) No information and data supplied by the registered bank under section 67(1)(c) and no documents or extracts from documents obtained under an inspection made under section 67(1)(c)(i) shall be –
  - (i) admissible in evidence in any proceedings;
  - (ii) used in connection with the exercise of any power conferred by section 79.

**78 Decision that exercise of powers under section 69 or 70 unlawful**

In any case where it is declared in a final decision given in any proceedings in respect of the exercise of powers conferred by section 69 or section 70 that the exercise of any powers conferred by those sections is unlawful, to the extent to which the exercise of those powers is declared unlawful –

- (a) The Bank shall ensure that forthwith after the decision of the Court is given –
  - (i) Any information or data obtained under section 70(1) is destroyed;
  - (ii) Any documents produced for inspection under section 70(1)(a) are returned to the person previously having possession of the documents or previously having the documents under his or her control and any copies of such documents or extracts from documents are destroyed;
  - (iii) any documents or extracts from documents obtained under an inspection made under section 70(2) are returned to the person previously having possession of those documents or previously having them under his or her control and any copies of such documents or extracts from documents are destroyed;
  - (iv) any information derived from or based upon any such information, documents or extracts is destroyed;

- (b) No information or data obtained or documents produced for inspection under section 70(1)(a) and no documents or extracts from documents obtained under an inspection made under section 70(2) shall be –
- (i) admissible in evidence in any proceedings;
  - (ii) used in connection with the exercise of any power conferred by section 79.

**79 Bank may require registered bank to consult**

- (1) If the Bank has reasonable grounds to believe that –
- (a) A registered bank is insolvent or is likely to become insolvent; or
  - (b) A registered bank is about to suspend payment or is unable to meet its obligations as and when they fall due; or
  - (c) The affairs of a registered bank are being conducted in a manner prejudicial to the soundness of the financial system; or
  - (d) The circumstances of a registered bank are such as to be prejudicial to the soundness of the financial system; or
  - (e) The business of a registered bank has not been, or is not being, conducted in a prudent manner; or
  - (f) A registered bank has failed to comply with any requirement imposed by or under this Act or regulations made under this Act; or
  - (g) A registered bank has been convicted of an offence against this Act; or
  - (h) A registered bank has failed to comply with a condition of its registration –
- the Bank may, by notice in writing, require the registered bank and any associated person of the registered bank, while the notice is in force to consult with the Bank as to the circumstances of that registered bank and methods of resolving any difficulties facing it.

- (2) If the Bank has reasonable grounds to believe that –
- (a) An associated person of a registered bank is insolvent or is likely to become insolvent; or
  - (b) An associated person of a registered bank is about to suspend payment or is unable to meet its obligations as and when they fall due; or
  - (c) The affairs of an associated person of a registered bank are being conducted in a manner prejudicial to the soundness of the financial system; or
  - (d) The circumstances of an associated person of a registered bank are such as to be prejudicial to the soundness of the financial system –
- the Bank may, by notice in writing, require that associated person, the registered bank, and any other associated person of the registered bank while the notice is in force to consult with the Bank as to the circumstances of that associated person and methods of resolving any difficulties facing it.

(3) Every notice under subsection (1) or subsection (2) shall state the grounds on which it is given.

(4) A registered bank or an associated person, as the case may be, that fails to comply with a notice under this section commits an offence.

(5) The Bank may, at any time, revoke a notice given under this section.

**80 Bank may give advice and assistance**

(1) While a notice under section 79(1) is in force in relation to a registered bank or an associated person, the Bank may –

- (a) Give advice to the registered bank or associated person concerning its affairs;

- (b) Give advice and assistance in connection with the negotiation of any sale or other disposition of the whole or any part of the capital or business undertaking of that registered bank or associated person;
  - (c) Give advice and assistance in connection with any scheme for resolving the difficulties of that registered bank;
  - (d) With the consent of the Minister, by notice in writing to the parties, approve the sale or other disposition of the whole or any part of the capital, or business undertaking, of the registered bank or associated person to any person specified in the notice.
- (2) While a notice under section 79(2) is in force in relation to an associated person of a registered bank or the registered bank, the Bank may –
- (a) Give advice to the associated person or the registered bank concerning its affairs;
  - (b) Give advice and assistance in connection with the negotiation of any sale or other disposition of the whole or any part of the capital or business undertaking of that associated person or the registered bank;
  - (c) Give advice and assistance in connection with any scheme for resolving the difficulties of that associated person;
  - (d) With the consent of the Minister, by notice in writing to the parties, approve the sale or other disposition of the whole or any part of the capital, or business undertaking, of the associated person or the registered bank to any person specified in the notice.

**81 Bank may give directions**

(1) While a notice under section 79(1) is in force in relation to a registered bank or an associated person, the Bank may, with the prior consent of the Minister, give a direction in writing –

- (a) Requiring that registered bank or associated person to carry on business or any part of its business under the direction;
- (b) Requiring that registered bank or associated person to cease to carry on its business, or any part of its business in accordance with the direction;
- (c) Requiring that registered bank or associated person to ensure that any officer or employee of the registered bank or associated person ceases to take part in the management or conduct of its business except with the permission of the Bank and so far as that permission extends;
- (d) Requiring the registered bank or associated person in general meeting to remove or replace a director;
- (e) Requiring the registered bank or associated person to take such other action as may be specified in the notice.

(2) While a notice under section 79(2) is in force in relation to an associated person of a registered bank or a registered bank, the Bank may, with the prior consent of the Minister, give a direction in writing –

- (a) Requiring that associated person or the registered bank to carry on business, or any part of its business, in accordance with the direction;
- (b) Requiring that associated person or the registered bank to cease to carry on its business, or any part of its business under the direction;
- (c) Requiring the associated person or registered bank to ensure that any officer or employee of the associated person or the registered bank ceases to take part in the management or conduct of its business except with the permission of the Bank and so far as that permission extends;

- (d) Requiring that associated person or the registered bank in general meeting to remove or replace a director;
- (e) Requiring that associated person or the registered bank to take such other action as may be specified in the notice.

(3) The Bank may, with the consent of the Minister, amend or modify a direction given under this section or revoke a direction and give another direction in its place, and may, at any time, revoke a direction.

**82 Offence to contravene directions**

(1) Every person commits an offence who, being a registered bank or associated person, without lawful justification or excuse, contravenes, or fails to comply with, a direction under section 81.

(2) Every person commits an offence who, being an officer or employee of a registered bank or of an associated person, without lawful justification or excuse, obstructs, hinders or prevents that registered bank or associated person giving effect to any direction given under section 81.

**83 Offence to disclose giving of notice**

(1) Subject to subsections (2) and (3) every person commits an offence who discloses that a notice has been given under section 79 or that a direction has been given under section 81.

(2) Nothing in subsection (1) applies to the disclosure or publication of the fact that a notice or direction has been given where the disclosure or publication is made –

- (a) To any professional or financial adviser of the registered bank or associated person to which the notice or direction relates;
- (b) With the written consent of the Bank, for the purposes of the sale or other disposition, or the possible sale or other disposition, of the whole or any part of the capital, or business undertaking, of the registered bank or associated person;
- (c) By the Bank or with the written consent of the Bank –
  - (i) to the public; or
  - (ii) to any person who has a proper interest in knowing that the notice or direction has been given.

(3) Nothing in subsection (1) applies to the disclosure or publication of the fact that a direction has been given under section 81(1)(c) or (d) or section 81(2)(c) or (d) for the purpose of giving effect to that direction.

**84 Miscellaneous provisions with respect to notices and directions**

(1) A notice given under section 79 and a direction given under section 81 shall be deemed to have been given on delivery to the head office, registered office or principal place of business in Niue of the registered bank or associated person.

(2) Where the Bank approves the sale or other disposition under section 80 of the whole or any part of the capital, or business undertaking, of a registered bank or any associated person to any person, the provision of any enactment requiring any consent, licence, permission, clearance or other authority shall not apply in relation to that sale or disposition.

**PART 7A**  
**AUTHORISING PROVISION OF CERTAIN BANKING SERVICES**

**84A Interpretation**

In this Part, —

“approved agent” —

- (a) means a body corporate that is for the time being approved under section 84F as the agent in Niue of a designated bank; and

- (b) in relation to a designated bank, means an approved agent of the bank

“customer” includes prospective customer;

“designated bank” —

- (a) means a New Zealand bank that is for the time being designated by regulations to provide banking services under this Part; and

- (b) in relation to an approved agent, means the designated bank as whose agent the approved agent is approved;

“merchant” includes service-provider and financial institution;

“New Zealand account”, in relation to a designated bank, means an account at the bank in New Zealand whose operation is governed by the law of New Zealand;

“New Zealand bank” means a registered bank within the meaning of —

- (a) section 2 of the Reserve Bank of New Zealand Act 1989 (New Zealand); or

- (b) any provision enacted in substitution for that section;

“New Zealand contract” means a contract that is governed by the law of New Zealand;

“provision of any authorised agency banking service” means doing of any thing of a kind described in section 84H(1);

“provision of any authorised direct banking service” means doing of any thing of a kind described in any of paragraphs (b) to (d) of section 84D(1).

**84B Designation of New Zealand banks to provide banking services in Niue**

Cabinet may by regulations designate a New Zealand bank to provide banking services under this Part.

**84C Revocation of designation**

(1) Regulations revoking any regulations designating a New Zealand bank to provide banking services under this Part may come into force no earlier than the day 6 months after the day on which they are made.

(2) On the revocation of regulations designating a New Zealand bank to provide banking services under this Part —

- (a) the New Zealand bank to which they relate ceases to be designated to provide banking services under this Part; and

- (b) every approved agent ceases to be approved as the agent in Niue of the New Zealand bank.

(3) Subsection (2) does not prevent —

- (a) the designation to provide banking services under this Part for a second or later time of a New Zealand bank that has earlier (by virtue of that subsection) ceased to be designated to provide banking services under this Part; or

- (b) the approval of a body corporate as the agent in Niue of a designated bank for a second or later time of a body corporate that has earlier ceased to be approved as the agent in Niue of a designated bank by virtue of that subsection.

(4) Subsection (3)(b) applies whether the second or later approval applies to the same designated bank or some other designated bank.

**84D Effect of designation of banks**

(1) Whether or not it is registered as a bank under this Act, a designated bank—

- (a) may, by the agency of an approved agent, undertake the provision of any authorised agency banking service; and
- (b) may (directly, or with the help or involvement of an approved agent) do any or all of the following:
  - (i) enable customers of the bank in Niue to open electronically from Niue New Zealand accounts at the bank;
  - (ii) enable customers of the bank in Niue to operate electronically from Niue New Zealand accounts at the bank (whether opened directly under the authority of subparagraph (i) or by the agency of an approved agent);
  - (iii) enable customers of the bank in Niue to close electronically from Niue New Zealand accounts at the bank (whether opened directly under the authority of subparagraph (i) or by the agency of an approved agent);
- (c) may do in Niue (directly, or with the help or involvement of an approved agent) any other thing the doing of which is provided for in a contract that—
  - (i) is a New Zealand contract between the bank and an approved agent; and
  - (ii) has been approved by the Minister for the purposes of this paragraph by written notice to the bank;
- (d) may provide in Niue (directly, or with the help or involvement of an approved agent) acquiring services, issuing services, or both;
- (e) may by any means or medium, offer to do, or advertise, market, or otherwise make known its ability to do, the things stated in paragraphs (a) to (d) (or any of them);
- (f) may do any other thing reasonably necessary to enable the bank to do any of the things stated in paragraphs (a) to (e).

(2) Notwithstanding any enactment of Niue to the contrary, subsection (1) is complete authority for a designated bank to do any or all of the things described in that subsection.

(3) Notwithstanding subsection (2), for the purposes of the law of Niue, any thing of a kind described in any of paragraphs (a) to (c), (e), or (f) of subsection (1) that is done in Niue by a designated bank must be treated as having been done in New Zealand.

(4) Subsections (1) and (2)—

- (a) do not authorise a designated bank that is not registered as a bank under this Act to undertake, otherwise than by the agency of an approved agent, the provision of any authorised agency banking service; but
- (b) do not prevent a designated bank that is not registered as a bank under this Act from becoming registered as a bank under this Act and (while registered) carrying on banking business in Niue.

**84E Application of section 40(1) to designated banks**

Section 84B overrides section 40(1), but does not limit or affect the application to a designated bank of section 40(1) so far as it relates to—

- (a) the carrying on in Niue by the agency of an approved agent of banking business that does not constitute the provision of an authorised agency banking service; or
- (b) the carrying on in Niue by the bank directly of banking business of a kind that is not described in section 84D(1)(b) or (c).

**84F Approval of agents**

Cabinet may, by regulations stating the name of the agent and the name of the bank, approve a body corporate incorporated under the laws of Niue as the agent in Niue of a designated bank.

**84G Revocation of approval**

(1) Regulations revoking any regulations approving a body corporate incorporated under the laws of Niue as the agent in Niue of a designated bank may come into force no earlier than the day 6 months after the day on which they are made.

(2) On the revocation of regulations approving a body corporate incorporated under the laws of Niue as the agent in Niue of a designated bank, the body corporate ceases to be approved as the agent in Niue of the designated bank concerned.

(3) Subsection (2) does not prevent the approval as the agent in Niue of a designated bank for a second or later time of a body corporate that has earlier (by virtue of that subsection) ceased to be approved as the agent in Niue of a designated bank.

(4) Subsection (3) applies whether the second or later approval applies to the same designated bank or some other designated bank.

**84H Approved agents may provide certain services**

(1) Whether or not it is registered as a bank under this Act, an approved agent may —

- (a) on behalf of the designated bank, do any or all of the following things:
  - (i) enable customers of the bank in Niue to open and close New Zealand accounts at the bank;
  - (ii) accept cash in Niue to be credited to a New Zealand account at the bank, in accordance with a New Zealand contract between the account-holder and the bank;
  - (iii) in Niue, pay cash out of funds held in a New Zealand account at the bank, in accordance with a New Zealand contract between the account-holder and the bank;
  - (iv) do any or all of the things described in section 84D(1)(c);
  - (v) provide in Niue, in accordance with a New Zealand contract with the bank, services of a kind approved for the purposes of this section by Cabinet by regulations (being services that relate to accounts, products, or services of the bank of a kind offered to the public in New Zealand by the bank);
- (b) help the designated bank to do, or involve itself in the doing by the designated bank of, any or all of the things described in section 84D(1)(b), (c), or (d);
- (c) with the consent of the designated bank (given generally or in relation to the particular customer), provide to any customer in Niue of the bank any information relating to the customer that is held by the agent or bank;
- (d) act as a channel of communication between the designated bank and its customers in Niue;
- (e) on behalf of the designated bank, do in Niue any other thing the doing of which is provided for in a contract that —
  - (i) is a New Zealand contract between the bank and an approved agent; and
  - (ii) has been approved by the Minister for the purposes of this paragraph by written notice to the approved agent;
- (f) on behalf of the designated bank, enter into contracts with its customers in Niue to do any of the things stated in paragraphs (a) to (d);

- (g) by any means or medium, offer to do, or advertise, market, or otherwise make known its ability to do, the things stated in paragraphs (a) to (e) (or any of them);
- (h) do any other thing reasonably necessary to enable the agent to do any of the things stated in paragraphs (a) to (f).

(2) Regulations approving services of any kind for the purposes of subsection (1)(a)(iv)—

- (a) may apply to all approved agents; or
- (b) may apply only to approved agents of stated kinds or descriptions; or
- (c) may apply only to stated approved agents.

(3) Notwithstanding any enactment of Niue to the contrary, subsection (1) is complete authority for an approved agent to do any or all of the things described in that subsection, even if it is not registered as a bank under this Act.

(4) Subsection (1)—

- (a) does not authorise an approved agent that is not registered as a bank under this Act to carry on in Niue any banking business that is not the provision of an authorised agency banking service; but
- (b) does not prevent an approved agent that is not registered as a bank under this Act from becoming registered as a bank under this Act and (while registered) carrying on banking business in Niue.

#### **84I Effect of agency arrangement**

(1) The provision of an authorised agency banking service in Niue by an approved agent on behalf of a designated bank does not constitute the carrying on of banking business in Niue by the bank.

(2) The laws of Niue apply to every action (or failure or refusal to act) by an approved agent as if the agent acts (or fails or refuses to act) in its own right, rather than on behalf of the designated bank; and—

- (a) the agent is liable for the action (or failure or refusal) accordingly; and
- (b) the bank is not liable, either directly or vicariously, for the action (or failure or refusal).

(3) Subsection (2)—

- (a) overrides section 84H(1); and
- (b) applies even though, as between an approved agent and the designated bank, the agent and bank may be agent and principal.

(4) Subsection (3)(b) does not prevent the bank, or an officer or employee of the bank, from being liable (civilly or criminally) as a party to an action, or a failure or refusal to act, of the agent that the bank, officer, or employee participated in, directed, authorised, assented to, or knowingly acquiesced in, knowing that the action, failure, or refusal—

- (a) (in the case of civil or criminal liability) was contrary to the law of Niue; or
- (b) (in the case of civil liability only) gave rise to civil liability under the law of Niue.

#### **84J Status of bank accounts at designated banks**

(1) This subsection applies to a bank account in New Zealand at a designated bank that—

- (a) was opened directly from Niue under the authority of section 84D(1)(b)(i); or
- (b) was opened by a customer in Niue using an approved agent acting on the bank's behalf.

- (2) The law of Niue has effect as if—
- (a) a bank account to which subsection (1) applies is a bank account in New Zealand and is not a bank account in Niue; and
  - (b) the operation of a bank account to which subsection (1) applies occurs entirely in New Zealand and not in Niue.

**84K Application of section 40(1) to designated banks and approved agents**

Sections 84D(1) and 84H(1) override section 40(1); but—

- (a) section 84D(1) does not limit or affect the application to a designated bank of section 40(1) so far as it relates to the carrying on in Niue of banking business that does not constitute the provision of an authorised direct banking service; and
- (b) section 84H(1) does not limit or affect the application to an approved agent of section 40(1) so far as it relates to the carrying on in Niue of banking business that does not constitute the provision of an authorised agency banking service.

**84L Approved agents to disclose certain information required by Minister**

(1) The Minister may by written notice to an approved agent or designated bank require the agent or bank to disclose to the Minister any information described in the notice that is—

- (a) information that the Minister, some other Minister, or the Government of Niue would be entitled to require the agent or the bank to disclose under this Act if the agent and bank were each a registered bank; or
- (b) information that the competent authorities in New Zealand would be entitled to require the agent or the bank to disclose under New Zealand legislation in respect of anti-money laundering and the countering of financing of terrorism as described in section 84N if the agent and the bank were each carrying on business in New Zealand.

(2) The notice must describe the information required to be disclosed with enough particularity to enable the notice to be complied with.

(3) If the information required is in the agent's possession, the agent must promptly disclose it to the Minister.

(4) If the information required is not in the agent's possession, the agent—

- (a) must promptly require the designated bank to disclose it to the agent; and
- (b) must disclose it to the Minister promptly after the bank discloses it to the agent.

(5) Neither the agent nor the designated bank is liable to any person to whom any information disclosed under this section relates for the disclosure of the information or any consequences of that disclosure.

**84M Approved agents to keep information confidential**

An approved agent must not disclose to any person any information relating to the provision of any authorised agency banking service unless the disclosure—

- (a) is made with the consent (given generally or in the particular case) of every person to whom the information relates; or
- (b) is made to its designated bank; or
- (c) is permitted or required by the law of Niue or New Zealand.

**84N Compliance with certain New Zealand financial legislation**

Every designated bank and approved agent must comply with the requirements of New Zealand legislation in respect of anti-money laundering and the countering of financing of

terrorism (including, without limitation, any New Zealand legislation Cabinet may specify by regulations), as if such New Zealand legislation, including as to offences and penalties, (with such modifications as Cabinet may specify by regulations) applied in Niue, instead of any Niue legislation in respect of anti-money laundering and the countering of financing of terrorism (including, without limitation, any Niue legislation Cabinet may specify by regulations).

**84O Tax status of authorised agency banking services**

(1) The provision of an authorised agency banking service in Niue by an approved agent on behalf of a designated bank—

- (a) is the conduct of a taxable activity in Niue by the agency; and
- (b) is not the conduct of a taxable activity in Niue by the bank.

(2) A designated bank is not required—

- (a) to pay income tax, consumption tax, or withholding tax in relation to the provision of any authorised agency banking service on its behalf by an approved agent;
- (b) to make any withholding or deduction on account of the payment of income tax, consumption tax, or withholding tax from any money paid or received by an approved agent on its behalf.

(3) Subsections (1) and (2) override every enactment of Niue to the contrary.

**84P Tax status of authorised direct banking services**

(1) The provision of an authorised direct banking service to a person in Niue by a designated bank is not the conduct of a taxable activity in Niue by the bank.

(2) A designated bank is not required—

- (a) to pay income tax, consumption tax, or withholding tax in relation to the provision of any authorised direct banking service to a person in Niue by the bank; or
- (b) to make any withholding or deduction on account of the payment of income tax, consumption tax, or withholding tax from any money paid or received by the bank by means of an authorised direct banking service.

(3) Subsections (1) and (2) override every enactment of Niue to the contrary.

**84Q Other regulations for purposes of this Part**

(1) Cabinet may by regulations make provision for any matter or thing it considers necessary or expedient to ensure any or all of the following:

- (a) that this Part provides for the fair and efficient provision in Niue of authorised agency banking services;
- (b) that this Part provides for the fair and efficient provision in Niue of authorised direct banking services;
- (c) that the powers and responsibilities of designated banks and approved agents are such that—
  - (i) designated banks and approved agents can with confidence arrange the provision in Niue of authorised agency banking services and authorised direct banking services; and
  - (ii) the people of Niue can have access to a banking system that supplies their needs.

(2) The regulations may do either or both of the following:

- (a) modify (unconditionally or subject to conditions) the application of any enactment other than this Part to designated banks, approved agents, or both;
- (b) exempt designated banks, approved agents, or both from the application of any enactment other than this Part —
  - (i) wholly or partially; and
  - (ii) unconditionally or subject to conditions.
- (3) Subsection (2) overrides section 84I(2).

**84R Exchange of information with New Zealand agencies**

The Minister, any other Minister, and any Government or regulatory agency —

- (a) may disclose to any Government or regulatory agency in New Zealand any information that—
  - (i) relates to, or arises out of, the doing of anything in relation to or under the authority of this Part; or
  - (ii) has been disclosed to the Minister under section 84L; and
- (b) may for the purposes of paragraph (a) enter into agreements with Government and regulatory agencies in New Zealand providing for the exchange of information.

**PART 8**  
**FINANCIAL AND OTHER MATTERS**

**85 Financial year**

The Bank's financial year shall end on 30 June in each year or on such other date as the Board may decide.

**86 Notional surplus income**

For the purposes of section 90 "notional surplus income", in relation to a financial year of the Bank, means the gross income of the Bank in that year, after —

- (a) Deducting the amount of income estimated to be paid or applied in meeting the expenditure (other than interest expenditure) of the Bank in carrying out the functions and exercising the powers referred to in section 87(1) —
  - (i) as determined under the relevant funding agreement; or
  - (ii) if a funding agreement has not been ratified under section 89, as determined under the funding agreement applying to the immediately preceding financial year;
- (b) Deducting the expenditure (other than interest expenditure) incurred by the Bank in respect of that year in carrying out the other functions of the Bank;
- (c) Deducting interest expenditure incurred by the Bank in carrying out any of its functions;
- (d) Deducting any provision made under generally accepted accounting practice (other than those taken into account under paragraphs (a) and (b));
- (e) Deducting any net income derived by the Bank from its other functions as shown in the financial statements of the Bank for that financial year;
- (f) Adding any net loss incurred by the Bank from its other functions as shown in the financial statements of the Bank for that financial year.

**87 Funding agreements**

(1) Funding agreements shall be entered into by the Minister and the Board which shall specify the amount of income of the Bank to be paid or applied in meeting

the expenditure incurred by the Bank in each financial year in carrying out the functions imposed and exercising the powers conferred by this Act and any other Act.

(2) There shall be a funding agreement applying for every financial year and each funding agreement shall apply to a period that comprises 3 consecutive financial years.

(3) The Minister and the Board may by agreement –

- (a) Vary the provisions of a funding agreement; or
- (b) Terminate a funding agreement and enter into a new funding agreement.

**88 Contents of funding agreements**

Every funding agreement shall be in writing and –

- (a) Shall make provision for the total expenditure to be incurred by the Bank in carrying out the functions and exercising the powers specified in section 87(1);
- (b) Shall make provision for such items as may under generally accepted accounting practice, properly be taken into account in determining the expenditure applicable to those functions and powers;
- (c) May provide for the extent, if any, to which any material change in the nature or extent of the work undertaken by the Bank in respect of any of those functions or powers shall require the total level of expenditure to be redetermined between the Board and the Minister;
- (d) May make provision for such other matters, not being matters that are inconsistent with this section, as the Board and the Minister may think fit.

**89 Funding agreements to be ratified by the Assembly**

(1) On the sitting day immediately following a funding agreement being entered into, or a funding agreement being varied, the Minister shall lay a copy of the agreement or the variation before the Assembly.

(2) No funding agreement, and no variation of a funding agreement, shall be effective for the purposes of this Act unless it is ratified by a resolution of the Assembly.

**90 Application of surplus income**

(1) The amount by which, in any financial year, the actual net income of the Bank as shown the financial statements of the Bank for that year exceeds the notional surplus income for that year, calculated under section 86, shall be paid or credited to the reserves of the Bank.

(2) The amount by which in any financial year the notional surplus income for that year, calculated under section 86, exceeds the actual net income of the Bank for that year, as shown in the financial statements of the Bank for that year, shall be deducted from the reserves of the Bank.

(3) An amount equal to the amount of the notional surplus income calculated under section 86 for each financial year shall be paid or credited, at the direction of the Minister, after consultation with the Bank –

- (a) To the reserves of the Bank or to the Niue Government Account; or
- (b) To both the reserves of the Bank and to the Niue Government Account in proportions determined by the Minister after consultation with the Bank.

(4) In determining the amount of the notional surplus income to be credited to the reserves of the Bank, the Minister shall have regard to –

- (a) The capital requirements of the Bank; and
- (b) The views of the Board; and
- (c) Any other relevant matters.

**91 Annual report and accounts**

(1) Within 6 months after the end of each financial year the Bank shall deliver to the Minister –

- (a) A report on the operations of the Bank during that financial year;
- (b) Audited financial statements for that financial year;
- (c) The auditor's report on those financial statements;
- (d) A statement of the projected income and expenditure for the next financial year.

(2) The report referred to in subsection (1)(a) shall contain such information as is necessary to enable an informed assessment to be made of the Bank's performance in carrying out its functions during that year.

(3) The documents referred to in subsection (1) shall, by virtue of this section, stand referred to the Assembly.

**92 Contents of financial statements**

(1) The financial statements shall be prepared under generally accepted accounting practice and shall include –

- (a) A statement of the Bank's financial position as at its balance date;
- (b) An operating statement reflecting the income and expenses of the Bank for that year by reference to the functions carried out by the Bank;
- (c) A statement of cash flows reflecting the Bank's cash flow for that year;
- (d) A statement of the Bank's commitments as at the balance date;
- (e) A statement of the Bank's contingent liabilities as at the balance date;
- (f) A statement of accounting policies;
- (g) Such other statements as are necessary to fairly reflect the financial operations of the Bank for that year and its financial position at the end of that year;
- (h) Comparative actual figures for the previous financial year for paragraphs (a) to (e) and, where appropriate paragraph (g).

(2) The financial statements shall show separately –

- (a) Any payments made by the Bank under section 8(1); and
- (b) Any payments made by the Minister to the Bank under section 8(2).

**93 Management statements**

(1) The financial statements of the Bank shall be accompanied by a management statement signed by the Board.

(2) The management statement shall comprise –

- (a) A statement of the management's responsibility for the preparation of the annual financial statements and the judgments used in them;
- (b) A statement of the management's responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting;
- (c) A statement that, in the opinion of the management, the annual financial statements for the financial year fairly reflect the financial position and operations of the Bank.

**94 Auditors**

(1) The Minister may appoint one or more persons (whether as individuals or as the members of any firm or firms), being persons qualified for appointment as auditors of a company under the Companies Act 2006, to be the auditor or auditors of the Bank.

- (2) Every appointment shall be for a term not exceeding 2 years, but any person appointed as auditor shall continue in office until a successor comes into office.
- (3) Any person appointed as auditor shall be eligible for reappointment.
- (4) The auditor or auditors shall be entitled to receive from the funds of the Bank such fees as the Board determines.

**95 Performance audit**

(1) Cabinet on the advice of the Minister may appoint one or more persons (whether as individuals or as members of any firm or firms) to carry out an assessment of the performance by the Bank of its functions and of the exercise by the Bank of its powers under this Act.

(2) As soon as practicable after completing an assessment, the person appointed shall submit a report to the Minister setting out the results of that assessment.

(3) The report shall by virtue of this section, stand referred to the Assembly.

(4) Any person appointed to conduct an assessment under this section, for the purpose of conducting that assessment –

- (a) Shall have full access to all books and documents that are the property of or that are under the control of any person relating to the Bank or its affairs;
- (b) May require any director, officer or employee of the Bank or any other person to answer any questions relating to the Bank or its affairs;
- (c) May, by notice in writing to any person, require that person to deliver any books or documents relating to the Bank or its affairs in the possession or under the control of that person and may take copies of them or extracts from them.

(5) Nothing in subsection (4) limits or affects section 74.

(6) The fees of the person appointed to carry out an assessment under this section shall be paid out of the funds of the Bank.

**PART 9**

**INTERNATIONAL COMMERCIAL BANK**

**96 Bank to act as International Commercial Bank**

The Bank shall act as an International Commercial Bank under this Part.

**97 Appointment of Board of International Commercial Bank**

(1) The Board shall, on the advice of the Cabinet, appoint a board to administer the functions and powers of the International Commercial Bank.

(2) This board shall be known as the International Commercial Bank Board.

(3) The International Commercial Bank Board shall consist of 3 members.

(4) The International Commercial Bank Board shall comprise –

- (a) A Chief Executive to be appointed by Cabinet;
- (b) Two non-executive directors to be appointed by Cabinet on the advice of the Minister;

(5) A member of the Board of the Niue Bank shall not be a member of the International Commercial Bank Board at any one time.

(6) The members of the International Commercial Bank Board shall be deemed officers of the Bank for the purposes of section 73 and directors for the purposes of section 106.

(7) Sections 24 to 31 shall apply to the operations and membership of the International Commercial Bank Board.

**98 Duties of Board of International Commercial Bank**

Subject to this Act, the International Commercial Bank Board shall –

- (a) Keep under constant review the performance of the International Commercial Bank in carrying out its functions;
- (b) Ensure that the International Commercial Bank carries out the functions imposed on it by this Act;
- (c) Ensure that the resources of the International Commercial Bank are properly and effectively managed;
- (d) Direct the exercise of the powers granted to the International Commercial Bank by this Act.

**99 Powers of the International Commercial Bank**

(1) The International Commercial Bank shall have the power to enter into such transactions as the Board determines are for the benefit of Niue.

(2) The International Commercial Bank shall have all the powers associated with a commercial bank including the following –

- (a) The power to incorporate and/or register a company; and
- (b) The power to give security over its assets and undertaking.

(3) In discharging its functions under section 96, the International Commercial Bank may exercise those powers specified in sections 7 to 19 if the Board gives its prior consent to such exercise.

**100 Liabilities of International Commercial Bank not to be charge against the Niue Government Account**

(1) Any liability or obligation incurred by the International Commercial Bank as a result of performing its duties or exercising any power under this Act shall not be a charge against the Niue Government Account.

(2) The Government Loans Act 1980 shall not apply to any liability or obligation incurred by the International Commercial Bank as a result of performing its duties or exercising any power under this Act.

PART 10  
MISCELLANEOUS PROVISIONS

**101 Issue of Bank notes**

(1) It shall not be lawful for any Bank to issue bank notes in Niue.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 1000 penalty units.

**102 Obligations under this Act not limited**

An obligation or limitation imposed on a person by any other Act or instrument or by any trust or agreement shall not prevent or excuse that person from complying with any provision of this Act or any regulation made under it or with any direction, notice, requirement or condition given or imposed under that provision.

**103 Regulations**

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

- (a) Providing for those Acts to be administered by the Bank under section 6;

- (b) Providing for such matters as are necessary to enable the Minister or the Bank to exercise any powers and functions conferred on the Minister or the Bank by this Act or by any regulation made for any of the purposes of this Act;
- (c) Providing for the granting, refusal and revocation of consents, permissions and exemptions in respect of any matters to which any regulations made under this Act relate; and authorising the imposition, variation, and revocation of conditions subject to which such consents, permissions and exemptions may be granted;
- (d) Providing for the furnishing of information and the production of books or documents to the Minister or the Bank or any other person for any of the purposes of any such regulations (whether or not the effect of doing so may be to require the furnishing of information, or the production of books or documents, that will reveal the identity or affairs or any particular person); and providing for the verification of any such information; and providing that any such books or documents may be copied, and may be retained or impounded, by any person or persons to whom they are produced;
- (e) Authorising the Minister or the Bank or any other person to exercise any discretionary power or authority for the purposes of any such regulations;
- (f) Providing for the delegation of any of the powers or functions of the Minister (including the power of delegation) or the Bank under any such regulations;
- (g) Providing for and regulating the issue, registration, transfer, control and redemption of any securities issued by the Bank;
- (h) Prescribing forms for the purposes of this Act or of any such regulations, in any case where a form is not prescribed by this Act;
- (i) Providing for and regulating the giving or service of notices for the purposes of this Act or of any such regulations, and the effect of such notices;
- (j) Prescribing fees to be charged by the Bank in respect of any matter under this Act;
- (k) Prescribing offences against any such regulations and prescribing fines not exceeding in respect of any such offence 500 penalty units and, in the case of a continuing offence, 5 penalty units for every day on which the offence has continued;
- (kk) Providing for any matter contemplated by Part 7A;
- (l) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and its due administration.

#### **104      Consents under regulations**

(1) If a transaction is entered into or an instrument is executed without the prior consent of the Minister or the Bank required by any regulations made under this Act, the Minister or the Bank, as the case may be, may at any time consent to the entry into the transaction or the execution of the instrument.

(2) Subject to the terms of the consent any transaction or instrument and any relationship or interests created by it which would be invalid or unenforceable without that consent shall, on the giving of that consent, be valid and enforceable as if the consent had been given before the transaction was entered into or the instrument executed.

(3) Consent may be given –

- (a) In respect of such transactions, instruments, or persons or classes of transactions, instruments or persons as the Minister or the Bank may determine or in respect of any specified transaction, instrument or person;

(b) Wholly or partly and either unconditionally or subject to such conditions as the Minister or the Bank thinks fit.

(4) A consent to the entry into any transaction or the execution of any instrument shall be deemed to be a consent given under the regulations requiring consent.

## **105 Offences against regulations**

(1) Every person commits an offence against this Act who –

- (a) With intent to deceive, makes any false or misleading statement or any material omission in –
  - (i) any offer or declaration made for the purposes of any regulations under this Act; or
  - (ii) any communication with, or application to, the Minister or the Bank or any other person (whether in writing or otherwise) for the purposes of those regulations;
- (b) Resists, obstructs, or deceives any person who is exercising or attempting to exercise any power or function under any such regulations;
- (c) Without lawful excuse, acts in contravention of or fails to comply in any respect with any such regulations or any direction, notice, requirement or condition given or imposed under any such regulations.

(2) Nothing in subsection (1) limits section 103(k).

## **106 Penalties for offences**

Every person who commits an offence against this Act for which no penalty is provided except in this section is liable on conviction –

- (a) In the case of an individual to imprisonment for a term not exceeding 3 months or to a fine not exceeding 50 penalty units;
- (b) In the case of a body corporate, to a fine not exceeding 500 penalty units.

## **107 Evidence**

(1) A copy of a resolution of the Bank certified by the Board to be correct shall in the absence of proof to the contrary be sufficient evidence of the resolution in any proceedings.

(2) A certificate signed by the Board to the effect that –

- (a) Any approval or consent required under any Act has or has not been given by the Bank, or is or is not for the time being in force; or
- (b) Any document has been duly signed by or on behalf of the Bank or the Board

shall in the absence of proof to the contrary be sufficient evidence of the matters stated in it in any proceedings.

(3) Any certificate purporting to have been signed by the Board shall, in the absence of proof to the contrary, be deemed for all purposes to have been duly signed by the Board.

## **108 No action to lie against certain persons**

Notwithstanding any other provision of this Act, no action shall lie against the Government, the Minister, the Bank, the Board, or any director or employee of the Bank in respect of the performance of their functions or duties under this Act.

## **109 [Spent]**



# NIUE CERTIFICATION AUTHORITY ACT 1978

1978/36 – 14 February 1978

1	Short title	5	Functions of Authority
2	Interpretation	6	Use of common seal
3	Niue Certification Authority established	7	Regulations
4	Meetings	8	Expenses of Authority

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## To establish the Niue Certification Authority and to define its functions and powers

### 1 Short title

This is the Niue Certification Authority Act 1978.

### 2 Interpretation

In this Act –

“Authority” means the Niue Certification Authority established under section 3;

“Minister” means the Minister for Education;

“trade” means any trade in connection with which the Authority considers it desirable to conduct examinations or issue certificates.

### 3 Niue Certification Authority established

(1) There is hereby established for the purposes of this Act the Niue Certification Authority.

(2) The Authority shall consist of –

(a) The Secretary to the Government, who shall be the Chairman;

(b) The Director of Public Works;

(c) The Director of Education;

(d) Two other officers appointed for a period of three years by the Cabinet.

### 4 Meetings

(1) Meetings of the Board shall be held at such time and places as the Authority or the Chairman determines.

(2) A quorum shall consist of three members of the Authority.

(3) Every question before the Authority shall be determined by a majority of the votes of the members present at a meeting of the Authority.

(4) As often as the office is vacant the Authority shall appoint a Deputy Chairman who shall hold office, while he continues to be a member of the Authority, for a term of 3 years, and who may be reappointed.

(5) (a) The Chairman shall preside at all meetings at which he is present.

(b) In the absence of the Chairman from any meeting the Deputy Chairman shall preside.

(c) In the absence of both the Chairman and Deputy Chairman from any meeting the members present shall appoint one of their number to preside at that meeting.

(6) The person presiding at any meeting of the Authority shall have a deliberative vote and, in the case of an equality of votes, shall have a casting vote.

(7) Except as expressly provided in this Act or in regulations under this Act, the Authority may regulate its procedure in such manner as it thinks fit.

**5 Functions of Authority**

- (1) The functions of the Authority shall be –
- (a) To make provision for the examination of persons practising or intending to practise any trade calling or profession who desire to present themselves for examination;
  - (b) To make provisions for the examination of public servants who are studying for the Niue Public Service Administration Certificate and who desire to present themselves for examination;
  - (c) To grant or issue diplomas or certificates of his proficiency in any trade, calling or matter relating to any trade calling or profession;
  - (d) To grant or issue diplomas or certificates to any public servant who has satisfied the course requirements for the Niue Public Service Administration Certificate.
- (2) The Authority may expand any moneys and generally take any action for any purpose that in its opinion is ancillary to its functions as defined in subsection (1). Without limiting the general power conferred under subsection (1) it is hereby declared that the Authority may –
- (a) Co-opt, if necessary, any person or persons to advise the Authority in connection with any of its functions under subsection (1);
  - (b) With the approval of Cabinet, appoint such Advisory or Technical Committee to advise the Authority on such matters within the scope of its functions and powers as are referred to them by the Authority, and appoint any person to be a member of any such Committee, notwithstanding that he is not a member of the Authority;
  - (c) Charge fees for entry for examination.

**6 Use of common seal**

The common seal of the Authority shall not be affixed to any document, other than a diploma or certificate issued by the Authority, except under a resolution of the Authority, and the fixing of the seal to any such document shall be attested by the Minister and the Chairman.

**7 Regulations**

Cabinet may make all such regulations that may be necessary or expedient for giving full effect to this Act and for the due administration of it.

**8 Expenses of Authority**

All payments made in the course of the administration of this Act shall be made out of money which the Authority receives in exercise of its functions from fees and otherwise, and, to the extent that money is insufficient, shall be made out of money appropriated by the Assembly for the purposes of the Department of Education.

# NIUE CONSUMPTION TAX ACT 2009

2007/296 – 1 April 2009

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## An Act to impose a tax on the import into, and the supply of goods and services in Niue

### PART 1 PRELIMINARY

#### 1 Short Title

- (1) This is the Niue Consumption Tax Act 2009.
- (2) This Act applies to supplies and imports made on or after 1 April 2009.

#### 2 Interpretation

In this Act, unless the context otherwise requires –

“additional tax” means the additional tax imposed under section 116 of the Income Tax

Act applying for the purposes of this Act by virtue of section 41;

“associate”, in relation to a person, means any other person who acts or may act in accordance with the directions, requests, suggestions, or wishes of the first-mentioned person, and the first-mentioned person is an associate of the second-mentioned person;

“consideration”, in relation to a supply, means the total of the following amounts –

- (a) the amount in money paid or payable by any person, directly or indirectly, for the supply;
- (b) the fair market value of an amount in kind paid or payable by any person, directly or indirectly, for the supply; and
- (c) any taxes, duties, levies, fees, and charges (including NCT) paid or payable on, or by reason of the supply,

reduced by any price discounts or rebates allowed and accounted for at the time of the supply;

“Customs Act” means the Customs Act 1966;

“Customs legislation” means the Customs Act and the Customs Tariff Act;

## Niue Consumption Tax Act

“employment” includes the holding of an office unless the office is held as part of the business of an office holder;

“enterprise” means –

- (a) an activity carried on continuously or regularly by a person whether or not for profit if the activity involves or is intended to involve the supply of goods or services to another person; or
- (b) an activity of a licensing authority in issuing a licence, permit, certificate, concession, or authorisation, for a fee,

but not including –

- (i) an employment;
- (ii) a hobby or leisure activity of an individual; or
- (iii) an activity of a person other than an individual that if carried on by an individual would come within paragraph (d);

“exempt import” has the meaning in section 18;

“exempt supply” has the meaning in section 6;

“fair market value” has the meaning in section 3;

“finance lease” means –

- (a) a hire purchase agreement; or
- (b) any lease that is treated under international financial reporting standards as a finance lease;

“Financial Secretary” means the Financial Secretary appointed under section 6 of the Customs Act;

“goods” means real or tangible personal property, but does not include money;

“import”, in relation to goods, means to bring or cause to be brought into Niue from a foreign country or place;

“importer” has the same meaning as in the Customs Act;

“input tax” means the NCT paid in respect of a taxable acquisition or a taxable import by a person, but does not include additional tax or penal tax imposed in respect of such acquisition or import;

“licensing authority” means any person that has the responsibility to issue a licence, permit, certificate, concession, or authorisation for a fee under any law;

“money” means –

- (a) any coin or paper currency that is legal tender in Niue, other than a coin or paper currency that is a collector’s piece;
- (b) a bill of exchange, promissory note, bank draft, or postal or money order; or
- (c) whatever is supplied as payment by way of –
  - (i) credit card or debit card; or
  - (ii) crediting or debiting an account;

“NCT” means the Niue consumption tax imposed under this Act;

“NCT-exclusive fair market value”, in relation to a supply, means the fair market value of the supply reduced by an amount equal to the fair market value multiplied by the tax fraction;

“NCT period” means the calendar month;

“NCT-registered person” means a person who is registered for NCT;

“non-resident” means a person who is not a resident;

“output tax” means the NCT paid or treated as having been paid in respect of a taxable supply made or treated as having been made by a taxable person;

“partnership” has the same meaning as in section 4 of the Partnership Act 1908;

“person” means an individual, company, partnership, body of persons, trust, estate, the Government, or a foreign government;

“recipient”, in relation to a supply, means the person or persons to whom the supply is made;

“resident” means –

- (a) the Government;
- (b) a person that is resident in Niue under section 81 of the Income Tax Act; or
- (c) a person not covered by paragraph (a) or (b) that is formed in Niue or has its centre of administrative management in Niue;

“Revenue laws” means this Act, the Income Tax Act, Customs Act, and Customs Tariff Act, and includes any regulations or other subsidiary legislation made thereunder;

“services” means anything that is not goods or money;

“self-assessment” means an assessment treated as having been made by a taxable person under section 35;

“self-assessment return” means a return furnished under section 32;

“supplier”, in relation to a supply, means the person or persons who make the supply;

“supply” means a supply of goods or services;

“supply of goods” means -

- (a) a sale, exchange, or other transfer of the right to dispose of goods as owner; or
- (b) the lease or hire of goods under a finance lease;

“supply of services” means anything done that is not a supply of goods or money, including –

- (a) the grant, assignment, or surrender of any right;
- (b) the making available of any facility or advantage;
- (c) the toleration of any situation;
- (d) the refraining from the doing of any act; or
- (e) the issuing of any licence, permit, certificate, concession, authorisation, or other document by a licensing authority;

“tax fraction”, in relation to a taxable supply, means the fraction computed in accordance with the following formula –

$$r / (1+r)$$

where **r** is the rate of NCT applicable to the supply as determined under section 4(3)(b);

“Tax officer” –

- (a) means the Financial Secretary and any person employed by the Niue Public Service Commission acting under the authority of the Financial Secretary; and
- (b) includes a Customs Officer who is performing duties under this Act in accordance with the requirements of Customs legislation;

“taxable acquisition”, in relation to a taxable person, means a taxable supply made to the person;

“taxable import” means an import of goods, other than an exempt import;

“taxable person” means –

- (a) an NCT-registered person; or

## Niue Consumption Tax Act

- (b) a person who is required to apply for registration but who has not done so within the time specified in section 7;
- “taxable supply” means a supply made in Niue by a person in connection with the carrying on of an enterprise, including a supply in connection with the commencement or termination of an enterprise, but not including an exempt supply;
- “telecommunications services” means the transmission, emission, or reception of signals, writing, images, sounds, or information of any kind by wire, radio, optical, or other electromagnetic systems, and includes –
- (a) the related transfer or assignment of the right to use capacity for such transmission, emission, or reception; and
  - (b) the provision of access to global or local information networks, but does not include the supply of the underlying writing, images, sounds, or information;
- “temporarily imported goods” means goods imported temporarily into Niue as described in section 181 of the Customs Act 1966 for a period of less than 12 months or another period prescribed under that Act;
- “zero-rated supply” has the meaning in section 5.

### **3 Fair market value**

(1) The fair market value of a supply is the consideration that the supply would ordinarily fetch in the open market at the time of supply.

(2) If the fair market value of a supply cannot be determined under subsection (1), the fair market value is the amount determined by the Financial Secretary.

(3) If a provision of this Act requires the fair market value to be determined at a particular time for particular goods or services, or for an asset held by a person, that value is worked out by reference to the fair market value of a supply of those goods or services, or that asset, as determined under this section, at the relevant time.

## PART II

### IMPOSITION OF NIUE CONSUMPTION TAX

### **4 Imposition of NCT**

(1) Niue consumption tax is imposed on –

- (a) a taxable supply by a person who is a taxable person at the time of supply; or
- (b) a taxable import.

(2) The amount of NCT payable in respect of a taxable supply or taxable import is computed by applying the rate specified in subsection (3) to the value of the taxable supply or taxable import.

(3) The rate of NCT is –

- (a) in the case of a zero-rated supply, zero percent; or
- (b) in any other case, 12.5 percent.

(4) The NCT payable –

- (a) on a taxable supply, is accounted for to the Financial Secretary by the taxable person making the supply in accordance with this Act; or

(b) on a taxable import, is payable by the importer in accordance with the requirements of Customs legislation.

(5) Notwithstanding anything contained in any law, the NCT payable by a taxable person on a taxable supply is recoverable by the supplier from the recipient of the supply.

## 5 Zero-rated supplies

(1) Subject to subsection (3), the following supplies are zero-rated supplies –

- (a) a supply of goods if the supplier has entered the goods for export under the customs legislation and the goods have been exported from Niue by the supplier;
- (b) a supply of goods if the Financial Secretary is satisfied that the goods have been exported from Niue by the supplier;
- (c) a supply of goods if the goods are situated outside Niue at the time of supply and are not –
  - (i) entered for home consumption by the supplier of the goods; or
  - (ii) situated in Niue at the time of delivery to the recipient;
- (d) a supply of goods as consumable stores for use outside Niue on –
  - (i) an aircraft or ship going to a destination outside Niue; or
  - (ii) a fishing craft going outside Niue's fishery waters;
- (e) a supply of goods in the course of repairing, renovating, modifying, or treating temporarily imported goods if the first-mentioned goods –
  - (i) are wrought into, affixed to, attached to, or otherwise form part of the temporarily imported goods; or
  - (ii) consumable stores that become unusable or worthless as a direct result of being used in the repair, renovation, modification, or treatment process;
- (f) a supply of services directly in connection with temporarily imported goods;
- (g) a supply of telecommunications services if –
  - (i) the supply is made by a resident telecommunications supplier to a non-resident telecommunications supplier; or
  - (ii) the person who initiates the supply (including when the person initiates the supply on behalf of another person) is physically present outside Niue at the time the supply is initiated as determined under section 12(4), (5), and (6);
- (h) a supply of services if the Financial Secretary is satisfied that the services are for use or consumption outside Niue;
- (i) a supply of international transport services;
- (j) a supply of education services, but not including any textbooks or stationery supplied in relation to such services; and
- (k) a supply of medical, dental, or nursing services, but not including any pharmaceuticals supplied in relation to such services.

(2) Goods are exported from Niue if the goods are delivered to, or made available at, an address outside Niue, and for this purpose evidence of –

- (a) the consignment or delivery of goods to an address outside Niue; or

(b) the delivery of the goods to the owner, charterer, or operator of a ship or aircraft supplying international transport services for the purposes of carrying the goods outside of Niue, is considered sufficient evidence that the goods have been exported, in the absence of proof to the contrary;

(3) A supply of goods is not a zero-rated supply under subsection (1)(a), (b), (c), or (d) if the goods have been or will be re-imported into Niue.

(4) In this section –

“ancillary transport services” means stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services, and the storage of transported goods or goods to be transported, but does not include such services supplied directly in connection with an aircraft or ship that is temporarily imported goods;

“consumable stores” means –

- (a) goods for consumption by passengers or crew on board an aircraft or ship; or
- (b) goods that are necessary to operate or maintain an aircraft or ship, including fuel and lubricants, but not including spare parts and equipment;

“education services” means pre-primary, primary, secondary, tertiary, or adult education provided by the Government or an education service provider approved by Cabinet;

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

“fishing craft” has the meaning in the Territorial Sea and Exclusive Economic Zone Act 1996;

“international transport services” means the services, other than ancillary transport services, of transporting goods or passengers by sea or air –

- (a) from a place outside Niue to another place outside Niue, including, if relevant, any part of the transport that takes place across the territory of Niue;
- (b) from a place outside Niue to a place within Niue as the final destination for the transportation; or
- (c) from a place within Niue as the place where the transportation commenced to a place outside Niue; and

## 6 Exempt supplies

(1) The following supplies are exempt supplies –

- (a) a supply of financial services;
- (b) a supply of precious metal;
- (c) supply of donated goods or services by a non-profit body;
- (d) a supply by way of sale or long-term lease of residential premises, other than new residential premises; and
- (e) a supply by way of a lease of residential premises, other than a lease for a term of less than 2 months.

(2) A supply that is both a zero-rated supply under section 5 and an exempt supply under subsection (1) is treated as a zero-rated supply for the purposes of this Act.

(3) In this section –

“donated goods or services”, in relation to a non-profit body, means goods or services that are gifted to the body and that are intended for use in the carrying out of the purposes of the body;

“financial services” means –

- (a) the granting, negotiating, and dealing with loans, credit, credit guarantees, and any security for money, including management of loans, credit, or credit guarantees by the grantor;
- (b) transactions concerning money, deposit and current accounts, payments, transfers, debts, cheques, or negotiable instruments, other than debt collection and factoring;
- (c) transactions relating to financial derivatives, forward contracts, options to acquire financial instruments, and similar arrangements;
- (d) transactions relating to shares, stocks, bonds, and other securities, other than custody services;
- (e) the management of investment funds;
- (f) the provision, or transfer of ownership, of an insurance contract or the provision of reinsurance in respect of any such contract;
- (g) the provision, or transfer of ownership, of an interest in a scheme for the payment or granting of benefits by a benefit fund, provident fund, pension fund, retirement annuity fund, or preservation fund;
- (h) a supply of credit under a finance lease, if the credit for the goods is provided for as a separate charge and the charge is disclosed to the recipient of the goods; or
- (i) the arranging of any of the services in paragraphs (a) to (h);

“lease” includes a licence but does not include a long-term lease;

“long-term lease” means a lease for more than 50 years;

“new residential premises” means residential premises that –

- (a) have not previously been sold as residential premises or been the subject of a long-term lease;
- (b) have been created by a substantial renovation of a building; or
- (c) have replaced demolished premises on the same land;

“non-profit body” means a society, association, or organisation, whether or not incorporated, that is carried on for charitable or religious purposes and none of the income or assets of which confers, or may confer, a private benefit on any person;

“precious metal” means –

- (a) gold, in any form, being gold of a fineness of not less than 99.5 percent;
- (b) silver, in any form, being silver of a fineness of not less than 99.9 percent;
- (c) platinum, in any form, being platinum of a fineness of not less than 99.0 percent; or
- (d) any other substance that is declared in the regulations to be a precious metal for the purposes of this definition; and

“residential premises” means land or a building occupied or capable of being occupied as a residence, but not including hotel or holiday accommodation.

- (4) (a) Cabinet may exempt certain supplies of goods and/or services as it thinks fit.
- (b) Cabinet may grant a partial or full exemption and may be for such period not exceeding 5 years.

**PART III**  
**REGISTRATION**

**7 Application for registration**

- (1) A person must apply to the Financial Secretary for registration for NCT –
- (a) at the beginning of any 12 month period, if there are reasonable grounds to expect that the person will exceed the registration threshold in that period; or
  - (b) at the end of any 12 month or lesser period, if in that period the person exceeds the registration threshold.
- (2) Subject to subsection (3), a person exceeds the registration threshold in a particular period if the total value of taxable supplies made or reasonably expected to be made by the person during the period is equal to or greater than \$75,000.
- (3) In determining whether a person exceeds the registration threshold in subsection (2), the Financial Secretary may have regard to the value of taxable supplies made by an associate of the person.
- (4) A person making taxable supplies may apply for registration even though subsection (1) does not apply to the person if the person satisfies subsection (1) on the basis that the registration threshold is the total value of taxable supplies made or to be made by the person that are zero-rated supplies under section 5(1)(a) – (f) is equal to or greater than \$50,000.
- (5) An application for registration must be in the approved form and must be lodged with the Financial Secretary within seven days of becoming required to apply for registration.

**8 Registration**

- (1) The Financial Secretary must register a person –
- (a) who has applied for registration under section 7(1), if satisfied that the person is required to apply for registration; or
  - (b) who has applied for registration under section 7(4), if satisfied that the person is permitted to apply for registration.
- (2) The Financial Secretary –
- (a) must register a person who is required to apply for registration under section 7(1) but who has failed to do so; or
  - (b) may register any person making taxable supplies if the Financial Secretary is of the view that a registered person will suffer a competitive disadvantage in the marketplace if the first-mentioned person is not registered; or
  - (c) may consider and grant an application for registration made by a person who does not meet the registration threshold set out in section 7(2) if –
    - (i) supplies of goods and services made by the person are mainly to NCT-registered persons; and
    - (ii) the person meets the requirements of subsection (2A); and

(iii) it is in the best interests of the Niue economy for the person to be registered.

(2A) For the purposes of subsection (2)(c), the requirements are that, in the view of the Financial Secretary, the person –

- (a) will suffer a competitive disadvantage in the marketplace if the person is not registered; and
- (b) employs the necessary accounting systems to produce the records and documents required under this Act.

(3) The Financial Secretary must issue a person registered under this section with a NCT registration certificate in the approved form.

(4) Registration takes effect –

- (a) in the case of a person to whom section 7(1) applies, from the beginning of the first NCT period after the person became obliged to apply for registration or such later time as set out in the NCT registration certificate; or
- (b) in the case of a person to whom subsection (2)(b) or section 7(4) applies, from the date set out in the NCT registration certificate.

(5) A registered person must display, in a conspicuous place –

- (a) the original copy of its NCT registration certificate at the principal place at which the person carries on its enterprise; and
- (b) a certified copy of the certificate obtained from the Financial Secretary at every other place at which the person carries on its enterprise.

(6) A registered person must notify the Financial Secretary, in writing, of any change in the name (including business name), address, place of business, or nature of the business of the person within 21 days of the change occurring.

(7) A registered person who is a partnership must notify the Financial Secretary, in writing, of any change in the membership of the partnership within 21 days of the change occurring.

## **9 Cancellation of registration**

(1) An NCT-registered person who ceases to make taxable supplies must apply to the Financial Secretary in the approved form for cancellation of the person's registration within seven days of the date on which the person ceased to make taxable supplies.

(2) An NCT-registered person who continues to make taxable supplies but does not exceed the registration threshold may apply to the Financial Secretary in the approved form for cancellation of the person's registration.

(3) The Financial Secretary must, by notice in writing, cancel the registration of a person who has applied for cancellation if satisfied that the person is required to apply for cancellation under subsection (1) or permitted to apply for cancellation under subsection (2).

(4) The Financial Secretary must, by notice in writing, cancel the registration of a person who has failed to apply for cancellation of the person's registration as required under subsection (1), if the Financial Secretary is satisfied that the person has ceased to make taxable supplies.

(5) The cancellation of a person's registration takes effect from the date set out in the notice of cancellation.

(6) A person whose registration is cancelled under this section is treated as having made a taxable supply of any goods (including raw materials) or services on hand at the time the registration is cancelled but only if the person was allowed an input tax credit on acquisition or import of the goods or services, or in respect of the acquisition or import of goods or services which have been subsumed into those goods or services.

(7) The taxable supply referred to in subsection (6) is treated as having been made –

- (a) immediately before cancellation of the person's registration; and
- (b) for a value equal to –
  - (i) in the case of goods or services acquired in a taxable acquisition, the lesser of –
    - (A) the consideration paid on acquisition of the goods, reduced by an amount equal to the consideration multiplied by the tax fraction; or
    - (B) the NCT-exclusive fair market value of the goods at the time specified in paragraph (a); or
  - (ii) in the case of goods acquired in a taxable import, the lesser of –
    - (A) value of the import; or
    - (B) NCT-exclusive fair market value of the goods at the time specified in paragraph (b).

(8) The output tax payable in respect of the supply is treated as received at the time referred to in subsection (7)(a).

(9) If a person's registration is cancelled under this section, the person must

- 
- (a) immediately cease to hold out that the person is a registered person, including in any documentation used by the person;
  - (b) furnish a final NCT return and pay all NCT due, including the NCT due as a result of subsection (6), within 15 days after the date of cancellation of the person's registration; and
  - (c) immediately return the person's NCT registration certificate and certified copies thereof to the Financial Secretary.

#### PART IV RULES RELATING TO SUPPLIES

##### 10 Mixed supplies

(1) Subject to this Act, a supply of a particular kind that is ancillary or incidental to a supply of another kind (“the principal supply”) is treated as part of the principal supply.

(2) Subject to this Act, a supply of services that is ancillary or incidental to an import of goods is treated as part of the import of goods.

(3) Subject to subsections (1) and (2), Regulations may provide that a supply of goods and services is a supply of goods or a supply of services, or that a supply of more than one kind is a supply of one of those kinds.

**11 Time of supply**

- (1) Subject to this Act, a supply of goods or services occurs on the earlier of –
- (a) the date on which the invoice for the supply is issued; or
  - (b) the date on which any payment (including part payment) for the supply is made.
- (2) A supply between associates or by way of a gift occurs –
- (a) in the case of goods, on the date the goods are delivered; or
  - (b) in the case of services, on the date the performance of the services is complete.
- (3) A supply of goods under a finance lease occurs on the date of commencement of the lease.
- (4) A supply of goods by means of a vending machine, meter, or other device operated by a coin, note, or token occurs on the date the coin, note, or token is taken from the machine, meter, or other device by or on behalf of the supplier.
- (5) If services are supplied –
- (a) by way of a lease of goods (other than a finance lease); or
  - (b) progressively under an agreement or law that provides for periodic payments, the supply of services (referred to as the —actual supply<sup>¶</sup>) is treated as a series of separate, successive supplies of services corresponding to the successive parts of the period of the lease, or agreement or as determined by law, and each successive supply is treated as occurring on the earlier of the date on which the payment for that part of the actual supply is due or received.
- (6) In this section, “invoice” means any document notifying an obligation to make a payment.

**12 Place of supply**

- (1) Except as otherwise provided in this Act, a supply of goods or services takes place in Niue if –
- (a) the supplier is a resident; or
  - (b) the supplier is a non-resident and –
    - (i) in the case of a supply of goods, the goods supplied are located in Niue at the time of the supply; or
    - (ii) in the case of a supply of services, the services are performed in Niue and the supplier is in Niue at the time the services are performed.
- (2) A supply of services consisting of the issuing of a licence, permit, certificate, concession, or authorisation to do something in Niue takes place in Niue regardless of where it is issued.
- (3) A supply of telecommunications services by a non-resident takes place in Niue if the person who initiates the supply is physically present in Niue at the time the supply is initiated, including when the person initiates the supply on behalf of another person.
- (4) For the purposes of subsection (3), the person who initiates a supply of telecommunications services is the person who –
- (a) controls the commencement of the supply;
  - (b) pays for the services; or

(c) contracts for the supply, and if persons are identified under more than one paragraph for the same supply, the person who initiates the supply is the person who appears in first listed paragraph.

(5) If a non-resident supplier of telecommunications services cannot apply subsection (3) because it is impractical for the supplier to determine the physical location of the person who initiates the supply due to the type of service or the class of customer to which the person belongs, the supply occurs at the place where the billing address of the person who initiates the supply is located.

(6) If subsection (5) applies, the supplier must apply the subsection to all supplies of telecommunications services made for that type of service or class of customer.

(7) Subsections (3) and (5) do not apply to supplies made between telecommunications suppliers.

(8) In this section –

“billing address”, in relation to a telecommunications supply, means –

- (a) the address to which invoices for the supply are mailed; or
- (b) if invoices are not mailed –
  - (i) in the case of an individual, the place where the individual resides; or
  - (ii) in the case of any other person, the place where the person who initiates the supply undertakes an enterprise or other activity;

### **13 Value of supply**

(1) Subject to this section –

- (a) the value of a taxable supply made by a taxable person is the consideration for the supply reduced by an amount equal to the consideration multiplied by the tax fraction; or
- (b) the value of any other supply is the consideration for the supply.

(2) The value of a taxable supply made by a taxable person to an associate who is not a taxable person for no consideration or for a consideration that is less than the fair market value of the supply is the NCT-exclusive fair market value of the supply determined at the time of the supply.

(3) The value of a taxable supply under a finance lease is –

- (a) if the lessor and lessee are not associates and an amount is stated as the cost or value of the asset (excluding NCT) in the lease agreement, that amount; or
- (b) in any other case, the NCT-exclusive fair market value of the asset at the time of the supply.

(4) Except as provided in this Act, the value of a supply for no consideration is zero.

### **13A Rounding of Amounts**

(1) Subsection (2) applies when the consideration for a supply is an amount that includes a figure to the second decimal place, that is, when the amount specifies a reference to a number of cents between 1 cent and 9 cents.

(2) The amount is rounded to the nearest 10 cents by –

- (a) Regarding 1 to 4 cents as zero;
- (b) Rounding 5 to 9 cents up to 10 cents.

(3) For the purpose of subsection (1), if several suppliers are included in a transaction, the rounding referred to in subsection (2) applies to the total consideration.

(4) Subsection (5) applies when an amount of tax charged under this Act is an amount that includes a fraction of a cent.

(5) The amount is rounded to the nearest cent by –

- (a) Regarding a fraction that is less than half a cent as zero;
- (b) Rounding a fraction that is equal to or more than half a cent up to 1 cent.

#### **14 Application of goods or services to private or exempt use**

(1) An application of goods or services by a taxable person wholly or partly to a private or exempt use is a taxable supply of the goods or services, but only if the taxable person has been allowed an input tax credit in respect of the acquisition of the goods or services, or that part of the goods or services applied to a private or exempt use.

(1A) For the purposes of subsection (1), an application of goods or services by a taxable person to an employee of the person is treated as a taxable supply of the goods or services if the supply is not connected with the performance of the employee's duties.

(1B) Subsection (1A) does not apply if the goods or services are provided by the person and received or used by the employee on the premises of the person.

(1C) For the purposes of subsection (1B) –  
“premises” –

- (a) include premises that the person owns or leases;
- (b) include premises, other than those referred to in paragraph (a), on which the employee is required to perform duties for the person;
- (c) do not include premises occupied by an employee of the person for residential purposes.

(2) A taxable supply referred to in subsection (1) occurs on the date the goods or services are first applied to private or exempt use and the output tax payable in respect of the supply is treated as having been received at that time.

(3) Subject to subsection (4), the value of a taxable supply referred to in subsection (1) is –

- (a) in the case of goods or services acquired in a taxable acquisition, the lesser of
  - - (i) the consideration paid on acquisition of the goods, reduced by an amount equal to the consideration multiplied by the tax fraction; or
    - (ii) the NCT-exclusive fair market value of the goods at the time specified in paragraph (a);
- (b) in the case of goods acquired in a taxable import, the lesser of –
  - (i) value of the import; or
  - (ii) NCT-exclusive fair market value of the goods at the time specified in paragraph (b).

(4) The value of an import or supply determined under subsection (3) is reduced by –

- (a) if part only of the input tax paid by the taxable person was allowed as an input tax credit, an amount reflecting the extent to which no input tax credit was allowed; or
- (b) if part only of the goods were applied to a private or exempt use, an amount reflecting the extent to which the goods were not so applied.
- (c) In this section, “exempt use” means the use of goods or services to make an exempt supply.

**15 Lay-by sales**

(1) A supply of goods under a lay-by agreement occurs on the date the goods are delivered to the purchaser and the output tax payable in respect of the supply is treated as received on that date.

(2) If a lay-by agreement is cancelled and the seller retains any amount paid by the purchaser or recovers any amount owing by the purchaser under the agreement –

- (a) the cancellation of the agreement is a supply of services by the seller at the time of cancellation;
- (b) the value of the supply –
  - (i) if the seller is a taxable person at the time of the cancellation, is the amount retained or recovered by the seller reduced by an amount equal to the amount retained or recovered multiplied by the tax fraction; or
  - (ii) in any other case, is the amount retained or recovered by the seller; and
- (c) the output tax payable on the supply is treated as received at the time of the supply as determined under paragraph (a).

(3) In this section, "lay-by agreement" means any purchase agreement for goods under which –

- (a) the purchase price is payable by at least one additional payment after the payment of a deposit;
- (b) delivery of the goods takes place at any time after payment of the deposit; and
- (c) ownership of the goods is transferred by delivery.

**16 Vouchers**

(1) This section applies to a voucher, token, coupon or similar article (a “voucher”) that can be redeemed by the holder of the voucher for goods or services up to a certain monetary amount. This section does not apply –

- (a) to a postage stamp;
- (b) if the voucher entitles the holder to receive a specified supply of goods or services.

(2) The issue of a voucher is not a supply if the voucher –

- (a) entitles the holder to receive a supply of goods or services for a monetary amount on redemption of the voucher; and
- (b) is issued for a consideration in money.

(3) On the redemption of a voucher, the value of the supply includes the consideration for the voucher.

(4) Subsections (5) and (6) apply when a taxable person issues a voucher for no consideration and the voucher entitles the holder to a discount on the price of goods or services supplied by another person.

(5) On the redemption of the voucher, the value of the supply includes the monetary amount of the voucher reduced by an amount equal to the monetary amount multiplied by the tax fraction.

(6) (a) The taxable person, as issuer of the voucher, is entitled to an input tax credit for an amount paid to the supplier on redemption of the voucher.

(b) The amount of the input tax credit is the amount paid to the supplier multiplied by the tax fraction.

## 17 Gambling supplies

(1) Notwithstanding section 4(2), the amount of NCT imposed on gambling supplies made by a taxable person is determined on a global basis under this section for each NCT period rather than for each gambling supply.

(2) A taxable person making gambling supplies in an NCT period is treated as having received output tax for the period in relation to those supplies of an amount computed in accordance with the following formula –

$$(A - B) \times C$$

where –

A is the total amounts wagered with the person in the period;

B is the total monetary prizes paid out by the person in the period; and

C is the tax fraction.

(3) If the amount calculated under subsection (2) for a NCT period is a negative amount, no amount is included under this section in the output tax of the taxable person for that period.

(4) No input tax credits are allowed in respect of the acquisition of a gambling supply and a taxable person must not issue a NCT invoice for a gambling supply.

(5) In this section –

“gambling event” means –

(a) the conduct in Niue of a lottery, raffle, or similar undertaking; or

(b) a race, game, sporting event, or other event in Niue that has or is intended to have an outcome;

“gambling supply” means –

(a) the supply of a ticket (however described) in a lottery, raffle, or similar undertaking; or

(b) the acceptance of a bet (however described) relating to the outcome of a gambling event;

“total amounts wagered”, in relation to a taxable person and a NCT period, means the sum of the following amounts –

(a) the consideration for all the gambling supplies made by the person in the period; and

(b) any amounts recovered by the taxable person in the NCT period in respect of an amount written off in the current or a previous NCT period that were

included in total monetary prizes under paragraph (d) of the definition of that term; and  
“total monetary prizes”, in relation to a taxable person and a NCT period, is the sum of the following amounts, whether or not the relevant gambling event, gambling supply, or gambling loss occurred during the period –

- (a) the monetary prizes paid by the person in the period because of the outcome of gambling events;
- (b) the amounts of money paid in the period by the person to a recipient of the person’s gambling supplies because of an agreement between them requiring the person to repay a proportion of the recipient’s losses from those supplies;
- (c) the amount, if any, referred to in subsection (3) arising in the immediately preceding period; and
- (d) an amount that the person writes off as a bad debt in relation to all or a part of the consideration for a gambling supply made by the person that is due as a debt to the person and has not been received.

(6) A payment referred to in paragraph (b) of the definition of “total monetary prizes” is not treated as consideration for a supply.

PART V  
RULES RELATING TO IMPORTS

**18 Exempt imports**

- (1) The following imports are exempt imports –
  - (a) an import of goods that, if supplied in Niue, the supply would be an exempt or zero-rated supply;
  - (b) an import of goods not exceeding \$50 in value arriving by air or sea in Niue and subject to the Collector treating more than one item as a single item under the Customs and Tariff Regulations; and
  - (c) an import of goods by a diplomatic or consular mission, or by a diplomat or member of the diplomat’s family forming part of the diplomat’s household in Niue to the extent provided for in the Diplomatic Privileges and Immunities Act 1968; and
  - (d) temporarily imported goods to which section 181 of the Customs Act 1966 applies.

**19 Time of import**

- (1) An import of goods occurs –
  - (a) if the goods are entered under the Customs legislation, on the date on which they are so entered; or
  - (b) in any other case, on the date the goods are brought into Niue.

**20 Value of import**

- (1) Subject to subsection (2), the value of an import of goods is the sum of
  - (a) the value of the goods for the purposes of customs duty under the Customs legislation, whether or not any duty is payable on the import; and
  - (b) the amount of any customs duty, excise, port charges, or other fiscal charge (other than NCT) payable in respect of the import.

(2) If goods are re-imported after being exported for the purpose of undergoing repair, renovation, or improvement, and the form or character of the goods has not changed, the value of the import is the amount of the increase in value of the goods as a result of the repair, renovation, or improvement.

## PART VI INPUT TAX CREDITS

### **21 Input tax credits**

(1) Subject to this Act, if all the supplies made by a taxable person during an NCT period are taxable supplies, the person is allowed a credit for all the input tax paid in respect of taxable acquisitions or taxable imports by the person during the period for the purposes of making taxable supplies.

(2) Subject to this Act, if none of the supplies made by a taxable person during an NCT period are taxable supplies, the person is not allowed any credit for the input tax paid in respect of taxable acquisitions or taxable imports by the person during the period.

(3) Subject to this Act, if a taxable person makes both taxable and other supplies during an NCT period, the input tax credits allowed to the person for that period are determined as follows –

- (a) if a taxable acquisition or taxable import by the person relates wholly to making taxable supplies, an input tax credit is allowed for the full amount of input tax paid in respect of the acquisition or import;
- (b) if a taxable acquisition or taxable import by the person relates wholly to making supplies that are not taxable supplies, no input tax credit is allowed for the input tax paid in respect of the acquisition or import; or
- (c) if a taxable acquisition or taxable import by the person relates, whether directly or indirectly, partly to making taxable supplies and partly to making other supplies, the sum of the input tax credits allowed for such acquisitions or imports during the NCT period is calculated according to the following formula –

$$A \times B/C$$

where –

- A** is the total amount of input tax paid in respect of taxable acquisitions or taxable imports by the person during the period for the purposes of making taxable supplies, less the input tax accounted for under paragraphs (a) and (b);
- B** is the value of all taxable supplies made by the taxable person during the period; and
- C** is the value of all supplies made by the taxable person during the period, other than supplies made through an enterprise carried on by the person outside Niue.

(4) If the fraction  $B/C$  in subsection (3)(c) for an NCT period is more than 0.90, the taxable person is allowed an input tax credit for all of the input tax comprising component **A** of the formula in subsection (3)(c).

(5) No input tax credit is allowed under subsection (1) or (3) to the extent that the taxable acquisition or taxable import is for private use.

(6) Subject to subsection (7), an input tax credit under subsection (1) or (3), is allowed in the NCT period in which the input tax is paid.

(7) If, at the time a taxable person furnishes an NCT return for an NCT period in which an input tax credit would otherwise be allowable under this Act, the person does not hold the documentation referred to in subsection (8), the input tax credit is not allowed in that NCT period but instead is allowed in the first NCT period in which the person holds such documentation provided that is not more than two years after the right to the input tax credit arose under subsection (6).

(8) The documentation required for the purposes of subsection (9) is –

- (a) in the case of a taxable supply, the NCT invoice for the supply;
- (b) in the case of a taxable import, a bill of entry or other document prescribed under the Customs legislation for the import;
- (c) in the case of an input tax credit allowed in respect of input tax treated as payable under section 24(3), the NCT debit note required to be issued under section 28; or
- (d) in the case of an input tax credit allowed under section 24(4), a copy of the NCT credit note issued to the recipient of the supply.

(9) Whether an acquisition or importation made in an NCT period relates to making a particular kind of supply should be determined on the basis of the taxable person's intention at the time of the acquisition or importation, but the taxable person may take account of actual use or a change in intention that occurs before the date on which the NCT return for that period is required to be furnished.

## **22 Input tax credit for newly registered person**

(1) Subject to this Act, an NCT-registered person may claim, in the first NCT return of the person, an input tax credit determined in accordance with section 21 for the input tax paid in respect of goods held at the date of registration, if –

- (a) at the end of the last day before the date of the person's registration, the person held the goods as inventory;
- (b) the inventory was acquired by the person in a taxable acquisition or a taxable import by the person;
- (c) the acquisition or import occurred no more than four months prior to the date of registration; and
- (d) the person can provide documentary evidence satisfactory to the Financial Secretary that input tax has been paid on the acquisition or import.

## **23 Denial of input tax credits**

(1) No input tax credit is allowed under this Act for input tax paid in respect of a taxable acquisition or taxable import by a taxable person –

- (a) of a passenger vehicle, or spare parts or repair and maintenance services for such vehicle, unless the person's enterprise involves the dealing in, or hiring of such vehicles and the vehicle were acquired for the purpose of such enterprise;
- (b) of petroleum products, unless those products are wholly for use in the enterprise of the person;

- (c) to the extent that the acquisition or import is used to provide entertainment, unless the person's enterprise involves providing entertainment and the entertainment was provided in the ordinary course of the enterprise and was not supplied to an associate or employee;
- (d) to the extent to which the acquisition is used to provide accommodation, unless
  - - (i) the person's enterprise involves providing accommodation and the accommodation was provided in the ordinary course of the enterprise; or
    - (ii) the accommodation was provided while the recipient of the accommodation was away from home for the purposes of the enterprise of the recipient or the recipient's employer; or
- (e) if the acquisition provides membership or entrance for any person in a sporting, social, or recreational club, association, or society.

(2) Section 21 applies in determining whether an input tax credit is allowed for a taxable acquisition or taxable import that is an exception to the denial of input tax credits under subsection (1)(a), (b), (c), or (d).

(3) In this section –

“entertainment” means the provision of food, beverages, tobacco, amusement, recreation, or hospitality of any kind; and  
“passenger vehicle” means a road vehicle designed or adapted for the transport of nine or fewer seated passengers.

## PART VII POST-SALE ADJUSTMENTS

### 24 Post-sale adjustments relating to changes to a taxable supply

- (1) This section applies if –
- (a) a taxable supply is cancelled;
  - (b) the nature of a taxable supply is fundamentally varied or altered;
  - (c) the consideration for a taxable supply is altered; or
  - (d) the goods (or part thereof) the subject of a taxable supply are returned to the supplier.

(2) If this section applies and the NCT properly chargeable in respect of the supply exceeds the NCT actually accounted for by the supplier, the supplier must treat the amount of the excess as output tax paid on a taxable supply made by the supplier in the NCT period in which the event referred to in subsection (1) occurred.

(3) If subsection (2) applies and the supplier has issued an NCT debit note to the recipient of the supply in accordance with section 28, the recipient must treat the additional NCT specified in the debit note as input tax paid on a taxable supply made to the recipient in the NCT period in which the debit note is received.

(4) Subject to subsection (6), if this section applies and the NCT actually accounted for by the supplier exceeds the NCT properly chargeable in respect of the supply, the supplier is allowed an input tax credit for the amount of the excess in the NCT period in which the event referred to in subsection (1) occurred.

(5) If subsection (4) applies and the supplier has issued an NCT credit note to the recipient of the supply in accordance with section 28, the recipient must treat the additional NCT specified in the credit note as output tax paid on a taxable supply made by the recipient in the NCT period in which the credit note is received.

(6) If the recipient of a supply to which subsection (4) applies is unregistered, no input tax credit is allowed under that subsection until the supplier has repaid the excess NCT to the recipient of the supply, whether in cash or as a credit against any amount owing to the supplier by the recipient.

**PART VIII**  
**COMPUTATION OF NET NCT PAYABLE AND REFUNDS**

**25 Computation of net NCT payable**

(1) The amount of NCT that a taxable person must remit to the Financial Secretary for a NCT period is the net NCT payable for the period computed according to the following formula –

$$\mathbf{A - B}$$

where –

- A** is the total output tax received or treated as having been received by the person during the period; and
- B** is the total input tax credit allowed to the person under sections 21, 22, and 24 for the period, but does not include input tax for which section 23 denies the allowance of a credit.

**26 Refunds**

(1) Subject to subsection (2), if the total input tax credit allowed to a taxable person for an NCT period exceeds the person's total output tax for the period, the Financial Secretary must –

- (a) apply the excess in payment of any tax or duty owing by the person under any revenue law; and
  - (b) refund the remainder (if any) to the person within twenty working days after the person furnished the NCT return for the period.
- (2) No refund is payable if the amount of the refund is less than \$5.

**PART IX**  
**NCT DOCUMENTATION**

**27 NCT Invoices**

(1) An NCT-registered person making a taxable supply to another NCT registered person must, at the time of the supply, issue that other person with an original NCT invoice for the supply.

- (2) An NCT invoice must contain the following particulars –
- (a) the words "NCT INVOICE" in a prominent place;
  - (b) the name, address, and NCT registration number of the supplier;
  - (c) the name, address, and NCT registration number of the recipient;
  - (d) the individualised serial number and the date on which the NCT invoice is issued;

- (e) the description of the goods supplied (including quantity or volume) or services provided and the date on which the supply was made; and
- (f) the consideration for the supply and the amount of NCT charged.

**28 NCT credit and debit notes**

(1) If –

- (a) an NCT-registered person (referred to as “the supplier”) has made a taxable supply to another NCT-registered person (referred to as “the recipient”);
- (b) the supplier has issued an original NCT invoice to the recipient;
- (c) section 24 applies to the supply; and
- (d) the amount shown on the invoice as the NCT charged exceeds the NCT properly chargeable in respect of the supply,

the supplier must provide the recipient with an original NCT credit note.

(2) An NCT credit note must contain the following particulars –

- (a) the words “NCT CREDIT NOTE” in a prominent place;
- (b) the name, address, and NCT registration number of the supplier;
- (c) the name, address, and NCT registration number of the recipient;
- (d) the individualised serial number and the date on which the NCT credit note is issued;
- (e) a brief description of the circumstances giving rise to the issuing of the NCT credit note, including information sufficient to identify the taxable supply to which the NCT credit note relates;
- (f) if section 24(1)(a), (c), or (d) applies, the consideration shown on the NCT invoice for the supply, the correct amount of the consideration, the difference between those two amounts, and the amount of NCT that relates to the difference; and
- (g) in any case when paragraph (f) does not apply, the NCT originally payable, the NCT payable as a result of the circumstances giving rise to the issuing of the NCT credit note, and the difference between those amounts.

(3) If –

- (a) an NCT-registered person (referred to as “the supplier”) has made a taxable supply to another NCT-registered person (referred to as “the recipient”);
- (b) the supplier has issued an original NCT invoice to the recipient;
- (c) section 24 applies to the supply; and
- (d) the NCT properly chargeable in respect of the supply exceeds the amount shown on the invoice as the NCT charged,

the supplier must provide the recipient with an original NCT debit note.

(4) An NCT debit note must contain the following particulars –

- (a) the words “NCT DEBIT NOTE” in a prominent place;
- (b) the name, address, and NCT registration number of the supplier;
- (c) the name, address, and NCT registration number of the recipient;
- (d) the individualised serial number and the date on which the NCT debit note is issued;
- (e) a brief description of the circumstances giving rise to the issuing of the NCT debit note, including information sufficient to identify the taxable supply to which the NCT debit note relates;

- (f) if section 24(1)(a), (c), or (d) applies, the consideration shown on the NCT invoice for the supply, the correct amount of the consideration, the difference between those two amounts, and the amount of NCT that relates to the difference; and
- (g) in any case when paragraph (f) does not apply, the NCT originally payable, the NCT payable as a result of the circumstances giving rise to the issuing of the NCT credit note, and the difference between those amounts.

**29 NCT documentation issued by or to agents**

(1) If a taxable supply is made by or to an agent on behalf of a principal and both the agent and principal are NCT-registered persons, an NCT invoice, NCT credit note, or NCT debit note required to be issued by or to the principal may be issued by or to the agent, using the name, address and NCT registration number of the agent.

(2) If a taxable supply is made by or to an agent on behalf of a principal and the principal is an NCT-registered person but the agent is not, an NCT invoice, NCT credit note, or NCT debit note required to be issued by or to the principal may be issued by or to the agent, but using the name, address and NCT registration number of the principal.

(3) If a taxable supply is made by or to an agent on behalf of a principal, an NCT invoice, NCT credit note, or NCT debit note required to be issued under this Act can be issued once only and cannot be issued by or to both the agent and the principal.

(4) An NCT invoice, NCT credit note, or NCT debit note issued by or to an agent in accordance with this section is treated as issued by or to the principal, as the case may be, for the purposes of this Act.

**30 Requests for NCT documentation**

(1) A taxable person who, for any reason, has not been issued with an original NCT invoice, NCT credit note, or NCT debit note as required under this Act may make a written request to the supplier to issue the document.

(2) A request under subsection (1) must be made –

- (a) in the case of an NCT invoice, within 60 days of the time of the supply; or
- (b) in the case of an NCT credit note or NCT debit note, within 60 days of the date of the event under section 24 to which the NCT credit note or NCT debit note relates.

(3) An NCT-registered person receiving a request under subsection (1) must comply with the request within 14 days of receiving the request.

**31 Maintenance of NCT documentation**

(1) An NCT-registered person can issue only one original NCT invoice for a taxable supply, or one original NCT credit note or NCT debit note for an event under section 24, but a copy clearly marked as such may be provided to an NCT-registered person who claims to have lost the original.

(2) A person must not issue a NCT invoice, NCT credit note, or NCT debit note other than in the circumstances specified in this Act.

(3) The following documents must be maintained by an NCT-registered person for the purposes of this Act –

- (a) original (or copies issued under subsection (1)) of all NCT invoices, NCT credit notes, and NCT debit notes received by the person;
- (b) a copy of all NCT invoices, NCT credit notes, and NCT debit notes issued by the person; and
- (c) customs documentation relating to imports and exports of goods by the person.

(4) The documents referred to in subsection (3)(b) must be maintained in chronological order.

(5) Documents required to be maintained under this Act must be –

- (a) maintained in Niue in English or Niuean; and
- (b) retained for seven years after the end of the NCT period to which they relate.

**PART X**  
**PROCEDURAL RULES**  
*Division I - Returns and Payments*

**32 NCT return**

(1) A taxable person must furnish an NCT return, in the prescribed form and manner, for each NCT period by the last day of the month following the end of the period.

(2) An NCT return purporting to be made or signed by or on behalf of a taxable person under this Act is treated as having been made by the taxable person or with the taxable person's authority unless the contrary is proved.

(3) A taxable person may apply, in writing, to the Financial Secretary for an extension of time to furnish an NCT return.

(4) The Financial Secretary may, upon satisfaction that there is reasonable cause, grant an application under subsection (3) and must serve notice of the decision on the applicant.

(5) An extension of time granted under subsection (4) does not change the date for payment of NCT due in respect of the return.

**33 Due date for payment of NCT**

(1) The net NCT payable by a taxable person for an NCT period computed under section 25 is payable by the due date for furnishing the NCT return for that period.

(2) A taxable person may apply, in writing, to the Financial Secretary for an extension of time to pay NCT due.

(3) The Financial Secretary may, upon satisfaction that there is reasonable cause, grant an application under subsection (2) and must serve notice of the decision on the applicant.

(4) The grant of an extension of time to pay NCT due does not preclude the liability for additional tax arising from the original date the NCT was payable.

(5) The NCT payable by an importer in respect of a taxable import is payable at the time of the import.

(6) The liability for NCT arises by operation of this section and does not depend on the Financial Secretary making an assessment of the NCT due.

**34 Collection of NCT on imports**

(1) The Financial Secretary –

- (a) must collect NCT due under this Act on an import of goods at the time of import and must, at that time, obtain the name and NCT registration number (if any) of the importer, the customs declaration, and invoice values in respect of the import; and
- (b) may make arrangements for such functions to be performed on the Financial Secretary's behalf in respect of imports through the postal service.

(2) Except when the contrary intention appears, the provisions of the Customs legislation relating to the import, transit, coastwise carriage, and clearance of imported goods, and the payment and recovery of duty, in so far as relevant and with such exceptions and modifications as necessary, apply in relation to NCT payable on a taxable import.

(3) The Financial Secretary may exercise any power conferred on him by the Customs legislation as if the reference to customs duty in that legislation included a reference to NCT payable on imported goods under this Act.

*Division II - Assessments*

**35 Self-assessments**

(1) For the purposes of this Act –

- (a) a taxable person who has furnished an NCT return is treated as having made an assessment of the amount of NCT payable for the NCT period to which the return relates being that amount as set out in the return; and
- (b) an NCT return furnished by a taxable person is treated as a notice of the assessment served by the Financial Secretary on the person on the date that the return was furnished.

**36 Default assessments**

(1) The Financial Secretary may make an assessment of the NCT payable by a taxable person if –

- (a) the person fails to furnish an NCT return as required under this Act; or
- (b) the person has been paid a refund under section 26 to which the person is not entitled.

(2) If a person, other than a taxable person, makes a supply of goods or services and represents that NCT is charged on the supply, the Financial Secretary may make an assessment of the NCT payable by the person in relation to the supply as if the person were a taxable person and the supply were a taxable supply.

(3) If a taxable person makes a supply of goods or services and the supply is not a taxable supply or is zero-rate supply and, in either case, the taxable person represents that a positive rate is charged on the supply, the Financial Secretary may make an assessment of the NCT payable by the person in relation to the supply as if the supply were a taxable supply subject to a positive rate of NCT.

(4) An amount assessed under subsection (2) or (3) is treated, for all purposes of the Act, as NCT payable under the Act unless, in the case of an amount assessed under subsection (3), the taxable person reasonably believed that NCT should have been applied at a positive rate to the supply and the person has since refunded to

the recipient of the supply the NCT charged on the supply or has otherwise satisfied the Financial Secretary that the recipient was not disadvantaged and the taxable person was not advantaged by the mistake.

(5) The Financial Secretary may make an assessment under this section at any time.

(6) The Financial Secretary may, based on the information available, estimate the NCT payable by a person for the purposes of making an assessment under this section.

(7) The Financial Secretary must serve a notice of the assessment made under this section on the person assessed stating –

- (a) the reason for the assessment;
- (b) the net amount of NCT payable under the assessment;
- (c) the date on which the net amount of NCT payable under the assessment is due, which must be, at least, [thirty] days after the date on which the notice is served; and
- (d) the time, place, and manner of objecting to the assessment.

(8) Additional tax –

- (a) in respect of NCT assessed under subsection (1)(a), is computed from the original due date for payment of NCT under section 33;
- (b) in respect of NCT assessed under subsection (1)(b), is computed from the date the refund was paid; or
- (c) in respect of NCT assessed under subsection (2) or (3), is computed from the date on which payment of the NCT would have been due under section 33 if the supply had been a taxable supply subject to a positive rate of NCT.

### **37 Assessment of recipient of a supply**

(1) If a taxable person has, in consequence of misrepresentation or fraud by the recipient of a supply, incorrectly treated the supply as an exempt or zero-rated supply, the Financial Secretary may assess the recipient of the supply for payment of the NCT due in respect of the supply and any additional tax imposed as a result of the late payment of the NCT.

(2) The Financial Secretary must serve notice of an assessment under subsection (1) on the recipient specifying –

- (a) the reason for the assessment as provided for in subsection (1);
- (b) the NCT payable under the assessment;
- (c) the date on which the NCT payable under the assessment is due, which must be at least thirty days after the date on which the notice is served; and
- (d) the time, place, and manner of objecting to the assessment.

(3) Subsection (1) does not preclude the Financial Secretary from recovering the whole or part of the NCT due in respect of the supply together with any additional tax payable from the taxable person who made the supply and –

- (a) any amount recovered from the recipient of the supply is credited against the liability of the supplier in respect of the supply; and
- (b) any amount recovered from the supplier is credited against the liability of the recipient of the supply,

but the Financial Secretary cannot recover more than the total amount of NCT and additional tax payable in relation to the supply.

(4) Any supplier who pays NCT or additional tax referred to in subsection (1) may recover the amount from the recipient of the supply.

(5) An assessment made under subsection (1) is treated as an assessment of NCT for all purposes of this Act.

**38 Amendment of assessments**

(1) Subject to this section, the Financial Secretary may amend an assessment by making such alterations or additions to the assessment as the Financial Secretary considers necessary to ensure that a person is liable for the correct amount of NCT payable in respect of the NCT period to which the assessment relates.

(2) A taxable person may apply to the Financial Secretary within the time specified in subsection (3)(b) for the Financial Secretary to make an amendment in accordance with subsection (1) to a self-assessment and the Financial Secretary must serve the person with notice of the decision on the application.

(3) The amendment of an assessment under subsection (1) may be made –

- (a) in the case of fraud or wilful neglect by or on behalf of the person assessed, at any time; or
- (b) in any other case, within three years of the date the Financial Secretary served notice of the assessment on the person assessed.

(4) As soon as practicable after making an amended assessment under this section, the Financial Secretary must serve the person assessed with notice of the amended assessment.

(5) Subject to subsection (6), if a notice of assessment (referred to as the “original assessment”) has been amended under subsection (1), the Financial Secretary may further amend the original assessment within the later of –

- (a) three years after the Financial Secretary served notice of the original assessment on the person assessed; or
- (b) one year after the Financial Secretary served notice of the amended assessment on the person assessed.

(6) If subsection (5)(b) applies, the Financial Secretary is limited to amending the alterations and additions made in the amended assessment to the original assessment.

(7) An amended assessment is treated in all respects as an assessment for the purposes of this Act (other than subsection (1) or (2)).

**39 Application of Income Tax Act assessment provisions**

(1) Sections 21 – 24 of the Income Tax Act apply for the purposes of this Act with the necessary changes made.

*Division III - Objections and Appeals*

**40 Application of Income Tax Act objection and appeal provisions**

Part IV of the Income Tax Act applies for the purposes of this Act with the necessary changes made.

*Division IV - Recovery of NCT*

**41 Application of Income Tax Act recovery provisions**

Sections 115 and 116 – 126 of the Income Tax Act apply for the purposes of this Act with the necessary changes made.

**42 Seizure of goods**

(1) The Financial Secretary may seize any goods in respect of which the Financial Secretary has reasonable grounds to believe that the NCT payable in respect of the supply or import of the goods has not been, or will not be paid.

(2) Goods seized under subsection (1) must be stored in a place approved by the Financial Secretary for the storage of seized goods.

(3) Immediately after the seizure of the goods, a written statement should be obtained from the owner of the goods or the person who had custody or control stating the quantity and quality of the goods.

(4) If goods have been seized under subsection (1), the Financial Secretary must, within ten days after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before the seizure, a notice in writing –

- (a) identifying the goods;
- (b) stating that the goods have been seized under this section and the reason for the seizure; and
- (c) setting out the terms for the release or disposal of the goods.

(5) The Financial Secretary is not required to serve a notice under subsection (4) if, after making reasonable enquiries, the Financial Secretary does not have sufficient information to identify the person on whom the notice should be served.

(6) If subsection (5) applies, the Financial Secretary may serve notice under subsection (4) on a person claiming the goods, provided that person has given sufficient information to enable the notice to be served.

(7) The Financial Secretary may authorise any goods seized under subsection (1) to be delivered to the person on whom a notice under subsection (4) has been served if that person has paid, or gives security for the payment of, the NCT payable or that will become payable in respect of the supply or import of the goods.

(8) If subsection (7) does not apply, the Financial Secretary must detain the goods seized under subsection (1) –

- (a) in the case of perishable goods, for a period that the Financial Secretary considers reasonable having regard to the condition of the goods; or
- (b) in any other case, for the greater of –
  - (i) twenty days after the seizure of the goods; or
  - (ii) twenty days after the date for payment of the NCT in respect of the supply or import of the goods.

(9) If the detention period in subsection (8) has expired, the goods seized may be sold by public auction or in such other manner as the Financial Secretary may direct and the proceeds of disposal must be applied by the Financial Secretary –

- (a) first towards the cost of taking, keeping, and selling the seized goods;
- (b) then towards the payment of the NCT, additional tax, and penal tax that is or will become payable in respect of the supply of the goods;

- (c) then towards payment of any other tax, duty, additional tax, or penal tax payable by the owner of the goods under any revenue law; and
- (d) the remainder of the proceeds, if any, must be paid to the owner.

**43 Security**

The Financial Secretary may, if there is reason to believe that a taxable person may not pay NCT when it becomes payable, require, by notice in writing, the person to give security by bond, deposit, or otherwise to the Financial Secretary's satisfaction for the payment of NCT that may become payable.

**44 Temporary closure of business**

(1) If an NCT-registered person fails to deliver a NCT return by the due date or pay NCT by the date for payment, the Financial Secretary may notify the person in writing of the intention to close down part or the whole of the person's business unless the person delivers the return or pays the NCT owing, as the case may be, within a period of seven days of the date of the notice.

(2) If a person fails to comply with a notice under subsection (1), the Financial Secretary may issue an order to close down part or the whole of the business of the person for a period not exceeding fourteen days.

(3) The Financial Secretary may, at any time, enter any premises described in an order issued under subsection (2) for the purposes of executing the order and may require a police officer to be present while the order is being executed.

(4) The Financial Secretary must affix, in a conspicuous place on the front of the premises of the business or part of the business which has been closed under an order issued under subsection (2), a notice in the following words

“CLOSED TEMPORARILY FOR NOT COMPLYING WITH TAX OBLIGATIONS BY ORDER OF THE FINANCIAL SECRETARY UNDER SECTION 44 OF THE NIUE CONSUMPTION TAX ACT”.

(5) If the return is delivered or the NCT owing is paid, as the case may be, within the period of closure, the Financial Secretary must immediately arrange for removal of the notice referred to in subsection (4).

*Division V - Information Collection and Investigations*

**45 Power to enter and search**

(1) A tax officer for the purposes of this section must apply to a Judge or the Registrar of the Niue High Court for a warrant to –

- (a) enter and search any premises, place, property, book, record or data storage device; and
- (b) may make an extract or copy of any books, accounts, documents, records or information on a data storage device to which access is obtained under paragraph (a); and
- (c) may seize any books, accounts, documents, or records that, in the opinion of the tax officer, afford evidence that may be material in determining the NCT liability of any person; and
- (d) may retain any books, accounts, documents, or records seized under paragraph (c) for as long as they may be required for determining a person's NCT liability or for any proceeding under this Act; and

(e) may, if a hard copy or copy on a data storage media of information stored on a data storage device is not provided, seize and remove the device from the premises and retain the device for as long as is necessary to copy the information required.

(2) A tax officer may require a police officer or any other officer of the Niue Public Service to be present for the purposes of exercising powers under this section.

(3) The owner or lawful occupier of the premises or place to which an exercise of power under subsection (1) relates must not interfere with the execution of the warrant.

(4) A person whose books, accounts, documents, records or data storage device have been seized under subsection (1) may examine them and make copies, at the person's expense, during office hours.

(5) The tax officer is responsible for all books, accounts, documents, records, or data storage devices removed and retained under this section and return them to the owner within 14 days of the conclusion of the investigation and any proceedings to which they relate.

(6) If any book, accounts, document, record, or data storage device removed and retained under subsection (1) is lost or destroyed in the possession of the tax officer the tax officer must appropriately compensate the owner for the loss or destruction, unless the loss or destruction was due to circumstances beyond the tax office control.

#### **46 Administrative summons**

(1) For the purposes of this Act, the Financial Secretary may, by notice in writing, require any person –

- (a) to furnish such information as the Financial Secretary may require;
- (b) to attend and give evidence concerning the person's or any other person's NCT affairs; or
- (c) to produce all books, accounts, documents, or records in the person's custody or under the person's control relating to the person's or any other person's NCT affairs.

(2) If the notice requires the production of books, accounts, documents, records, including in electronic format, it is sufficient if such books, accounts, documents, or records are described with reasonable certainty.

(3) A notice issued under this section must be served personally upon the person to whom it is directed or left at the person's last known usual place of business or abode and the certificate of service signed by the person serving the notice is conclusive evidence of the facts stated therein.

(4) The Regulations may prescribe scales of expenses to be allowed to persons required to attend and give evidence under this section.

#### **47 Audit of a person's NCT affairs**

(1) The Financial Secretary may select any person for an audit for the purposes of this Act having regard to –

- (a) the person's history of compliance or non-compliance with this Act or any other revenue law;
- (b) the amount of NCT payable by the person;

- (c) the class of business conducted by the person; or
- (d) any other matter that the Financial Secretary considers relevant to ensuring the collection of NCT due.

(2) The fact that a person has been audited in an NCT period does not preclude the person from being audited again in the next and following periods if there are reasonable grounds for the audits, particularly having regard to the matters referred to in subsection (1).

(3) An audit may be conducted for the purposes of more than one revenue law.

*Division VI - Representatives*

**48 Liabilities and obligations of representatives**

- (1) In this section, “representative” means –
  - (a) in the case of a natural person under a legal disability, the guardian or manager who receives or is entitled to receive income on behalf, or for the benefit of the individual;
  - (b) in the case of a company, the chief executive officer, public officer, managing director, or any director of the company;
  - (c) in the case of a partnership, a partner in the partnership;
  - (d) in the case of a trust, a trustee of the trust;
  - (e) in the case of an estate, the executor of the estate;
  - (f) in the case of a body of persons other than a partnership or company, any individual responsible for accounting for the receipt or payment of moneys or funds on behalf of the body;
  - (g) in the case of the Government or village council in Niue, any natural person responsible for accounting for the receipt or payment of moneys or funds on behalf of the Government or village council;
  - (h) in the case of a foreign government, political subdivision of a foreign government, or a public international organisation, any natural person responsible for accounting for the receipt or payment of moneys or funds in Niue on behalf of the government, political subdivision, or organisation;
  - (i) in the case of a non-resident person, any natural person controlling the person’s affairs in Niue, including any manager of any enterprise of such person;
  - (j) in the case of any person (including a person referred to in paragraphs (a)-(i)), a natural person that the Financial Secretary has, by notice in writing, declared to be a representative of the first-mentioned person for the purposes of this section.

(2) Every representative of a person is responsible for performing any duties or obligations imposed by this Act on that person, including the payment of tax.

(3) Subject to subsection (4), any NCT that, by virtue of subsection (2), is payable by a representative of a person is recoverable from the representative only to the extent of any assets of the person that are in the possession or under the control of the representative.

(4) Every representative is personally liable for the payment of NCT due by the representative in that capacity if, while the amount remains unpaid, the representative disposes of or parts with any moneys or funds belonging to the person

that are in the possession of the representative or which come to the representative after the tax is payable, if the NCT could legally have been paid from or out of such moneys or funds.

(5) If there are two or more representatives of a person, the duties or obligations referred to in this section apply jointly and severally to the representatives but may be discharged by any of them.

(6) Nothing in this section relieves any person from performing any duties or obligations imposed on the person under this Act that the representative of the person has failed to perform.

(7) This Act applies to any amount payable under this section by a representative as if the amount is NCT due.

**49 Liability for NCT payable by a company left with insufficient assets**

(1) This section applies if an arrangement has been entered into with the purpose or effect of rendering a company unable to satisfy a current or future liability under this Act.

(2) Subject to subsection (3), if this section applies, every person who was a director or controlling shareholder of the company at the time the arrangement was entered into is jointly and severally liable for the NCT liability of the company.

(3) A director of a company is not liable under this section for the tax liability of the company if the director derived no financial or other benefit from the arrangement and –

- (a) the director has, on becoming aware of the arrangement, formally recorded with the company his or her dissent and notified the Financial Secretary, in writing, of the arrangement; or
- (b) the director satisfies the Financial Secretary that, at the time the arrangement was entered into –
  - (i) the director was not involved in the executive management of the company; and
  - (ii) the director had no knowledge of, and could not reasonably have been expected to know of the arrangement.

(4) This Act applies to any amount payable under this section as if the amount is NCT due.

(5) In this section –

“arrangement” means any contract, agreement, plan, or understanding whether

express or implied and whether or not enforceable in legal proceedings;

“controlling shareholder”, in relation to a company, means any person who beneficially holds, either alone or together with an associate or associates –

- (a) more than fifty per cent of the voting rights in the company; or
- (b) more than fifty per cent of the rights to dividends; or
- (c) more than fifty per cent of the rights to capital; and

“director”, in relation to a company, means any person occupying the position of director of the company.

*Division VII - Penal Tax*

**50 Application of Income Tax Act penal tax provisions**

Sections 127, and 130 – 138 of the Income Tax Act apply for the purposes of this Act with the necessary changes made.

**51 Penal tax for failure to apply for NCT registration**

A person who fails to apply for registration as required by section 7 is liable for penal tax equal to double the amount of NCT payable during the period commencing on the day on which the person was first required to apply for registration until either the person lodges an application for registration or the person is registered by the Financial Secretary on the Financial Secretary's own motion.

**52 Penal tax for failure to display NCT registration certificate**

A person who fails to display its NCT registration certificate or a copy thereof as required by section 8(5) is liable for penal tax equal to 0.2 penalty units per day for each day or part day on which the failure occurs.

**53 Penal Tax for making a false or misleading statement**

(1) This section applies to a person –

- (a) who makes a statement to a tax officer that is false or misleading in a material particular or omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular; and
- (b) the NCT liability of any person computed on the basis of the statement is less than it would have been if the statement had not been false or misleading (the difference being referred to as the “NCT shortfall”).

(2) Subject to subsections (3) and (4), a person to whom this section applies is liable –

- (a) if the statement or omission was made knowingly or recklessly, for penal tax equal to seventy-five percent of the tax shortfall; or
- (b) in any other case, for penal tax equal to twenty percent of the tax shortfall.

(3) The amount of penal tax imposed under subsection (2) –

- (a) is increased by ten percentage points if this is the second or a subsequent application of this section to the person; and
- (b) is reduced by ten percentage points if the person voluntarily disclosed the statement to which the section applies prior to the earlier of discovery by the Financial Secretary or the commencement of an audit of the person’s NCT affairs.

(4) No penal tax is payable under subsection (2)(b) if –

- (a) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular; or
- (b) the NCT shortfall arose as a result of the person taking a reasonably arguable position on the application of this Act to the person’s circumstances in making a self-assessment return.

(5) Penal tax imposed under this section is in addition to additional tax payable in respect of the tax shortfall and nothing in subsection (4) prevents the imposition of additional tax in respect of an NCT shortfall if the NCT is not paid by the date for payment.

(6) A reference in this section to a statement made to a tax officer is a reference to a statement made in writing, orally, or in any other form to a tax officer acting in the performance of his or her duties under this Act, and includes a statement made –

- (a) in an application, certificate, declaration, notification, NCT return, objection, or other document furnished under this Act;
- (b) in any information required to be furnished under this Act;
- (c) in a document furnished to a tax officer otherwise than under this Act;
- (d) in answer to a question asked of a person by a tax officer; or
- (e) to another person with the knowledge or reasonable expectation that the statement would be passed on to a tax officer.

**54 Penal tax for failing to maintain proper records**

(1) A person who fails to maintain books, accounts, documents, or records as required under this Act is liable –

- (a) if the failure was knowingly or recklessly made, for penal tax equal to seventy-five per cent of the amount of NCT payable by the person for the NCT period to which the failure relates; or
- (b) in any other case, for penal tax equal to twenty per cent of the amount of NCT payable by the person for the tax period to which the failure relates.

*Division VIII - Offences*

**55 Application of Income Tax Act offence provisions**

Sections 127 – 130 of the Income Tax Act apply for the purposes of this Act with the necessary changes made.

**56 Offences related to registration**

A person who –

- (a) fails to apply for registration as required by section 7;
- (b) fails to notify the Financial Secretary of a change in circumstances as required by section 8(6);
- (c) applies for cancellation of registration when the value of the person's taxable supplies is not below the registration threshold specified in section 7(2);
- (d) fails to apply for cancellation of registration as required by section 9; or
- (e) fails to comply with section 9(9)(a) or (c),

commits an offence and is liable on conviction to a fine not exceeding 2 penalty units.

**57 Offences related to NCT documentation**

(1) A taxable person who fails to provide an NCT invoice, NCT credit note, or NCT debit note as required under this Act commits an offence and is liable on conviction to a fine not exceeding 2 penalty units.

(2) A person who issues an NCT invoice, NCT credit note, or NCT debit note otherwise than as provided for under this Act commits an offence and is liable on conviction to a fine not exceeding 2 penalty units.

(3) A registered person who fails to comply with a request under section 30 commits an offence and is liable on conviction to a fine not exceeding 2 penalty units.

**58 Offence for making a false or misleading statement**

- (1) A person who knowingly or recklessly –
- (a) makes a statement to a tax officer that is false or misleading in a material particular; or
  - (b) omits from a statement made to a tax officer any matter or thing without which the statement is misleading in a material particular,
- commits an offence and is liable on conviction to a fine not exceeding 2 penalty units.
- (2) Section 53(6) applies in determining whether a person has made a statement to a tax officer.

**59 Offence for failing to maintain proper records**

A person who knowingly or recklessly fails to maintain books, accounts, documents, or records as required under this Act commits an offence and is liable on conviction to a fine not exceeding 2 penalty units.

**60 Offence for breach of recovery or investigation powers**

A person who –

- (a) rescues any goods that have been seized under section 42; or
  - (b) before, at, or after the seizure of goods under section 42, staves, breaks or destroys any goods, or documents relating to any goods, to prevent –
    - (i) the seizure or the securing of the goods; or
    - (ii) the proof of an offence;
  - (c) enters premises the subject of an order under section 44(2) without the permission of the Financial Secretary;
  - (d) fails to provide reasonable facilities and assistance as required under section 45(4); or
  - (e) fails to comply with a notice served on the person under section 46,
- commits an offence and is liable on conviction to a fine not exceeding 2 penalty units.

*Division IX - Forms and Notices*

**61 Forms and notices; authentication of documents**

(1) A form, notice, NCT return, statement, table, or any other document required for the purposes of this Act may be in such form as the Financial Secretary determines for the efficient administration of this Act.

(2) The Financial Secretary must make the documents referred to in subsection (1) available to the public at the Tax or Customs Office and at such other locations, or by mail or such other means, as the Financial Secretary may determine.

(3) A notice or other document issued, served, or given by the Financial Secretary under this Act is sufficiently authenticated if the name or title of the Financial Secretary, or authorised tax officer, is printed, stamped, or written on the document.

**62 Manner of furnishing documents**

(1) An NCT return, application, notice, or other document to be furnished with the Financial Secretary under this Act must be delivered personally or by registered post to the Tax or Customs Office.

(2) If the due date for furnishing an NCT return, application, notice, or other document is a Saturday, Sunday, or a public holiday, the due date is the next following business day.

**63 Service of notices**

(1) Subject to this Act, a notice or other document required to be served on a person for the purposes of this Act is treated as properly served on the person if –

- (a) personally served on the person or the person’s representative; or
- (b) left at the person’s usual or last known place of abode or business address in Niue; or
- (c) sent by registered post to the person’s current address for service of notices or, if no address for service has been provided by the person to the Financial Secretary, to the person’s last known address.

(2) The validity of service of any notice or other document under this Act cannot be challenged after the notice or document has been wholly or partly complied with.

**PART XI**  
**ADMINISTRATION**

**64 Financial Secretary to administer Act**

(1) The Financial Secretary is charged with the administration of this Act.

(2) Subject to subsection (3), the Financial Secretary may delegate to a tax officer any duties, powers, or functions conferred or imposed on the Financial Secretary under this Act, other than this power of delegation.

(3) The powers of the Financial Secretary under sections 42, 44, and 45 must be specifically delegated to a tax officer and cannot form part of a general delegation of powers under this Act.

(4) A delegation under this section is revocable at will and does not prevent the exercise of a power or performance of a function by the Financial Secretary.

**65 Secrecy**

(1) A tax officer –

- (a) must maintain and aid in maintaining the secrecy of all matters relating to this Act that come to the officer’s knowledge and the officer must not communicate any such matters to any person except for the purposes of carrying into effect any revenue law; and
- (b) must, before the officer begins to perform any official duty under this Act, take and subscribe an oath of fidelity and secrecy to maintain secrecy in conformity with this section.

(2) Nothing in subsection (1)(a) prevents a tax officer from disclosing a document or information to –

- (a) another tax officer or an officer of the Customs office for the purposes of carrying out any duty arising under a revenue law;
- (b) a Court to the extent necessary for the purpose of carrying into effect any revenue law;

- (c) any person in the service of the Government in the Statistics Department if such disclosure is necessary for the performance of official duties;
- (d) the Auditor-General or any person authorised by the Auditor-General if such disclosure is necessary for the performance of official duties; or
- (e) any person with the written consent of the person to whom the document or information relates.

(3) If the person receiving documents or information under subsection (2) is not a tax officer, subsection (1)(a) applies to a person as if the person were a tax officer.

(4) A person who wilfully contravenes this section commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding 2 penalty units.

(5) In this section, “tax officer” includes a former tax officer.

## PART XII

### MISCELLANEOUS

#### **66 Branches and divisions**

(1) An enterprise conducted by a taxable person in branches or divisions is treated as a single enterprise for the purposes of this Act.

(2) A person who conducts an enterprise in branches or divisions must be registered in the name of the person and not in the names of the branches and divisions.

#### **66A Partnerships generally**

(1) For the purposes of this Act, if partners in a partnership undertake or carry on an enterprise, the partnership is regarded as the taxable person in relation to the enterprise. The consequences of this treatment are set out in subsections (2) to (4).

(2) The partnership is treated as carrying on the enterprise and the partners are treated as not carrying on the enterprise.

(3) A taxable supply, taxable acquisition, or taxable import made by or on behalf of a partner in the partnership in the course of carrying on the enterprise-

- (a) is taken to be a taxable supply, taxable acquisition, or taxable import of the partnership; and
- (b) is not taken to be a taxable supply, taxable acquisition, or taxable import of that partner or any other partner in the partnership.

(4) The partnership is the registered person in relation to the enterprise, and no partner in the partnership is eligible to apply for registration under section 7 in relation to the carrying on of the enterprise.

#### **66B Responsibilities of partners**

(1) Despite section 66A, for the purposes of this Act, a partner in a partnership is jointly and severally liable with the other partners in the partnership for-

- (a) paying NCT, additional tax, or penal tax due in relation to the carrying on of the partnership’s enterprise;
- (b) furnishing NCT returns in relation to the carrying on of the partnership’s enterprise;

- (c) providing information, producing books, accounts, documents or records, or attending and giving evidence as required in relation to the carrying on of the partnership's enterprise;
- (d) doing anything that is required to be done under this Act by or on behalf of the partnership.

(2) Subsection (1) applies for an NCT period when a partner is a member of the partnership. For this purpose, a partner does not stop being a member of the partnership until the date on which the Financial Secretary receives written notice under section 8(7) of a change in the partnership's membership.

(3) For the purposes of subsection (1)(d), a thing done by any partner in the partnership is sufficient compliance with the requirement.

#### **66C Notices**

A notice served under this Act to a partnership in its registered name is treated as served on the partnership and on all the partners in the partnership.

#### **66D Partnership changes**

A change in a partnership's membership does not give rise to any taxable supply or taxable acquisition under section 66A(3) and does not carry with it any consequences for the purposes of this Act.

#### **67 Tax avoidance schemes**

(1) Notwithstanding anything in this Act, if the Financial Secretary is satisfied –

- (a) that a scheme has been entered into or carried out;
- (b) a person has obtained a tax benefit in connection with the scheme; and
- (c) having regard to the substance of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person to obtain a tax benefit,

the Financial Secretary may determine the NCT liability of the person who has obtained a tax benefit as if the scheme had not been entered into or carried out.

(2) If the Financial Secretary makes a determination under subsection (1), the Financial Secretary must issue an assessment giving effect to the determination.

(3) A determination under subsection (1) must be made within 3 years from the last day of the NCT period to which the determination relates.

(4) Subsection (3) does not affect the operation of section 38(3)(a).

(5) In this section –

“scheme” includes a course of action, and an agreement, arrangement, promise, plan, proposal, or undertaking, whether express or implied, and whether or not legally enforceable; and

“tax benefit” means –

- (a) a reduction in the liability of a person to pay NCT;
- (b) an increase in the entitlement of a person to an input tax credit;
- (c) an entitlement to a refund;
- (d) a postponement of a liability for the payment of NCT;
- (e) an acceleration of an entitlement to an input tax credit;

- (f) any other advantage arising because of a delay in payment of NCT or an acceleration of the entitlement to an input tax credit;
- (g) anything that causes a taxable supply or taxable import not to be a taxable supply or taxable import, as the case may be; or
- (h) anything that gives rise to an input tax credit entitlement for an acquisition or import that is used or to be used other than in making taxable supplies.

**68 Currency**

(1) Any amount taken into account under this Act must be expressed in New Zealand dollars.

(2) If any amount is expressed or paid in a currency other than New Zealand dollars –

- (a) in the case of an import of goods, the amount must be converted into New Zealand dollars at the exchange rate applicable under the Customs legislation for the purposes of computing the customs duty payable on the import; or
- (b) in any other case, the amount must be converted to New Zealand dollars at the Reserve Bank of New Zealand mid-exchange rate applying between the foreign currency and New Zealand dollars on the date the amount is taken into account for the purposes of this Act.

**69 Prevention of price exploitation on introduction of NCT**

(1) Subject to subsection (3), a person who makes a regulated supply for a price that is excessive having regard to –

- (a) the introduction of this Act;
- (b) the person's costs;
- (c) supply and demand conditions; and
- (d) any other relevant matter, commits an offence and is liable on conviction to a fine not exceeding 2 penalty unit for the first breach of this subsection and a fine not exceeding 4 penalty units for the second and each subsequent breach.

(2) No offence is committed under subsection (1) if –

- (a) the contravention was due to reasonable mistake; and
- (b) the person took reasonable precautions and exercised due diligence to avoid contravention of subsection (1).

(3) The Financial Secretary must publish guidelines about when prices for regulated supplies may be in contravention of subsection (1).

(4) In this section, “regulated supply” means a supply occurring in the period commencing six months before and ending one year after the commencement date.

**70 Act to bind Crown**

This Act binds the Crown.

PART XIII  
FINAL PROVISIONS

**71      Regulations**

- (1)      The Cabinet may make regulations –
  - (a) prescribing forms required under this Act; and
  - (b) for the proper and efficient administration of this Act.
- (2)      Without limiting the general effect of subsection (1), the regulations made under that subsection may –
  - (a) contain provisions of a saving or transitional nature consequent on the making of this Act; or
  - (b) prescribe penalties for the contravention of the regulations.
- (3)      The regulations may provide that rules of a transitional nature that are made under this section within six months after the commencement date take effect from the date on which the Act comes into force.

**72-73 [Spent]**

# NIUE DEVELOPMENT BANK ACT 1993

1994/189 – 6 July 1994

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## To establish the Niue Development Bank

### 1 Short title

This is the Niue Development Bank Act 1993.

### 2 Interpretation

In this Act –

“Audit Office” means the auditor appointed under article 60 of the Constitution;  
“Bank” means the Niue Development Bank;

“economic development” means development, in conformity with the priorities of national development goals made by the Government including development of –  
(a) Tourism;

- (b) Agriculture, livestock, forestry and fishing;
- (c) Manufacturing and processing industries;
- (d) Engineering, construction and transport;
- (e) Commercial activities;
- (f) Housing;
- (g) Other areas;

“financial assistance” means any –

- (a) Equity participation; or
- (b) Loan; or
- (c) Hire Purchasing; or
- (d) Leasing;

“Minister” means the Minister of Finance;

“permanent Niuean resident” means any person who has been granted permanent resident status under the Immigration Act 2011;

“recipient” means any Government corporate body, or person, or organisation, to whom the bank provides financial assistance.

## PART 1

### ESTABLISHMENT AND ADMINISTRATION

**3**

#### **Niue Development Bank**

- (1) There is hereby established a Bank called the Niue Development Bank.
- (2) The Bank shall be a body corporate with perpetual succession and a common seal and shall be capable of acquiring holding and disposing of real and personal property, suing and being sued and subject to this Act, of doing and suffering all such other acts and things as body corporates may lawfully do and suffer.

**4**

#### **Constitution of Board**

- (1) There shall be a Board of Directors of the Bank consisting of –
  - (a) The Financial Secretary or a person delegated by him in writing as his alternate;
  - (b) Four persons from the private sector, of good character and standing, who shall each have expertise in one or more different areas of the Bank’s operation and who shall be appointed by Cabinet, but shall not include any Ministers of the Crown or any members of the Assembly.
- (2) Cabinet shall appoint a Chairman who shall be one of the directors referred to in subsection (1).
- (3) The appointment of directors and Chairman shall be publicly notified in such manner as Cabinet deems appropriate.
- (4) The Board may elect one of their members to be Deputy Chairman.
- (5) No person shall be deemed to be employed in the public service by reason only of his being a member of the Board.

**5**

#### **Responsibilities of directors**

- (1) The Board of Directors shall be responsible to the Cabinet for the proper and efficient operation of the Bank.
- (2) Without limiting the generality of subsection (1), the responsibilities of the Board of Directors shall include the responsibility to –
  - (a) Ensure that the functions of the Bank are carried out efficiently and under proper banking standards;

- (b) Maintain the independence and integrity of the Bank;
- (c) Ensure that the Bank complies with this Act, the Bank's policies and any directions given to the Bank under section 10.

**6 Term of office of directors**

(1) Except as otherwise provided by this Act, every appointed director shall hold office for a period of not less than one year and not more than 2 years commencing on the date of his appointment provided that any director may be reappointed for further terms.

(2) A member of the Board who is not an employee of the public service or any ad hoc body of the Government shall be paid from the funds of the Bank such remuneration and allowances as Cabinet may determine.

(3) Notwithstanding any other provision in this Act every member whose office is terminated by the effluxion of time shall continue to hold office until his successor is appointed.

**7 Extraordinary vacancies**

(1) Any appointed director may at any time be removed from office by the Minister with the concurrence of Cabinet –

- (a) For disability, bankruptcy, neglect of duty or misconduct proved to the satisfaction of the Minister with the concurrence of Cabinet; or
- (b) If that director is absent from Niue for any period exceeding 2 months; or
- (c) If the director is absent from 3 consecutive meetings of the Board without leave of absence from the Board.

(2) An appointed director may at any time resign his office by delivering a notice in writing to that effect to Cabinet.

(3) If any director dies or resigns, or is removed from office, his office shall become vacant and the vacancy shall be deemed to be an extraordinary vacancy.

(4) An extraordinary vacancy shall be filled by the appointment of a person in the same manner as the appointment of the vacating member.

(5) Every person appointed to fill an extraordinary vacancy shall be appointed for the residue of the term for which the vacating member was appointed.

(6) The powers of the Board shall not be affected by any vacancy in its membership, provided that no business shall be transacted by the board if at any time its total membership under clause 4 falls below three persons.

**8 Meetings of the Board**

(1) The first meeting of the Board shall be held on a day to be appointed by the Minister.

(2) Subsequent meetings of the Board shall be held at intervals of not more than every 6 weeks, at such times and places as the Board appoints.

(3) The Minister, or the Chairman or any two directors may at any time call a special meeting of the Board.

(4) Not less than three days notice of every meeting, together with the proposed agenda for that meeting shall be given in writing to every director present in Niue, unless all the directors of the time being in Niue unanimously agree that shorter notice may be given in respect of any particular meeting.

(5) At all meetings of the Board the quorum necessary for the transaction of business other than the adjournment of the meeting shall be not less than three members holding office.

(6) The Chairman shall preside at all meetings of the Board at which he is present.

(7) In the absence of the Chairman from any meeting, the Vice-Chairman shall preside, provided that if the Vice-Chairman is also absent, then the directors present shall appoint one of their number to be Chairman.

(8) At any meeting of the Board every director shall be entitled to one vote on any matter, provided that the Chairman or other person presiding shall in the case of equality of votes, also have a casting vote.

(9) Minutes shall be kept of every meeting of the Board. A resolution in writing signed or assented to by letter or facsimile, by all members of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted.

(10) Subject to this Act and of any regulations under it, the Board may regulate its procedures in such manner as it thinks fit.

(11) (a) No director shall vote or take part in the discussion of any matter before the Board or before the committee of it in which he has directly or indirectly a pecuniary interest apart from any interest in common with the public.

(b) Any director who knowingly offends against this subsection commits an offence and shall be liable on conviction to a fine not exceeding 10 penalty units.

## **9 Committees**

(1) The Board may by resolution appoint, discharge, alter, continue or reconstitute a committee or committees, consisting of two or more members, to advise the Board on such matters as are referred to any committee by the Board.

(2) Any person may be appointed to be a member of any committee appointed under this section notwithstanding that he is not a member of the Board.

(3) Subject to this Act, of any regulations, or of any general or special directives of the Board, any such committee may regulate its procedure in such manner as it thinks fit.

## **10 Directives by Cabinet**

(1) Cabinet may give the Bank in writing such directives as Cabinet thinks fit as to the policy to be followed by the Bank in the exercise of its functions or powers, provided that no such directives shall be given in respect of specific loans or loan applications.

(2) The Bank shall, in the exercise of its functions and powers, give effect to any written directives given to it by the Cabinet under this section.

(3) A copy of every direction given by Cabinet to the bank under this section in any financial year shall be included in the annual report of the Bank for that year laid before the Assembly under section 27(1)(b).

## **11 General Manager and other employees**

(1) The Board shall employ at such remuneration and on such terms and conditions as it may determine, a suitably qualified General Manager, who shall perform such duties as may be prescribed by the Board.

(2) The General Manager may be required to attend all Board meetings unless his presence at any meeting is excused by the Board or when any matter in which he is directly or indirectly privately interested is to be considered at such meeting.

(3) The Board may engage at such remuneration on such terms and conditions and in such number as it may determine, other employees as may be essential for the conduct of the business of the Bank.

(4) The Board may in writing delegate to the General Manager or other employee of the Bank such of the powers or functions of the Board including the power of delegation conferred by this section as it may think fit; provided that in no case shall any power –

- (a) to acquire land or buildings; or
  - (b) to sell land or building vested in the Bank
- be delegated.

(5) Subject to any general or special direction given or conditions imposed by the Board or person to whom any powers are delegated as aforesaid, any person to whom any powers are delegated may exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(6) Every person purporting to act under any delegation under this section shall be presumed to be acting under the terms of the delegation in the absence of proof to the contrary.

(7) Any delegation under this section may be made to a specified person or to persons of a specified class or may be made to the holder for the time being of a specified office or appointment or to the holders of offices or appointments of a special class.

(8) Any delegation under this section may be revoked at any time.

(9) The delegation of any power by the Board or person shall not prevent the exercise of that power by the Board or as the case may require, by that person.

(10) A copy of every delegation made under this section in any financial year shall be included in the annual report of the bank for that year laid before the Assembly under section 27(1)(b).

(11) Any person in the public service may be appointed to be an officer or employee of the Bank but no such person shall be entitled to hold office concurrently as an officer or employee of the Bank and as a public servant except –

- (a) In the case of a person who is a member of the public service with the consent of the Public Service Commission; and
- (b) In any other case with the consent of the Minister of the Crown to whose control he is subject.

(12) (a) Any person who was an officer of the public service and who is employed by the Bank, may within 3 months after his appointment as an officer or employee of the Bank, elect to resume employment in the public service and, in any such case, notwithstanding the provisions of any enactment to the contrary, his employment in the public service shall be deemed to have continued without interruption;

- (b) This subsection shall not apply to any person whose employment by the Bank is terminated for misconduct or neglect of duty.
- (c) No person shall be entitled to receive any salary as a member of the public service in respect of any period during which he was employed by the Bank.

## 12 Consultant and specialist personnel

Without limiting this Act, the board may with the approval of the Minister with concurrence of Cabinet appoint consultants, advisers and such specialist personnel as it thinks necessary or appropriate to assist the General Manager or the Bank generally or specifically.

**13 Personal liability**

No member of the Board or employee of the Bank shall be personally liable for any act or default done or made by the Board or by any director or employee in good faith in the course of the operations of the Bank.

**PART 2**

**CAPITAL**

**14 Authorised capital**

- (1) [Spent]
- (2) The authorised capital of the Board may be increased to such amount as may be prescribed by Cabinet.
- (3) The authorised capital of the Bank shall not be increased otherwise than under this section.

**15 Subscription of shares**

- (1) The Bank shall not allot any of its unissued shares to any person other than Her Majesty or a nominee holding the shares on behalf of Her Majesty.
- (2) For the purposes of subsection (1) the Minister may hold and subscribe for shares on behalf of Her Majesty and any statutory body in which the Government holds a controlling interest or ad hoc of Government may be a nominee of Her Majesty for the purpose of subscribing for and being allotted shares on Her behalf.
- (3) The shares of the Bank shall not be pledged or encumbered in any manner whatsoever and shall not without the prior approval of Cabinet be transferred or assigned and then, only on such terms and conditions as Cabinet may impose.
- (4) The liability of a shareholder shall be limited to the unpaid portion of the par value of shares for which the shareholder subscribed.

**PART 3**

**FUNCTIONS, POWERS AND FUNDS**

**16 Functions of the Bank**

- (1) The general functions of the Bank shall be –
  - (a) To provide finance for the establishment, development, extension or assistance of industry and economic development in Niue;
  - (b) To encourage and promote investment in the economic development of Niue;
  - (c) To provide finance for dwellings and improved housing and improved living conditions in Niue;
  - (d) To provide technical assistance or advice and to generally foster economic development in Niue.
- (2) Without limiting the generality of subsection (1), the Bank shall have the following functions –
  - (a) To provide financial assistance on such terms and conditions as the Board thinks fit, to permanent Niuean residents engaged or about to be or intending to be engaged in any economic development in Niue;
  - (b) To provide such advisory and technical services either with or without remuneration or fee as the Board considers desirable or expedient in the interest of the community and its economic development;
  - (c) To assist in obtaining and placing foreign investment on Niue for the purposes of economic development;
  - (d) To administer on such terms and conditions as may be approved by the board such special funds as may be placed at the disposal of the Bank;

- (e) To study and promote onshore investment opportunities for the economic development in Niue;
  - (f) With the prior approval of Cabinet to acquire by lease or sublease any land or buildings and to develop the same as a building estate by the erection, construction, alteration, maintenance and improvement of dwelling houses or flats, and gardens, recreation parks and other works and buildings for or for the convenience of persons occupying such dwelling houses or flats;
  - (g) To lease any land in the cause of housing and other urban development, improvements and renewal; provided that the power to sell land contained in here shall not extend to any land acquired by the Government by warrant under section 8 of the Niue Amendment Act 1968 No 2 and provided further that this provision shall not be deemed to extend the powers of the Niue Development Bank in respect of land beyond such powers as the Niue Development Bank would have had prior to the passing of this Act;
  - (h) To do all matters and things incidental to or connected with the foregoing.
- (3) The Board shall have such other functions as are conferred on it by this Act or by any other enactment.

## 17 Powers of the Bank

(1) The Bank shall have all such powers, rights and authorities as may reasonably be necessary or expedient to carry out its functions.

(2) Without limiting the generality of subsection (1) the Board shall have the following specific powers –

- (a) Sell, purchase or subscribe for shares, debentures, bonds or other securities including securities which the Bank has issued or guaranteed or make loans, with or without security, or acquire any other interest;
- (b) Finance the purchase, sale or hire of machinery, plant, equipment, materials, goods and articles of every description by means of any arrangement whatsoever, including but without limiting the generality of the foregoing, the purchase and resale and hire of it on such terms as the Board thinks fit; and
- (c) Execute, make, draw, accept, endorse, discount, issue and negotiate cheques, promissory notes, bills of exchange, bills of lading, bankers and other drafts, warrants, bonds, debentures, coupons and other negotiable or transferable instruments and buy, sell or otherwise deal in the same, and accept deposits of money;
- (d) With the prior approval of Cabinet and upon terms and conditions to be approved by Cabinet, borrow money required by it for the purpose of meeting any of its obligations of discharging any of its functions under this Act provided that the aggregate of the liabilities of the Bank outstanding at any one time, including bonds and debentures if any, issued by the Bank shall not exceed three times the amount of its paid-up shares capital and reserves;
- (e) Participate, in the discretion of the Board, in the management of enterprises to whose finance it has contributed whether by loan or otherwise;
- (f) Organise, participate in, or act as agent for consortium arrangements for the assistance of economic development in Niue;
- (g) Act as agent for the government of international financial institutions in the financing of economic development in Niue;
- (h) Place funds not immediately required on deposit with any onshore bank, or an overseas bank with Cabinet's approval;
- (i) Take such steps as may be necessary to protect or recover its financial interest in any business;

- (j) To accept gifts of leases or subleases of any land, money or other property;
- (k) To subdivide or develop any land acquired by or vested in it;
- (l) Subject to the provisions of any enactment applicable to the bank, to fix, regulate or make such charges as may be determined from time to time for the use of any dwelling house, flat, building or other facility provided, maintained, controlled or operated by the bank;
- (m) To make advances under this Act;
- (n) To negotiate and enter into arrangements with and between landowners and householders, and assist by advice and otherwise the development of private housing conditions;
- (o) To contract for the execution or provision by any person of any work or services authorised by this or any other enactment to be executed or provided by the Board in such manner and subject to such terms and conditions as the Board thinks fit;
- (p) Make such charges for the provision of its service as the Bank thinks fit.

## **18 Operating principles**

- (1) In determining whether or not any financial assistance shall be given to any enterprise, the Board shall properly evaluate each proposal and consider –
  - (a) The prospects of the enterprises being or becoming and remaining financially viable and the prospects of any money lent to it by the Bank being repaid to the Bank;
  - (b) The degree to which the enterprise is or will become or remain of value to the economy of Niue;
  - (c) The degree to which persons ordinarily resident in Niue will derive a direct benefit from the enterprise;
  - (d) Any policy directives given to it by Cabinet.
- (2) No financial assistance shall be given in respect of any project, or for housing purposes unless the Board is satisfied –
  - (a) That the project or recipient has the financial ability and resources to meet all repayments and other obligations imposed by the Bank; or
  - (b) That the recipient is a permanent Niuean resident or an organisation in which the majority shareholder or principal partner or owner is a permanent Niuean resident.

## **19 Vesting of property in Bank**

- (1) Her Majesty may in accordance with section 8 of the Niue Amendment (No 2) Act 1968 grant in respect of the Crown land, any lease, licence, easement or other limited estate, right or interest to the Bank or in the name of the Bank property, rights or privileges, vested in or held on behalf of the Crown and used or administered or to be used or administered for the purposes of or in connection with any housing or industrial projects or town planning schemes subject to any leases, rights, easements and interests subsisting in respect of the land or property at the date of the grant, transfer or assignment.

(2) Any lease by the Crown under subsection (1) may be for such term and provide for such rent and other conditions as the Bank with the prior written approval of the Minister shall accept or approve.

**20 Funds**

- (1) The funds of the Bank shall consist of –
- (a) Such sums of money as may be received by the Bank under section 15;
  - (b) Such sums of money as the Bank may acquire by virtue or grants or raised by way of loan;
  - (c) Such sums of money as may be appropriated for it by the Assembly; and
  - (d) Such other sums of money as may accrue to it in the course and on account of its business.
- (2) Any special funds shall be kept separate from the other funds specified in subsection (1).
- (3) No charge or lien created on any special fund shall operate as a charge or lien upon the funds of the Bank, provided that –
- (a) Where in any Appropriation Act or in any estimate of expenditure and revenue accompanying the Appropriation Act for any year any vote or item to which the section applies is noted as being for a specified purpose, it shall not be competent for the Bank to use moneys so appropriated for any purpose other than that specified in such Act or estimate; and,
  - (b) Where any appropriation is made for the purposes of the Board, the Cabinet may direct the manner in which the moneys appropriated shall be paid to the Board and may require that any such appropriation be used first in payment of any debt due to the Public Account or to any account within the Public Account.

**21 Application of funds**

The funds of the Bank shall be applied towards –

- (a) The payment of salaries and fees due to employees of the Bank;
- (b) The repayment of sums raised by way of loan by the bank and the payment of interest on it;
- (c) Providing financial assistance under this Act;
- (d) The payment of rates, taxes, insurance premiums and other outgoings;
- (e) The payment of such dividends as the Board may authorise; and
- (f) All other payments necessary for or incidental to the business of the Bank authorised under this Act.

**22 Principles and limits on financing and operations**

(1) The Bank may alone or in conjunction with other domestic or foreign investors, provide or participate in providing financial assistance in aid of development investment in Niue.

- (2) In providing financial assistance the Bank shall –
- (a) Maintain a reasonable diversification in its investments among all sectors of economic activity in Niue;
  - (b) Maintain a satisfactory balance between the dates of maturity of its own obligations and those of the loans it grants; and
  - (c) As principal objective, operate as a successful business, as profitably and efficiently as comparable businesses in the private sector.
- (3) The Bank's financial assistance shall in the cases of a single recipient or several recipients who are associated with each other in a community of material financial interest, not exceed 20 per centum of the Bank's paid-up shares, capital and reserves.

- (4) In the case of funds invested by the Bank in equity participation –
- (a) The aggregate of the amounts so invested shall not exceed 20 percentum of the aggregate of the Bank's paid-up share capital;
  - (b) The Bank shall limit such participation, in any recipient or recipients associated with each other in a community of material financial interest, to a maximum of 10 per centum of the Bank's paid up capital of such recipient; and
  - (c) The Bank shall seek to rotate its funds by selling such participations to other investors wherever it can do so on satisfactory terms.

**23 Short-term investment**

The Bank may invest all or any part of its funds not immediately required for the purpose stated in this Act in good and sound investment, to be approved by Cabinet.

**24 Reserve Fund and allocation of net profit**

(1) The Bank shall provide against any anticipated losses by establishing and maintaining a reserve fund to which shall be allocated at the end of each financial year of the Bank –

- (a) Not less than 50 per centum of the net profit of the Bank of that year until the total sum standing to the credit of such reserve fund shall amount to a sum equal to the paid-up share capital of the Bank;
- (b) Not less than 10 per centum of the net profit of the Bank of that year if the total sum standing to the credit of such reserve fund exceeds a sum equal to the paid-up share capital of the Bank.

(2) The Board shall determine annually on the allocation of the net profit of the Bank after providing for the Reserve Fund.

**PART 4**

**ACCOUNTS AND REPORTS**

**25 Financial Year**

The financial year of the Bank shall be the period of 12 months ending on 30 June in each year.

**26 Accounts and audit**

(1) The Board shall cause true and full accounts and records to be kept of all the transactions with which the Bank is concerned, and the books of account and records shall be kept at the principal place of business of the Bank.

(2) The accounts shall be subject to annual audit by the Government's official Audit Office or their duly authorised representatives.

**27 Reports**

- (1) The Board shall –
- (a) Provide to the Minister a quarterly report containing such financial and other information as the Minister may require regarding the operation of the Bank; and
  - (b) Not later than 3 months after the end of each financial year, submit to the Cabinet a report of its operations, including the annual statement of its accounts for that year, and shall forward a copy of such report and annual statement to the Audit Office;
  - (c) Submit to Cabinet an audited annual statement of accounts.

(2) Without limiting the content of the annual report required to be made under subsection (1) under (b) such report shall include the following information –

- (a) The objectives and policies of the Bank;
- (b) The nature and scope of activities being undertaken or to be undertaken;
- (c) The ratio of capital to total assets, and definitions of those terms as used in the report;
- (d) The accounting policies used in relation to the annual statement included in the report.

(3) Every audited report and annual report submitted to Cabinet under subsection (1)(b) and (c) shall forthwith be laid before the Assembly for debate if the Assembly is then in session, or, if the Assembly is not then in session, within 24 hours of the commencement of the next ensuing session.

PART 5  
SECURITIES

**28 Security for advances**

(1) Advances made by the Bank shall be secured in such manner and on such terms as the Bank thinks fit.

(2) For the purposes of determining whether an application for an advance should be granted, the Bank shall not be bound to insist upon any fixed or definite margin of security.

**29 Securities to be taken in name of Bank**

Every security for an advance shall be taken in the name of the Bank.

**30 Assignment of money as security may be irrevocable**

(1) The Bank may require any order on or assignment of money given as security for the repayment of any advance to be expressed to be irrevocable, notwithstanding the death of the person giving the order or assignment, and the order or assignment shall be irrevocable accordingly except with the consent in writing of the Bank.

(2) Notwithstanding anything in any enactment to the contrary, any company, corporate body, or person upon whom any notice of any such order or assignment has been served, shall be bound to accept and to act upon the order or assignment and to pay to the person nominated in that behalf in the order or assignment all money payable under it.

**31 Alienation and assignment as security for advances**

(1) Notwithstanding anything in Part 19 of the Niue Act 1966, or in section 24 of the Niue Amendment Act (No 2) 1968, it shall be competent for any Niuean or descendent of a Niuean to alienate any Niuean freehold land or things growing on or attached to any such land of the rents and profits from any such land as security for any advance made by the Bank for any housing or other purpose.

(2) Notwithstanding anything in the Property Law Act 1952 no power of sale shall be contained or implied in any charge given on any interest in land (not being leasehold interest) to secure the repayment of any advance made by the Bank for any housing or other purpose.

**32 Assignments of money from land vested in trustees**

(1) For the purpose of securing the repayment of any advance made by the Bank for any housing or other purpose, it shall be competent for any Niuean or

descendant of a Niuean to give an order on or an assignment of the proceeds of the alienation of any land (including compensation money for land taken) whether the land is vested in a trustee or not.

(2) Any such order or assignment shall be valid and enforceable for all purposes notwithstanding any other enactment.

### **33 Advances to be paid as Bank directs**

Every advance shall be expended or applied by the Bank, or at its discretion, for any one or more purposes for the benefit or on behalf of the applicant and, unless the Bank otherwise determines, shall not be paid direct to the applicant.

### **34 Charging order may be made**

(1) Notwithstanding anything in the Niue Act 1966, or in any other enactment where a charge on any interest in land has been given as security for the repayment of any advance, the Court, on proof to its satisfaction that the advance has been approved by the Bank, and in anticipation of the advance being made, may make an order changing the land or any interest in it or any part of it or any undivided or partial interest in it with repayment of the amount advanced or to be advanced, together with all interest and other monies which may become payable thereunder and by such instalments and with such directions for giving effect to the charge as the Court thinks expedient.

(2) The certificate of the Bank shall for all purposes be prima facie proof of the amount of the advance and of the rate of interest payable, and may be accepted by the Court accordingly.

(3) (a) The Court may make a further order varying any former order in respect of any additional advance or by way of apportioning charges in such manner as it thinks expedient or for any other purpose it thinks fit, and every subsequent order shall supersede all prior charging orders so far as it is inconsistent with it.

(b) Where any charge is apportioned, each portion shall be deemed to be a separate charge.

(4) Every order made under this section shall be registered or recorded, as the case may require, in such manner as the Court directs.

### **35 Discharging of charging orders**

The Court may at any time, on the application of the Bank wholly or partially discharge any charging order made under section 34, whether or not the money secured by the charge has been repaid.

### **36 Appointment of receiver to enforce charges**

(1) When by section 34 any charging order has been made in respect of any land or any interest or upon the revenues in it or the proceeds of the alienation of it, the Court may, for the purpose of enforcing that charge, appoint a receiver in respect of the property so charged.

(2) A receiver appointed under this section shall have all such rights, powers, duties and liabilities as may be expressly conferred or imposed on him by the Court and such other incidental powers as may be reasonably necessary for the exercise of the powers so conferred provided that a receiver appointed under this section shall not have power to sell the freehold interest in any Niuean land, or to lease any such land otherwise than as provided in subsection (3).

(3) Notwithstanding any of the provisions of the Niue Act 1966 as to the alienation of Niuean land, a receiver appointed under this section for the purpose of

enforcing a charge may, in his own name and with the leave of the Court, grant leases of any land so charged for any term not exceeding 21 years, on such conditions and for such rent or other consideration as he thinks fit.

**PART 6**  
**MISCELLANEOUS**

**37 Taxation**

The income and revenue of the Bank shall not be subject to taxation.

**38 Contracts of Bank**

(1) Any contract which, if made between private persons, must be by deed shall, if made by the Bank, be in writing under the common seal of the Bank.

(2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged therewith shall, if made by the Bank be under the common seal of the Bank.

(3) Any contract which, if made between private persons, may be made orally may be similarly made by or on behalf of the Bank by any person acting under its authority, express or implied.

**39 Execution of documents**

(1) Every document to which the common seal of the Bank is affixed shall be signed by the Chairman or in his absence the Vice-Chairman, and shall be countersigned by either the General Manager of the Bank, or in his absence from Niue, any other director.

(2) Any document which, if executed by a private person, would not require to be executed as a deed may be signed on behalf of the Bank by the Chairman or by the General Manager of the Bank.

(3) No document to which the common seal is required to be affixed, and no contract to which the Bank is a party shall be executed except under a resolution of the directors.

**40 Evidence of documents**

Every document purporting to be a document executed by or on behalf of the Bank in a manner provided in section 39 shall be received in evidence and be deemed to be so executed in the absence of proof to the contrary.

**41 Penalty for misapplication of loan**

Any person who knowingly applies any loan or part of it made under this Act to any purpose other than that authorised by the Bank shall be guilty of an offence and on conviction shall be liable to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

**42 False statements**

Any applicant for assistance from the Bank by way of loan or otherwise who wilfully fails to disclose any material information within his knowledge, or who wilfully makes any statement which he knows to be false or does not believe to be true shall be guilty of an offence and on conviction shall be liable to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

**43 Disclosure of information**

Any Board member or employee of the Bank who directly or indirectly discloses, or for private purpose uses, any information acquired by him either in the course of his duties or his capacity as an employee of the Bank shall be guilty of an offence and on conviction shall be liable to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

**44 Breach of Act or regulations**

Every person who commits or attempts to commit or is concerned in committing or attempting to commit a breach or violation of this Act or of any regulations made under this Act for which no special penalty is provided is liable for every offence to a fine not exceeding 5 penalty units.

**45 Rules**

The Board may make such rules, consistent with this Act, as it considers necessary or appropriate to facilitate and control its operations, and further the objects and functions of the Bank.

**46 Regulations**

Cabinet may by publication in the *Gazette* after consideration of any recommendations thereon made to it by the Bank through the Minister, make all such regulations as may be necessary or expedient for giving full effect to this Act and for the due administration of it.

**47-49 [Spent]**

# NIUE DEVELOPMENT BONDS ACT 1994

1994/181 – 28 March 1994

	PART 1	
	PRELIMINARY	
1	Short title	5 [Repealed]
2	Interpretation	6 Prospectus
	PART 2	7 Non-resident withholding tax
	NIUE DEVELOPMENT BONDS	8 Part of Income Tax Act
3	Power to issue Bonds	9 Jurisdiction
4	Terms of issue	10 Secrecy
		SCHEDULES

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## To enable the Niue Bank to borrow money for development purposes by issuing Niue Development Bonds

### PART 1 PRELIMINARY

#### 1 Short title

This is the Niue Development Bonds Act 1994.

#### 2 Interpretation

In this Act –

“applicant” means any eligible person making an application for a Bond;

“Bank” means the Niue Bank;

“Bond” means a Niue Development Bond issued under this Act;

“bond certificate” means a bond certificate in the form specified in Schedule 3 issued by the Bank;

“bondholder” means a holder in due course of a Niue Development Bond;

“date of commencement” means the date of receipt by the Bank of an application plus any payment required by clause 3(4) of Schedule 1;

“date of repayment” means the date on which the Bank is required to make available the amount of the Bond and any interest required to be paid under clause 6 of Schedule 1;

“maturity” means the date on which a Bond becomes repayable;

“memorandum of transfer” means a memorandum of transfer in the form specified in Schedule 4;

“Minister” means the Minister of Finance;

“non-resident” means a non-resident for the purposes of the Income Tax Act 1961;

“Register” means the register of Bondholders kept by the Bank under this Act;

“special terms” means those additional terms of issue approved by Cabinet in accordance with clause 10 of Schedule 1.

**PART 2**  
**NIUE DEVELOPMENT BONDS**

**3 Power to issue Bonds**

(1) Notwithstanding any other provision of this Act or any rule of law, the Bank may, with the approval of Cabinet, issue negotiable fixed or floating rate coupon bonds if it appears to the Bank to be necessary or expedient in the public interest to do so.

(2) Any Bonds issued under this Act shall be termed "Niue Development Bonds".

**4 Terms of issue**

(1) The Bonds shall be issued by the Bank under the terms and conditions of issue specified in Schedule 1 (which shall include any Special Terms approved by Cabinet in accordance with clause 10 of Schedule 1) as may be amended, provided that no amendment shall affect the terms of issue of any Bond on issue at that time until the Bank is renewed.

(2) The Bank shall have the right to amend the terms and conditions of issue upon written notification to Bondholders of any amendments to the terms and conditions of issue.

(3) If the Bank notifies existing bondholders of amendments to the terms and conditions of issue not less than one month prior to the date of repayment, the amended terms and conditions of issue shall apply for any renewed term commencing from the date of repayment.

(4) If the Bank fails to notify any amendments to the terms and conditions of issue within the period specified in subsection (3), the existing terms and conditions of issue shall apply for any renewed term commencing from the date of repayment.

**5 [Repealed]**

**6 Prospectus**

(1) The Bank shall prior to any issue of Bonds offer them for subscription by way of registered prospectus.

(2) The prospectus shall be registered with the Minister.

(3) The prospectus shall include the terms and conditions of issue specified in Schedule 1 (which shall include any Special Terms approved by Cabinet under clause 10 of Schedule 1).

**7 Non-resident withholding tax**

(1) Every non-resident Bondholder who derives interest on a bond shall be liable to non-resident withholding tax upon that interest at the domestic tax rate for resident companies on the gross amount of interest.

(2) Where the Bank makes an interest payment to a Bondholder under this Act, it shall, at the time of making the payment, make a deduction of non-resident withholding tax therefrom at the rate referred to in subsection (1).

(3) The Bank, upon making a deduction of non-resident withholding tax, shall not later than the 20<sup>th</sup> day of the month next after the month in which the Bank has made any such deduction, pay to the Financial Secretary the amount of the deduction.

(4) The Bank shall not later than the 20<sup>th</sup> day of the month next after the month in which the Bank has made a deduction under subsection (2), deliver to the

Financial Secretary a statement specifying the gross interest payable to the non-resident Bondholder and any deductions made from it.

(5) The interest payable to the non-resident Bondholder by the Bank shall not be included in the return of assessable income of the non-resident Bondholder and the amount of income tax for which the non-resident Bondholder is liable in respect of the amount of the interest derived by the Bondholder in any income year shall be determined exclusively and finally by the total amount of non-resident withholding tax for which the Bondholder is liable by virtue of subsection (1).

**8 Part of Income Tax**

(1) [Spent]

(2) The non-resident withholding tax imposed by section 7 shall be deemed to be a tax on assessable income for the purposes of the Income Tax Act 1961.

**9 Jurisdiction**

The law of Niue shall apply unless expressly excluded by this Act.

**10 Secrecy**

(1) Except where the provisions of this Act require, it shall be an offence for any person to divulge or communicate to any other person information relating to the establishment, constitution, business, undertaking or affairs of an applicant or Bondholder.

(2) An offence proved to have been committed under this section shall be liable upon conviction to imprisonment for a term not exceeding 1 year, or to a fine not exceeding 100 penalty units, or both.

(3) Notwithstanding subsection (1), an offence shall not be committed where information is divulged or made available to the extent reasonably required in the circumstances to any foreign Government or any court or tribunal of any country including Niue but only if and to the extent that the Court so directs, having been satisfied that the information is required and will be used solely for the purposes of an investigation or prosecution of any person in relation to the sale, or the laundering of the proceeds of sale, of any prohibited narcotic substances or the laundering of the proceeds gained from any other serious criminal activity, whether that sale or laundering or other serious criminal activity occurred in Niue or elsewhere.

(4) Nothing in this section shall prevent the Court from requiring any person to produce documents or to give evidence in any proceedings of any facts relevant in such proceedings in a court in Niue.

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**SCHEDULE 1**  
**TERMS AND CONDITIONS OF ISSUE**

**1 Eligibility**

(1) Bonds issued under this Act may be held by –

- (a) An individual;
- (b) Two or more persons as joint tenants;
- (c) Any limited liability company;
- (d) Any partnership, special partnership or limited liability partnership;
- (e) Any trust or trustee; and
- (f) Any other corporate entity.

(2) If at any time a Bondholder is not eligible to hold a Bond the Bank reserves the right to repay any Bonds issued under this Act.

## 2 Niue Development Bonds

(1) The Bank may issue Bonds in multiples of NZ\$500,000 or in such other multiples as Cabinet may approve.

(2) The Bonds will be issued at par.

## 3 Applications

(1) Any person eligible to hold a Bond may make an application to the Bank in the form specified in Schedule 2.

(2) The Minister may impose a limit upon the value of Bonds that a Bondholder may hold.

(3) Applications lodged after 3pm at any receiving office of the Bank shall be deemed to have been received on the first working day following the date of lodgement.

(4) Applications must be accompanied by the full issue price and must be received prior to the designated Closing Date (“the Closing Date”).

(5) The Bank reserves the right to decline any application or applications and to close any or all maturities of Bonds issued pursuant to this Act.

(6) All amounts received prior to the Closing Date will be banked into the Government of Niue’s Consolidated Account for the Applicant’s account until the application is accepted at which time they will be held on the Government of Niue’s account.

(7) Upon acceptance by the Bank of an application the Bank shall issue a Bond Certificate to the Bondholder in the form specified in Schedule 3.

(8) In the event the Issue is over-subscribed the Minister, whose decision shall in all respects be final, will direct the Niue Bank to allocate the Bonds amongst applicants in order of magnitude of subscription amount, after which any unallocated subscriptions will be returned to the applicant, together with interest on it.

## 4 Registration

(1) The Bank shall keep a Register of all Bonds issued under this Act.

(2) The Register may be kept in book form, or in the form of a paper or card record, or by computer or any device by means of which information is recorded or stored. If the Register is kept by computer or any such device –

(a) The recording or storing of any information in it shall be deemed to be the entry of it in the Register; and

(b) Any material subsequently derived from information so recorded or stored shall be deemed to be an extract from the Register.

(3) The Bank shall cause to be entered in the Register the following particulars of every Bondholder –

(a) The name and address of the Bondholder;

(b) The amount of Bonds held by the Bondholder;

(c) The rate of interest payable in respect of the Bond;

(d) The date or dates on which the interest is payable;

(e) The due date of repayment of the Bond;

(f) Such other particulars as may be required by the Bank.

(4) Any extract from the Register, certified as correct by an officer of the Bank purporting to act in the course of his duties as such shall, in the absence of evidence to the contrary, for all purposes and in all courts, be sufficient evidence of the entry in the Register to which the extract relates as on the date when the extract was so certified. Any such certificate purporting to have been signed by such an officer shall, in the absence of proof to the contrary, be deemed for all purposes to have been duly signed by such an officer.

## Niue Development Bonds Act

(5) The Bank may, on such evidence as appears to it to be sufficient, correct errors and remedy omissions in the Register or any entry in it or in Bond Certificates, and may call in any outstanding bond certificate for that purpose.

(6) Where 2 or more persons are registered as the Bondholders of the same Bond by virtue of any application, memorandum of transfer, or other instrument, then, unless the contrary is expressed in the application, memorandum of transfer, or other instrument, the persons shall be deemed to hold the stock as joint tenants with right of survivorship.

(7) On application by any Bondholder, the Bank shall issue to the applicant a bond certificate certifying that the applicant is the registered Bondholder referred to therein (being the whole or any part of the amount of the Bond of which the Bondholder is the registered holder).

(8) Any bond certificate shall be conclusive evidence of the ownership of the Bond to which it relates by the person named therein as the Bondholder. The Register shall be maintained confidential by the Bank, such that only a registered Bondholder may have access to the Register for the purposes of confirming its position as Bondholder.

(9) Subject to clause 7 the transfer, whether by delivery or otherwise, of any such Bond Certificate shall not operate as a transfer of the legal or equitable interest of the Bondholder to which it relates. The Bank shall not repay nor record any dealing with any Bond for which a bond certificate has been issued, unless the bond certificate has been produced to and cancelled by the Bank.

(10) The Bank shall enter in the Register particulars of the issue of every bond certificate.

(11) Where any bond certificate has been lost, destroyed, mutilated or rendered illegible, the Bank, on receiving evidence to its satisfaction of the loss or destruction or, as the case may be, on the surrender of the mutilated or illegible bond certificate, may, on such terms and subject to such conditions as the Bank prescribes, issue a substitute bond certificate with the word "substitute" stamped or written on it, and shall record the issue of it in the Register.

(12) Every such substitute bond certificate shall have the same effect to all intents and purposes as the original bond certificate for which it is substituted.

### 5 Term

Bonds shall be issued for a term of one or more years from the date of commencement and, if approved by Cabinet, may be subject to a right of renewal for a further period of one or more years.

### 6 Interest

(1) Interest shall be payable on the par value of the Bond at the rate specified on it.

(2) Interest is to be calculated from the date of commencement.

(3) Interest will be payable quarterly in arrears, the first interest payment to be made 3 calendar months from the date of commencement and subsequent interest payments to be made at 3 calendar monthly intervals thereafter until maturity.

(4) Interest will be credited without apportionment to the Bondholder's nominated account at any registered bank or other financial institution in Niue or New Zealand or any other country.

### 7 Transferability

(1) Each Bond issued will be a negotiable transferable certificate of deposit. A Bondholder may, by memorandum of transfer in the form specified in Schedule 4, transfer the total amount of Bonds held or any part of it to another eligible party.

(2) On production of a duly executed memorandum of transfer, the Bank shall enter in the Register the name of the transferee as the registered Bondholder of the Bond to which the memorandum of transfer relates.

(3) Every such entry shall operate as a transfer of the Bonds to which it relates, and shall vest those Bonds in the transferee.

(4) The Register will close for registration of transfers 10 days prior to each quarterly interest date.

**8 Bonds as security**

Bonds may be mortgaged, charged, or pledged by the Bondholder.

**9 Repayment**

(1) Subject to clause 5(2), Bonds will be repaid on the date of repayment.

(2) At the date of repayment, Bondholders will receive the par value of the Bond plus interest on it for the 3 calendar month interval preceding the date of repayment.

(3) Repayment shall be made in the method specified for the payment of interest in clause 6(4).

**10 Special Terms**

Bonds may be issued on such other additional terms as Cabinet may approve.

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**SCHEDULE 2**  
**APPLICATION FORM**  
“Application for Niue Development Bonds”

To      Niue Bank  
[Address]

**A Investor Details**

1      Surname                  First name(s)  
(or Company name):

2      Address  
(or registered office including contact person)

3      Telephone numbers  
Business:  
Facsimile:

4      Niue Tax Number

(Note: This will be allocated automatically upon acceptance of the application if the applicant does not hold a Niue tax number).

I/We/The Company hereby apply(ies) for Niue Development Bonds upon the terms and conditions set out in the Prospectus dated [Prospectus Date].

**B Investment Details**

1      No. of Bonds applied for:

2      Interest Rate: [Interest Rate]% (Interest rate effective from [Prospectus Date]). Notes:  
Multiples of NZ\$500,000 (or such other multiples as may be approved by Cabinet).

## Niue Development Bonds Act

Interest paid quarterly  
Special terms of issue

### C Payment Authority

- 1 Name of Bank Account:
- 2 Country:
- 3 Bank:
- 4 Bank Account No:

I/We/The Company hereby authorise(s) the Niue Bank to pay to the above bank account all interest and redemption proceeds which hereafter may become payable in respect of Niue Development Bonds for which the Niue Bank acts as Registrar and to accept their receipt as a full and final discharge, such order to remain in force until revoked by me/ us/the Company in writing.

Signature (signed on behalf of [The Company])

Date: \_\_\_\_\_

### SCHEDULE 3 Form of Bond Certificate

Niue Bank  
(being duly established under the Niue Bank Act 1994)

Certificate No.

“Certificate for Niue Development Bonds”

Niue Bank  
Treasury Department, Alofi, Niue

Niue Development Bonds (hereinafter called “Development Bonds”) constituted by this Certificate are issued pursuant to the Niue Development Bonds Act 1994.

Name and Address of Bondholder:

This is to certify that:

- 1 The Bondholder named in the above table is the registered holder of the principal amount of registered Development Bonds of \$500,000 [or such other multiples as Cabinet may approve from time to time] principal amount which is set out in the table below.
- 2 The Development Bonds comprised in this certificate bear interest at the interest rate set out in the table below and are redeemable at par on the date of maturity set out in the table below.
- 3 Interest on the development Bonds comprised in this certificate is payable on the Interest Payment Dates set out in the table below and on the Date of Maturity.

NUMBER OF DEVELOPMENT BONDS: (in words and figures)

INTEREST RATE:

INTEREST PAYMENT DATES:

DATE OF MATURITY:

COMMENCEMENT     DATE:     SPECIAL  
TERMS:

CERTIFIED on behalf of the Niue Bank by:

The Minister of Finance for Niue

Director of Niue Bank (appointed pursuant to section  
23(2)(b) of the Niue Bank Act 1994)

NOTES

- 1 This certificate must be surrendered before any transfer of the whole or any number of the Development Bonds comprised therein can be registered and no other than a multiple of NZ\$500,000 [or such other multiples as Cabinet may approve from time to time] principal amount of Development Bonds may be transferred.
  - 2 This certificate must be surrendered before redemption of the principal sum of the Development Bonds comprised herein.
  - 3 A copy of the terms and conditions of issue can be requested from the Niue Bank at any time.
- 

SCHEDULE 4  
Memorandum of Transfer

Niue Bank

“Memorandum of Transfer of Niue Development Bonds”(For use in respect of the transfer of registered Niue Development Bonds)

PART 1  
Particulars Number of Development Bonds (in words and figures)

Certificate No.

Interest Rate:

Date of Maturity:

Particulars of Registered Holder(s):

Surname(s) (or Company Name)	(First name(s))	Address (or Registered Office)
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I/We/The Company hereby transfer(s) the Development Bonds described above to the person/s/ company named below.

Signatures of Registered Holder(s) (or on behalf of Company):

## Niue Development Bonds Act

### PART 2 Particulars of Transferee(s) of Development Bonds

#### Consideration

Transferee(s)

Surname(s) (First name(s))  
(or Company Name)

Address  
(or Registered Office)

Tax No (if exempt from withholding tax please attach exemption certificates):

I/We/The Company confirm(s) that the Development Bond(s) described above has (have) been acquired on the terms and conditions pursuant to the Niue Development Bonds Act 1994 and I/We/the Company request(s) that such entries be made in the register as are necessary to give effect to this transfer.

#### PAYMENT AUTHORITY

I/We/The Company hereby authorise the Niue Bank to pay to the bank account below all interest and redemption proceeds which hereafter may become payable in respect of Niue Bonds of which the Niue Bank acts as Registrar and to accept their receipt as a full and sufficient discharge, such order to remain in force until revoked by me/us/the Company in writing.

Name of Bank Account:

Country:

Bank:

Bank Account No:

Signatures of Transferee(s) (or on behalf of the Company);

Date:



# NIUE FLAG ACT 1975

1975/16 – 1975

1	Short title	4A	Consent of Cabinet required for prosecution under section 4
2	Niue Flag		SCHEDULE
3	Regulations		
4	Offences involving Niue Flag		

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## To provide for the establishment and use of a Niue Flag

### 1 Short title

This is the Niue Flag Act 1975.

### 2 Niue Flag

- (1) The Niue Flag shall be the flag described in the Schedule.
- (2) The Niue Flag is hereby declared to be the recognised flag of Niue.
- (3) Any other flag hitherto prescribed or used as the recognised flag of Niue is hereby declared to be disestablished in Niue.

### 3 Regulations

Cabinet may make regulations prescribing the circumstances in which and the conditions subject to which the Niue Flag may be flown.

### 4 Offences involving Niue Flag

- (1) Every person commits an offence and is liable on conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months who –
  - (a) without lawful authority, alters the Niue Flag by placing any sign, letter, emblem, or representation on it; or
  - (b) in or within view of any public place, uses, displays, destroys, or damages the Niue Flag in any manner with the intention of dishonouring it.
- (2) In any prosecution for an offence against this section, the onus of proving that any alteration of the Niue Flag was lawfully authorised is on the defendant.

### 4A Consent of Cabinet required for prosecution under section 4

No prosecution for an offence against section 4 may be commenced without the consent of Cabinet.

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SCHEDULE

THE NIUE FLAG

The Niue Flag shall be described as follows:

“The Niue National Flag shall be a golden yellow flag, bearing on the upper canton of the hoist thereof the Union Flag, commonly known as the Union Jack, displaying 2 five-pointed yellow stars on the vertical line and on the horizontal line thereof separated by a blue disc containing a larger five-pointed yellow star.”

AND IT SHALL MEAN:

Golden yellow represents the bright sunshine of Niue and the warm feelings of the Niuean people towards New Zealand and her people.

The Union Flag, commonly known as the Union Jack represents that Niue was a British Protectorate, proclaimed on 19 October 1900 after petitioning by the Kings and Chiefs of Niue to Great Britain for the Union Flag to be flown in Niue as the symbol of protection.

The four small stars represent the Southern Cross and New Zealand under whose administration Niue was placed by Great Britain in 1901 and as well reflecting the continuing close relationship between Niue and New Zealand.

The larger star within the blue disc represents the self-governing status of Niue, standing alone within the deep blue sea.

# NIUE PHILATELIC AND NUMISMATIC ACT 1996

1996/206 – 16 May 1996

PART 1 PRELIMINARY		PART 3 PERSONNEL	
1	Short title	15	Corporation employees
2	Interpretation	16	Application of the Niue Public Service terms and conditions
3	Application		
4	General objectives of the Act		
PART 2		PART 4 FINANCIAL PROVISIONS	
THE NIUE PHILATELIC AND NUMISMATIC CORPORATION		17	Annual estimates
5	The Corporation established	18	Accounts and records
6	Functions and powers of the Corporation	19	Audit
7	Government policy	20	Annual report
8	Board of Directors	21	Taxation
9	Chairperson	22	Dividends
10	Disclosure of interest	22A	Corporation expenditure
11	Directors not personally liable		
12	[Repealed]		
13	Committees		
14	Delegation of powers	23	Regulations
PART 5 MISCELLANEOUS			

## To establish the Niue Philatelic and Numismatic Corporation for the purpose of conducting Philatelic and Numismatic business

### 1 Short title

This is the Philatelic and Numismatic Act 1996.

### 2 Interpretation

In this Act –

“Board” means the Board of Directors appointed under this Act;

“Corporation” means the Niue Philatelic and Numismatic Corporation;

“Minister” means the Minister of Finance;

“numismatic” means matters dealing with or concerning coins or coinage.

“other revenue earning options” means options approved by Cabinet, that may earn  
Niue revenue;

“philatelic” means matters dealing with or concerning stamps;

“regulations” means regulations made under section 23;

“services” in addition to philatelic and numismatic, includes any other service carried  
out by the Corporation under this Act.

### 3 Application

This Act shall bind the Crown except as specified in this Act or the regulations but  
nothing in this Act shall render the Crown liable to any prosecution.

### 4 General objectives of the Act

The general objectives of the Act are to provide for philatelic and numismatic and other  
matters to be controlled by the corporation.

## PART 2

### THE NIUE PHILATELIC AND NUMISMATIC CORPORATION

#### 5 The Corporation established

(1) There is hereby established a Corporation to be called the Niue Philatelic and Numismatic Corporation.

(2) The Corporation is a body corporate with perpetual succession and a common seal.

(3) The Corporation shall for the general objectives of this Act and in the exercise of its functions and powers, have all the rights powers and privileges of a natural person of full age and capacity.

#### 6 Functions and powers of the Corporation

(1) The functions of the Corporation shall be to administer philatelic, numismatic and other revenue earning options and services.

(2) The Corporation shall with the approval of the Board explore and undertake revenue earning options and services other than philatelic and numismatic matters.

(3) The Corporation shall utilise its funds to achieve the objectives of the Corporation and the fulfilment of its functions.

#### 7 Government policy

In the exercise of its functions and powers under this Act the Corporation shall have regard to the general policy of the Government in relation to philatelic, numismatic and any other revenue earning options of the Government and shall comply with any directions given by Cabinet under any such policy.

#### 8 Board of Directors

(1) The Corporation shall be governed by a Board of Directors consisting of the following directors –

- (a) The Minister of Finance;
- (b) The Government Solicitor;
- (c) The Financial Secretary.

(2) Without limiting the generality of the powers and functions of the Corporation as provided under this Act, the Board shall –

- (a) Ensure that the functions of the Corporation are performed efficiently;
- (b) Maintain the independence and integrity of the Corporation;
- (c) Ensure the assets of the Corporation are as far as practicable preserved, maintained and utilised in a way consistent with the functions of the Corporation;
- (d) Ensure that the Corporation does not contravene or fail to comply with any of the provisions of this Act or any directions given under section 7.

(3) Subject to this Act and to any regulations made under it, the Board may make such rules as it thinks appropriate for the proper conduct of its proceedings and the despatch of the business of the Corporation.

**9 Chairperson**

Cabinet shall appoint one of the directors to act as Chairperson.

**10 Disclosure of interest**

A director who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

**11 Directors not personally liable**

No director of the Corporation shall be personally liable for any act done or default made by the Corporation or by any of its employees in good faith in the course of operations of the Corporation.

**12 [Repealed]**

**13 Committees**

(1) The Corporation may appoint committees consisting of any directors or officers of the Corporation.

(2) Subject to the other provisions of this Act and to directions given to it by the Corporation, every committee may regulate its procedure in such a manner as it thinks fit.

**14 Delegation of powers**

(1) The Corporation may delegate in writing to any of its committees or to the Manager, or to any other officer of the Corporation any of its powers under this Act including this present power of delegation.

(2) Subject to any general or special directions given to it or to him by the Corporation any committee or person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on it directly by this Act and not by delegation.

(3) Any committee or person purporting to act under any delegation under this section shall be presumed, until the contrary is proven, to be acting under the terms of the delegation.

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

(5) Until any such delegation is revoked it shall continue in force in accordance with its tenor, notwithstanding any change in the membership of the Corporation or any committee.

**PART 3**  
**PERSONNEL**

**15 Corporation employees**

(1) The Corporation may employ such officers and employees as it considers necessary for the performance of its functions, on such terms and conditions as provided under section 17 and may at any time remove any such officer or employee from his office or employment.

(2) For the purpose of article 62 (3) of the Constitution employees of the Corporation shall not be regarded as members of the Niue Public Service for the purpose of their duties with the Corporation.

**16 Application of the Niue Public Service terms and conditions**

The Corporation may with any necessary modifications, apply the terms and conditions applicable to the Niue Public Service.

PART 4

FINANCIAL PROVISIONS

**17 Annual estimates**

(1) The Corporation shall, for each financial year prepare an estimate, in a form approved by the Minister of the amount of expenditure and revenue for all purposes and the receipts of the Corporation. The annual balance date of the Corporation shall be 30 June.

(2) The estimates so prepared shall be submitted to Cabinet not later than such date as the Minister directs, and the funds of the Corporation shall not be expended otherwise than in accordance with estimates of expenditure so approved.

**18 Accounts and records**

The Corporation shall keep proper accounts and records of the transactions and affairs of the Corporation and shall do all things necessary to ensure that all payments out of its funds are correctly made and properly authorised and that adequate control is maintained over the assets of or in the custody of the Corporation and over incurring of liabilities by the Corporation.

**19 Audit**

The accounts and records of financial transactions of the Corporation shall be audited annually by the Government Auditors and a report of the audit shall be furnished to the Corporation and the Cabinet, and shall be tabled in the Niue Assembly.

**20 Annual report**

The Corporation shall within 3 months after the end of the Corporation's financial year prepare and furnish to Cabinet and the Assembly a report on its operation during the year ended on that date together with financial statements in respect of that year in such form as the Minister approves.

**21 Taxation**

The Corporation shall be subject to taxation.

**22 Dividends**

The Corporation shall pay a dividend to the Government as agreed by the Board.

**22A Corporation expenditure**

(1) In addition to the other objectives, functions and powers set out in this Act, the Corporation may make financial contributions towards:

- (a) Tāoga Niue matters for the promotion and preservation of the Niuean culture and living community;
- (b) Community appeals for aid relief by Niue to overseas countries that are being affected by natural or other catastrophes; and
- (c) Community oriented projects specifically for the improvement of life, health, education and overall well-being of the Niue people.

(2) In this section "Tāoga Niue" means the cultural heritage and treasures of Niue, as represented in its diverse sectors by Vagahau Niue, Arts and Crafts, History,

## Niue Philatelic and Numismatic Act

Environment, Customs and Traditions, Heritage Assets, and the Cultural Bridge to people of Niue descent abroad.

(3) Notwithstanding subsection (1) the Corporation shall not sponsor annual events or activities such as but not limited to village show days, Constitution celebrations, church appeals, monetary prizes or travel allowances.

### PART 5 MISCELLANEOUS

#### **23 Regulations**

Cabinet may on the recommendation of the Corporation make regulations necessary for carrying out or giving full effect to this Act.



# NIUE TRUST FUND ACT 2004

2004/226 – 19 May 2004

1	Short title	6	Provision of information
2	Interpretation	7	Information for the Assembly
3	Status of Fund	8	Taxation exemption
4	Government contributions	9	Secretarial support
5	Application of money received by Government	10	Regulations

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## To implement in Niue the Agreement concerning a Trust Fund for Niue and to make financial provision for the Fund

### 1 Short title

This is the Niue Trust Fund Act 2004.

### 2 Interpretation

In this Act –

“Advisory Committee” means the Advisory Committee for the Fund;

“Agreement” means the Deed Concerning the Niue International Trust done at Nadi, Fiji on 25 October 2006;

“Auditor” means the Auditor of the Government of Niue;

“Board” means the Board of Directors of the Fund;

“Fund” means the Niue Trust Fund to be set up by the Agreement;

“Minister” means the Minister for Finance;

“public money” has the same meaning as in the Public Revenues Act 1959.

### 3 Status of Fund

(1) The Fund is a body corporate with all the rights and powers of a natural person of full age and capacity, to be exercised for the purposes of the Fund.

(2) The Fund is not a public fund of Niue and the capital and revenue (except money referred to in section 5) of the Fund is not public money of Niue nor subject in Niue law to control and accounting except as provided by this Act.

### 4 Government contributions

(1) The Government may at any time contribute to the Fund –

- (a) Such moneys as may be appropriated for the purpose by the Assembly; and
- (b) Money or securities received by the Government from any other source.

(2) The Government may without further procedure make an initial contribution of \$50,000 to the Fund.

(3) Contributions under this section may be made only as direct cash payments, donations, or interest free loans.

**5 Application of money received by Government**

Money received by the Government from the Fund –

- (a) Shall become public money and shall be paid only into the Niue Government Account until article 57 of the Constitution;
- (b) Shall be spent only under Part 4 of the Constitution; and
- (c) Shall be accounted for under Part 4 of the Constitution.

**6 Provision of information**

The Government and any public officer or other person may, and shall on request, give to the Board, the Advisory Committee or any other person authorised by them or on their behalf –

- (a) Any information or documents which the Auditor requires to fulfil its obligations under clause 17 of the Agreement;
- (b) Any information or documents relating to the national budget, annual estimates or appropriation for the service of the financial year before or after the national budget has been presented to the Assembly;
- (c) The annual accounts of Niue furnished under section 25 of the Public Revenues Act 1959; and
- (d) The audit report prepared under article 60 of the Constitution.

**7 Information for the Assembly**

The following documents shall be laid before the Assembly at its sitting next following the date on which the document is received by Government –

- (a) The annual report by the Board;
- (b) The annual accounts of the Fund;
- (c) The report by the Auditor of the Fund on its annual accounts; and
- (d) The annual report, and the first 6 monthly report, of the Advisory Committee.

**8 Taxation exemption**

Contributions to and income received by the Fund shall be exempt from payment of all taxes, rates and duties in the hands of the Fund.

**9 Secretarial support**

The Government shall provide the administrative, secretarial and other services necessary for the purposes of the Fund.

**10 Regulations**

Cabinet may make regulations for the purposes of this Act.

## NUCLEAR TEST BAN ACT 2014

No. 327

1	Title	<i>Subpart 2 – Onsite inspections</i>
2	Commencement	14 Purpose of subpart 2
		15 On-site inspections
		16 People who may accompany inspectors during on-site inspection
PART 1		17 Minister may give directions to facilitate on-site inspections
	PRELIMINARY MATTERS	18 Appointment of Niue officials
3	Interpretation	19 Identification certificates
4	Act binds the Government	20 Applications for search warrants
		21 Effect of search warrants
PART 2		22 Search without warrant
	PROHIBITION OF NUCLEAR EXPLOSIONS	23 Obligations of people accompanying international inspectors
5	Nuclear explosions prohibited	24 Obstruction of international inspectors
6	Application	
7	Proceedings in respect of offences outside Niue	
PART 3		
	INFORMATION AND DOCUMENTS	
8	Information that may be sought under sections 9 and 10	<b>PART 5</b>
9	Secretary may seek information	MISCELLANEOUS PROVISIONS
10	Secretary may seek documents	25 Self-incrimination
11	Failure to supply information an offence	26 Regulations
12	False or misleading statements	27 [Spent]
		SCHEDULE
PART 4		
	INSPECTIONS	
	<i>Subpart 1 – Clarification inspections</i>	
13	Clarification inspections	

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### An Act to implement in the law of Niue the Comprehensive Nuclear-Test Ban Treaty

#### 1 Title

This Act is the Nuclear Test Ban Act 2014.

#### 2 Commencement

This Act comes into force on a date to be appointed in an enactment of the Cabinet made in accordance with Article 13 of the Constitution.

#### PART 1 PRELIMINARY MATTERS

#### 3 Interpretation

(1) In this Act, unless the context otherwise requires —  
“international inspector” —

- (a) means an individual designated by the Technical Secretariat, according to the procedures set out in the Protocol to the Treaty, to carry out an on-site inspection in accordance with the Treaty; and
- (b) includes an individual specially designated by the Technical Secretariat, according to the procedures set out in the Protocol to the Treaty, as an

- inspection assistant to assist an international inspector within the meaning of paragraph (a);
- “Minister” means the Minister for External Affairs;
- “Niue official” means a person appointed under section 18 on-site inspection, except in the definition of international inspector, means an inspection undertaken (or to be undertaken) under the authority of section 15(1);
- “Organization” means the Organization established by paragraph 1 of Article II of the Treaty place includes an aircraft or a ship;
- “Secretary” means the Secretary to the Government;
- “Technical Secretariat” means the Technical Secretariat established under paragraph 4 of Article II of the Treaty;
- “Treaty”—
- (a) means the Comprehensive Nuclear-Test-Ban Treaty, adopted by resolution of the United nations on 10 September 1996 (a copy of extracts from the English text of which are set out in the Schedule); and
  - (b) includes the Annexes to the Treaty, the Protocol to the Treaty, and the Annexes to the Protocol, and any amendments to, or substitutions of, the Treaty or those documents that are from time to time binding on Niue.
- (2) In this Act, unless the context otherwise requires, terms and expressions used and not defined in this Act have the same meaning as in the Treaty.

#### **4 Act binds the Government**

This Act binds the Government.

### PART 2 PROHIBITION OF NUCLEAR EXPLOSIONS

#### **5 Nuclear explosions prohibited**

- (1) No person may—
  - (a) carry out any nuclear weapon test explosion or any other nuclear explosion; or
  - (b) cause, encourage, or in any way participate in, the carrying out of any nuclear weapon test explosion or any other nuclear explosion.
- (2) Every person who engages in conduct prohibited by subsection (1) commits an offence.
- (3) Every person who commits an offence against subsection (2) is liable on conviction to imprisonment for a term not exceeding 10 years or a fine not exceeding 10 000 penalty units, or both.

#### **6 Application**

- (1) Section 5 applies to—
  - (a) acts done in Niue by any person; and
  - (b) acts done outside Niue—
    - (i) by a resident of Niue; or
    - (ii) by any person on board a ship or aircraft registered in Niue.
- (2) In subsection (1)(b), resident of Niue—
  - (a) means a person who normally resides in Niue and, ever since being outside Niue, has had the intention to return to Niue to reside indefinitely; but
  - (b) does not include a person who has resided outside Niue for a continuous period of more than three years regardless of his or her intention to return to

Niue, unless for substantially the entire period the person is outside Niue for the purposes of undergoing a course of education or technical training or instruction or is in the service of the Niue government.

**7 Proceedings in respect of offences outside Niue**

(1) If an offence against section 5(2) is alleged to have occurred somewhere outside Niue, the person alleged to have committed the offence may be arrested, or a warrant for the person's arrest may be issued and executed, and the person may be remanded in custody or on bail, but—

- (a) an information for the alleged offence may be laid only with the consent of the chief legal adviser to the Government of Niue and on his or her certificate that it is expedient that the information be laid; and
- (b) no further or other proceedings can be taken in relation to the alleged offence until the consent and certificate have been obtained.

(2) Subsection (1) does not prevent the laying of an information for an offence against section 5(2) in respect of a person who has not been arrested or remanded provided the consent and certificate required by subsection (1)(a) of this section is obtained.

**PART 3**

**INFORMATION AND DOCUMENTS**

**8 Information that may be sought under sections 9 and 10**

Sections 9 and 10 apply to information if the Secretary is satisfied –

- (a) that –
  - (i) the information is relevant to clarification of a matter that may cause concern about possible non-compliance with Article I of the Treaty; and
  - (ii) Niue must provide the information to another State Party on a request under paragraph 29 of Article IV of the Treaty; or
- (b) that –
  - (i) the information is relevant to clarification necessary to resolve an ambiguity that has arisen during an on-site inspection in relation to which Niue is the inspected State Party; and
  - (ii) Niue must provide the information to an on-site inspection team under paragraph 61(g) of Part II of the Protocol to the Treaty; or
- (c) that the information is relevant to the implementation of the Treaty or the enforcement of this Act.

**9 Secretary may seek information**

If satisfied that a person is capable of giving information to which section 8 applies, the Secretary may, by written notice to the person specifying the information –

- (a) require the person to give the information to the Secretary, by written statement, –
  - (i) within a reasonable period stated in the notice; and
  - (ii) in the manner stated in the notice; and
- (b) require the person to authenticate the statement, –
  - (i) in the case of a natural person, by signing it; and
  - (ii) in the case of a body corporate, by causing it to be signed by an officer authorised to sign on behalf of the body corporate.

**10 Secretary may seek documents**

If satisfied that a person has in the person's possession or control a document containing information to which section 8 applies, the Secretary may, by written notice to the person, require the person to give the document to the Secretary within a reasonable period stated in the notice.

**11 Failure to supply information an offence**

- (1) Every person commits an offence if the person –
- (a) is given a notice under section 9 or 10; and .
  - (b) is capable of complying with it; but
  - (c) without reasonable excuse, fails or refuses to comply with it.

(2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding 1,000 penalty units or imprisonment for a term not exceeding 12 months, or both.

**12 False or misleading statements**

(1) Every person commits an offence who, pursuant to a requirement under section 9, gives to the Secretary a written statement that includes information that makes the statement false or misleading in a material particular-

- (a) knowing that the inclusion of the information makes the statement false or misleading in a material particular; or
- (b) being reckless as to whether the inclusion of the information makes the statement false or misleading in a material particular.

(2) Every person commits an offence who, pursuant to a requirement under section 9, gives to the Secretary a written statement that is false or misleading in a material particular as a result of the omission of information —

- (a) knowing that the omission of the information makes the statement false or misleading in a material particular; or
- (b) being reckless as to whether the omission of the information makes the statement false or misleading in a material particular.

(3) Every person who commits an offence against subsection (1) or (2) is liable on conviction to a fine not exceeding 1,000 penalty units or imprisonment for a term not exceeding 12 months, or both.

**PART 4**

**INSPECTIONS**

*Subpart 1 – Clarification inspections*

**13 Clarification inspections**

(1) A constable may enter and conduct an inspection of a place in Niue if another State Party, without having made a request for an on-site inspection under paragraph 34 of Article IV of the Treaty, requests Niue to clarify, either directly or through the Organization, whether there has been non-compliance with Article I of the Treaty at the place.

(2) For the purposes of the inspection –

- (a) the constable has the functions contemplated by the Treaty for on-site inspections by an international inspector; and
- (b) subpart 2 applies (with any necessary modifications) as if the inspection were an on-site inspection and the constable were an international inspector.

*Subpart 2 – On-site inspections*

**14 Purpose of subpart 2**

The purpose of this subpart is to facilitate on-site inspections under the Treaty by –

- (a) confirming the right of international inspectors to inspect places in Niue within an on-site inspection area; and
- (b) enabling Niue officials to secure access for an international inspector where consent is not, or may not be, obtainable; and
- (c) enabling Niue officials to accompany or assist an international inspector.

**15 On-site inspections**

- (1) An international inspector has the right, and every person must permit the inspector to –
  - (a) enter any place in Niue within an on-site inspection area in accordance with the Treaty; and
  - (b) undertake an inspection of the place in accordance with the Treaty.
- (2) The inspector has the right, and every person must permit the inspector, to perform or exercise, in connection with the inspection, any function or power contemplated by or provided for in the Treaty.

**16 People who may accompany inspectors during on-site inspection**

To facilitate an on-site inspection, an international inspector may be accompanied by—

- (a) up to three observers for the purposes of giving effect to paragraph 61 of Article IV of the Treaty;
- (b) any Niue official;
- (c) any constable.

**17 Minister may give directions to facilitate on-site inspections**

- (1) The Minister may, by written notice to any person, give directions to the person for the purpose of facilitating an on-site inspection.
- (2) Every person commits an offence who wilfully fails or refuses to comply with a direction under subsection (1).
- (3) Every person who commits an offence against subsection (2) is liable on conviction to a fine not exceeding 1,000 penalty units.

**18 Appointment of Niue officials**

The Minister may appoint any person to accompany or assist an international inspector.

**19 Identification certificates**

The Minister may issue a certificate identifying an international inspector or any other person authorised to accompany or assist an international inspector.

**20 Applications for search warrants**

- (1) Any Judge or Commissioner of the High Court, or any two Justices of the Peace acting together, may, on application, issue a search warrant in respect of a place if satisfied that there are reasonable grounds for believing that –
  - (a) the place is within an on-site inspection area in Niue; and
  - (b) entry to the place is necessary for the purpose of performing or exercising any function or power contemplated by or provided for in the Treaty.

(2) An application may not be made unless the consent of the person having control of the place is not, or may not be, obtainable to allow entry to and inspection of the place by an international inspector (and any persons empowered by section 16 to accompany the inspector) for the purpose of performing or exercising any function or power contemplated by or provided for in the Treaty.

(3) The application —

- (a) must be made in writing by a constable or a Niue official; and
- (b) must include or be accompanied by a copy of relevant provisions of the Treaty and a copy of the inspection mandate.

## **21 Effect of search warrants**

(1) A warrant under section 20(1) —

- (a) authorises any international inspector (and any other officials) to enter the place concerned, at any time within 14 days of the issue of the warrant (or within any further time specified in the warrant) for the purpose of the performance or exercise of any function or power contemplated by or provided for in the Treaty; and
- (b) authorises the international inspector (and any other officials) to perform or exercise in the place any function or power contemplated by or provided for in the Treaty; and
- (c) authorises a constable or Niue official who accompanies the international inspector to use any force that is reasonable in the circumstances for effecting entry to or inspection of the place (including force to break down a door or break open any thing in the place); and
- (d) may be issued unconditionally, or subject to any conditions the Judge, Commissioner, or Justices think fit.

(2) In this section, official means —

- (a) a person empowered by section 16 to accompany the inspector; and
- (b) a Niue official.

## **22 Search without warrant**

(1) This subsection applies to a place and a constable or Niue official (the official concerned) if the official concerned is satisfied that there are reasonable grounds for believing that there are grounds for the issue of a warrant under section 20(1) in respect of the place, but that —

- (a) it is impossible or impracticable to obtain a warrant immediately; and
- (b) delaying entry until a warrant can be obtained will create a real risk that the performance or exercise of a function or power contemplated by or provided for in the Treaty will be frustrated.

(2) The powers conferred by section 21 may be exercised by an international inspector (and people empowered to accompany the international inspector under section 16) to the same extent, and in the same manner, as if a warrant in respect of the place had been issued to the official concerned, if—

- (a) subsection (1) applies to the place and official concerned; and
- (b) the international inspector (and the other people accompanying the international inspector) are accompanied by the official concerned.

**23 Obligations of people accompanying international inspectors**

(1) Every person who accompanies an international inspector on an on-site inspection undertaken in any place —

- (a) must carry any identification certificate issued to him or her under section 19, or some other means of identifying himself or herself as a person authorised to accompany or assist an international inspector; and
- (b) must produce the certificate or other means of identification to a person appearing to be in charge of the place—
  - (i) on entering the place (if such a person is then present); and
  - (ii) at any reasonable time afterwards, if asked to do so by such a person; and
- (c) must have any warrant (whether issued under section 20(1) or otherwise) authorising entry to the place with him or her and produce it if required to do so by a person appearing to be in charge of the place; and
- (d) if any thing is seized, must ensure that an occupier or person appearing to be in charge of the place is given a written inventory of all things seized.

(2) If there is no person appearing to be in charge of the place between the time of entry and the time the inspection has been completed, every person who accompanies the international inspector on the inspection must, as soon as practicable after the inspection is completed, ensure that an occupier or person in charge of the place is given a written notice stating—

- (a) that the place has been entered; and
- (b) the time and date of entry; and
- (c) the circumstances and purpose of entry; and
- (d) the person's name.

(3) If a Niue official discovers any offence or suspected offence under this Act as a result of accompanying an international inspector on an onsite inspection, the official must report that offence or suspected offence to the police as soon as practicable after the completion of the inspection.

**24 Obstruction of international inspectors**

(1) Every person commits an offence who wilfully obstructs, hinders, resists, or deceives any international inspector who is performing or exercising in Niue any function or power contemplated by or provided for in the Treaty.

(2) Subsection (1) does not apply to a refusal to allow entry to any place by an international inspector who is not acting pursuant to section 22 or a search warrant (whether issued under section 20(1) or otherwise).

(3) Every person who commits an offence against subsection (1) is liable on conviction a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 6 months, or both.

**PART 5**  
**MISCELLANEOUS PROVISIONS**

**25 Self-incrimination**

(1) A person is not excused from answering a question or giving any information or document under this Act or the Treaty on the ground that to do so may incriminate or tend to incriminate the person.

(2) A self-incriminating statement or document made or given under this Act or the Treaty that incriminates or tends to incriminate the person making or giving

it is not admissible as evidence in criminal proceedings against the person except on the prosecution of the person for an offence against section 12(1) or (2) in relation to the statement or document.

**26 Regulations**

- (1) Cabinet may make regulations for all or any of the following purposes:
  - (a) providing for any matter that is necessary or desirable for the purpose of implementing the Treaty or any agreement or arrangement that is concluded between Niue and the Organization under the Treaty;
  - (b) prescribing offences in respect of the contravention of or noncompliance with any provision of any regulations made under this subsection, and prescribing fines, not exceeding 500 penalty units, that may on conviction be imposed in respect of any such offence;
  - (c) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.
- (2) Cabinet may make regulations –
  - (a) amending the Schedule by making any amendments to the text of the extracts of the Treaty set out in it that are required to bring that text up to date; or
  - (b) revoking the Schedule, and substituting a new schedule setting out in an up-to-date form the text of the extracts of the Treaty set out in it.

**27 [Spent]**

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**SCHEDULE**

[Schedule not reproduced. The text of the Treaty can be accessed at <https://www.un.org> or <https://www.ctbto.org>. The Schedule as enacted in Niue can be found at <http://www.gov.nu>]

# OCCUPIERS' LIABILITY ACT 1962

1962/31 (NZ) – 1 January 1963

1	Short title	7	Occupier's duty to contractual visitors
2	Interpretation	8	Landlord's liability in virtue of obligation to repair
3	Application of sections 4 and 5	9	Act not to apply to certain contracts of hire or carriage
4	Extent of occupier's ordinary duty	10	Act to bind the Crown
5	Effect of contract on occupier's liability to third party		
6	Contribution between landlord and tenant as joint tortfeasors		

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**To amend the law relating to the liability of occupiers and others for injury or damage resulting to persons or goods lawfully on any land or other property from dangers due to the state of the property or to things done or omitted to be done there**

**1 Short title**

This is the Occupiers' Liability Act 1962.

**2 Interpretation**

In this Act –

“premises” includes land;

“structure” includes any vessel, vehicle, or aircraft.

**3 Application of sections 4 and 5**

(1) The rules enacted by sections 4 and 5 shall have effect, in place of the rules of the common law, to regulate the duty which an occupier of premises owes to his visitors in his capacity as an occupier in respect of dangers due to the state of the premises or to things done or omitted to be done on them.

(2) The rules so enacted shall regulate the nature of the duty imposed by law in consequence of a person's occupation or control of premises and of any invitation or permission he gives, or is to be treated as giving, to another to enter or use the premises, but they shall not alter the rules of the common law as to the persons on whom a duty is so imposed or to whom it is owed; and accordingly for the purpose of the rules so enacted the persons who are to be treated as an occupier and as his visitors are the same as the persons who would at common law be treated as an occupier and as his invitees or licensees.

(3) Subject to section 9, the rules so enacted in relation to an occupier of premises and his visitors shall also apply, in like manner and to the like extent as the principles applicable at common law and to an occupier of premises and his invitees or licensees would apply, to regulate –

- (a) The obligations of a person occupying or having control over any fixed or movable structure; and
- (b) The obligations of a person occupying or having control over any premises or structure in respect of damage to property, including the property of persons who are not themselves his visitors.

#### **4 Extent of occupier's ordinary duty**

(1) An occupier of premises owes the same duty (in this Act referred to as the common duty of care) to all his visitors, except so far as he is free to and does extend, restrict, modify, or exclude his duty to any visitor or visitors by agreement or otherwise.

(2) The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

(3) The circumstances relevant for the present purpose include the degree of care, and of want of care, which would ordinarily be looked for in such a visitor.

(4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances.

(5) Where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe.

(6) Where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, reconstruction, demolition, maintenance, repair, or other like operation by an independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done.

(7) The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor.

(8) Where the occupier fails or neglects to discharge the common duty of care to a visitor, and the visitor suffers damage as the result partly of that fault and partly of his own fault section 736 of the Niue Act 1966 shall apply.

(9) For the purposes of this section, persons who enter premises for any purpose in the exercise of a right conferred by law are to be treated as permitted by the occupier to be there for that purpose, whether they in fact have his permission or not.

#### **5 Effect of contract on occupier's liability to third party**

(1) Where an occupier of premises is bound by contract to permit persons who are strangers to the contract to enter or use the premises, the common duty of care which he owes to them as his visitors cannot be restricted or excluded by that contract, but (subject to any provision of the contract to the contrary) shall include the duty to perform his obligations under the contract, whether undertaken for their protection or not, so far as those obligations go beyond the obligations otherwise involved in the common duty of care.

(2) A contract shall not by virtue of this section have the effect, unless it expressly so provides, of making an occupier who has taken all reasonable care answerable to strangers to the contract for dangers due to the faulty execution of any work of construction, reconstruction, demolition, maintenance, repair, or other like operation by persons other than himself, his servants, and persons acting under his direction and control.

(3) In this section "stranger to the contract" means a person not for the time being entitled to the benefit of the contract as a party to it or as the successor by assignment or otherwise of a party to it, and accordingly includes a party to the contract who has ceased to be so entitled.

(4) Where by the terms or conditions governing any tenancy (including a statutory tenancy which does not in law amount to a tenancy) either the landlord or the tenant is bound, though not by contract, to permit persons to enter or use premises of which he is the occupier, this section shall apply as if the tenancy were a contract between the landlord and the tenant.

## 6 Contribution between landlord and tenant as joint tortfeasors

(1) Where a landlord is the occupier of any part of any premises that is used by a tenant, and damage is suffered by a visitor to that part of the premises as a result of the fault of the landlord and of the tenant, and the tenant would, if sued, have been liable to the visitor in respect of the damage, the landlord shall have the same right to recover contribution from the tenant as if the tenant were a joint occupier of that part of the premises.

(2) Where a tenant is the occupier of any part of any premises, and damage is suffered by a visitor to that part of the premises as a result of the fault of the tenant and of the landlord, and the landlord would, if sued, have been liable to the visitor in respect of the damage, the tenant shall have the same right to recover contribution from the landlord as if the landlord were a joint occupier of that part of the premises.

(3) For the purposes of this section –  
"landlord" includes both an immediate and a superior landlord;  
"tenant" includes a person occupying premises under a statutory tenancy which does not in law amount to a tenancy, or under any contract conferring a right of occupation, and also includes a subtenant.

## 7 Occupier's duty to contractual visitors

(1) Where persons enter or use, or bring or send goods to, any premises in exercise of a right conferred on them by contract with a person occupying or having control of the premises, the duty he owes them, in his capacity as occupier, in respect of dangers due to the state of the premises or to things done or omitted to be done on them shall be the common duty of care, except so far as a contrary intention is expressed in the contract; and section 4 (2) to (8) shall apply accordingly.

(2) In determining whether in any such case the occupier has discharged the common duty of care, so far as it is applicable, the existence and nature of the contract shall be included in the circumstances to which regard is to be had under section 4.

(3) Subject to section 9, this section shall apply to fixed and movable structures as it applies to premises.

## 8 Landlord's liability in virtue of obligation to repair

(1) Where premises are occupied by any person under a tenancy which puts on the landlord an obligation to that person for the maintenance or repair of the premises, the landlord shall owe to all persons who or whose goods may from time to time be lawfully on the premises the same duty, in respect of dangers arising from any default by him in carrying out that obligation, as if he were an occupier of the premises and those persons or their goods were there by his invitation or permission but without any contract.

(2) Where premises are occupied under a subtenancy, subsection (1) shall apply to any landlord of the premises (whether the immediate or a superior landlord)

on whom an obligation to the occupier for the maintenance or repair of the premises is put by the subtenancy, and for that purpose any obligation to the occupier which the subtenancy puts on a mesne landlord of the premises, or is treated by virtue of this provision as putting on a mesne landlord, shall be treated as put by it also on any landlord on whom the mesne landlord's tenancy puts the like obligation towards the mesne landlord.

(3) For the purposes of this section, where premises comprised in a tenancy (whether occupied under that tenancy or under a subtenancy) are put to a use not permitted by the tenancy, and the landlord of whom they are held under the tenancy is not debarred by his acquiescence or otherwise from objecting or from enforcing his objection, then no persons or goods whose presence on the premises is due solely to that use of the premises shall be deemed to be lawfully on the premises as regards that landlord or any superior landlord of the premises, whether or not they are lawfully there as regards an inferior landlord.

(4) For the purposes of this section, a landlord shall not be deemed to have made default in carrying out any obligation to the occupier of the premises unless his default is such as to be actionable at the suit of the occupier or, in the case of a superior landlord whose actual obligation is to an inferior landlord, his default in carrying out that obligation is actionable at the suit of the inferior landlord.

(5) This section shall not put a landlord of premises under a greater duty than the occupier to persons who or whose goods are lawfully on the premises by reason only of the exercise of a right of way.

(6) Nothing in this section shall relieve a landlord of any duty which he has under apart from this section.

(7) For the purposes of this section, obligations imposed by any enactment in virtue of a tenancy shall be treated as imposed by the tenancy; and "tenancy" includes a statutory tenancy which does not in law amount to a tenancy, and includes also any contract conferring a right of occupation; and "landlord" shall be construed accordingly.

## **9      Act not to apply to certain contracts of hire or carriage**

This Act shall not apply to the obligations of any person under or by virtue of any contract for the hire of, or for the carriage for reward of persons or goods in, any vehicle, vessel, aircraft, or other means of transport, or under or by virtue of any contract of bailment.

## **10     Act to bind the Crown**

This Act shall bind the Crown.

# PARTNERSHIP ACT 1908

1908/138 (NZ) – 4 August 1908

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- 2 Interpretation
- 3 Saving for rules of equity and common law

## PART 1 THE GENERAL LAW RELATING TO PARTNERS

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- 5 Rules for determining existence of partnership
- 6 Rights of person lending or selling in consideration of share of profits in case of bankruptcy
- 7 Meaning of “firm”

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## To consolidate certain enactments relating to partnership

### 1 Short title

This is the Partnership Act 1908.

### 2 Interpretation

In this Act, “business” includes every trade, occupation, or profession.

### 3 Saving for rules of equity and common law

The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with this Act.

## PART 1

### THE GENERAL LAW RELATING TO PARTNERS

#### *Nature of Partnership*

### 4 Definition of partnership

(1) Partnership is the relation which subsists between persons carrying on a business in common with a view to profit.

(2) The relationship between members of a company or association registered under the Companies Act 2006 is not a partnership within the meaning of this Act.

### 5 Rules for determining existence of partnership

In determining whether a partnership does or does not exist regard shall be had to the following rules:

- (a) Joint tenancy, tenancy in common, joint property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use of it;
- (b) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived;
- (c) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share or of a payment contingent on or varying with the profits of a business does not of itself make him a partner in the business and, in particular –
  - (i) the receipt by a person of a debt or other liquidated amount, by instalments or otherwise, out of the accruing profits of a business does not of itself make him a partner in the business or liable as such;
  - (ii) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;
  - (iii) a person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such;
  - (iv) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make

the lender a partner with the person or persons carrying on the business, or liable as such:

Provided that the contract is in writing, and signed by or on behalf of all the parties to it;

- (v) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not, by reason only of such receipt, a partner in the business or liable as such.

## **6 Rights of person lending or selling in consideration of share of profits in case of bankruptcy**

In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in section 5, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than 100 cents in the dollar, or dying in insolvent circumstances the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

## **7 Meaning of "firm"**

Persons who have entered into partnership with one another are for the purposes of this Act called collectively a "firm", and the name under which their business is carried on is called the "firm name".

### *Relations of Partners to Persons Dealing with Them*

## **8 Power of partner to bind the firm**

Every partner is an agent of the firm and his other partners, for the purpose of the business of the partnership, and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner.

## **9 Partners bound by acts on behalf of firm**

(1) An act or instrument relating to the business of the firm and done or executed in the firm name, or in any other manner showing an intention to bind the firm, by any person authorised for the purpose whether a partner or not, is binding on the firm and all the partners.

(2) This section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.

## **10 Partner using credit of firm for private purposes**

(1) Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound unless he is in fact specially authorised by the other partners.

(2) This section does not affect any personal liability incurred by an individual partner.

**11 Effect of notice that firm will not be bound by acts of partner**

If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

**12 Liability of partners**

Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner, and after his death his estate is also severally liable in a due course of administration for such debts and obligations as far as they remain unsatisfied, but subject to the prior payment of his separate debts.

**13 Liability of the firm for wrongs**

Where by the wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

**14 Misapplication of money received for firm**

The firm is liable to make good the loss –

- (a) Where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and
- (b) Where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm.

**15 Joint and several liability**

Every partner is liable jointly with his co-partners and also severally for everything for which the firm, while he is a partner in it, becomes liable under sections 13 and 14.

**16 Improper employment of trust property for partnership purposes**

(1) If a partner, being a trustee, improperly employs trust property in the business or on the account of the partnership, no other partner is liable for the trust property to the persons beneficially interested in it.

(2) (a) This section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust.

(b) Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

**17 Persons liable by “holding out”**

(1) Every one who, by words spoken or written, or by conduct, represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm is liable as a partner to any one who has, on the faith of any such representation, given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

(2) Where after a partner's death the partnership business is continued in the old firm's name, the continued use of that name or of the deceased partner's name as part of it shall not of itself make his executors or administrators estate or effects liable for any partnership debts contracted after his death.

**18 Admissions and representations of partners**

An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.

**19 Notice to acting partner to be notice to firm**

Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

**20 Liabilities of incoming and outgoing partners**

(1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

(2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

**21 Revocation of continuing guarantee by change in firm**

A continuing guarantee given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guarantee was given.

*Relations of Partners to One Another*

**22 Variation by consent of terms of partnership**

The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either express or inferred from a course of dealing.

**23 Partnership property**

(1) All property and rights and interests in property originally brought into the partnership stock, or acquired (whether by purchase or otherwise) on account of the firm or for the purposes and in the course of the partnership business, are called in this Act "partnership property" and must be held and applied by the partners exclusively for the purposes of the partnership and under the partnership agreement.

(2) The legal estate or interest in any land which belongs to the partnership shall devolve under the nature and tenure thereof and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(3) Where co-owners of an estate or interest in any land not being itself partnership property are partner as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of the purchase.

**24 Property bought with partnership money**

Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

**25 Conversion into personal estate of land held as partnership property**

Where land has become partnership property it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal and not real estate.

**26 Procedure against partnership property for partner's separate debt**

(1) A writ of execution shall not issue against any partnership property except on a judgment against the firm.

(2) The Court or a Judge may on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest on it, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money coming to him in respect of the partnership, and direct all accounts and inquiries and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in case of a sale being directed, to purchase the same.

**27 Rules as to interests and duties of partners**

The interests of partners in the partnership property, and their rights and duties in relation to the partnership, shall be determined, subject to any agreement (express or implied) between the partners, by the following rules:

- (a) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm.
- (b) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him –
  - (i) in the ordinary and proper conduct of the business of the firm; or
  - (ii) in or about anything necessarily done for the preservation of the business or property of the firm.
- (c) A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe is entitled to interest at the rate of 5% per annum from the date of the payment or advance.
- (d) A partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him.
- (e) Every partner may take part in the management of the partnership business.
- (f) No partner shall be entitled to remuneration for acting in the partnership business.
- (g) No person may be introduced as a partner without the consent of all existing partners.

- (h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.
- (i) The partnership books are to be kept at the place of business of the partnership (or the principal place if there is more than one), and every partner may have access to and inspect and copy any of them.

**28      Expulsion of partner**

A majority of the partners cannot expel any partner unless a power to do so has been conferred by express agreement between the partners.

**29      Retirement from partnership at will**

(1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.

(2) Where the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, shall be sufficient for this purpose.

**30      Conditions of partnership where term continued over**

(1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any expressed new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2) A continuance of the business by the partners, or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs is presumed to be a continuance of the partnership.

**31      Duty to render accounts**

Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

**32      Partners to account for private profits**

(1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name, or business connection.

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

**33      Partner not to compete with firm**

If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

**34      Rights of assignee of share in partnership**

(1) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or

administration of the partnership business or affairs, or to require any account of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

(2) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

*Dissolution of Partnership and its Consequences*

**35 Dissolution by expiration or notice**

(1) Subject to any agreement between the partners, a partnership is dissolved –

- (a) If entered into for a fixed term, by the expiration of that term;
- (b) If entered into a single adventure or undertaking, by the termination of that adventure or undertaking;
- (c) If entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.

(2) In subsection (1)(c) the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

**36 Dissolution by death, bankruptcy, or charge**

(1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.

(2) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt.

**37 Dissolution by illegality of partnership**

A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

**38 Dissolution by the Court**

On application by a partner the Court may declare a dissolution of the partnership in any of the following cases –

- (a) Where a partner is found lunatic by inquisition, or is shown to the satisfaction of the Court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene as by any other partner;
- (b) Where a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract;
- (c) Where a partner, other than the partner suing, has been guilty of such conduct as in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business;
- (d) Where a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable

for the other partner or partners to carry on the business in partnership with him;

- (e) Where the business of the partnership can only be carried on at a loss;
- (f) Where circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

**39 Rights of persons dealing with firm against apparent members**

(1) Where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

(2) An advertisement in the *Gazette* shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised.

(3) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively.

**40 Right of partners to notify dissolution**

On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

**41 Continuing authority of partners for purposes of winding up**

(1) After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue (notwithstanding the dissolution) so far as may be necessary to wind up the affairs of the partnership and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

(2) The firm is in no case bound by the acts of a partner who has become bankrupt, but this proviso does not affect the liability of any person who has after the bankruptcy represented himself, or knowingly suffered himself to be represented, as a partner of the bankrupt.

**42 Rights of partners as to application of partnership property**

On the dissolution of a partnership every partner is entitled as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of that partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners of the firm, and for that purpose any partner or his representatives may, on the termination of the partnership, apply to the Court to wind up the business and affairs of the firm.

**43 Apportionment of premium where partnership prematurely dissolved**

Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the Court may order the repayment of the premium or of such part of it as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued, unless –

- (a) The dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium; or
- (b) The partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

**44 Rights where partnership dissolved for fraud or misrepresentation**

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties to it, the party entitled to rescind is, without prejudice to any other right, entitled –

- (a) To a lien on or right of retention of the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him; and
- (b) To stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities; and
- (c) To be indemnified, by the person guilty of the fraud or making the representation, against all the debts and liabilities of the firm.

**45 Right of outgoing partner to share profits made after dissolution**

(1) Where any member of a firm dies or otherwise ceases to be a partner and the surviving or continuing partners carry on the business of the firm with his capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled, at the opinion of him or his representative, to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or the interest at the rate of 5 per cent per annum on the amount of his share of the partnership assets.

(2) Where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner or the outgoing partner, or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms of it he is liable to account under this section.

**46 Retiring or deceased partner's share to be a debt**

Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner, in respect of the outgoing or deceased partner's share, is a debt accruing at the date of the dissolution or death.

**47 Distribution of assets on final settlement of accounts**

In settling accounts between the partners after a dissolution of partnership the following rules shall, subject to any agreement, be observed –

- (a) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits.
- (b) The assets of the firm, including the sums (if any) contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order –
  - (i) in paying the debts and liabilities of the firm to persons who are not partners in it;

- (ii) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital;
- (iii) in paying to each partner rateably what is due from the firm to him in respect of capital;
- (iv) the ultimate residue, if any, shall be divided among the partners in the proportion which profits are divisible.

PART 2  
SPECIAL PARTNERSHIPS

**48 Part 1 not to affect special partnerships**

Part 1 shall not affect special partnerships except in so far as the general law relating to partners is declared by sections 49-67 to be applicable to special partnerships.

**49 Special partnerships may be formed, except for banking and insurance**

(1) Special partnerships may be formed for the transaction of agriculture, mining, mercantile, mechanical, manufacturing, or other business, by any number of persons, upon the terms and subject to the conditions and liabilities prescribed in this Part.

(2) Nothing shall authorise any such partnership for the purpose either of banking or insurance.

**50 General and special partners, and their liabilities**

Every special partnership may consist of general partners, who shall be jointly and severally responsible as general partners are now by law, and of persons, to be called special partners, who shall contribute to the common stock specific sums in money as capital, beyond which they shall not be responsible for any debt of the partnership except in cases provided in this Part.

**51 Certificates to be signed by partners**

All the persons forming any special partnership shall, before commencing business, sign a certificate containing –

- (a) The style of the firm under which the partnership is to be conducted;
- (b) The names and places of residence of all the partners, distinguishing the general from the special partners;
- (c) The amount of capital which each special partner contributes, and also (if any) the amount contributed by the general partners to the common stock;
- (d) The general nature of the business to be transacted;
- (e) The principal or only place at which it is to be transacted; and
- (f) The time when such partnership is to commence and when it is to terminate.

**52 Style of partnership**

Such style or firm shall contain the names of general partners only, or the name of one such partner, with (in either case) the addition of the words “and Company”, and the general partners only shall transact the business of the partnership.

**53 When special partner deemed general partner**

If in carrying on such business or in any contract connected with it the name of any special partner is used with his consent or privity, or if he personally makes any contract respecting the concerns of the partnership, he shall be deemed to be a general partner with respect to the contract or matter in which his name has been so used or as to which he so contracted.

**54 Certificates to be acknowledged and registered**

A special partnership shall not be deemed formed until such certificate is acknowledged by each partner before the Court, and registered in the office of the Court in a book to be kept for that purpose by the Registrar open to public inspection.

**55 False statement in certificate: partners liable as general partners**

(1) If any false statement is made in any such certificate, all the persons interested in the special partnership shall be liable for all the engagements thereof as general partners.

(2) No clerical error or matter not of substance shall be deemed false within the meaning of this section unless some person is prejudiced thereby, in which case the special partners shall be liable to the person so prejudiced.

**56 Copy of certificate to be published**

(1) A copy of such certificate shall be published once at least in the *Gazette* and twice in some newspaper published at the intended principal place of business of the special partnership, or at the nearest place to such place of business where a newspaper is published.

(2) If such publication is not so made, the partnership shall be deemed general.

**57 Duration of partnerships**

A special partnership shall not be entered into for a longer period than 7 years, but any such partnership may be renewed at the end of that period or at the termination of any shorter period for which it was formed.

**58 Certificate to be signed on renewal**

(1) Upon every renewal or continuation beyond the time originally agreed on for the duration of a special partnership, a certificate thereof shall be signed, acknowledged, registered and published in like manner as the original certificate.

(2) Every partnership renewed or continued otherwise than in conformity with this section shall be deemed general.

**59 Capital stock not to be withdrawn**

During the continuance of any special partnership no part of the certified capital thereof shall be withdrawn, nor shall any division or interest or profit be made so as to reduce such capital below the aggregate amount stated in the certificate.

**60 When special partners liable to refund capital withdrawn**

(1) If any part of such capital is withdrawn, or any such division is made, so that at any time during the continuance or at the termination of the special partnership the assets are insufficient to pay the partnership debts, the special partners shall be severally liable to refund every sum received by them respectively in diminution of such capital or by way of such interest or profit.

(2) All such sums may be recovered as money had and received by the respectively to the use of the general partners; and may in the case of any judgment being obtained against the general partners, be recovered by the plaintiff against the special partners, or any of them, by process of execution issued under such judgment by leave of the Court.

**61 Suits to be by and against general partners**

All suits respecting the business of any special partnership shall be prosecuted by and against the general partners only, except in the cases in which it is provided by this Act that special partners shall or may be deemed general partners, in which cases every special partner who becomes liable as a general partner may be joined or not in the action as a defendant, at the discretion of the party suing.

**62 Dissolution, how effected**

A dissolution of a special partnership shall not take place, except by operation of law, before the time specified in the certificate, unless a notice of such dissolution is signed, acknowledged, registered, and published in like manner as the original certificate.

**63 Cases not specially provided for**

In all cases not otherwise provided for all the members of a special partnership shall be subject to the liabilities and entitled to the rights of general partners.

**64 Accounting**

The general partners shall be liable to account to each other and to the special partners for their management of the partnership concerns as other partners are by law.

**65 Frauds by partners**

Every partner guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of his damage, and shall also be liable to an indictment for a crime punishable by fine or imprisonment, or both, at the discretion of the Court.

**66 Books of account to be kept, and to be open to inspection**

If the general partners do not at all times cause regular books of account to be kept, or do not have the same open at all reasonable times to the inspection of the special partners, such special partners shall be entitled to have the special partnership dissolved and the accounts of it taken by the Court.

**67 Liability of special partners if books not kept**

If the books of any special partnership are, with the knowledge or privity of the special partners or any of them, kept incorrectly, or contain any false or deceptive entries, whereby the ascertainment of the matters mentioned in sections 59 and 60 are or may be affected, the certified capital of such special partners or such one or more of them having such knowledge or privity shall as against creditors be deemed to have been withdrawn, and they or he shall be liable accordingly under section 60.



# PARTNERSHIP AMENDMENT ACT 1994

1994/180 – 28 March 1994

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## PART 1 PRELIMINARY

### 1 Short title

This is the Partnership Amendment Act 1994.

### 2 Interpretation

“Deputy Registrar” means a deputy registrar of limited liability partnerships appointed under section 11;

“Minister” means the Minister of Justice;

“Registrar” means a registrar of limited liability partnerships appointed under section 11.

## PART 2 GENERAL AND SPECIAL PARTNERSHIPS

### 3 Partnership Act

(1) Where there is an inconsistency between the provisions of this Act and the Partnership Act 1908, this Act prevails.

(2) –

4 –

### 5 Formation

A partnership shall be formed in Niue when the deed or written agreement of partnership constituting that partnership is executed or signed in Niue by all the partners of it or by their duly appointed attorneys.

## **6 Special partnerships**

(1) Any partner of a special partnership formed in Niue under Part 2 of the Partnership Act 1908 who would be a general partner solely by virtue of the operation of section 53 of the Partnership Act 1908 shall be deemed to be a special partner notwithstanding that section if the making of any contract by that partner respecting the concerns of the partnership, or the use or consensual use of that partner's name in relation to the carrying on of the business of the partnership or any contract connected with it, is directly related to a business principally carried on outside Niue.

(2) Section 57 of the Partnership Act 1908 shall not apply to limit the duration of any special partnership, formed in Niue under Part 2 of the Partnership Act 1908, to any period.

## **7 Penalties**

Any person who –

- (a) Does anything which is forbidden by or under this Act; or
- (b) Omits to do something required or directed by or under this Act; or
- (c) Contravenes or fails to comply with this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding one year or to both.

## **8 Regulations**

Cabinet may make Regulations prescribing all matters and things required or authorised by this Act to be prescribed or which are necessary for carrying out or giving effect to this Act including the prescribing of penalties for breaches of such Regulations not exceeding a fine of 100 penalty units.

## **9 Partnership interests**

(1) A partnership ("the first partnership") may be a partner in another partnership ("the second partnership") in which case the members of the first partnership shall become individual members of the second partnership, excepting that for the purposes of determining the rights of the partners of the second partnership inter se and for the purposes of Part III they shall be deemed to be one person. Nothing in this subsection applies to, or prevents, a partner in a partnership creating a sub-partnership in equity of his legal interest as regards either his capital or income or both.

(2) A person may assign in equity any legal or equitable interest in partnership capital or income, or both, providing the assignment is in writing and is unconditional.

(3) Subsection (2) shall apply both to present property, being a present right to receive future income and to future property, being the income to be received in the future.

## **10 Passive income**

(1) Persons who are jointly in receipt of passive income from any investment and who carry on no business in respect of that investment other than the raising of capital in relation to it, the taking of accounts in respect of it, and the

contracting for maintenance for it are deemed not to be partners by virtue of such joint receipt.

(2) Passive income from any investment shall for the purposes of this section include any income derived from any interest as a beneficiary under a trust, and any income derived from the holding of any income-producing property, providing always that the expenditure referred to in subsection (1) does not in any 3 year period exceed 15 per cent of the total income derived from that interest or property in that period before taking into account capital costs (and interest on it) with respect to it.

(3) Income-producing property shall for the purposes of this section include any intellectual property rights or know-how which generate income, providing that any services supplied in relation to or in conjunction with the income thereby generated does not in any 3 year period exceed 15 per cent in value of the total income derived from that interest or property in that period.

(4) This section shall not apply to any persons who are jointly in receipt of passive income from any investment and who enter into any deed or written Agreement of Partnership with each other, whose status shall thereafter be determined under the general law.

### PART 3 LIMITED LIABILITY PARTNERSHIPS

#### 11 Appointment of Registrar

(1) There shall be appointed by the Niue Public Service Commission on the advice of Cabinet –

- (a) A Registrar of limited liability partnerships to carry out the duties and functions vested in him by or under this Act;
- (b) Such Deputy Registrars of limited liability partnerships and other officers as are required for the purposes of this Act.

(2) Anything by this Act appointed or authorised or required to be done by the Registrar may be done by any such Deputy Registrar and shall be as valid and effectual as if done by the Registrar, and the term Registrar shall for the remainder of this Act be deemed to include any Deputy Registrar.

(3) All courts, judges, and persons acting judicially shall take judicial notice of the seal and also the signature of the Registrar.

(4) For the purposes of ascertaining whether a limited liability partnership is complying with this Part the Registrar or any person authorised by him may inspect any book, minute book, register or record kept by the limited liability partnership.

(5) Any person appointed under subsection (1) who except for the purposes of this Act or except in the course of criminal proceedings makes a record of, divulges or communicates to any other person any information which he possesses or has acquired –

- (a) By reason of his carrying out the duties and functions of his office; or
- (b) By reason of access forwarded or obtained by him to any document or register kept by the Registrar or book, minute book, register or record kept by any limited liability partnership,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 50 penalty units or to a term of imprisonment not exceeding 2 years in respect of each such offence.

## **12 Application for registration**

(1) Any partnership formed in Niue that is not a special partnership formed under Part 2 of the Partnership Act 1908 may apply to the Registrar for registration as a limited liability partnership.

(2) Any application of the kind referred to in subsection (1) shall be on a form prescribed by the Minister and shall be accompanied by the prescribed fee.

(3) Every such application shall be signed by all the partners to the partnership, and every such application shall specify a partner of the partnership or a duly appointed attorney thereof such that the registered office of the partnership shall be the address in Niue of that partner or duly appointed attorney.

(4) Every such application shall contain a several guarantee from the partners in prescribed form to all creditors of the partnership limited to such sum as the partners shall nominate, being not less than \$250 in it per partner.

(5) A deed or written Agreement of Partnership shall accompany every such application and shall be stamped by the Registrar with a registration number when the application is accepted in proper form and the prescribed fee is paid.

(6) Upon stamping of the deed or written Agreement of Partnership under subsection (5) the Registrar shall return the deed or written Agreement of Partnership to the registered office of the partnership and shall register that partnership upon a Register of limited liability partnerships kept for that purpose and issue a certificate of registration in the prescribed form.

(7) A limited liability partnership is deemed to be registered under this section from the date upon which the deed or written Agreement of Partnership is stamped under subsection (5), and the date of registration specified in the certificate of registration issued under subsection (6) shall be that date.

(8) A partnership shall not be deemed to be formed as a limited liability partnership until it is registered under this section or with section 13.

## **13 Annual certificates of registration**

(1) A certificate of registration issued under section 12(6) shall be valid and effective for one year from the date of registration specified in that certificate.

(2) Application for renewal of registration may be made upon filing with the Registrar an application for renewal of registration on a form prescribed by the Minister and payment of the prescribed fee.

(3) No application for renewal of registration under subsection (2) shall be granted where the application is filed or fee paid after the date of expiry of the last certificate of registration.

(4) Every renewal of registration shall be for a period of one year from the date of expiry of the last certificate of registration.

**14 Address for service**

The address for service of any documents upon a limited liability partnership shall be the registered office of that partnership.

**15 Display name**

Every limited liability partnership shall have its name displayed on the outside of its registered office in a conspicuous position in letters easily legible.

**16 Liability for debts**

(1) (a) Subject to subsection (2), in determining the extent of any liability for the debts of a limited liability partnership the partners of a limited liability partnership shall each be severally liable for the debts of the partnership only to the extent of the amount nominated by each of them in the guarantee lodged with the application referred to in section 12 (4).

(b) Nothing in this subsection shall apply to prevent any security given in respect of any property being enforced, nor any personal guarantee given by any partner being sued upon.

- (2) Subsection (1) shall not apply –
- (a) To any debt arising from a transaction entered into by a limited liability partnership with a person or persons resident in Niue unless the fact that the partnership is registered as a limited liability partnership is acknowledged in writing by the other person or persons prior to the parties to the transaction being bound to it;
  - (b) To any debt existing at the date of first registration of the limited liability partnership under section 12.

**17 Power of partner to bind the partnership**

Every partner of a limited liability partnership is an agent of the limited liability partnership and the other partners in it for the purposes of the business of the limited liability partnership, and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the limited liability partnership shall, subject to section 16, bind the limited liability partnership and the other partners in it, unless the partner so acting has in fact no authority to act for the limited liability partnership in the particular matter, and the person with whom the partner is dealing either knows that the partner has no authority or does not know or believe that person to be a partner.

**18 Jurisdiction**

Every limited liability partnership shall be subject to the exclusive jurisdiction of the High Court of Niue unless the partners otherwise provide at the time of entering into binding legal relations, with third parties or with each other, with respect to such legal relations.

**19 No separate legal entity**

Nothing in this Part shall be taken to alter the laws of partnership applying to partnerships generally so as to constitute any limited liability partnership a legal entity separate from its members, and for the avoidance of doubt a limited liability partnership cannot sue or be sued in its own name.

## **20 Assignment**

Unless otherwise agreed in writing by all the partners of a limited liability partnership a partner in that partnership will not by assigning all his interest in that partnership to another person thereby dissolve that partnership and that partnership shall upon such an assignment occurring be deemed to have always consisted of its present partners excepting that –

- (a) Any person to whom a partnership interest has been assigned shall be liable under the guarantee given under section 12 (4) by the assignor (or his predecessor in title (being the person who signed the guarantee)) and the assignor shall be released from the same;
- (b) The proviso to section 16 (1) shall continue to apply to both the assignor and the assignee;
- (c) For the purposes of any action between the partners inter se only those partners who were partners at the time the relevant cause of action arose shall be parties to any such action.

## **21 Secrecy**

(1) Except where this Act requires, and subject to subsection (2), it shall be an offence for any person to divulge or communicate to any other person information relating to the establishment, constitution, business, undertaking or affairs of a limited liability partnership.

(2) All judicial proceedings, other than criminal proceedings, relating to limited liability partnerships shall, unless ordered otherwise, be heard in camera and no details of the proceedings shall be published by any person without leave of the Court or person presiding.

(3) Notwithstanding subsection (1), an offence shall not be committed where information is divulged or made available to the extent reasonably required in the circumstances to any foreign government or any court or tribunal of any country including Niue but only if and to the extent that the High Court of Niue so directs, having been satisfied that the information is required and will be used solely for the purposes of an investigation or prosecution of any person in relation to the sale, or the laundering of the proceeds of sale, of any prohibited narcotic substances, or the laundering of the proceeds gained from any other serious criminal activity, whether that sale or laundering or other serious criminal activity occurred in Niue or elsewhere.

(4) Nothing in this section shall prevent the High Court of Niue from requiring any person to produce documents or to give evidence in any proceedings of any facts relevant in such proceedings in a court in Niue.

## **22 Translations**

(1) Every document filed with the Registrar under this Part and not in the English language shall be accompanied by a certified translation.

(2) A document that is not in the English language and which is not accompanied by a certified translation at the time of filing shall not be accepted for registration by the Registrar.

(3) For the purpose of this section a certified translation is a translation into the English language, certified as a correct translation, by a translator to the satisfaction of the Registrar.

**23 No action to lie against certain persons**

Notwithstanding section 21 no action shall lie against the Government of Niue, any statutory body or authority or a public or judicial officer in respect of the performance of its or his functions or duties under this Part.

**24 Power of exemption**

(1) Cabinet may, on the advice of the Minister, on its own motion or under an application in writing lodged with the Registrar by a limited liability partnership or a partnership which would be a limited liability partnership if it were registered, exempt that limited liability partnership or partnership from all or any of the provisions of this Act and any Regulations made under this Act and may impose such terms and conditions as it thinks fit as a condition under which that exemption is granted.

(2) Any exemption granted under subsection (1) may be revoked or varied by Cabinet, on the advice of the Minister, at any time.

(3) In dealing with an application under this section Cabinet shall not be required to act judicially and its decision shall in all cases be final.

(4) Any exemption or condition imposed under subsection (1) shall take effect as from a date to be decided by the Cabinet in its discretion.

**25 Prohibitions by the Minister**

(1) Cabinet shall, on the advice of the Minister, have an absolute right and without assigning reasons to make an order –

- (a) Prohibiting the registration of any partnership as a limited liability partnership; or
- (b) Directing any limited liability partnership to cease carrying on its business or part of its business immediately or within such time as may be specified in the order.

(2) Any order made under this section may be revoked or varied by the Cabinet, on the advice of the Minister.

(3) In making an order under this section the Cabinet shall not be required to act judicially and such order shall be final.



# PENSIONS AND BENEFITS ACT 1991

1991/157 – 1 October 1991

1 Short title	11 Maintenance
2 Interpretation	12 Provision for welfare benefit
	13 Rate of welfare benefit
<b>PART 1</b>	
PENSIONS	
3 Entitlement to a pension	GENERAL PROVISIONS
4 Rate of pension	14 Moneys payable out of the Government Account
<b>PART 2</b>	
WELFARE BENEFITS	
5 Welfare Committee	15 Payment of pension or welfare benefit in special circumstances
6 Meetings of Committee	16 Recovery of payments in excess
7 Delegation of powers of Committee	17 Offences
8 Application for welfare benefit	18 Taxation
9 Investigation of applications	19 Regulations
10 Criteria for receipt of welfare benefit	20-21 [Spent]

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## To consolidate and amend the law relating to the provision of pensions and benefits in Niue

### **1 Short title**

This is the Pensions and Benefits Act 1991.

### **2 Interpretation**

In this Act –

“Committee” means the Welfare Committee established by section 5;

“destitute person” and “infirm person” means any person who is unable to support himself by his own means or labour, and includes persons with dependents where such dependants are unable through infirmity or age to support themselves by their own means or labour;

“Director” means the Director of Community Affairs;

“permanent resident” means any person who has been granted permanent resident status under the Immigration Act 2011.

### PART 1

#### PENSIONS

### **3 Entitlement to a pension**

(1) Every person who is –

(a) Of the age of 60 years or more; and

(b) Every Niuean and permanent resident in Niue and has been so resident for not less than 6 months immediately preceding the date on which the application is made;

shall, on application to the Director, be entitled subject to this Act, to receive a pension.

(2) For the purposes of this section, residence in Niue shall be deemed not to have been interrupted in any case where such interruption was due to absence for –

- (a) The purpose of the applicant undergoing medical or surgical treatment for a period not exceeding 6 months, and the Director is satisfied that there was good and sufficient reason for leaving Niue to obtain that treatment;
- (b) The purpose of undertaking a course of education or training;
- (c) Service overseas by the applicant for the Government of Niue.

(3) Notwithstanding subsection (1), every person who is in receipt of a pension shall, upon being absent from Niue for any period in excess of 3 months, cease to be entitled to receive a pension, but shall on returning to take up residence in Niue, be entitled to re-apply for, and receive a pension.

(4) The payment of a pension shall cease immediately on the death of the recipient.

(5) A recipient can only be entitled to one pension, funded either locally or from overseas, but not both.

#### **4 Rate of pension**

The rate of pension payable shall be prescribed by Cabinet.

### PART 2 WELFARE BENEFITS

#### **5 Welfare Committee**

(1) For the purposes of this Part there shall be a committee called the Welfare Committee.

(2) The Committee shall consist of –

- (a) The Director;
- (b) The Director of Health; and
- (c) A person appointed by and at the pleasure of Cabinet.

(3) The Director shall be Chairman of the Committee and shall preside at all meetings at which he is present.

(4) In the absence of the Chairman the Director of Health shall act as Chairman.

(5) At any meeting of the Committee the Chairman or as the case may be the acting chairman shall have a deliberative vote and in the case of an equality of votes shall also have a casting vote.

#### **6 Meetings of Committee**

- (1) The Committee shall sit at such times and places as it may determine.
- (2) At any meeting of the Committee two members shall form a quorum.

#### **7 Delegation of powers of Committee**

(1) The Committee may either generally or particularly delegate to the Director, such of its powers as the Committee determines.

(2) Subject to this section and to any general or special directions given or conditions attached by the Committee, the Director to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on the Director directly by this section.

(3) Every person purporting to act under any delegation under this section shall be presumed to be acting under the terms of the delegation in the absence of proof of the contrary.

(4) Any delegation under this section may at any time be revoked by the Committee in whole or in part, and no such delegation shall prevent the exercise of any power by the Committee.

## **8 Application for welfare benefit**

Every person who has been ordinarily resident in Niue for not less than 10 years immediately preceding the date of the application, and who is a destitute person or an infirm person, may apply in writing to the Committee for a welfare benefit.

## **9 Investigation of applications**

(1) The Director shall cause every application for a welfare benefit to be investigated and a report on it to be made to the Committee for deliberation and decision.

(2) It shall be the duty of every person to answer all questions put by or on behalf of the Director in connection with an application.

## **10 Criteria for receipt of welfare benefit**

(1) On receipt of an application for a welfare benefit, and the report required to be furnished under section 9(1), the Committee shall as soon as practicable consider the application, taking into account such matters as the Committee thinks fit, including

- (a) The financial circumstances of the applicant;
- (b) The health of the applicant;
- (c) Such other matters as may be prescribed by Cabinet.

(2) On receipt of an application for a welfare benefit, the Committee shall, in addition to the matters set out in subsection (1), consider the possibility of rehabilitating the applicant, or of assisting the applicant to find employment, or undergoing medical treatment, or counselling.

(3) Any applicant who without reasonable excuse refuses to act on any advice or counselling given to him by the Committee consequent upon any matters considered by the Committee under subsection (2), shall not be entitled to receive a welfare benefit or, if he is already in receipt of such a benefit, such benefit may be reduced, or terminated forthwith by the Committee.

## **11 Maintenance**

In considering any application for a welfare benefit the Committee shall, in addition to the matters set forth in section 10, have regard to Part 7 of the Family Law Code, and may refuse to grant any welfare benefit to an applicant if the Committee is satisfied that proceedings on behalf of the applicant should first be taken to recover maintenance under that Part, and the Director is hereby empowered in the name of the applicant to make application to the Court and to prosecute any application which may be made or instituted by any other person under section 88 of the Family Law Code.

## **12 Provision for welfare benefit**

(1) On approval of any application the Committee shall in the first instance, approve the payment of a welfare benefit for a period not exceeding 6 months.

(2) On the expiry of 6 months, or such shorter period for which the payment of a welfare benefit may have been approved in the first instance, application for continuation of the benefit for a further period not exceeding 6 months may be made by the recipient in the same manner as the original application.

(3) After two successive successful applications by the recipient of a benefit, the Committee may grant a benefit for longer periods not exceeding one year on such terms as it may decide.

(4) A welfare benefit shall be paid in such amount, not exceeding the maximum rate of benefit payable prescribed under section 13, as the Committee may determine.

(5) Payment of a welfare benefit under any grant shall cease immediately on –

- (a) The death of the recipient;
- (b) The circumstances which entitled the recipient to a welfare benefit ceasing to exist;
- (c) The recipient being absent from Niue for any period in excess of 3 months, provided that such recipient may, on returning to take up residence in Niue, reapply for a welfare benefit.

(6) A welfare benefit shall be paid at such intervals, and upon such terms and conditions as the Committee may decide.

### **13 Rate of welfare benefit**

The maximum rate of welfare benefit payable shall be prescribed by Cabinet.

## PART 3

### GENERAL PROVISIONS

### **14 Money payable out of the Government Account**

There shall be paid out of the Niue Government Account from money appropriated by the Assembly for the purpose –

- (a) All money required to be expended in providing pensions or welfare benefits under Part 1 and Part 2; and
- (b) All other money that may be appropriated by the Assembly for the purposes of Part 1 and Part 2, or that may be appropriated for any purpose incidental or related to the purposes of Part 1 and Part 2.

### **15 Payment of pension or welfare benefit in special circumstances**

Notwithstanding any other provision in this Act, Cabinet may approve the payment of a pension or of a welfare benefit to any person who is ordinarily resident in Niue and who would not otherwise qualify under this Act for the payment to him of a pension or welfare benefit where –

- (a) In the case of a pension, Cabinet is satisfied that the person to whom the pension is to be paid is of the age of 60 years or more;
- (b) In the case of a welfare benefit, Cabinet is satisfied that the person to whom the benefit is to be paid is a destitute or infirm person;

and in either case, Cabinet is satisfied on the merits of the case that special circumstances exist to warrant such payment.

### **16 Recovery of payments in excess**

If any pension or welfare benefit, or instalment of it, or any money is paid to any person under this Act in excess of the amount which ought to have been paid to such person, the excess so paid may be –

- (a) Recovered by the Director as a debt due to the Crown; or
- (b) Recovered by the Director by any necessary adjustment to or deduction from any instalments of the same or any other pension or welfare benefit being paid to that person;

- (c) Deducted by the Financial Secretary from any other money of whatsoever kind payable or due from the Government to that person.

**17 Offences**

Every person commits an offence and shall be liable on conviction to a fine not exceeding 2 penalty units or to imprisonment for a term not exceeding 3 months who –

- (a) For the purpose of obtaining any pension or welfare benefit under this Act for himself or for any other person, makes any false statement to, or otherwise misleads or attempts to mislead any officer concerned in the administration of this Act, or any other person whomsoever;
- (b) Being a person engaged in the administration of this Act, demands or receives from an applicant for a pension or a welfare benefit or any other person, any fee or other consideration for procuring or attempting to procure any pension or welfare benefit.

**18 Taxation**

No person shall be liable for income tax in respect of a pension or a welfare benefit paid under this Act.

**19 Regulations**

(1) Cabinet may make regulations providing for such matters as are contemplated by or necessary for giving full effect to this Act and for the due administration of it.

(2) Regulations made under this section may provide for offences against such regulations punishable by a term of imprisonment not exceeding 3 months or a fine not exceeding 2 penalty units or both.

**20-21 [Spent]**



# PESTICIDES ACT 1991

1991/158 – 1 October 1991

1	Short title	10	Application for permit to sell or distribute pesticide
2	Interpretation	11	Register of importers and sellers of pesticides
3	Power to declare substances to be pesticides	12	Customs not to release pesticides
4	Pesticides Committee	13	Revocation and suspension of permits
5	Functions and powers of Committee	14	Search and seizure
6	Exemptions	15	Offences and penalties
7	Importation of pesticides	16	Regulations
8	Application for permit to import pesticide		
9	Sale and distribution of pesticides		

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## To regulate the importation and sale of pesticides

### 1 Short title

This is the Pesticides Act 1991.

### 2 Interpretation

In this Act –

“brand” means the trade name applied to a pesticide of any description by the manufacturer, importer, seller or distributor;

“Committee” means the Pesticides Committee established under section 4;

“container” includes anything in or by which pesticides may be cased, covered, enclosed, contained or packed;

“Director” means the Director of Agriculture, Forestry and Fisheries or such other person as (being an officer of the Department of Agriculture Forestry and Fisheries) to whom the functions of the Director under this Act may for the time being have been delegated by the Director;

“label” means any written, printed or graphic matter on, attached to, the pesticide or the container of it and the outside container of the retail package of the pesticide;

“Minister” means the Minister for the time being responsible for agriculture;

“permit to import” means a permit issued under section 8;

“permit to sell” means a permit issued under section 10;

“pest” means any form of plant or animal life or any pathogenic agent injurious or potentially injurious to plant or animal life and includes any public health pest, but does not include any such pest living on or in humans;

“pesticide” means –

- (i) any substance or mixture of substances used for preventing, destroying or controlling any pest, including vectors or human and animal disease, unwanted species of plants or animals causing harm during or otherwise interfering with production, processing, storage, transport or marketing of food agricultural commodities, wood and wood products or animal foodstuffs, or which may be administered to animals for the control of insects, arachnids or other pests in or on their bodies; and
- (ii) includes substances or mixture of substances intended for use as a plant growth regulator, defoliant, desiccant or agent for thinning fruit or preventing the premature fall of fruit and substances applied to crops

- either before or after harvest to protect the commodity from deterioration during storage and transport;
- (iii) includes any substance or mixture of substances declared by Cabinet under section 3 to be a pesticide.

### **3 Power to declare substances to be pesticides**

(1) Cabinet may on the recommendation of the Committee declare any substance or mixture of substances to be a pesticide for the purposes of this Act and in the like manner, may revoke such declaration.

(2) Any such declaration may relate to any substance or mixture specified by its common name or brand, or to any class of substances or mixture identified by a description of that class.

(3) Any such substance or mixture or class of substances or mixtures may be identified by reference to its toxicological action, its use, or its intended purpose.

### **4 Pesticides Committee**

(1) For the purposes of this Act there shall be constituted a committee to be called the Pesticides Committee.

(2) The Committee shall consist of –

- (a) The Director who shall be Chairman of the Committee;
- (b) The Director of Health;
- (c) One person appointed by and to hold office at the pleasure of Cabinet, who shall be a person who in the opinion of Cabinet, represents the interests of pesticide importers and sellers;
- (d) One person appointed by and to hold office at the pleasure of Cabinet, who shall be a person who in the opinion of Cabinet, represents the interests of pesticide users.

(3) The Committee shall meet when required by the Minister or the Chairman but in any event not less than 4 times in every year.

(4) Subject to this Act the Committee may regulate its own procedure as it thinks fit, including the appointment of technical advisers and temporary members.

(5) The Chairman at any meeting of the Committee shall have a casting vote as well as a deliberative vote.

### **5 Functions and powers of the Committee**

The Committee shall have all the functions and powers necessary for the administration of this Act, including the function and power to –

- (a) Assess and evaluate every application made under this Act for the importation or sale of a pesticide;
- (b) Determine in its discretion the conditions relating to the importation or sale of any pesticide;
- (c) Suspend or revoke subject to this Act, any permit issued under this Act;
- (d) Promote the efficient, prudent and safe use of pesticides by the public generally;
- (e) Advise Cabinet and the Minister on pesticide-related matters.

### **6 Exemptions**

Notwithstanding any other provision of this Act, Cabinet may, on the recommendation of the Committee, exempt any pesticide from one or more of the provisions of this Act and may in like manner revoke any such exemption.

**7 Importation of pesticides**

No person shall import into Niue any pesticide, except under the terms and conditions of a permit issued under section 8.

**8 Application for permit to import pesticide**

- (1) Every application to import a pesticide shall be lodged with the Director in writing.
- (2) Every application made under this section shall state full particulars of

- 
- (a) The name and address of the applicant and the name and address of the manufacturer or distributor of the pesticide;
- (b) The brand name and percentage by weight or volume of every active ingredient contained in the pesticide;
- (c) The nature and formulation of the pesticide;
- (d) The labelling which it is proposed to use on the pesticide container;
- (e) The purpose for which the pesticide is normally used;
- (f) The storage facilities available to the applicant for the keeping of the pesticide.

(3) On receipt of an application for importation of a pesticide, the Director shall refer the application to the Committee who shall —

- (a) Approve the application either wholly or in part, and either with or without such conditions as the Committee thinks fit; or
- (b) Defer the application until further relevant information required by the Committee is provided; or (c) Decline the application.

(4) Without limiting the generality of the conditions which the Committee may impose under subsection (3)(a) the Committee may, when approving an application for the importation of a pesticide impose conditions relating to —

- (a) The quantity of any pesticide which may be imported pursuant to the permit;
- (b) The period of time for which the permit shall remain valid, being in any event not longer than 2 years;
- (c) The methods to be used when handling the pesticide;
- (d) The premises where the pesticide is to be stored, including the type and condition of those premises, the extent and type of security measures which will be taken, and whether any other type of goods will be stored in or about those same premises.

(5) Every permit issued under this section shall be in writing under the hand of the Director, and shall be in such form as the Committee may approve.

**9 Sale and distribution of pesticides**

No person shall sell or distribute in Niue, any pesticide to any other person, except under the terms and conditions of a permit issued under section 10.

**10 Application for permit to sell or distribute pesticide**

(1) Every application to sell or distribute a pesticide shall be lodged with the Director in writing.

(2) Every application made under this section shall state full particulars of

- 
- (a) The name and address of the applicant;
- (b) The brand name of the pesticide which the applicant proposes to sell;
- (c) Whether or not the applicant is the importer of the pesticide, and if not, the person from whom the pesticide is to be obtained;

- (d) The premises where the pesticide will be stored, including the type and condition of those premises, the extent and type of security measures which will be taken, and the storage of the pesticide in relation to the proximity of other types of goods;
- (e) The label to be affixed to any container containing the pesticide;
- (f) The purpose for which the pesticide is normally used.

(3) On receipt of an application to sell or distribute a pesticide, the Director shall refer the application to the Committee, who shall –

- (a) Approve the application either wholly or in part, and either with or without such conditions as the Committee thinks fit; or
- (b) Defer the application until further relevant information required by the Committee is provided; or
- (c) Decline the application.

(4) Without limiting the generality of the conditions which the Committee may impose under subsection (3)(a), the Committee may, when approving an application to sell or distribute a pesticide impose conditions relating to –

- (a) The period of time for which the permit shall remain valid, being in any event not longer than 2 years;
- (b) The methods to be used when handling the pesticide;
- (c) The premises where the pesticide is to be stored, including the type and condition of those premises, the extent and type of security measures which are to be taken and the storage of the pesticide in relation to the proximity of other types of goods;
- (d) The label which is to be affixed on any container containing the pesticide.

(5) Every permit issued under this section shall be in writing under the hand of the Director, and shall be in such form as the Committee may approve.

## **11 Register of importers and sellers of pesticides**

(1) The Director shall keep and maintain a register of all persons who have been issued with a permit to import or a permit to sell.

(2) The register required to be kept and maintained under subsection (1) shall include –

- (a) The name and address of the permit-holder;
- (b) The date on which the permit was issued by the Committee and the date of its expiry;
- (c) The brand name of the pesticide approved under the permit;
- (d) The purpose for which the pesticide is ordinarily used;
- (e) Any conditions which the Committee may have imposed in respect of the permit;
- (f) Such further particulars as the Committee may require to be kept.

## **12 Customs not to release pesticides**

The Revenue Manager shall not release any pesticide to any person importing a pesticide unless the Revenue Manager is first satisfied that the importer of the pesticide is the holder of a current permit to import in respect of that pesticide.

## **13 Revocation and suspension of permits**

Notwithstanding the period of time for which any permit may have been issued under section 8 or section 10, the Committee may, after giving the holder of the permit a reasonable opportunity to be heard in relation to the matter –

- (a) Revoke any permit where the holder of the permit has been convicted of any offence under this Act; or
- (b) Suspend any permit where a prosecution is pending in the Court against the holder of the permit and the Committee is satisfied that having regard to all the circumstances, the continued importation or selling (as the case may be) of any pesticide under that permit constitutes a danger to the health or safety of any person;
- (c) Suspend or revoke any permit when facts not known to the Committee at the time the permit was issued subsequently come to the attention of the Committee, and the Committee is satisfied on the basis of such facts that the continued importation or sale (as the case may be) of that pesticide would give rise during normal use to an unacceptable hazard to any person, any animal, or to the environment.

#### **14 Search and seizure**

Where the Director has reasonable cause to suspect that an offence has been or is about to be committed against this Act or any regulations made under this Act, the Director or any person acting under the authority of the Director may, during usual business hours and in the presence of a constable, without warrant enter any premises and search them, and may –

- (a) Seize or take samples of and remove any substance which the Director has reasonable cause to suspect is a pesticide;
- (b) Seize or take samples of and remove any document, container, or other thing whatsoever which the Director has reasonable cause to believe may be required as evidence for the purpose of proceedings in respect of any such offence.

#### **15 Offences and penalties**

(1) Every person who –

- (a) Imports a pesticide without first obtaining a permit under section 8, or
- (b) Being the holder of a permit to import, imports a pesticide in contravention of any condition attaching to such permit; or
- (c) Sells or distributes any pesticide without first obtaining a permit under section 10; or
- (d) Being the holder of a permit to sell, sells or distributes any pesticide in contravention of any condition attaching to such permit,

commits an offence and shall be liable on conviction to a fine not exceeding 2 penalty units for a first offence, and not exceeding 10 penalty units for a second or subsequent offence.

(2) Where any person is convicted of any offence under subsection (1), the Court may, in addition to the penalty prescribed under subsection (1), order that any pesticide in respect of which the offence has been committed shall be forfeited to the Crown, or disposed of in such other manner as the Court, after hearing submissions in relation to the matter, may direct.

#### **16 Regulations**

- (1) Cabinet may make regulations for the purpose of carrying out this Act.
- (2) Without limiting the generality of subsection (1), Cabinet may make regulations prescribing –
  - (a) The form to be used for any application under section 8 or section 10 and the form of any permit which may be issued under those sections;
  - (b) The fees to be paid in respect of any application under section 8 or section 10 and for the issue of any permit under those sections;

- (c) The terms and conditions subject to which any permit under section 8 or section 10 may be issued;
- (d) Minimum standards to be observed by the holder of a permit to import or a permit to sell in relation to the storage or handling of any pesticide;
- (e) Minimum standards to be observed by any user of any pesticide, whether or not such users hold a permit to import or a permit to sell under this Act;
- (f) Offences for the non-observance or breach of any such regulations, and penalties not exceeding a fine of 2 penalty units.

# PIG CONTROL ACT 1998

1998/231 – 5 June 1998

- |   |   |
|---|---|
| 1 Short title   | 10 Constable may destroy a pig suffering from injury        |
| 2 Interpretation  | 11 Power of entry   |
| 3 Owner of pig must not allow the pig to wander at large            | 12 Power of constable to request information                |
| 4 Owner of pig to ensure that its enclosure is not a nuisance       | 13 Wilful obstruction of constable                          |
| 5 Owner of pig to ensure that the pig has sufficient food and water | 14 Court may order convicted person to pay compensation     |
| 6 Owner of pig found wandering to recapture pig                     | 15 Owner liable for damage done by a pig wandering at large |
| 7 Owner of land may capture and destroy pig wandering on land       | 16 Indemnity  |
| 8 Constable may be requested to capture wandering pig               | 17 Compensation not payable for destruction of pig          |
| 9 Constable may destroy or capture pig found wandering at large     | 18 Regulations  |
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## **1 Short title**

This is the Pig Control Act 1998.

## **2 Interpretation**

In this Act –

“Chief of Police” includes a person for the time being carrying out the duties of the Chief of Police;

“owner”, in respect of a pig or land, includes a person for the time being having responsibility for the pig or land, and, in the case of land, also includes any person who has an interest in the land.

## **3 Owner of pig must not allow the pig to wander at large**

(1) The owner of a pig must ensure that the pig is –

- (a) Kept in an enclosure; or
- (b) Tethered, in such a way that it cannot wander at large.

Penalty: (a) Fine not exceeding 2 penalty units; or

(b) If a person is convicted of an offence under this section within one year after being convicted of an offence under this section – 5 penalty units.

(2) It is not a defence for a person charged with an offence under subsection(1) for the person to prove that the pig to which the charge relates was wandering at large on land in which that person had an interest.

## **4 Owner of pig to ensure that its enclosure is not a nuisance**

The owner of a pig must ensure that any enclosure in which the pig is kept is kept in such a condition that the enclosure does not become a nuisance or annoyance to any other person.

Penalty: (a) Fine not exceeding 2 penalty units;

(b) If a person is convicted of an offence under this section within one year after being convicted of an offence under this section – 5 penalty units.

**5 Owner of pig to ensure that the pig has sufficient food and water**

The owner of pig must ensure that the pig has sufficient food and water.

Penalty: Fine not exceeding 1 penalty unit.

**6 Owner of pig found wandering to recapture pig**

If the owner of land –

- (a) Finds a pig at large on that land; and
- (b) Requests the owner of the pig to remove it, the owner of the pig must comply with that request as soon as reasonably practicable but in any event within 24 hours of being requested to do so.

Penalty: (a) Fine not exceeding 2 penalty units;

- (b) If a person is convicted of an offence under this section within one year after being convicted of an offence under this section – 5 penalty units.

**7 Owner of land may capture and destroy pig wandering on land**

(1) If the owner of land finds a pig wandering at large on that land the owner may –

- (a) Destroy the pig; or
- (b) Claim ownership of the pig,

and for either of those purposes may capture the pig.

(2) If the owner of land destroys a pig under subsection (1)(a) the carcass of the pig is the property of that owner.

(3) If the owner of land captures and claims ownership of a pig under subsection (1)(b) the pig becomes the property of that owner.

(4) Subsections (2) and (3) apply despite the fact that –

- (a) The pig was the property of some other person before its destruction or capture; and
- (b) The owner of the land may have been aware that the pig was the property of some other person before its destruction or capture.

**8 Constable may be requested to capture wandering pig**

(1) If the owner of land finds a pig wandering at large on that land the owner may request a constable to –

- (a) Destroy the pig; or
- (b) Capture and remove the pig.

(2) A constable may comply with a request made under subsection (1).

(3) If a constable destroys or captures a pig in accordance with a request made under subsection (1) the carcass of the pig or, if captured live, the pig must be disposed of in a manner determined by the Chief of Police.

(4) The Chief of Police may determine that the carcass of the pig or the pig is to be returned to the owner of the pig but is under no obligation to do so.

(5) Subsections (1) and (2) apply although before its destruction or capture

–

- (a) The pig was the property of some other person; and
- (b) The owner of the land or the constable or both may have been aware of that fact.

**9 Constable may destroy or capture pig found wandering at large**

- (1) A constable may –  
(a) Destroy; or  
(b) Capture,

a pig found wandering at large and for either of those purposes may enter land.

(2) If a constable destroys or captures a pig under subsection (1) the carcass of the pig or, if captured live, the pig must be disposed of in a manner determined by the Chief of Police.

(3) The Chief of Police may determine that the carcass of the pig or the pig is to be returned to the owner of the pig but is under no obligation to do so.

(4) Subsection (1) applies although before its destruction or capture – (a) The pig was the property of some other person; and (b) The constable may have been aware of that fact.

**10 Constable may destroy a pig suffering from injury**

- (1) A constable –  
(a) May destroy a pig that is apparently suffering from injury, disease or neglect; and  
(b) For that purpose, may enter the land.
- (2) If a constable destroys a pig under subsection (1) the carcass of the pig must be disposed of in a manner determined by the Chief of Police.
- (3) The Chief of Police may determine that the carcass of the pig is to be returned to the owner of the pig but is under no obligation to do so.
- (4) Subsection (1) applies although before its destruction –  
(a) The pig was the property of some other person; and  
(b) The constable may have been aware of that fact.

**11 Power of entry**

If a constable has good cause to suspect that an offence against this Act is being committed on land the constable may enter the land –

- (a) To inspect –  
(i) any pig for the time being appearing to be kept on that land; or  
(ii) the conditions in which any such pig is being kept; and  
(b) If authorised to do so under any other provision of this Act, destroy a pig on the land.

**12 Power of constable to request information**

- (1) A constable may for the purposes of this Act request –  
(a) A person appearing to be in charge of a pig; or  
(b) A person appearing to be the occupier of land on which a pig is for the time being kept,

to state the person's name and address, and if that person claims not to be the owner of the pig, the name and address of the owner of the pig.

- (2) A person must not –  
(a) Without reasonable excuse, fail or refuse to comply with a lawful request under subsection (1); or  
(b) Wilfully state a false name or address in response to such a request.

Penalty: Fine not exceeding 2 penalty units.

- (3) A constable may arrest without warrant a person who –
- (a) Fails or refuses to comply with a lawful request under subsection(1); or
  - (b) In the opinion of the constable, has stated a false name or address in response to such a request.

**13 Wilful obstruction of constable**

(1) A person must not wilfully obstruct or hinder a constable in the exercise of the constable's powers under this Act.

Penalty: Fine not exceeding 2 penalty units.

(2) A constable may arrest without warrant a person who wilfully obstructs or hinders the constable in the exercise of the constable's powers under this Act.

**14 Court may order convicted person to pay compensation**

(1) If the Court –

- (a) Has convicted a person of an offence under this Act in respect of a pig wandering at large on the land of another person; and
- (b) Is satisfied that the pig caused damage on the land of that other person, the Court may inquire into the extent of that damage, and in addition to any other penalty it imposes in respect of the offence or in substitution for any such penalty order the person convicted of the offence to pay to the owner of the land such amount as the Court considers is fair compensation for the damage caused by the pig.

(2) If the Court orders a person to pay compensation under subsection (1) the making of that order does not prohibit any person taking action for the recovery of damages or additional damages.

**15 Owner liable for damage done by a pig wandering at large**

The owner of a pig that wanders at large is liable in damages for damage done by the pig while wandering at large, and it is not necessary for a person seeking damages to show –

- (a) A previous propensity in the pig to wander at large; or
- (b) The owner's knowledge of any such propensity; or
- (c) That the damage was attributable to neglect on the part of the owner of the pig.

**16 Indemnity**

(1) Action, civil or criminal, does not lie against the Government, the Chief of Police, a constable or any other person in respect of –

- (a) The destruction or capture of a pig or the disposal of a pig or the carcass of a pig under this Act; or
- (b) The attempted destruction or capture of a pig under this Act if the pig is wounded or maimed instead of being so destroyed or captured.

(2) Subsection (1)(b) does not apply if unnecessary suffering is caused to a pig.

**17 Compensation not payable for destruction of pig**

The owner of a pig has no right to compensation in respect of a pig destroyed or captured or disposed of under this Act.

**18 Regulations**

(1) Cabinet may make regulations necessary or convenient for the purposes of this Act.

(2) Regulations made under subsection (1) may, in particular –

- (a) Provide for the registration of pigs;
- (b) Provide for the imposition of fees for the registration of pigs;
- (c) Provide for pigs to be distinguishable as the property of an ascertainable person by the wearing of tags or collars, or by branding or earmarks, or by any similar means;
- (d) Provide for the registration of the owners of pigs;
- (e) Provide for the imposition of fees for the registration of owners of pigs;
- (f) Prescribe the manner in which enclosures for pigs are to be constructed;
- (g) Prohibit or regulate where the enclosures for pigs may be placed;
- (h) Provide for the imposition of fines not exceeding 5 penalty units for a failure to comply with any provision of the regulations; and
- (i) Provide for the remission of fees in whole or in part in cases of hardship.

(3) The Cabinet may exempt a person from compliance with any provision of a regulation made under this section if the Cabinet is satisfied that compliance with the regulation would cause the person undue hardship.

(4) An exemption given under subsection (3) may be given subject to conditions and is of no effect unless those conditions are complied with.



# PRICE CONTROL ON IMPORTED GOODS FOR RESALE IN NIUE ACT 1975

1975/5 – 13 February 1975

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## To consolidate and amend the law relating to the control of prices on imported goods for resale in Niue

### 1 Short title

This is the Price Control on Imported Goods for Resale in Niue Act 1975.

### 2 Interpretation

In this Act –

“Board” means the Price Control Board;

“goods” shall include merchandise, articles, things and commodities, but shall not include any liquor within the meaning of the Liquor Act 1975;

“Minister” means the Minister of Customs Shipping and Trade;

“price” when used in connection with the sale of any goods or the performance of any services, includes every valuable consideration whatsoever, whether direct or indirect;

“retail price” means the price paid or payable for goods sold on retail to a consumer;

“service” includes any service supplied for hire or reward by any person engaged in trade or business;

“trader” means any person who in connection with business carried on by him, sells or proposes to sell any goods, or who supplies or carries on any service;

“wholesale” means the sale or supply of goods to a person for the purpose of resale or for use by such person in his trade or business.

### 3 Administration

(1) There is hereby constituted a Price Control section of the Customs Department, which shall be under the immediate control of an officer of the Public Service called the Price Control Officer.

(2) The office of the Price Control Officer may be held in conjunction with any other office which the Public Service Commission shall consider to be not incompatible with it.

(3) This Act shall be administered by the Price Control section under the control of the Minister.

### 4 Price Control Board

(1) For the purpose of this Act there is hereby established a Board to be known as the Price Control Board, consisting of –

- (a) A Chairman, and
  - (b) Not less than 2, nor more than 4 other persons, to be appointed by Cabinet.
- (2) Every member of the Board shall hold office for 3 years, but may sooner resign by notice in writing to the Minister, or be removed by Cabinet for disability, misconduct, or neglect of duty proved to the satisfaction of Cabinet.
- (3) Of the members appointed under subsection (1)(b), one shall be a person whom Cabinet considers representative of merchants and traders carrying on business in Niue, and one shall be a person whom Cabinet considers representative of consumers in Niue.

## 5 Delegation of powers

- (1) With the written consent of the Minister, the Board may delegate to the Price Control Officer all or any of the powers exercisable by it under this Act, including the powers to make price orders and to institute proceedings.
- (2) Any person affected by any order of the Price Control Officer acting pursuant to a delegation under this section may at any time appeal therefrom to the Board by giving to the Minister a written notice of appeal.
- (3) The Board may determine any appeal under this section in such manner as it thinks fit.

## 6 Price orders

- (1) If the Board considers it expedient in the public interest to control the price of any goods or services, it may make price orders fixing the maximum or minimum or actual price of such goods or services, either generally throughout Niue or in any specified part of or place in Niue.
- (2) Any price order may relate to the sale of goods either at wholesale or retail prices.
- (3) Any price order may contain such incidental and supplementary provisions as are necessary or expedient.
- (4) (a) The Board may at any time revoke or amend any price order.  
(b) The Board shall not increase the price of any goods as fixed by any price order, more than once in any 3 month period.
- (5) The decision of the Board shall be final and shall not be subject to any right of appeal.
- (6) Every price order shall be published in the Niuean and English languages in one or more newspapers or published in such other manner as the Board shall consider sufficient, and no price order shall come into force before it has been so published.
- (7) It shall be the duty of every trader whose business includes the sale of any goods or the performance of any services to which a current price order made under this Act applies, to keep displayed in a prominent position on the premises in which the sale of such goods or the performance of such services are offered, a list showing clearly for the information of the public the price fixed in respect of such goods or services.
- (8) The Price Control Officer may cause lists to be printed in the Niuean or English language or both and may require the trader to exhibit the same in the manner aforesaid.
- (9) The Price Control Officer may with regard to any specified goods require that any retailer having such goods for sale shall cause the same to be legibly and conspicuously marked with the selling price for the information of the public.

(10) Nothing in this section shall be construed to affect the exercise by any person or authority having statutory powers to fix prices, fares or charges under any other enactment.

**7 Obtaining information**

- (1) For the purposes of this Act, any member of the Board, or the Price Control Officer, or any other officer lawfully delegated by the Board may –
- (a) Require any trader to supply him either orally or in writing with any information in his possession relating to goods or services;
  - (b) By notice published in a newspaper to require any traders or specified class of traders to render returns setting forth such particulars regarding the sale or performance of services as may be specified in the notice;
  - (c) Require any trader to produce for inspection any records, accounts, or documents relating to the sale of goods or supply of services, and to furnish copies of them;
  - (d) During business hours, to inspect all books of account and records of any trader, and to make copies or extracts;
  - (e) Take possession of any documents or papers which appear to him to constitute *prima facie* evidence of breach of a price order.
- (2) No person shall –
- (a) Obstruct any officer or person in the lawful exercise of his powers under this section;
  - (b) Wilfully fail to give any information or to produce any record, account or document lawfully required of him under this section;
  - (c) Knowingly give any false information relating to goods and services to any such person.

**8 Keeping of records**

Every trader shall keep such records and accounts, including stock and costing records, as are customary and proper in the type of business carried on by him and shall retain such records and accounts for a period of 5 years after they come into being.

**9 Penalties**

(1) Any person who sells or offers for sale any goods or services in breach of any relevant price order, or fails to comply with this Act or any order, notice, direction or requirement lawfully made or published thereunder shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months or to both.

(2) Where a company is charged with an offence under this Act, every person who at the time of the commission of the offence was a director or officer of the company may be charged jointly in the same proceedings with such company, and where the company is convicted of the offence, every such director or officer shall be deemed to be guilty of that offence unless he satisfies the Court that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

(3) Proceedings against a director of a company under subsection (2) shall not be instituted except on the direction of the Board.

**10 Vicarious responsibility**

Any trader who engages any employee shall be answerable for the acts or omissions of his employee in so far as they concern the business of such trader, and if such employee

commits any act or makes any omission which is an offence or would be an offence if made or committed by such employer, then and in such case both the employer and the employee or either of them may be charged with such offence.

**11      Regulations**

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

**12      [Spent]**

# PROCEEDS OF CRIME ACT 1998

1998/245 – 16 December 1998

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## To provide for confiscation of the proceeds of crime, and for related purposes

### PART 1 PRELIMINARY

#### 1 Short title

This is the Proceeds of Crime Act 1998.

#### 2 [Spent]

#### 3 Principal objects

The principal objects of this Act are –

- (a) To deprive persons of the proceeds of, and benefits derived from, the commission of serious offences;
- (b) To provide for the forfeiture of property used in, in connection with, or for the purpose of facilitating the commission of serious offences;
- (c) To enable law enforcement authorities to trace such proceeds, benefits and property; and
- (d) To make it an offence to engage in money laundering.

#### 4 Interpretation

In this Act –

“Attorney-General” means the chief legal adviser to the Government of Niue;

“benefit” has the same meaning as in section 5(1);

“Commissioner” means a Commissioner of the Court;

“confiscation order” means an order made by the Court under section 19(1);

“document”, in relation to an offence, means a written or printed thing and includes –

- (a) a map, plan, graph or drawing;
- (b) a photograph;
- (c) a disk, tape, sound track or other device in which sound or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; and
- (d) a film, negative, tape or other device in which one or more visual images are embodied, so as to be capable (as aforesaid) of being reproduced from it;

“foreign confiscation order” means an order made under the law of a foreign country for a person to pay to the foreign country an amount representing the value (or part of it) of the person’s benefits from an offence against the law of that country;

“foreign forfeiture order” means an order, made under the law of a foreign country, for the forfeiture of property in respect of an offence against the law of that country;

“foreign restraining order” means an order, made under the law of a foreign country, restraining a particular person, or all persons, from dealing with property, being an order made in respect of an offence against the law of that country;

“foreign serious offence” means a serious offence against the law of a foreign country;

“forfeiture order” means an order made by the Court under section 11(1);

“gift caught by this Act” is to be construed in accordance with section 5(12) and (14);

“interest”, in relation to property, means –

(a) a legal or equitable estate or interest in the property; or

(b) a right, power or privilege in connection with the property;

“Judge” includes a Commissioner;

“proceeds” in relation to an offence, means any property that is derived or realised, directly or indirectly, by any person from the commission of the offence;

“proceeds of crime” means –

(a) proceeds of a serious offence; or

(b) any property that is derived or realised, directly or indirectly, by any person from acts or omissions that occurred outside Niue and would, if they had occurred in Niue, have constituted a serious offence;

“production order” means an order made by the Court under section 47;

“property” includes money and all other property, real or personal, including things in action and other intangible or incorporeal property;

“property-tracking document”, in relation to an offence, means –

(a) a document relevant to –

(i) identifying, locating, or quantifying property of a person who committed the offence; or

(ii) identifying or locating any document necessary for the transfer of property of a person who committed the offence; or

(b) a document relevant to –

(i) identifying, locating or quantifying tainted property in relation to the offence; or

(ii) identifying or locating any document necessary for the transfer of tainted property in relation to the offence;

“realisable property” has the same meaning as in section 5;

“relevant application period”, in relation to a person’s conviction of a serious offence, means the period of 12 months after –

(a) where the person is to be taken to have been convicted of the offence by reason of section 5(2)(a) – the day on which the person was convicted of the offence;

(b) where the person is to be taken to have been convicted of the offence by reason of section 5(2)(b) – the day on which the person was discharged without conviction; or

(c) where the person is to be taken to have been convicted of the offence by reason of section 5(2)(c) – the day on which the court took the offence into account in passing sentence for the other offence referred to in that section;

“relevant offence”, in relation to tainted property, means an offence by reason of the commission of which the property is tainted property;

“restraining order” means an order made by the Court under section 32(1);

“serious offence” means an offence the maximum penalty for which is death, or imprisonment for not less than 12 months;

“tainted property”, in relation to a serious offence, means –

- (a) property used in, or in connection with, the commission of the offence or intended to be so used by a person convicted of the offence; or
  - (b) proceeds of the offence;
- and when used without reference to a particular offence means tainted property in relation to a serious offence;
- “unlawful activity” means an act or omission that constitutes an offence against a law in force in Niue or a foreign country.

## 5 Definition of certain terms

- (1) In this Act –
  - (a) “A benefit” includes any property, service or advantage, whether direct or indirect;
  - (b) “To benefit” has a corresponding meaning;
  - (c) A reference to a benefit derived or obtained by, or otherwise accruing to, a person (A) includes a reference to a benefit derived or obtained by, or otherwise accruing to, another person at A’s request or direction.
- (2) For the purposes of this Act, a person must be treated as having been convicted of a serious offence if—
  - (a) the person is convicted of the offence; or
  - (b) the person is charged with, and found guilty of, or pleads guilty to, the offence but is discharged without conviction; or
  - (c) the person absconds in connection with the offence; or
  - (d) a court, with the consent of the person, takes the offence, of which the person has not been found guilty, into account in passing sentence on the person for another offence.
- (2A) For the purposes of this Act, a person's conviction of an offence must be treated as having been quashed -
  - (a) where subsection (2)(a) applies, if the conviction is quashed or set aside;
  - (b) where subsection (2)(b) applies, if the finding or plea of guilt is quashed or set aside;
  - (c) where subsection (2)(c) applies, if, after the person has been brought before a court in respect of the offence, the person is discharged in respect of the offence or a conviction of the person for the offence is quashed or set aside.
- (2B) Where a person is treated as having been convicted of an offence by reason of subsection (2)(c), a reference in this Act to the commission of the offence by the person must be read as a reference to the alleged commission of the offence by that person.
- (3) In this Act, “realisable property” means, subject to section 6 –
  - (a) Any property held by a person who has been convicted of, or charged with, a serious offence; and
  - (b) Any property held by a person to whom a person so convicted or charged has directly or indirectly made a gift caught by this Act.
- (4) Property is not realisable property if –
  - (a) There is in force, in respect of that property, a forfeiture order under this Act or under another enactment; or
  - (b) A forfeiture order is proposed to be made against that property under this Act or another enactment.
- (5) For the purposes of sections 21 and 22 the amount that might be realised at the time a confiscation order is made against a person is the total of the values at that time of all the realisable property held by the person less the total amounts payable

under an obligation, where there is an obligation having priority at that time, together with the total of the values at that time of all gifts caught by this Act.

(6) For the purposes of subsection (5), an obligation has priority at any time if it is an obligation of the person to –

- (a) Pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or the order was made before the confiscation order; or
- (b) Pay an amount due in respect of any tax, rate, duty, excise or other impost payable under an enactment for the time being in force;
- (c) Pay any other civil obligation as may be determined by the Court.

(7) Subject to subsections (8) and (9), for the purposes of this Act, the value of property (other than cash), in relation to a person holding the property, is –

- (a) Where any other person holds an interest in the property – the market value of the first-mentioned person's beneficial interest in the property, less the amount required to discharge any encumbrance on that interest; and
- (b) In any other case – its market value.

(8) References in this Act to the value at any time (referred to in subsection (9) as "the material time") of the transfer of any property are references to whichever is the greater of –

- (a) The value of the property to the recipient when he or she receives it, adjusted to take account of subsequent changes in the value of money; or
  - (b) Where subsection (9) applies – the value there mentioned,
- whichever is the greater.

(9) Where at the material time the recipient holds –

- (a) The property which he or she received (not being cash); or
- (b) Property which, in whole or in part, directly or indirectly represents in the recipient's hands the property which he or she received –

the value referred to in subsection (7)(b) is the value to the recipient at the material time of the property referred to in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b), so far as it represents the property which he or she received.

(10) Subject to subsection (14), a reference to the value at any time (referred to in subsection (11) as "the material time") of a gift is a reference to –

- (a) The value of the gift to the recipient when he or she received it, adjusted to take account of subsequent changes in the value of money; or
  - (b) Where subsection (11) applies – the value there mentioned,
- whichever is the greater.

(11) Subject to subsection (14), where at the material time a person holds –

- (a) The property which the person received, not being cash; or
- (b) Property which, in whole or in part, directly or indirectly represents in the person's hands the property which the person received,

the value referred to in subsection (10)(b) is the value to the person at the material time of the property mentioned in paragraph (a) or the value of the property mentioned in paragraph (b) so far as it so represents the property which the person received.

(12) A gift, including a gift made before the commencement of this Act, is caught by this Act where –

- (a) It was made by the person convicted or charged at a time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate, and the Court considers it appropriate in all the circumstances to take the gift into account;

(b) It was made by the person convicted or charged at any time and was a gift of property –

- (i) Received by the person in connection with the commission of a serious offence committed by the person or by another person; or
- (ii) Which in whole or in part directly or indirectly represented in the person's hands property received by the person in that connection.

(13) The reference in subsection (12) to “an offence to which the proceedings for the time being relate” includes, where the proceedings have resulted in the conviction of the person, a reference to any offence that the Court takes into consideration when determining sentence.

(14) For the purposes of this Act –

- (a) The circumstances in which a person must be treated as making a gift include those where the person transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided or the property transferred by the person; and
- (b) In those circumstances, subsections (10), (11) and (12) shall apply as if the person had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided or the property transferred by the person.

## PART 2

### FORFEITURE ORDERS, CONFISCATION ORDERS AND RELATED MATTERS *General*

#### **6 Application for forfeiture order or confiscation order on conviction**

(1) Subject to subsection (2), where a person is convicted of a serious offence committed after the coming into force of this Act, the Attorney-General may apply to the Court for one or both of the following orders –

- (a) A forfeiture order against property that is tainted property in respect of the offence;
- (b) A confiscation order against the person in respect of benefits derived by the person from the commission of the offence.

(2) The Attorney-General may not make an application after the end of the relevant application period in relation to the conviction.

(3) An application under this section may be made in respect of one or more than one serious offence.

(4) Where an application under this section is finally determined, no further application for a forfeiture order or a confiscation order may be made in respect of the offence for which the person was convicted unless the Court gives leave for the making of a new application on being satisfied –

- (a) That the property or benefit to which the new application relates was identified after the previous application was determined; or
- (b) That necessary evidence became available only after the previous application was determined; or
- (c) That it is in the interests of justice that the new application be made.

#### **7 Notice of application**

(1) Where the Attorney-General applies for a forfeiture order against property in respect of a person's conviction of an offence –

- (a) The Attorney-General must give written notice of the application to the person and to any other person who the Attorney-General has reason to believe may have an interest in the property;
  - (b) The person, and any other person who claims an interest in the property, may appear and adduce evidence at the hearing of the application; and
  - (c) The Court may, at any time before the final determination of the application, direct the Attorney-General –
    - (i) to give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property; or
    - (ii) to publish in a newspaper published and circulating in Niue notice of the application, in the manner and containing such particulars and within the time that the Court considers appropriate.
- (2) Where the Attorney-General applies for a confiscation order against a person –
- (a) The Attorney-General must give the person written notice of the application; and
  - (b) The person may appear and adduce evidence at the hearing of the application.

## **8 Amendment of application**

(1) The Court hearing an application under section 6(1) may, before final determination of the application, and on the application of the Attorney-General amend the application to include any other property or benefit, as the case may be, upon being satisfied that –

- (a) The property or benefit was not reasonably capable of identification when the application was originally made; or
- (b) Necessary evidence became available only after the application was originally made.

(2) Where the Attorney-General applies to amend an application for a forfeiture order and the amendment would have the effect of including additional property in the application for the forfeiture order the Attorney-General must give written notice of the application to amend to any person who the Attorney-General has reason to believe may have an interest in property to be included in the application for the forfeiture order.

(3) Any person who claims an interest in the property to be included in the application for the forfeiture order may appear and adduce evidence at the hearing of the application to amend.

(4) Where the Attorney-General applies to amend an application for a confiscation order against a person and the effect of the amendment would be to include an additional benefit in the application for the confiscation order the Attorney-General must give the person written notice of the application to amend.

## **9 Procedure on application**

(1) Where an application is made to the Court for a forfeiture order or a confiscation order in respect of a person's conviction of an offence, the Court may, in determining the application, have regard to the transcript of any proceedings against the person for the offence.

(2) Where an application is made for a forfeiture order or a confiscation order to the Court before which the person was convicted, and the Court has not, when the application is made, passed sentence on the person for the offence, the Court may, if it is satisfied that it is reasonable to do so in all the circumstances, defer passing sentence until it has determined the application for the order.

**10 Application for forfeiture order where person has absconded**

(1) Where a person absconds in connection with a serious offence committed, the Attorney-General may, within the period of 6 months after the person so absconds, apply to the Court for a forfeiture order under section 17 in respect of any tainted property.

(2) For the purposes of this section, a person must be taken to have absconded in connection with an offence, and at the earliest applicable time specified in paragraphs (a) to (c), if an information has been laid alleging the commission of the offence by the person, and a warrant for the arrest of the person is issued in relation to that information, and either –

- (a) reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the 6 months commencing on the day the warrant was issued (in which case the person must be taken to have so absconded on the last day of that period); or
- (b) the person died after the warrant was issued but before it was practicable to make reasonable attempts to arrest the person pursuant to the warrant (in which case the person must be taken to have so absconded on the day on which the person died); or
- (c) the person died after the warrant was issued and after reasonable but unsuccessful attempts were made to arrest the person pursuant to the warrant (in which case the person must be taken to have so absconded on the day on which the person died).

(3) Where the Attorney-General applies under this section for a forfeiture order against any tainted property the Court shall, before hearing the application –

- (a) Require notice of the application to be given to any person who, in the opinion of the Court, appears to have an interest in the property; or
- (b) Direct notice of the application to be published in a newspaper published and circulating in Niue containing such particulars and for so long as the Court may require.

*Forfeiture Orders*

**11 Forfeiture order on conviction**

(1) Where the Attorney-General applies to the Court for an order under this section against property in respect of a person's conviction of an offence and the Court is satisfied that the property is tainted property in respect of the offence, the Court may order that the property, or such of the property as is specified by the Court in the order, be forfeited to the Crown.

(2) In determining whether property is tainted property the Court may infer –

- (a) Where the evidence establishes that the property was in the person's possession at the time of, or immediately after, the commission of the offence of which the person was convicted – that the property was used in, or in connection with, the commission of the offence;
- (b) Where the evidence establishes that property, and in particular money, was found in the person's possession or under the person's control in a building, vehicle, receptacle or place during the course of investigations conducted by the police before or after the arrest and charge of the person for the offence of which the person was convicted – that the property was derived, obtained or realised as a result of the commission by the person of the offence of which the person was convicted;

(c) Where the evidence establishes that the value, after the commission of the offence, of all ascertainable property of a person convicted of the offence exceeds the value of all ascertainable property of that person prior to the commission of that offence, and the Court is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the increase in value – that the value of the increase represents property which was derived, obtained or realised by the person directly or indirectly from the commission of the offence of which the person was convicted.

(3) Where the Court orders that property, other than money, be forfeited to the Crown, the Court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made.

(4) In considering whether a forfeiture order should be made under subsection (1), the Court may have regard to –

- (a) The rights and interests, if any, of third parties in the property;
- (b) The gravity of the offence concerned;
- (c) Any hardship that may reasonably be expected to be caused to any person by the operation of the order; and
- (d) The use that is ordinarily made of the property, or the use to which the property was intended to be put.

(5) Where the Court makes a forfeiture order, the Court may give such directions as are necessary or convenient for giving effect to the order.

## 12 Effect of forfeiture order

(1) Subject to subsection (2), where the Court makes a forfeiture order against property, the property vests absolutely in the Crown by virtue of the order.

(2) Where a forfeiture order is made against registrable property –

- (a) The property vests in the Crown in equity but does not vest in the Crown at law until the applicable registration requirements have been complied with;
- (b) The Crown is entitled to be registered as owner of the property; and
- (c) The Attorney-General has power on behalf of the Crown to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Crown as owner, including the execution of any instrument required to be executed by a person transferring an interest in property of that kind.

(3) If a forfeiture order has been made against registrable property –

- (a) The Attorney-General has the power on behalf of the Crown to do anything necessary or convenient to give notice of, or otherwise protect, the equitable interest of the Crown in the property; and
- (b) Any such action by or on behalf of the Crown is not a dealing for the purposes of subsection (4)(a).

(4) Where the Court makes a forfeiture order against property –

- (a) The property shall not, except with the leave of the Court and under any directions of the Court, be disposed of, or otherwise dealt with, by or on behalf of the Crown, before the relevant appeal date; and
- (b) If, after the relevant appeal date, the order has not been discharged, the property may be disposed of, and the proceeds applied or otherwise dealt with in accordance with the direction of the Attorney-General.

(5) Without limiting the generality of subsection (4)(b), the directions that may be given under that paragraph include a direction that property is to be disposed of under the provisions of an enactment specified in the direction.

- (6) In this section –
- “registerable property” means property the title to which is passed by registration on a register kept under any law of Niue;
- “relevant appeal date”, used in relation to a forfeiture order made in consequence of a person’s conviction of a serious offence, means –
- (a) The date on which the period allowed by the rules of court for the lodging of an appeal against a person’s conviction, or for the lodging of an appeal against the making of a forfeiture order, expires without an appeal having been lodged, whichever is the later; or
  - (b) Where an appeal against a person’s conviction or against the making of a forfeiture order is lodged – the date on which the appeal, or the later appeal, lapses in accordance with the rules of court or is finally determined.

### 13 Protection of third parties

(1) Where an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture order is made, for an order under subsection (2).

(2) If a person applies to the Court for an order under this subsection in respect of the person’s interest in property and the Court is satisfied –

- (a) That the applicant was not in any way involved in the commission of an offence in respect of which forfeiture of the property is sought, or the forfeiture order against the property was made; and
- (b) If the applicant acquired the interest during or after the commission of the offence – that the applicant acquired the interest –
  - (i) for sufficient consideration; and
  - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of the acquisition, tainted property,

the Court shall make an order declaring the nature, extent and value (as at the time when the order is made) of the applicant’s interest.

(3) Subject to subsection (4), where a forfeiture order has already been made directing the forfeiture of property, a person who claims an interest in the property may, before the end of the period of 6 months commencing on the day on which the forfeiture order is made, apply under this subsection to the Court for an order under subsection (2).

(4) A person who –

- (a) Had knowledge of the application for the forfeiture order before the order was made; or
- (b) appeared at the hearing of that application,

shall not be permitted to make an application under subsection (3), except with the leave of the Court.

(5) A person who makes an application under subsection (1) or (3) must give written notice of the making of the application to the Attorney-General, who shall be a party of any proceedings in the application.

(6) An applicant or the Attorney-General may, under the rules of court, appeal to the Court of Appeal from an order made under subsection (2).

(7) The Cabinet shall, on application by any person who has obtained an order under subsection (2), and where the period allowed by the rules of court with respect to the making of appeals has expired and any appeal from that order taken under subsection (6) has been determined –

- (a) Direct that the property, or the part of it to which the interest of the applicant relates, be returned to the applicant; or
- (b) Direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

**14 Discharge of forfeiture order on appeal and quashing of conviction**

(1) Where the Court makes a forfeiture order against property in reliance on a person's conviction of an offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order.

(2) Where a forfeiture order against property is discharged as provided by subsection (1) or by the Court hearing an appeal against the making of the order, any person who claims to have had an interest in the property immediately before the making of the forfeiture order may apply to the Premier, in writing, for the transfer of the interest to the person.

(3) On receipt of an application under subsection (2) from a person who had such an interest in the property, the Cabinet shall –

- (a) If the interest is vested in the Crown – give directions that the property or part of it to which the interest of the applicant relates be transferred to the person; or
- (b) In any other case – direct that there be payable to the person an amount equal to the value of the interest as at the time the order is made.

(4) In the exercise of powers under this section and section 13, the Attorney-General shall have the power to do, or authorise the doing of, anything necessary or convenient to effect the transfer or return of property, including the execution of any instrument and the making of an application for the registration of an interest in the property on any appropriate register.

**15 Payment instead of forfeiture order**

Where the Court is satisfied that a forfeiture order should be made in respect of property of a person under section 11 or section 17 but that the property or any part of it or interest in it cannot be made subject to such an order and, in particular

- 
- (a) Cannot, on the exercise of due diligence, be located;
- (b) Has been transferred to a third party in circumstances that do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;
- (c) Is located outside Niue; or
- (d) Has been commingled with other property that cannot be divided without difficulty;
- (e) The property is Niuean land whose Magafaoa includes a person who was, or two or more persons who were, convicted of the offence in respect of which such an order would otherwise be made;

the Court may and in the case of Niuean land shall, instead of ordering the property or part of it or interest in it to be forfeited, order the person to pay to the Crown an amount equal to the value of the property, part or interest.

**16 Enforcement of order for payment instead of forfeiture**

(1) An amount payable by a person to the Crown under an order under section 15 is a civil debt due by the person to the Crown.

(2) An order against a person under section 15 may be enforced as if it were an order made in civil proceedings instituted by the Crown against the person to recover a debt due by the person to the Crown and the debt arising from the order shall be taken to be a judgment debt.

**17 Forfeiture order where person has absconded**

(1) Subject to section 10(3), where an application is made to the Court under section 10(1) for a forfeiture order against any tainted property because a person has absconded in connection with a serious offence and the Court is satisfied that –

- (a) Any property is tainted property in respect of the offence;
- (b) Proceedings in respect of a serious offence committed in relation to that property were commenced; and
- (c) The accused charged with the offence referred to in paragraph (b) has absconded;

the Court may order that the property, or such of the property as is specified by the Court in the order, be forfeited to the Crown.

(2) Sections 11(2), (3), (4) and (5), 12 and 13 shall apply with such modifications as are necessary to give effect to this section.

**18 Registered foreign forfeiture orders**

If a foreign forfeiture order is registered in the Court under the Mutual Assistance in Criminal Matters Act 1998 sections 11 to 18 apply in relation to the order as if –

- (a) All references to an appeal against the making of an order and to the relevant appeal date were omitted; and
- (b) A period of 6 weeks were substituted for the period of 6 months provided in section 13(3).

*Confiscation Orders*

**19 Confiscation order on conviction**

(1) Subject to this section, where the Attorney-General applies to the Court for a confiscation order against a person in respect of that person's conviction of a serious offence, the Court may, if it is satisfied that the person has benefited from that offence, order the person to pay to the Crown an amount equal to the value of the person's benefits from the offence or such lesser amount as the Court certifies under section 22 to be the amount that might be realised at the time the confiscation order is made.

(2) The Court shall assess the value of the benefits derived by a person from the commission of an offence under sections 20 to 23.

(3) The Court shall not make a confiscation order under this section –

- (a) Until the period allowed by the rules of court for the lodging of an appeal against conviction has expired without such an appeal having been lodged; or
- (b) Where an appeal against conviction has been lodged, until the appeal lapses under the rules of court or is finally determined.

(4) In considering whether to make a confiscation order under subsection (1), the Court may have regard to any hardship that compliance with the order may reasonably be expected to cause to any one or more persons who are not the person against whom the order is made.

**20 Rules for determining benefit and assessing value**

(1) Where a person obtains property as the result of, or in connection with the commission of, a serious offence, the person's benefit is the value of the property so obtained.

(2) Where a person derives an advantage as the result of, or in connection with the commission of, a serious offence, the person's advantage shall be deemed to be a sum of money equal to the value of the advantage so derived.

(3) The Court, in determining whether a person has benefited from the commission of a serious offence or from that offence taken together with other serious offences and, if so, in assessing the value of the benefit, shall, unless the contrary is proved, deem –

(a) All property –

(i) appearing to the Court to be held by the person on the day on which the application is made; and

(ii) appearing to the Court to be held by the person at any time –

(A) within the period between the day the offence, or the earliest offence, was committed and the day on which the application is made; or

(B) within the period of 5 years immediately before the day on which the application is made,

being whichever is the shorter period,

to be property that came into the possession or under the control of the person by reason of the commission of that offence or those offences;

(b) Any expenditure by the person since the beginning of that period to be expenditure met out of payments received by the person as a result of, or in connection with, the commission of that offence or those offences; and

(c) Any property received or deemed to have been received by the person at any time as a result of, or connection with, the commission by the person of that offence, or those offences, to be property received by the person free of any interests in it.

(4) Where a confiscation order has previously been made against a person, in assessing the value of any benefit derived by the person from the commission of the serious offence in respect of which the order was made, the Court shall leave out of account any of the person's benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.

(5) If evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the serious offence exceeded the value of the person's property before the commission of the offence, then the Court shall, subject to subsection (6), treat the value of the benefits derived by the person from the commission of the offence as being not less than the amount of the excess.

(6) If, after evidence of the kind referred to in subsection (5) is given, the person satisfies the Court that the whole or part of the excess was due to causes unrelated to the commission of the offence, subsection (5) does not apply to the excess or, as the case may be, that part.

**21 Statements relating to benefits from commission of serious offences**

(1) Where –

(a) A person has been convicted of a serious offence and the Attorney-General tenders to the Court a statement as to any matters relevant –

(i) to determining whether the person has benefited from the offence or from any other serious offence of which the person is convicted in the same proceedings or which is taken into account in determining his sentence; or

- (ii) to an assessment of the value of the person's benefit from the offence or any other serious offence of which he is so convicted in the same proceedings or which is so taken into account; and
- (b) The person accepts to any extent an allegation in the statement, the Court may, for the purposes of so determining or making that assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where –

- (a) A statement is tendered under subsection (1)(a); and
- (b) The Court is satisfied that a copy of that statement has been served on the person,

the Court may require the person to indicate to what extent the person accepts each allegation in the statement and, so far as the person does not accept any such allegation, to indicate any matters the person proposes to rely on.

(3) Where the person fails in any respect to comply with a requirement under subsection (2), the person may be treated for the purposes of this section as having accepted every allegation in the statement, other than –

- (a) An allegation in respect of which the person has complied with the requirement; and
- (b) An allegation that the person has benefited from the serious offence or that any property or advantage was obtained by the person as a result of, or in connection with, the commission of the offence.

(4) Where –

- (a) The person tenders to the Court a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
- (b) The Attorney-General accepts to any extent any allegation in the statement, the Court may, for the purposes of that determination, treat the acceptance of the Attorney-General as conclusive of the matters to which it relates.

(5) An allegation may be accepted or matter indicated for the purposes of this section either –

- (a) Orally before the Court; or
- (b) In writing under rules of court.

(6) An acceptance by a person under this section that he received any benefits from the commission of a serious offence is admissible in any proceedings for any offence.

## 22 Amount to be recovered under confiscation order

(1) Subject to subsection (2), the amount to be recovered in the person's case under a confiscation order shall be the amount which the Court assesses to be the value of the person's benefit from the offence or, if more than one, all the offences in respect of which the order may be made.

(2) Where the Court is satisfied as to any matter relevant to determining the amount which might be realised at the time the confiscation order is made (whether by an acceptance under section 21 or otherwise) the Court may issue a certificate giving the Court's opinion as to the matters concerned, and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount that the Court assesses to be the value of the person's benefit from the offence, or if more than one, all the offences in respect of which the confiscation order may be made.

**23 Variation of confiscation orders**

- (1) Where –
- (a) The Court makes a confiscation order in relation to an offence;
  - (b) In calculating the amount of the confiscation order, the Court took into account a forfeiture of property or a proposed forfeiture of property or a proposed forfeiture order in respect of property; and
  - (c) An appeal against the forfeiture or forfeiture order is allowed or the proceedings for the proposed forfeiture order terminate without the proposed forfeiture order being made,

the Attorney-General may apply to the Court for a variation of the confiscation order to increase the amount of the order by the value of the property and the Court may, if it considers it appropriate to do so, vary the order accordingly.

- (2) Where –
- (a) The Court makes a confiscation order against a person in relation to an offence;
  - (b) In calculating the amount of the confiscation order, the Court took into account under section 5(5) and (6), an amount of tax paid by the person; and
  - (c) An amount is repaid or refunded to the person in respect of that tax,

the Attorney-General may apply to the Court for a variation of the confiscation order to increase the amount of the order by the amount repaid or refunded and the Court may, if it considers it appropriate to do so, vary the order accordingly.

**24 Court may lift corporate veil**

(1) In assessing the value of benefits derived by a person from the commission of an offence or offences, the Court may treat as property of the person any property that, in the opinion of the Court, is subject to the effective control of the person whether or not the person has –

- (a) Any legal or equitable interest in the property; or
- (b) Any right, power or privilege in connection with the property.

(2) Without limiting the generality of subsection (1), the Court may have regard to –

- (a) Shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property, and for this purpose the Court may order the investigation and inspection of the books of a named company;
- (b) A trust which has a relationship to the property; and
- (c) Any relationship whatsoever between persons having an interest in the property, or in companies of the kind referred to in paragraph (a) or trusts of the kind referred to in paragraph (b), and other persons.

(3) Where the Court, for the purposes of making a confiscation order against a person, treats particular property as the person's property under subsection (1), the Court may, on application by the Attorney-General, make an order declaring that the property is available to satisfy the order.

(4) Where the Court declares that property is available to satisfy a confiscation order –

- (a) The order may be enforced against the property as if the property were property of the person against whom the order is made; and
- (b) A restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

(5) Where the Attorney-General makes an application for an order under subsection (3) that property is available to satisfy a confiscation order against a person

- - (a) The Attorney-General shall give written notice of the application to the person and to any person who the Attorney-General has reason to believe may have an interest in the property; and
  - (b) The person and any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

**25 Enforcement of confiscation orders**

(1) An amount payable by a person to the Crown under a confiscation order is a civil debt due by the person to the Crown.

(2) A confiscation order against a person may be enforced as if it were an order made in civil proceedings instituted by the Crown against the person to recover a debt due by the person to the Crown and the debt arising from the order shall be taken to be a judgment debt.

(3) Where a confiscation order is made against a person and the person is, or becomes a bankrupt, the order may be enforced against the person or against any property of the person that is not vested in the person's trustee under the Niue Act 1966.

**26 Amounts paid in respect of registered foreign confiscation orders**

Where a foreign confiscation order is registered in the Court under the Mutual Assistance in Criminal Matters Act 1998, any amount paid, whether in Niue or elsewhere, in satisfaction of the foreign confiscation order shall be taken to have been paid in satisfaction of the debt that arises by reason of the registration of the foreign confiscation order in the Court.

**PART 3**

PROVISIONS FOR FACILITATING POLICE INVESTIGATIONS AND PRESERVING PROPERTY LIABLE  
TO FORFEITURE AND CONFISCATION ORDERS  
*Powers of Search and Seizure*

**27 Warrant to search land for tainted property**

(1) A constable may apply to a Commissioner for the issue of a warrant to search land or premises for tainted property.

(2) Where an application is made under subsection (1) for a warrant to search land or premises for tainted property, the Commissioner may issue a warrant of that kind in the same manner, and subject to the same conditions, as a judge could issue a search warrant under the Criminal Law Code and, subject to sections 27 to 30 of this Act, the warrant may be executed in the same manner as if it had been issued under that Act.

**28 Police may seize other tainted property**

In the course of a search under a warrant issued under section 27 a constable may seize

- - (a) Any property that the constable believes, on reasonable grounds, to be tainted property in relation to any serious offence;
  - (b) Any thing that the constable believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence,

if the constable believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or any other offence.

**29      Return of property seized**

(1) Where property has been seized under sections 27 to 30 (otherwise than because it may afford evidence of the commission of an offence), a person who claims an interest in the property may apply to the Court for an order that the property be returned to that person.

(2) Where a person makes an application under subsection (1) and the Court is satisfied that –

- (a) The person is entitled to possession of the property;
- (b) The property is not tainted property in relation to the relevant offence; and
- (c) The person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property,

the Court shall order the Chief of Police to return the property to the person and the Chief of Police shall arrange for the property to be returned.

(3) Where –

- (a) Property has been seized under sections 27 to 30, otherwise than because it may afford evidence as to the commission of an offence;
- (b) At the time when the property was seized, an information had not been laid in respect of a relevant offence; and
- (c) At the end of the period of 48 hours after the time when the property was seized, an information has not been laid in respect of a relevant offence,

the Chief of Police shall, subject to subsections (5) and (6), arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

(4) Where –

- (a) Property has been seized under sections 27 to 30, otherwise than because it may afford evidence as to the commission of an offence; and
- (b) No forfeiture order has been made against the property within the period of 14 days after the property was seized and the property is in the possession of the Chief of Police at the end of that period;

the Chief of Police shall, subject to subsections (5) and (6), arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

(5) Where –

- (a) Property has been seized under sections 27 to 30, otherwise than because it may afford evidence as to the commission of an offence;
- (b) But for this subsection, the Chief of Police would be required to arrange for the property to be returned to a person as soon as practicable after the end of a particular period; and
- (c) Before the end of that period, a restraining order is made in relation to the property,

the Chief of Police shall –

- (d) If the restraining order directs the Financial Secretary to take custody and control of the property – arrange for the property to be given to the Financial Secretary in accordance with the restraining order;
- (e) If the Court that made the restraining order has made an order under subsection (6) in relation to the property – arrange for the property to be kept until it is dealt with under another provision of this Act.

(6) Where –

- (a) Property has been seized sections 27 to 30, other than because it may afford evidence as to the commission of an offence;
- (b) A restraining order is made in relation to the property; and

- (c) At the time when the restraining order is made, the property is in the possession of the Chief of Police,

the Chief of Police may apply to the Court that made the restraining order for an order that the Chief of Police retain possession of the property and the Court may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of a relevant offence or any other offence, make an order that the Chief of Police may retain the property for so long as the property is so required as evidence as to the commission of that offence.

(7) Where the Chief of Police applies to the Court for an order under subsection (6), a witness shall not be required to answer a question or to produce a document if the Court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

(8) Where –

- (a) Property has been seized under sections 27 to 30; and  
(b) While the property is in the possession of the Chief of Police, a forfeiture order is made in respect of the property;

the Chief of Police shall deal with the property as required by the order.

## **30 Search for and seizure of tainted property in relation to foreign offences**

(1) Where a constable is authorised, under the Mutual Assistance in Criminal Matters Act 1998, to apply to a Commissioner for a search warrant under this Act in relation to tainted property in respect of a foreign serious offence, the constable may apply for the warrant accordingly and sections 27 to 30 apply to the application and to any warrant issued as a result of the application as if –

- (a) References in sections 27 to 30 to tainted property were references to tainted property in relation to a foreign serious offence; and  
(b) References in sections 27 to 30 to a relevant offence were references to a relevant foreign serious offence;  
(c) References in sections 27 to 30 to seizure of property under sections 27 to 30 were references to seizure of property under a warrant issued under section 27 in respect of a foreign serious offence;  
(d) The reference in section 29(2)(c) to the person in respect of whose conviction, charging or proposed charging the seizure of the property was made were a reference to the person who is believed or alleged to have committed the relevant foreign serious offence;  
(e) The reference in section 29(4) to a period of 14 days were a reference to a period of 30 days;  
(f) The references in sections 29(5) and (6) to the making of a restraining order in relation to seized property were references to –  
(i) the registration in the Court under the Mutual Assistance in Criminal Matters Act 1998 of a foreign restraining order in relation to the seized property; or  
(ii) the making by the Court under this Act of a restraining order in respect of the seized property in relation to the foreign serious offence;  
(g) The reference in section 29(8) to the making of a forfeiture order were a reference to the registration in the Court under the Mutual Assistance in Criminal Matters Act 1998 of a foreign forfeiture order; and  
(h) Sections 28 and 29(3) were omitted.

(2) If, in the course of searching under a warrant issued under section 27, for tainted property in relation to a foreign serious offence, a constable finds –

- (a) Property that the constable believes, on reasonable grounds, to be tainted property in relation to any foreign serious offence in respect of which a search warrant under section 27 is in force; or
- (b) Any thing that the constable believes, on reasonable grounds –
  - (i) to be relevant to a criminal proceeding in the foreign country in respect of the foreign serious offence; or
  - (ii) will afford evidence as to the commission of a criminal offence,

and the constable believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence,

the warrant shall be deemed to authorise the constable to seize that property or thing.

#### *Restraining Orders*

### **31 Application for restraining order**

(1) Where a person (in sections 31 to 46 called the “defendant”) –

- (a) Has been convicted of a serious offence; or
- (b) Has been, or is about to be, charged with a serious offence, the Attorney-General may apply to the Court for a restraining order under subsection (2) against any realisable property held by the defendant or specified realisable property held by a person other than the defendant.

(2) An application for a restraining order may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating –

- (a) Where the defendant has been convicted of a serious offence, the offence of which the defendant was convicted, the date of the conviction, the Court before which the conviction was obtained and whether an appeal has been lodged against the conviction;
- (b) Where the defendant has not been convicted of a serious offence, the offence with which the defendant is, or is about to be, charged and the grounds for believing that the defendant committed the offence;
- (c) Where the defendant is about to be charged with a serious offence, the grounds for believing that the defendant will be charged with a serious offence within 48 hours;
- (d) A description of the property in respect of which the restraining order is sought;
- (e) The name and address of the person who is believed to be in possession of the property;
- (f) Where the application seeks a restraining order against property of the defendant, the grounds for the belief that the property is tainted property in relation to the offence or the defendant derived a benefit directly or indirectly from the commission of the offence; and
- (g) Where the application seeks a restraining order against property of a person other than the defendant, the grounds for the belief that the property is tainted property in relation to the offence or is subject to the effective control of the defendant.

**32 Restraining order**

(1) Subject to this section, where the Attorney-General applies to the Court for a restraining order against property and the Court is satisfied that –

- (a) The defendant has been convicted of a serious offence or has been charged with a serious offence or will be charged with a serious offence within 48 hours;
- (b) Where the defendant has not been convicted of the offence, there are reasonable grounds for believing that the defendant committed the offence;
- (c) Where the application seeks a restraining order against property of the defendant, there are reasonable grounds for believing that the property is tainted property in relation to the offence or that the defendant derived a benefit directly or indirectly from the commission of the offence;
- (d) Where the application seeks a restraining order against property of a person other than the defendant, there are reasonable grounds for believing that the property is tainted property in relation to the offence or that the property is subject to the effective control of the defendant,

the Court may make an order –

- (i) Prohibiting the defendant or any person from disposing of, or otherwise dealing with, the property or such part of it or interest in it as is specified in the order, except in such manner as is specified in the order; and
- (ii) At the request of the Attorney-General, where the Court is satisfied that the circumstances so require, directing the Financial Secretary to take custody of the property or such part of it as is specified in the order and to manage or otherwise deal with all or any part of the property under the directions of the Court.

(2) An order under subsection (1) may be made subject to such conditions as the Court thinks fit and, without limiting the generality of this section, may make provision for meeting, out of the property or a specified part of the property, all or any of the following –

- (a) The person's reasonable living expenses (including the reasonable living expenses of the person's dependants (if any)) and reasonable business expenses;
- (b) The person's reasonable expenses in defending a criminal charge and any proceedings under this Act;
- (c) Another specified debt incurred by the person in good faith;

but the Court shall not make such provision unless it is satisfied that the person cannot meet the expense or debt concerned out of property that is not subject to a restraining order.

(3) In determining whether there are reasonable grounds for believing the property is subject to the effective control of the defendant the Court may have regard to the matters referred to in section 24(2).

(4) Where the Financial Secretary is given a direction under subsection (1)(f) in relation to property, the Financial Secretary may do anything that is reasonably necessary for preserving the property and for this purpose may exercise any power that the owner of the property could exercise and do so to the exclusion of the owner.

(5) Where the Attorney-General applies to the Court for an order under subsection (1), a witness shall not be required to answer a question or to produce a document if the Court is satisfied that answering the question or producing the document may prejudice the investigation of, or prosecution of a person for, an offence.

**33 Undertakings by the Crown**

(1) Before making an order under section 32, the Court may require the Crown to give such undertakings as the Court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) For the purposes of this section, the Attorney-General may, on behalf of the Crown, give to the Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.

**34 Notice of application for restraining order**

(1) Subject to subsection (2), before making a restraining order, the Court shall require notice to be given to, and may hear, any person who, in the opinion of the Court, may have an interest in the property.

(2) If the Attorney-General so requests, the Court shall consider the application without requiring notice to be given under subsection (1) but a restraining order made under this subsection shall cease to have effect after 14 days or such lesser period as the Court specifies in the order.

(3) The Court may, on application by the Attorney-General, extend the period of operation of a restraining order made under subsection (2), but shall not consider the application without requiring notice to be given under subsection (1).

**35 Service of restraining order**

(1) Subject to subsection (2), a copy of a restraining order shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of Court.

(2) Where the Court is satisfied that it is in the public interest to do so, it may order that service under subsection (1) be delayed for a specified period.

**36 Further orders**

(1) Where the Court makes, or has made, a restraining order, the Court may, on application by the Attorney-General, a person whose property is the subject of the restraining order (in this section called “the owner”), the Financial Secretary (if the restraining order directs the Financial Secretary to take custody and control of property) or, with the leave of the Court, any other person, make any ancillary orders it considers appropriate.

- (2) Without limiting the generality of subsection (1), an ancillary order may –
- (a) Vary the property to which a restraining order relates;
  - (b) Vary any condition to which a restraining order is subject;
  - (c) Order the examination on oath before the Court of any person about the affairs of the owner or the defendant;
  - (d) Provide for the carrying out of any undertaking with respect to the payment of damages or costs given by the Crown in connection with the making of the restraining order;
  - (e) Direct the owner or the defendant to give to a specified person a statement on oath setting out such particulars of the property, or dealings with the property, as the Court thinks proper;
  - (f) Where the restraining order directs the Financial Secretary to take custody and control of property –
    - (i) regulate the performance or exercise of the Financial Secretary’s functions, duties or powers under the restraining order;

- (ii) determine any question relating to the property;
- (iii) direct a person to do any act or thing to enable the Financial Secretary to take custody and control of the property;
- (iv) where the restraining order provides that a person's reasonable expenses in defending a criminal charge be met out of the property , direct that such expenses be taxed as provided in the order before being met; and
- (v) make provision for the payment to the Financial Secretary out of the property of the costs, charges and expenses incurred in connection with the performance or exercise by the Financial Secretary of functions, duties or powers under the restraining order.

(3) Where a person who has an interest in property in respect of which a restraining order was made applies to the Court for a variation of the order to exclude the person's interest from the order, the Court shall grant the application if the Court is satisfied –

- (a) That the interest is not tainted property and that it cannot be required to satisfy a confiscation order; or
- (b) That the applicant was not in any way involved in the commission of the offence in respect of which the restraining order was made and, where the applicant acquired the interest at the time of or after the commission (or alleged commission) of the offence, that the applicant acquired the interest –
  - (i) for sufficient consideration; and
  - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; or
- (c) in any case, it is in the public interest to do so having regard to all the circumstances, including any financial hardship or other consequence of the interest remaining subject to the order.

(4) An application under subsection (1) shall not be heard by the Court unless the applicant has given to each other person who is entitled to make an application under subsection (1) in relation to the restraining order notice in writing of the application.

(5) The Court may require notice of the application to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property.

(6) Where a person is required, under an order under subsection (2)(c) or (e), to make or give a statement on oath, the person is not excused from making or giving the statement on the ground that the statement, or part of the statement, might tend to incriminate the person or make the person liable to forfeiture or a penalty but such a statement, and any information, document or thing obtained as a direct or indirect consequence of the statement, is not admissible against the person in any criminal proceedings except a proceeding in respect of the falsity of the statement.

### **37 Financial Secretary to satisfy confiscation order**

- (1) Where –
  - (a) A confiscation order is made against a defendant in reliance on the defendant's conviction of an offence; and
  - (b) A restraining order is made against property of the defendant, or property of another person in relation to which an order under section 24(3) is in force, in reliance on the defendant's conviction, or alleged commission, of the offence, the Court may, upon the making of the later of the orders or, on application by the Attorney-General, at any time after it while the restraining order remains in force, direct

the Financial Secretary to satisfy the confiscation order by a payment to the Crown out of the property.

(2) For the purposes of enabling the Financial Secretary to comply with a direction under subsection (1), the Court may –

- (a) Direct the Financial Secretary to sell or otherwise dispose of such of the property as the Court specifies; and
- (b) Order that the Financial Secretary may execute, and do anything necessary to give validity and operation to, any deed or instrument in the name of a person who owns or has an interest in the property,

and, where the Court makes such an order, the execution of the deed or instrument by the Financial Secretary has the same force and validity as if the deed or instrument had been executed by the person.

(3) The Financial Secretary shall refrain from taking action to sell property under a direction under subsection (1) –

- (a) Until the relevant appeal date; or
- (b) If proceedings in bankruptcy against the owner of the property are in progress or the owner is bankrupt.

(4) In this section “relevant appeal date”, used in relation to a confiscation order made in consequence of a person’s conviction of a serious offence, means –

- (a) The date on which the period allowed by the rules of Court for the lodging of an appeal against a person’s conviction, or for the lodging of an appeal against the making of a confiscation order, expires without an appeal having been lodged, whichever is the later; or
- (b) Where an appeal against a person’s conviction or against the making of a confiscation order is lodged, the date on which the appeal, or the later appeal, lapses in accordance with the rules of court or is finally determined.

### **38 Registration of restraining order**

Where a restraining order applies to property of a particular kind and the provisions of any law of Niue provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering those provisions may, on application by the Attorney-General, record on the register kept under those provisions the particulars of the restraining order and, if those particulars are so recorded, a person who subsequently deals with the property shall, for the purposes of section 39, be deemed to have notice of the restraining order at the time of the dealing.

### **39 Contravention of restraining orders**

(1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order commits an indictable offence punishable, on conviction –

- (a) In the case of a natural person, by a fine not exceeding 300 penalty units or imprisonment for a period not exceeding 5 years, or both; or
- (b) In the case of a body corporate, by a fine not exceeding 1500 penalty units.

(2) Where a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith the Attorney-General may apply to the Court that made the restraining order for an order that the disposition or dealing be set aside.

(3) Where the Attorney-General makes an application under subsection (2) in relation to a disposition or dealing, the Court may –

- (a) Set aside the disposition or dealing as from the day on which the disposition or dealing took place; or
- (b) Set aside the disposition or dealing as from the day of the order under this subsection and declare the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order under this subsection.

**40 Court may revoke restraining orders**

(1) Where the Court has made a restraining order against a person's property, the Court may, on application by the person, revoke the order if the applicant

- (a) Where the applicant is a defendant, gives security satisfactory to the Court for the satisfaction of any confiscation order that may be made against the person under this Act; or
  - (b) Gives undertakings satisfactory to the Court concerning the person's property.
- (2) An applicant under subsection (1) shall give written notice of the application to the Attorney-General and, if the restraining order directed the Financial Secretary to take control of property, to the Financial Secretary.

**41 When restraining order ceases to be in force**

(1) Subject to subsection (2), a restraining order made in reliance on a person's conviction, or alleged commission, of a serious offence ceases to be in force, in whole or in part, as the case requires –

- (a) Where the order is made in reliance on the proposed charging of the person with the offence and the person is not so charged within the period of 48 hours after the making of the order, at the end of that period;
- (b) When the charge against the person is withdrawn or the person is acquitted of the charge;
- (c) When property subject to the order is used to satisfy a confiscation order which was made in reliance on the person's conviction of the offence;
- (d) When the Court refuses an application for a confiscation order in reliance on the person's conviction of the offence;
- (e) When property subject to the order is forfeited under section 11 or 17.

(2) In spite of anything in subsection (1), a restraining order ceases to be in force at the end of 6 months after the day when the restraining order was made but the Court may within that period, on application by the Attorney-General, order that the restraining order shall continue in force until a specified time or event, if the Court is satisfied that a forfeiture order may still be made in respect of the property or that the property may be required to satisfy a confiscation order which has not yet been made.

(3) The Attorney-General shall give a person written notice of an application under subsection (2) in relation to a restraining order in respect of property of the person.

**42 Interim restraining order may be made in respect of foreign offence**

(1) Where the Attorney-General is authorised, under the Mutual Assistance in Criminal Matters Act 1998, to apply for a restraining order under this Act against any property of a person in respect of a foreign serious offence, the Attorney-General may apply for the order accordingly and sections 31 to 46 apply to the application and to any restraining order made as a result of the application as if –

- (a) Reference in sections 31 to 46 to a serious offence were a reference to the foreign serious offence;

- (b) A reference in sections 31 to 46 to a person charged or about to be charged with a serious offence were a reference to a person against whom a criminal proceeding in respect of a foreign serious offence has commenced, or is reasonably believed to be about to commence, in a foreign country;
- (c) There were substituted for the words of section 31(2)(b) the following words –
  - “where the defendant has not been convicted of a foreign serious offence – the offence which the defendant is believed to have committed and the grounds for that belief”;
- (d) There were substituted for the words of section 32(1)(a) the following words – “the defendant has been convicted of a foreign serious offence, or a criminal proceeding in respect of a foreign serious offence has commenced, or is reasonably believed to be about to commence, against the defendant in a foreign country”;
- (e) The reference in section 32(2)(b) to a person’s reasonable expenses in defending a criminal charge includes a reference to the person’s reasonable expenses in being represented in a criminal proceeding in a foreign country; and
- (f) Sections 31(2)(c) and (f), 32(1)(c), 36(3)(a), 37, 40 and 41 were omitted.

(2) Subject to subsections (3) and (4), a restraining order made in respect of a foreign serious offence ceases to have effect at the end of the period of 30 days commencing on the day on which the order is made.

(3) Where the Court makes a restraining order in respect of a foreign serious offence, it may, on application made by the Attorney-General before the end of the period referred to in subsection (2), extend the period of operation of the restraining order.

- (4) Where –
- (a) A restraining order against property is made in respect of a foreign serious offence; and
  - (b) Before the end of the period referred to in subsection (2) (including that period as extended under subsection (3)) a foreign restraining order against the property is registered in the Court under the Mutual Assistance in Criminal Matters Act 1998,

the restraining order referred to in paragraph (a) ceases to have effect upon the registration of the foreign restraining order referred to in paragraph (b).

#### **43 Registered foreign restraining orders – general**

Where a foreign restraining order is registered in the Court under the Mutual Assistance in Criminal Matters Act 1998, sections 31 to 46 apply in relation to the order as if –

- (a) Sections 36, 37(3) and (4), 40 and 41 were omitted;
- (b) A reference in section 35, 37, 38 or 39 to a restraining order included a reference to an order under section 44; and
- (c) The reference in section 37(1) to the making of a restraining order were a reference to the registration by the Court of a foreign restraining order under the Mutual Assistance in Criminal Matters Act 1998 and the making of an order under section 44.

#### **44 Registered foreign restraining orders – Court may direct Financial Secretary to take custody and control of property**

(1) Where a foreign restraining order against property is registered in the Court under the Mutual Assistance in Criminal Matters Act 1998, the Court may, if

satisfied, upon application by the Attorney-General, that the circumstances so require, by order direct the Financial Secretary to take custody and control of the property, or of such part of it as is specified in the Court order and to manage or otherwise deal with all or any part of the property under the directions of the Court.

(2) Before making an order under subsection (1), the Court shall require notice to be given to, and may hear, any person who, in the opinion of the Court, may have an interest in the property.

(3) Where the Financial Secretary is given an order under subsection (1) in relation to property, the Financial Secretary may do anything that is reasonably necessary for preserving the property and for this purpose may exercise any power that the owner of the property could exercise and do so to the exclusion of the owner.

(4) Where an order is made under subsection (1) in respect of property of a person (in this subsection called the “respondent”), the Court may, at the time when it makes the order or at any later time, make any one or more of the following orders –

- (a) Directing the respondent to give the Financial Secretary a statement on oath setting out such particulars of the property, or dealings with the property, as the Court thinks proper;
- (b) Regulating the performance or exercise of the Financial Secretary’s functions, duties or powers under the restraining order;
- (c) Determining any question relating to the property;
- (d) Where the registered foreign restraining order provides that a person’s reasonable expenses in defending a criminal charge be met out of the property – directing that such expenses be taxed as provided in the order before being met; and
- (e) Making provision for the payment to the Financial Secretary out of the property of the costs, charges and expenses incurred in connection with the performance or exercise by the Financial Secretary of functions, duties or powers under the restraining order.

#### **45 Registered foreign restraining orders – undertakings**

Where –

- (a) A foreign restraining order against property is registered in the Court under the Mutual Assistance in Criminal Matters Act 1998; or
- (b) The Court makes an order under section 44 in respect of property,

the Court may, upon application by a person claiming an interest in the property, make an order as to the giving, or carrying out, of an undertaking by the Attorney-General, on behalf of the Crown, with respect to the payment of damages or costs in relation to the registration, making or operation of the order.

#### **46 Registered foreign restraining orders – time when order ceases to be in force**

A foreign restraining order registered in the Court under the Mutual Assistance in Criminal Matters 1998 ceases to be in force when the registration is cancelled under that Act.

#### *Production Orders, and Other Information Gathering Powers*

#### **47 Production and inspection orders**

(1) Where –

- (a) A person has been convicted of a serious offence and a constable has reasonable grounds for suspecting that a person has possession or control of a property-tracking document or property-tracking documents in relation to the offence; or

(b) A constable has reasonable grounds for suspecting that a person has committed a serious offence and that a person has possession or control of a property-tracking document or property-tracking documents in relation to the offence; the constable may apply to a Judge in Chambers under subsection (2) for an order under subsection (5) against the person suspected of having possession or control of the document or documents.

(2) An application under subsection (1) shall be made ex parte and shall be in writing and be accompanied by an affidavit.

(3) Where a constable applies for an order under subsection (5) in respect of an offence and includes in the affidavit a statement to the effect that the constable has reasonable grounds to believe that –

- (a) The person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and
- (b) Property specified in the affidavit is subject to the effective control of the person referred to in paragraph (a),

the Judge may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence for the purposes of this section.

(4) In determining whether to treat a document, under subsection (3), as a property-tracking document in relation to an offence, the Judge may have regard to the matters referred to in section 24(2).

(5) Notwithstanding any enactment which prohibits disclosure of information of a particular type, where an application is made under subsection (1) for an order against a person, the Judge may, if satisfied that there are reasonable grounds for doing so, make an order requiring the person to –

- (a) Produce to a constable, at a specified time and place, any documents of the kind referred to in subsection (1) that are in the person's possession or control; or
- (b) Make available to a constable for inspection, at a specified time or times, any documents of that kind that are in the person's possession or control.

(6) [Repealed]

#### **48 Scope of police powers under production order**

(1) Where a document is produced to a constable, or made available to a constable for inspection pursuant to an order under section 47, the constable may –

- (a) Inspect the document;
- (b) Take extracts from the document;
- (c) Make copies of the document;
- (d) In the case of an order under section 47(5)(a), retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Act.

(2) Where a constable retains a document pursuant to an order under section 47, the constable shall –

- (a) Give the person to whom the order was addressed a copy of the document certified by the constable in writing to be a true copy of the document retained; and
- (b) Unless the person has received a copy of the document under paragraph (a) –  
permit the person to –
  - (i) inspect the document;
  - (ii) take extracts from the document; or
  - (iii) make copies of the document.

**49 Evidential value of information**

(1) Where a person produces or makes available a document pursuant to an order under section 47, the production or making available of the document, or any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document, is not admissible against the person in any criminal proceedings except a proceeding for an offence against section 51.

(2) For the purposes of subsection (1), proceedings on an application for a restraining order, a forfeiture order or a confiscation order are not criminal proceedings.

(3) A person is not excused from producing or making available a document when required to do so by an order under section 47 on the ground that –

- (a) The production or making available of the document might tend to incriminate the person or make the person liable to penalty; or
- (b) The production or making available of the document would be in breach of an obligation (whether imposed by enactment or otherwise) of the person not to disclose the existence or contents of the document.

**50 Variation of production order**

Where a Judge makes a production order requiring a person to produce a document to a constable, the person may apply to the Judge or another Judge for a variation of the order and if the Judge hearing the application is satisfied that the document is essential to the business activities of the person, the Judge may vary the production order so that it requires the person to make the document available to a constable for inspection.

**51 Failure to comply with production order**

(1) Where a person is required by a production order to produce a document to a constable or make a document available to a constable for inspection, the person commits an offence against this subsection if the person –

- (a) Contravenes the order without reasonable excuse; or
- (b) In purported compliance with the order produces or makes available a document known to the person to be false or misleading in a material particular without –
  - (i) indicating to the constable to whom the document is produced or made available that the document is false or misleading and the respect in which the document is false or misleading; and
  - (ii) providing correct information to the constable if the person is in possession of, or can reasonably acquire, the correct information.

(2) An offence against subsection (1) is punishable, on conviction –

- (a) If the offender is a natural person, by a fine not exceeding 300 penalty units or imprisonment for a period not exceeding 5 years, or both; or
- (b) If the offender is a body corporate, by a fine not exceeding 1500 penalty units.

**52 Search warrant to facilitate investigation**

(1) Where –

- (a) A person is convicted of a serious offence and a constable has reasonable grounds for suspecting that there is in any premises a property-tracking document in relation to the offence; or
- (b) A constable has reasonable grounds for suspecting that a person has committed a serious offence and there is in any premises a property-tracking document in relation to the offence,

the constable may apply to a Judge for a warrant under subsection (4) to search the premises for the document.

(2) Where a constable applies for a warrant under subsection (4) in respect of an offence and includes in the affidavit a statement to the effect that the officer has reasonable grounds to believe that –

- (a) The person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and
- (b) Property specified in the affidavit is subject to the effective control of the person referred to in paragraph (a),

the Judge may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence for the purposes of this section.

(3) In determining whether to treat a document, under subsection (2), as a property-tracking document in relation to an offence, the Judge may have regard to the matters referred to in section 24(2).

(4) Subject to subsection (5), but notwithstanding any enactment which prohibits disclosure of information of a particular type, where an application is made under subsection (1) for a warrant to search premises for a property-tracking document, the Judge may, if satisfied that there are reasonable grounds for doing so, issue a warrant of that kind in the same manner, and subject to the same conditions, as a Judge could issue a search warrant under the Criminal Law Code and, subject to sections 47 to 53, the warrant may be executed in the same manner as if it had been issued under that Act.

(5) A Judge shall not issue a search warrant under subsection (4) unless the Judge is satisfied that –

- (a) It would not be appropriate to make a production order in respect of the document; or
- (b) The investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the constable does not gain immediate access to the document without notice to any person.

(6) Where a constable enters premises in execution of a warrant issued under this section, the police officer may seize and retain –

- (a) Any document which is likely to be of substantial value (whether by itself or together with other documents) to the investigation for the purpose of which the warrant was issued; and
- (b) Any thing that the constable believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence.

(7) In this section “premises” includes any place and in particular any building, receptacle, vehicle, vessel or aircraft.

### **53 Production orders and search warrants in relation to foreign offences**

(1) Where a constable is authorised, under the Mutual Assistance in Criminal Matters Act 1998, to –

- (a) Apply to a Judge of the Court for a production order under this Act in respect of a foreign serious offence; or
- (b) Apply to the Court for a search warrant under this Act in relation to a property-tracking document in respect of a foreign serious offence;

the constable may apply for the order or warrant accordingly and sections 47 to 53 apply to the application and to any order or warrant issued as a result of the application as if a reference in those sections to a serious offence were a reference to the foreign serious offence.

(2) Where a constable takes possession of a document under a production order made, or a warrant issued, in respect of a foreign serious offence, the constable may retain the document for a period not exceeding one month pending a written direction from the Attorney-General as to the manner in which the document is to be dealt with (which may include a direction that the document is to be sent to an authority of the foreign country that requested the issue of the warrant).

*Monitoring Orders*

**54 Monitoring orders**

(1) A constable may apply to a Judge in Chambers under subsection (2) for an order (in sections 54 and 55 called a “monitoring order”) directing a financial institution to give information to a constable.

(2) An application under subsection (1) shall be made ex parte and shall be in writing and be accompanied by an affidavit.

(3) A monitoring order shall direct a financial institution to give information obtained by the institution about transactions conducted through an account held by a particular person with the institution.

(4) A monitoring order shall apply in relation to transactions conducted during the period specified in the order, being a period commencing not earlier than the day on which notice of the order is given to the financial institution and ending not later than 3 months after the date of the order.

(5) A Judge shall not make a monitoring order unless the Judge is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is sought –

- (a) Has committed, or is about to commit, a serious offence;
- (b) Was involved in the commission, or is about to be involved in the commission, of a serious offence; or
- (c) Has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a serious offence.

(6) A monitoring order shall specify –

- (a) The name or names in which the account is believed to be held;
- (b) The class of information that the institution is required to give; and
- (c) The name of the constable to whom the information is to be given, and the manner in which the information is to be given.

(7) Where a financial institution is, or has been, subject to a monitoring order, the fact that the monitoring order has been made shall be disregarded for the purposes of the application of sections 64 and 65 in relation to the institution.

(8) Where a financial institution that has been given notice of a monitoring order knowingly –

- (a) Contravenes the order; or
- (b) Provides false or misleading information in purported compliance with the order;

the institution is guilty of an offence against this subsection punishable, on conviction, by a fine not exceeding 3000 penalty units.

(9) A reference in this section to a transaction conducted through an account includes a reference to –

- (a) The making of a fixed term deposit; and
- (b) In relation to a fixed term deposit, the transfer of the amount deposited, or any part of it, at the end of the term; and
- (c) The opening, existence or use of a deposit box held by the institution.

**55 Monitoring orders not to be disclosed**

(1) A financial institution that is, or has been, subject to a monitoring order shall not disclose the existence or the operation of the order to any person except –

- (a) The Chief of Police or a constable authorised in writing by the Chief of Police to receive the information;
- (b) An officer or agent of the institution, for the purpose of ensuring that the order is complied with; or
- (c) A legal practitioner or adviser, for the purpose of obtaining legal advice or representation in relation to the order.

(2) A person of a kind referred to in subsection (1)(a), (b) or (c) to whom a disclosure of the existence or operation of a monitoring order has been made (whether under subsection (1) or a previous application of this subsection or otherwise) shall not –

- (a) Disclose the existence or operation of the order except to another person of a kind referred to in subsection (1)(a), (b) or (c) for the purposes of –
  - (i) if the disclosure is made by the Chief of Police or a constable, the performance of that officer's duties;
  - (ii) if the disclosure is made by an officer or agent of the institution, ensuring that the order is complied with or obtaining legal advice or representation in relation to the order; or
  - (iii) if the disclosure is made by a legal practitioner, giving legal advice or making representations in relation to the order; or
- (b) When the person is no longer a person of a kind referred to in subsection (1)(a), (b) or (c), make a record of, or disclose, the existence or the operation of the order in any circumstances.

(3) Nothing in subsection (2) prevents the disclosure by a person of a kind referred to in subsection (1)(a) of the existence or operation of a monitoring order –

- (a) For the purposes of, or in connection with, legal proceedings; or
- (b) In the course of proceedings before a court.

(4) A person of a kind referred to in subsection (1)(a) shall not be required to disclose to any court the existence or operation of a monitoring order.

(5) A person who contravenes subsection (1) or (2) is guilty of an offence punishable, on conviction –

- (a) If the person is a natural person, by a fine not exceeding 600 penalty units or imprisonment for a period not exceeding 10 years, or both; or
- (b) If the person is a body corporate, by a fine not exceeding 3000 penalty units.

(6) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the monitoring order.

*Obligations of financial institutions*

**56 Retention of records by financial institutions**

(1) Subject to this section and to section 57, a financial institution shall retain, in its original form, for the minimum retention period applicable to the document, a document that relates to a financial transaction carried out by the institution in its capacity as a financial institution, including, without limiting the generality of this, a document that relates to –

- (a) The opening or closing by a person of an account with the institution;
- (b) The operation by a person of an account with the institution;
- (c) The opening or use by a person of a deposit box held by the institution;

- (d) The telegraphic or electronic transfer of funds by the institution on behalf of a person to another person;
  - (e) The transmission of funds between Niue and a foreign country or between foreign countries on behalf of a person; or
  - (f) An application by a person for a loan from the institution, where a loan is made to the person under the application.
- (2) Subsection (1) does not apply to –
- (a) A document of a type referred to in subsection (1)(b) that relates to a single deposit, credit, withdrawal, debit or transfer of an amount of money that does not exceed \$2,000 or such higher amount as is prescribed for the purposes of this paragraph; or
  - (b) A document –
    - (i) that is not a document given to the institution by or on behalf of a customer, and
    - (ii) whose retention is not necessary in order to preserve a record of the financial transaction concerned.
- (3) A financial institution required to retain documents under this section shall retain them on microfilm or in another way that makes retrieval of the documents, or of the information contained in the documents, reasonably practicable.
- (4) A financial institution that contravenes subsection (1) or (3) is guilty of an offence against this section punishable, on conviction, by a fine not exceeding 300 penalty units.
- (5) This section does not limit any other obligation of a financial institution to retain documents.

## 57 Register of original documents

(1) Where a financial institution is required by law to release an original of a document before the end of the minimum retention period applicable to the document, the institution shall retain a complete copy of the document until the period has ended or the original document is returned, whichever occurs first.

(2) The financial institution shall maintain a register of documents released under subsection (1).

(3) A financial institution that contravenes subsection (1) or (2) is guilty of an offence against this section punishable, on conviction, by a fine not exceeding 300 penalty units.

## 58 Communication of information to law enforcement authorities

(1) Where a financial institution is a party to a transaction and the institution has reasonable grounds to suspect that information that the institution has concerning the transaction –

- (a) May be relevant to an investigation of, or the prosecution of, a person for an offence; or
- (b) May be of assistance in the enforcement of this Act or any regulations made under it;

the institution may give the information to a constable or the Attorney-General.

(2) An action, suit or proceedings does not lie against –

- (a) A financial institution; or
- (b) An officer, employee or agent of a financial institution acting in the course of the person's employment or agency,

in relation to an action taken by the institution or person under subsection (1).

(3) Where a financial institution gives information to a constable or the Attorney-General, under subsection (1), about the institution's suspicion in relation to a transaction to which the institution is a party, the institution, or an officer, employee or agent of the institution, must not, unless required to do so under this Act or any other Act, disclose to anyone else –

- (a) That the institution has formed the suspicion; or
- (b) That information has been given; or
- (c) Any other information from which the person to whom the information is disclosed could reasonably be expected to infer that the suspicion had been formed or that the first-mentioned information had been given.

(4) A financial institution, or an officer, employee or agent of the institution, who contravenes subsection (3) is guilty of an offence punishable, on conviction –

- (a) If the offender is a natural person, by a fine not exceeding 120 penalty units, or imprisonment for a term not exceeding 2 years, or both; or
- (b) If the offender is a body corporate, by a fine not exceeding 600 penalty units.

## **59 Protection for financial institutions**

Where a financial institution, or a person who is an officer, employee or agent of the institution, gives the information under section 58(1) as soon as practicable after forming the belief referred to in that subsection, the institution shall be taken for the purposes of sections 64 and 65 not to have been in possession of that information at any time.

## **60 Interpretation**

For the purposes of sections 56 to 60 –

“customer”, in relation to a financial institution, means a person by or on behalf of whom a financial transaction of a type referred to in section 56(1) is carried out by the institution;

“financial institution” means –

- (a) A bank;
- (aa) An approved agent within the meaning of section 84A of the Niue Bank Act 1994;
- (b) A building society;
- (c) A credit union;
- (d) A trust company;
- (e) A finance company; or
- (f) A deposit taking company, designated as such by the Minister responsible for finance;

“minimum retention period” means –

- (a) If the document relates to the opening of an account with the institution, the period of 7 years after the day on which the account is closed;
- (b) If the document relates to the opening by a person of a deposit box held by the institution, the period of 7 years after the day on which the deposit box ceases to be used by the person; or
- (c) In any other case, the period of 7 years after the day on which the transaction takes place.

### *Disclosure of Information Held by Government Departments*

## **61 Direction to disclose information**

Notwithstanding any provision in any other law, the Attorney-General may direct the person in charge of any Government department or statutory body to disclose a document or

information which is in the possession or under the control of that person or to which that person may reasonably have access (not being a document readily available to the public), if the Attorney-General is satisfied that the information is relevant to –

- (a) Establishing whether a serious offence has been, or is being, committed; or
- (b) The making, or proposed or possible making, of an order under Part 2 or 3,

and, where the Attorney-General directs disclosure of information under this subsection, the person shall disclose the information to the Attorney-General or a constable nominated by the Attorney-General.

## **62 Further disclosure of information and documents**

(1) No person to whom information has been disclosed under section 61 shall further disclose the information except for the purposes of –

- (a) The investigation of, or the prosecution, or proposed or possible prosecution, of a person for a serious offence; or
- (b) An investigation relating to proceedings, or proposed or possible proceedings, for the making of an order under this Act or an investigation relating to the making, or proposed or possible making, of such an order.

(2) A person to whom information has been disclosed under subsection (1) or this subsection shall not disclose the information to another person except for the purposes referred to in subsection (1)(a) and (b).

(3) Where information is communicated to a person under section 61 or subsection (1) or (2), the person –

- (a) Shall not voluntarily give the information in evidence in a proceeding before the Court other than a proceeding referred to in subsection (1)(a) or (b); and
- (b) Shall not be required to communicate the information to the Court.

(4) A person who discloses information in contravention of this section is guilty of an offence punishable, on conviction, by a fine not exceeding 120 penalty units or imprisonment for a period not exceeding 2 years, or both.

## **63 Evidential value of copies**

Where any document is examined or provided pursuant to a direction under section 61, the person by whom it is examined or to whom it is provided, or any officer or person authorised for the purpose by the person in charge of the relevant Government department or statutory body, may make or cause to be made one or more copies of it and any copy purporting to be certified by the person in charge of the relevant Government department or statutory body to be a copy made under this section is evidence of the nature and content of the original document and has the same probative force as the original document would have had if it had been proved in the ordinary way.

## **PART 4 OFFENCES**

### **64 Money laundering**

(1) In this section “transaction” includes the receiving or making of a gift.

(2) A person who engages in money laundering is guilty of an offence punishable, on conviction –

- (a) If the offender is a natural person, by a fine not exceeding 1,200 penalty units or imprisonment for period not exceeding 20 years, or both; or
- (b) If the offender is a body corporate, by a fine not exceeding 10,000 penalty units.

(3) A person shall be taken to engage in money laundering if, and only if –

- (a) The person engages, directly or indirectly, in a transaction that involves money, or other property, that is proceeds of crime; or
  - (b) The person receives, possesses, conceals, disposes of or brings into Niue any money, or other property that is proceeds of crime,
- and the person knows, or ought reasonably to know, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity.

**65 Possession of property suspected of being proceeds of crime**

- (1) A person who receives, possesses, conceals, disposes of or brings into Niue any money, or other property, that may reasonably be suspected of being proceeds of crime is guilty of an offence punishable, on conviction –
  - (a) If the offender is a natural person, by a fine not exceeding 200 penalty units or imprisonment for a period not exceeding 2 years, or both; or
  - (b) If the offender is a body corporate, by a fine not exceeding 1000 penalty units.
- (2) It is a defence to a charge for an offence against this section, if the person satisfies the Court that the person had no reasonable grounds for suspecting that the property referred to in the charge was derived or realised, directly or indirectly, from some form of unlawful activity.

**66 Conduct by directors, servants or agents**

- (1) Where it is necessary, for the purposes of this Act, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate –
  - (a) By a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
  - (b) By any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant, or agent,

shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.
- (3) Where it is necessary, for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (4) to have been engaged in by the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (4) Conduct engaged in on behalf of a person other than a body corporate –
  - (a) By a servant or agent of the person within the scope of his or her actual or apparent authority; or
  - (b) By any other person at the direction or with the consent or agreement (whether expressed or implied) of a servant or agent of the first mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in by the first mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.

**PART 5**  
**MISCELLANEOUS**

**67 Standard of proof**

Save as otherwise provided in this Act, any question of fact to be decided by the Court in proceedings under this Act is to be decided on the balance of probabilities.

**68 Costs**

Where –

- (a) A person brings, or appears at, proceedings under this Act before a Court in order –
  - (i) to prevent a forfeiture, confiscation or restraining order from being made against property of the person; or
  - (ii) to have property of the person excluded from a forfeiture, confiscation or restraining order;
- (b) The person is successful in those proceedings; and
- (c) The Court is satisfied that the person was not involved in any way in the commission of the offence in respect of which the forfeiture, confiscation or restraining order was sought or made,

the Court may order the Crown to pay all costs reasonably incurred by the person in connection with the proceedings or such part of those costs as is determined by the Court.

**69 Non-liability of Financial Secretary**

The Financial Secretary shall not be personally liable for any act done, or omitted to be done, by him or her in the course of the performance of the Financial Secretary's functions under this Act.

**70 Operation of other laws not affected**

Nothing in this Act prejudices, limits or restricts –

- (a) The operation of any other law which provides for the forfeiture of property or the imposition of penalties or fines; or
- (b) The remedies available to the Crown, apart from this Act, for the enforcement of its rights and the protection of its interests; or
- (c) Any power of search or any power to seize or detain property which is exercisable by a constable apart from this Act.

**71 Regulations**

The Cabinet may make regulations prescribing matters –

- (a) Required or permitted by this Act to be prescribed; or
- (b) Necessary or convenient to be prescribed for carrying out or giving effect to this Act.

# **PROHIBITION OF THE DEVELOPMENT, PRODUCTION, STOCKPILING AND USE OF CHEMICAL WEAPONS AND THEIR DESTRUCTION ACT 2007**

2007/289 – 7 November 2007

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## **SCHEDULES OF CHEMICALS**

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### **An Act to Implement the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction 1993 (CWC)**

#### **1 Short title**

This Act is the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction Act 2007.

#### **2 Interpretation**

- (1) For the purposes of this Act –
- “chemical weapon” means the following, together or separately –
- (a) Toxic chemicals and their precursors, except where intended for purposes not prohibited under the Convention, as long as the types and quantities are consistent with such purposes;
  - (b) Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in paragraph (a), which would be released as a result of the employment of such munitions and devices;
  - (c) Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in paragraph (b);
- “Convention” means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction 1993;
- “OPCW” means the Organization for the Prohibition of Chemical Weapons;
- “precursor” means –
- (a) Any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system;

- (b) Precursors which have been identified for the application of verification measures by the OPCW are listed in the Schedules contained in the Annex on Chemicals to this Act;

“purposes not prohibited under the Convention” means –

- (a) Industrial, agricultural, research, medical, pharmaceutical, or other peaceful purposes;
- (b) Protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;
- (c) Military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare;
- (d) Law enforcement including domestic riot control purposes;

“toxic chemical” means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals.

- (a) The definition includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere;
- (b) Toxic chemicals which have been identified for the application of verification measures by the OPCW are listed in the Schedules.

(2) Terms and expressions used and not defined in this Act but defined in the Convention shall, unless the context otherwise requires, have the same meaning as in the Convention.

### **3 General prohibitions**

(1) Every person commits an offence who –

- (a) develops, produces, otherwise acquires, stockpiles or retains a chemical weapon;
- (b) transfers, directly or indirectly, a chemical weapon to any other person;
- (c) uses a chemical weapon;
- (d) engages in any military preparations to use a chemical weapon;
- (e) assists, encourages or induces, in any way, a person to engage in any activity prohibited to a State Party under the Convention;
- (f) uses a riot control agent as a method of warfare;
- (g) engages in any other activity prohibited to a State Party under the Convention and shall be punished upon conviction by imprisonment for a term not exceeding 10 years or a fine not exceeding 1000 penalty units or both.

(2) If any chemical weapon is developed, produced, otherwise acquired, stockpiled, retained, or transferred in contravention of this provision, the weapon –

- (a) is to be forfeited to the Crown; and
- (b) may be seized without warrant by any officer of the Police; and
- (c) shall be stored pending disposal, and disposed of, as Cabinet sees fit.

#### 4 Schedule 1 Chemical prohibitions

Every person commits an offence who –

- (a) produces, acquires, retains or uses Schedule 1 chemicals outside the territory of Niue unless such production, acquisition, retention or use takes place within the territory of another State Party;
- (b) produces, acquires, retains, transfers or uses Schedule 1 chemicals unless fully licensed by the Cabinet of Ministers under the licensing scheme for Schedule 1 chemicals;
- (c) transfers Schedule 1 chemicals outside the territory of Niue to a State not Party to the Convention;
- (d) transfers Schedule 1 chemicals to another State Party without notifying the licensing authority which is the Cabinet of Ministers not less than 60 days before the transfer, except as follows:  
Notification of the transfer of sax toxin shall be made not less than 24 hours before the time of transfer, paragraph (d) notwithstanding, if the transfer is for medical/diagnostic purposes and the quantity is 5 milligrams or less.
- (e) retransfers to a third State Schedule 1 chemicals transferred to Niue;

and shall be punished upon conviction by imprisonment for a term not exceeding 14 years and or a fine not exceeding 1000 penalty units.

#### 5 Schedule 2 chemical prohibitions

(1) Every person commits an offence who transfers to or receives from a State not Party to the Convention Schedule 2 chemicals, or products containing such chemicals, except as stipulated below. He shall be punished upon conviction by imprisonment for a term not exceeding 14 years and or a fine not exceeding 1000 penalty units.

(2) Subsection (1) shall not apply to those products containing Schedule 2 chemicals in which:

- (a) the product contains one percent or less of a Schedule 2A or 2A\* chemical;
- (b) the product contains 10 percent or less of a Schedule 2B chemical;
- (c) the product is identified as a consumer good packaged for retail sale for personal use or packaged for individual use.

#### 6 Schedule 3 chemical restrictions

(1) Every person commits an offence who transfers to a State not Party to the Convention Schedule 3 chemicals, or mixtures containing such chemicals in excess of 30 percent in weight, without first receiving an end-user certificate from the competent government authority of that State. He shall be punished upon conviction by imprisonment for a term not exceeding 14 years and or a fine not exceeding 1000 penalty units.

(2) An end-user certificate shall contain, at a minimum –

- (a) a statement that the Schedule 3 chemicals will only be used for purposes not prohibited under the Convention;
- (b) a statement that the Schedule 3 chemicals will not be re-transferred;
- (c) the types and quantities of the Schedule 3 chemicals to be transferred;
- (d) the end-use(s) of the Schedule 3 chemicals to be transferred;
- (e) the name(s) and address(es) of the Schedule 3 chemical end-user(s).

(3) With regard to subsection (2)(d)-(e), in the event that the Schedule 3 chemical transfer is to an importer in a State not Party to the Convention, and such importer is not the actual end-user, the importer shall be obliged to specify the name(s) and address(es) of the end-user(s) for the purposes of subsections (1) and (2).

## 7 Extraterritorial application

- (1) This Act shall extend –
- (a) to acts or omissions prohibited under the Convention, which are committed by a Niuean national or permanent resident of Niue, who is outside the jurisdiction of Niue;
  - (b) to acts or omissions prohibited under the Convention, which are committed on board Niuean sea vessels and aircraft.

(2) For the purposes of subsection (1)(b), “Niuean sea vessels and aircraft” means sea vessels and aircraft registered in Niue or belonging to, or in the possession of, Niue.

## 8 Legal assistance

(1) The Office of the Secretary to the Government is the National Authority and is responsible for crime prevention, criminal proceedings, and implementation of the Convention. It may collaborate with other competent State authorities and international organizations and entities, and coordinate their actions to the extent required by the implementation of this Act or of the equivalent foreign statute(s), subject to the other State authorities or international organizations or entities being bound to official secrecy.

(2) The National Authority may request other State authorities and international organizations or entities, under subsection (1), to provide relevant data or information. The National Authority is authorized to receive data or information concerning –

- (a) the nature, quantity, and utilization of scheduled chemicals or their precursors and related technologies, and the places of consignment and consignees for such scheduled chemicals, precursors, or related technologies, or
- (b) persons taking part in the production, delivery, or brokerage of the scheduled chemicals, precursors or related technologies in paragraph (a).

(3) If a State has entered into the appropriate reciprocity agreement with Niue, the National Authority, may provide, on their own initiative or on request, the data or information described in subsection (2) to that State so long as that other competent State authority provides assurances that such data or information shall –

- (a) only be utilized for purposes consistent with this Act; and
- (b) only be used in criminal proceedings on the condition that they are obtained in accordance with those provisions governing international judicial cooperation.

(4) The National Authority may provide the data or information described in subsection (2) to international organizations or entities if the conditions set forth in subsection (3) are fulfilled, in which case the requirement for a reciprocity agreement is waived.

## 9 Mandatory reporting

### *Purpose of this section*

- (1) The purpose of this section of this Act is to ensure that –
- (a) toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred, or used for purposes not prohibited under the Convention; and
  - (b) the National Authority has knowledge of dealings with chemicals that facilitates the making of Niue annual declarations under the Convention to the OPCW; and
  - (c) Niue is otherwise able to fulfil its obligations under the Convention.
- (2) Any power under this section of this Act may be exercised only for the purpose in subsection (1).

### *Supply of information*

(3) Any person who develops, produces, otherwise acquires, retains, transfers or uses toxic chemicals or their precursors to which any provision in Parts VI through IX of the Verification Annex of the Convention applies must –

- (a) Notify the chemicals and, as the case may be, the facility or plant site to the National Authority within 60 days of the commencement of that activity, by giving written notice in a form approved by the National Authority and issued under the regulations further to this Act, containing such information as is required by the form; and
- (b) Keep records in relation to the chemicals and facility or plant site, and the purpose to which the chemicals are put; and
- (c) Prepare, from those records, annual reports relating to the chemicals and the facility or plant site in a form approved by the National Authority and issued under regulations under this Act; and
- (d) Send those annual reports to the National Authority at intervals specified in the regulations under this Act.

(4) The records and reports under subsection (3) must be sufficient to satisfy the National Authority that the Convention and the provisions of this Act and any regulations made under this Act are being complied with.

(5) Every person commits an offence who refuses or fails to comply with subsection (3), and shall be punished upon conviction by imprisonment for a term not exceeding 2 years, and/or a fine not exceeding 100 penalty units.

### *Additional information*

(6) The National Authority may, by written notice given to a person, require the person to give to the National Authority particular documents, of a particular kind, specified in the notice, within such reasonable period and as is specified in the notice.

(7) (a) Subsection (6) and this subsection apply if the National Authority has reason to believe that any person is capable of giving information that is relevant to

- 
- (i) a declaration required to be given by Niue to the OPCW under the Convention, or
  - (ii) the implementation of the Convention or enforcement of this Act.

- (b) Further to paragraph (a), the National Authority may require the person to give such information to the National Authority –
  - (i) Within such reasonable period and in such manner as specified in the notice; and
  - (ii) If the person is a natural person, by writing signed by the person; or
  - (iii) If the person is a body corporate, by writing signed by an officer authorized to sign on behalf of the body corporate.

(8) Every person commits an offence who refuses or fails to comply with a notice under subsection (6) or (7) to the extent that the person is capable of complying with it, and shall be punished upon conviction by imprisonment for a term of 2 years and or a fine not exceeding a fine of 100 penalty units.

(9) The power of the National Authority under subsections (6) and (7) to require a person to give information or documents to the National Authority is in addition to any obligation to give information or documents that the person may have under subsection (3).

*False or misleading statements*

(10) Every person commits an offence who, in any document prepared pursuant to this section of this Act, makes a statement or omits any matter knowing that the statement or omission makes the document false or misleading in a material particular, and shall be punished upon conviction by imprisonment for a term not exceeding 2 years and or a fine not exceeding 100 penalty units.

**10 Scheduled chemicals licensing**

*Schedule 1 chemical*

(1) No person shall produce, acquire, retain, transfer or use Schedule 1 chemicals for a permitted purpose except under and in accordance with the conditions of a licence granted by the Cabinet pursuant to subsection (4).

*Schedules 2 and 3 chemicals and unscheduled discrete organic chemicals*

- (2) No person shall –
  - (a) produce, process or consume more than 1 kilogram of a Schedule 2A\* chemical per year for a purpose not prohibited under the Convention; or
  - (b) produce, process or consume more than 100 kilograms of any other Schedule 2A chemical per year for a permitted purpose; or
  - (c) subject to subsection (4), produce, process or consume more than 1 tonne of a Schedule 2B chemical per year for a permitted purpose; or
  - (d) subject to subsection (4), produce more than 30 tonnes of a Schedule 3 chemical per year for a permitted purpose; or
  - (e) subject to subsection (4), produce by synthesis more than 200 tonnes of unscheduled discrete organic chemicals or more than 30 tonnes of an unscheduled discrete organic chemical containing the elements phosphorous, sulfur or fluorine,

except under and in accordance with the conditions of a licence granted by the Cabinet pursuant to subsection (7).

(3) A licence in accordance with subsection (7), is required for any person that produced, processed, or consumed a Schedule 2 chemical for a permitted purpose

during any of the three calendar years previous to the current year, above the following thresholds per year –

- (a) 1 kilogram of a Schedule 2A\* chemical;
- (b) 100 kilograms of any other Schedule 2A chemical;
- (c) 1 tonne of a Schedule 2B chemical.

(4) A licence is not required for, the production, processing or consumption of mixtures of chemicals containing 30% or less of a Schedule 2B chemical or the production of chemicals containing 30% or less of a Schedule 3 chemical or an unscheduled discrete organic chemical.

*Imports and exports of Schedules 2 and 3 chemicals*

(5) No person shall import or export a Schedule 2 chemical or Schedule 3 chemical except under and in accordance with the conditions of a licence granted by Cabinet pursuant to subsection (7).

*Licencing*

(6) An application for a licence to do any of the acts referred to in subsections (1) to (3) shall be made to the Cabinet of Ministers in such manner or form as the Chairperson of the National Authority may determine and shall be accompanied by the prescribed fee.

(7) The Cabinet may make regulations to prescribe the manner of application for a licence; the form and duration of a licence; the terms and conditions upon which and the circumstances in which a licence may be granted, held, suspended, cancelled, extended, renewed or replaced; and the fees payable in respect thereof.

*Penalties*

(8) Every person commits an offence who –

- (a) produces, acquires, retains, transfers or uses Schedule 1 chemicals for a purpose other than a permitted purpose; or
- (b) contravenes subsection (1),

and shall be punished upon conviction by imprisonment for a term not exceeding 14 years and or with a fine not exceeding 1000 penalty units.

(9) Every person commits an offence who –

- (a) as the case may be, produces, processes or consumes Schedules 2 or 3 chemicals or unscheduled discrete organic chemicals for a purpose other than a permitted purpose; or
- (b) contravenes subsections (2)-(5),

and shall be punished upon conviction by imprisonment for a term not exceeding 14 years and or with a fine not exceeding 1000 penalty units.

(10) A reference in this section to “permitted purpose” means –

- (a) in the case of a Schedule 1 chemical, research, medical, pharmaceutical or protective purposes only; or
- (b) in the case of any other toxic chemical or precursor –
  - (i) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;

- (ii) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;
- (iii) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare, or
- (iv) law enforcement including domestic riot control purposes.

## 11 Inspections

### *Purpose of this section*

- (1) The purpose of this section is to –
  - (a) facilitate inspections by national inspectors for a compliance purpose; and
  - (b) facilitate inspections by international inspectors in accordance with the Convention and any facility agreement between Niue and the OPCW.
- (2) A reference in this section to a compliance purpose is a reference to the purpose of –
  - (a) determining whether the provisions of this Act and any regulations made thereunder have been or are being complied with at any premises;
  - (b) determining whether the conditions applicable to a licence have been or are being complied with by the holder of a licence, or
  - (c) ensuring the proper functioning at any premises of any monitoring equipment installed in the course of an international compliance inspection or under a facility agreement between Niue and the OPCW.
- (3) A reference in this section to an inspection power is a reference to a power to –
  - (a) search any premises;
  - (b) inspect or examine a matter or thing;
  - (c) take examples of a matter or thing;
  - (d) measure a matter or thing;
  - (e) examine a document, including a record kept in accordance with the requirements of this Act and any regulations made thereunder, or the conditions of a licence;
  - (f) take extracts from, or make copies of, a document including a record of a kind referred to in paragraph (e);
  - (g) interview any person working on the premises, including making sound recordings of such interviews;
  - (h) have operated any equipment, including electronic equipment, located at the premises;
  - (i) operate any photographic or video-recording equipment anywhere in or around the premises provided safety regulations in force at the location permit doing so;
  - (j) do anything that is necessary or expedient for the carrying out of any of the acts referred to in paragraphs (a)-(i), including restricting or prohibiting the access of persons and vehicles to or from the premises.
- (4) A power referred to in subsection (3)(a), (b), (c), (d), or (i) may only be exercised in a manner that the facility operator believes, on reasonable grounds, to be in accordance with safety procedures applicable at the premises.

*National inspections*

(5) All authorized officers shall be national inspectors for the purposes of this Act and any regulations made thereunder.

(6) The Chair of the National Authority may, from time to time, appoint in writing other persons from within the Public Service to be national inspectors.

(7) A national inspector may –

- (a) with the consent of the person in control of any premises, or
- (b) under a warrant issued under subsections (15)-(17) in respect of any premises, enter the premises and exercise, on or in the premises, any inspection power for a compliance purpose.

*International inspections*

(8) An international inspector may –

- (a) with the consent of the person in control of any premise –
  - (i) in respect of which any provision of Parts VI to IX of the Verification Annex to the Convention applies; or
  - (ii) that is subject to an on-site challenge inspection referred to in Article IX (8) of the Convention; or
  - (iii) in respect of which an investigation under Article X (9) of the Convention has been initiated; or
- (b) under a warrant issued under subsections (18)-(20) in respect of the premises
  - (i) enter the premises; and
  - (ii) inspect the premises pursuant to –
    - (I) Part II of the Verification Annex to the Convention, except where the provisions of this Part differ from the provisions set forth for specific types of inspections in Parts VI to XI of the Verification Annex, in which case the latter provisions will take precedence; and
    - (II) In the case of any facility, any applicable facility agreement between Niue and the OPCW; and
  - (iii) exercise, in connection with any inspection, any function contemplated, and power provided for in –
    - (I) Part II of the Verification Annex to the Convention, except where the provisions of this Part differ from the provisions set forth for specific types of inspections in Parts VI to XI of the Verification Annex, in which case the latter provisions will take precedence; and
    - (II) In the case of any facility, any applicable facility agreement between Niue and the OPCW.

*Persons who may accompany international inspectors*

(9) In order to facilitate an inspection, an international inspector may be accompanied by one or more of the following persons –

- (a) an observer;
- (b) a national inspector.

(10) A national inspector may exercise any inspection power for the purposes of facilitating an inspection referred to in subsection (8).

(11) For the purposes of subsection (9)(a), “observer” means an observer referred to in Article IX (12) of the Convention, and includes any person authorized by the Chairperson of the National Authority to observe the inspection.

*Written directions*

(12) The National Authority may, by notice in writing, issue directions to any person for the purpose of facilitating any inspection under this section.

(13) Every person commits an offence who fails to comply with any direction given by the Chairperson of the National Authority and shall be punished upon conviction by imprisonment for a term of not exceeding 2 years with a fine not exceeding 100 penalty units.

*Identification certificates*

(14) The Chairperson of the National Authority shall issue to every international inspector and national inspector a certificate identifying him as such international inspector or national inspector, as the case may be.

*Warrant for national inspection*

(15) A national inspector may apply for a warrant where the consent of the person in control of any premises to enter the premises to exercise any inspection powers for a compliance purpose cannot be obtained or where the person refuses to give such consent.

(16) Subject to subsection (17), a judge of the High Court who is satisfied that there are reasonable grounds for believing that –

- (a) entry to the premises is necessary to exercise any inspection power for a compliance purpose; and
- (b) the consent of the person who is in control of the premises cannot be obtained or such consent is refused,

may issue, unconditionally or subject to conditions, a warrant authorizing the entry of the premises, at any time within 7 hours after the issue of such warrant, or within such further time as may be specified in the warrant, by the national inspector for the purpose of exercising any inspection power for a compliance purpose.

(17) The national inspector applying for a warrant shall –

- (a) first make reasonable inquiries as to whether any other applications for such a warrant have been made in respect of the premises concerned, and if so, as to the following matters –
  - (i) the offence or offences, if any, alleged in respect of each application; and
  - (ii) the results of each application; and
- (b) disclose on the application for the warrant the results of the inquiries.

*Warrant for international inspection*

(18) The Chairperson of the National Authority may apply for a warrant on behalf of an international inspector or national inspector where the consent of the person in control of any premises to enter the premises for the purposes referred to in subsection (8)(b)(ii)-(iii) cannot be obtained or where the person refuses to give such consent.

(19) Subject to subsection (20), a judge of the High Court of Niue who is satisfied that there are reasonable grounds for believing that –

- (a) The premises meets the conditions for entry described in subsection (8);
- (b) Entry to the premises is necessary for the purposes referred to in subsection (8)(b)(ii)-(iii); and
- (c) The consent of the person who is in control of the premises cannot be obtained or such consent is refused,

may issue, unconditionally or subject to conditions, a warrant authorizing the entry of the premises, at any time within 7 hours of the issue of the warrant, or within such further time as may be specified in the warrant, by the international inspector or national inspector for the purposes referred to in subsection (19)(b).

(20) The Secretary to the Government shall –

- (a) before applying for a warrant, make reasonable inquiries as to whether any other applications for such a warrant have been made in respect of the premises concerned, and, if so, as to the following matters –
  - (i) the offence or offences, if any alleged in respect of each application; and
  - (ii) the results of each application; and
- (b) disclose on the application for the warrant the results of the inquiries.

*Obligations of persons carrying out inspections*

(21) Every national inspector shall –

- (a) carry his identification certificate; and
- (b) produce it to any person appearing to be in control of the premises entered –
  - (i) on entering the premises, if such a person is then present; and
  - (ii) at any reasonable time thereafter, if asked to do so by the person.

(22) Every national inspector shall –

- (a) as soon as is practicable after completing the inspection, give the occupier or person in control of the premises a written notice stating that the premises has been entered, if, at any time between the time of entry of any premises to be inspected and the time the inspection is completed, there is no person appearing to be in control of the premises, and specify the following matters –
  - (i) the time and date of entry;
  - (ii) the circumstances and purpose of entry; and
  - (iii) the name of every person entering;
- (b) where applicable, have a warrant with him and produce it if required to do so; and
- (c) where any thing is seized, give the occupier or person in control of the premises a written inventory of all things so seized.

## 12 Obstruction of national or international inspectors

(1) Every person commits an offence who obstructs, hinders, resists, or deceives any national inspector or international inspector who is exercising any function contemplated, or any power provided for, in this section or in the Convention or in any applicable facility agreement, and shall be punished upon conviction by imprisonment for a term not exceeding 1 year and/or a fine not exceeding 50 penalty units.

(2) Nothing in this section shall apply to a refusal to give consent to entry by a national inspector who is not acting pursuant to a warrant referred to in section 11 (15)-(20).

(3) Nothing in this section shall to a refusal to give consent to entry by an international inspector who is not acting pursuant to a warrant referred to in section 11 (15)-(20).

### **13 Privileges and immunities of members of OPCW inspection teams**

(1) Members of inspection teams and observers shall enjoy the following privileges and immunities as are enjoyed by diplomatic agents in accordance with the following provisions of the Articles of the Vienna Convention on Diplomatic Relations of 1961, namely –

- (a) Article 29;
- (b) Article 30, paragraph 1;
- (c) Article 31, paragraphs 1, 2, 3; and
- (d) Article 34.

(2) In addition to those privileges and immunities granted in subsection (1), members of inspection teams and observers shall –

- (a) have the right to use codes for their communications with the Technical Secretariat of the OPCW, in addition to the same privileges as are enjoyed by diplomatic agents in accordance with paragraph 2 of Article 30 of the Vienna Convention on Diplomatic Relations 1961;
- (b) be permitted to bring into the territory of Niue, without payment of any customs duties or related charges, articles for personal use, with the exception of articles the importing or exporting of which is prohibited by law or controlled by quarantine regulations, and;
- (c) be accorded the same currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions in Niue.

(3) Samples and approved equipment carried by members of an inspection team shall be inviolable and exempt from customs duties.

(4) The privileges and immunities accorded to members of inspection teams and observers by virtue of this section shall be enjoyed by them at any time –

- (a) when they are in Niue –
  - (i) in connection with the carrying out of a routine inspection, a challenge inspection or an assistance inspection; or
  - (ii) while in transit to or from the territory of another State Party in connection with the carrying out of such an inspection there; or
- (b) after an inspection under subsection (4)(a)(i), with respect to acts previously performed in the exercise of their official capacity.

(5) If –

- (a) immunity from jurisdiction of a member of an inspection team is expressly waived in accordance with Part II(b)(14) of the Verification Annex to the Convention; and
- (b) a notice made by the Cabinet and informing the member of the waiver is delivered to him or her in person,

then, from the time the notice is so delivered, this section shall not have effect to confer that immunity on the member.

(6) If in any proceedings any question arises whether a person is entitled or not to any privilege or immunity by virtue of this section, a certificate issued by or under the Cabinet stating any fact relating to that question shall be conclusive evidence of that fact.

(7) Members of inspection teams and observers are hereby prohibited from engaging in any professional or commercial activity for personal profit in Niue.

## **14 Protection of confidential information**

(1) Every person shall keep confidential any information that is given pursuant to this Act or the Convention concerning the affairs of another person.

(2) Such information may be disclosed only with the consent of the person to whose affairs it relates or for the purpose of –

- (a) enabling Niue to fulfil its obligations under the Convention;
- (b) the enforcement of this Act; or
- (c) dealing with an emergency involving public safety.

(3) Every person who fails to comply with this section commits an offence and shall be punished upon conviction by imprisonment for a term of 2 years and/or with a fine not exceeding 50 penalty units.

## **15 Establishment, mandate and enforcement powers of the National Authority**

### *Establishment*

(1) There is established for the purposes of this Act the Niue National Authority for the implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.

### *Composition*

- (2) The National Authority shall consist of but shall not be limited to –
  - (a) the Secretary to the Government, who shall also serve as the Chairperson of the National Authority;
  - (b) a representative from the National Environment Council for Sustainable Development;
  - (c) a representative each from the Department of Police and the Customs Office.

### *Functions and duties of the National Authority*

(3) The National Authority shall perform its functions so as to most effectively attain the objectives of this Act and in particular-

- (a) To serve as the national focal point for effective liaison with the OPCW and other States Parties;
- (b) To supervise and monitor the enforcement of this Act through the regime established by this Act and the regulations issued thereto;
- (c) To gather the data to be reported in the initial and annual declarations to the OPCW and to report such data to the OPCW;
- (d) To supervise the implementation and enforcement of the Convention;

- (e) To provide the OPCW and other States Parties with relevant data and information in fulfilment of Niue's obligations under the Convention;
  - (f) To facilitate and cooperate with inspections under the Convention, including accompanying OPCW inspectors on international routine inspections and challenge inspections;
  - (g) To approve facility agreements further to this Act;
  - (h) To perform any other tasks assigned to it by appropriate authorities;
  - (i) To advise the Cabinet on matters relevant to this Act and the Convention and to provide any information, which the Premier or other appropriate authorities may require.
- (4) The National Authority may appoint a task force to advise it on any matter relating to this Act or the Convention.

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## SCHEDULES OF CHEMICALS

[Section 4, 5, 6]

The following Schedules list toxic chemicals and their precursors. For the purpose of implementing the Convention, these Schedules identify chemicals for the application of verification measures according to the provisions of the Verification Annex. Pursuant to Article II, paragraph 1(a), these Schedules do not constitute a definition of chemical weapons.

(Whenever reference is made to groups of dialkylated chemicals, followed by a list of alkyl groups in parentheses, all chemicals possible by all possible combinations of alkyl groups listed in the parentheses are considered as listed in the respective Schedule as long as they are not explicitly exempted. A chemical marked "\*" on Schedule 2, part A, is subject to special thresholds for declaration and verification, as specified in Part VII of the Verification Annex).

[Schedules 1, 2 and 3 can be found in the original text of the Law in *Niue Legislation Supplement 2007* p54 or at <http://www.gov.nu/>]

# PROPERTY LAW ACT 1952

1952/51 (NZ) – 1 January 1953

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## To consolidate and amend certain enactments relating to property

### 1 Short title

This is the Property Law Act 1952.

### 2 Interpretation

In this Act –

“conveyance” includes any deed of assignment, appointment, lease, settlement, or other assurance by deed of any property; and “convey” has a corresponding meaning; “encumbrance” includes a mortgage in fee or for a lesser estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and “encumbrancee”: has a corresponding meaning and includes every person entitled to the benefit of an encumbrance or entitled to require payment or discharge thereof;

“executors” and “administrators” of a deceased person mean respectively the persons to whom the right to administer the estate of the deceased has been granted by the

proper court, whether for general, special, or limited purposes; and “executors” includes executors by right of representation;

“fine” includes premium or foregift, and any payment, consideration, or benefit in the nature of a fine, premium, or foregift;

“income”, when used with reference to land, includes rents and profits;

“instrument” includes deed, will, Proclamation taking land, and Act;

“possession”, when used with reference to land, includes the receipt of income from it;

“property” includes real and personal property, and any estate or interest in any property real or personal and any debt, and anything in action, and any other right or interest;

“purchaser” includes a lessee or mortgagee, or other person who for valuable consideration takes or deals for any property; and “purchase” has a corresponding meaning, but “sale” means only a sale properly so called;

“rent” includes yearly or other rent, toll, duty, royalty, or other reservation by the acre, the ton, or otherwise; and;

“will” includes codicil.

**3** [Repealed]

**PART 1**  
**DEEDS AND OTHER INSTRUMENTS**

**4 Formalities of deed**

(1) Every deed, whether or not affecting property, shall be signed by the party to be bound by it and shall also be attested by at least one witness and, if the deed is executed in Niue, the witness shall add to his signature his place of abode and calling or description, but no particular form of words shall be requisite for the attestation.

(2) Except where the party to be bound by a deed is a corporation, sealing is not necessary.

(3) Formal delivery and indenting are not necessary in any case.

(4) Every deed executed as required by this section shall be binding on the party purported to be bound by it.

(5) Every deed, including a deed of appointment, executed before the commencement of this Act which is attested in the manner required or authorised by any enactment providing for the execution and attestation of deeds in force at the time of execution, or at any time subsequent to it, shall be deemed to be and to have been as valid and effectual as if it had been attested as required by this section.

**5 Deed by corporation**

Any deed that may be lawfully made by a corporation –

- (a) To which the common or official seal of the corporation is affixed; or
- (b) Which is executed in the name of the corporation by any person who has been appointed its attorney, and has at the time of execution made a statutory declaration that he is the attorney of the corporation acting under a power of attorney specified by him, and that he has executed the deed under the powers by it conferred, and that he has not at the time of making the declaration received any notice of the revocation of the power of attorney by the dissolution of the corporation or otherwise,

shall be deemed to have been duly executed by the corporation, and shall bind the corporation; and all persons dealing in good faith without notice of any irregularity shall be entitled to presume the regular and proper execution of the deed, and to act accordingly.

**6 Receipt for consideration money**

An acknowledgement of the receipt of the consideration contained in the body of a deed shall be as valid and effectual in all respects as if the same had also been endorsed on it.

**7 Person not named may take benefit**

Any person may take an immediate benefit under a deed, although not named as a party to it.

**8 Construction of supplemental or annexed deed**

A deed expressed to be supplemental to a previous deed, or directed to be read as an annex to it, shall, as far as may be, be read and have effect as if the deed so expressed or directed were made by way of endorsement on the previous deed, or contained a full recital thereof.

**9 Exercise of powers**

Where a power of appointment by deed or writing, otherwise than by will, is exercised by deed executed in the manner required by this Act, the deed shall be deemed to be a valid exercise of the power, notwithstanding that by the instrument creating the power some additional or other form of execution is required.

**10 Partitions, exchanges**

No partition, exchange, lease, assignment, or surrender (otherwise than by operation of law) of any land shall be valid at law unless the same is made by deed, except a lease for a term not exceeding a tenancy of one year, which lease may be made either by writing or by parol.

**11 Appointments**

No appointment to be made by deed or writing (otherwise than by will) in exercise of a power shall be valid unless the same is executed as a deed is hereby required to be executed.

**12 Disclaimers**

No disclaimer of any land shall be valid unless the same is made by deed or by matter of record.

**13 [Repealed]**

**PART 2**  
**GENERAL RULES AFFECTING PROPERTY**

**14-30 [Repealed]**

**31 Release of part of land charged not to be extinguishment of rent**

(1) The release from a rent of any part of the land out of which it is payable shall not be a discharge of the residue of the land from the rent.

(2) Where the owner of the part released is not the owner of the residue of the land charged with the rent, the owner of the residue shall be entitled to the same contribution from the owner of the part released as he would have been entitled to if no release had been made.

**32 Corporations may hold as joint tenants**

(1) (a) A body corporate shall be capable of acquiring and holding any property in joint tenancy in the same manner as if it were an individual, and where a body corporate and an individual or two or more bodies corporate become entitled to

any property under circumstances or by virtue of any instrument which would, if the body corporate had been an individual, have created a joint tenancy they shall be entitled to the property as joint tenants.

(b) The acquisition and holding of property by a body corporate in joint tenancy shall be subject to the like conditions and restrictions as attach to the acquisition and holding of property by a body corporate in severalty.

(2) Where a body corporate is a joint tenant of any property, then on its dissolution the property shall devolve on the other joint tenant.

**33 Alienation of property may be restricted**

(1) It shall be lawful by will, or by a settlement made on marriage, to provide that any estate or interest in any property comprised in the will or settlement devised, bequeathed, settled, or given to any beneficiary, whether male or female, shall not during the life of that beneficiary be alienated, or pass by bankruptcy, or be liable to be seized, sold, attached, or taken in execution by process of law.

(2) [Repealed]

(3) Nothing in this section shall prevent any lawful restraint on alienation of property from being imposed by will or settlement.

(4) The Court may in any case where it appears to be for the benefit of the person subject to any restraint on alienation either wholly or partly remove the restraint.

**33A Restrictions on ground of colour, race to be void**

(1) Any provision in or in connection with any disposition of property (whether oral or in writing) made after the commencement of this section shall be void to the extent that its effect would be to prohibit or restrict the transfer, assignment, letting, subletting, charging, or parting with the possession of the property or any part of it, by any party to the disposition or his successor in title, to any person by reason only of the colour, race, or ethnic or natural origins of that person or of any member of his family.

(2) For the purposes of this section, "disposition" means –

- (a) A sale, lease or letting, sublease or subletting, or licence; or
- (b) A mortgage; or
- (c) An agreement for any such disposition.

(3) This section shall bind the Crown.

**34 Disclaimer of powers**

(1) A person to whom is given any power, whether coupled with an interest or not, may by deed release or contract not to exercise the power.

(2) Any such person as aforesaid may by deed disclaim any such power, and after disclaimer shall not be capable of exercising or joining in the exercise of the power.

(3) On any such disclaimer the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power.

**35 Intermediate income of contingent or executory gifts**

(1) A contingent or future specific or residuary devise or bequest of property, and a specific or residuary devise or bequest of property upon trust for a person whose interest is contingent or executory, shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that property

from the death of the testator except so far as the income or any part of it may be otherwise expressly disposed of.

(2) Where under an instrument other than a will property stands limited to a person for a contingent or future interest, or stands limited to trustees upon trust for a person whose interest is contingent or executory, that interest shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that property from the time when the instrument comes into operation, except so far as the income or any part of it may be otherwise expressly disposed of.

**36 Receipts for income by married infants**

A married infant shall have power to give valid receipts for all income (including statutory accumulations of income made during the minority) to which the infant may be entitled in like manner as if the infant were of full age.

**37 "Heirs" and other words interpreted**

(1) Where under the terms of any instrument coming into operation after the commencement of this Act any property vests in –

- (a) The heir or heirs of any person; or
- (b) The next of kin of any person; or

(c) The next of kin of any person to be determined under the Family Law Code – the property shall vest in the persons who on the death of the person intestate would be beneficially entitled to his real and personal estate under the said last mentioned Act, and in the same shares.

(2) This section applies only if and so far as a contrary or other intention is not expressed in the instrument, and shall have effect subject to the terms of the instrument and to the provisions it contains.

**38 "Heirs of the body" and other words interpreted**

(1) Where under the terms of any instrument any property vests in –

- (a) The heir or heirs of the body of any person; or
- (b) The heir or heirs male of any person, or the heir or heirs male of the body of any person; or
- (c) The heir or heirs female of any person, or the heir or heirs female of the body of any person, –

the property shall vest as follows –

In case (a) in the issue of that person as tenants in common *per stirpes*; and

In case (b) in the sons and issue of sons of that person as tenants in common *per stirpes*; and

In case (c) in the daughters and the issue of daughters of that person as tenants in common *per stirpes*.

(2) This section applies only if and so far as a contrary or other intention is not expressed in the instrument, and shall have effect subject to the terms of the instrument and to the provisions it contains.

**39 [Repealed]**

**40 Appointments valid notwithstanding objects excluded**

(1) An appointment in exercise of any power to appoint any property amongst several objects shall be valid and effectual notwithstanding that any one or more of the objects do not by the appointment or in default of appointment take a share or shares of the property.

(2) Nothing in this section shall prejudice or affect any provision in any instrument creating any power which declares the amount of the share or shares from which no object of the power shall be excluded, or some one or more object or objects shall not be excluded.

**41-42** [Repealed]

PART 3

**43-49** [Repealed]

PART 4

POWERS AND CONDITIONS OF SALE AND PROTECTION OF PURCHASERS AND CREDITORS

**50-59** [Repealed]

**60 Alienation with intent to defraud creditors**

(1) Save as provided by this section, every alienation of property with intent to defraud creditors shall be voidable at the instance of the person prejudiced.

(2) This section does not affect the law of bankruptcy for the time being in force.

(3) This section does not extend to any estate or interest in property alienated to a purchaser in good faith not having at the time of the alienation, notice of the intention to defraud creditors.

**61-62** [Repealed]

PART 5

COVENANTS AND POWERS

**63 Benefit of covenants relating to land**

(1) A covenant, whether express or implied under this or any other Act, relating to any land of the covenantee shall, unless a contrary intention is expressed, be deemed to be made with the covenantee and his successors in title and the persons deriving title under him or them, and, subject as aforesaid, shall have effect as if those successors and other persons were expressed.

(2) For the purposes of this section in connection with covenants restrictive of the user of land, "successors in title" shall be deemed to include the owners and occupiers for the time being of the land of the covenantee intended to be benefited.

**64 Burden of covenants relating to land**

(1) A covenant, whether express or implied under this or any other Act, relating to any land of a covenantor or capable of being bound by him by covenant shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of himself and his successors in title and the persons deriving title under him or them, and, subject as aforesaid, shall have effect as if those successors and other persons were expressed.

(2) This section extends to a covenant to do some act relating to the land, notwithstanding that the subject-matter may not be in existence when the covenant is made.

(3) For the purposes of this section in connection with covenants restrictive of the user of land, "successors in title" shall be deemed to include the owners and occupiers for the time being of the land.

**65 Effect of covenant with two or more jointly**

(1) A covenant, whether express or implied under this or any other Act, and a contract by deed, and a bond or obligation by deed, made with two or more jointly, to pay money, or to make a conveyance, or to do any other act to them or for their benefit, shall be deemed to include, and shall by virtue of this Act imply, an obligation to do the act to or for the benefit of the survivor or survivors of them, and to or for the benefit of any other person on whom devolves the right to sue on the covenant, contract, bond, or obligation.

(2) This section applies only to a covenant, contract, bond, or obligation made expressly or by implication on or after 1 January 1906 and then only in so far as a contrary intention is not expressed in the deed containing the covenant or contract, or in the bond or obligation, and shall have effect subject to its provisions.

**66 Covenants and agreements made by a person with himself and others**

A covenant, whether express or implied under this or any other Act, or an agreement made by a person with himself and another or others, shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been made with the other or others.

**66A [Spent]**

**67 Covenants to be joint and several**

Where under a covenant, whether express or implied under this or any other Act, more persons than one are covenantors, the covenant shall, unless a contrary intention is expressed, be deemed to bind the covenantors and any two or greater number of them jointly and each of them severally.

**68 Implied covenants may be negated**

(1) A covenant or power implied under this or any other Act shall have the same force and effect, and may be enforced in the same manner, as if it had been set out at length in the deed wherein it is implied.

(2) Any such covenant or power may be negated, varied or extended in the deed, or by a memorandum in writing endorsed on it and executed as a deed is required to be executed by the parties to the deed intended to be bound by it.

**69 Benefit of covenant for title**

The benefit of a covenant for title implied under this or any other Act shall be annexed and incident to and shall go with the estate and interest of the implied covenantee, and may be enforced by any person in whom that estate or interest is, for the whole or any part of it vested.

**70-71 [Repealed]**

**PART 6**

**COVENANTS IMPLIED IN CONVEYANCES**

**72 Covenants implied in conveyance by way of sale**

(1) In every conveyance by way of sale, mortgage, marriage settlement, or lease and in every other conveyance for valuable consideration, there shall be implied (except as provided by section 75) the following covenants by the person or each of the persons who conveyans, so far as regards the estate or interest expressed to be conveyed by him, with the person to whom the conveyance is made, or with the person jointly to whom the conveyance is made as joint tenants or with each of the persons to whom the conveyance is made as tenants in common, that is to say –

- (a) A covenant for right to convey, meaning a covenant that the conveying party has good right and full power to convey and assure the estate or interest purported to be conveyed, and that free and clear from all encumbrances other than such as are mentioned in the conveyance;
- (b) A covenant for quiet enjoyment, meaning a covenant that the party to whom the estate or interest is purported to be conveyed, and all persons claiming under him, shall quietly enjoy the same without any disturbance by any person;
- (c) A covenant for further assurance, meaning a covenant that the conveying party, his executors or administrators, and all other persons having or claiming any interest in the subject-matter of the conveyance, will, at the cost of the person requiring the same, do and execute all such acts and conveyances for the better assuring of the estate or interest purported to be conveyed by it as may be reasonably required by the party to whom the same is conveyed or any person claiming under him;
- (d) A covenant for production of title deeds, meaning a covenant that the conveying party, his executors, administrators, or assigns, at the request and cost of the grantee, his executors, administrators or assigns, will, unless prevented by fire or other inevitable accident, produce to him or them, or as he or they may direct, within Niue all registered deeds and instruments or evidences of title in the possession of the conveying party, and relating to the land conveyed as well as to other land; and also that the conveying party, his executors, administrators, and assigns, will, unless prevented as aforesaid, keep the said deeds and instruments or evidences of title in the meantime safe, whole, and uncancelled. This covenant shall run with the land, so as to bind only the person for the time being entitled to the possession of the deeds, instruments, or evidences of title.

(2) The covenants for right to convey, for quiet enjoyment, and for further assurance shall, except in the case of a mortgage, be restricted to the acts, deeds and defaults of the conveying party, and of all persons through whom he derives title otherwise than by purchase for value, and of all persons claiming or to claim through, under, or in trust for him, or through or under any persons through whom he derives title as aforesaid.

(3) The costs of any further assurance or production of title deeds required by a mortgagee under the implied covenants in that behalf shall during the continuance of the mortgage be borne by the mortgagor.

(4) The covenant for quiet enjoyment shall not be implied against any mortgagor until default in payment of the principal moneys secured by the mortgage at the time fixed for the repayment of it, or in payment of interest on it, or until breach of any covenant by the mortgagor contained or implied in the mortgage; and until such default or breach as aforesaid it shall not be lawful for a mortgagee to enter into possession of the mortgaged land.

### **73 Covenants implied in conveyance subject to encumbrance**

(1) In every conveyance by way of sale subject to an encumbrance there shall be implied a covenant by the person to whom the property is conveyed with the person making the conveyance to pay the moneys or perform the obligations secured by the encumbrance, and to perform and observe the covenants and provisions of the encumbrance, and to keep harmless and indemnified the person making the conveyance in respect of all such moneys, obligations, covenants, and provisions.

(2) This section applies only in so far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the provisions of the conveyance.

**74 Covenants implied in conveyance of term of years**

In every conveyance of a term of years in land by way of sale or marriage settlement, and in every other conveyance of a term of years in land for valuable consideration, not being by way of mortgage, there shall be implied (except as provided by section 75) the following covenants by each conveying party severally, for himself, his executors and administrators, to the extent of the interest parted with by him, but restricted to the acts, deeds, and defaults of the conveying party, and of all persons through whom he derives title otherwise than by purchase for value, and of all persons claiming through, under, or in trust for him, them, or any of them, that is to say –

That the rent reserved by the lease under which the land is held, and the covenants and conditions expressed or implied in the lease and to be performed and observed by the lessee, have been respectively paid, performed, and observed up to the date of the conveyance.

**75 Covenants implied in conveyance by trustees**

(1) Where any person conveys as trustee or mortgagee, or as executor or administrator of a deceased person, or as manager of a mentally disordered person, when appointed or acting as manager of a mentally disordered person's estate or where any person conveys under an order of the Court, or in a fiduciary capacity, the covenants set out in section 72(1)(a),(b) and (c) and in section 74 shall not be implied, but there shall be implied the following covenant on the part of the person conveying, which covenant shall be deemed to extend to his own acts only, namely –

That he has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing whereby or by means whereof the subject-matter of the conveyance or any part of it is or may be impeached, charged, affected, or encumbered in title, estate, or otherwise, or whereby or by means whereof he is in any wise hindered from conveying the subject-matter of the conveyance or any part of it in the manner in which it is expressed to be conveyed.

(2) The covenant implied by this section shall be deemed to be implied in every memorandum of discharge endorsed on or annexed to a mortgage in the same manner as if the memorandum were a deed of conveyance by the mortgagee.

**PART 7**

**76-104 [Repealed]**

**PART 8**

**LEASES AND TENANCIES**

*General Provisions*

**105 Tenancy from year to year not to be implied**

No tenancy from year to year shall be created or implied by payment of rent; and if there is a tenancy it shall be deemed in the absence of proof to the contrary to be a tenancy determinable at the will of either of the parties by one month's notice in writing.

**106 Covenants implied in leases**

In every lease of land there shall be implied the following covenants by the lessee, for himself, his executors, administrators, and assigns:

- (a) That he or they will pay the rent thereby reserved at the time therein mentioned: Provided that in case the demised premises or any part of it shall at any time during the continuance of the lease, without neglect or default of the lessee, be destroyed or damaged by fire, flood, lightning, storm, tempest or earthquake so as to render the same unfit for the occupation and use of the lessee, then and so often as the same shall happen, the rent thereby reserved, or a proportionate

part of it, according to the nature and extent of the damage, shall abate, and all or any remedies for the recovery of the rent or the proportionate part of it shall be suspended until the demised premises shall have been rebuilt or made fit for the occupation and use of the lessee, and in the case of any dispute arising under this proviso the same shall be referred to arbitration under the Arbitration Act 1908:

- (b) That he or they will, at all times during the continuance of the said lease, keep, and at the termination of it, yield up, the demised premises in good and tenantable repair, having regard to their condition at the commencement of the said lease, accidents and damage from fire, flood, lightning, storm, tempest, earthquake and fair wear and tear (all without neglect or default of the lessee) excepted.

#### **107 Powers in lessor**

In every lease of land there shall be implied the following powers in the lessor, his executors, administrators, or assigns:

- (a) That he or they may, by himself or themselves, or his or their agents, at all reasonable times, enter upon the demised premises and view the state of repair of it, and may serve upon the lessee, his executors, administrators or assigns, a notice in writing of any defect, requiring him or them, within a reasonable time, to be prescribed in it, to repair the same under the covenant in that behalf contained or implied in the lease;
- (b) That whenever the rent reserved is in arrear he or they may levy the same by distress;
- (c) That whenever the rent or any part of it whether legally demanded or not, is in arrear for the space of 1 month, or whenever the lessee has failed to perform or observe any of the covenants, conditions or stipulations contained or implied in the lease, and on the part of the lessee to be performed or observed, he or they may re-enter the demised premises (or any part of it in the name of the whole) and thereby determine the estate of the lessee, his executors, administrators, or assigns in it, but without releasing him or them from liability in respect of the breach or non-observance of any such covenant, condition, or stipulation.

#### **108 Effect of licence to assign**

A condition or covenant not to assign or underlet or to do any other act without licence shall not be released or determined by any such licence.

#### **109 No fine for licence to assign**

(1) In all leases containing a covenant, condition, or agreement that the lessee shall not, without the licence or consent of the lessor, assign, underlet, part with the possession, or dispose of the demised premises or any part of it, that covenant, condition, or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of any such licence or consent; but this proviso shall not preclude the right to require the payment of a reasonable sum in respect of any legal or other expenses incurred in relation to the licence or consent.

(2) Neither the assignment or underletting of any leasehold by the assignee of a bankrupt, or by the liquidator of a company, or by the Sheriff under an execution, nor the bequest of a leasehold, shall be deemed to be a breach of any such covenant, condition or agreement, unless the contrary is expressly declared in the lease.

(3) For the purposes of this section, terms defined in section 117 have the meanings assigned to them by that section.

**110 Licence or consent not to be unreasonably withheld**

(1) In all leases, whether made before or after the commencement of this Act, containing a covenant, condition, or agreement against assigning, underletting, charging, or parting with the possession of demised premises or any part of it without licence or consent, that covenant, condition, or agreement shall, notwithstanding any express provision to the contrary, be deemed to be subject to a proviso to the effect that the licence or consent is not to be unreasonably withheld, but this proviso does not preclude the right of the landlord to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with any such licence or consent.

(1A) For the purposes of this section, a licence or consent shall be treated as unreasonably withheld if it is withheld by reason only of the colour, race, or ethnic or national origins of any person.

(2) In this section “lease” has the same meaning as in section 117.

**111 Merger of reversion not to affect remedies**

Where the reversion of land subject to a lease is merged in any remainder or other reversion, or future estate, the person entitled to the estate into which the reversion has merged and his executors or administrators, shall have the same remedy for non-performance or non-observance of the conditions or covenants expressed or implied in the lease as the person who would for the time being have been entitled to the mesne reversion so merged would have had.

**112 Rent and benefit of lessee’s covenants to run with reversion**

(1) Rent reserved by a lease, and the benefit of every covenant or provision in it having reference to the subject-matter thereof, and on the lessee’s part to be observed or performed, and every condition of re-entry and other condition in it, shall be annexed and incident to and shall go with the reversionary estate in the land or in any part of it immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and may be recovered, received, enforced, and taken advantage of by the person entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased. This subsection extends to a covenant to do some act relating to the land, notwithstanding that the subject-matter may not be in existence when the covenant is made.

(2) The benefit of every condition of re-entry or forfeiture for a breach of any covenant or condition contained in a lease shall be capable of being enforced and taken advantage of by the person entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased, although that person became, by conveyance or otherwise, so entitled after the condition of reentry or forfeiture had become enforceable.

(3) This section shall not render enforceable any condition of re-entry or other condition waived or released before that person became entitled as aforesaid.

**113 Obligation of lessor’s covenants to run with reversion**

The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, in so far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate or the several parts of it, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is vested by conveyance, devolution in law, or otherwise; and, in so far as the lessor has

power to bind the person entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

**114 Apportionment of conditions on severance**

Notwithstanding the severance by conveyance, surrender, or otherwise of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition in the lease, shall be apportioned and shall remain annexed to the several parts of the reversionary estate so severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land that has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had been the only land comprised in the lease.

**115 Restriction on effect of waiver**

Where any actual waiver of the benefit of any covenant or condition in any lease on the part of any lessor or his executors, administrators or assigns is proved to have taken place on or after 1 January 1906 in any one particular instance, that actual waiver shall not be deemed to extend to any instance or any breach of covenant or condition other than that to which the waiver specially relates, or to be a general waiver of any such covenant or condition, unless an intention to that effect appears.

**116 Executor not personally liable for covenants**

An executor or administrator shall not be personally liable on any covenant entered into by a testator or intestate as a lessee of land, any rule of law notwithstanding.

*Relief against Forfeiture*

**117 Interpretation**

For the purposes of sections 118 and 119 –

“bankruptcy” does not include the voluntary winding up of any solvent company;  
“lease” includes an original or derivative underlease, a grant securing a rent by condition, and an agreement for a lease where the lessee has become entitled to have his lease granted;  
“lessee” includes an original or derivative underlessee, a grantee under any such grant as aforesaid, a person entitled under an agreement as aforesaid, and the executors, administrators, and assigns of a lessee;  
“lessor” includes an original or derivative underlessor, a grantor as aforesaid, a person bound to grant a lease under an agreement as aforesaid, and the executors, administrators, and assigns of a lessor;  
“underlease” includes an agreement for an underlease where the underlessee has become entitled to have his underlease granted;  
“underlessee” includes any person deriving title through or from an underlessee.

**118 Restrictions on and relief against forfeiture**

(1) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant, condition, or agreement in the lease, shall not be enforceable by action or otherwise unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and in any case requiring the lessee to make compensation in money for the breach, and the lessee fails within a reasonable

time after it to remedy the breach, if it is capable of remedy, and to make reasonable compensation therefor in money to the satisfaction of the lessor.

(1A) (a) Where the lease in respect of which such a notice has been served on the lessee has been mortgaged and the lessor has actual notice of the name and address of the mortgagee, he shall forthwith after serving the notice on the lessee serve a copy of the notice on the mortgagee.

(b) Failure to comply with this subsection shall not of itself prevent the exercise by the lessor of any right of re-entry or forfeiture under any proviso or stipulation in the lease.

(2) Where a lessor is proceeding by action or otherwise to enforce such a right of re-entry or forfeiture, or has re-entered without action, the lessee may, in the lessor's action (if any), or in any action brought by himself, or by proceeding otherwise instituted, apply to the Court for relief; and the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the circumstances of the case, may grant or refuse relief as it thinks fit; and in case of relief may grant the same on such terms (if any) as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court in the circumstances of each case thinks fit.

(3) Where any such relief as aforesaid is granted, the Court shall direct a minute or record of it to be made on the lease or otherwise.

(4) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act.

(5) For the purposes of this section a lease limited to continue so long as the lessee abstains from committing a breach of any covenant, condition, or agreement shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(6) This section does not extend to a condition for forfeiture on the taking in execution of the lessee's interest.

(7) Except in a case where the lessee is bankrupt this section shall not affect the law relating to re-entry or forfeiture in case of non-payment of rent.

(8) This section shall have effect notwithstanding any stipulation to the contrary.

## **119 Protection of underlessees on forfeiture of superior leases**

Where a lessor is proceeding, by action or otherwise, to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, the Court may, on application by any person claiming as underlessee any estate or interest in the property comprised in the lease, or any part of it either in the lessor's action (if any) or in any action brought by that person for that purpose, make an order vesting, for the whole term of the lease or any less term the property comprised in the lease, or any part of it in any person entitled as underlessee to any estate or interest in that property, upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, the giving of security, or otherwise as the Court in the circumstances of each case thinks fit, but in no case shall any such underlessee be entitled to require a lease to be granted to him for any longer term than he had under his original underlease.

*Relief against Refusal to Grant Renewal*

**120 Relief of lessee against refusal or lessor to grant a renewal or to assure the reversion**

(1) In this section, “lease”, “lessee”, and “lessor” have the same meanings as in section 117.

(2) This section applies to leases made and shall have effect with respect to any lease notwithstanding any stipulation to the contrary and notwithstanding the expiry of the term of the lease.

(3) Where –

- (a) By any lease to which this section applies the lessor has covenanted or agreed with the lessee that, subject to the performance or fulfilment of certain covenants, conditions, or agreements by the lessee, the lessor will –
  - (i) on the expiry of the lease grant to the lessee a renewal of the lease or a new lease of the demised premises; or
  - (ii) whether upon the expiry of the lease or at any time previous to it assure to the lessee that lessor’s reversion expectant on the lease; and
- (b) The lessor has refused to grant that renewal or that new lease or to assure that reversion, as the case may be, on the ground that the lessee has failed to perform or fulfil the said covenants, conditions, and agreements, or any of them

the lessee may in any action or by proceeding otherwise instituted, apply to the Court for relief.

(4) The Court, having regard to all the circumstances of the case, may grant or refuse relief as it thinks fit, and in particular may decree, order, or adjudge –

- (a) That the lessor shall grant to the lessee a renewal of his lease or a new lease, as the case may require; or
- (b) That the lessor’s covenant or agreement to assure the reversion ought to be specifically performed and carried into execution, and that the lessor shall execute such assurances as the Court thinks proper for that purpose – on the same terms and conditions in all respects as if all the covenants, conditions, and agreements aforesaid had been duly performed and fulfilled.

(5) The Court may grant relief on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise as the Court in the circumstances of each case thinks fit.

(6) Failure by the lessee to give to the lessor notice of his intention to require or to accept a renewal of a lease or a new lease or an assurance of the lessor’s reversion, as the case may be, within the time or in the manner, if any, prescribed by the original lease shall not limit the rights of the lessee or the powers of the Court under this section.

(7) The fact that the lessor may have granted any estate or interest in the demised land to any person other than the lessee, which estate or interest would be defeated or prejudicially affected by the grant of relief to the lessee, shall not affect the power of the Court under this section, but in any such case the Court may, if it thinks just, grant relief to the lessee and cancel or postpone any such estate or interest and may, if it thinks fit, assess damages or compensation to be paid to that person in respect of the defeat of or prejudicial effect upon the estate or interest. Any damages or compensation to be paid under this subsection shall as the Court may determine be payable either by the lessor or by the lessee, or partly by the lessor and partly by the lessee in proportions to be fixed by the Court.

**121 Limitation of time for application for relief**

(1) Application for relief under section 120 may be made at any time within 3 months after the refusal of the lessor to grant a renewal of the lease or to grant a new lease or to assure the reversion, as the case may be, has been first communicated to the lessee.

(2) For the purposes of the subsection (1), communication to the lessee of notice in writing of the lessor's intention to refuse at the appropriate time to grant a renewal of a lease or to grant a new lease or to assure the reversion shall be deemed to be equivalent to communication of his refusal to grant the renewal or new lease or to assure the reversion, and in any case where notice of intention is so given the period of limitation fixed by subsection (1) shall begin to run from the date of the communication of the notice accordingly.

**PART 9**

**EASEMENTS, RESTRICTIVE STIPULATIONS AND ENCROACHMENTS**

**122 Easement in gross permitted**

An easement over land may be created without being attached or made appurtenant to other land, and such an easement shall run with and bind the land over which it is created, and all persons claiming title to that land by, through, or under the person creating the easement; and the easement so created shall be to all intents and purposes an incorporeal hereditament, and shall be assignable accordingly.

**123 Access or use of light or air**

Except as herein provided, no tenement shall become servient to any other in respect of the access of either light or air, and no person shall have or acquire by prescription, grant, or otherwise any claim or right to the access of light or air to any land or building from or over the land of any other person.

**124-126 [Repealed]**

**127 Power for Court to modify or extinguish easements and restrictive stipulations**

(1) Where land is subject to an easement or to a restriction arising under covenant or otherwise as to the user of it, the Court may on the application of any person interested in the land, by order modify or wholly or partially extinguish the easement or restriction upon being satisfied –

- (a) That by reason of any change in the user of any land to which the easement or the benefit of the restriction is annexed, or in the character of the neighbourhood or other circumstances of the case which the Court may deem material, the easement or restriction ought to be deemed obsolete, or that the continued existence of it would impede the reasonable use of the land subject to the easement or restriction without securing practical benefit to the persons entitled to the easement or to the benefit of the restriction, or would, unless modified, so impede any such user; or
- (b) That the persons of full age and capacity for the time being or from time to time entitled to the easement or to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the land to which the easement or the benefit of the restriction is annexed, have agreed to the easement or restriction being modified or wholly or partially extinguished, or by their acts or omissions may reasonably be considered to have abandoned the easement wholly or in part; or

(c) That the proposed modification or extinguishment will not substantially injure the persons entitled to the benefit of that restriction.

(2) Where any proceedings by action or otherwise are instituted to enforce an easement or restriction, or to enforce any rights arising out of a breach of any restriction, any person against whom the proceedings are instituted may in those proceedings apply to the Court for an order under the section.

(3) The Court may on the application of any person interested make an order declaring whether or not in any particular case any land is affected by an easement or restriction and the nature and extent of it, and whether the same is enforceable, and, if so, by whom.

(4) [Repealed]

(5) An order under this section shall, when registered as in this section provided, be binding on all persons, whether of full age or capacity or not, then entitled or thereafter becoming entitled to the easement, or interested in enforcing the restriction, and whether those persons are parties to the proceedings or have been served with notice or not.

(6) –

(7) [Repealed]

(8) In the case of other land a memorandum of the order shall be endorsed on such of the instruments of title as the Court directs.

## **128 Commissioner may authorise entry for erecting or repairing buildings**

(1) The owner of any land may at any time apply to a Commissioner for an order authorising him, or any person authorised by him in writing on that behalf, to enter upon any adjoining land for the purpose of erecting, repairing, adding to, or painting the whole or any part of any building, wall, fence, or other structure on the applicant's land, and to do on the land so entered upon such things as may reasonably be considered necessary for any such purpose as aforesaid.

(2) On any such application the Commissioner may make such an order as the Commissioner thinks fit, and may make such order subject to such terms and conditions as are thought fit.

## **129 Power of Court to grant special relief in cases of encroachment**

(1) Where any building on any land encroaches on any part of any adjoining land (that part being referred to in this section as the piece of land encroached upon), whether the building was erected by the owner of the first-mentioned land (in this section referred to as the encroaching owner) or by any of his predecessors in title, either the encroaching owner or the owner of the piece of land encroached upon may apply to the Court, whether in any action or proceeding then pending or in progress and relating to the piece of land encroached upon or by an originating application, to make an order under this section in respect of that piece of land.

(2) If it is proved to the satisfaction of the Court that the encroachment was not intentional and did not arise from gross negligence, or, where the building was not erected by the encroaching owner, if in the opinion of the Court it is just and equitable in the circumstances that relief should be granted to the encroaching owner or any other person, the Court, without ordering the encroaching owner or any other person to give up possession of the piece of land encroached upon or to pay damages, and without granting an injunction, may make an order –

(a) Vesting in the encroaching owner or any other person any estate or interest in the piece of land encroached upon; or

- (b) Creating in favour of the encroaching owner or any other person any easement over the piece of land encroached upon; or
- (c) Giving the encroaching owner or any other person the right to retain possession of the piece of land encroached upon.

(3) Where the Court makes any order under this section, the Court may, in the order, declare any estate or interest so vested to be free from any mortgage or other encumbrance affecting the piece of land encroached upon, or vary, to such extent as it considers necessary in the circumstances, any mortgage, lease, or contract affecting or relating to that piece of land.

(4) Any order under this section, or any provision of any such order, may be made upon and subject to such terms and conditions as the Court thinks fit, whether as to the payment by the encroaching owner or any other person of any sum or sums of money, or the execution by the encroaching owner or any other person of any mortgage, lease, easement, contract or other instrument, or otherwise.

(5) Every person having any estate or interest in the piece of land encroached upon or in the adjoining land of the encroaching owner, or claiming to be a party to or to be entitled to any benefit under any mortgage, lease, contract, or easement affecting or relating to any such land, shall be entitled to apply for an order under this section, or to be heard in relation to any application for or proposal to make any order under this section. For the purposes of this subsection the Court may, if in its opinion notice of the application or proposal should be given to any such person as aforesaid, direct that such notice as it thinks fit shall be given to that person by the encroaching owner or any other person.

#### **129A Relief in cases of mistake as to boundaries or identity of land**

(1) Where any person who has or had an estate or interest in any piece of land (in this section referred to as the original piece of land) has, while he had that estate or interest, erected a building on any other piece of land (that other piece together with any land reasonably required as curtilage and for access to the building being in this section referred to as the piece of land wrongly built upon), if the building has been so erected because of a mistake as to any boundary or as to the identity of the original piece of land, that person, or any other person for the time being in possession of the building or having an estate or interest in either the original piece of land or the piece of land wrongly built upon, may apply to the Court, whether in any action or proceeding then pending or in progress and relating to the piece of land wrongly built upon or by an originating application, to make an order under this section.

(2) If in the opinion of the Court it is just and equitable in the circumstances that relief should be granted to the applicant or any other person, the Court may make an order –

- (a) Vesting that piece of land wrongly built upon in the person or persons specified in the order;
- (b) Allowing any person or persons specified in the order to remove the building and any chattels and fixtures or any of them from the piece of land wrongly built upon;
- (c) Where it allows possession of the building to any person or persons having an estate or interest in the piece of land wrongly built upon, requiring all or any of the persons having an estate or interest in that piece of land to pay compensation in respect of the building and other improvements to the piece of land wrongly built upon to such person or persons as the Court may specify;

- (d) Giving the person who erected the building or any person or persons claiming through him the right to possession of the piece of land wrongly built upon for such period and on such terms and conditions as the Court may specify.
- (3) Where appropriate, the Court may make any such order without ordering the applicant or any other person to give up possession of the piece of land wrongly built upon, or to pay damages and without granting an injunction.
- (4) Where the Court makes any order under this section, the Court may, in the order, declare any estate or interest in the piece of land wrongly built upon to be free from any mortgage, lease, easement, or other encumbrance affecting that piece of land, or vary, to such extent as it considers necessary in the circumstances, any mortgage, lease, easement, contract, or other instrument affecting or relating to that piece of land.
- (5) Any order under this section, or any provision of any such order, may be made upon and subject to such terms and conditions as the Court thinks fit, whether as to the payment by any person of any sum or sums of money, or the execution by any person of any mortgage, lease, easement, contract, or other instrument or otherwise.
- (6)-(8) [Repealed]
- (9) Nothing in this section shall restrict the operation of section 129.

## PART 10

### ASSIGNMENTS OF THINGS IN ACTION

#### 130 Assignment of debts and things in action

(1) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal or equitable thing in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim that debt or thing in action, shall be and be deemed to have been effectual in law (subject to all equities that would have been entitled to priority over the right of the assignee if this Act had not been passed) to pass and transfer the legal or equitable right to that debt or thing in action from the date of the notice, and all legal or equitable and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor.

(2) Where the debtor, trustee, or other person liable in respect of any such debt or thing in action has had notice that the assignment is disputed by the assignor or any one claiming under him, or that there are other opposing or conflicting claims to that debt or thing in action, he shall be entitled, if he thinks fit, to call upon the several persons making claim to it to interplead concerning the same; or he may, if he thinks fit, pay the same into the Court, under and in conformity with the provisions of the Acts for the relief of trustees.

## PART 11

### MARRIAGE SETTLEMENTS

#### 131-132 [Repealed]

#### 133 [Reprint – see now Family Law Code 2007]

## PART 12

### POWERS OF ATTORNEY

#### 134 Execution by attorney in his own name

(1) The donee of a power of attorney may execute or do any assurance instrument, or thing in and with his own name and signature and his own seal (where

sealing is required) by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law to all intents as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor of it.

(2) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.

**135 Continuance until notice of death or revocation received**

(1) Subject to any stipulation to the contrary contained in the instrument creating a power of attorney, the power shall, so far as concerns any act or thing done or suffered thereunder in good faith, operate and continue in force until notice of the death of the donor of the power or until notice of other revocation of it has been received by the donee of the power.

(2) Every act or thing within the scope of the power done or suffered in good faith by the donee of the power after such death or other revocation as aforesaid, and before notice of it has been received by him, shall be as effectual in all respects as if that death or other revocation had not happened or been made.

(3) A statutory declaration by any such attorney to the effect that he has not received any notice or information of the revocation of the power of attorney by death or otherwise shall, if made immediately before or if made after any such act as aforesaid, be taken to be conclusive proof of the no-revocation at the time when the act was done or suffered in favour of all persons dealing with the donee of the power in good faith and for valuable consideration without notice of the said death or other revocation.

(4) Where the donee of the power is a corporation aggregate the statutory declaration shall be sufficient if made by any director, manager, or secretary of the corporation or by any officer of it discharging the functions usually appertaining to any of those offices or by any officer of the corporation appointed for that purpose either generally or in the particular instance by the board of directors, council, or other governing body by resolution or otherwise, and if it is to the effect that to the best of the declarant's knowledge and belief neither the attorney nor any servant or agent of the attorney has received any such notice or information as is mentioned in subsection (3); and where the declaration contains a statement that the declarant is a director, manager, or secretary of the corporation or is an officer of the corporation discharging the functions usually appertaining to any of those offices or is an officer of the corporation appointed for the purpose of making the declaration, the statement shall be conclusive evidence in favour of the persons mentioned in that subsection.

(5) This section applies to powers of attorney executed in or out of Niue.

**136 Irrevocable power of attorney for value**

Where a power of attorney given for valuable consideration (whether executed in or out of Niue) is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser –

- (a) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee, or by the death, mental deficiency, or bankruptcy of the donor; and
- (b) Any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor without the concurrence of the donee, or the death, mental deficiency, or bankruptcy of the donor, had not been done or had not happened; and

- (c) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor without the concurrence of the donee, or of the death, mental deficiency, or bankruptcy of the donor.

**137 Power of attorney made irrevocable for fixed time**

Where a power of attorney (whether executed in or out of Niue, and whether given for valuable consideration or not) is in the instrument creating the power expressed to be irrevocable for a fixed time in it specified, not exceeding 1 year from the date of the instrument, then, in favour of a purchaser —

- (a) The power shall not be revoked for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee, or by the death, mental deficiency, or bankruptcy of the donor; and
- (b) Any act done within that fixed time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor without the concurrence of the donee, or the death, mental deficiency, or bankruptcy of the donor had not been done or had not happened; and
- (c) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice, either during or after that fixed time, of anything done by the donor during that fixed time without the concurrence of the donee, or of the death, mental deficiency, or bankruptcy of the donor within that fixed time.

**138 Conveyance under power of attorney from person not in Niue**

No person shall be entitled to object to the execution or proposed execution of conveyance solely on the ground that the execution is under a power of attorney from a person not in Niue.

**139 Application to corporations**

The provisions of this Part apply with the necessary modifications with respect to any power of attorney executed by any corporation to the same extent as if the corporation were a person and the dissolution of the corporation (however occurring) were the death of a person within the meaning of this Part.

**PART 13**

**PARTITION OF LAND AND DIVISION OF CHATTELS**

**140 In action for partition Court may direct land to be sold**

(1) Where in an action for partition the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the land to which the action relates request the Court to direct a sale of the land and a distribution of the proceeds, instead of a division of the land between or among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale accordingly.

(2) The Court may on the request of any party interested, and notwithstanding the dissent or disability of any other party, direct a sale in any case where it appears to the Court that, by reason of the nature of the land, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of any of those parties, or of any other circumstance, a sale of the land would be for the benefit of the parties interested.

(3) The Court may also if it thinks fit, on the request of any party interested, direct that the land be sold, unless the other parties interested, or some of them, undertake to purchase the share of the party requesting a sale and, on such an

undertaking being given, may direct a valuation of the share of the party requesting a sale.

(4) On directing any such sale or valuation to be made, the Court may give also all necessary or proper consequential directions.

(5) (a) Any person may maintain such action as aforesaid against any one or more of the parties interested without serving the other or others, and it shall not be competent to any defendant in the action to object for want of parties; and at the hearing of the cause the Court may direct such inquiries as to the nature of the land and the persons interested therein, and other matters, as it thinks necessary or proper, with a view to an order for partition or sale being made on further consideration.

(b) All persons who, if this Act had not been passed, would have been necessary parties to the action shall be served with notice of the decree or order on the hearing, and, after the notice, shall be bound by the proceedings as if they had originally been parties to the action, and shall be deemed parties to the action; and all such persons may have liberty to attend the proceedings, and any such person may, within a time limited by rules of Court, apply to the Court to add to the decree or order.

(6) On any sale under this section the Court may allow any of the parties interested in the land to bid at the sale, on such terms as the Court deems reasonable as to non-payment of deposit, or as to setting off or accounting for the purchase money or any part of it instead of paying the same, or as to any other matters.

#### **141    Proceeds of sale, how applied**

(1) All money received under any such sale may if the Court thinks fit be paid to trustees appointed by the Court, and applied, as the Court directs –

- (a) In the discharge of any encumbrance affecting the land directed to be sold; and, subject to it
- (b) In the payment of the residue to the parties interested.

(2) Where the Court so directs, the trustees (if any) may in their discretion apply the money in manner aforesaid; and where no such direction is given any party interested may apply to the Court for an order that the money be so applied.

(3) Until the money can be applied as aforesaid, it shall be invested in such securities as the Court may approve, and the interest and dividends of it shall be paid to the parties interested.

#### **142    Costs in partition suits**

In any action for partition the Court may make such order as it thinks just respecting costs up to the time of the hearing.

#### **143    Division of chattels**

Where any chattels belong to persons jointly or in undivided shares, the persons interested to the extent of a moiety or upwards may apply to the Court for an order for division of the chattels or of any of them, according to a valuation or otherwise, and the Court may make such order and give such consequential directions as the Court thinks fit.

### **PART 14 APPORTIONMENT**

#### **144    Interpretation**

In this Part –

“annuities” includes salaries and pensions;

“dividends” includes (besides dividends strictly so called) all payments made by the name of dividend bonus, or otherwise out of the revenue of trading or other companies or corporations, divisible between all or any of the members of it, whether those payments are usually made or declared at any fixed time or otherwise; and all such divisible revenue shall for the purposes of this section be deemed to have accrued by equal daily increments during and within the period for or in respect of which the payment of the same revenue is declared or expressed to be made but “dividends” does not include payments in the nature of a return or reimbursement of capital;

“rent” includes rents and all periodical payments or renderings in lieu of or in the nature of rent.

#### **145 Income apportionable in respect of time**

All rents, annuities, dividends and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly.

#### **146 Time when apportioned part payable**

The apportioned part of any such rent, annuity, dividend, or other payment shall be payable or recoverable in the case of a continuing rent, annuity, or other payment as soon as the entire portion of which the apportioned part forms part becomes due and payable, and not before, and where the payment is determined by re-entry, death, or otherwise, as soon as the next entire portion of the same would have become payable if the same had not so determined, and not before.

#### **147 Recovery of apportioned parts**

(1) All persons and their respective executors, administrators, and assigns and also the executors, administrators, and assigns respectively of persons whose interests determined with their own death, shall have such or the same remedies, legal and equitable, for recovering such apportioned parts as aforesaid when payable (allowing for a proportionate part of all just allowance) as they respectively would have had for recovering such entire portions as aforesaid if entitled to it respectively.

(2) Where any person is liable to pay rent reserved out of or charged on lands or other hereditaments of any tenure, that person and the said lands or other hereditaments shall not be resorted to for any such apportioned part forming part of an entire or continuing rent as aforesaid, but the entire or continuing rent, including the apportioned part, shall be recovered and received by the person who, if the rent had not been apportionable under this Part or otherwise, would have been entitled to the entire or continuing rent; and the apportioned part shall be recoverable from the last-mentioned person by the executors, administrators or other parties entitled under this Part.

#### **148 Exceptions and application**

(1) Nothing in this Part shall render apportionable any annual sums payable under policies of assurance of any description.

(2) This Part does not extend to any case in which it is expressly stipulated that apportionment shall not take place.

PART 15

**149** [Repealed]

PART 16

RENTCHARGES AND OTHER ANNUAL SUMS

**150 Recovery of annual sums charged on land**

(1) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rentcharge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to that annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, so far as those remedies might have been conferred by the instrument under which the annual sum is payable, but not further.

(2) If at any time the annual sum, or any part of it, is unpaid for 21 days next after the time appointed for any payment in respect of it, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part of it, and dispose of it according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears of it, and all costs and expenses occasioned by non-payment of it may be fully paid.

(3) If at any time the annual sum or any part of it is unpaid for 40 days next after the time appointed for any payment in respect of it, then, although no legal demand for that payment has been made, the person entitled to receive the annual sum may enter into possession of and hold the land charged, or any part of it and take the income of it until thereby or otherwise the annual sum, and all arrears of it due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum, are fully paid; and the possession when taken shall be without impeachment of waste.

(4) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed convey the land charged, or any part of it to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage, or sale, or demise for all or any part of the term, of the land charged, or of any part of it, or by receipt of the income of it, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears of it due or to become due, and all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or obtaining payment of it, or otherwise relating to it, including the costs of the preparation and execution of the deed of demise, and the cost of the execution of the trusts of that deed; and the surplus, if any, of the money raised or of the income received under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5) This section applies only where the instrument under which the annual sum is payable comes into operation on or after 1 January 1906, and then only in so far as a contrary intention is not expressed in the instrument and shall have effect, subject to the terms and provisions of it.

(6) The rule of law relating to perpetuities shall not apply to any powers or remedies conferred by this section, nor to the same, or like powers or remedies conferred by any instrument for recovering or compelling the payment of any annual sum within the meaning of this section.

**151** [Repealed]

PART 17  
SERVICE OF NOTICES

**152 Service of notices**

(1) (a) Any notice required or authorised by this Act to be served on any person shall be delivered to that person, and may be delivered to him either personally or by posting it by registered letter addressed to that person at his last known place of abode or business in Niue.

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

(2) If the person is absent from Niue, the notice may be delivered as aforesaid to his agent in Niue. If he is deceased, the notice may be delivered as aforesaid to his personal representative.

(3) If the person is now known, or is absent from Niue and has no known agent in Niue, or is deceased and has no personal representative, the notice shall be delivered in such manner as may be directed by an order of the Court.

(4) Notwithstanding anything in subsections (1) to (3) the Court may in any case make an order directing the manner in which any notice is to be delivered, or dispensing with the delivery of it.

(5) This section does not apply to notices served in proceedings of the Court.

PART 18  
MISCELLANEOUS

**153 [Repealed]**

**154 Protection of solicitors and trustees**

(1) It is hereby declared that the powers given by this Act to any person, and the covenants, provisions, stipulations and words which under this Act are to be deemed included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations and words to be given by or to be contained in any such instrument, or to be adopted in connection with or applied to any such contract or transaction; and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting in good faith in any such instrument, or in connection with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words or to insert or apply any others in place of it, in any case where the provisions of this Act would allow of his doing so.

(2) But nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connection with, or the application to, any contract or transaction of any further or other powers, covenants, provisions, stipulations, or words is improper.

(3) Where the solicitor is acting for trustees, executors, or other persons in a fiduciary capacity, those persons shall also be protected in like manner.

(4) Where such persons as aforesaid are acting without a solicitor they shall also be protected in like manner.

**155 [Spent]**



# PUBLIC EMERGENCY ACT 1979

1979/51 – 31 January 1980

1	Short title	4	Special provisions applicable pending issue of Proclamation of Emergency
2	Issue of Proclamations of Emergency	5	Protection of persons acting under authority of this Act
3	Emergency regulations		

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## To make provision for the protection of the community in cases of emergency

### 1 Short title

This is the Public Emergency Act 1979.

### 2 Issue of Proclamation of Emergency

(1) Cabinet may by Proclamation of Emergency declare that a state of emergency exists throughout Niue or, throughout any area or areas that may be specified in the Proclamation if any time it appears to Cabinet that –

- (a) Certain action has been taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be calculated, by interfering with the supply and distribution of food, water, fuel, or light or with the means of locomotion, to deprive the community of the essentials of life; or
- (b) Circumstances exist or are likely to come into existence, whereby the public safety or public order is or is likely to be imperilled.

(2) No such Proclamation shall be in force for more than one month, without prejudice to the issue of another Proclamation at or before the end of that period.

(3) Where a Proclamation of Emergency has been made, it shall be communicated to the Assembly at its next meeting.

### 3 Emergency regulations

(1) Where a Proclamation of Emergency is in force, and so long as the Proclamation is in force, Cabinet may make such regulations as it thinks necessary for the following purposes –

- (a) The prohibition of any acts which in its opinion would be injurious to the public safety; and
- (b) The conservation of public safety and order; and
- (c) Securing the essentials of life to the community.

(2) Without limiting the generality of the authority conferred by subsection (1), any regulations as aforesaid may confer or impose on a responsible Minister or any Department of State, or on any persons in the service of the Crown or acting on behalf of the Crown, such powers and duties as Cabinet deems necessary for –

- (a) The preservation of peace and order;
- (b) Securing and regulating the supply and distribution of food, water, fuel, light and other necessities;
- (c) Maintaining the means of transit, transport or locomotion; and
- (d) Any other purposes essential to the maintenance of public safety, order and the life of the community.

(3) Cabinet may make such provisions incidental to the powers aforesaid as may be required for making the exercise of those powers effective.

(4) Any regulations made under the authority of this section may apply throughout Niue, notwithstanding that a Proclamation of Emergency may have been issued only in respect of a limited area or of limited areas, or may, according to the tenor of such regulations, apply only within the area or areas specified or defined in the Proclamation of Emergency.

(5) Any regulations so made shall be laid before the Assembly as soon as they are made, and shall not continue in force after the expiration of 14 days from the time they are laid before the Assembly unless a resolution is passed by the Assembly providing for their continuance.

(6) (a) Every person who commits, or attempts to commit any act with intent to commit, or counsels, procures, aids, abets, or incites any other person to commit, or conspires with any other person (whether in Niue or elsewhere) to commit, any offence against any such regulation shall be liable on conviction before the Court to imprisonment for a term of 3 months or a fine of 2 penalty units or both such imprisonment and fine, together with the forfeiture of any goods or money in respect of which the offence has been committed.

(b) In any prosecution for any such offence the Court may admit such evidence as it thinks fit, whether such evidence would be admissible in other proceedings or not.

(7) (a) The regulations so made shall have effect as if enacted, in this Act, but may be added to, altered, or revoked by resolution of the Assembly or by regulations made in the like manner and subject to the like provisions as the originals.

(b) All regulations made under this section and not earlier revoked shall expire on the expiration of the Proclamation of Emergency by virtue of which they were made, but may be revived either in whole or in part by any subsequent Proclamation of Emergency.

(8) The expiry or revocation of any regulations so made shall not be deemed to have affected their previous operation or the validity of any action taken under them or any penalty or punishment incurred in respect of any contravention or failure to comply with them or any proceeding or remedy in respect of any such punishment or penalty.

(9) No regulations under this Act shall be deemed invalid because they deal with any matter already provided for by any Act or because of any repugnancy to any such Act.

(10) Nothing in this Act or in any regulation under this Act shall be so construed or shall so operate as to take away or restrict the liability of any person for any offence punishable independently of this Act.

#### 4

#### **Special provisions applicable pending issue of Proclamation**

(1) (a) In any case of public emergency, whether arising from earthquake, fire, flood, public disorder, or otherwise howsoever, in which, owing to the suddenness of the occurrence, the interruption of communications, or any other cause, sections 2 and 3 cannot be put into operation immediately, the senior officer of the Police present in the locality shall assume responsibility for the issuing of all orders and instructions necessary in his opinion for the preservation of life, the protection of property, and the maintenance of order.

(b) The authority conferred by this section shall cease on the issue of a Proclamation of Emergency under section 2.

(2) Every person who obstructs or interferes with any constable or other person in the execution of any orders or instructions given by or with the authority of

the senior officer of the Police as aforesaid commits an offence and shall be liable to the same penalty as if he had committed an offence against regulations made under the authority of section 3.

**5 Protection of person acting under authority of this Act**

No action, claim, or demand whatsoever shall be made or allowed by or in favour of any officer or person acting in the execution or intended execution of this Act or of any regulations under it, for or in respect of any damage, loss or injury sustained or alleged to have been sustained by reason of anything done or purporting to be done under the authority of this Act or of regulations as aforesaid, save only in respect of reasonable compensation for any property used or taken for or on behalf of the Crown under any powers conferred by this Act or by regulations under this Act.



# PUBLIC HEALTH ACT 1965

1965/24 – 29 January 1965

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PART 1  
PRELIMINARY

**1 Short title**

This is the Public Health Act 1965.

**2 [Repealed]**

**3 Interpretation**

(1) In this Act –

“approved” means approved by the Chief Medical Officer;

“Director” means the Director of Health and includes any Medical Officer and other officer of the Department of Health performing duties under this Act on behalf and under the authority of the Director of Health and includes also any Inspector of Health appointed under section 7:

Provided that, when an Inspector of Health has been appointed for the specific purposes of one Part, reference to the Director of Health in that Part shall be taken as including reference to an Inspector so appointed only;

“isolation station” means an isolation station appointed under section 9;

“notice” means a notice in writing signed by the person authorised to give such notice and to be served as provided in section 65;

“Director of Works” means the officer for the time being in charge of the Public Works Department.

(2) Terms defined in any Part of this Act have the meaning so defined for the purposes of any other Part.

PART 2  
ADMINISTRATION OF PUBLIC HEALTH

**4 [Repealed]**

**5 Principal functions of Director**

The principal functions of the Director under this Act shall be –

- To prevent, limit, and suppress infectious and other diseases;
- To institute and carry out investigations in respect of public health;
- Generally to take all such steps or, as the case may be, to advise the Cabinet on taking such steps, as may be necessary to secure the promotion and conservation of human health.

**6 Powers of Director and duty of Police to assist –**

(1) The Director shall have –

- Power to enter at all reasonable times any dwelling, building, land or any other premises or place and inspect the same and to execute on it any works authorised under or on this Act;
- All powers conferred on him for the purposes of any Part as specified in any such Part;

(c) All other powers necessary to carry out his duties and functions under this Act.

(2) It shall be the duty of every constable to give the Director any assistance which he may require in the exercise of his duties and functions under this Act and, when requested by the Director so to do, to accompany him and to enter with him any premises or place.

**7 Appointment of Inspectors**

There may be appointed such number of Inspectors of Health as may be necessary for the administration and operation of this Act and any Inspector so appointed may be known as "Inspector of Health" or as "Mosquito Control Officer" or "Food Inspector", as the case may be, or by any other name indicating the specific purposes (if any) for which he was so appointed.

**PART 3**  
**QUARANTINE**

**8 Special functions of Director**

The Director shall confer with and advise the Cabinet in the administration and application of the sanitary measures permitted or prescribed, as the case may be, by the International Sanitary Regulations.

**9 Appointment of isolation stations**

(1) Cabinet may by public notice appoint any institution, building, premises or place to be an isolation station for the purposes of this Act, and any such appointment may be permanent or for any period or extended period as circumstances require.

(2) The boundaries of any isolation station so appointed shall be exactly defined in the public notice and the site of the station shall be marked off accordingly and clearly indicated by fences, hoardings, posters or in such other ways as the Cabinet may direct.

**10 Offences**

Every person who trespasses on any isolation station may, in addition to any penalty inflicted under this Act or the Criminal Law Code be detained within the isolation station under an order issued by the Director under section 14(1)(d).

**PART 4**  
**NOTIFIABLE INFECTIOUS DISEASES**

**11 Interpretation**

In this Part –

"carrier" means any person having in his blood, or in his nose or throat, or in his excretions, or in his discharges, or in his secretions, the specific infectious agent of any notifiable disease though he may exhibit no other sign or symptom of that disease;

"contact" means any person who has been exposed to risk of infection by a notifiable disease, when the length of time since such exposure does not exceed, in the opinion of the Director, the period or incubation of that disease;

"drug" means and includes any drug or medicine used in the treatment, prevention, investigation, or alleviation of any disease, illness, or injury affecting human beings;

“notifiable disease” means –

- (a) Tuberculosis, whether pulmonary, glandular or osseous or in any other form, and in any stage of development or course of medical treatment which, in the opinion of the Director is infectious;
- (b) Leprosy in all known forms of that disease;
- (c) Venereal diseases including syphilis, gonorrhoea and soft sore;
- (d) Any other infectious disease which Cabinet may declare on publication by public notice to be a notifiable disease;

“suspected person” means any person suspected to be suffering from a notifiable disease or to be a carrier or contact.

## **12 Duty to notify the Director**

(1) Every person who has reason to believe that he is a suspected person or that any other person, whether under his care and responsibility or not, is a suspected person, shall without delay notify the Director.

(2) Every person who knowingly fails to notify the Director as provided in subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units.

## **13 Procedure on notification**

On being notified as aforesaid the Director shall forthwith issue instructions for the medical examination of every suspected person and make arrangements for the medical treatment of every person found to be suffering from any notifiable disease or to be a carrier or contact and, where in his opinion necessary, for the isolation of any such person or any suspected person, as hereinafter provided.

## **14 Special powers of Director and offences**

- (1) The Director shall have power –
- (a) To order any person to undergo such medical examination as he thinks fit and for that purpose to attend before him at such time and place as he may appoint;
  - (b) To order any person to undergo such medical treatment in his home or in the hospital as the Director may prescribe;
  - (c) To enter at all reasonable times any dwelling, building, land or any other premises or place where he has reason to believe that a suspected person may be and to conduct in it such investigation and such medical examination or treatment as he deems necessary;
  - (d) To order any person to be admitted to and detained in such isolation station as he may direct, for such period of time or such extended period of time as he deems necessary.

(2) For the purposes of subsection (1), “person” means every person suffering from a notifiable disease, every suspected person, and every person who, in the opinion of the Director requires any observation, examination, or treatment necessary for the control of notifiable diseases.

(3) All orders issued by the Director under this section shall be in writing signed by him and any order of admission and detention issued under subsection (1)(d) shall, when delivered to the person named in it, be sufficient authority to that person and shall bind that person to receive and detain under the order, the person in respect of whom the order is made and not to discharge such person except on receipt of an order in writing to that effect signed by the Director.

(4) Any Medical Officer, Inspector, or constable may without any authority other than this section apprehend any person who attempts to evade detention or who leaves an isolation station without being discharged as provided in this section, and shall deliver or return, as the case may be, the person so apprehended to the officer in charge of the isolation station.

(5) Except to the extent to which any part of the isolation station may be open to visits by the public, no person shall visit any person detained under this section except with the written permission of the Director which may be given either generally or for any particular case and subject to any condition which the Director may think fit to impose, and every person found without such permission or in contravention of any condition attached to such permission on the site of any isolation station or visiting any person detained in it commits an offence and, in addition to any penalty inflicted under section 70, may be detained within the isolation station under an order under subsection (1)(d).

(6) Every person who fails to comply with any order made by the Director under subsection (1) or who escapes or attempts to escape from any isolation station, commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units.

## **15 Infecting any person with venereal disease**

Every person who knowingly infects any other person with a venereal disease or knowingly does or permits or suffers any act likely to lead to the infection of any other person with any such disease, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding 1 penalty unit.

## **16 Occupation of suspended or diseased person restricted**

(1) Except with the written permission of the Director, no person who to his own knowledge suffers from any notifiable disease or is a suspected person shall engage, and no person shall knowingly employ any person so suffering or being a suspected person in any of the following occupations, that is to say –

- (a) The handling of food within the meanings of Part 6;
- (b) Any trade, business, or occupation connected with the supply, preparation or distribution of drugs or tobacco in any form;
- (c) Laundry work;
- (d) Tailoring;
- (e) Domestic service;
- (f) Nursing and midwifery;
- (g) Hairdressing;
- (h) Work in any store or shop;
- (i) Driving any vehicle used for passenger services within the meaning of Part 12 of the Transport Act 1965;
- (j) Work on board any ship or vessel;
- (k) Teaching or any other occupation involving close contact with children.

(2) Every person who fails to comply with this section commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units in the case of an individual, and 2 penalty units in the case of a company or other body corporate as employer.

## PART 5

### CARE OF SICK PERSONS OTHER THAN IN HOSPITAL

#### **17 Duty to notify Director of persons in need of care**

Every person who has reason to believe that any other person, whether under his care and responsibility or not, is by reason of age, infirmity, or disease, living in a destitute or insanitary condition or without proper care or attention, shall without delay notify the Director.

#### **18 Treatment by laymen restricted**

No person other than a Medical Officer or a nurse shall apply mechanical restraint to any person of unsound mind without the previous consent in writing of the Director.

#### **19 Change of abode restricted**

No person who is seriously ill shall be removed from any dwelling to any other place (other than the hospital or any isolation station) without the previous consent in writing of the Director.

#### **20 Number of persons in sick room restricted**

(1) Not more than 3 persons shall congregate in a sick room.

(2) Only persons in immediate attendance on a sick person shall sleep in such sick person's room and not more than 2 persons being so in attendance shall sleep in that room at one and the same time.

#### **21 Lighting of fire in sick room restricted**

No fire shall be lighted in a sick room except in a properly constructed fireplace with a chimney attached.

#### **22 Offences**

Any person who fails to comply with this Part commits an offence.

## PART 6

### MANUFACTURE AND SALE OF FOOD

#### *Preliminary*

#### **23 Interpretation**

(1) In this Part, and subject to subsection (2) –

“bakehouse” means any place in which are prepared or baked for sale for human consumption bread, doughnuts, biscuits, cakes or confectionery, and includes any portion of any such premises used for the storage of yeast or flour or the kneading or working of dough;

“Certificate of Registration” includes every renewal of such certificate;

“engaging in the handling of food” means the handling of food as employer or employee or in any capacity whatsoever, whether permanently or temporarily and, if as employee, whether for remuneration or not;

“food” means every article used for food or drink by man other than drugs and water, and includes flavouring matters and condiments as well as every article used in the composition or preparation of food;

“food premises” means and includes –

- (a) any bakehouse or cake-kitchen;
- (b) any meat room;
- (c) any place used for the sale of meat or fish;
- (d) any place used for the storage of retail sale of milk;

- (e) any place used for the manufacture, packing, or sale of ice cream or milk ices;
- (f) any place used for the manufacture or bottling of cordials, syrups, aerated waters, or beverages;
- (g) any other premises or buildings or any room or other part of them or any place in or on which food is handled;

“handling of food” means taking part in the manufacture, preparation, storage, packing, carriage or delivery of food for sale, or in the retail sale of food;

“meat” means the edible parts of any mammal, fish, fowl, crustacean, or mollusc ordinarily used for human consumption and includes any food containing meat;

“sell” includes to barter and also includes to offer or attempt to sell or receive for sale or have in possession for sale or send forward for sale or deliver for sale or cause or suffer or allow to be sold, offered or exposed for sale, but refers only to selling for consumption or use by man, and to sell food includes to supply meals at any restaurant, hotel or boardinghouse;

“vehicle” has the same meaning as in the Transport Act 1965.

(2) Nothing in this Part shall be so construed as to apply to the growing and harvesting of any kind of fruit, vegetable or seed and the transporting of the same as harvested to any place for storage, sale, manufacture, or processing.

### *Registration*

#### **24 Register**

The Director shall compile and keep at his office a record of all registered food premises and of all certificates of registration issued with respect to such premises and also of the fees received.

#### **25 Procedure and certificate of registration**

(1) Application for the registration of any food premises shall be made to the Director and shall contain such particulars as the Director may in any individual case require.

(2) On receipt of an application for registration of any class of food premises the Director, if satisfied that the food premises comply with all the requirements of this Part pertaining to that class of food premises, shall register the food premises and issue to the applicant a certificate of registration for such period of time not exceeding one year, as the Director thinks fit.

(3) Any such certificate may be renewed in the same manner on application made on or before the date of its expiration.

(4) Any certificate of registration shall be posted conspicuously in the food premises to which it relates and a fresh certificate shall be issued on every renewal of registration.

#### **26 Fees**

(1) Cabinet may by public notice prescribe that fees shall be payable for the registration of any specified class or classes of food premises and shall determine the amount of any fee so prescribed.

(2) Every application for registration shall be accompanied by the amount of the fee (if any) so prescribed and determined.

#### **27 Cancellation of registration**

(1) The Director may by notice cancel and endorse any certificate of registration and direct the holder of the certificate to discontinue the handling of food in the food premises on and from a date specified in the notice, if he considers –

- (a) That the certificate had been obtained by a substantially false statement in the application; or
- (b) That the food premises do no longer comply with all the relevant requirements of this Part; or
- (c) That the food premises are not kept as required by this Part or that work is carried out or food handled in the food premises or in connection with the business conducted in the food premises contrary to the provisions of this Part.

(2) If the Director in the exercise of the powers conferred on him by subsection (1) directs the holder of the certificate to discontinue the handling of food he may make his direction known to the public in any way he thinks fit.

(3) Within 5 days of the receipt of such notice the holder of the certificate may file with the Registrar of the Court an application for relief from the requirements of the notice setting forth the extent and grounds of the relief sought.

(4) In hearing and determining any application so filed a Judge shall have and may exercise all the powers which he has in his ordinary jurisdiction and his determination shall be final.

(5) Pending the expiration of the time within which the application for relief may be lodged and the determination of the motion the notice shall be deemed to be suspended.

(6) On hearing the case the Judge may cancel the notice or may confirm it either absolutely or subject to such conditions and modifications as he thinks just.

(7) The power to cancel any certificate of registration under this section may be exercised in addition to any penalty which the holder of the certificate may have incurred under this Act or any other enactment for the time being in force.

## 28 Offences

Every person who engages in the handling of food in any food premises –

- (a) Without first having obtained a certificate of registration with respect to those particular food premises; or
- (b) After the date of expiry of such certificate; or
- (c) In the event of cancellation –
  - (i) If no application for relief is filed, on the expiration of 5 days after receipt of the notice or after the date specified in the notice whichever is the later;
  - (ii) If application for relief is duly filed, after the date on or from which the notice is confirmed by an order of the Court,

commits an offence and, unless he is guilty of contempt of the High Court within the meaning of section 101 of the Niue Act 1966 shall be liable on conviction to a fine not exceeding 0.5 penalty units in the case of an individual, and 2 penalty units in the case of a company or other body corporate and, if there is a continuing one, to a further fine not exceeding 0.5 penalty units for every day on which the offence has continued.

### *Provisions Covering all Classes of Food Premises*

## 29 Requirements of food premises

(1) No food premises shall be opened in any building, premises, or other places which are or have at any time been used for any purpose likely to affect injuriously the cleanliness of the food premises or the food handled in it.

(2) Buildings shall –

- (a) Be well constructed, in good repair, weatherproof, and shall offer no entrance or harbourage for rats, mice and other vermin;
- (b) Have approved means of lighting and ventilation;

(c) Be provided with approved drainage:

Provided that no drain or pipe carrying off faecal matter or sewage shall be approved if it has any opening within the food premises;

(d) When adjacent to any dwelling, be separated therefrom by an approved solid wall.

(3) Floors shall be constructed of approved material suited to the process of work carried out there, and properly graded and drained.

(4) The internal surfaces of all walls shall be finished with an approved material having a smooth even surface capable of being readily cleaned and ceilings shall be of approved design.

(5) All staircases or passages in any food premises or leading to them shall be kept lime-washed or painted with not less than 2 coats of approved paint or varnish.

(6) All food premises shall be provided with –

(a) Approved fly-proof cupboards or other receptacles for all the food or other products of the food premises and with sufficient metal receptacles for waste and refuse;

(b) Tables and benches suitable for handling food and having an approved impervious surface free from cracks and capable of being easily cleaned;

(c) An approved constant supply of clean water, basin, soap and hand towels for the washing of hands of food handlers.

(7) No dust bin shall at any time be placed within any food premises, and no food premises shall be in direct communication with any urinal, privy or water closet, or situated less than fifty yards from any pigsty or from any domestic animal.

(8) No animal shall be kept or allowed to be in any food premises.

(9) (a) No room forming part of the food premises and being used for their purposes shall serve during any period of the day or the night as a sleeping-apartment or as a living-apartment.

(b) Any room forming part of the food premises without being used for their purposes may serve as a sleeping-apartment or as a living-apartment, but if it is situated on the same level with any room used as food premises, only when effectually separated therefrom by a partition extending from the floor to the ceiling and provided with approved ventilation.

(10) All food premises shall be kept scrupulously clean and their grounds kept tidy and free from any accumulation of rubbish or other matter likely to harbour flies and other insects, rats, mice or other vermin.

(11) Food and every implement, article, utensil, tool of trade, bench, fitting, machine or other appliance, and every vehicle used for or in connection with the carriage or delivery of food shall at all times be kept clean and free from dust and foul odours and be protected as far as practicable against the access of flies and other insects, or of rats, mice and other vermin.

(12) All receptacles shall be emptied and cleaned at such intervals as may be necessary to prevent a nuisance arising from their contents and shall be kept covered except when being filled or emptied.

### 30 Medical examination

(1) (a) Every person engaged or taking up engagement in the handling of food shall, before taking up such engagement, and once every year thereafter or at such shorter intervals as the Director may direct, present himself to the Director for a medical examination.

(b) The Director may exempt any person from compliance with the requirements of this section when the nature of his engagement in the handling of food obviates the necessity for such compliance.

(2) Every person, not being so exempted, who fails to comply with this section commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units.

**31 Cleanliness of persons handling food**

(1) Every person shall, while handling food maintain his clothing, his hands, and his body clean and shall, before commencing work and every time after visiting any privy and before resuming work, wash his hands thoroughly with soap and clean water.

(2) No person who is, for the time being, suffering from any skin eruption or who is wearing unclean or medicated bandages shall handle food.

(3) No person shall spit or smoke or chew tobacco while handling food.

*Special Classes of Food Premises*

**32 Additional requirements**

Without limiting in any way sections 29, 30 and 31 the following additional provisions shall apply with respect to the specific classes of food premises described hereinafter.

**33 Bakehouses**

(1) Every bakehouse shall comply in all respects with the requirements hereinafter provided.

(2) The bakehouse shall be provided with a wooden or metal bench and racks, troughs, bins and cupboards of approved design and material for the storage of flour and all other articles of food or ingredients used in baking and all flour and other food shall be placed on a table, bench, shelf, rack, or any other stand or structure well above ground level.

(3) The bakehouse shall be used exclusively for the purpose of baking and for the storage of flour and other articles of food or ingredients for baking and for no other purpose.

(4) Every room or compartment in which flour is stored shall be free from damp, and flour and other food shall as far as practicable be protected from dust, vermin, and insects.

**34 Meat and fish**

(1) All premises used for the preparation of meat or fish for sale and every butcher's or fishmonger's shop for the retail sale of meat or fish and all work in connection therewith shall comply in every respect with the requirements hereinafter provided.

(2) The floor of any building so used shall be constructed of an approved impervious material which shall be carried up the walls to a height of not less than three inches in such a manner that angles between the floor and the walls are concavely rounded off.

(3) All floors shall be thoroughly cleaned with hot water at least once every working day and shall at all times be kept in a state of reasonable cleanliness.

(4) Tables, benches, shelves and all appliances with which meat or fish may come into contact shall, as far as practicable, be impervious to water and shall be kept clean.

(5) Every ventilation opening and every window shall be fitted with a covering of wire gauze or other material suitable for excluding flies.

(6) If required by the Director, a self-closing door shall be fitted in every doorway to such premises or shops so as to exclude flies.

(7) All meat and other articles of food except when being processed shall be adequately protected by storage in a refrigerator or other approved compartment or receptacle from contamination by dust, vermin, or insect.

(8) No bones or waste matter of any kind shall be kept longer than 12 hours in any such premises or shop.

(9) (a) No carcase or portion of a carcase shall, while being transported or delivered to or from any such premises or shop, be deposited on any roadway or wharf or on the deck of any vessel or on any similar surface or place open to traffic, unless the carcase or portion of it, as the case may be, is enclosed in a clean receptacle or cover;

(b) It shall not be necessary to cover any carcase or portion of a carcase that is suspended during transit so that no part of it can rest on such surface or place.

(10) No person shall transport any carcase or portion of a carcase in any vehicle unless it is by any approved method protected from contamination caused by coming into contact with any unclean portion of the vehicle.

(11) No person shall use for the carriage of meat any vehicle or receptacle which is not so constructed as to be easily cleaned and capable of being kept so closed or covered as to protect the meat being transported, from dust, flies and other sources of contamination.

### **35 Ice cream, milk ices and milk**

(1) All utensils used for the manufacture, packing, or sale of ice cream or milk ices and all work in connection with it shall comply in every respect with the requirements hereinafter provided.

(2) All appliances with which any ice cream or milk ice may come into contact during its preparation, manufacture, or packing, shall be cleaned and sterilised by steam, boiling water, or other approved method at least once each working day.

(3) No person shall manufacture, store, or deposit any ice cream or milk ice for sale, or store, or deposit the ingredients thereof or any milk in any vessel which is not clean.

(4) No person shall use for transporting ice cream, milk ices, or milk any vessel unless such vessel is so constructed as to permit of every part of its interior being seen and adequately cleaned, and unless it is provided with a lid or covering which protects the interior from dust, rain and contamination.

(5) Ice cream and milk ices for sale shall be kept in a separate compartment of a refrigerator or in a separate approved container within a refrigerator and any such compartment or container shall at all times be kept clean.

(6) No other kind of food or any other substance shall be placed or kept in any compartment or container –

(a) Containing at the same time ice cream or milk ices; or

(b) Not containing any ice cream or milk ices for the time being, but to be used again for containing the same.

(7) All dishes and servers used in the retail sale of ice cream and milk ices shall be made of metal and shall have no moving parts and shall, when not in actual use, be kept either in clear water or free from water in an approved covered receptacle made of impervious material and capable of being easily cleaned and sterilised.

(8) Ice cream, milk ices, and the cones or wafers or other containers in which ice cream or milk ices are sold, shall at all times be protected from contamination by dust and by flies and other insects.

(9) No person engaged in the manufacture, or packing, or in the sale of ice cream or milk ices shall permit his hands or arms, or any part of his clothing, to come into contact with any ice cream or milk ice.

(10) No person shall sell any ice cream or milk ice which, after having been once frozen, has run down or melted and has again been frozen.

*Miscellaneous Provisions*

**36 Special powers of Director**

(1) The Director shall have power –

- (a) To enter, inspect and examine at all reasonable times by day or night any food premises or any vehicle used in connection with the handling of food and to examine any food and any utensil used in the handling of food;
- (b) To make such examination or inquiry and to take such samples of any food as he deems necessary for the control of compliance with this Part;
- (c) To seize any food that in his opinion is unfit for human consumption.

(2) On seizing any food the Director shall forthwith apply to the Court for an order of forfeiture.

(3) (a) Without limiting section 69 and section 70 the Court on hearing the application may make such order as it thinks just for the restoration of any food seized or may order that the food shall be forfeited and any such food shall be forfeited to the Crown accordingly and may be disposed of in such manner as the Court directs.

(b) The Director may order any food seized to be destroyed prior to the making of a Court order when the food is so decayed or putrefied that its restoration is not reasonably practicable.

**37 Unlawful handling of food**

Every person commits an offence who handles food in any food premises, whether registered or not, which do not comply with all the relevant requirements of this Part or who handles food in a manner contrary to the requirements of this Part.

**38 Sale of unwholesome provisions**

Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding one month or to a fine not exceeding 0.5 penalty units who sells, or exposes for sale, or has in his possession with intent to sell, any food or drink which he knows or might by the exercise of reasonable care have known to be unwholesome.

**39 Unlawful interference with food and food premises**

Every person not being a person engaged in the handling of food, who –

- (a) Interferes without lawful excuse with any food or the handling of it or with any thing or matter used in the handling of food so as to prevent any provisions of this Part from being complied with;
- (b) Who urinates, spits, smokes or chews tobacco in any food premises, commits an offence.

**PART 7**  
**SANITATION (BUILDINGS AND DWELLINGS)**

**40 Interpretation**

In this Part –

“building” means public buildings and business buildings;

“business building” means and includes –

- (a) Every shop, workshop, warehouse, store and other place in which goods are kept or exposed or offered for sale to dealers therein or to the public;
- (b) Every office or place in which business of any description is transacted and to which the public have access for that purpose;  
but, subject to section 49 does not include food premises within the meaning of Part 6;

“dwelling” means any structure, whether permanent or temporary, used for human habitation and includes any cookhouse belonging to the dwelling;

“public building” means –

- (a) Every building used as an assembly room or used for the purpose of public worship or public meetings;
- (b) Every building provided for the instruction, training, or use of the pupils of any school.

**41 Requirements of buildings**

Every building shall comply to the satisfaction of the Director with the following requirements –

- (a) Every room in any building shall be provided with means of ventilation so as to admit of a sufficient supply of fresh air and carry off and render harmless, as far as practicable, all fumes, gases, vapours, dust and other impurities arising from the use of the building;
- (b) Every room in any building shall be lighted to the extent that the Director considers necessary for the purpose for which such room is used;
- (c) Every part of any building shall be day by day kept in a clean state so as not to be injurious to health;
- (d) Every building and land belonging to such building shall be kept free from any leakage in any drain or sanitary convenience and from any other nuisance which is offensive or likely to be injurious to health;
- (e) All land, sheds, and other outbuildings belonging to any building shall be kept in a state of reasonable cleanliness and refuse and rubbish shall be disposed of from time to time as circumstances require.

**42 Offences (buildings)**

(1) Every person who is responsible for compliance with section 41 (whether by law or by contract and whether by reason of his trade, occupation, office or employment) and who makes default in such compliance commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units and, if the offence is a continuing one, to a further fine not exceeding 0.5 penalty units for every day on which the offence has continued.

(2) Every person who does any act or thing likely to impair or lower the state of sanitary condition in any building commits an offence.

**43 Requirements of dwellings**

Every dwelling shall comply to the satisfaction of the Director with the following requirements –

- (a) The dwelling shall be provided with sufficient ventilation and approved natural lighting;
- (b) The dwelling including its movable contents shall be kept reasonably clean. All bedding and mats shall be regularly aired and gravel or leaf floors shall be renewed as circumstances require;
- (c) The dwelling shall be provided with a properly built and maintained latrine. Pit latrines shall be placed not less than twenty feet from any dwelling, building, or public place. Water seal latrines and septic tanks shall be placed not less than 10 feet from any dwelling, building or public place. Every latrine shall be kept thoroughly clean at all times;
- (d) Any enclosure for animals or birds belonging to the dwelling shall be placed not less than 66 feet from the dwelling and shall be properly kept and maintained;
- (e) Every dwelling and land belonging to such dwelling shall be kept free from any leakage in any drain or sanitary convenience and from any other nuisance which is offensive or likely to be injurious to health;
- (f) All land, sheds, and other outbuildings belonging to the dwelling shall be kept in a state of reasonable cleanliness and refuse and rubbish shall be disposed of as circumstances require.

**44 Overcrowding of dwellings prohibited**

The Director may by notice limit the number of persons who may sleep in one and the same room of any particular dwelling and for the purposes of this Part every dwelling shall be deemed to be overcrowded if the number of persons sleeping at the same time in any room exceeds the maximum number specified in the notice.

**45 Offences (dwellings)**

(1) Every person who uses or permits to be used any dwelling shall be responsible for compliance with this Part relating to dwellings and every person who uses or permits to be used any dwelling which does not comply with the requirements of section 43 or which is overcrowded commits an offence and, on conviction as provided in this section, shall be liable to a fine not exceeding 0.5 penalty units.

(2) Except as provided in subsection (3) on the hearing of any information laid against any such person under this section, a Judge after hearing the evidence shall, if the evidence supports the information, make an order directing the offender to comply with every provision in respect of which default has been made, within a time specified in the order and shall adjourn the hearing until some day after the time so specified and on such adjourned hearing shall not convict the offender unless he has wilfully failed to comply with the order made on the first hearing.

(3) If at any hearing of the information it is made to appear to the satisfaction of the Judge that the neglect or omission in respect of which the information is laid, was due to the physical incapacity of the offender or that compliance with any requirements of section 43 or section 44 is liable to involve undue hardship to the offender, the Judge may grant to the offender such exemption from the requirements of those sections or, as the case may be, such extension of time for compliance with them as, having regard to all the circumstances of the case, appears just and reasonable and any such exemption or extension may be so granted subject to any condition which the Judge deems fit to impose.

**46 Enforcement order (buildings and dwellings)**

In every case where –

- (a) Default is made in complying with any requirements of section 41 or section 43; and
- (b) The person responsible for so complying has departed from Niue without appointing any attorney, agent, or trustee to act in his stead in respect of his duties and liabilities under those sections,

the Judge, on application made by the Director, may make an order (an enforcement order) directing the Director of Works to enter upon the land and the dwelling or building, as the case may be, and, at the expense in all things of the responsible person, to carry out such work required by those sections and specified in the order as appears necessary in the interest of the community, and the amount of all such expenses shall be recoverable from that person as a debt due to the Crown.

**47 Closing order (buildings and dwellings)**

(1) If any building or dwelling is, by reason of its state of disrepair or for any other reason likely to be injurious to health, a Judge of the Court, on application made by the Director may, after hearing such evidence as he deems fit, make an order (a closing order) prohibiting the use or occupation of the dwelling or building or any part of it as the case may be, until the repairs, alterations, or other works specified in the closing order have been carried out by the person or persons named in the order to the satisfaction of the Director.

(2) The Judge shall, in the closing order, state the date on or before which the works specified in the order shall be carried out and shall adjourn the hearing until some day as soon as practicable after the time so specified.

(3) On such adjourned hearing –

- (a) If a certificate issued by the Director is produced to the effect that the works specified in the closing order have been carried out to his satisfaction the Judge shall revoke the closing order;
- (b) If no such certificate is produced the Judge may extend the time specified in the closing order and adjourn the hearing accordingly or make an order directing the Director of Works to enter upon the land and the dwelling or building, as the case may be, and, at the expense in all things of the person or persons named in the closing order to carry out the works specified in the closing order and the amount of all such expenses shall be recoverable from that person or those persons as a debt due to the Crown.

(4) In any order made under subsection (3) (b) the Judge shall declare that the closing order shall cease to have any force and effect on the issue of a certificate signed by the Director of Works that he has carried out the works specified in the closing order.

(5) The certificate so issued shall be handed over to the person or persons named in the closing order and a copy shall be filed with the Registrar of the Court.

**48 Demolition order (buildings and dwellings)**

(1) If any dwelling or part of it is permanently unfit for human habitation or any building or part of it is permanently unfit for use or occupation, a Judge, on application made by the Director, may, after hearing such evidence as he deems fit, make an order (a demolition order) prohibiting the use or occupation of the dwelling or building or any part of it, as the case may be, and requiring the person or persons named in the order to take down and remove any structure specified in the order to the satisfaction of the Director.

(2) The Judge shall, in the demolition order, state the date on or before which the works specified in the order shall be carried out and shall adjourn the hearing until some day after the time so specified.

(3) On such adjourned hearing –

- (a) If a certificate issued by the Director is produced to the effect that the works specified in the demolition order have been carried out to his satisfaction, the Judge shall dismiss the case;
- (b) If no such certificate is produced the provisions of section 47 (3) (b) shall apply with all necessary modifications.

(4) On completing the works as directed the Director of Works shall file with the Registrar of the Court a statement to the effect that the works have been so completed.

(5) The provisions of this section shall, with all necessary modifications, apply to the removal and destruction of any mat or other household article or of any business utensil.

(6) If any building or dwelling described in subsection (1) is deserted or if for any other reason no order under that subsection can be made, the Judge, on application made by the Director may, after hearing such evidence as he deems fit, make an order directing the Director of Works to enter and to demolish as provided in subsection (4) (b) and such provisions of this section as are applicable shall then apply with all necessary modifications.

**49 Closing orders and demolition orders to apply to food premises**

Notwithstanding section 40, section 47 and section 48 shall apply to all classes of building including food premises within the meaning of Part 6.

**PART 8**

**50-53 [Repealed]**

**PART 9**

**54-59 [Repealed]**

**PART 10**

**METHYLATED SPIRIT**

**60 Interpretation**

In this Part –

“methylated spirit” means any spirit which has been mixed with methyl-alcohol or with wood spirit, or to which any other substance has been added that has the like effect as methyl-alcohol or wood spirit in rendering such spirit unsuitable for human consumption and includes any spirit from which methyl-alcohol, wood spirit or such other substances has been unlawfully removed;

“spirit” means and includes alcohol and every other description of spirituous liquor.

**61 Offences**

Every person who consumes or attempts to consume or supplies to any other person for the purpose of consumption methylated spirit, whether such spirit has been subjected to any process of purification or not, and whether alone or in solution with any other liquid, or who has any such methylated spirit or solution containing methylated spirit in his possession for the purposes of consumption by himself or by any other person, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 months.

PART 11  
MISCELLANEOUS PROVISIONS

**62** [Repealed]

**63 Powers of High Court in respect of certain orders under this Act**

(1) In hearing and determining any application made by the Director for any enforcement order or for a closing order or a demolition order under this Act, a Judge shall have and may exercise all the powers which he has in his ordinary jurisdiction and his determination shall be final.

(2) The power to make any of the orders mentioned in subsection (1) may be exercised in addition to any penalty inflicted on any person for non-compliance with this Act or any other enactment for the time being in force.

**64 Language of public notice and notices**

(1) Every public notice given under this Act shall be in both the English and Niuean languages.

(2) All other notices, orders, forms, or other documents used for the purposes of this Act shall be in the English or Niuean language, or in both languages as circumstances require.

**65 Serving of notices and orders**

Where any notice has to be given or any order to be issued under this Act such notice or order may be served either by delivering the same personally to the person on whom it is to be served or by leaving the same at his usual place of abode or by posting the same either by ordinary letter or, where it is necessary or desirable that proof of the date of receipt be ensured, by registered letter, addressed to him at his usual place of abode or, as circumstances require, by affixing the same in some conspicuous place on the land to which it relates.

**66 Protection of persons acting under authority of Act**

No person who, while exercising any powers conferred on him by this Act, in good faith does or orders or causes to be done any act in pursuance or intended pursuance of any of the provisions of this Act shall be under any civil or criminal liability in respect of that.

**67 Compensation**

(1) No person injuriously affected by any act done in the exercise of any powers conferred by this Act shall be entitled to compensation.

(2) No person injuriously affected by the total or partial destruction of any building, dwelling, or thing under a demolition order under section 48 shall be entitled to compensation, if such destruction was necessary by reason of any default made in complying with this Act.

(3) If such destruction was necessary in the interest of public health and without any default so made, any person injuriously affected by it, shall be entitled to compensation from the Crown for any loss which he may have suffered as a result of such destruction.

(4) Any compensation claimed under subsection (3) shall be assessed and awarded by the Court and no compensation shall be assessed in excess of the actual market value of the building, dwelling (or part of it) or thing in respect of which the claim is made.

(5) In hearing and determining any claim for compensation a Judge shall have and may exercise all the powers which he has in his ordinary jurisdiction and his determination shall be final.

(6) Any compensation awarded to any person under this section shall constitute a debt due to him by the Crown and shall be payable out of the appropriate account of the public revenues of Niue.

**68 Other Acts not affected**

Nothing in this Act shall be so construed as to limit or derogate from the provisions of any other Act providing for building permits or for minimum requirements and the control of dwellings or buildings in respect of construction, sanitation, maintenance, repair or in any other respect.

**69 Offences (general)**

Every person commits an offence who –

- (a) Fails to comply with any order, notice or direction given to him by the Director under this Act;
- (b) Wilfully obstructs, hinders, or resists the Director of Works or any other person in the execution of any power conferred on either of those officers or that person by this Act;
- (c) Offends against or fails to comply with any condition, duty, or obligation imposed on him by this Act;
- (d) Does or omits, or causes or knowingly permits or suffers to be done or omitted, any act, matter or thing contrary to this Act;
- (e) Knowingly makes a substantially false statement in any application or in connection with any information which he may be required to furnish under this Act.

**70 Penalties (general)**

Every person who commits an offence against this Act for which no penalty is otherwise provided in this Act or in the Criminal Law Code, is liable to a fine not exceeding 0.5 penalty units.

**71 Laying poison**

Every person is liable to a fine of 0.5 penalty units who without lawful justification places any poison in any place so as to be a source of danger to human beings or to animals.

**72 Storage of drugs**

(1) For the purposes of this section, the term “drug” (as defined in section 11) includes –

- (a) Soaps and dusting powders; and
- (b) Disinfectants, germicides, antiseptics, and preservatives used for any purposes.

(2) Every person who has in his store or possession any drug for sale shall store it in such a manner that the container is protected from damage and shall do all things reasonably necessary to ensure that the contents are protected from deterioration.

(3) Every person commits an offence who knowingly sells or offers for sale any drug which has so deteriorated as to be harmful or dangerous to health.

(4) The provisions of section 36 shall apply with all necessary modifications.

(5) The Director may seize any drug which is or appears to be unwholesome, unclean, damaged, deteriorated, perished, or injurious to health, or which contains any decomposed organic substance.

(6) On seizing any drug as aforesaid the Director shall forthwith apply to the Court for an order of forfeiture.

(7) Without limiting the provisions of section 69 and section 70 the Court on hearing the application, may make such order as it thinks just for the restoration of any drug seized or may order that the drug shall be forfeited and any such drug shall be forfeited to the Crown accordingly and may be disposed of in such manner as the Court directs.

**73** [Spent]

**74 Application of fees and fines**

All fees, fines and other moneys received under this Act shall form part of the public revenues of Niue and shall be paid into the appropriate account.



# PUBLIC NOTARIES ACT 1998

1998/236 – 28 March 1994

1	Short title	4	Role of public notaries
2	[Spent]	5	Offence
3	Cabinet may appoint public notaries	6	[Spent]

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## To provide for the appointment of public notaries

### 1 Short title

This is the Public Notaries Act 1998.

### 2 [Spent]

### 3 Cabinet may appoint public notaries

- (1) Cabinet may appoint a person to hold the office of public notary if it is satisfied that the person –
- (a) Is of good fame and character; and
  - (b) Is competent to act as a public notary.
- (2) A person holds the office of public notary at the pleasure of Cabinet.

### 4 Roll of public notaries

- (1) The Clerk to the Cabinet must maintain a roll of public notaries and enter on it the name of each person who for the time being holds the office of public notary.
- (2) The Clerk to the Cabinet must make the roll of public notaries available for inspection by any person during normal office hours.

### 5 Offence

A person –

- (a) Who performs in Niue any act, matter or thing pertaining to the office, function or practice of a public notary; and
  - (b) Whose name is not on the roll of public notaries,
- is guilty of an offence and is liable on conviction to a fine not exceeding 5 penalty units.

### 6 [Spent]



# PUBLIC REVENUES ACT 1959

1959/1 – 1 October 1959

- 1 Short title
- 2 Interpretation

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- 43 Meaning of a "deficiency or loss"
- 44 Deficiency or loss of public money or public stores
- 45 Surcharge
- 46 Appeal to High Court
- 47 Set-off

## To make provision for the control of public moneys and public securities of Niue

### 1 Short title

This is the Public Revenues Act 1959.

### 2 Interpretation

In this Act –

"accounting officer" means any person who by any enactment, or appointment is required to render any account, or who is charged with the duty of collecting or

receiving, or who does actually collect or receive, any public money, or who is charged with the duty of disbursing, or who does actually disburse, any public money, or who is charged with the receipt, custody or disposal of or the accounting for public stores or other public property;

“imprestee” means a person in whose hands any public money is placed for expenditure in the public service;

“public money” means money or securities of any kind for the payment of money, received for or on account of, or payable, or belonging to, or deposited with the Government or any Department or agency of the Government, and includes public securities;

“public securities” means securities representing the investment of any public moneys;

“public stores” means chattels, machinery, livestock, or buildings in the possession of or under the control of any person or department on account of the Government.

## PART 1 THE TREASURY

### 3 Administration of Act

Subject to the direction of Cabinet, the Financial Secretary shall be charged with the administration of this Act.

### 4 Appointment of Financial Secretary

On the occurrence from any cause of a vacancy in the office of Financial Secretary (whether by reason of death, resignation, or otherwise) and in the case of absence from duty of the Financial Secretary (from whatever cause arising) and so long as any such vacancy or absence continues, the Public Service Commission may appoint an officer of the public service to act as Financial Secretary and such officer shall have and may exercise all the powers, duties and functions of the Financial Secretary and the fact that he exercises such powers, duties and functions shall be conclusive evidence of his authority to do so.

### 5 Financial Secretary may delegate

(1) The Financial Secretary may in writing either generally or particularly, delegate to such officer or officers of the Treasury as he thinks fit all or any of the power exercisable by him under this or any other Act, but not including this present power of delegation.

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

(3) Any person purporting to act under any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(4) Any delegation under this section may be made to a specified officer or to officers of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.

(5) Every delegation under this section shall be revocable at will and no such delegation shall prevent the exercise of any power by the Financial Secretary.

(6) Every such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Financial Secretary by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that Financial Secretary.

**6 Accounting officers**

(1) The Financial Secretary by writing under his hand, either generally or particularly authorise any accounting officer stationed within or outside Niue to receive any public moneys, and to give any receipts or acknowledgements in respect of any such money and to endorse any cheque, draft, bill or other negotiable instrument received in respect of such money.

(2) Any accounting officer receiving any money under any authority conferred upon him by the Financial Secretary shall pay the money into such bank or to the credit of such account as the Financial Secretary directs.

(3) Subject to any general or special directions given or conditions attached by the Financial Secretary, an accounting officer on whom authority is conferred under this section may exercise that authority in the same manner and with the same effect as if it had been conferred on him directly by this section and not by delegation.

(4) Every person purporting to act under any authority under this section shall be presumed to be acting under the terms of the authority in the absence of proof to the contrary.

(5) Any authority under this section may be given to a specified officer or to officers of a specified class, or may be given to the holder or holders for the time being of a specified office or class of offices.

(6) Every authority given under this section shall be revoked at will, and no such authority shall prevent the exercise of any power by the Financial Secretary.

(7) Every such authority shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Financial Secretary by whom it was given may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that Financial Secretary.

**7 Financial Secretary to be member of boards**

(1) Notwithstanding anything to the contrary in any other Act, the Financial Secretary shall be deemed to be a member of any board or other body of which Cabinet directs the Financial Secretary shall be a member, being a board or other body charged with the control of investment of public money or of any other money administered by any department of the Government.

(2) In the absence of the Financial Secretary from any meeting of any such board or other body, he may authorise any other officer of the Treasury to attend the meeting in his stead. The fact that any other officer of the Treasury attends and acts as a member of any board at any meeting shall be conclusive proof of his authority to do so.

**PART 2**

**NIUE GOVERNMENT ACCOUNT**

**8 Public money is to be kept in Government Account**

(1) All public money is the property of Government and shall, except as herein otherwise provided, be kept in one account called the Niue Government Account.

(2) The Financial Secretary may authorise the payment of any public money to a bank account either by way of fixed deposit or current account.

(3) All money paid into the Niue Government Account or into any bank account shall be deemed to be public money, the property of Her Majesty, or to be money lent by Her Majesty to the Bank, and may not be removed from it except as provided in this Act.

**9 Government Account**

The Niue Government Account shall consist of –

- (a) The Appropriation Account comprising the accounts of all departments of the Government to which shall be carried the revenues of Niue;
- (b) Every separate fund, account, or subsidiary account which by any Act, or regulation is directed to form part of the Niue Government Account or which, after notice to the Audit Office, the Financial Secretary may open and keep with intent to make better provision for accounting for money in the Niue Government Account.

**10 Power of investment**

(1) The Financial Secretary may invest or cause to be invested any balance of the Niue Government Account, or any part of it, and may sell and convert or cause to be sold and converted into money, any securities obtained through such investments.

(2) Any investments made under this section shall be for such periods as may be determined by the Financial Secretary and shall be by way of fixed deposit with a bank in New Zealand, or by deposit in a Post Office Savings Bank, or in such securities as are authorised in New Zealand for the investment of public money.

(3) All such investments shall be charged against a separate account to be called the Niue Assembly Cash Investment Account, and the interest earned on it shall be credited to the Niue Government Account and credited to such funds or accounts within the Niue Government Account as the Financial Secretary determines.

(4) All money received upon the sale or conversion of any security or upon the expiration of the period or periods for which money is placed on fixed deposit at a bank shall be credited to the Niue Assembly Cash Investment Account and shall become part of the general funds of the Niue Government Account unless invested for a specific purpose when the money shall be applied for that purpose.

**11 Money collected for private persons**

(1) Whenever, by virtue of any agreement made by the Government and any person or body, money due to that person or body is collected by the Financial Secretary, or by some officer acting on his behalf, that money shall be deemed to be and shall be dealt with as public money within the meaning of this Act; and that money or so much of it as becomes payable shall without further appropriation than this section, be issued and paid to that person in such proportions, in such manner, and at such times as may be set forth in such agreement.

(2) The Government shall not be liable to any such person for any money so payable into the Niue Government Account or into any separate Fund or account, except for money actually collected under any such agreement.

**12 Deposits and trust money**

(1) The following shall be deemed to be public money within the meaning of this Act –

- (a) Money deposited with any accounting officer pending the completion of a transaction whereby the money may become payable to the Government or repayable to the depositor or any other person;
- (b) Money paid into Court by virtue of any Act, rule or authority whatsoever;
- (c) Money payable to the Government in trust for any purpose.

(2) All such money shall be either paid into the Niue Government Account or otherwise dealt with and accounted for by the person having custody of it as the Financial Secretary, subject to this Act and to any rules made under it, directs.

- (3) (a) The Financial Secretary may, without further authority than this section, invest any particular sum or sums of such public money by way of deposit with the Post Office Savings Bank or with any bank in Niue.
- (b) The investment of any such sum or sums and the period of investment shall be at the absolute discretion of the Financial Secretary and no person shall have any right of action against him or against the Government in respect of the investment or the noninvestment of any such money.
- (c) When any such sum or sums become repayable to the depositor or other person entitled to it there shall be added the amount of the interest certified by the Financial Secretary to have been earned .
- (d) The Financial Secretary may reduce the amount of interest so payable by the reasonable cost of arranging or administering the investment.

**13 Unclaimed deposits and trust money**

Every sum of public money to which section 12 relates which is unclaimed for a period of one year after having become payable to the depositor or other person entitled to it shall, with accrued interest (if any) on it, be transferred to and form part of the Niue Government Account; but the Financial Secretary may issue and pay the same at any time to any claimant who establishes his claim to it to the satisfaction of the Financial Secretary.

**PART 3**  
**APPROPRIATION OF PUBLIC MONEY**

**14-18 [Repealed]**

**19 Overexpenditure of items**

(1) Where the head of any department of the Government is of the opinion that the amount provided in the estimates for any item will be insufficient to meet expenditure chargeable to that item, he shall report the particulars to the Financial Secretary who, having regard to the circumstances of the case, may authorise the over-expenditure of the amount provided for that item.

(2) No approval given under this section shall in itself authorise a department to overspend the amount appropriated to any vote.

**20 [Repealed]**

**21 Payments for which no specific appropriation**

When any vote specified in an Appropriation Act contains an item for contingencies, that item shall be deemed to be an appropriation for expenditure on purposes other than those of the other items of the vote.

**PART 4**  
**THE PAYMENT OF PUBLIC MONEY**

**22 Authority for payment**

The annual Appropriation Act shall be the authority for the payment of money from the Niue Government Account.

**23 Imprests**

(1) Public money may be issued by way of imprest from the Niue Government Accounts to such officers or to such accounts as the Financial Secretary authorises for the payment of amounts payable by the Government.

(2) The Financial Secretary may in such cases as he thinks fit authorise an imprest or official account to be opened and operated in the name of an officer, either personally or by his official designation or in the name of an officer.

(3) With the prior approval in writing of the Financial Secretary more than one officer may be authorised to operate on any such account.

**24 [Repealed]**

**24A Rounding off transactions**

(1) (a) Notwithstanding any other provision of this Act or any other Act, the Financial Secretary may, when levying any fee, levy, duty or impost, or making any assessment, or payment, round off the total amount charged, levied, assessed or paid (as the case may be) to the nearest multiple of 5 cents.

(b) Any amount rounded off under this section shall be rounded off in favour of the person so charged, levied, assessed, or paid.

(2) Where under subsection (1) any amount is paid to any person in excess of the amount which, but for this section, that person shall have been entitled to, such excess amount shall be deemed to have been written off as if it were written off under section 37.

**PART 5**  
**ANNUAL ACCOUNTS**

**25 Financial Secretary to furnish**

(1) As soon as possible after the close of the financial year, the Financial Secretary shall furnish to Cabinet a statement of receipts and payments for that year together with separate income and expenditure accounts and balance sheets for such activities, institutions or services of a commercial nature as Cabinet directs.

(2) Subject to the concurrence of the Audit Office, Cabinet may direct that the commercial accounts and balance sheets prepared in terms of subsection (1) shall be made up as at such date as he thinks fit.

(3) Such annual accounts are to be transmitted forthwith to the Audit Office and, when finally certified by the Audit Office, are to be presented to the Assembly together with the report of the Audit Office on them.

**PART 6**  
**OFFENCES**

**26 False declarations**

Every person who makes any declaration or gives any certificate required to be made or given by this Act, or by any regulations or rules made under it, knowing it to be false, shall be liable on conviction to imprisonment or a term not exceeding 6 months or to a fine not exceeding 2 penalty units, or to both.

**27 Neglect to pay money into account**

(1) Every person who refuses or neglects to pay any public money into the account into which it is payable shall be liable on conviction to a fine not exceeding 2 penalty units.

(2) Every person who refuses or neglects to make any return or furnish any account, vouchers, or other papers which he is required to make or furnish under this Act, or under any rules or regulations made under it, shall be liable on conviction to a fine not exceeding 0.5 penalty units.

**28 Failure to appear for examination or produce accounts**

Every person who fails to attend at the time and place required of him by any person under this Act for the purpose of being examined, or who fails to produce any accounts, books, vouchers, or papers in his possession or under his control which he is so required to produce, or who refuses to be sworn or to answer any lawful question shall be liable on conviction to a fine not exceeding 2 penalty units.

**29 General penalty**

Every person who is guilty of any wilful act of commission or omission contrary to any provision of this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding 1 penalty unit.

**30 Fines recoverable**

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

**PART 7**  
**GENERAL PROVISIONS**

**31-31A [Repealed]**

**32 Suppression in case of death or bankruptcy**

On the death, resignation or removal of any accounting officer the balances remaining at the credit of his public or official account shall on the appointment of his successor vest in and be transferred to the public or official account of the successor, or otherwise dealt with as the Financial Secretary directs; and on the death, bankruptcy, or insolvency of any such accounting officer those balances shall not constitute assets of his estate or be in any manner subject to the control of his legal representative, assignee, or trustee.

**33 [Repealed]**

**34 Recovery of money not accounted for**

Every accounting officer or person into whose hands or under whose control any public money or stores come shall be deemed to owe to the Government all such money or the value of all such stores for which he has not accounted in such manner as the Financial Secretary may direct; and all such money or the value of all such stores shall be recoverable as money due to the Crown.

**35 Financial Secretary's instructions**

All accounting officers and other persons concerned in the collection, receipt, custody or expenditure of public money or stores shall, subject to the provisions of this Act and to any rules or regulations made under it, observe instructions issued by the Financial Secretary with respect to public money or public stores or to accounting for the same.

**36 Regulations and rules**

Cabinet may make all such rules or regulations as it deems necessary or expedient for the purpose of giving full effect to this Act and for the due administration of it, and in particular for all or any of the following purposes –

- (a) For regulating the collection, receipt, custody, banking, issue, expenditure, care and management of public money, and generally for the guidance of all persons concerned with it;

(b) For regulating the purchase, safe custody, issue, sale or other disposal, or writing off of public stores and for rendering accounts of public stores.

**37 Irrecoverable losses**

(1) Except as provided by this section the authority of the Assembly shall be obtained before any losses of public money or stores are finally written off: Provided that this section shall not apply to any money the payment of which has been remitted under any statutory authority or by any Court or other tribunal or to any normal and unavoidable losses of stores.

(2) If any dispute arises as to what constitutes a normal and unavoidable loss in respect of any stores or class of stores for the purpose of this section, the decision of Cabinet shall be binding on all parties.

**38 Public stores**

This Act, and of any regulations or instructions made under it in their application to public money with any necessary modifications apply to public stores.

PART 8  
PUBLIC SECURITIES

**39 Custodians**

The Financial Secretary and one other person to be appointed by Cabinet shall be the custodians of public securities.

**40 Annual statement of investments**

(1) There shall be included in the annual accounts for each financial year a statement of public securities showing details of public securities held at the commencement of that financial year, acquired or disposed of during that year and held at the close of it.

(2) Such statement shall be presented to the Niue Assembly together with the annual accounts when audited.

**41 Taking and release of securities to the Crown**

(1) Wherever security is taken in respect of an advance of public money, unless any enactment provides otherwise, the security shall be given to or taken in the name of Her Majesty.

(2) Where any security is vested in Her Majesty Cabinet may, on behalf of Her Majesty, exercise any powers, functions, and rights (including any power of disposal) and undertake and perform any liabilities, in respect of or in connection with the security which could be exercised, undertaken or performed by Her Majesty.

**42 Expenditure for protection of public securities**

(1) (a) Subject to this section, money may be expended out of any fund or account of the Niue Government Account for the protection, preservation and improvement of any real or personal property on the security of which any money in that fund or account has been lawfully invested.

(b) The authority conferred by this section may be exercised notwithstanding the prior exercise in respect of the mortgaged property of any power of sale or of entry into possession.

(2) The authority conferred by this section shall extend to authorise the expenditure out of any fund or account as aforesaid of money required for the planting of any land, the employment of labour on it, the making of further advances to

mortgagors, the carrying on of any farming business, and for such other purposes as may be considered necessary to prevent or minimise any loss on the realisation of any securities as aforesaid.

(3) All money expended under this section shall be paid out of money appropriated for the purpose by the Assembly.

(4) No amount shall be expended under this section in respect of any property without the specific approval of Cabinet.

(5) This section is in addition to and not in substitution for any powers or authorities conferred otherwise than by or under this section.

**PART 9**  
**SURCHARGES**

**43 Meaning of “deficiency or loss”**

In this Part, “deficiency or loss” means –

- (a) Any deficiency or loss of, or failure to fully and properly account for, public money or public stores, by reason of –
  - (i) The wilful or negligent omission of any person or persons to collect, receive, or account for any public money or public stores; or
  - (ii) The application and charging of any public money to any service or purpose for which it was not legally available or applicable; or
  - (iii) The payment of any public money without proper authority or without being properly vouchered; or
  - (iv) The failure to comply with any enactment or any rules or instructions made or issued pursuant to any enactment;
- (b) Any deficiency or loss of public money or public stores, or expenditure of public money, or damage to public stores, or expenditure for the replacement or repair of public stores caused through –
  - (i) The fraud, default or neglect, or improper or unauthorised use by any person or persons;
  - (ii) The failure of any person or persons to comply with any enactment, or any rules or instructions made or issued under any enactment.

**44 Deficiency or loss of public money or public stores**

Where there has been a deficiency or loss of public money or public stores, the permanent head or administrative head, as the case may be, of the Government department or Government agency responsible for the money or stores shall, as soon as practicable after the deficiency or loss occurs, report the matter to the Financial Secretary.

**45 Surcharge**

(1) If it appears to the Financial Secretary that there has been any deficiency or loss in respect of any public money or public stores, the Financial Secretary may, by notice in writing require any person who appears to the Financial Secretary to be in default or responsible for such deficiency or loss, to show cause why he should not be surcharged with the amount of deficiency or loss.

(2) Every notice given under subsection (1) shall –

- (i) Specify the amount of the surcharge; and
- (ii) Include a statement of the grounds on which it is considered the person is liable to be surcharged; and
- (iii) State the date (being a date not less than 14 days from the date of the notice) by which the person is required to show cause why he should not be surcharged.

(3) Where any amount of any deficiency or loss cannot be accurately determined, the Financial Secretary may estimate the deficiency or loss and, in the absence of proof to the contrary, that estimate shall for all purposes be deemed to be correct.

(4) On receipt of an explanation by a person who has been required to show cause why he should not be surcharged, or, where the Financial Secretary is satisfied on reasonable grounds that the notice given under subsection (1) has been received by the person, then in default of any such explanation, the Financial Secretary shall, if he considers that the circumstances warrant it –

- (a) Surcharge the person for the amount of the deficiency or loss or such lesser amount as he thinks fit; and
- (b) Notify the person surcharged in writing of the date by which the surcharge must be satisfied.

(5) Where the Financial Secretary is of the opinion that 2 or more persons are responsible for any deficiency or loss, he may surcharge each person for the full amount of the deficiency or loss, and in that event, those persons shall be jointly and severally liable for such amount.

(6) The Financial Secretary may revoke, or reduce the amount of any surcharge made under this section.

(7) The amount of any unsatisfied surcharge under this section shall be a debt due to the Crown by the person surcharged, and may be recovered accordingly in the Court, or by way of set-off as provided for in section 47.

(8) If the Financial Secretary so directs, no money (other than salary or wages) payable to or claimed by a person surcharged under this section shall be paid to him by the Crown until the surcharge has been satisfied.

(9) Nothing in this section shall prevent the recovery without surcharge from any person liable to be surcharged, of the amount of any deficiency or loss, or of such part of it as the Financial Secretary thinks fit, as a debt due to the Crown.

(10) All money recovered under this section shall be paid into the account which suffered the deficiency or loss in respect of which the surcharge was made.

## **46 Appeal to High Court**

Any person who has been surcharged under section 45(4)(b), and who is dissatisfied with the surcharge, may within 21 days after the date of service on him of notice of the surcharge, appeal to the High Court which, after making such investigation as it deems equitable, may make such order as the Court thinks fit either confirming the surcharge, or directing the relief of the appellant from it either wholly or in part in such manner as the Court may direct.

## **47 Set-off**

(1) Where –

- (a) Under section 45 the Financial Secretary has surcharged any person; or
- (b) Any person owes any sum of money to the Government or any agency of the Government and such sum is overdue for payment,

and such person is entitled to be paid any money by the Crown or any agency of the Government, the Financial Secretary may without further authority than this section, where any surcharge remains unsatisfied or such sum remains overdue for payment, set-off any sum to which the person is so entitled against the amount surcharged or overdue as the case may be, either in one sum or by deduction over a period of time, and shall send to the person a statement of the amount or amounts so set-off.

## Public Revenues Act

(2) For the purposes of this section, a sum of money shall, in the absence of evidence to the contrary, be deemed to be overdue for payment when it has been due and owing for a period of 3 months.

(3) Notwithstanding section 45 (8) a set-off under this section may be made against salary or wages, provided the amount so set-off does not exceed 20 per cent in any one pay period of the net amount after income tax of such salary or wages.



# PUBLIC SERVICE SAVINGS AND LOAN SOCIETY ACT 1980

1980/55 – 23 June 1980

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## To make provision for the establishment of the Public Service Savings and Loan Society

### 1 Short title

This is the Public Service Savings and Loan Society Act 1980.

### 2 Interpretation

In this Act –

“Constitution” means the Constitution of the Public Service Savings and Loan Society contained in Schedule 1;

“Management Committee” means the Management Committee established under section 9;

“Officer” includes the Chairman or his Deputy or Secretary or Treasurer of the Society;

“Registrar” means the Registrar of Incorporated Societies;

“Rules” means the rules of the Management Committee of the Public Service Savings and Loan Society contained in Schedule 2;

“Society” means the Public Service Savings and Loan Society established under section 3.

### PART 1

#### SOCIETY ESTABLISHED

### 3 Public Service Savings and Loan Society established

(1) The Niue Public Service Savings and Loan Society is hereby established and it shall be a body corporate.

(2) The Society shall have perpetual succession and a common seal and shall be capable of suing and being sued and of doing all such things as bodies corporate may lawfully do.

#### **4 Functions of Society**

The principal functions of the Society shall be –

- (a) To encourage thrift among the Society members;
- (b) To educate members in financial responsibility;
- (c) To receive the savings of members as contribution for shares or on deposit;
- (d) To make loans to members for the purposes specified in the Constitution; and
- (e) To distribute profits under co-operative principles.

#### **5 Powers of Society**

The Society shall have full powers –

- (a) To establish, operate, manage or maintain such projects, schemes, or arrangements for the benefits of its members as it may think fit;
- (b) To acquire, by purchase or otherwise both real and personal property of whatsoever kind or nature or wheresoever situate;
- (c) To invest moneys on deposit in any bank, or in any bonds, or on mortgage of any land or buildings, in or outside Niue, or in or on debentures, debenture-stocks, stocks, funds, shares or securities of any corporation or company carrying on business in or outside Niue;
- (d) To grant, sell, convey, surrender, yield up, mortgage, demise, let, reassign, transfer or otherwise dispose of any land, or buildings, mortgages, debentures, debenture-stocks, funds, securities, vessels, goods and chattels for the time being vested in the Society, upon such terms as the Society may deem fit;
- (e) To erect any buildings or like construction and effect any improvement to them;
- (f) To borrow or lend money upon such terms as the Society shall think fit, and to raise money by private subscriptions; and
- (g) Generally to do such other things as may appear to be incidental or conducive to the functions of the Society.

#### **6 Constitution and Rules**

(1) (a) The Constitution of the Society may be amended or changed at any time by Cabinet acting upon a resolution passed by two thirds of the members present and voting at a general meeting of the Society.

(b) The members present shall not be less than 60.

(2) The Rules may be amended or changed at any time by a resolution passed at a general meeting of the Society and such amendments or changes shall be filed with the Registrar under section 7(1)(b).

#### **7 Registration with Registrar**

(1) The Society shall forward to the Registrar for registration the following

- 
- (a) Notice of the address of the registered office of the Society and any change to it;
- (b) A copy of any amendment to the Rules and certified as correct by at least 2 officers of the Society;
- (c) A list of the names and addresses of the members of the Society, and any change in it, certified as correct by an officer or officers of the Society;
- (d) The name and address of any person or persons appointed under section 9 to sign deeds, documents and other instruments;

## Public Service Savings Act

(e) A report concerning its projects, schemes and arrangements during the year after the end of each financial year;

(f) A statement of its accounts after the end of each financial year; and

(g) A copy of the report of the auditors.

(2) Notification under subsection (1) shall be as soon as conveniently possible or within such period as the Registrar may reasonably require.

(3) Any person or member may inspect any of the documents registered under this section.

(4) A fee of \$2 shall be payable for registering any document under this section.

(5) A fee of 50 cents shall be payable for the inspection of documents filed with the Registrar under this Act.

### **8 Meetings of Society**

(1) There shall be held each year not later than 3 months after the financial year a general meeting of the Society to be known as the Annual General Meeting. The order of business shall include –

- (a) Minutes of the last Annual General Meeting and any general meeting held since that meeting;
- (b) Report of the Management Committee;
- (c) Determination of the rate of interest on share capital;
- (d) Consideration of notices of motion;
- (e) Election of Management Committee; and
- (f) Determinations of the rate of remuneration for the officers of the Management Committee and the auditor.

(2) In considering subsection (1)(c) the Annual General Meeting shall have before it a recommendation from the Management Committee. Before the rate of interest can be approved in variance to that recommended by the Management Committee a Special Meeting held shall also approve the interest rate so varied.

(3) The Society shall at the request of the Management Committee or at the written request of at least 10 members call a Special Meeting of the Society. Any request so made shall state the object of the proposed meeting.

(4) At least 14 days notice of any Annual or Special Meeting shall be given by individual notice in writing to members and public notice.

(5) Thirty members of the Society shall constitute a quorum.

## PART 2

### MANAGEMENT OF SOCIETY

### **9 Management of Society**

(1) The Annual General Meeting of the Society shall elect from amongst their members –

(a) A Management Committee of a –

- (i) Chairman;
- (ii) Vice Chairman;
- (iii) Secretary;
- (iv) Treasurer;
- (v) One to three other members;

(b) The names of persons elected under paragraph (a) shall be communicated to Cabinet not later than 14 days after their election.

(2) All members of the Management Committee shall be of the age of 20 years or more.

(3) The Management Committee shall make arrangements for the internal audit of the accounts of the Society at least once every 3 months or at such intervals decided upon by the Management Committee.

(4) At the end of each financial year the books and accounts shall be audited by such person or persons as are appointed by the Management Committee with the approval of Cabinet.

## **10 Functions of Management Committee**

(1) The general management and control of the Society shall be in the Management Committee.

(2) Without limiting the generality of subsection (1) the Management Committee shall –

- (a) Approve, defer, or reject applications for membership;
- (b) Expel or discipline members as provided for in the Constitution;
- (c) Approve, defer or reject applications for loans;
- (d) Have general responsibility for the investment of funds of the Society;
- (e) Recommend the interest rate on shares to the Annual General Meeting of the Society; and
- (f) Do all such other things as are necessary for the achievement of the purposes of this Act.

## **11 Management Committee meetings**

(1) The Management Committee shall hold meetings at least once in each month.

(2) Every meeting shall be presided over by the Chairman or, in the absence of the Chairman, the Vice Chairman or, in the absence of the Vice Chairman, some other member of the Management Committee nominated by the Management Committee to preside over the meeting.

(3) At all meetings of the Management Committee three members of the Management Committee shall form a quorum.

(4) At any meeting of the Management Committee the Chairman or in the absence of the Chairman, the Vice Chairman or the person nominated to preside over the meeting shall have a deliberative vote and in the case of an equality of votes a casting vote.

(5) All questions before the Management Committee shall be decided by a majority of votes recorded in it.

## **12 Procedure**

Subject to this Act, and rules made under it, the Management Committee may regulate its procedure in such manner as it thinks fit.

## **13 Employees of Society**

(1) The Management Committee may employ such persons and take such other steps as they think necessary and expedient for properly carrying out their duties.

(2) Any person so appointed may hold office in addition to or in conjunction with any other office.

PART 3  
FINANCIAL PROVISIONS

**14 Accounts and audit**

- (1) The Society shall keep or shall cause to be kept proper accounts and other records in respect of its operations and shall cause to be prepared statements of accounts in respect of each financial year as soon as possible.
- (2) The accounts of the Society shall be audited by such person or persons as are appointed under section 9(4).

**15 Remuneration Fund**

- (1) There shall be established a Remuneration Fund to which every member of the Society shall contribute annually a sum prescribed by the Rules of the Society.
- (2) There shall be paid from the Remuneration Fund to the members of the Management Committee such remuneration by way of salary, fees, or allowances as may be prescribed by the Rules of the Society either generally or in respect of any particular person or persons or class or classes of persons.

**16 Deposits**

Deposits may be received on behalf of the Society upon or subject to such terms and conditions as may be prescribed by this Act or by any regulations or Rules made under this Act.

**17 Withdrawals**

Withdrawals may be made upon or subject to such terms and conditions as may be prescribed by this Act or Rules made under this Act.

**18 Deposits banked**

- (1) The amount of the deposits and all other sums of money received by the Society, except so much as is retained for daily requirements, shall with all convenient speed, be deposited in a trading bank or the Post Office Savings Bank Account in the name of the Society.
- (2) The said account shall be operated only by cheque signed by one member of the Society for the time being authorised by the Management Committee in that behalf, and countersigned by one of the Management Committee.

**19 Proportionate sum retained**

The Society shall at all times keep in cash or in other resources immediately available as may be approved in that behalf by Cabinet sums amounting in the aggregate to not less than 5 percent of the total amount for the time being standing to the credit of the depositors.

**20 Investment in Government securities**

The Society shall invest a minimum of 20 per cent of its funds in any given year in Niue Government securities or New Zealand Government securities.

**21 Loans**

- (1) The Society may with the approval of the majority of members at the Annual General Meeting lend to the Government such sums of money as may be requested by the Government and the interest on such a loan shall be such figure as negotiated by the Management Committee and the Cabinet.

(2) The Management Committee shall negotiate an agreement with the Government over the repayment of the loan.

(3) The Management Committee shall not borrow any money without a prior resolution of the Society and the prior approval of Cabinet.

**PART 4**  
**MISCELLANEOUS PROVISIONS**

**22 Sealing of deeds**

All deeds, documents and other instruments requiring the seal of the Society shall be signed by an officer of the Society or by such other person or persons as the Society shall appoint and such signing shall be taken as sufficient evidence of the due sealing of such deeds, documents and other instruments.

**23 Investigation of Society**

The Society may at any time be investigated by Cabinet –

- (a) Upon receipt of a resolution of the Society passed by two thirds of the members present and voting and such resolution to be forwarded by the Secretary of the Society to the Cabinet not later than 7 days from the date it was passed, or;
- (b) If it has reason to believe that the affairs of the Society are such as to require an investigation.

**24 Suspension or dissolution**

The Society may at any time be suspended or dissolved by Cabinet upon such terms and conditions it may decide –

- (a) Upon receipt of a resolution of the Society passed by two thirds of the members present and voting and such resolution to be forwarded by the Secretary to the Cabinet not later than 7 days from the date it was passed:  
Provided that not less than 60 members were present; or
- (b) If it is satisfied after an investigation has been conducted that the Society be dissolved.

**25 [Repealed]**

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**SCHEDULES**

[Schedules not reproduced. See *Niue Legislation as at December 2006* vol 3 for full text.]

# RACE RELATIONS ACT 1972

1972/77 – 28 June 1972

1	Short title	13	Evidence
2	Act to bind the Crown	14	Procedure after investigation
3	Access by the public to places, vehicles and facilities	15	Remedies
4	Provision of goods and services	16	Damages
5	Employment	17	Licences and registration
6	Land, housing and other accommodation	18	Access by the public to places, vehicles and facilities
7	Advertisements	19	Inciting racial disharmony
8	Liability of principals and employers	20	No prosecution without consent
9	Measures to ensure equality	21	Condition in restraint of marriage
10	Civil proceedings	22	Offences
11	Investigation and conciliation where proceedings commenced	23	Other enactments not affected
12	Proceedings of the conciliator	24	Charitable instruments
		25	Savings

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**To affirm and promote racial equality in Niue and to implement the International Convention on the Elimination of All Forms of Racial Discrimination**

**1 Short title**

This is the Race Relations Act 1972.

**2 Act to bind the Crown**

This Act shall bind the Crown.

**3 Access by the public to places, vehicles and facilities**

(1) It shall be unlawful for any person –

- (a) To refuse to allow any other person access to or use of any place or vehicle which members of the public are entitled or allowed to enter or use; or
- (b) To refuse any other person the use of any facilities in that place or vehicle which are available to members of the public; or
- (c) To require any other person to leave or to cease to use that place or vehicle or those facilities –

by reason of the colour, race, or ethnic or national origins of that person or of any relative or associate of that person.

(2) In this Act “relative”, in relation to any person, means any person who

- 
- (a) Is related to him by blood, marriage, affinity, or adoption; or
  - (b) Is wholly or mainly dependent on him; or
  - (c) Is a member of his household.

(3) In this section, “vehicle” includes a vessel, an aircraft, or a hovercraft.

**4 Provision of goods and services**

(1) It shall be unlawful for any person who supplies goods, facilities or services to the public or to any section of the public –

- (a) To refuse or fail on demand to provide any other person with those goods, facilities, or services; or

- (b) To provide any other person with those goods, facilities, or services on less favourable terms or conditions than those upon or subject to which he would otherwise make them available –  
by reason of the colour, race, or ethnic or national origins of that person or of any relative of that person as defined in section 3 or of any associate of that person.
- (2) For the purpose of subsection (1), but without limiting the meaning of the terms goods, facilities, and services in that subsection, “facilities” includes facilities by way of banking or insurance or for grants, loans, credit or finance.

## 5 Employment

- (1) It shall be unlawful for any employer, or any person acting or purporting to act on behalf of any employer –
- (a) To refuse or omit to employ any person on work of any description which is available and for which that person is qualified; or
  - (b) To refuse or omit to offer or afford any person the same terms of employment, conditions of work, and opportunities for training and promotion as are made available for persons of the same qualifications employed in the same circumstances on work of that description; or
  - (c) To dismiss any person in circumstances in which other persons employed by that employer on work of that description are not or would not be dismissed – by reason of the colour, race, or ethnic or national origins of that person or of any relative of that person as defined in section 3 or of any associate of that person.
- (2) It shall be unlawful for any person concerned with procuring employment for other persons or procuring employees for any employer to treat any person seeking employment differently from other persons in the same circumstances by reason of the colour, race, or ethnic, or national origins of that person or of any relative of that person as defined in section 3 or of any associate of that person.
- (3) Nothing in this section shall apply in respect of the employment of any person for any purpose for which persons of a particular ethnic or national origin have or are commonly found to have a particular qualification or aptitude.
- (4) Nothing in this section shall apply to the employment or an application for employment of a person on a ship or aircraft if the person employed or seeking employment was engaged or applied for it outside Niue.
- (5) In this section, “employment” includes the employment of an independent contractor.

## 6 Land, housing and other accommodation

- (1) It shall be unlawful for any person, on his own behalf or on behalf or purported behalf of any principal –
- (a) To refuse or fail to dispose of any estate or interest in land or any residential or business accommodation to any other person; or
  - (b) To dispose of such an estate or interest or such accommodation to any person on less favourable terms and conditions than are or would be offered to other persons; or
  - (c) To treat any person who is seeking to acquire or has acquired such an estate or interest or such accommodation differently from other persons in the same circumstances; or
  - (d) To deny any person, directly or indirectly, the right to occupy any land or any residential or business accommodation; or

(e) To terminate any estate or interest in land or the right of any person to occupy any land or any residential or business accommodation – by reason of the colour, race, or ethnic or national origins of that person or of any relative of that person as defined in section 3 or of any associate of that person.

(2) It shall be unlawful for any person, on his own behalf or on behalf or purported behalf of any principal, to impose or seek to impose on any other person any term or condition which limits, by reference to colour, race, or ethnic or national origins, the persons or class of persons who may be the licensees or invitees of the occupier of any land or any residential or business accommodation.

(3) For the purposes of this section –  
“dispose” includes sell, assign, lease, let, sublease, sublet, license, or mortgage, and agree to dispose;  
“residential accommodation” includes accommodation in dwelling house, flat, hotel, motel, boarding house, or camping ground.

## **7 Advertisements**

It shall be unlawful for any person to publish or display or to cause or allow to be published or displayed, any advertisement or notice which indicates, or could reasonably be understood as indicating, an intention to commit a breach of any of the provisions of sections 3 to 6.

## **8 Liability of principals and employers**

Anything which is done or omitted in contravention of sections 3 to 7 by a person as the agent or employee of another person shall be treated for the purposes of sections 3 to 7 as done or omitted by that other person as well as by him, unless it is done or omitted without that other person’s express or implied authority, precedent or subsequent.

## **9 Measures to ensure equality**

Anything done or omitted which would otherwise constitute a breach of sections 4 to 7 shall not constitute such a breach if –

- (a) It is done or omitted in good faith for the purposes of assisting or advancing particular persons or groups of persons or persons of a particular colour, race, or ethnic or national origin; and
- (b) Those groups or persons need or may reasonably be supposed to need assistance or advancement in order to achieve an equal place with other members of the community.

## **10 Civil proceedings**

Any person who considers himself aggrieved by a breach of any of the provisions of sections 3 to 7 (the aggrieved person) may bring civil proceedings in the Court against any person alleged to have committed the breach, and in those proceedings the aggrieved person may seek such of the remedies described in section 15 as he thinks fit.

## **11 Investigation and conciliation where proceedings commenced**

(1) Where proceedings are commenced under section 10 the Court shall refer the case to a conciliator appointed by the Court and shall adjourn the proceedings accordingly.

(2) The conciliator appointed under subsection (1) shall investigate the case referred to him and carry out the functions described in section 14.

**12 Proceedings of the conciliator**

(1) Every investigation by a conciliator appointed under section 11 shall be conducted in private.

(2) The conciliator may hear or obtain information from such persons as he thinks fit.

(3) Subject to this Act, the conciliator may regulate his procedure in such a manner as he thinks fit.

**13 Evidence**

(1) The conciliator appointed under section 11 may require any person who in his opinion is able to give any information relating to the matter which is being investigated by the conciliator to furnish to him any such information and to produce any documents or papers or things which in the conciliator's opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person.

(2) (a) The conciliator may summon before him and examine on oath any person who in the conciliator's opinion is able to give any such information as aforesaid and for that purpose may administer an oath.

(b) Every such investigation by the conciliator shall be deemed to be a judicial proceedings within the meaning of section 67 of the Criminal Law Code.

(3) Every such person shall be obliged to answer any questions put to him by the conciliator but shall have the same privilege in relation to the production of documents and papers and things as witnesses have in any Court.

(4) Except on the trial of any person for perjury within the meaning of the Criminal Law Code in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of the inquiry by or any proceedings before the conciliator shall be admissible in evidence against any person in any Court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the conciliator shall be given against any person.

(5) No person shall commit an offence against section 115 of the Criminal Law Code or any enactment, other than this Act, by reason of compliance with any requirement of the conciliator under this section.

(6) Where any person is required by the conciliator to attend before him for the purposes of this section, the person shall be entitled to the same fees, allowances, and expenses as if he were a witness in civil proceedings in the Court and the amounts payable shall be fixed by the Court and paid out of the Niue Government Account.

(7) Every person appointed a conciliator under section 11 who, except insofar as it is necessary for him to do so for the proper discharge of his functions under this Act discloses to any person any information received by him or any statement or admission made to him in the course of an investigation under section 11 or an endeavour to bring about a settlement under section 14 commits an offence and is liable on conviction to a fine not exceeding 2 penalty units.

**14 Procedure after investigation**

(1) After investigating a case referred to him under section 11, the conciliator shall use his best endeavours to secure a settlement acceptable to the parties and, if he considers it appropriate in a case where he is of the opinion that a breach of any of the provisions of sections 3 to 7 has occurred, a satisfactory assurance against the repetition of the act or omission constituting the breach or the doing of further acts or omissions of a similar kind by the person considered to have committed the breach.

(2) As soon as reasonably practicable and in any event not later than 60 days after the matter has been referred to him or within such further time as the Court may allow the conciliator shall furnish a report to the Court which shall state whether or not the endeavour to secure a settlement between the parties or, as the case may be, a settlement and an assurance of the kind referred to in subsection (1), has been successful.

(3) A copy of every such report shall be made available to each party or to his solicitor or counsel.

(4) (a) If the conciliator reports that he has secured a settlement, or a settlement and such an assurance as aforesaid, the proceedings shall lapse but without prejudice to the right of the aggrieved person to commence fresh proceedings at any time in respect of the same cause of action if there has been a breach of any term of the settlement or of the assurance.

(b) In this event, the Court, if it is satisfied that such a breach has occurred, shall proceed to hear the case and section 11 (1) shall have no application.

(c) The Court shall otherwise dismiss the case.

## **15 Remedies**

(1) If in any proceedings under section 10 the Court is satisfied on the balance of probabilities that the defendant has committed a breach of any of the provisions of sections 3 to 7, it may grant one or more of the following remedies –

- (a) A declaration that the defendant has committed a breach of this Act;
- (b) An injunction restraining the defendant from continuing or repeating the breach or from engaging in, or causing or permitting others to engage in conduct of the same kind as that constituting the breach, or conduct of any similar kind specified in the injunction;
- (c) Damages under section 16;
- (d) A declaration that any contract entered into or performed in contravention of any of the provisions of sections 3 to 7 is an illegal contract;
- (e) Such other relief as the Court thinks just.

(2) It shall not be a defence to proceedings under this section that the breach was unintentional or without negligence on the part of the defendant, but the Court may take the conduct of the defendant into account in granting a remedy.

## **16 Damages**

(1) In any proceedings under section 10 the Court may award damages against the defendant for a breach of any of the provisions of sections 3 to 7 in respect of any one or more of the following –

- (a) Pecuniary loss suffered and expenses reasonably incurred by the aggrieved person for the purpose of the transaction or activity out of which the breach arose;
- (b) Loss of any benefit which the aggrieved person might reasonably have been expected to obtain but for the breach;
- (c) Humiliation, loss of dignity, and injury to the feelings of the aggrieved person.

(2) Damages awarded under subsection (1)(c) shall not exceed 200 dollars.

## **17 Licences and registration**

(1) Where any person is licensed or registered under any enactment to carry on any occupation or activity or where any premises or vehicle are registered or licensed for any purpose under any enactment, and where the person or other authority

authorised to renew, revoke, cancel, or review any such licence or registration is satisfied –

- (a) That in the carrying on of its occupation or activity; or
- (b) That in the use of the premises or vehicle –

there has been a breach of any of the provisions of sections 3 to 7 the person or authority, in addition to any other powers which that person or authority has, but subject to subsection (2), may refuse to renew or may revoke or cancel any such licence or registration, as the case may require, or may impose any other penalty authorised by the enactment, whether by way of censure, fine, or otherwise.

(2) Any procedural requirements of the enactment, including any whereby a complaint is a prerequisite to the exercise by the person or authority of its powers under the enactment, shall be observed.

(3) In any case in which any of the powers conferred by subsection (1) are exercised –

- (a) The person or authority shall in giving its decision state that the decision is being made under subsection (1); and
- (b) Any person who would have been entitled to appeal against that decision if it had been made on other grounds shall be entitled to appeal against the decision made under subsection (1).

## **18 Access by the public to places, vehicles and facilities**

(1) Every person commits an offence who –

- (a) Refuses to allow any other person access to or use of any place or vehicle which members of the public are entitled or allowed to enter or use; or
- (b) Refuses any other person the use of any facilities in that place or vehicle which are available to members of the public; or
- (c) Requires any other person to leave or to cease to use that place or vehicle or those facilities –

by reason of the colour, race, or ethnic or national origins of that person or of any relative of that person as defined in section 3 or of any associate of that person.

(2) Every person who commits an offence against this section is liable to a fine not exceeding 1 penalty unit.

(3) In this section, “vehicle” includes a vessel, an aircraft, or a hovercraft.

## **19 Inciting racial disharmony**

(1) Every person commits an offence and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding 2 penalty units who with intent to incite hostility or ill-will against, or bring into contempt or ridicule, any group of persons in Niue on the ground of the colour, race, or ethnic or national origins of that group of persons –

- (a) Publishes or distributes written matter which is threatening, abusive, or insulting, or broadcasts by means of radio or television words which are threatening, abusive, or insulting; or
- (b) Uses in any public place or within the hearing of persons in any such public place, or at any meeting to which the public are invited or have access, words which are threatening, abusive, or insulting,

being matter or words likely to excite hostility, or ill-will against, or bring into contempt or ridicule, any such group of persons in Niue on the ground of the colour, race, or ethnic or national origins of that group of persons.

(2) For the purposes of this section –  
“publishes” or “distributes” mean publishes or distributes to the public at large or to  
any member or members of the public;  
“written matter” includes any writing, sign, visible representation, or sound recording.

**20 No prosecution without consent**

No prosecution for an offence under section 18 or 19 shall be instituted without the consent of Cabinet.

**21 Condition in restraint of marriage**

(1) A condition, whether oral or contained in a deed, will, or other instrument, which restrains or has the effect of restraining marriage shall be void if the person or class of person whom the person subject to the condition may or may not marry is identified or defined, expressly or by implication, by reference to the colour, race, or ethnic or national origins of the person or class of person.

(2) Nothing in this section shall affect the construction of any deed, will, or other instrument executed before the commencement of this Act.

(3) For the purposes of this section, the will of any testator who dies after 31 December 1973 shall (notwithstanding the actual date of the execution of it), be deemed to have been executed after the commencement of this Act.

**22 Offences**

Every person commits an offence against the Act and is liable to a fine not exceeding 1 penalty unit who –

- (a) Without lawful justification or excuse, wilfully obstructs, hinders, or resists any person appointed as conciliator under section 11 in the exercise of his powers under this Act;
- (b) Without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of any person appointed as conciliator under section 11;
- (c) Wilfully makes any false statement to or misleads or attempts to mislead any person appointed as conciliator under section 11 in the exercise of his powers under this Act.

**23 Other enactments not affected**

Except as expressly provided in this Act nothing in this Act shall limit or affect any other enactment.

**24 Charitable instruments**

(1) Nothing in this Act shall apply to any provision contained in an existing or future charitable instrument which confers benefits, or enables benefits to be conferred, on persons of a particular colour, race, or ethnic or national origin, or to any act done in order to comply with any such provision.

(2) In this section “instrument” means an instrument the purposes of which are exclusively charitable.

**25 Savings**

(1) Nothing in this Act shall affect the right to bring any proceedings, either civil or criminal, which might have been brought if this Act had not been passed, but, in assessing any damages to be awarded to or on behalf of any person under this Act or

otherwise, a court shall take account of any damages already awarded to or on behalf of that person in respect of the same cause of action.

(2) No proceedings, civil or criminal, shall lie against any person, except as provided by this Act, in respect of any act or omission, which is unlawful by virtue only of sections 3 to 7.

(3) Nothing in this Act shall affect any enactment or law, or any administrative practice, which distinguishes between New Zealand citizens and other persons, or between British subjects or Commonwealth citizens (including citizens of the Republic of Ireland) and aliens, or between Niueans and other persons.

(4) For the purposes of subsection (3) “enactment” includes any provision of any notice, consent, approval, or direction which is given by any person pursuant to a power conferred by any enactment.

# REPRINT OF STATUTES ACT 1991

1991/154 24 July 1991

1 Short title	4 Carrying Act into operation
2 Interpretation	5 Copy of statute to be evidence
3 Powers and functions of Cabinet	6 Judicial notice to be taken of reprint

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## For compiling reprints or a composite edition of the enactments in force in Niue

### 1 Short title

This is the Reprint of Statutes Act 1991.

### 2 Interpretation

For the purposes of this Act –

“statute” means any Act and includes any regulations, rules, orders and notices made under the authority of an Act.

### 3 Powers and functions of Cabinet

(1) Cabinet shall have the powers and functions set out in subsection (2), in the reprint of any statute.

(2) Cabinet may –

- (a) Prepare and arrange for the publication of a composite reprint edition of the Constitution and statutes in such form as Cabinet shall consider desirable;
- (b) Prepare a separate reprint of the Constitution or any statute;
- (c) Omit formal, enacting or introductory words;
- (d) Unless inconsistent with the context, revise and correct obsolete references to statutes and any office, department, board or any other body whatsoever;
- (e) Omit all repealed or revoked provisions and may renumber remaining provisions accordingly;
- (f) Make such alterations as may be necessary to conform to current drafting style and practice, and to reconcile any contradictions, supply any omissions, and amend any imperfections in the form of the existing statutes;
- (g) Consolidate with all necessary consequential changes, statutes on the same subject.

### 4 Carrying Act into operation

Statutes reprinted as aforesaid may be printed and compiled or bound in such manner as the Cabinet may direct.

### 5 Copy of statute printed to be evidence

Every copy of any statute printed under the authority of this Act shall be evidence of such statute and of its contents, and every copy of it purporting to be printed as aforesaid shall be deemed to be so printed unless the contrary is proved.

### 6 Judicial notice to be taken of reprint

Judicial notice of any statute reprinted pursuant to this Act shall be taken by all courts and persons acting judicially.



## **ROYAL TITLES ACT 1974**

1974/1 (NZ) – 6 February 1974

- 1 Short title
- 2 Royal style and titles
- 3-4 [Spent]

### **To define Her Majesty's royal style and titles in relation to Niue**

#### **1 Short title**

This is the Royal Titles Act 1974.

#### **2 Royal style and titles**

The royal style and titles of Her Majesty, for use in relation to Niue, shall be – Elizabeth the Second, by the Grace of God Queen of New Zealand and Her other Realms and Territories, Head of the Commonwealth and Defender of the Faith....

- 3-4 [Spent]



# SALE OF GOODS ACT 1908

1908/68 (NZ) – 4 August 1908

- 1 Short title
- 2 Interpretation

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### FORMATION OF THE CONTRACT

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- 4 Capacity to buy and sell

#### *Formalities of the Contract*

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- 52 Damages for non-delivery
- 53 Specific performance
- 54 Remedy for breach of warranty
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- 56 Exclusion of implied terms and conditions

57	Reasonable time a question of fact	60	Savings
58	Rights and duties under Act enforceable by action		
59	Auction sales		

SCHEDULE

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**To consolidate certain enactments relating to the sale of goods**

**1 Short title**

This is the Sale of Goods Act 1908.

**2 Interpretation**

(1) In this Act –

“action” includes counterclaim and set-off;

“buyer” means a person who buys or agrees to buy goods;

“contract of sale” includes an agreement to sell as well as a sale;

“delivery” means voluntary transfer of possession from one person to another;

“document of title to goods” includes any bill of lading, dock warrant, warehouse keeper’s certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

“fault” means wrongful act or default;

“future goods” means goods to be manufactured or acquired by the seller after the making of the contract of sale;

“goods” includes all chattels person other than money or things in action. The term includes emblements, growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

“plaintiff” includes defendant counterclaiming;

“property” means the general property in goods, and not merely a special property;

“quality of goods” includes their state or condition;

“sale” includes a bargain and sale, as well as a sale and delivery;

“seller” means a person who sells or agrees to sell goods;

“specific goods” means goods identified and agreed on at the time a contract of sale is made;

“warranty” means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated;

“writ of execution” means any writ of sale, warrant of distress, or other writ or warrant of execution under which chattels of any kind may be seized or taken to satisfy process issued out of any Court.

(2) A thing is deemed to be done “in good faith” within the meaning of this Act when it is in fact done honestly, whether it is done negligently or not.

(3) A person is deemed to be insolvent, within the meaning of this Act, who either has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not.

(4) Goods are in a “deliverable state” within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them.

PART 1  
FORMATION OF THE CONTRACT  
*Contract of Sale*

**3 Sale and agreement to sell**

- (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called "the price".
- (2) There may be a contract of sale between one part owner and another.
- (3) A contract of sale may be absolute or conditional.
- (4) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called "a sale"; but where the transfer of the property in the goods is to take place at a future time, or subject to some condition thereafter to be fulfilled, the contract is called "an agreement to sell".
- (5) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

**4 Capacity to buy and sell**

- (1) (a) Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.
- (b) Where necessaries are sold and delivered to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price for them.
- (2) "Necessaries" in this section means goods suitable to the condition in life of the person, and to his actual requirements at the time of the sale and delivery.

*Formalities of the Contract*

**5 Contract of sale, how made**

- (1) Subject to this and any other Act, a contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.
- (2) Nothing in this section shall affect the law relating to corporations.

**6 [Repealed]**

*Subject-Matter of Contract*

**7 Existing or future goods**

- (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Act called "future goods".
- (2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.
- (3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

**8 Goods which have perished**

Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void.

**9 Goods perishing before sale but after agreement to sell**

Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided.

*The Price*

**10 Ascertaintment of price**

(1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties.

(2) Where the price is not determined under subsection (1) the buyer must pay a reasonable price.

(3) What is a reasonable price is a question of fact, dependent on the circumstances of each particular case.

**11 Agreement to sell at valuation**

(1) (a) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided.

(b) If the goods or any part have been delivered to and appropriated by the buyer he must pay a reasonable price for them.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

*Conditions and Warranties*

**12 Stipulations as to time**

(1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale.

(2) Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

(3) In a contract of sale “month” means prima facie calendar month.

**13 When condition to be treated as warranty**

(1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty, and not as a ground for treating the contract as repudiated.

(2) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. A stipulation may be a condition, though called a “warranty” in the contract.

(3) Where a contract of sale is not severable, and the buyer has accepted the goods or part of it, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

(4) Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

**14 Implied undertaking as to title**

In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is –

- (a) An implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass;
- (b) An implied warranty that the buyer shall have and enjoy quiet possession of the goods;
- (c) An implied warranty that the goods are free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

**15 Sale by description**

Where there is a contract for the sale of goods by description there is an implied condition that the goods shall correspond with the description; and if the sale is by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

**16 Implied conditions as to quality or fitness**

Subject to this and any other Act, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows –

- (a) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgement, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose:  
Provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose;
- (b) Where goods are brought by description from a seller who deals in goods of that description (whether he is the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality:  
Provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed;
- (c) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;
- (d) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

*Sale by Sample*

**17 Sale by sample**

(1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample, there is an implied condition –

- (a) That the bulk shall correspond with the sample in quality;

- (b) That the buyer shall have a reasonable opportunity of comparing the bulk with the sample; and
- (c) That the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

## PART 2

### EFFECTS OF THE CONTRACT

#### *Transfer of Property as Between Seller and Buyer*

##### **18 Goods must be ascertained**

Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

##### **19 Property passes when intended to pass**

(1) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

##### **20 Rules for ascertaining intention**

Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:

*Rule 1.* Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, is postponed.

*Rule 2.* Where there is a contract for the sale of specific goods, and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done, and the buyer has notice of it.

*Rule 3.* Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done, and the buyer has notice of it.

*Rule 4.* Where goods are delivered to the buyer on approval, or "on sale or return" or other similar terms, the property in it passes to the buyer –

- (a) When he signifies his approval or acceptance to the seller, or does any other act adopting the transaction;
- (b) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection then, if a time has been fixed for the return of the goods, on the expiration of such time, and if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

*Rule 5.(1)* Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

## Sale of Goods Act

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer, or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

### 21 Reservation of right of disposal

(1) Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled.

(2) In such case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(3) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

(4) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

### 22 Risk *prima facie* passes with property

(1) (a) Unless otherwise agreed, the goods remain at the seller's risk until the property in them is transferred to the buyer; but when the property in them is transferred to the buyer the goods are at the buyer's risk, whether delivery has been made or not.

(b) Where delivery has been delayed through fault of either buyer or seller, the goods are at the risk of the party if fault as regards any loss which might not have occurred but for such fault.

(2) Nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

### *Transfer of Title*

### 23 Sale by person not the owner

(1) Subject to this Act, where goods are sold by a person who is not the owner of them, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Nothing in this Act shall affect –

- (a) The Mercantile Law Act 1908, or any other enactment enabling the apparent owner of goods to dispose of them as if he were the true owner of them;
- (b) The validity of any contract of sale under any special common law or statutory power of sale, or under the order of a court of competent jurisdiction.

### 24 Market overt

The law relating to market overt shall not apply in Niue.

**25 Sale under voidable title**

Where the seller of goods has a voidable title to them, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

**26 Revesting of property in stolen goods on conviction of offender**

(1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen reverts in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise.

(2) Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to theft, the property in such goods shall not revert in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender.

**27 Seller or buyer in possession after sale**

(1) Where a person, having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition of it, or under any agreement for sale, pledge, or other disposition of it, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

(2) Where a person, having brought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition of it, or under any agreement for sale, pledge, or other disposition of it, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner:

Provided that if the lien or other right of the original seller is expressed in an instrument duly registered under the Chattels Transfer Act 1924, and if the person selling, pledging, or disposing of the goods or agreeing so to do is the mortgagor or bailee named in such instrument, then the person receiving the goods shall be deemed to have had notice of the contents of such instrument.

(3) In this section "mercantile agent" has the same meaning as in Part 1 of the Mercantile Law Act 1908.

**28 Effect of writs of execution**

(1) (a) A writ of execution against goods binds the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation of such time, the sheriff shall, without fee, upon the receipt of any such writ, endorse on the back thereof the hour, day, month and year when he received the same.

(b) No such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ under which

the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff.

(2) In this section “sheriff” includes any officer charged with the enforcement of a writ of execution.

### PART 3

#### PERFORMANCE OF THE CONTRACT

##### **29 Duties of seller and buyer**

It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them under the terms of the contract of sale.

##### **30 Payment and delivery are concurrent conditions**

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions – that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

##### **31 Rules as to delivery**

(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties.

(2) (a) Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he has one, and if not, his residence.

(b) If the contract is for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

(3) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(4) (a) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf.

(b) Nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(5) (a) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour;

(b) What is a reasonable hour is a question of fact.

(6) Unless otherwise agreed, the expenses of and incidental to putting the goods into a delivery state must be borne by the seller.

##### **32 Delivery of wrong quantity**

(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are under the contract and reject the rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

**33 Instalment deliveries**

(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery of it by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach, giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

**34 Delivery to carrier**

(1) Where, under a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is *prima facie* deemed to be a delivery of the goods to the buyer.

(2) (a) Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case.

(b) If the seller omits so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit.

**35 Risk where goods delivered at distant place**

Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

**36 Buyer's right of examining goods**

(1) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

**37 Acceptance**

The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time he retains the goods, without intimating to the seller that he has rejected them.

**38 Buyer not bound to return rejected goods**

Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

**39 Liability of buyer for neglecting or refusing delivery**

(1) Where the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods.

(2) Nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

**PART 4**

**RIGHTS OF UNPAID SELLER AGAINST THE GOODS**

**40 “Unpaid seller” defined**

(1) The seller of goods is deemed to be an “unpaid seller”, within the meaning of this Act –

- (a) When the whole of the price has not been paid or tendered;
- (b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Part, “seller” includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid or is directly responsible for the price.

**41 Unpaid seller’s rights**

(1) Subject to this Act, and of any statute in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has, by implication of law –

- (a) A lien on the goods, or right to retain them for the price, while he is in possession of them;
- (b) In case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them;
- (c) A right of resale, as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

*Unpaid Seller's Lien*

**42 Unpaid seller's lien**

(1) Subject to this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely –

- (a) Where the goods have been sold without any stipulation as to credit;
- (b) Where the goods have been sold on credit, but the term of credit has expired;
- (c) Where the buyer becomes insolvent.

(2) The seller may exercise his right of lien, notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

**43 Part delivery**

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien or retention on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention.

**44 Termination of lien**

- (1) The unpaid seller of goods loses his lien or right of retention thereon –
  - (a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
  - (b) When the buyer or his agent lawfully obtains possession of the goods;
  - (c) By waiver of it.

(2) The unpaid seller of goods, having a lien or right of retention on it, does not lose his lien or right of retention by reason only that he has obtained judgment for the price of the goods.

*Stoppage in Transit*

**45 Right of stoppage in transit**

Subject to this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit – that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

**46 Duration of transit**

(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf, and continues in possession of them as bailee for the buyer, or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer, it is a question, depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent to the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

**47 How stoppage in transit effected**

(1) (a) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are.

(b) Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) (a) When notice of stoppage in transit is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to or according to the directions of the seller.

(b) The expenses of such redelivery must be borne by the seller.

*Resale by Buyer or Seller*

**48 Effect of subsale or pledge by buyer**

(1) Subject to this Act, the unpaid seller's right of lien or retention or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented.

(2) Where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage in transit is defeated, and if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage in transit can only be exercised subject to the rights of the transferee.

**49 Sale not generally rescinded by lien or stoppage in transit**

(1) Subject to this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or retention or stoppage in transit.

(2) Where an unpaid seller who has exercised his right of lien or retention or stoppage in transit resells the goods, the buyer acquires a good title thereto as against the original buyer.

(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to resell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may resell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

(4) Where the seller expressly reserves a right of resale in case the buyer should make default, and on the buyer making default resells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim the seller may have for damages.

**PART 5**  
**ACTIONS FOR BREACH OF THE CONTRACT**  
*Remedies of the Seller*

**50 Action for price**

(1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods under the terms of the contract, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract.

**51 Damages for non-acceptance**

(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or if no time was fixed for acceptance, then at the time of the refusal to accept.

*Remedies of the Buyer*

**52 Damages for non-delivery**

(1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or if no time was fixed, then at the time of the refusal to deliver.

**53 Specific performance**

(1) In an action for breach of contract to deliver specific or ascertained goods the Court may on the application of the plaintiff, by its judgment direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages.

(2) The judgment may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as the Court deems just, and the application by the plaintiff may be made at any time before judgment.

**54 Remedy for breach of warranty**

(1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may –

- (a) Set up against the seller the breach of warranty in diminution or extinction of the price; or
- (b) Maintain an action against the seller for damages for the breach of warranty.
  - (2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting in the ordinary course of events, from the breach of warranty.
  - (3) In the case of breach of warranty of quality, such loss is *prima facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.
  - (4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

**55 Interest and special damages, or recovery of money paid**

Nothing in this Act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid when the consideration for the payment of it has failed.

**PART 6**

**SUPPLEMENTARY**

**56 Exclusion of implied terms and conditions**

Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negated or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract.

**57 Reasonable time a question of fact**

Where by this Act any reference is made to a “reasonable time”, the question what is a reasonable time is a question of fact.

**58 Rights and duties under Act enforceable by action**

Where any right, duty, or liability is declared by this Act, it may, unless otherwise by this Act provided, be enforced by action.

**59 Auction sales**

- (1) Where goods are put up for sale by auction in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale.
- (2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner: until such announcement is made any bidder may retract his bid.
- (3) (a) Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, the seller shall not bid himself or employ any person to bid at such sale, nor shall the auctioneer knowingly take any bid from the seller or any such person.
  - (b) Any sale contravening this rule may be treated as fraudulent by the buyer.
- (4) A sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller.
- (5) Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

**60 Savings**

(1) The rules in bankruptcy relating to contracts of sale shall continue to apply to it, notwithstanding anything in this Act.

(2) The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause, shall continue to apply to contracts for the sale of goods.

(3) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security.

(4) Nothing in this Act shall affect the enactments in force relating to chattels transfer, or any enactment in force relating to the sale of goods.

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SCHEDULE  
[Not reproduced]

# **SEAL OF NEW ZEALAND ACT 1977**

1977/1 (NZ) – 28 February 1977

1	Short title	5	Validity of instruments
2	Assent of Parliament to establishment, design, and use of Seal of New Zealand	6	Judicial notice of Seal
3	Use of Seal	7-9	[Spent]
4	Custody of Seal		SCHEDULE

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## **To assent to the establishment, design, and use of a seal to be known as the Seal of New Zealand and to provide for matters incidental**

### **1 Short title**

This is the Seal of New Zealand Act 1977.

### **2 Assent of Parliament to establishment, design, and use of Seal of New Zealand**

(1) The Parliament of New Zealand hereby assents to the establishment, by Proclamation, from time to time by Her Majesty and Her successors of a seal to be known as the Seal of New Zealand for use in relation to New Zealand and all other territories for whose foreign relations Her Majesty's Government in New Zealand is responsible.

(2) The Seal of New Zealand shall be of such design and style as may be specified in the Proclamation.

(3) No Proclamation made for the purposes of this section shall be required to be sealed, and every such Proclamation that does not prescribe the time from which it is to take effect shall come into operation on the day on which it is gazetted.

### **3 Use of Seal**

(1) The Seal of New Zealand shall be the seal to be used on any instrument that is made by Her Majesty and Her successors, or by the Governor-General, on the advice of a Minister of Her Majesty's Government in New Zealand or on the advice and with the consent of the Executive Council of New Zealand.

(2) The Seal of New Zealand shall be so used in place of any other seal that may have been so used if this Act had not been passed.

(3) The Seal of New Zealand in being at the time of the death of the Sovereign shall continue and be made use of until provision for a new Seal of New Zealand is made by Proclamation.

### **4 Custody of Seal**

The Seal of New Zealand shall be in the custody of the Governor-General.

### **5 Validity of instruments**

(1) Except where the affixing of the Seal of New Zealand to any instrument is expressly required by the provisions of any enactment other than this Act, no instrument shall be declared or deemed invalid on the ground that it should have been sealed with the Seal of New Zealand but has not been so sealed.

(2) No instrument shall be declared or deemed invalid on the ground that it should not have been sealed with the Seal of New Zealand but has been so sealed, or that the Seal of New Zealand has been improperly affixed to it.

**6 Judicial notice of Seal**

Judicial notice shall be taken by all Courts, Judges, Justices, Commissioners, and other persons acting judicially of the impression of the Seal of New Zealand, without evidence of such seal having been impressed or any other evidence relating thereto.

**7-9 [Spent]**

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SCHEDULE  
[Not reproduced]

# STATISTICS ACT 2009

No. 301

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6	Official statistics and coordination	PART 4 OFFENCES AND PENALTIES
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13	Government Statistician authorised to disclose certain information	26 Other offences
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		SCHEDULES

## An Act relating to the collection of statistical information

### PART 1 PRELIMINARY

#### 1 Name

This is the Statistics Act 2009.

#### 2 Interpretation

In this Act –

“appointee” means a person appointed under section 3(3);

“Assistant Statistician” means a person appointed under section 3(3);

“authorised officer” means a person appointed under section

“Census night” means the night of the Census day;

“Deputy Government Statistician” means a person appointed under section 3(3);

“Government department” includes a Government corporation;

“Minister” means the Minister responsible for statistics;

“National Statistics Office” means the unit set up under section 3;

“official statistics” means statistics derived from:

(a) Statistical surveys under this Act; and

(b) Administrative and registration records and other forms and papers the statistical analysis of which is published regularly, is planned to be published regularly, or could reasonably be published regularly;

“private dwelling” does not include –

(a) a hotel, motel, hostel or boarding house; or

(b) a dwelling used solely or principally as sleeping accommodation by members of a group of persons who share common living or dining areas or other common amenities; or

(c) a religious institution; or

(d) a residential institution (including a hospital, nursing home, school, university, college, orphanage, house of refuge, prison or other penal or corrective institution);

“respondent” means any person who supplies or is required to supply statistical information;

“sample” means a statistical procedure by which information relating to a whole field of inquiry is derived by applying statistical techniques to information obtained in respect of a proportion of the total number of persons concerned in the relevant field of inquiry;

“schedule” means any book, document, form, card, tape, disc, or storage media on which the information required is entered or recorded or is required to be entered or recorded for statistical purposes under this Act;

“statistical survey” means a survey of undertakings, or of the public on Niue, whereby information is collected from all persons in a field of inquiry or from a sample of them, by a Government Department pursuant to this Act wholly or primarily for the purpose of processing and summarising by appropriate statistical procedures and publishing the results of the survey in statistical form;

“this Act” means this Act and any regulations made under it.

## PART 2

### NATIONAL STATISTICS OFFICE

#### **3 Appointment of the Government Statistician**

(1) There shall be established a National Statistics Office.

(2) (a) The Niue Public Service Commission must appoint a Government Statistician.

(b) The Government Statistician shall be the administrative head of the National Statistics Office and have such functions and duties and powers as are conferred or imposed on the Government Statistician by any enactment.

(3) The Niue Public Service Commission may on the request of the Government Statistician appoint an Assistant Statistician and other persons to be authorised officers to assist the Government Statistician to carry out his or her functions under this Act.

(4) The Deputy Government Statistician, Assistant Statistician or an authorised officer shall perform such functions under this Act as the Government Statistician directs.

(5) An authorised officer is not by virtue of that office an employee of the Niue Public Service for the purpose of article 62(3) of the Constitution.

- (6) (a) The Government Statistician has the sole responsibility for deciding the procedures and methods employed in the provision of any statistics produced or to be produced by the National Statistics Office, and for deciding the extent, form, and timing of publications of those statistics.
- (b) Notwithstanding paragraph (a), where the Cabinet through the Minister directs the Government Statistician to collect or cease collection of statistics of any kind provided by this Act and the Government Statistician would not without such a direction produce or cease production of those statistics, the Government Statistician shall carry out the direction, but may make public without comment the fact that the statistics have been collected and published, or that collection and publication has ceased, by direction of the Cabinet.

#### **4 Duties of Government Statistician**

The Government Statistician shall –

- (a) make reports as are required by this Act, which reports shall have regard to the needs of user departments and, where consultations have been held, shall include the results of such consultations;
- (b) advise the Minister on statistical policy matters, and where appropriate confer with appropriate officers of other Government departments to that end;
- (c) keep the Minister informed of the statistical projects of all Government departments and provide, where appropriate after consultation with an appropriate officer of any other Government department concerned, any explanation required of the Government Statistician by the Minister of the purpose, scheme, methodology, and usefulness of any existing or proposed official statistical project;
- (d) on the completion of periodical statistical abstracts and reports, provide a copy of the abstract or report to the Minister;
- (e) compile, analyse, abstract, and publish, with or without comments, official statistics;
- (f) advise Government departments on the conception of statistical projects initiated or carried on by them, and to promote the observance of approved statistical standards by those Government departments;
- (g) consult with appropriate officers of Government departments on the need for, and the scope, procedure, and form of any existing or proposed statistical survey being or to be carried out by the departments and make a report to the Minister on the necessity for and the scope of any such survey and the Government department to be responsible for the survey;
- (h) make, after consultation with an appropriate officer of any other Government department concerned, a report to the Minister on the need for the continuance or discontinuance or the variation of any current collections of official statistics;
- (i) define, lay down, and promote standard concepts, procedures, definitions and classifications for use in official statistics;
- (j) make or construct such estimates, forecasts, projections, and statistical models as the Government Statistician may consider necessary;

- (k) arrange for the taking of a census of the population and households of Niue in 2006 and every 5<sup>th</sup> year after that;
- (l) examine and comment, where the Government Statistician considers necessary, the interpretation and validity of any published unofficial statistics;
- (m) carry out such investigations, do all such things, and provide such certificates, as may be required by any other enactment;
- (n) subject to section 12 supply, where the Government Statistician considers appropriate, specifications of the methods, procedures, and definitions used in the collection and preparation of the official statistics produced.

## **5 Declaration of secrecy**

(1) Every authorized officer or employee of the National Statistics Office shall before taking up the duties of Office make a declaration in the form set out in Schedule 3.

(2) Any employee of any Government department, if engaged in the collection and processing of official statistics, and if the information so collected is primarily for statistical purposes and the respondent has been so informed shall, subject to agreement with an appropriate officer of the National Statistics Office, if required to do so by the Government Statistician, make a similar statutory declaration of secrecy under this or any other Act.

(3) (a) An employee who has made a statutory declaration of secrecy under subsection (2) shall be deemed to be an employee of the National Statistics Office in relation to the statistical collections with which the employee is associated.

(b) Every independent contractor and every employee of any such independent contractor, who is likely, in the course of carrying out the terms of that contract, to have access to information collected under the authority of this Act shall, if required to do so by the Government Statistician, make a statutory declaration of secrecy similar to the declaration of secrecy prescribed by subsection (1), regardless of whether that independent contractor or employee has made a declaration of secrecy under any other Act.

(4) A statutory declaration for the purposes of this section may be made before any person authorised for that purpose by or under the Niue Act 1966 section 720 or before any other person authorised for that purpose by the Government Statistician and the provisions of that Act shall apply in relation to any such declaration as if any person so authorised by the Government Statistician were so authorised by that Act.

(5) Every statutory declaration that is made for the purposes of this section shall be returned and recorded in such manner as the Government Statistician determines.

## **PART 3**

### **COLLECTION OF STATISTICS**

## **6 Official statistics and co-ordination**

(1) Official statistics shall be collected to provide information required by Cabinet, Government departments, village councils and local authorities, businesses

and the general public for the purpose of making policy decisions and to facilitate the appreciation of economic, social, demographic and other matters of interest.

(2) In order to co-ordinate as effectively as possible, and to render most useful the official statistics produced, and also to avoid unnecessary duplication of requests for information, all official statistics shall be subject to this Act.

## **7 Necessity to inform the Government Statistician of official statistics**

(1) The permanent head or principal administrative officer of each Government department shall inform the Government Statistician of the official statistics for which the Government department is responsible.

(2) This information shall, if the Government Statistician requires, include details of the concepts, classifications, schedules, statistical methods and procedures employed, the means of publishing the official statistics, and all other matters as the Government Statistician requires.

(3) The permanent head or the principal administrative officer shall advise the Government Statistician of any new official statistics or substantial alteration to existing official statistics in relation to his or her Government department, or when any document which is being used or proposed to be used as the source of official statistics is being amended or drafted.

## **8 Periodic reviews**

The Government Statistician shall from time to time review the collection, compilation, analysis, abstraction and publication of official statistics prepared by the National Statistics Office.

## **9 Meetings of statisticians and users of statistics**

(1) The Government Statistician shall, at least every 3 years, convene a meeting of users of official statistics to review user needs for such statistics.

(2) The Government Statistician may also hold other meetings, and set up committees of statisticians, suppliers, or users of statistics and other interested parties.

## **10 Sampling**

Official statistics may be collected by means of the statistical procedure known as sampling in place of a full enumeration, where the use of that method is considered appropriate.

## **11 Statistical surveys and census**

(1) A statistical survey shall be made only with the written approval of Cabinet.

(2) A statistical survey may be conducted in respect of any of the matters listed in Schedule 2.

(3) The date for the taking of the population and household census shall be set by public notice by the Government Statistician after consultation with the Cabinet.

(4) The information that may be required of a person at a population and household census is set out in Schedule 1.

**12 Security of information**

(1) Information furnished to the Government Statistician under this Act shall only be used for statistical purposes.

(2) No person other than an appointee of the National Statistics Office who has made a statutory declaration specified in section 5(1) shall be permitted to see any individual schedule or any answer to any question put under this Act except for the purposes of a prosecution or a proposed prosecution under this Act.

(3) No information contained in any individual schedule and no answer to any question put for the purposes of this Act shall, except for the purposes of a prosecution or a proposed prosecution under this Act, be separately published or disclosed to any undertaking or to any person not being an employee of the National Statistics Office who has made the statutory declaration specified in section 5(1).

(4) All statistical information published by the Government Statistician shall be arranged in such a manner as to prevent any particulars published from being identifiable by any person as particulars relating to any particular person or undertaking, unless –

- (a) that person or the owner of that undertaking has consented to their publication in that manner, or has already permitted their publication in that manner; or
- (b) their publication in that manner could not reasonably have been foreseen by the Government Statistician or any appointee of the National Statistics Office.

(5) The Government Statistician shall make such other office rules as he considers necessary for the purposes of subsection (4) and section 13 (e).

**13 Government Statistician authorised to disclose certain information**

Notwithstanding section 12(1), the Government Statistician may disclose –

- (a) Information supplied by a person or undertaking in respect of which disclosure is consented to in writing by that person, or a competent officer of the undertaking, who supplied it;
- (b) Information made available to the public under any enactment as a public document;
- (c) Information in the form of an index or list of the names and addresses of individual undertakings, together with the industrial classification allotted to them and the number of persons engaged;
- (d) Details of external trade, movement of ships and aircraft, and cargo handled at ports;
- (e) In the event of a declaration of emergency under the Public Emergency Act 1979, the names, addresses, sex and age of persons resident on Niue for the purposes of controlling of that emergency only.

**14 Disclosure of unfilled individual schedules**

(1) Notwithstanding section 12(1), the Government Statistician may disclose or distribute individual schedules to any officer of another Government department solely for bona fide research or statistical purposes pursuant to the functions and duties of that Government department.

(2) The published results of any such research or statistical project shall not divulge any more information than the Government Statistician could publish under this Act.

**15 Information is privileged**

Except in respect of a prosecution under this Act, no return made pursuant to this Act and no copy of a filled schedule or return in the possession of the respondent shall be disclosed or used as evidence in any proceedings, and no person who has made a statutory declaration under section 5(1) shall be compellable in any proceedings to give oral testimony regarding the return or to produce any return, document, or record with respect to any information obtained in the course of administering this Act, except in the manner provided by this Act.

**16 Forms**

The Government Statistician or an authorised officer shall design and use appropriate schedules for the collection of statistics on any matter listed in Schedule 2, and shall lay down for all such schedules the instructions and procedures necessary for the proper distribution, filling in, and return of them.

**17 Onus to complete schedules**

Delivery to any person of any schedule purporting to be issued under this Act and having on it a notice requiring that it be filled in and signed within the stated time by the occupier of that dwelling or part of the dwelling, or in his absence by some other member of the household, shall, as against the occupier, be a sufficient requirement so to fill in and sign the schedule within a stated time to the National Statistics Office , whether or not the occupier is specifically named in the schedule or personally served.

**18 Persons to furnish information**

Every person from whom particulars for the purposes of any statistical inquiry may lawfully be required pursuant to this Act shall, to the best of his knowledge, when required so to do by the Government Statistician or by any authorized officer, fill in and supply information, in accordance with the instructions contained in the schedule.

**19 Questions asked by the Government Statistician to be answered**

Every person who is required to provide information pursuant to this Act shall, for the purpose of providing that information, to the best of their knowledge and belief, answer all questions asked by the Government Statistician, or by an authorised officer of the National Statistics Office.

**PART 4**

**OFFENCES AND PENALTIES**

**20 Omissions**

Every person employed in the execution of any duty or the exercise of any power or function under this Act commits an offence, and is liable on a conviction to a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 60 days or both, who –

- (a) after having made the prescribed statutory declaration, omits (without lawful excuse) to carry out the duties under this Act, or knowingly makes any false declaration, statement, or return touching on any such matter; or
- (b) in the performance of his duties, obtains or seeks to obtain information which he is not duly authorised to obtain; or

- (c) knowingly fails to keep inviolate the secrecy of the information gathered or entered on the schedules collected by the Government Statistician pursuant to this Act, divulges the contents of any schedule filled in or any information furnished to the Government Statistician under this Act.

**21      Obstruction of appointee of National Statistics Office**

(1) Every person commits an offence who interferes with, hinders, or obstructs the Government Statistician or any appointee of the National Statistics Office in the exercise of any power conferred by this Act.

(2) Every person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding 5 penalty units or, in the case of body corporate, not exceeding 20 penalty units.

**22      Impersonation**

(1) Every person commits an offence who, not being an appointee of the National Statistics Office, by words, conduct, or demeanour, pretends that he is an appointee of the National Statistics Office or assumes the name, designation, or description of an appointee of the National Statistics Office.

(2) Every person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding 30 penalty units or imprisonment for a period not exceeding 60 days, or both.

**23      Neglect or refusal to supply particulars**

(1) Every person commits an offence who neglects or refuses to fill in and supply the particulars required in any schedule lawfully left with or sent to him, or who neglects or refuses to answer any question or inquiry lawfully addressed to him by the Government Statistician, or by an employee of the National Statistics Office authorised in writing by the Government Statistician, and is liable on conviction to a fine not exceeding 5 penalty units or, in the case of a body corporate, to a fine not exceeding 20 penalty units.

(2) The conviction of any person of an offence against subsection (1) or against this subsection in relation to a failure to produce any books of account, vouchers, documents, or other business records, or to neglect or refusal to fill in and supply any particulars required in any such schedules or to answer any such question or inquiry, shall not relieve that person of the obligation to supply such books of account, vouchers, documents, or other business records, or to fill in and supply the particulars or to answer the question or inquiry.

(3) Where after the expiration of 14 days from the date of conviction, a person convicted of an offence against this section still has failed to produce the books of account, vouchers, documents, or other business records lawfully requested, or continues to neglect or refuse to fill in and supply the particulars or to answer the question or inquiry, that person commits a further offence and is liable on conviction in respect of each day after the expiration of those 14 days to a fine not exceeding 1 penalty unit.

(4) Any obligation imposed on any person to produce any books of account, vouchers, documents, or other business records when lawfully required to do so, or to fill in and supply the particulars required in any schedule lawfully left with or

sent to him, or to answer any question or inquiry lawfully addressed to him by the Government Statistician, or by an employee of the National Statistics Office authorised in writing by the Government Statistician, being an obligation required to be performed at or within a specified or particular time, shall be deemed to be a continuing obligation to produce such books of account, vouchers, documents, or other business records, or to fill in and supply any particulars required in any such schedule, or to answer any such question or inquiry, notwithstanding that the obligation has not been performed at or within that time.

(5) No person who objects to state their religious denomination or sect commits an offence by refusing to supply that information if "Object" is inserted in the space on the schedule provided for the information.

(6) Except with the prior approval of the Government Statistician, a reference in response to any schedule to a document from which the required information can be obtained shall not be deemed a compliance with this section.

**24 False statement**

(1) Every person commits an offence who knowingly makes, in any schedule filled in or supplied pursuant to this Act, or in answer to any question asked him under the authority of this Act, any false or misleading statement or any material omission.

(2) Any person who commits an offence this section is liable on conviction to a fine not exceeding 2 penalty units.

**25 Mutilation or defacement of schedules**

Every person who without lawful excuse, destroys, defaces, removes, or mutilates any schedule, form or other document containing particulars collected under this Act or requesting any such particulars is liable on conviction to a fine not exceeding 2 penalty units.

**26 Other offences**

Every person commits an offence and is liable on conviction to a fine not exceeding 5 penalty units who –

(a) Without lawful excuse, contravenes or fails to comply with a provision of this Act or a requirement imposed under this Act; or

(b) Wilfully deceives or attempts to deceive the Government Statistician or any Officer of the National Statistics Office in the exercise of any powers, duties, or functions under this Act.

**27 Time within which information may be laid**

No prosecution of any information in respect of an offence against this Act shall be commenced later than 12 months from the time when the matter of the information arose.

**PART 5**  
**MISCELLANEOUS PROVISIONS**

**28 Regulations**

- (1) Cabinet may make regulations for the purposes of this Act.
- (2) Cabinet may by regulations amend the Schedules.

**29 [Spent]**

Schedule 1  
(Section 11)

**Matters prescribed for the purpose of a census**

The following matters are prescribed for the purposes of the taking of a census –

- (a) in relation to a person –
  - (i) name;
  - (ii) sex;
  - (iii) age;
  - (iv) relationship to the other persons, if any, who spend Census night in the same accommodation;
  - (v) present marital status; iaddress of usual residence;
  - (vii) address of usual residence 1 year before the Census day;
  - (viii) address of usual residence 5 years before the Census day;
  - (ix) religious denomination;
  - (x) citizenship;
  - (xi) country of birth;
  - (xii) country of birth of each parent;
  - (xiii) in the case of a person not born in Niue – the year of the person's first arrival in Niue;
  - (xiv) languages spoken at home;
  - (xv) in the case of a person who speaks a language other than English at home
    - 
    - (A) age of leaving school;
    - (B) education qualifications;
    - (C) whether employed or unemployed;
    - (D) income;
  - (xvi) in the case of a female person who is not less than 15 years of age – number of children given birth to;
  - (xvii) in the case of a person who is not less than 15 years and was employed (including self-employed) during the week immediately preceding the Census day –
    - (A) status in employment during that week;
    - (B) occupation during that week;
    - (C) the name and address of the undertaking in which the person was employed during that week;
    - (D) the main kind of business or industry carried on, or service provided, by that undertaking during that week;
    - (E) the hours worked by the person during that week;
    - (F) mode of travel to work by the person during the week;
- (b) in relation to a household –
  - (i) the address on Census night;
  - (ii) in the case of a person who is usually a member of the household but is absent from the household accommodation on the Census night –
    - (A) name;
    - (B) sex;

- (C) age;
  - (D) present marital status;
  - (E) relationship to other members of the household;
  - (iii) the right, title or interest of the household in the household's accommodation;
  - (iv) the number of bedrooms occupied by the household;
  - (v) the rent or loan repayments payable by the household for its accommodation;
  - (vi) if the household's accommodation is rented –
    - (A) the nature of the person or body to whom the rent is paid;
    - (B) the provision of furniture;
  - (vii) the number of registered motor vehicles garaged or parked at or near the address of the household on the Census night;
  - (c) in relation to a private dwelling –
    - (i) the structure;
    - (ii) the location;
  - (d) in relation to a dwelling other than a private dwelling – classification of the dwelling by reference to its purpose.
- 

Schedule 2  
(Section 11 and 16)

**Matters in relation to which statistical information may be collected.**

Information may be collected on the following matters –

- (1) population and dwellings, migration, vital and other demographic and social matters;
- (2) health, welfare, and morbidity;
- (3) cultural participation, education, and recreation;
- (4) law enforcement and the administration of justice;
- (5) matters relating to the social and physical environment;
- (6) labour and manpower, including conditions of employment; work descriptions; and wages; Incomes, earnings, and related emoluments; expenditure and taxation;
- (7) household (including family) characteristics, conditions and activities;
- (8) land tenure, occupation of land; and condition of land;
- (9) internal and external trade, visible and invisible;
- (10) travel, internal and overseas;
- (11) migration;
- (12) births, deaths, marriages and divorce;
- (13) population and the social, economic and demographic characteristics of the population;
- (14) health, health services and quarantine;
- (15) social and welfare services;
- (16) pension and superannuation schemes;
- (17) accidents and injuries;
- (18) public safety;
- (19) law;

- (20) crime;
- (21) the police force;
- (22) village councils;
- (23) education;
- (24) scientific research and development;
- (25) recreation and entertainment;
- (26) cultural activities;
- (27) tourism;
- (28) energy;
- (29) water resources;
- (30) conservation and environment;
- (31) agricultural, apicultural, poultry, dairying and pastoral industries and related service industries;
- (32) fishing, hunting and trapping;
- (33) mining, mineral and petroleum exploration, quarrying and related service industries;
- (34) forestry, saw milling and related service industries;
- (35) manufacturing;
- (36) housing;
- (37) construction and demolition;
- (38) repairs and maintenance;
- (39) wholesaling and retailing;
- (40) food preparation and food consumption;
- (41) transport and storage;
- (42) wages, earnings, hours of employment and workers' compensation;
- (43) conditions of employment;
- (44) employment and unemployment;
- (45) industrial disputes and arbitration;
- (46) employers' and employees' associations;
- (47) income, expenditure and savings in relation to a person, household or family;
- (48) prices and charges
- (49) business, professional, personal and household services;
- (50) trade commerce;
- (51) overseas transactions;
- (52) banking;
- (53) insurance;
- (54) finance;
- (55) ownership and control of property;
- (56) assets, liabilities and financial operations and transactions of a natural person or and organisation;
- (57) land tenure and occupancy;
- (58) real estate including land and property development;
- (59) taxation;
- (60) investment;
- (61) communication.

Schedule 3  
(Section 5)

**Declaration**

I ..... *[full name]* of ..... *[Place of residence]*  
..... *[Occupation]*,

Solemnly and sincerely declare that I will faithfully and honestly fulfil my duties as an appointee of the National Statistics Office in conformity with the requirements of the Statistics Act 2006 and of all regulations made under it, and that any information acquired by me as an employee of that Office –

- (a) will not be disclosed by me during my employment in that Office, except in accordance with my official duty; and
- (b) will not be disclosed by me after I cease to be an employee of that Office, except with the authority of the Government Statistician.

Declared at ..... *[Place]* this ..... day of ..... 20.....

.....  
(Signature of person making  
the declaration)

.....  
(Name of person taking the  
declaration)

.....  
(Signature of person taking  
the declaration)  
*(person authorized to take a declaration in Niue)*



# TĀOGA NIUE ACT 2012

2012/320 – 13 September 2012

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# An Act to enhance and protect tāoga Niue.

## 1 Title

This is the Tāoga Niue Act 2012.

## 2 [Spent]

### PART 1 PRELIMINARY MATTERS

## 3 Interpretation

- (1) In this Act, unless the context otherwise requires —
- "antiquity" includes a Niue relic, any article manufactured with ancient Niue tools and according to Niue methods, and any other article or thing of historical or scientific value or interest relating to Niue, but does not include any botanical or mineral collections or specimens;
- "authorised user agreement" means a written agreement entered into under Part 5;
- "Convention 1972" means the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage of 16 November 1972;
- "Council" means the Tāoga Niue Council established by section 11;
- "customary use" means the use of traditional knowledge or expressions of culture in accordance with the customary laws and practices of the traditional owners;
- "Department" means the Department of Tāoga Niue established by section 6;
- "derivative work" means any intellectual creation or innovation based upon or derived from traditional knowledge or expressions of culture;
- "derogatory treatment", in relation to traditional knowledge or expressions of culture, includes any act or omission that results in a material distortion, mutilation or alteration of the traditional knowledge or expressions of culture that is prejudicial to the honour or reputation of the traditional owners, or the integrity of the traditional knowledge or expressions of culture;
- "Director" means the Director of the Department;
- "expression of culture" means any way in which traditional knowledge appears or is manifested, irrespective of content, quality or purpose, whether tangible or intangible, and includes—
- names, stories, chants, riddles, histories, and songs in oral narratives; and
  - art and craft, musical instruments, sculpture, painting, carving, pottery, terracotta mosaic, woodwork, metal ware, painting, jewellery, weaving, needlework, shell work, rugs, costumes, and textiles; and
  - music, dances, theatre, literature, ceremonies, ritual performances, and cultural practices; and
  - the delineated forms, parts, and details of designs and visual compositions; and
  - architectural forms;
- "intangible cultural heritage" has the same meaning as in article 2 of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage of 17 October 2003;
- "member" means a member of the Council;

"Minister" means the Minister who is responsible for the Department;

"moral rights" are the rights set out in section 33;

"prior and informed consent" means consent that is deemed to be given when traditional owners enter into an authorised user agreement, as set out in section 43(1) and 45(3),

"protected object" means an antiquity or object that is recorded on the register of protected objects in accordance with section 17(3);

"tāoga Niue" means—

- (a) antiquities; and
- (b) objects of national cultural significance to Niue; and
- (c) objects of national historical significance to Niue; and
- (d) traditional knowledge; and
- (e) expressions of culture; and
- (f) customs, traditions, and history of Niue; and
- (g) Vagahau Niue;
- (h) traditional food;

"traditional cultural rights" are the rights set out in section 27(2) and (3);

"traditional knowledge" includes any knowledge that generally—

- (a) is or has been created, acquired or inspired for traditional economic, spiritual, ritual, narrative, decorative, or recreational purposes; and
- (b) is or has been transmitted from generation to generation; and
- (c) is regarded as pertaining to a particular traditional group in Niue; and
- (d) is collectively originated and held;

"traditional owners", in relation to traditional knowledge or expressions of culture, means—

- (a) the group, clan, or community of people; or
- (b) the individual who is recognised by a group, clan, or community of people as the individual,

in whom the custody or protection of the traditional knowledge or expressions of culture are entrusted in accordance with the customary law and practices of that group, clan, or community.

(2) If there is any conflict between the Vagahau Niue version and the English version of this Act, the Vagahau Niue version prevails.

## 4 Purposes of Act

The purposes of this Act are to—

- (a) establish the Department as a department of Government to act as the central coordinator of all matters relating to tāoga Niue; and
- (b) establish a Tāoga Niue Council to act as an expert advisory council to the Department in relation to tāoga Niue; and
- (c) place controls on the export of—
  - (i) antiquities; and
  - (ii) objects of national cultural significance; and
  - (iii) objects of national historical significance; and
- (d) protect traditional knowledge and expressions of culture; and

- (e) consequentially amend a number of other enactments so that they reflect the purposes set out in paragraphs (a) to (d); and
- (f) promote the cultural standards proclaimed in the United Nations Declaration on the Rights of Indigenous Peoples of 13 September 2007; and
- (g) support the implementation of the Convention 1972.

## 5    **Act binds the Government**

This Act binds the Government.

## PART 2

### ESTABLISHMENT OF THE DEPARTMENT OF TĀOGA NIUE

## 6    **Establishment of the Department of Tāoga Niue**

The Department of Tāoga Niue is established as a department of Government.

## 7    **Functions of Department**

The functions of the Department are to—

- (a) administer this Act; and
- (b) advance the purposes of this Act in each of the sectors, and for the purposes, set out in Schedule 1; and
- (c) advise the Government of Niue on all matters relating to tāoga Niue; and
- (d) formulate objectives relating to the protection and public awareness of tāoga Niue; and
- (e) promote all aspects of work associated with tāoga Niue; and
- (f) facilitate the formulation of policies and law relating to tāoga Niue; and
- (g) review laws relating to tāoga Niue and where necessary propose reform; and
- (h) develop a cultural bridge between Niue and Niueans abroad; and
- (i) develop an integrated strategy for continuing education in relation to tāoga Niue; and
- (j) develop and strengthen training to meet the needs of the Department; and
- (k) establish and maintain a register of protected objects; and
- (l) control the export of antiquities and protected objects in accordance with Part 4; and
- (m) introduce incentives for the people of Niue and Niueans to produce creative works; and
- (n) work with communities, groups, and relevant organisations to identify and define the various elements of the intangible cultural heritage of Niue; and
- (o) cooperate at the bilateral, sub-regional, regional, and international levels with appropriate institutions for the safeguarding of intangible cultural heritage; and
- (p) be the competent body for the purposes of safeguarding the intangible cultural heritage of Niue; and
- (q) keep the public informed of any dangers threatening the intangible cultural heritage of Niue and the activities carried out for the purposes of safeguarding that heritage; and

- (r) promote education for the protection of natural spaces and places of memory whose existence is necessary for expressing the intangible cultural heritage of Niue; and
- (s) promote the cultural standards proclaimed in the United Nations Declaration on the Rights of Indigenous Peoples of 13 September 2007; and
- (t) support the implementation of the Convention 1972.

**8 Department must follow Government policy and Cabinet directives**

In the exercise of its functions and powers under this Act, the Department must—

- (a) have regard to the Tohi Fakatokatoka Gahua (Strategic Action Plan) 2005-2008 or any document that replaces it; and
- (b) have regard to the general policy of the Government in relation to the protection and preservation of tāoga Niue; and
- (c) comply with any policy directive given to it by Cabinet.

**9 Staff**

The Niue Public Service Commission must appoint a Director and such other officers of the Department as are necessary to fulfil the functions of the Department.

**10 Annual report**

(1) The Director must, before 31 March in each year, give a written report to the Minister on the operations of the Department in the preceding year.

(2) The Minister must table a copy of the report before the Assembly at the first available meeting.

**PART 3**  
**ESTABLISHMENT OF TĀOGA NIUE COUNCIL**

**11 Establishment of Tāoga Niue Council**

The Tāoga Niue Council is established.

**12 Council's status and powers**

(1) The Council has—

- (a) the statutory powers conferred by this Act and any other Act; and
- (b) the powers necessary to enable it to perform its functions.

(2) The Council may exercise its powers only for the purpose of performing its functions.

**13 Council's functions**

The Council's functions are—

- (a) to act as an expert advisory council to the Department in relation to tāoga Niue; and
- (b) to advise the Director on whether an object is—
  - (i) an antiquity; or
  - (ii) of national cultural significance; or
  - (iii) of national historical significance; and

- (c) to advise the Director on the removal of protected objects from the register; and
- (d) to determine the ownership of antiquities and protected objects if it is unclear or if there is a dispute; and all incidental and related matters.

#### **14 Membership of Council**

The Council consists of—

- (a) a representative of the Niue Language Commission; and
- (b) a representative of the Environment Department; and
- (c) a representative of the Education Department; and
- (d) one senior employee of the National Archives of Niue, the National Museum and Cultural Centre, the National Library, or the Justice, Lands and Survey Department that is selected jointly by those organisations to represent those organisations; and
- (e) the chairperson of the Niue Council of Women; and
- (f) the chairperson of the Niue Youth Council; and
- (g) three members selected and appointed by Cabinet; and
- (h) the Director (as a non-voting member).

#### **15 Qualifications of Cabinet appointees**

To be qualified to be selected and appointed by Cabinet in accordance with section 14(g), a person must—

- (a) have his or her primary residence in Niue; and
- (b) be widely regarded as being well-versed in either—
  - (i) Niue culture and heritage; or
  - (ii) matters of the Department.

#### **16 Further provisions relating to Council and its members**

Schedule 2 applies to the Council and its members.

### **PART 4**

#### **EXPORT CONTROLS ON ANTIQUITIES AND PROTECTED OBJECTS**

#### **17 Register of protected objects**

- (1) The Director must establish and maintain a register of protected objects.
- (2) The register is to be in such form and contain such information as the Director determines.
- (3) The Director may, with the approval of the Council, record on the register—
  - (a) antiquities; and
  - (b) any object that is of national cultural significance; and
  - (c) any object that is of national historical significance.
- (4) A protected object may be removed from the register only if the Council decides that the export of the object would not substantially diminish the cultural heritage of Niue.

**18 Council's role in relation to antiquities and objects**

- (1) The Council is the final authority on whether an object is—
- (a) an antiquity; or
  - (b) of national cultural significance; or
  - (c) of national historical significance.
- (2) The Director must refer any dispute about the ownership of an antiquity or an object of national cultural or historical significance to the Council for determination in accordance with customary law and practice.
- (3) The decision of the Council on an ownership dispute is final.

**19 Export permit required to export antiquities and protected objects**

- (1) Any person who wishes to export an antiquity or protected object must make a written application for an export permit to the Director.
- (2) The application must provide the following information—
- (a) an accurate description of the antiquity or protected object; and
  - (b) the name of the owner of the antiquity or protected object; and
  - (c) the purpose of the export; and
  - (d) the period the antiquity or protected object will be absent from Niue; and
  - (e) the proposed security and insurance measures to be taken (if any) by the applicant for the antiquity or protected object while it is absent from Niue; and
  - (f) any other information prescribed by regulations made under this Act.

**20 Grant of export permit**

- (1) An export permit may be granted for an antiquity or protected object—
- (a) only if—
    - (i) its absence from Niue is temporary; and
    - (ii) its owner allows it to be photographed, cast, or otherwise copied as the Director requires; and
  - (b) on such other conditions as the Director thinks fit, which may include a requirement that the exporter—
    - (i) provide a bond to the Government of Niue of an amount set by the Director against the return of the antiquity or protected object in good condition; and
    - (ii) comply with packaging and handling requirements specified by the Director; and
  - (c) only with the approval of the Minister.
- (2) A copy made of an antiquity or protected object is the property of the Government of Niue.

**21 Unlawfully exported antiquities and protected objects may be seized**

A constable or customs officer may seize and detain any antiquity or protected object that a person attempts to remove from Niue in breach of this Act.

**22 Director may recover unlawfully exported antiquities and protected objects**

If an antiquity or protected object is exported from Niue in breach of this Act, the Director may take all appropriate action to have the antiquity or protected object returned to Niue.

**23 Offences and forfeiture of antiquities and protected objects**

(1) A person commits an offence if that person—

- (a) removes an antiquity or protected object from Niue without an export permit issued under section 20; or
- (b) attempts to remove an antiquity or protected object from Niue without an export permit issued under section 20; or
- (c) breaches a condition of an export permit issued under section 20.

(2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding 100 penalty units.

(3) If the owner of an antiquity or protected object is convicted of an offence against subsection (1), the antiquity or protected object is automatically forfeited to the Government of Niue for the benefit of the people of Niue.

## PART 5

### PROTECTION OF TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF CULTURE

#### *Preliminary matters*

**24 Application**

(1) This Part applies to traditional knowledge and expressions of culture that—

- (a) were in existence before the commencement of this Act; or
- (b) are created on or after the commencement of this Act.

(2) This Part does not affect or apply to rights that exist immediately before the commencement of this Act, including intellectual property rights.

(3) This Part does not affect or apply to contracts, licences, or other agreements entered into by traditional owners before the commencement of this Act in relation to the use of traditional knowledge or expressions of culture.

**25 Customary use**

The customary use of traditional knowledge or expressions of culture does not give rise to any criminal or civil liability under this Part.

#### *Traditional cultural rights*

**26 Holders of traditional cultural rights**

The traditional owners of traditional knowledge or expressions of culture are the holders of the traditional cultural rights in the traditional knowledge or expressions of culture.

**27 Meaning of traditional cultural rights**

(1) Traditional cultural rights are the rights set out in subsections (2) and (3).

(2) The following uses of traditional knowledge or expressions of culture require the prior and informed consent of the traditional owners in accordance with section 43(1) or 45(3) if the use is a non-customary use (whether or not of a commercial nature)—

- (a) to reproduce traditional knowledge or expressions of culture; or
- (b) to publish traditional knowledge or expressions of culture; or
- (c) to perform or display traditional knowledge or expressions of culture in public; or
- (d) to broadcast traditional knowledge or expressions of culture to the public by radio, television, satellite, cable, or any other means of communication; or
- (e) to translate, adapt, arrange, transform, or modify traditional knowledge or expressions of culture; or
- (f) to fixate traditional knowledge or expressions of culture through any process such as making a photograph, film, or sound recording; or
- (g) to make traditional knowledge or expressions of culture available online or to electronically transmit traditional knowledge or expressions of culture to the public (whether over a path, a combination of paths, or both); or
- (h) to create derivative works; or
- (i) to make, use, offer for sale, sell, import, or export traditional knowledge or expressions of culture or products derived from traditional knowledge or expressions of culture; or
- (j) to use traditional knowledge or expressions of culture in any other material form.

(3) To avoid doubt, the traditional owners are entitled to use traditional knowledge or expressions of culture in the ways specified in subsection (2) in the exercise of their traditional cultural rights.

(4) Subsection (2) does not apply to the use of traditional knowledge or expressions of culture for any of the following—

- (a) face to face teaching; or
- (b) criticism or review; or
- (c) reporting news or current events; or
- (d) judicial proceedings; or
- (e) incidental use.

(5) A user of traditional knowledge or expressions of culture specified in subsections (4)(a) to (d) must make sufficient acknowledgement of the traditional owners by mentioning them, or the geographical place from which the traditional knowledge or expressions of culture originated, or both.

## **28 Material form not required**

Traditional cultural rights exist in traditional knowledge and expressions of culture whether or not that traditional knowledge or those expressions of culture are in material form.

## **29 Duration**

Traditional cultural rights continue in force in perpetuity.

**30 Traditional cultural rights inalienable**

Traditional cultural rights are inalienable.

**31 Additional rights**

The traditional cultural rights in traditional knowledge or expressions of culture are in addition to, and do not affect, any rights that may subsist under any law relating to copyright, trademarks, patents, designs, or other intellectual property.

**32 Derivative works**

(1) Any copyright, trademark, patent, design, or other intellectual property right that exists in relation to a derivative work vests in the creator of the work or as otherwise provided by the relevant intellectual property law.

(2) If a derivative work, traditional knowledge, or expressions of culture are to be used for a commercial purpose, the authorised user agreement must—

- (a) contain a benefit sharing arrangement providing for equitable monetary or non-monetary compensation to the traditional owners; and
- (b) provide for identification of the traditional knowledge or expressions of culture on which the derivative work is based in an appropriate manner in connection with the exploitation of the derivative work by mentioning the traditional owners, or the geographical place from which it originated, or both; and
- (c) provide that the traditional knowledge or expressions of culture in the derived work will not be subject to derogatory treatment.

*Moral rights*

**33 Meaning of moral rights**

(1) The traditional owners of traditional knowledge or expressions of culture are the holders of the moral rights in the traditional knowledge or expressions of culture.

(2) The moral rights of the traditional owners of traditional knowledge and expressions of culture are—

- (a) the right of attribution of ownership in relation to their traditional knowledge and expressions of culture; and
- (b) the right not to have ownership of traditional knowledge or expressions of culture falsely attributed to them; and
- (c) the right not to have their traditional knowledge and expressions of culture subject to derogatory treatment.

(3) The moral rights of traditional owners in their traditional knowledge and expressions of culture exist independently of their traditional cultural rights.

(4) Moral rights continue in force in perpetuity, are inalienable, and cannot be waived or transferred.

*Obtaining prior and informed consent from traditional owners*

**34 Overview**

This subpart sets out the procedure for obtaining the prior and informed consent of the traditional owners to use their traditional knowledge or expressions of culture for a non-customary use (whether or not of a commercial nature).

**35 Application to Director for use of traditional knowledge or expression of culture**

(1) A prospective user of traditional knowledge or expression of culture for a non-customary use (whether or not of a commercial nature) must apply to the Director to obtain the prior and informed consent of the traditional owners to use the traditional knowledge or expressions of culture.

(2) The application must—

- (a) be in the prescribed form; and
- (b) specify the way in which the applicant proposes to use the traditional knowledge or expressions of culture; and
- (c) state clearly the purpose for which that use is intended; and
- (d) be accompanied by the prescribed fee.

(3) If the Director does not finalise the application within 90 days, the traditional owners are deemed not to have consented to the proposed use.

**36 Public notification**

(1) The Director must—

- (a) give a copy of the application to any persons who the Director is satisfied are the traditional owners of the traditional knowledge or expressions of culture to which the application relates; and
- (b) give public notice of the application by—
  - (i) publishing a copy of the application on the Department's website or the Government's website stating how interested persons may obtain a copy of the application; and
  - (ii) broadcasting details of the application on radio or television stating how interested persons may obtain a copy of the application; and
  - (iii) making it generally known by any other means that the Director considers appropriate in the circumstances.

(2) Any person who claims to be a traditional owner of the traditional knowledge or expressions of culture to which the application relates must advise the Director (either orally or in writing) within 28 days after the application is published or broadcast (whichever is the later).

(3) The Director must record in writing the details of any advice given under subsection (2).

**37 Identification of traditional owners**

(1) If the Director is satisfied that all of the traditional owners have been identified, the Director must issue a written determination identifying the traditional owners.

(2) The Director must give public notice of the determination by—

- (a) publishing a copy of the determination on the Department's website or the Government's website; and
- (b) broadcasting details of the determination on radio or television; and
- (c) making it generally known by any other means that the Director considers appropriate in the circumstances.

**38      Uncertainty or dispute about ownership**

(1) If the Director is not satisfied that all of the traditional owners have been identified, or if there is a dispute about ownership, the Director must refer the matter to the Council to be resolved according to customary law and practice.

(2) When all of the traditional owners have been identified —

- (a) the traditional owners must advise the Director; and
- (b) the Director must issue a determination identifying the traditional owners.

(3) The Director must give public notice of the determination by —

- (a) publishing a copy of the determination on the Department's website or the Government's website; and
- (b) broadcasting details of the determination on radio or television; and
- (c) making it generally known by any other means that the Director considers appropriate in the circumstances.

**39      No traditional owners or no agreement about ownership**

(1) The Director may, after consultation with Cabinet, issue a determination that the Government of Niue is the traditional owner of traditional knowledge or expressions of culture for the purposes of this Act if the Director is satisfied that—

- (a) no traditional owners can be identified; or
- (b) no agreement has been reached on ownership within 90 days after the matter was referred to the Council in accordance with section 38(1).

(2) If the Director, as a representative of the Government, enters into an authorised user agreement, any monetary or non-monetary benefits arising under the agreement must be used for traditional cultural development purposes.

**40      Application to be rejected or accepted**

(1) The traditional owners to whom an application relates must decide whether—

- (a) to reject the application; or
- (b) to accept the application and to enter into negotiations for a written authorised user agreement in relation to the application.

(2) The traditional owners must advise the Director (either orally or in writing) of their decision.

(3) The Director must advise the applicant in writing of the traditional owners' decision.

**41      Proposed agreement to be referred to Director**

(1) Before entering into an authorised user agreement, the traditional owners must refer the proposed agreement to the Director for comment on the proposed terms and conditions of the agreement.

(2) The Director may request the applicant and the traditional owners to meet with the Director to discuss the proposed agreement if the Director is, after reviewing the proposed agreement, satisfied that—

- (a) the traditional owners do not have sufficient information to make a full and informed decision about the proposed terms and conditions of the agreement; or
- (b) the proposed terms and conditions of the agreement do not adequately protect the traditional knowledge or expressions of culture of the traditional owners.

(3) The traditional owners may accept, reject, or modify any comments made by the Director in relation to the proposed agreement.

## **42 Terms and conditions**

An authorised user agreement should include terms and conditions about—

- (a) the extent of the permitted use of the traditional knowledge or expressions of culture (the "use"); and
- (b) sharing of financial and other benefits arising from the use; and
- (c) compensation, fees, royalties, or other payments for the use; and
- (d) whether the use will be exclusive or non-exclusive; and
- (e) the duration of the use to be allowed and rights of renewal; and
- (f) disclosure requirements in relation to the use; and
- (g) the possible sharing by the traditional owners of any intellectual property rights arising from the use of the traditional knowledge or expressions of culture; and
- (h) access arrangements for the traditional owners; and
- (i) education and training requirements for the applicant; and
- (j) controls on publication; and
- (k) whether the rights arising under the agreement can be assigned; and
- (l) choice of law in relation to disputes under the agreement; and
- (m) respect for the moral rights of the traditional owners.

## **43 Authorised user agreement and prior and informed consent**

(1) If an applicant and the traditional owners enter into an authorised user agreement, the traditional owners are deemed to have given their prior and informed consent to the use of the traditional knowledge or expressions of culture permitted by the agreement.

(2) The traditional owners must advise the Director and forward a copy of the final agreement to the Director.

(3) The Director must keep a register of authorised user agreements.

(4) The register is to be in such form and contain such information as the Director determines.

## **44 No authorised user agreement reached**

(1) The traditional owners must advise the Director (either orally or in writing) if the traditional owners and an applicant cannot agree on the terms and conditions of an agreement in relation to an application.

(2) The Director must advise the applicant in writing that the traditional owners have rejected the proposed authorised user agreement.

(3) The Director must record in writing the details of any oral or written advice given under subsection (1).

**45 Procedure for applications made directly to traditional owners**

(1) A prospective user of traditional knowledge or expressions of culture may obtain the prior and informed consent of the traditional owners without applying to the Director under section 35.

(2) The prospective user must—

- (a) advise the Director that the prospective user has sought the prior and informed consent of the traditional owners; and
- (b) provide the Director with a copy of the proposed authorised user agreement between the prospective user and the traditional owners for comment and for advice about other prospective traditional owners; and
- (c) provide a copy of the signed authorised user agreement to the Director to be entered in the register kept by the Director in accordance with section 43(3) and (4) within 28 days after the agreement comes into force.

(3) If a prospective user and the traditional owners enter into an authorised user agreement, the traditional owners are deemed to have given their prior and informed consent to the use of the traditional knowledge or expressions of culture permitted by the agreement.

(4) The prospective user cannot contract out of the obligations under subsection (2)(b) and (c).

(5) If a copy is not provided in accordance with subsection (2)(b), the authorised user agreement is null and void.

(6) To the extent that it is inconsistent, this section overrides the rest of this subpart.

*Enforcement*

**46 Offence in relation to traditional cultural rights**

A person commits an offence and is liable on conviction to a fine not exceeding 100 penalty units, or a term of imprisonment not exceeding 12 months, or both, if—

- (a) that person makes a non-customary use of traditional knowledge or an expression of culture (whether or not such use is of a commercial nature); and
- (b) the traditional owners have not given their prior and informed consent to that use.

**47 Offence in relation to moral rights**

A person commits an offence and is liable on conviction to a fine not exceeding 100 penalty units, or a term of imprisonment not exceeding 12 months, or both if—

- (a) that person does an act or makes an omission in relation to traditional knowledge or an expression of culture that is inconsistent with the moral rights of the traditional owners of that traditional knowledge or expression of culture; and

- (b) the traditional owners have not given their prior and informed consent to the act or omission.

**48 Offence in relation to sacred-secret material**

(1) A person who uses sacred-secret traditional knowledge or an expression of culture other than in accordance with a customary use commits an offence and is liable on conviction to a fine not exceeding 100 penalty units, or a term of imprisonment not exceeding 12 months, or both.

(2) In this section —  
"sacred-secret" means any traditional knowledge or expression of culture that has a sacred or secret significance according to the customary law and practices of the traditional owners concerned.

**49 Offences in relation to importation and exportation**

(1) A person commits an offence and is liable on conviction to a fine not exceeding 100 penalty units, or a term of imprisonment not exceeding 12 months, or both if that person—

- (a) imports an article or other thing into Niue that relates to traditional knowledge or expressions of culture of Niue; and
- (b) knows, or ought reasonably to know, that the article or thing would contravene the traditional cultural rights or the moral rights of the traditional owners had it been created in Niue.

(2) A person commits an offence and is liable on conviction to a fine not exceeding 100 penalty units, or a term of imprisonment not exceeding 12 months, or both if—

- (a) that person exports traditional knowledge or an expression of culture; and
- (b) the export is a non-customary use (whether or not such use is of a commercial nature); and
- (c) the traditional owners have not given their prior and informed consent to the export of the traditional knowledge or expressions of culture.

**50 Civil claims**

(1) The traditional owners may institute proceedings in the High Court seeking all or any of the relief set out in section 51 against a person if—

- (a) that person makes a non-customary use of traditional knowledge or an expression of culture (whether or not such use is of a commercial nature); and
- (b) the traditional owners have not given their prior and informed consent to that use.

(2) The traditional owners may institute proceedings in the High Court seeking all or any of the relief set out in section 51 against a person if—

- (a) that person does an act or makes an omission in relation to traditional knowledge or an expression of culture that is inconsistent with the moral rights of the traditional owners of that traditional knowledge or expression of culture; and
- (b) the traditional owners have not given their prior and informed consent to the act or omission.

## 51 Remedies

(1) The High Court may grant all or any of the following in relation to proceedings instituted under section 50—

- (a) an injunction;
- (b) damages for loss resulting from the unauthorised use;
- (c) a declaration that the traditional cultural rights of the traditional owners have been contravened;
- (d) an order that the defendant make a public apology for the contravention;
- (e) an order that any false attribution of ownership, or derogatory treatment, of the traditional knowledge or expression of culture cease or be reversed;
- (f) an order for an account for profits;
- (g) an order for the seizure of any object made, imported, or exported contrary to this Act;
- (h) such other orders as the Court considers appropriate in the circumstances.

(2) The Court in deciding what relief is to be granted may take into account all or any of the following—

- (a) whether the defendant was aware or ought reasonably to have been aware of the traditional cultural rights and moral rights of the traditional owners;
- (b) the effect on the honour or reputation of the traditional owners resulting from the unauthorised use;
- (c) anything done by the defendant to mitigate the effects of the unauthorised use;
- (d) any cost or difficulty that may have been associated with identifying the traditional owners;
- (e) any cost or difficulty in ceasing or reversing any false attribution of ownership, or derogatory treatment, of the traditional knowledge or expression of culture;
- (f) whether the parties have undertaken any other action to resolve the dispute.

## 52 Defences

It is a defence to an offence against section 47 or 47, or an action under section 50(1) or (2), if a determination has been published under section 37 and the traditional owners specified in that determination have given their prior and informed consent to the use in question.

## 53 Other rights of action and remedies

This Part does not affect any rights of action or other remedies, whether civil or criminal, provided for under any other law.

### *Role of Director*

## 54 Directors role in relation to traditional knowledge and expressions of culture

The Director may—

- (a) monitor compliance with authorised user agreements and advise traditional owners of any breaches of such agreements; and
- (b) develop standard terms and conditions for authorised user agreements; and
- (c) provide training and education programmes for traditional owners and users of traditional knowledge or expressions of culture; and

- (d) develop a Code of Ethics in relation to the use of traditional knowledge and expressions of culture; and
- (e) issue advisory guidelines for the purposes of this Part; and
- (f) liaise with regional bodies in relation to matters in this Part; and
- (g) maintain a record of traditional owners and of traditional knowledge and expressions of culture; and
- (h) if requested, provide guidance on the meaning of customary use in specific cases.

**PART 6**  
**MISCELLANEOUS MATTERS**

**55 Regulations**

- (1) Cabinet may make regulations for the purposes of this Act.
- (2) Regulations made under this Act may set fees.
- (3) Cabinet may by regulation amend Schedule 1.
- (4) In accordance with reciprocal arrangements, Cabinet may make regulations extending the application of this Act to traditional knowledge and expressions of culture originating in other countries or territories in order to provide the same protection for that traditional knowledge or expressions of culture as is provided to traditional knowledge and expressions of culture originating in Niue.

**56-59** [Spent]

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Schedule 1  
Sectors in which Department is to advance purposes of this Act

Section 7(b)

Sector	Purpose of Sector
Arts and Crafts	To promote development of traditional art and crafts and encourage participation of people of Niue in the creation and sharing of artistic and craft work.
Cultural bridge	To promote continuing and sustainable affiliations between people of Niue in Niue and abroad.
Customs and traditions	To preserve customs and traditions in order to secure the identity and sovereignty of the people of Niue.
Environment	To collaborate with the Department for the Environment in order to preserve the natural environment, biological diversity, and historic areas for the benefit of future generations.

Heritage Assets	To collaborate with the National Archives of Niue to maintain, collect, conserve, and preserve archival records as assets for the use of future generations.
	To collaborate with the National Archives of Niue and the National Library to act as custodians of Niue's intellectual heritage and to provide organisations access to that heritage.
	To collaborate with the National Archives of Niue and the National Library to preserve the national imprint in all media.
	To collaborate with the National Museum and Cultural Centre to maintain, promote, exhibit, and use traditional ways to preserve Niue's cultural history.
	To collaborate with the Justice, Lands and Survey Department to support the recording, maintenance, and preservation of Niue genealogies.
History	To raise the status of the study of the history of Niue through the production of books for students, scholars, researchers, and the general public.
Vagahau Niue	To collaborate with the Education Department and the Niue Language Commission to promote Vagahau Niue in accordance with the Vagahau Niue Act 2012.

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Schedule 2  
Further provisions applying to Council

Section 16

## 1 Procedure for appointing members

- (1) Each of the members must be appointed by Cabinet.
- (2) The procedure for Cabinet selecting and appointing persons in accordance with section 14(g) is as follows—
  - (a) the Director must recommend suitably qualified members of the public to Cabinet, setting out the relevant qualifications and expertise of each candidate; and
  - (b) Cabinet must appoint the candidate or (depending upon the number of vacancies) candidates that it considers is most qualified to be a member of the Council.
- (3) The procedure in subclause (2) applies each time there is a vacancy in the membership of a person referred to in section 14(g).

**2 Effect of vacancies and validity of members' acts**

- (1) A vacancy in the membership of the Council does not affect—
  - (a) the validity of any Council decision; or
  - (b) the powers and functions of the Council.
- (2) The acts of a person as a member are valid even if—
  - (a) the person's appointment was defective; or
  - (b) the person is not qualified to be a member.

**3 Term of appointment**

- (1) A member selected and appointed by Cabinet in accordance with section 14(g) may be appointed for 3 years or any shorter period of time specified by Cabinet.
- (2) A member may be reappointed.

**4 Duties of members**

- (1) A member of the Council must act—
  - (a) in good faith; and
  - (b) with reasonable care, diligence, and skill; and
  - (c) with honesty and integrity; and
  - (d) in accordance with the Niue Public Service Code of Conduct.
- (2) The duties of members are owed to Cabinet and do not provide any ground of action for any other person.

**5 Collective duties of Council**

The Council must—

- (a) not contravene this Act; and
- (b) act in a manner consistent with the objectives and functions of the Council; and
- (c) perform its functions efficiently and effectively and in a manner consistent with the spirit of service to the public.

**6 Liability of members**

No member is liable for any act or omission done, in good faith, in the performance or intended performance and exercise of the functions and powers of the Council.

**7 Removal from office**

- (1) Cabinet may remove a member from the Council by written notice to the member for any of the following reasons proved to the satisfaction of the Cabinet—
  - (a) breach of the member's duties or the Council's collective duties under this Act; or
  - (b) failure or inability to perform, or inadequate performance of, the member's duties and responsibilities as a member; or
  - (c) misconduct by the member; or
  - (d) any other just cause.

(2) Cabinet must give the member a reasonable opportunity to be heard on the proposal to remove the member.

- (3) The notice of removal must state the reason for the removal.

## **8 Member ceasing to hold office**

A member ceases to hold office if he or she—

- (a) is removed from office in accordance with clause 7; or
- (b) dies; or
- (c) resigns by giving written, signed notice to Cabinet; or
- (d) fails to attend 3 consecutive meetings of the Council without the prior permission of the chairperson; or
- (e) ceases to have his or her primary residence in Niue.

## **9 No compensation for ceasing to hold office**

A member is not entitled to any compensation or other payment or benefit relating to his or her ceasing for any reason to hold office as a member of the Council.

## **10 Chairperson and deputy chairperson**

(1) Cabinet may appoint one of the members as the chairperson, and another member as the deputy chairperson, of the Council by written notice to the Council.

(2) However, the Director must not be appointed as chairperson or deputy chairperson.

(3) In the case of the absence or incapacity of the chairperson, the functions of the chairperson must be performed by the deputy chairperson.

## **11 Meetings of Council**

(1) The Council must meet—

- (a) to the extent required in order for it to fulfil its functions, but no less than 4 times in each 12 month period; and
- (b) when directed by the Director.

(2) The Council must meet at the time and place determined by the chairperson.

(3) The quorum for a meeting of the Council is 5 voting members.

(4) Subject to this Act and any regulations made under this Act, the Council may regulate its proceedings as it thinks fit.

## **12 Decisions of Council**

(1) All decisions made by the Council must be made by consensus if this can be obtained.

(2) If there is no consensus, the decision must be made by vote.

(3) The Director does not have a vote.

(4) At any meeting, the person presiding has a deliberative vote and, in the case of an equality of votes, a casting vote.

## **13 Remuneration of members**

(1) A member is entitled to receive remuneration for services as a member at a rate and of a kind set by regulations made by Cabinet.

(2) However, the following office holders are not entitled to any remuneration for services as a member of the Council in addition to the member's remuneration in respect of that office—

- (a) a Judge:

- (b) a member of the Assembly;
- (c) an employee (including a director) within any part of the Niue Public Service who is acting as a member of the Council as a representative of all or any part of the Niue Public Service.

**14 Annual report**

- (1) The Council must, before 31 March in each year, give a written report to the Minister on the operations of the Council in the preceding year.
- (2) The Minister must table a copy of the report before the Assembly at the first available meeting.

**15 Resources and facilities**

The Department must provide the resources and facilities that are necessary for the Council to fulfil its functions.

Schedule 3  
[Spent]



# TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE ACT 1996

1997/220 – 7 April 1997

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**To make provision with respect to the territorial sea of Niue and to establish an exclusive economic zone for Niue adjacent to the territorial sea, and in the exercise of the sovereign rights of Niue to make provision for the exploration and exploitation, and conservation and management of the resources of the zone, and related matters**

**1 Short title**

This is the Territorial Sea and Exclusive Economic Zone Act 1996.

**2 Interpretation**

(1) In this Act –

“access agreement” means an agreement under section 22 and includes any other agreement or arrangement entered into under such an agreement;

“authorised officer” means –

- (a) The Director; or
- (b) A fisheries officer; or
- (c) A constable; or
- (d) A surveillance officer; or
- (e) A person appointed under section 38; or
- (f) A person or body referred to in section 24;

“body corporate” means a body corporate resident on Niue;

“commercial fishing” means taking fish for sale;

“designated fishery” means any fishery designated under section 12;

“Director” means the Director of Agriculture, Forestry and Fisheries;

“driftnet” means a gillnet or other net which is more than 2.5 kilometres in length, the purpose of which is to enmesh, entrap, or entangle fish;

“driftnet fishing” means fishing with a driftnet;

“exclusive economic zone” means the exclusive economic zone of Niue described in section 10;

“fish” means any aquatic plant or animal, whether piscine or not, and includes any oyster or other mollusc, crustacean (including uga), coral, sponge, holothurian (beche-de-mer), or other echinoderm, turtle and marine mammal, and include their eggs, spawn, spat and juvenile stages;

“fisheries officer” means a fisheries officer appointed by the Niue Public Service Commission and responsible to the Director;

“fishery” means one or more stocks of fish or any fishing operation based on those stocks which can be created as a unit for the purposes of conservation and management;

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

“fishing” means activity that is either –

- (a) Searching for, catching, taking or harvesting fish;
- (b) The attempted searching for, catching, taking or harvesting of fish;
- (c) Engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- (d) Placing, searching for or recovering any fish, aggregating device or associated equipment including radio beacons;
- (e) Fish processing within the fishery waters;
- (f) Transshipment within the fishery waters;

- (g) Any operation at sea in support of or in preparation for any activity described in this paragraph;
  - (h) The use of any fishing craft in relation to any activity described in this definition;
  - (i) Any related activity; or
  - (j) The use of any vehicle, vessel or aircraft, for any activity described in this paragraph, except for emergencies involving the health or safety of crew members or the safety of the vessel;
- “fishing craft” means any vessel, aircraft, hovercraft, submersible craft, or other craft, of whatever size, that is capable of being used for fishing but, shall not include any vessel that is 5 metres or less in overall length;
- “fishing gear” means any equipment, implement, or other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, hook, winch, fishing craft or vessel;
- “fish processing” means the producing of any substance or article from fish by any method and includes the cutting up, dismembering, cleaning, sorting, loining, freezing, canning, salting and preserving of fish;
- “fish processing establishment” means a place (other than a licensed fishing craft) where fish are canned, dried, gutted, salted, iced, chilled, frozen or otherwise processed for sale on or outside Niue;
- “foreshore” means all the land between the high water line at mean-high water spring tides and the low water line at mean-low-water spring tides;
- “*Gazette*” means any periodical printed publication circulating in Niue such as the Niue Star;
- “highly migratory species” means species that, in the course of their life cycle, migrate over great distances of ocean;
- “infringement notice” means a notice alleging the commission of an infringement offence;
- “infringement offence” means an offence against this Act or regulations made under this Act that is classified as an infringement offence by regulations made under this Act;
- “low-water mark” has the meaning assigned to it by section 8(1);
- “master”, in relation to any fishing craft, means the person for the time being having command or charge, or apparent command or charge of the craft;
- “median line” as between Niue and any other country, means a line every point of which is equidistant from the nearest points of the baseline of the territorial sea of Niue and the corresponding baseline of that other country;
- “Minister” means the Minister responsible for fisheries;
- “nautical mile” means the international nautical mile;
- “Niuean” includes a person having the status of permanent resident as defined in the Immigration Act 2011 and its Regulations;
- “observer” means any person authorised to act as an observer under section 38 and includes any person who has any or all of the functions, powers and duties of an observer under an access agreement;
- “observer device” means any device or machine placed on a fishing craft in accordance with this Act or an access agreement which transmits (whether in conjunction with other machines elsewhere or not), information or data concerning the position of fishing activities of the fishing craft;
- “operator” in relation to any fishing craft includes any body of persons, whether incorporated or not, by whom the craft is operated, and any owner, charterer,

master, lessee, or sub-lessee who exercises control over any of the fishing activities of the craft;

“owner”, in relation to a fishing craft, includes any person or body of persons whether incorporated or not, by whom the craft is owned, and any charterer, sub-charter, lessee or sub-lessee;

“prescribed” means prescribed by regulations made under this Act;

“protected fish species” means the species of fish the Government of Niue recognises as fish that are to be protected within Niue’s territorial sea and exclusive economic zone such as –

- (i) Cetaceans: all species of whales identified within/under the 3 groups Right Whale, Grey Whale, and Rorquals;
- (ii) Cetaceans: All species of whales identified within/under the 5 groups Sperm Whale, Beaked Whale, Belugas Whale, Narwhal, and Dolphin and Porpoise;
- (iii) All marine species of the Chelonia order which, includes all species of Turtle;
- (iv) Myliobatidae: rays, all species; and
- (v) Lamniformes: sharks, all species;

“Regional register” means the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency at Honiara, Solomon Islands;

“related activity” means doing anything in support of, or in preparation for, fishing operations, including doing, or attempting or preparing to do or having done any of the following –

- (a) Transshipping fish; or
- (b) Storing, processing or transporting fish at any time before the fish is or are brought on land; or
- (c) Refuelling or supplying fishing craft; or
- (d) Performing activities in support of fishing operations;

“surveillance officer” means any officer of a vessel or aircraft used for the enforcement of this Act, whether or not the officer is a Niuean and whether or not the vessel or aircraft is registered in Niue;

“territorial sea” means the area of the sea defined in section 4;

“transshipment” means transferring any fish or fish product to or from one fishing craft to another;

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

(2) The administration of this Act is under the control and direction of Cabinet, which may delegate, either generally or particularly all or any of the powers conferred on it under this Act.

### **3 Reference to money amounts**

(1) A reference in this Act or the regulations to any penalty or fee, the amount of which is specified, or to any other specified amount of money, is to be read as a reference to the specified amount in the currency of the United States of America.

(2) A reference in this Act or the regulations to a penalty or fee, the amount of which is not specified, or to any other unspecified amount of money, is to be read as empowering the person or body authorised to specify the amount to do so in the currency of the United States of America.

PART 1  
TERRITORIAL SEA

**4-9** [Repealed]

PART 2  
EXCLUSIVE ECONOMIC ZONE

**10** [Repealed]

PART 3  
APPLICATION

**11 Application**

(1) This Act applies to every person, every fishing craft and every vessel, fishing within fishery waters.

(2) No fishing craft shall be used for commercial fishing unless the craft is licensed under section 28.

PART 4  
FISHERIES MANAGEMENT AND DEVELOPMENT

**12 Designated fisheries**

If Cabinet thinks it is in the national interest to ensure the effective conservation or the efficient use of a fishery, it may, by notice in the *Gazette* declare the fishery to be a designated fishery.

**13 Management and development plans**

(1) The Director may direct a Fisheries Officer to prepare and implement a management and development plan for a designated fishery.

(2) The management and development plan shall –

- (a) Identify the fishery to which it relates; and
- (b) Set out the objectives to be achieved by the plan; and
- (c) Specify the management measures to be adopted to achieve those objectives; and
- (d) Specify what protection is to be given to the habitat of the fishery; and
- (e) Specify the limits within which the fishery may be exploited; and
- (f) Specify what licensing requirements (if any) are to apply to anyone who wants to operate within a fishery; and
- (g) Specify what protection is to be given to any other designated fishery (whether by way of management measures, habitat protection, exploitation limits or licensing requirements) for the purpose of –
  - (i) Ensuring the conservation of the fishery in accordance with its management and development plan; or
  - (ii) Ensuring that the objectives set out in the management and development plan can be achieved;
- (h) Identify new protected fish species.

**14 Variation of management and development plan**

(1) If the Director thinks that a management and development plan should be varied in order to ensure the effective conservation or the efficient use of the fishery

to which it relates, the Director may, in writing, prepare a variation of the plan and submit it to Cabinet for approval.

(2) A variation takes effect when it is approved by Cabinet or at such other time as Cabinet determines.

## **15 Exemptions**

(1) Cabinet may, on application made by or on behalf of a person or a group of persons, declare that a management and development plan, or a specified part of such a plan, is not to apply to the person or group.

(2) Cabinet may make a declaration subject to such conditions, if any, as Cabinet thinks necessary in order to ensure the effective conservation or efficient use of the fishery to which the management and development plan relates.

## **16 Revocation of management and development plan**

If Cabinet is satisfied that the objectives set out in a management and development plan have been achieved, the Cabinet may revoke the plan by notice in the *Gazette*.

## **17 Offences**

(1) A person may not contravene or fail to comply with a provision of a management and development plan that applies to the person.

Penalty: A fine not exceeding 1,000 penalty units.

(2) A person must not contravene or fail to comply with a direction given to the person by an authorised officer, being a direction that is consistent with a management and development plan, or part of such a plan, that applies to the person.

Penalty: A fine not exceeding 1,000 penalty units.

(3) In this section, person includes a Niuean and a resident of Niue.

## **PART 5**

### **UNAUTHORISED FISHING AND PROHIBITED FISHING METHODS**

## **18 Unauthorised fishing prohibited**

(1) A person shall not engage in commercial fishing in fishery waters unless the person is licensed, authorised or otherwise permitted to do so by or under this Act or the regulations.

Penalty: A fine not exceeding 1,000 penalty units and the Court may order the confiscation of fishing gear.

(2) A fishing craft shall not –

- (a) Do anything in fishery waters that is not authorised or permitted by or under international law; or
- (b) Be used for fishing in fishery waters unless it is licensed, authorised or otherwise permitted to do so by or under this Act or the regulations.

(3) A fishing craft shall not, while in any area within fishery waters, carry any fishing gear that is stored in a way that would allow it to be made readily available for fishing in that area, unless the vessel is licensed for use for fishing in that area or such use otherwise authorised or permitted by or under this Act or the regulations.

(4) If a fishing craft contravenes subsection (2) or (3), the owner or charterer and the master of the vessel are each guilty of an offence.

Penalty: A fine not exceeding 5,000 penalty units and the Court may order confiscation of fishing gear.

**19 Prohibited fishing methods**

- (1) A person shall not –
- (a) Have control or possession of a driftnet; or
  - (b) Engage in driftnet fishing in fishery waters; or
  - (c) Use any explosives, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish in fishery waters; or
  - (d) Bring on land, sell, dispose of, receive or have possession of any fish caught in contravention of paragraph (b) or (c).

Penalty: A fine not exceeding 100 penalty units.

(2) If a contravention of subsection (1) occurs on board a vessel or by use of a vessel, the owner or charterer, and the master, of the vessel is each guilty of an offence.

Penalty: 2,500 penalty units and the Court may order confiscation of fishing gear.

**20 Driftnets and other equipment on board vessels**

(1) If a driftnet is found on board a vessel, then, for the purpose of any proceedings under section 19 –

- (a) The driftnet is taken to be in the possession and control of the owner or charterer, and of the master of the vessel; and
- (b) The vessel is taken to have been used for the purpose of driftnet fishing in fishery waters; and
- (c) Fish on board the vessel are taken to have been caught in fishery waters by driftnet fishing.

(2) If an explosive, poison or other noxious substance is found on board a vessel that is used mainly for the purpose of fishing the explosive, poison or substance is to be presumed, unless the contrary is proved to be intended for use in contravention of section 19 (1)(c).

**21 Evidentiary certificate**

In any proceedings for an offence against section 19, a certificate signed by an authorised officer stating the cause and manner of death or injury of specified fish, or the circumstances surrounding the alleged commission of the offence, is evidence of the matter stated in the certificate.

**21A Release of protected fish**

(1) Any person who catches a protected fish species must release the fish unharmed where caught.

(2) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding 1000 penalty units.

**PART 6**  
**ACCESS AGREEMENTS**

**22 Access agreements**

(1) The Minister may, with Cabinet's approval, enter into a bilateral or multilateral access agreement on behalf of the Government of Niue with the government or governments of one or more other countries.

(2) An access agreement may provide for vessels owned or controlled by the country concerned, or by its nationals –

- (a) To be licensed for use in fishing in fishery waters and have access to those waters for that purpose; and

(b) Engage in any other related activities.

(3) The Minister may, in entering into access agreements, grant preferential access to vessels owned or controlled by member countries of the South Pacific Forum Fisheries Agency.

- (4) Every access agreement must –
- (a) Provide for fishing allocations at a level consistent with the proper conservation and management of fishery resources; and
  - (b) Be consistent with any relevant management and development plan; and
  - (c) Provide for the proper protection of fishing by Niueans; and
  - (d) Require the other parties to the agreement to take all necessary steps to ensure that the vessels covered by the agreement comply with the terms of the agreement and with the applicable laws of Niue; and
  - (e) Require the transshipment of fish at a time and place authorised by the licensing authority under the agreement except in cases where a licensed group seiner carries out transshipment to its licensed carrier vessel with the prior approval of the licensing authority; and
  - (f) Require the master of each vessel covered by the agreement to maintain fishing data about fishing carried out using the vessel on the high seas adjacent to the fishery waters, and to report that data in the prescribed form and manner to the Fisheries Officer; and
  - (g) Provide for the issuing of licences for fishing in fishery waters, or in a specified part of those waters, on terms and conditions consistent with this Act.

### **23 Licences taken to have been issued under this Act**

A licence, or authorisation issued or granted under an access agreement is, for the purposes of this Act, taken to have been issued or granted under this Act.

### **24 Persons may act on behalf of the Government of Niue in certain cases**

(1) A multilateral access agreement may authorise a person or body to act on behalf of the Government of Niue, or to act on its behalf in the performance of any obligations, duties or responsibilities (including the issue of licences).

(2) Any act done by any person, on behalf of the Government of Niue under an authority given in a multilateral access agreement is taken to have been done by the Government of Niue.

### **25 Certain provisions to have no effect**

A provision in an access agreement has no effect if it –

- (a) Purports to operate in substitution of this Act; or
- (b) Purports to prevent the Government of Niue from enforcing compliance with any provision of the access agreement; or
- (c) Purports to prevent the Government of Niue from taking proceedings under this Act against any person in respect of any fishing activity not authorised by the agreement.

### **26 Related agreements**

(1) The Minister may, with Cabinet's approval, enter into any other agreement that may be appropriate for the promotion of fisheries co-operation and harmonisation between Niue and any other country or countries.

(2) Without limiting subsection (1), the agreements referred to in that subsection could include, for example, agreements relating to –

- (a) The harmonisation of minimum terms and conditions for access to fisheries; or

- (b) The implementation of multilateral access agreements; or
- (c) The establishment of harmonised joint or reciprocal fisheries surveillance and enforcement measures;
- (d) The harmonisation of joint exploration and development of fisheries; or
- (e) The development of observer programmes; or
- (f) The harmonisation of transshipment requirements; or
- (g) The harmonisation of fisheries conservation and management.

PART 7  
LICENSING

**27 Application for licensed fishing craft**

(1) An application for a licence for a fishing craft may be made by or on behalf of the owner or charterer of the craft.

(2) An application must be in writing and lodged with the Director. It must include the following particulars –

- (a) The fishing craft's name, international radio call sign, specifications and country of registration;
- (b) The name of the owner or charterer, and the master, of the vessel;
- (c) The fishery resources to be exploited and the period during which exploitation is expected to occur;
- (d) The term for which the licence is sought;
- (e) The allocation of the fishery resources sought;
- (f) The desired area of the fishery waters within which the exploitation is to be carried out;
- (g) The method to be used to exploit the fishery resource;
- (h) The way in which the catch or harvest is to be disposed of, including particulars of the port where this is to occur and a statement indicating whether the catch or harvest is to be processed and, if so, in what form;
- (i) The estimated costs of exploiting the fishery resources and the estimated amount of the revenue to be derived from the exploitation;
- (j) Such other matters, if any, as are prescribed.

(3) An application must also include statements indicating –

- (a) Whether the vessel has at any time contravened an access agreement (whether the Government of Niue is a party or not), and, if so, the nature of the contravention and the action taken or the penalty imposed as a consequence; and
- (b) Whether the vessel is the subject of an inquiry or investigation relating to an alleged contravention of such an access agreement and, if so, the nature of the allegation; and
- (c) Whether the vessel is subject to any encumbrance, charge, lien, mortgage or liability whether potential, or actual, and whether or not arising out of any inquiry, investigation or legal proceeding; and
- (d) Whether the vessel has been denied approval to fish in the waters of any other country and, if so, the reasons for the denial; and
- (e) Whether the vessel has had its approval to fish in the waters of any other country suspended or withdrawn and, if so, the reasons for the suspension or withdrawal.

(4) An application must also include statements indicating –

- (a) Whether the owner, charterer or master of the vessel has contravened any access agreement (whether the government of Niue is party or not) and, if so, the nature of the contravention; and
- (b) Whether the owner, charterer or master of the vessel is alleged to have contravened such an access agreement and if so, the nature of the allegation; and
- (c) Whether the owner, charterer or master of the vessel is or has been involved in an inquiry, investigation or legal proceeding as a consequence of being engaged in fishing in the waters of any other country, and, if so particulars of that involvement; and
- (d) Whether the owner, charterer or master of the vessel has incurred any unsatisfied liability or penalty or may incur any liability or penalty, arising out of any contravention, inquiry, investigation or proceeding mentioned in paragraph (a), (b) or (c); and
- (e) Whether the owner, charterer or master of the vessel has engaged or is alleged to have engaged, in driftnet fishing.

**28 Issue of licences**

(1) The Minister may, on an application made under section 27 and with Cabinet's approval, issue a licence permitting a fishing craft identified in the application to be used –

- (a) For fishing (including test fishing) in the fishery waters; and
- (b) For scientific research in the fishery waters.

(2) The Minister may issue a licence in respect of a fishing craft whether or not the fishing craft is covered by an access agreement which is in force.

(3) A licence shall –

- (a) Specify the particular fishing activity permitted by it; and
- (b) Provide fishing allocations at a level consistent with the proper conservation and management of fishery resources; and
- (c) Be consistent with any relevant management and development plan; and
- (d) Ensure the protection of fishing by Niueans.

(4) In approving a licence, the Cabinet may impose any special conditions that it thinks desirable to ensure the proper conservation and management of fishery resources, including, for example, conditions relating to the following –

- (a) The type and method of fishing;
- (b) The area within which fishing is permitted;
- (c) The target species and quantity of fish authorised to be caught, including restrictions on by-catches; (d) The term of the licence.

(5) The Cabinet must not approve a licence unless satisfied that it ensures appropriate protection of fishing by Niueans.

(6) A licence must not be issued to a fishing craft under this section, unless that fishing craft is in good standing on the Regional Register.

(7) If a fishing craft is not registered on the Regional Register a licence may nevertheless be issued to a fishing craft that is fully owned or controlled by –

- (a) The Government of Niue; or
- (b) A Niuean; or
- (c) A person resident in Niue.

(8) In this section –

“test fishing” means fishing for the purpose of testing the feasibility of commercial fishing;

“scientific fishing” means gathering data for the purpose of conserving or managing a fishery.

**29 General conditions of licences**

(1) The Cabinet may, by notice in the *Gazette*, specify general conditions applicable to all licences.

(2) A general condition is taken to come into operation on a date specified in the notice or, if no date is specified, on the day on which it is published in the *Gazette*.

(3) General conditions applicable to all licences, whether or not an access agreement is in effect, may include, for example, conditions relating to the following –

- (a) Open and closed fishing seasons;
- (b) Prohibited fishing areas;
- (c) Minimum mesh size of fishing nets;
- (d) Minimum fish size;
- (e) Observer devices;
- (f) Any other general conditions as required by Cabinet.

(4) Any person who, whether intentionally or unintentionally, destroys, damages, renders inoperative or otherwise interferes with an observer device aboard a fishing craft without first obtaining the approval of the Director, commits an offence.

Penalty: A fine not exceeding 2,500 penalty units.

**30 Variation and revocation of conditions**

(1) Cabinet may, if satisfied that it is necessary to do so to ensure the proper conservation or management of fishery resources, add to, vary or revoke any special or general conditions imposed under this Act.

(2) A general condition must be varied or revoked by notice in the *Gazette*.

(3) If Cabinet adds a new general condition, it must do so by notice in the *Gazette*.

(4) If Cabinet adds a new special condition or varies or revokes a special condition, it must cause the holder of the licence concerned to be notified accordingly.

**31 Statutory conditions**

Every licence issued under Part 7 is subject to the following conditions –

- (a) The owner or charterer, and the master of the fishing craft to which the licence applies must comply with the laws of Niue;
- (b) The performance by the fishing craft to which the licence relates must at all times be consistent with the information, and financial projections, given in the application for the licence.

**32 Term of licence**

(1) Subject to this Act and any special or general conditions imposed by or under this Act, the term of a licence issued under Part 7 shall be for a period of one year from the date the licence is issued.

(2) A licence issued under this Act may be renewed on application made under section 27 before the end of the latest term of the licence.

**33 Authority to use fishing craft for certain activities**

(1) The Director may, with Cabinet’s approval, authorise the use of a fishing craft for a specified fishing activity within fishery waters.

(2) An authorisation may be made subject to such conditions, if any, as the Cabinet determines.

(3) The Director must not grant an authorisation under this section unless satisfied –

- (a) That it would not be appropriate in the circumstances to require a licence to be issued permitting the fishing craft to be used for the relevant activity; and
- (b) That the activity will not involve catching fish; and
- (c) That the activity will not be continuing one.

**34 Fees**

(1) There shall be a fee payable for every licence issued and for authorisations granted under this Act, provided however, where an access agreement specifies the making of such payments no additional payment shall be required.

(2) Cabinet shall prescribe the fees payable for the issue of licences and shall determine the amount payable for the granting of an authorisation.

**35 Assignment of licence or authorisation**

(1) A licence or authorisation issued or granted under this Act is not transferable, except with Cabinet's approval or under an access agreement.

(2) Any provision in a contract or arrangement that purports to assign, transfer or dispose of all or any of the rights or benefits conferred by a licence or authorisation issued or granted under this Act is void.

(3) Each person who enters into an agreement or arrangement that contains a provision of the kind described in subsection (2) is guilty of an offence.

Penalty: A fine not exceeding 1,000 penalty units.

(4) For the purpose of this section, the charter of a fishing craft in respect of which a licence or authorisation has been issued or granted under this Act, is taken to be a transfer of the licence or authorisation.

**36 Cancellation or suspension of licence**

(1) Cabinet may cancel a licence issued under this Act, or suspend such a licence for the period determined by Cabinet if –

- (a) The licence is, or becomes, inconsistent with the requirements of a management and development plan; or
- (b) The fishing craft in respect of which it is issued, or the owner, charterer or the master of the fishing craft, has contravened –
  - (i) A provision of this Act; or
  - (ii) A condition of the licence; or
  - (iii) If the licence was issued under an access agreement, a provision of the agreement; or
- (c) A payment due under, or in respect of, the licence is outstanding; or
- (d) The fishing craft's good standing on the Regional Register is suspended or withdrawn; or
- (e) The fishing craft, or the owner, charterer or master of the fishing craft has been engaged in driftnet fishing; or
- (f) There is a driftnet on board the fishing craft.

(2) The owner, charterer, or the master, of a fishing craft whose licence is cancelled or suspended must be notified of the cancellation or suspension in accordance with the Cabinet's directions.

(3) A cancellation or suspension takes effect when the notice referred to in subsection (2) is given.

(4) If a licence is cancelled or suspended on the ground mentioned in subsection (1) (a) any fee paid in respect of the issue of the licence must be apportioned, and the amount that represents the unexpired part of the term of the licence worked out on a pro rata basis, must be reimbursed to the person who paid the fee.

**37 Appeals**

A person aggrieved by a decision of the Cabinet to cancel or suspend a licence may, within 21 days after the cancellation or suspension takes effect, appeal to a Judge of the Court against the decision.

**PART 8**

**AUTHORISED OFFICERS AND OBSERVERS**

**38 Appointment of authorised officers**

(1) The Minister may, by notice in the *Gazette*, appoint a person, or each person in a class of persons (including a national or nationals of another country), to be an authorised officer for the purposes of this Act.

(2) The Minister may direct than an authorised officer shall not be an employee of the Public Service Commission.

**39 Powers of authorised officers**

(1) For the purposes of enforcing this Act, an authorised officer may, without a warrant do any of the following –

- (a) Stop, board and search any fishing craft to which this Act applies that the officer reasonably suspects has contravened or is contravening this Act;
- (b) Stay on board that fishing craft;
- (c) Require the master or anyone else on board to tell the officer the fishing craft's name, call sign and country of registration and the name of the master, owner, charterer or other crew member;
- (d) Require the master or anyone else on board, to answer questions about the fishing craft's cargo, the contents of its holds and storage spaces, and its voyage and activities;
- (e) Make any examination and inquiry that the officer thinks necessary about any premises, vessel, vehicle or aircraft in relation to which any of the powers conferred by this section have been or may be exercised, and take samples of any fish or fish product found in or on the premises, vessel, vehicle or aircraft;
- (f) Examine and take copies of any licence, logbook, record or other document that is required under this Act or that concerns the operation of any fishing craft;
- (g) Make, date and sign an entry in the fishing craft's log;
- (h) Examine any fish, fishing gear or explosive, poison or other noxious substance in or on any premises, vessel, vehicle or aircraft;
- (i) Give any directions to the master or to a crew member of any fishing craft stopped, boarded or searched that may be necessary or reasonably expedient for any purpose specified in this Act, or to provide for the compliance of the fishing craft or master or any crew member with the conditions of any licence, authority, permission or approval given or issued under this Act;
- (j) Examine any observer device;
- (k) Require the master of a fishing craft, or a person apparently in charge of any premises, vehicle or aircraft, to produce to the officer any thing mentioned in paragraph (f), (h) or (j) that is in or on the fishing craft, premises, vehicle or aircraft.

- (2) Where an authorised officer has reasonable grounds to believe an offence against this Act is being or has been committed, he may without a warrant –
- (a) Enter, inspect and search any premises, other than premises used exclusively as a dwelling house, in which he has reasonable grounds to believe an offence has been or is being committed or fish taken illegally are being stored;
  - (b) Stop, enter and search, and stay in or on any vehicle or aircraft which he reasonably suspects of transporting fish or fish products;
  - (c) Following hot pursuit in accordance with international law and commenced within the fishery waters, stop, board and search outside the fishery waters any vessel which he has reasonable grounds to believe has been used in the commission of any offence and bring that vessel and all persons and things on board within the fishery waters;
  - (d) Seize –
    - (i) Any vessel (together with its fishing gear, equipment, stores and cargo), vehicle or aircraft which he has reasonable grounds to believe has been or is being used in the commission of an offence or which he knows or has reasonable grounds to believe has been seized or forfeited under this Act;
    - (ii) Any fish or fish products which he has reasonable grounds to believe have been caught in the commission of an offence or are possessed in contravention of this Act;
    - (iii) Any logs, charts or other documents required to be maintained by this Act or under the terms of any licence or permit or which he has reasonable grounds to believe show or tend to show, with or without other evidence, the commission of an offence against this Act;
    - (iv) Anything which he has reasonable grounds to believe might be used as evidence in any proceedings under this Act; and
  - (e) Arrest any person whom he has reasonable grounds to believe has committed an offence against this Act.
- (3) An authorised officer may, with or without a warrant or other process –
- (a) Execute any warrant or other process issued by any court of competent jurisdiction; and
  - (b) Exercise any other lawful authority.

#### **40 Powers of authorised officers beyond limits of fishery waters**

If a vessel in hot pursuit is beyond the limits of the fishery waters, the powers conferred on authorised officers under this Act may be exercised beyond the limits of the fishery waters under international law.

#### **41 Treatment of seized vessels**

- (1) If a fishing craft is seized under this Act –
- (a) The master and crew must take it to the nearest or most convenient port designated by the authorised officer; and
  - (b) The master is responsible for the safety of the fishing craft and everyone on board the fishing craft, until the fishing craft arrives at the designated port.
- (2) If the master does not take the seized fishing craft to the designated port, an authorised officer, or person called upon to assist the officer may do so.
- (3) If a fishing craft is brought to port in the circumstances described in subsection (2), no claim whatever may be made against an authorised officer or the Government of Niue in respect of any death, injury, loss or damage incurred while the vessel is being taken to the designated port.

(4) The provisions of subsections (1), (2) and (3) apply (with the necessary changes) to vehicles and aircraft seized under this Act, and their drivers and pilots respectively.

(5) The owner and operator shall pay the costs of any environmental damage, cleaning, disposal or removal of fishing craft from Niue's exclusive economic zone.

**42 Removal of parts from seized vessels**

(1) An authorised officer may remove any part or parts from any fishing craft held in the custody of the Government of Niue for the purpose of immobilising the fishing craft.

(2) The authorised officer who removes a part or parts under subsection (1) must ensure that the part or parts are kept safely and returned to the fishing craft on its lawful release from custody.

(3) A person must not –

- (a) Possess or arrange to obtain any part or parts removed under subsection (1), except for the purposes of keeping the part or parts safely under subsection (2); or
- (b) Possess or arrange to obtain or make any replacement or substitute part or parts for those removed under subsection (1); or
- (c) Fit any part or parts or any replacement or substitute part or parts to a fishing craft, held in the custody of the Government of Niue.

Penalty: A fine not exceeding 2,500 penalty units.

**43 Observers**

(1) The Director may designate, in writing, one or more persons to act as observers on fishing craft in respect of which a licence or authorisation has been issued or granted under this Act.

(2) An access agreement may confer on a person the powers and duties of an observer and may confer powers and duties on the person in addition to those conferred by this section.

(3) An observer may board any fishing craft in respect of which a licence or authorisation has been granted under this Act for the purpose of –

- (a) Ensuring compliance by the fishing craft and its crew with this Act and the terms and conditions of the licence or authorisation; or
- (b) Monitoring any of the fishing craft's activities; or
- (c) Undertaking any research determined by the Director.

(4) The operator, and each member of the crew, of the fishing craft must allow and assist an observer to exercise all or any of the following powers –

- (a) To board the fishing craft;
- (b) To gain full access to, and use of any of the facilities and equipment on the fishing craft that the observer thinks necessary to carry out his duties;
- (c) To gain full access to the bridge and to areas which may be used to hold, weigh and store fish;
- (d) To gain full access to the fishing craft's records (including its log) and gather any information he requires relating to fisheries in fishery waters;
- (e) To gain full access to any fish on the fishing craft and to take samples of them;
- (f) To inspect and copy the fishing craft's records (including its logs);
- (g) To disembark at the time and place determined by the Director or under an access agreement.

(5) The operator must provide the observer, while on board the fishing craft and at no expense to the Government of Niue, with food, accommodation and medical facilities as may be reasonably acceptable to the Director.

(6) An observer may enter in or on any place where fish taken in the fishery waters is unloaded or transshipped, and may remove samples and gather any information he requires relating to fisheries in the fishery waters.

**44 Duties to authorised officers and observers**

(1) The master and each crew member of any fishing craft, the driver of any vehicle and the pilot and crew of any aircraft must comply immediately with every lawful instruction or direction given by an authorised officer or an observer.

(2) The master and each crew member of a fishing craft, driver of a vehicle and pilot and crew of an aircraft must take all reasonable measures –

- (a) To ensure the safety of an authorised officer or observer in the performance of his duties; and
- (b) To assist the officer or observer in the performance of those duties or the exercise of any of his powers.

(3) A person must not –

- (a) Assault, obstruct, resist, delay, intimidate or otherwise interfere with an authorised officer or observer in the performance of his duties; or
- (b) Assault, obstruct, resist, delay, intimidate or otherwise interfere with anyone lawfully acting under the orders, or in aid of, an authorised officer; or
- (c) Threaten, insult or use abusive language or insulting gestures towards any authorised officer or observer while performing his duties or exercising his powers; or
- (d) Threaten, insult or use abusive language or threatening gestures towards any one lawfully acting under the orders, or in aid of an authorised officer; or
- (e) Fail to comply with the lawful requirements of any authorised officer or observer; or
- (f) Give an authorised officer any particulars which the person knows are false or misleading in a material respect; or
- (g) Impersonates or falsely represents himself to be an authorised officer, or falsely represents himself to be a person lawfully acting under an authorised officer's orders or in his aid.

Penalty: A fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 2 months or both.

**45 Identification of authorised officers and observers**

An authorised officer or observer, when exercising any of the powers conferred by this Act, must, if asked to do so, produce identification to show he is an authorised officer or observer under this Act.

**46 Protection of authorised officers, observers and others**

An action or other proceeding (whether civil or criminal) does not lie against a person in relation to any thing done, or not done, by the person in good faith in the performance or exercise, or purported performance or exercise of the person's functions or powers under this Act.

**47 Information must be true, complete and correct**

(1) A person required to record, notify, communicate or report any information under this Act must ensure that any information so recorded, notified or communicated is true, complete and correct.

(2) A person required to notify, communicate or report any information to the Director by or under this Act or the regulations must notify the Director immediately of any change in circumstances which has the effect of rendering any information previously notified, communicated or reported false, incomplete or misleading.

(3) A person who contravenes this section commits an offence.

Penalty: A fine not exceeding 2,500 penalty units.

## PART 9

### SALE, RELEASE AND FORFEITURE OF RETAINED PROPERTY

#### 48 Release of seized goods

(1) The Court, may on application, order the release of any fishing craft (together with its fishing gear, equipment, stores and cargo), vehicle, aircraft or other item seized under this Act on receipt of a bond or other form of security.

(2) In determining the value of the bond or other form of security, the Court must take into consideration –

- (a) The total value of the property to be released, including the value of any catch which might be forfeited;
- (b) The total maximum fine or fines provided for the offences charged or likely to be charged; and
- (c) The costs the prosecution would be likely to recover if a conviction were entered.

#### 49 Sale of perishable goods seized

(1) Any fish or other items of a perishable nature seized under this Act, or the proceeds of sale of the fish or items, must be held and dealt with under this Act.

(2) The Director may sell the fish or other items referred to in subsection (1).

(3) If the Director, after making all reasonable efforts, is unable to sell the fish or other items referred to in subsection (1), or if the fish or other items are unfit for sale, the Director may dispose of them in such manner as he thinks fit.

#### 50 Seized goods to be held

The Government of Niue must hold anything seized under this Act, and any bond or security and the proceeds of sale, until –

- (a) Any relevant legal proceedings under this Act have been finally dealt with; or
- (b) A decision is made not to start any such proceedings.

#### 51 Court's power of forfeiture

(1) If a person is convicted of an offence against this Act, the Court, in addition to any other penalty may order –

- (a) That any fishing craft (together with its fishing gear, equipment, stores and cargo) and any vehicle or aircraft used in the commission of that offence be forfeited to the Crown; and
- (b) That any fish or perishables caught or involved in the commission of the offence, or the proceeds of sale of the fish or perishables, and any explosive, poison or other noxious substance used or involved in the commission of the offence, be forfeited.

(2) Where a fishing craft, vehicle, aircraft or other item seized under this Act, or any bond, security or the proceeds of a sale, is not forfeited or applied in the discharge of any fine, order for costs or penalty imposed under this Act, it must be made

available for collection by its owner or his nominee or, in the absence of those persons, the person who appears to be entitled to it.

(3) If a fishing craft, vehicle, aircraft or other item has been released upon the lodging of a bond or security, an order for forfeiture operates as an order for forfeiture of the amount of the bond or security, unless the court for special reasons fixes a smaller sum.

(4) If a fishing craft, vehicle, aircraft or other item has been released upon the lodging of a bond or security, the Court may order any defendant convicted of an offence against this Act involving the fishing craft, vehicle or aircraft or item or the owner of the fishing craft, vehicle or aircraft or item concerned (whether or not the owner is a defendant) to pay the difference between the amount of the bond or security and the total value of the forfeited property as determined under section 54.

## **52 Application of bond, security or proceeds of sale**

A bond or security, or the proceeds of sale, must be applied in the following order –

- (a) First, in paying the costs associated with the sale (if any);
- (b) Secondly, in discharging any forfeiture ordered under section 51;
- (c) Thirdly, in paying all fines or penalties imposed under this Act in connection with the fishing craft, vehicle, aircraft, or item;
- (d) Fourthly, in discharging all orders for costs in proceedings under this Act arising out of relating to the fishing craft, vehicle, aircraft;
- (e) Finally, in making such other payments (if any) as the Court determines.

## **53 Removal of forfeited goods**

If a fishing craft, vehicle, aircraft or other item held or forfeited under this Act has been unlawfully removed from the custody of the Government of Niue it is liable to seizure.

## **54 Disposal of seized or forfeited goods**

(1) A fishing craft, vehicle, aircraft or other item ordered to be forfeited under this Act may, at the expiry of the time limited for appeal and if no appeal is lodged, be disposed of in such manner as Cabinet may direct.

(2) A fishing craft, vehicle, aircraft or other item seized under this Act but not forfeited must be sold and the proceeds disposed of in the manner and the priority specified in section 52.

## **55 Liability for loss, damage or deterioration of items in custody**

The Government of Niue is not liable for any loss of, damage to or deterioration in the condition of any fishing craft, vehicle, aircraft or other item while in the custody of the government of Niue under this Act.

## **56 Banning order**

(1) If a person is convicted of an offence against section 44 (3), the court may, in addition to imposing any penalty, make an order banning the person for a period not exceeding 5 years from going on or remaining on board any fishing craft while the fishing craft is being used for fishing in the fishery waters.

(2) A person who contravenes an order under subsection (1), or the master of a fishing craft who has on board a person he knows is banned from remaining on the fishing craft by an order under subsection (1), is guilty of an offence.

Penalty: A fine not exceeding 2,500 penalty units.

**57 Removal of item in custody**

A person who without lawful authority removes a fishing craft, vehicle, aircraft or other item held in the custody of the Government of Niue under this Act is guilty of an offence, whether or not the person knew the fishing craft, vehicle, aircraft or other item was held in the custody of the Government of Niue.

Penalty: A fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 3 months, or both.

**PART 10**

**GENERAL PENALTY AND LIABILITY AND INFRINGEMENT OFFENCES**

**58 Liability of master**

Where an offence against this Act has been committed by a person on board or employed on a fishing vessel, the master of the vessel may be charged with the same offence.

**59 Penalties**

If a penalty is not specified for an offence under this Act the penalty shall be a fine not exceeding 2,500 penalty units.

**59A Infringement offences**

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

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

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

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

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

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

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

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

- (a) the reminder notice must be treated as the information for the infringement offence; and
- (b) the Court is deemed to have made an order, on the date that the reminder notice is filed, that the defendant pay a fine equal to the amount of the infringement

fee together with costs in the prescribed amount, but no conviction is entered against the person.

(6) A person requests a hearing by providing to the Director, within the period specified in the infringement notice or reminder notice, as the case may be, a notice, signed by the person, requesting a hearing and accepting or rejecting liability and, if accepting liability, the reasons, if any, why the Court should impose a lesser fine than the infringement fee for the offence,

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

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

## PART 11 REGULATIONS

### 60 Regulations

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

(2) Without limiting the general power conferred by subsection (1), regulations may be made under this section for all or any of the following –

- (a) Providing for the conservation, management, development, licensing and regulation of fisheries or any particular fishery;
- (b) Licensing, authorisation or registration in respect of any fishing craft or class or category of fishing craft to be used for fishing, related activities or any other purpose under this Act, including the form, issuance requirements, grounds for denial, terms and conditions, and fees, charges, royalties and other form of compensation related to the licensing, authorisation or registration;
- (c) Licensing, authorisation or registration in respect of any fisherman or class of fisherman, fishing gear and other equipment or device used for fishing;
- (d) The operation of, and conditions and procedures to be observed by any fishing craft while in the fishery waters;
- (e) The operation of, and conditions and procedures to be observed by any other fishing craft which may enter the fishery waters for any purpose under this Act;
- (f) The catching, loading, landing, handling, transshipping, transporting, possession and disposal of fish;
- (g) The import, export, distribution and marketing of fish and fish products;
- (h) The manner in which any fishing gear is to be stowed;
- (i) The appointment, powers and duties of authorised officers and observers;
- (j) The duties and procedures to be followed by the master and crew of any vessel in respect of authorised officers and observers;
- (k) Rewards to be paid to any person providing information on the operations of foreign fishing craft leading to a conviction of an offence against this Act;

- (l) The licensing, control and use of fish aggregating devices and the rights to the aggregated fish, and prescribing times and the minimum distances from the device any vessel may fish around it;
- (m) Regulating or prohibiting the use of self-contained underwater breathing apparatus, and any other under-water breathing apparatus other than a snorkel;
- (n) Regulating or prohibiting the use of spear guns or other similar devices;
- (o) Registration of fishing craft and the standards and measures for the safety of persons on board, and the safety of the fishing craft;
- (p) Regulating aquaculture and access to land leased for aquaculture and to the waters adjacent to the land;
- (q) Prescribing the terms and conditions of leases for aquaculture;
- (r) Requiring the provision of statistical and other information related to fisheries;
- (s) The control, inspection and conditions of operation for fish processing establishments;
- (t) The prevention of marine pollution, whether originating from a land based source or by discharge at sea;
- (u) The appointment, maintaining of and procedures for agents appointed to receive and respond to process under this Act;
- (v) The implementation of any access or related agreement or other agreement or arrangement entered into under this Act;
- (w) Regulating or prohibiting, either generally or in any specified fishery –
  - (i) The taking of coral and shells;
  - (ii) The setting of fish fences or nets;
  - (iii) The taking of aquarium fish; or
  - (iv) Aquaculture operations;
  - (v) Prescribing measures for the protection of marine life;
  - (vi) Regulating or prohibiting fishing of all kinds within any lagoon or any part of any lagoon, the time or times of year during which that fishing may occur or is prohibited, and approving, restricting, or prohibiting the equipment or methods which may be used in connection with that fishing;
- (x) Prescribing offences against the regulations and penalties for the offences, not exceeding a fine of 2,500 penalty units and, where the offence is a continuing one, a further fine not exceeding 5 penalty units for each day that the offence continues;
- (y) Regulating for –
  - (i) The implementation of an access agreement;
  - (ii) The implementation of any agreement to which the Government of Niue is a party relating to the establishment of uniform tests and conditions as between the parties to the agreement in respect of conservation, management, exploitation and surveillance; and
  - (iii) Access to and enforcement measures undertaken within the fisheries waters of each party;
- (z) Giving effect to the following International Conventions upon their ratification by the Government of Niue and their entry into force under international law or for Niue, as the case may be –
  - (i) The United Nations Conventions on the Law of the Sea 1982;
  - (ii) The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995 (the UN Fish Stocks Agreement);

- (iii) The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the WCPT Convention);
  - (za) Prescribing the requirements for fishing in areas under national jurisdiction of a foreign country or on the high seas or in areas subject to international conservation and management measures in accordance with international law binding on Niue by vessels carrying the flag of Niue or nationals of Niue ordinarily resident in Niue or foreign nationals ordinarily resident in Niue using vessels carrying the flags of other states;
  - (zb) Implementing any decisions of international and regional fisheries management bodies of which Niue is a member or with which Niue has agreed to cooperate.
- (3) The regulations may also, without limitation —
- (a) prescribe fees or charges for the purposes of this Act, or a means by which fees or charges for the purposes of this Act may be calculated or ascertained;
  - (b) create offences for contravention of the regulations and prescribe penalties not exceeding 5 penalty units for such offences;
  - (c) declare which offences against this Act or regulations made under this Act constitute infringement offences;
  - (d) prescribe infringement fees for infringement offences (which may be different fees for different offences, including different fees for a first, second, or subsequent offence) not exceeding the lesser of —
    - (i) 5 penalty units; or
    - (ii) the maximum penalty specified in the section of this Act that creates the offence (in the case of an offence against this Act that is declared to be an infringement offence).

**61-62 [Spent]**

# TERRORISM SUPPRESSION AND TRANSNATIONAL CRIMES ACT 2006

2006/280 – 1 December 2006

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## SCHEDULE

**To provide for the suppression of terrorism and transnational crimes**

PART 1  
PRELIMINARY

**1 Short title**

This is the Terrorism Suppression and Transnational Crimes Act 2006.

**2 Principal objects**

The principal objects of this Act are to implement the United Nations Security Council Resolution 1373 and Conventions dealing with terrorism and transnational organised crime, to prevent terrorists from operating in Niue, and to prevent persons in Niue from taking part in terrorist activities or supporting terrorism.

**3 Interpretation**

In this Act –

“Attorney-General” has the same meaning as in section 2 of the Proceeds of Crime Act 1998;

“authorised officer” means a constable, customs officer, or immigration officer;

“Convention country” means a country that is party to a counter terrorism convention; “counter terrorism convention” means a Convention listed in the Schedule;

“craft” includes any aircraft, ship, boat, or other machine or vessel used or capable of being used for the carriage or transportation of persons or goods, or both, by air or water or over or under water;

“detection agent” means a substance in the table to Part 2 of the Technical Annex to the Plastic Explosives Convention;

“entity” means a person, group, trust, partnership, fund, or an unincorporated association or organisation;

“explosive or other lethal device” means –

(a) An explosive, weapon, or device that is designed or has the capability to cause death, serious bodily injury, or substantial material damage; or

(b) A weapon or device that is designed or has the capability to cause death, serious bodily injury, or substantial material damage through the release, dissemination, or impact of toxic chemicals, biological agents, toxins, or similar substances or radiation or radioactive materials;

“financial institution” has the same meaning as in section 3 of the Financial Transactions Reporting Act 2006;

“Financial Intelligence Unit” means the Financial Intelligence Unit established under Part 5 of the Financial Transactions Reporting Act 2006;

“fixed platform” means an artificial island, installation or structure permanently attached to the seabed for the purposes of exploration or exploitation of resources or for other economic purposes;

“forfeiture order” means an order made under section 21;

“international nuclear transport” means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the country where the shipment originates –

(a) Beginning with the departure from a facility of the shipper in the country; and  
(b) Ending with the arrival at a facility of the receiver within the country of ultimate destination;

“international organisation” means any organisation of States or Governments of States or any organ or any agency of any organisation of that kind;

## Terrorism Suppression Act

“military device” includes a shell, bomb, projectile, mine, missile, rocket, charge, grenade, or perforator, lawfully manufactured exclusively for military or police purposes;

“Niuean land” has the same meaning as in section 2 of the Niue Amendment Act (No. 2) 1968;

“nuclear material” means any of the following –

- (a) plutonium with an isotopic concentration of not more than 80% in plutonium-238;
- (b) uranium-233;
- (c) uranium containing uranium-233, or uranium-235, or both;
- (d) uranium with a naturally occurring isotopic concentration, other than uranium in the form of an ore or ore residue;
- (e) a substance containing nuclear material;

“Nuclear Material Convention” means the Convention for the Physical Protection of Nuclear Material, done at Vienna and New York on 3 March 1980;

“organised criminal group” means a group of at least 3 persons, existing for a period of time, that acts together with an objective of obtaining material benefits from the commission of offences that are punishable by a maximum penalty of at least 4 years imprisonment;

“plastic explosive” means an explosive that is –

- (a) formulated with one or more high explosives that, in their pure form, have a vapour pressure less than  $10^{-4}$  Pa at a temperature of 25°C; and
- (b) formulated with a binder material; and
- (c) when mixed, malleable or flexible at normal room temperature;

“Plastic Explosives Convention” means the Convention on the Marking of Plastic Explosives for the Purposes of Identification, done at Montreal on 1 March 1991;

“privileged communication” means a confidential communication, whether made directly or indirectly through an agent, between –

- (a) A lawyer in his or her professional capacity and another lawyer in the same capacity; or
- (b) A lawyer in his or her professional capacity and his or her client; and to obtain or give legal advice or assistance; but not for the purpose of committing or assisting the commission of an illegal or wrongful act;

“property” includes –

- (a) assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible; and
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, those assets including, but not limited to, bank credits, traveller’s cheques, bank cheques, money orders, shares, securities, bonds, drafts, and letters of credit;

“Rome Convention” means the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, adopted at Rome on 10 March, 1988;

“specified entity” means a person or entity that is prescribed under section 5;

“trafficking in persons” means the recruitment, transportation, transfer, harbouring, or receipt of a person by improper means such as force, abduction, fraud or coercion for an improper purpose such as forced or coerced labour, servitude, slavery or sexual exploitation;

“terrorist act” has the meaning given by section 4;

“terrorist group” means –

- (a) An entity that has as one of its activities or purposes committing or facilitating the commission of a terrorist act; or
- (b) A group that is a specified entity;

“terrorist property” means –

- (a) Property that has been, is being, or is likely to be, used to commit a terrorist act; or
- (b) Property that has been, is being, or is likely to be, used by a terrorist group; or
- (c) Property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity;

“unmarked plastic explosive” means a plastic explosive that –

- (a) Does not contain a detection agent; or
- (b) At the time of manufacture, does not contain the minimum concentration level of a detection agent set out in the table to Part 2 of the Technical Annex to the Plastic Explosives Convention; and “weapon” includes a firearm, chemical, biological, or nuclear weapon.

#### 4 Definition of terrorist act

(1) For the purposes of this Act “terrorist act” means an act or omission that –

- (a) Constitutes an offence within the scope of a counter terrorism convention; or
- (b) Is mentioned in subsection (2).

(2) For paragraph (1)(b), the act or omission must –

- (a) Involve death or serious bodily injury to a person (other than the person carrying out the act); or
- (b) Involve serious damage to property; or
- (c) Endanger a person’s life; or
- (d) Create a serious risk to the health or safety of the public or a section of the public; or
- (e) Involve the use of weapons; or
- (f) Involve introducing into the environment, distributing, or exposing the public to any –
  - (i) dangerous, hazardous, radioactive, or harmful substance; or
  - (ii) toxic chemical; or
  - (iii) microbial or other biological agent; or
- (g) Involve serious disruption to any system or the provision of services directly related to essential infrastructure; and
  - (i) must be intended or, by its nature and context, reasonably be regarded as being intended –
    - (A) to intimidate the public or a section of the public; or
    - (B) to compel a Government or an international organisation to do, or refrain from doing, any act; and
  - (ii) must be made for the purpose of advancing a political, ideological, or religious cause.

(3) However, an act or omission mentioned in subsection (2) does not include an act or omission that –

- (a) Is committed as part of an advocacy, protest, demonstration, dissent, or industrial action, and is not intended to result in any harm mentioned in subparagraph (2)(a)(i), (ii), (iii), or (iv); or

- (b) Occurs in a situation of armed conflict and is, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict.

## PART 2

### SPECIFIED ENTITIES

#### 5 United Nations listed entities to be specified entities

(1) For the purposes of this Act, the entities listed from time to time by the United Nations Security Council as terrorist entities are “specified entities”.

(2) The Minister must, by notice published in the *Gazette*, give notice of the list of terrorist entities referred to in subsection (1), and continue to give notice as and when the United Nations Security Council adds or removes any terrorist entity from that list.

(3) A list of United Nations terrorist entities prepared and certified by the Minister is deemed to be *prima facie* evidence that the list is a correct list of entities listed by the United Nations Security Council as terrorist entities.

## PART 3

### OFFENCES

#### 6 Financing of terrorism

(1) A person who provides or collects, by any means, directly or indirectly, any property, intending, knowing, or having reasonable grounds to believe that the property will be used, in full or in part, to carry out a terrorist act, commits an offence and is liable on conviction to imprisonment for a term not exceeding 14 years.

(2) A person commits an offence who provides or collects, by any means, directly or indirectly, any property intending, knowing, or having reasonable grounds to believe that they will benefit an entity that the person knows is a specified entity.

(3) In a prosecution for an offence against subsection (1) or subsection (2), it is not necessary for the prosecutor to prove that the property collected or provided were actually used, in full or in part, to carry out a terrorist act.

#### 7 Provision of property or services to specified entity

(1) A person who, directly or indirectly, knowingly makes available property, financial, or other related services to, or for the benefit of, a specified entity commits an offence and is liable on conviction to imprisonment for a term not exceeding 14 years.

(2) Subsection (1) does not apply if the provision of the property or service is of a kind that is authorised by a resolution of the United Nations Security Council.

#### 8 Dealing with terrorist property

(1) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 14 years, who knowingly –

- (a) Deals, directly or indirectly, in any terrorist property; or
- (b) Collects or acquires or possesses terrorist property; or
- (c) Enters into, or facilitates, directly or indirectly, any transaction in respect of terrorist property; or
- (d) Converts, conceals, or disguises terrorist property.

(2) A person does not commit an offence under paragraph (1)(a), (b), or (c) if the person –

- (a) Tells the Attorney-General, in writing, as soon as the person becomes aware that the property is terrorist property; and
- (b) Acts in accordance with any direction of the Attorney-General for the property.

**9      Harboiring of persons committing terrorist acts**

A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years, who harbours or conceals, or prevents, hinders, or interferes with the apprehension of any other person knowing or having reason to believe that the other person –

- (a) Has committed, or is planning, or is likely to commit, a terrorist act; or
- (b) Is a member of a specified entity.

**10     Provision of weapons to terrorist groups**

A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years, who knowingly offers to provide, or provides, a weapon to –

- (a) A specified entity; or
- (b) A member of a specified entity; or
- (c) Any other person for use by, or for the benefit of, a specified entity or a member of a specified entity.

**11     Recruitment of person to be members of terrorist groups or to participate in terrorist acts**

A person commits an offence is liable on conviction to imprisonment for a term not exceeding 7 years, who knowingly agrees to recruit, or recruits, another person –

- (a) To be a member of a terrorist group; or
- (b) To participate in the commission of a terrorist act.

**PART 4**

**MANAGEMENT AND FORFEITURE OF PROPERTY OF SPECIFIED ENTITIES**

*Management*

**12     Order to take control of property**

(1) The Attorney-General may apply to the Court for an order under subsection (3) for property in Niue if the Attorney-General has reasonable grounds to believe that the property is terrorist property.

- (2) The Court –
  - (a) May make orders for service of the application; and
  - (b) May deal with the application ex parte.
- (3) If the Court is satisfied that there is evidence to support the application, the Court may direct the Registrar of the High Court to take custody and control of the property.
- (4) The order –
  - (a) Must specify the property concerned; and
  - (b) May be subject to conditions.
- (5) A person who has custody and control of the property specified in the order must allow the Registrar of the High Court to take custody and control of the property in accordance with the order.

**13     Notice of order**

- (1) Notice of the making of an order under section 12 must be given –
  - (a) If practicable, as soon as possible to the person who owns or controls the property if the person or a representative of the person is in Niue; and

(b) To any other person that the Attorney-General thinks may have an interest in the property.

(2) Failure to comply with subsection (1) does not affect the validity of the order.

**14 Variation, revocation, or expiry of order**

(1) If the Court has made an order under section 12, the Court may, on application by the Attorney-General or by the person who owns or controls the property –

(a) Make another order under section 12 varying the conditions of the order or the property that is subject to the order; or

(b) Revoke the order.

(2) If the application is made by the person who owns or controls the property –

(a) The person must give 14 days notice in writing of the application to the Attorney-General; and

(b) Before deciding on the application, the Court must hear from the Attorney-General.

(3) The Court must –

(a) If the Court decides that there are reasonable grounds to do so, revoke the order; or

(b) If the Court decides that there are no reasonable grounds to revoke the order, refuse the application.

(4) If the Court revokes the order, the Attorney-General must:

(a) Tell the person who owns or controls the property in writing; and

(b) Publish a notice of revocation in the *Gazette*.

(5) If not earlier revoked, an order under section 12 about property of a specified entity expires if –

(a) For property of a specified entity, the entity ceases to be a specified entity; or

(b) A forfeiture order is made under section 21 in relation to the property.

**15 Appeal**

The Attorney-General or a person whose property is subject to an order may, within 21 days of the making of the order, appeal to the Court of Appeal against a decision made by the Court under this Part.

**16 Third parties may apply for relief**

(1) A person, other than the person who owns or controls the property, who claims an interest in the property that is subject to an order under section 12 may apply to the Court for an order under section 17.

(2) The person must give 14 days notice in writing of the application to the Attorney-General, who is a party to any proceedings on the application.

**17 Court may grant relief to third party**

(1) Subsection (2) applies if –

(a) A person makes an application under section 16; and

(b) The Court is satisfied that the person's claim to the interest is valid.

(2) The Court must make an order –

(a) Declaring the nature, extent, and value of the person's interest in the property; and

- (b) Declaring that the interest is no longer subject to the order under section 12; and
- (c) If the interest is held by the Registrar of the High Court –
  - (i) directing the Registrar of the High Court to transfer the interest to the person; or
  - (ii) declaring that there is payable, by the Registrar of the High Court to the person, an amount equal to the value of the interest declared by the Court.
- (3) The Court may refuse to make an order if it is satisfied that –
  - (a) The person was knowingly involved in any way in the carrying out of the terrorist acts that are the basis of the designation of the entity as a specified entity, or is an entity that is wholly owned or effectively controlled, directly or indirectly, by the specified entity; or
  - (b) If the person acquired the interest at the time of, or after the designation of, the entity as a specified entity, the applicant did not acquire the interest in the property in good faith and for value, without knowing or having reason to believe that the property was, at the time of the acquisition, property subject to an order under section 12.

*Forfeiture*

**18 Certain property excluded from forfeiture**

A forfeiture order must not be made against property that is Niuean land or that is a leasehold right under section 29 of the Land Act 1969.

**19 Application for forfeiture order**

(1) The Attorney-General may apply to the Court for a forfeiture order against terrorist property.

(2) The Attorney-General must –

- (a) Name as respondents to the application only those persons who are known to own or control the property that is the subject of the application; and
- (b) Give notice of the application to each respondent in the manner directed by the Court.

(3) The Court may, at any time before the final determination of the application, make orders for –

- (a) Service of the application on any person whom the Court thinks has an interest in the property; and
- (b) Publication of notice of the application in the *Gazette*.

(4) Any person who claims an interest in the property may appear and present evidence at the hearing of the application.

**20 Making forfeiture order**

(1) If the Court is satisfied, on the balance of probabilities, that the property that is the subject of the application is terrorist property, the Court must order that the property be forfeited to the Government of Niue.

(2) If the Court is satisfied that a person mentioned in section 20(2)(a) or (3)(a) –

- (a) Has an interest in the property that is the subject of the application; and
- (b) Has exercised reasonable care to ensure that the property is not terrorist property; and
- (c) Is not a member of a specified entity;

the Court must order that the interest is not affected by the order and declare the nature and extent of the interest.

(3) If the Court makes a forfeiture order, the Court may give any directions that are necessary or convenient to give effect to the order.

(4) If the Court refuses to make a forfeiture order, the Court must make an order that describes the property and that declares that it is not terrorist property.

## **21 Effect of forfeiture order**

(1) If the Court makes a forfeiture order against property (other than registrable property), the order vests the property absolutely in the Government of Niue.

(2) If the Court makes an order against registrable property –

- (a) The order vests the property in the Government of Niue in equity, but does not vest it in the Government of Niue at law until the applicable registration requirements have been complied with; and
- (b) The Government of Niue is entitled to be registered as owner of the property; and
- (c) The Attorney-General may do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Government of Niue as owner, including the executing of any necessary instrument; and
- (d) the Attorney-General may do anything necessary or convenient to give notice of, or otherwise protect, the Government of Niue's equitable interest in the property; and
- (e) Anything done by the Attorney-General under paragraph (d) is not a dealing for the purposes of paragraph (3)(a).

(3) If the Court makes a forfeiture order against property (including registrable property) –

- (a) The property must not, except with leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or for the Government of Niue, until 6 months after the forfeiture order was made; and
- (b) The property may be disposed of, and the proceeds applied or otherwise dealt with as the Attorney-General directs, until 6 months after the forfeiture order was made

## **22 Protection of third parties**

(1) A person who claims an interest in property that has been forfeited and who has not been given notice under section 19(2)(b) or (3)(a) may apply to the Court within 6 months after the forfeiture order was made for an order under subsection (4).

(2) The person must give 14 days notice in writing of the application to the Attorney-General.

(3) The Attorney-General –

- (a) Is a party to the proceedings in an application under subsection (1); and
- (b) May make an application under subsection (1) for a person.

(4) If a person applies to the Court for an order about the person's interest in property, the Court must make an order declaring the nature, extent, and value (as at the time the order is made) of the person's interest if the Court is satisfied in accordance with section 20(2).

(5) An appeal lies to the Court of Appeal from an order under subsection (4).

**23    Return of property**

(1) The Attorney-General must on application by a person who has obtained an order under section 22(4), if the period for appeals has expired and any appeal from that order has been determined or has lapsed –

- (a) Arrange for the return of the property, or the part of it to which the interest of the applicant relates, to the applicant; or
- (b) If the interest in the property is no longer vested in the Government of Niue, pay an amount equal to the value of the interest of the applicant, as declared in the order, to the applicant.

(2) Subsection (1) does not apply to any property returned, or amount paid, to the person under section 17.

**24    Appeal**

The Attorney-General or a person affected by a decision made by the Court under this Part may appeal to the Court of Appeal against the decision.

*Information*

**25    Disclosure of information**

(1) A financial institution must immediately tell the Attorney-General about the existence of any property in its possession or control:

- (a) That is owned or controlled, directly or indirectly, by or for a specified entity, including property derived or generated from that property; or
- (b) For which there are reasonable grounds to suspect is property of a kind specified in paragraph (a).

(2) The Attorney-General may tell the Financial Intelligence Unit or other appropriate authority of a foreign country about any information it has about any property of the kind mentioned in subsection (1), if the Attorney-General thinks the information would be relevant to the foreign country.

(3) Information may be given under subsection (2) subject to any conditions that the Attorney-General determines.

(4) A financial institution must tell the Financial Intelligence Unit about every dealing that occurs in the course of its activities and for which there are reasonable grounds to suspect is related to the commission of a terrorist act.

(5) No civil or criminal proceedings lie against a person for making a disclosure or report in good faith under subsections (1), (2), or (4).

(6) Nothing in subsection (1) or (4) requires a lawyer to disclose a privileged communication.

(7) A person who receives information under subsection (1), (2), or (4) must not disclose the information or its source except –

- (a) For the purposes of –
  - (i) the enforcement of this Act; or
  - (ii) the detection, investigation, or prosecution of an offence under this Act; or
  - (iii) providing assistance under the Mutual Assistance in Criminal Matters Act 1998; or
- (b) In accordance with an order of a Court.

(8) A person who contravenes subsections (1) or (4) commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding 7 years.

PART 5

GENERAL POWERS

**26 Controlled delivery of property**

(1) This section applies to an authorised officer who has reasonable grounds to believe that a person has committed, is committing, or is about to commit, an offence under this Act.

(2) The authorised officer may allow property, which the authorised officer reasonably suspects has been, is being, or may be used to commit an offence under this Act, to enter, leave, or move through Niue for the purpose of gathering evidence to identify a person or to facilitate a prosecution for the offence.

(3) An authorised officer does not commit an offence under this Act if –

- (a) The authorised officer is engaged in the investigation of a suspected offence under this Act; and
- (b) The offence involves property that the authorised officer reasonably suspects has been, is being, or may be used, to commit an offence under this Act; and
- (c) The authorised officer does not take action that the authorised officer would otherwise be required to take under this Act for the purpose of the investigation.

**27 Exchange of information relating to terrorist groups and terrorist acts**

The Attorney-General may disclose to the appropriate authority of a foreign country any information in his or her possession relating to any of the following –

- (a) The actions or movements of terrorist groups or persons suspected of involvement in the commission of terrorist acts; and
- (b) The use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist acts; and
- (c) Traffic in explosives or other lethal devices by terrorist groups or persons suspected of involvement in the commission of terrorist acts; and
- (d) The use of communication technologies by terrorist groups; and

if the disclosure is not prohibited by any provision of law and will not, in the Attorney-General's view, prejudice national security or public safety.

PART 6

COUNTER TERRORISM CONVENTION OFFENCES

*Nuclear Material*

**28 Movement of nuclear material**

(1) A person commits an offence who knowingly imports or exports nuclear material to or from Niue, except with the written permission of Cabinet.

(2) A person commits an offence who knowingly, without written permission from the Cabinet, transports nuclear material –

- (a) Over the territory of Niue; or
- (b) Through any of its seaports or airports.

(3) The written permission specified in subsections (1) and (2) may be given only if the Cabinet has received a written assurance from the person that the material will, during international nuclear transport, be protected at the levels set out in the Nuclear Material Convention.

(4) A person who commits an offence against subsections (1) or (2) or who knowingly makes a false statement or provides a false assurance to the Cabinet under subsections (1) or (2) is liable on conviction to a term of imprisonment not exceeding 10 years.

**29 Offences relating to nuclear material**

A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 14 years, who intentionally –

- (a) Without lawful authority receives, possesses, uses, transfers, alters, disposes of, or disperses nuclear material in a way that causes, or is likely to cause, death or serious injury to a person or substantial damage to property; or
- (b) Steals nuclear material; or
- (c) Embezzles or fraudulently obtains nuclear material; or
- (d) Demands nuclear material by threat, or use of force, or any other form of intimidation; or
- (e) Threatens –
  - (i) to use nuclear material to cause death or serious injury to any person or substantial damage to property; or
  - (ii) to steal nuclear material to compel a person, State, or an international organisation to do or refrain from doing any act.

*Maritime Safety*

**30 Definition of “ship”**

For the purposes of sections 31 and 32 –

- (a) “Ship” means a vessel that is not permanently attached to the seabed including a hovercraft, hydrofoil, submarine or other floating craft, but does not include a warship, a ship owned or operated by a State and being used as a naval auxiliary or for customs or police purposes, or a ship that has been withdrawn from navigation; and
- (b) A duty of a master of a ship to arrest, detain, and notify the appropriate authority in Niue includes any other country that is a party to the Rome Convention.

**31 Offences**

(1) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 20 years, who unlawfully and intentionally –

- (a) Seizes, or exercises control over, a ship or fixed platform by force, or by threat of force, or by other form of intimidation; or
- (b) Commits an act of violence against a person on board a ship or fixed platform that is likely to endanger the safe navigation of the ship or safety of the fixed platform; or
- (c) Destroys a ship or fixed platform; or
- (d) Causes damage to a ship or its cargo or a fixed platform that is likely to endanger the safe navigation of the ship or safety of the fixed platform; or
- (e) Places, or causes to be placed, on a ship or fixed platform, a device or substance likely –
  - (i) for a ship, to destroy the ship or cause damage to the ship or its cargo that is likely to endanger the safe navigation of the ship; or
  - (ii) for a fixed platform, to destroy the fixed platform or to endanger its safety; or
- (f) Destroys or seriously damages maritime navigational facilities or seriously interferes with their operation in a way that is likely to endanger the safe navigation of a ship; or
- (g) Communicates information that he or she knows to be false and that endangers the safe navigation of a ship; or

(h) Injures or kills a person in connection with the commission, or attempted commission, of an offence set out in paragraphs (a), (b), (c), (d), (e), (f), or (g).

(2) A person commits an offence and is liable to conviction on indictment to a term of imprisonment not exceeding 14 years who, with the intention of compelling another person to do or to refrain from doing any act, threatens to commit an offence mentioned in subsection (1)(b), (c), (d), or (f) in relation to a ship or fixed platform, if the threat is likely to endanger the safety of the ship or fixed platform.

**32 Arrest and delivery**

(1) The master of a ship registered in Niue who has reasonable grounds to believe that a person has committed an offence under section 31 against, or on board, any ship may –

(a) Arrest and detain the person; and

(b) Deliver the person to the appropriate authorities in any other Convention country.

(2) The master of the ship must –

(a) Notify the authorities in the other Convention country before delivering the person; and

(b) Give to the authorities evidence in his or her possession that the person has committed the offence.

(3) If the person is delivered to a constable –

(a) The constable must take the person into custody unless he or she has reasonable grounds to believe that the person has not committed the offence; and

(b) If the constable refuses to take the person into custody, give reasons for the refusal.

(4) A master of a ship who contravenes subsection (2), commits an offence and is liable on conviction to a term of imprisonment not exceeding 7 years.

*Plastic Explosives*

**33 Plastic explosives offences**

(1) A person commits an offence who manufactures plastic explosives knowing that they are unmarked.

(2) A person commits an offence who possesses or transports unmarked plastic explosives knowing that they are unmarked.

(3) A person commits an offence who imports or exports unmarked plastic explosives.

(4) It is not an offence under subsections (1) or (2) if –

(a) The person manufactures or holds unmarked explosives in a quantity approved, in writing by Cabinet, solely for the use –

(i) in research, development, or testing of new or modified explosives; or

(ii) in training in explosives detection or in the development or testing of explosives detection equipment; or

(iii) for forensic science purposes; or

(b) The unmarked plastic explosives are destined to be, and are incorporated as, an integral part of duly authorised military devices in Niue within 3 years after the coming into force of the Plastic Explosives Convention in Niue.

(5) It is not an offence under subsection (2) if the person possesses or transports unmarked plastic explosives in a quantity, approved in writing by Cabinet, solely for the use mentioned in subsection (4).

(6) A person who commits an offence under this section is liable on conviction to a term of imprisonment not exceeding 7 years.

*Terrorist Bombing*

**34 Terrorist bombing offences**

- (1) Subsection (2) applies to an action that is intended by a person –
- (a) To cause death or serious bodily injury; or
  - (b) To cause extensive damage to a place mentioned in subsection (2)(a) or (b), a facility mentioned in subsection (2)(c), or a facility mentioned in subsection (2)(d), if the damage results in, or is likely to result in, major economic loss.
- (2) A person commits an offence and is liable on conviction to a term of imprisonment not exceeding 14 years, who unlawfully and intentionally delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against –
- (a) A part of a building, land, street, waterway or other location that is accessible or open to members of the public, whether continuously or occasionally, including a commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational, or similar place; or
  - (b) A facility or conveyance that is used or occupied, in connection with his or her official duties, by –
    - (i) a representative of any Government; or
    - (ii) the Head of State of any country; or
    - (iii) the Prime Minister or a Minister of any country; or
    - (iv) a member of the legislature of any country; or
    - (v) a Judge of any country; or
    - (vi) a public official or employee of a Government or public authority or an inter-governmental organisation; or
  - (c) A facility, conveyance, or instrumentality, whether public or privately owned, that is used in or for a publicly available service for the transportation of persons or cargo; or
  - (d) A publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, energy, fuel, or communications.

*Transnational Organised Crime*

**35 Participation in organised criminal group**

A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years, who participates (whether as a member, associate member, or prospective member) in an organised criminal group, knowing that it is an organised criminal group; and –

- (a) Knowing that his or her participation contributes to the occurrence of criminal activity; or
- (b) Reckless as to whether his or her participation contributes to the occurrence of criminal activity.

**PART 7**

**PEOPLE TRAFFICKING AND SMUGGLING**

*People Trafficking*

**36 Offence of trafficking in persons**

A person commits an offence and is liable on conviction to a term of imprisonment for a term not exceeding 14 years, who engages in trafficking in persons or is involved in the arranging of trafficking of persons knowing that the person's entry into Niue or any other country is or was arranged by means not in accordance with the law of Niue or that other country.

**37 Offence of trafficking in children**

A person commits an offence and is liable on conviction to a term of imprisonment for a term not exceeding 20 years, who intentionally engages in trafficking in a person who is a child or is involved in the arranging of trafficking in a person who is a child, regardless of whether the child's entry into Niue or any other country is or was arranged by means not in accordance with the law of Niue or that other country.

**38 Consent not a defence**

It shall not be a defence to any prosecution under section 36 or section 37 –

- (a) That the trafficked person consented to the intended exploitation; or
- (b) That the intended exploitation did not occur.

**39 Protection for trafficked persons**

(1) A trafficked person is not liable to prosecution for -

- (a) The act of trafficking in persons or being a party to an offence of trafficking in persons; or
- (b) The trafficked person's illegal entry into Niue in connection with the act of trafficking in persons if Niue is the receiving country; or
- (c) The trafficked person's period of unlawful residence in Niue after being trafficked, if Niue is the receiving country; or
- (d) The trafficked person's procurement or possession of any fraudulent travel or identity documents that the person obtained, or with which the trafficked person was supplied, for the purpose of entering the receiving country in connection with the act of trafficking in persons.

(2) Subsection (1) shall not prevent the removal from Niue of a trafficked person in accordance with the Immigration Act 2011.

*People Smuggling*

**40 Offence of people smuggling**

(1) A person who, in order to obtain a material benefit, engages in people smuggling either knowing or being reckless as to the fact that the entry of the person being or to be, smuggled into the country is illegal commits an offence and is liable on conviction to a term of imprisonment not exceeding 14 years.

(2) Subsection (1) applies whether or not the person being smuggled enters or arrives in the receiving country.

**41 Offence to facilitate stay of an unauthorised person**

A person who knowingly facilitates the continued presence of an unauthorised person in a receiving country in order to obtain a material benefit commits an offence and is liable on conviction to a term of imprisonment not exceeding 14 years.

**42 Aggravated offences**

(1) A person commits an aggravated offence of any of the offences mentioned in sections 40 or 41 who commits that offence in one or more of the following circumstances –

- (a) The unauthorised person is subjected to torture or to any other cruel, inhuman or degrading treatment (including exploitation);
- (b) The life or safety of the person being smuggled is, or is likely to be, endangered.

(2) A person who commits an offence against subsection (1) is liable on conviction to a term of imprisonment not exceeding 20 years.

**43 Protection for smuggled persons**

(1) An unauthorised person is not liable to prosecution for an offence against sections 40 and 41, by reason only of the fact that the person is the object of the following conduct –

- (a) People smuggling;
- (b) When committed for the purpose of enabling people smuggling, an offence against section 46;
- (c) An offence against section 41.

(2) For the avoidance of doubt, nothing in subsection (1) prevents proceedings being taken against an unauthorised person for an act or omission that constitutes an offence under any other law.

**44 Boarding, search and detention of craft**

(1) This section applies to a craft that is a ship, boat or other machine or vessel used or capable of being used for the carriage of persons by water or over water, except for a foreign warship.

(2) An authorised officer may stop and board the craft within Niue if the authorised officer has reasonable grounds to believe the craft –

- (a) Is being used to commit an offence against section 40; and
- (b) The craft is in –
  - (i) Niue; or
  - (ii) the contiguous zone of Niue.

(3) The authorised officer may, when reasonably necessary for the exercise of his or her functions in connection with an offence against section 40 –

- (a) Direct the craft to stay where it is, or direct it to be taken to a suitable place in Niue, for the purpose of search; and
- (b) Search and detain the craft, anyone on it and anything on it; and
- (c) Question any person on board the craft; and
- (d) Require the production of any documents relating to the craft or any travel or identity documents of a person on the craft; and
- (e) Take a copy of any documents produced; and
- (f) Seize and detain anything found on the craft that appears to him or her to be evidence of an offence against this Part; and
- (g) Remain on the craft for such period as is reasonably necessary for the purpose of boarding, searching and directing the craft or carrying out an investigation for an offence against section 40.

(4) If the craft fails to stop at the request of the authorised officer, the officer may pursue it into international waters and take any action that is reasonable necessary to stop the craft and enable it to be boarded (other than in the territorial sea of another country).

(5) The authorised officer may require the person in charge of the craft, a member of the crew or any person on board to take any action that may be directed by the officer for paragraph (3)(a).

(6) The person in charge of the craft must give any authorised officer who remains on board the craft proper and sufficient food and suitable accommodation without charge.

(7) Any person who fails to comply with a direction of an authorised officer under this section commits an offence and is liable on conviction on indictment to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 5 years, or both.

*Exploitation*

**45 Exploitation of people not legally entitled to work**

(1) An employer commits an offence who allows an unlawful employee to undertake employment in the employer's service and takes any action with the intention of preventing or hindering the employee from –

- (a) Leaving Niue; or
- (b) Ascertaining or seeking that person's entitlement under the law of Niue; or
- (c) Disclosing to any person the circumstances of that person's employment by the employer.

(2) Without limiting the generality of subsection (1), the following are examples of actions of the kind mentioned in that subsection –

- (a) Taking or retaining possession or control of a person's passport, any other travel or identity document, or travel tickets;
- (b) Preventing or hindering a person from –
  - (i) having access to a telephone; or
  - (ii) using a telephone; or
  - (iii) using a telephone privately; or
  - (iv) leaving premises; or
  - (v) leaving premises unaccompanied;
- (c) Preventing or hindering a authorised officer from entering or having access to any place or premises to which the person is entitled to have access under any law.

(3) An employer who commits an offence under this section is liable to a fine not exceeding 500 penalty units or to a term of imprisonment not exceeding 5 years, or both.

*General*

**46 Offence relating to fraudulent travel or identity documents**

A person commits an offence, and is liable on conviction to a fine not exceeding 500 penalty units or to a term of imprisonment not exceeding 5 years or both, who knowingly and in order to obtain a material benefit –

- (a) Produces a fraudulent travel or identity document; or
- (b) Procures, provides or possesses a fraudulent travel or identity document.

**47 Obligation on commercial carriers**

(1) A commercial carrier commits an offence and is liable on conviction to a fine not exceeding 500 penalty units, who transports a person into Niue if, on entry into the Niue, the person does not have the travel documents required for lawful entry.

(2) A commercial carrier is not guilty of an offence under subsection (1) if –

- (a) The commercial carrier had reasonable grounds to believe that the documents that the person has are the travel documents required for lawful entry of that person into Niue; or

- (b) The person possessed the travel documents required for lawful entry into Niue when that person boarded, or last boarded, the means of transport to travel to Niue; or
  - (c) Entry into Niue occurred only because of illness of or injury to a person on board, emergency, stress of weather or other circumstances beyond the control of the commercial carrier.
- (3) A commercial carrier that commits an offence under this section is liable to pay the costs of the person's detention in, and removal from Niue.

**PART 8**  
**GENERAL PROVISIONS**

**48 Jurisdiction**

Proceedings may be brought for an offence under this Act –

- (a) If the act or omission –
  - (i) is committed in Niue; or
  - (ii) is committed on board a ship or aircraft registered in Niue; or
  - (iii) is committed outside Niue by a person who is now in Niue; or
- (b) Whether or not the act or omission constituting the offence is committed in or outside Niue, if the act or omission –
  - (i) is committed by a Niuean or permanent resident of Niue or a citizen of any country who is ordinarily resident in Niue; or
  - (ii) is committed in order to compel the Government of Niue to do, or to abstain from doing, any act; or
  - (iii) is committed against a Niuean or a permanent resident of Niue; or
  - (iv) is committed by a person who is, after the commission of the offence, present in Niue; or
  - (v) is intended to be committed in Niue; or
  - (vi) originates in, or transits, Niue.

**49 Liability of body corporate**

(1) This Act applies to a body corporate in the same way as it applies to an individual, and a body corporate may be found guilty of any of the offences set out in this Act, in addition to the liability of any person for the same offence.

(2) For an offence under this Act, the conduct or state of mind of an employee, agent, or officer of a body corporate is taken to be attributed to the body corporate if that person is acting –

- (a) Within the scope of the person's employment; or
- (b) Within the scope of the person's actual or apparent authority; or
- (c) With the consent or agreement (express or implied) of a director, servant, or agent of a body corporate, and giving that consent is within the actual or apparent authority of the director, servant, or agent.

(3) A reference in this section to the "state of mind of a person" includes the person's knowledge, intention, opinion, belief, or purpose, and the person's reasons for that intentions, opinion, belief, or purpose.

**50 Obligation to extradite or prosecute**

(1) If the Attorney-General refuses a request from another country to extradite a person under the Extradition Act 1965, and the extradition request relates to an act or omission that may constitute an offence listed in subsection (2), the Attorney-General must submit the matter to the police.

(2) The offences referred to in subsection (1) are those set out in sections 6 to 11, 28, 29, 31, 33, 34, and 35.

**51 Restricted grounds for refusal to extradite or provide mutual assistance**

(1) Notwithstanding the Extradition Act 2007 or the Mutual Assistance in Criminal Matters Act 1998, an offence under this Act or any other Act, where the act or omission constituting the offence also constitutes a terrorist act, is taken, for the purposes of extradition and mutual assistance, not to be –

- (a) An offence of a political character or an offence connected with a political offence or an offence inspired by a political motive; or
- (b) A fiscal offence.

(2) Notwithstanding the Mutual Assistance in Criminal Matters Act 1998, no request for mutual assistance in relation to an offence under this Act may be declined solely on the basis of bank secrecy.

**52 Consent of Attorney-General**

(1) Proceedings for any offence under this Act for which jurisdiction is claimed under section 36(1)(a)(ii) for an offence committed on board a ship elsewhere than in Niue or for any other offence committed outside Niue may only be instituted with the consent of the Attorney-General.

(2) Subsection (1) does not prevent the arrest, or the issue of a warrant for the arrest, of any person for any offence, or the remanding in custody or on bail of any person charged with any offence.

**53 Regulations**

Cabinet may make such regulations as are necessary or convenient for the purposes of this Act.

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SCHEDULE

Section 4(1)

COUNTER TERRORISM CONVENTIONS

**1** Convention on Offences and certain Other Acts committed on Board Aircraft, done at Tokyo on 14 September 1963.

**2** Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.

**3** Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971.

**4** Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.

**5** International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.

**6** Convention on the Physical Protection of Nuclear Material, done at Vienna and New York on 3 March 1980.

**7** Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 24 February 1988.

**8** Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

- 9** Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.
- 10** Convention on the Marking of Plastic Explosives for the Purposes of Detection, done at Montreal on 1 March 1991.
- 11** International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.
- 12** International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

# TOBACCO CONTROL ACT 2018

2018/345 – 25 December 2018

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**An Act to provide for the control of the distribution, promotion, sale and use of tobacco products in Niue.**

**1 Title**

This is the Tobacco Control Act 2018.

**2 Commencement**

(1) Subject to subsections (2) to (4), this Act comes into force on 25 December 2018

(2) Sections 17 to 26, 28 to 31, 43 to 48, and 56 to 61 of this Act come into force on 25 June 2019.

(3) Sections 6 to 16 and 33 to 42 of this Act come into force on 25 December 2019.

**PART 1**  
**PRELIMINARY MATTERS**

**3 Purpose**

The purposes of this Act are to—

- (a) protect the health of the people of Niue from the diseases caused by tobacco use and tobacco smoke;
- (b) reduce the social approval of tobacco use in Niue by applying controls on the manufacture, importation, packaging, labelling, marketing, advertising and promotion of tobacco products and their association through sponsorship with other products and events or activities;
- (c) protect the health of young persons by restricting access to tobacco products;
- (d) promote the accurate portrayal of the health and social consequences of tobacco use;
- (e) enhance awareness of the hazards of tobacco use by ensuring the effective communication of accurate and relevant information about tobacco use;
- (f) reduce some of the harmful effects of tobacco products by monitoring and regulating the presence of harmful substances in tobacco products and in tobacco smoke;
- (g) protect individuals from the hazards of involuntary exposure to tobacco smoke; and
- (h) facilitate Niue's compliance with, and implementation of, the WHO Framework Convention on Tobacco Control by implementing necessary legislative controls.
- (i) restrict the types of engagement between government agencies and the tobacco industry that are allowed.

**4 Interpretation**

In this Act, unless the context otherwise requires —

“additive” means a substance that forms part of a tobacco product that is not cured tobacco leaf; and includes—

- (a) a substance forming part of the product that has been derived or refined from tobacco leaf (whether cured or not); and
- (b) any substance that is introduced into a tobacco product during processing, manufacturing, or packaging, including, as applicable, those contained in the paper, filter, portion pouch or similar part of the tobacco product;

“brand variant” means a tobacco product distinguishable from other tobacco products by any means, including the following—

- (a) the tobacco product is sold under different brand names;
  - (b) the tobacco product is sold under the same brand name, but differs in one or more of the following ways:
    - (i) containing or not containing menthol;
    - (ii) being otherwise differently flavoured;
    - (iii) producing different quantities of tar, nicotine, carbon monoxide or other constituents;
    - (iv) allegedly differing in "mildness";
    - (v) having or not having filter tips or cork tips;
    - (vi) being sold in retail packages containing different numbers of pieces; or
    - (vii) being of different length or mass;
- “broadcast” means the transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus;
- “children’s product” means a product (including comics, books, games, and toys) marketed primarily for children and includes sweets, ice cream, soft drinks, and other similar products;
- “cigarette” means a tobacco product comprising a roll of cut tobacco, enclosed in paper;
- “commercial purpose” means exchanging tobacco or tobacco products intended for smoking or consumption for direct or indirect profit whether monetary or not;
- “constituents” means—
  - (a) in relation to tobacco products intended for smoking, the chemicals inherent in the product itself, and in the smoke and other products of combustion emitted from the product;
  - (b) in relation to smokeless tobacco products, the chemicals inherent in the product;
- “corporate social responsibility activities” mean any activities promoting the health or welfare of other individuals, the wider community, or the environment; funding community services; activities related to disaster relief; charitable or any other activities that are philanthropic in nature;
- “Department” means the Department of Health;
- “Director” means the Director of Health and includes any person to whom he or she may have delegated his or her powers under this Act in accordance with section 47(4);
- “distribute” means to sell tobacco products and includes manufacturing and importing, but does not include sale by retail;
- “distributor” means a person or agent who sells tobacco products and includes a manufacturer or importer of tobacco products, but does not include a person whose only sale of tobacco products is by way of retail;
- “educational facility” means any school, college, place of learning or instruction and includes any kindergarten or pre-school facility;
- “enclosed”, in relation to a building, structure, location or place, means an area that is covered by a roof or roof-like structure and/or is surrounded by two or more walls or sides; regardless of the materials used for the roof and walls or sides, whether they comprise a permanent or temporary structure, or whether the roof and walls or sides have openings;
- “Enforcement Officer” means an officer who is appointed for the purposes of this Act under section 48;
- “exporter” means any person who sends, or arranges for tobacco products or raw tobacco to be sent from Niue to a point outside of Niue for the purpose of sale or distribution;

“Government department” includes any government agency or statutory body;

“health message” means a warning or an explanatory statement about the health effects or social costs of tobacco use, the benefits of, or suggestions for quitting, and any other matter related to tobacco and health, or other adverse effects of tobacco use or exposure, as prescribed by regulations made under the Act;

“importer” means any person who brings tobacco products or raw tobacco into Niue for the purpose of sale or distribution;

“licence” means a licence issued under section 7;

“licensed premises” mean any premises, or any part of any premises, on which liquor may be sold according to any licence (other than a restaurant licence) under the Liquor Act 1975;

“loose cigarettes” mean cigarettes that are not contained in sealed, unopened a package;

“loose tobacco” means tobacco, prepared for smoking in hand rolled cigarettes or in a pipe, which is not contained in a sealed, unopened package;

“manufacture” means to fabricate, produce, process, pack, or label tobacco products for the purpose of sale or distribution;

“manufacturer” means any person that manufactures, fabricates, produces, processes, packs, or labels tobacco products for the purpose of sale or distribution;

“Minister” means the Minister of Health;

“other information”, in connection with a health message means, additional or amplifying information or explanatory material which, as prescribed, is to be displayed or published in conjunction with that health message;

“package” means any container, wrapper, carton, or other enclosure that contains any tobacco product or in which tobacco products are customarily sold and includes the package’s label;

“person or any term descriptive of a person” includes a natural person, a corporation sole, a body corporate, and an unincorporated body;

“point of sale” means a counter or checkout where tobacco products may be bought; and includes a till or cashbox, where tobacco products may be bought, even if it is not at or part of that counter or checkout;

“prescribed” means as required by regulations made under this Act;

“promote” in relation to tobacco products or the activities of a seller, means any act or practice that is intended or likely to encourage the purchase or use of any tobacco product or brand or create a positive awareness of, or association with, a tobacco product, brand, manufacturer or seller;

“public place” means any place (including any ship, aircraft or other vehicle or conveyance used for the purposes of public transport) to which members of the general public or class of the general public ordinarily have access by express or implied invitation or licence, whether by payment or otherwise and includes any building, structure or facility which is either owned or occupied by the Government, but does not include any place or part of it which is primarily used as a private residence, unless otherwise designated by the owner.;

“public transport vehicle” means any form of transportation that carries passengers for hire or reward by land, air or by sea, whether locally, regionally, or internationally; it also includes government-owned vehicles;

“publish” means to—

- insert in any book, newspaper or other periodical publication printed, published, or distributed in Niue; or
- send to any person, by post or otherwise; or
- deliver to any person or leave upon premises in the occupation of any person; or

(d) broadcast; or

(e) include in any film or video recording; or

(f) include in any disk, portable drive, or other similar device capable of storing data, for use with a computer; or

(g) disseminate by means of any other electronic medium; or

(h) distribute by any means; or

(i) display by way of a sign, notice, poster, or other means; or

(j) bring to the notice of any person or of the public in Niue in any other manner;

“raw tobacco” means tobacco that has not been processed or prepared for consumption; “restaurant” means any premises, or any part of any premises, where the principal business is the selling of meals or refreshments to the general public for consumption on the premises, whether or not liquor is or may be sold on those premises or that part of those premises; and includes any room or area on a ship where meals or refreshments are provided for passengers to consume;

“retailer” means a person who sells tobacco products to consumers;

“sell” includes—

(a) to barter or exchange; or

(b) to offer or expose for sale, barter or exchange; or

(c) to supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; or

(d) to supply, or offer to supply, gratuitously but with a view to

(e) gaining or maintaining customs, or otherwise with a view to commercial gain;

“seller” means any person who sells any tobacco product or raw tobacco and includes any manufacturer, wholesaler, importer, exporter, retailer, or other distributor;

“smoking” means inhaling or exhaling the smoke from, or handling, a lighted tobacco product or any other product capable of being smoked;

“smoke-free” means an area that does not permit or allow smoking;

“tobacco” means any preparation of the leaves of plants from the genus Nicotiana or species tabacum used for smoking or chewing and includes all products which contain tobacco in any form and may include all parts and materials, such as filters, rods and similar matter. For the purposes of this Act tobacco also means any waterpipe, shisha, Electronic Nicotine Delivery systems (ENDS) or Electronic Non-Nicotine Delivery systems (ENNDS);

“tobacco industry” includes any manufacturer of tobacco products as well as any entity or person working to further the interests of any sellers of tobacco products;

“tobacco product” means any product intended for human consumption which contains tobacco in any form, in an amount that is more than an incidental ingredient or component and includes all parts and materials including filters, rods, portion pouches, and similar matter, as applicable, including loose tobacco but not including raw tobacco. Any product labelled as containing tobacco must be considered, for the purposes of this Act, to be a tobacco product;

“tobacco product advertisement” means any form of writing, still or moving picture, sign, symbol or other visual image, or any sounds, or any combination of those things (in whatever form that advertisement may be produced, including but not limited to hard copy, soft or electronic form, narrowcast or broadcast) which is either intended to or has the effect of advertising, promoting or giving any form of positive publicity (either directly or indirectly) to any one or more of the following—

(a) the purchase or use of a tobacco product or a range of tobacco products;

(b) the whole or a part of a trade mark of goods which are or include tobacco products;

- (c) the whole or a part of a design of articles which are or include tobacco products;
  - (d) the whole or a part of the name of a person:
    - (i) who is a manufacturer; and
    - (ii) whose name appears on, or on the packaging of, some or all of those products;
- any other words (for example, the whole or a part of a brand name) or designs (for example tobacco company logo, or a tobacco brand), or combination of words and designs, that are closely associated with a tobacco product or a range of tobacco products (whether also closely associated with other kinds of products);
- “tobacco sponsorship” means the attribution, acknowledgment, association or identification (in a manner which has the effect, directly or indirectly, of giving publicity (whether to the public, to any section of the public or to any person or group of persons)) of a tobacco manufacturer, seller, brand, or product with, on, or in connection with any one or more of—
- (a) an entertainment, sporting, recreational, educational, cultural, or other public event, activity, or work;
  - (b) a person or team participating in an event, activity or work, including people’s equipment, clothing, vehicle, or accessories;
  - (c) a service provided or contribution made by a tobacco manufacturer or seller;
  - (d) a building, institution, stadium, organisation or other entity which is not a tobacco manufacturer, importer or seller or the business premises of a person;
- “vending machine” means any self-service machine that on the insertion of a coin or token or by any other means dispenses by way of sale tobacco products, whether automatically or with the assistance of the purchaser;
- “waterpipe and shisha” means a form of tobacco consumption that utilizes a single or multi-stemmed instrument to smoke flavoured or non-flavoured tobacco, where smoke is designed to pass through water or other liquid before reaching the smoker;
- “wholesaler” means any person who buys tobacco products and re-sells them to another seller;
- “workplace” means any place (including any private club) in or at which employees, contractors, volunteers, or other persons perform duties of employment, services (paid or unpaid) or other work and includes private offices, common areas, and any other area that generally used by people during the course of their employment or work. Any place or part thereof which is used primarily as a private residence is not to be considered a workplace under this Act;
- “WHO” means the World Health Organization.

## 5     **Act binds the Government**

This Act binds the Government.

## PART 2

### TOBACCO PRODUCT CONTROLS

#### *Commercial growing and manufacturing prohibited*

## 6     **The commercial growing and manufacturing of tobacco is prohibited**

- (1) A person must not grow tobacco in Niue for a commercial purpose or distribution whether for exchange of goods, money, or the like, or not.
- (2) The onus of proving that tobacco is not being grown for a commercial purpose is on the grower.
- (3) A person must not manufacture tobacco in Niue.

(4) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

*Licensing*

**7 Licence required for manufacturers, importers, exporters, and other sellers**

(1) Unless they hold an appropriate licence issued by the Department of Health under this Act, a person must not—

- (a) import or export any tobacco product or raw tobacco; or
- (b) manufacture any tobacco product; or
- (c) distribute any tobacco product or raw tobacco; or
- (d) sell any tobacco product or raw tobacco.

(2) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

**8 Kinds of licence**

(1) The Department of Health may issue the following kinds of licence under this Act—

- (a) a licence to import tobacco products or raw tobacco; or
- (b) a licence to export tobacco products or raw tobacco; or
- (c) a licence to manufacture tobacco or tobacco products; or
- (d) a licence to sell tobacco products or raw tobacco as a distributor; or
- (e) a licence to sell tobacco products as a retailer.

(2) The Department of Health must issue separate licences for each premises or location at which one or more of the above activities takes place.

**9 How to apply for a licence**

(1) Every application for a licence under this Act or for the renewal of a licence under this Act must be made on a form as prescribed by regulations made under this Act.

(2) Every licence application and application for the renewal of a licence must be accompanied by the prescribed information and documents and the prescribed fee.

**10 The grounds for issuing or refusing to issue a licence**

(1) A licence must not be issued or renewed under this Act unless the Department of Health is satisfied on reasonable grounds that—

- (a) the applicant is a fit and proper person to hold a licence (and where the applicant is a corporation, that the character of the members of the governing body of the corporation make the corporation a fit and proper person to hold a licence); and
- (b) the application complies with all of the relevant requirements of this Act as well as the requirements of the regulations made under this Act; and
- (c) the applicant has not been convicted of two or more offences under this Act within the last year; and
- (d) the applicant has not, without reasonable excuse, breached any conditions imposed on a licence issued under this Act within the last year.

(2) The issue or refusal of a licence is, in all cases, at the absolute discretion of the Department of Health, subject to the provisions of this Act.

(3) If a licence application is refused, the Department of Health must advise the applicant in writing of the reasons for refusal and advise the applicant of his or her right to appeal that decision of the Department under section 59.

**11 The term of the licence and the conditions that may be imposed**

(1) Subject to section 10, a licence issued under the Act must be renewed annually.

(2) The Department of Health can issue a licence subject to terms, conditions and directions that must either be recorded on the licence or in a direction made under section 47.

**12 Suspension of licences**

(1) Where the Department of Health is satisfied that a licensee has committed a breach of any of the conditions of a licence issued under this Act, the Department may suspend the licence for any time period as the Department thinks fit.

(2) In notifying a licensee of the decision to suspend a licence, the Department of Health must advise the licensee of the reason for suspension, and advise the applicant of his or her right to appeal that decision of the Department under section 59.

**13 Revocation of licences**

(1) The Department of Health may revoke a licence granted under this Part if—

- (a) the licensee commits an offence under this Act; or
- (b) the licensee fails to comply with a direction of the Department issued under section 47; or
- (c) the licensee is a corporation and ceases operation; or
- (d) the licensee ceases carrying out the activity to which the licence relates.

(2) In notifying a licensee of the decision to revoke a licence, the Department of Health must advise the licensee of the reason for revocation, and advise the applicant of his or her right to appeal that decision of the Department under section 59.

**14 Register of licensees**

(1) The Department of Health must keep a register of all licences issued under this Act.

(2) On issuing a licence, the Department of Health must ensure the following information is entered into the register of licences—

- (a) the name and address of the licensee;
- (b) contact details of the licensee;
- (c) the location at or from which the licensee intends to carry out the import, export, manufacture, or sale of tobacco products or raw tobacco; and
- (d) any other information which the Department of Health considers appropriate.

(3) The Department of Health must make available for public inspection, at all reasonable times and free of charge, a list of licences issued and the location at which the import, export, manufacture, or sale of tobacco products and raw tobacco are licensed to take place, and by whom.

**15 Display of licence**

(1) A licence issued under section 8 must state the location where the activities to be covered by the licence are to take place.

(2) A premises or location must not be used for the import, export, manufacture, or sale of tobacco products or raw tobacco unless a copy of the required licence is displayed as prescribed or directed by the Department of Health.

(3) Any person who fails to comply with subsection (2) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or.
- (b) in any other case, to a fine not exceeding 100 penalty units.

**16 Notification of change of details**

(1) Any person who holds a licence issued under section 8 must advise the Department of Health at the earliest opportunity of any proposed change to the location at which activities covered by the licence are to take place.

(2) On receipt of a notification under subsection (1), the Department of Health, may:

- (a) reissue the licence with the changed location endorsed if the remaining term of the licence is less than six months, or
- (b) require a new licence application to be submitted if the remaining term of the licence is greater than six months.

(3) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or.
- (b) in any other case, to a fine not exceeding 100 penalty units.

*Advertising, promotion and sponsorship of tobacco products*

**17 Prohibition on tobacco and tobacco product advertising**

(1) A person must not, whether for any direct or indirect benefit or on behalf of another person:

- (a) publish, or arrange for any other person to publish, whether in Niue or elsewhere, any tobacco product advertisement;
- (b) display, exhibit, announce, broadcast or telecast, or cause or permit to be displayed, exhibited; announced, broadcast, or telecast, or authorize the display, exhibition, announcement, broadcast or telecast to the public of, a tobacco product advertisement;
- (c) sell or distribute, or cause or permit to be sold or distributed, or authorize the sale of, any film, video, magazine or other printed material, that contains a tobacco product advertisement;
- (d) distribute, or cause or permit or to be distributed, or authorize the distribution, to the public of any leaflet, handbill, or document that is a tobacco product advertisement; or
- (e) print or publish, or cause or permit to be printed or published; or authorize the printing or publication, of a tobacco product advertisement in any printed publication, book, magazine, leaflet, handbill, newspaper or other printed matter intended for the public;

(2) A person who resides in, or operates from, Niue must not display, export or publish any tobacco product advertisement so that it can be viewed by persons resident in another country.

(3) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or.
- (b) in any other case, to a fine not exceeding 250 penalty units.

**18 The activities that are not tobacco product advertisements**

The following are not tobacco product advertisements under this Act—

- (a) depictions of tobacco products or tobacco use in media where the depiction is purely incidental or is justified by reasons of historical accuracy or legitimate journalistic or artistic expression, or where the depiction is required for educational purposes, provided no payment or other consideration was offered or made by a tobacco manufacturer or seller, or any person acting on their behalf, unless—
  - (i) the principal purpose of the book, magazine, newspaper, broadcast, telecast, film, or video recording is the promotion of the use of a tobacco product;
  - (ii) the book, magazine, newspaper, film, or video recording is intended for sale, distribution, or exhibition primarily in Niue;
  - (iii) in the case of a tobacco product advertisement in any radio or television transmission, the advertisement is targeted primarily at a Niue audience; and
- (b) genuine political, social, or scientific commentary about tobacco products or tobacco use, provided no payment or other consideration was offered or made by a tobacco manufacturer or seller, or any person acting on their behalf.

**19 Permitted activities**

The prohibition in section 17 does not apply to—

- (a) plain black-and-white text-only price list made available where tobacco products are legally sold, provided the list contains nothing more than the tobacco product brand name and variant, package quantity, price, and any government-required or authorized information required in any regulations made under this Act;
- (b) product information made accessible to persons within the tobacco trade who need the information for trading decisions, and only to the extent access is limited to those persons;
- (c) tobacco manufacturers' newsletters destined for and distributed only to the manufacturer's employees, contractors, suppliers, and other tobacco-related business partners, and only to the extent their distribution is limited to such persons and not visible to the public; and
- (d) information that is necessary for business administration or for required corporate reporting but only to the extent access is limited to the person(s) who need to receive it for business administration or corporate reporting.

**20 Display of tobacco products prohibited**

- (1) A person must not—
  - (a) display or cause the display of tobacco products at a point of sale of retail outlets at which tobacco products are sold or offered for sale in Niue;
  - (b) expose tobacco products for sale or visible from outside the place of business; and
- (2) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction—
  - (a) in the case of an individual, to a fine not exceeding 50 penalty units or;
  - (b) in any other case, to a fine not exceeding 100 penalty units.

**21 ‘Smoking Kills’ signage at point of sale of tobacco products**

(1) A tobacco product retailer must clearly display, in close proximity to the point of sale and/or any place a tobacco product price list is posted, a rectangular sign, no smaller than 50 cm x 100 cm, with the words “Smoking Kills”—

- (a) in English and Niuean; and
- (b) printed in black on a white background; and
- (c) clearly legible from at least 5 metres away; and
- (d) any further requirements as prescribed under regulations made under this Act.

(2) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

**22 Prohibition against brand stretching**

(1) A person must not advertise, display for sale or distribution, sell, or distribute any goods which are not a tobacco product, or any service, in any manner or form that contains any writing, picture, image, graphic, message, or other matter, in whole or part, that is commonly identified or associated with, or is likely or intended to be identified or associated with, a tobacco product, brand, trademark, or brand name of a tobacco product or manufacturer.

(2) A person must not display any name, writing, picture, image, graphic, message, or other matter, in whole or part, that is commonly identified or associated with, or is likely or intended to be identified or associated with, a tobacco brand, trademark, or seller on a building, including a club, restaurant, stadium, or other place which is not primarily a business that imports, manufactures, or sells tobacco products.

(3) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

**23 Prohibition against reverse brand stretching**

(1) A person must not use the brand name, trademark, or other sign, symbol, logo, or similar visual matter, in whole or in part, commonly associated with a non-tobacco product on a tobacco product.

(2) A person must not manufacture or distribute any product designed for or likely to appeal to children or minors that evokes, or is likely to evoke, an association with a tobacco product or brand, including but not limited to candy cigarettes and similar products.

(3) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

**24 Tobacco sponsorship prohibited**

(1) A person must not provide any tobacco sponsorship, which may promote, or cause to be promoted by any other person, any tobacco product or seller through direct or indirect means.

(2) A person must not promote, or cause to promote by any other person, a tobacco product or a tobacco product-related brand element through direct or indirect means, including through sponsorship of an organization, service, physical establishment or vehicle of any kind, or event, whether publicly attributable or not.

- (3) Any person who fails to comply with this section commits an offence and is liable on conviction—
- in the case of an individual, to a fine not exceeding 100 penalty units; or
  - in any other case, to a fine not exceeding 250 penalty units.

**25 Corporate social responsibility activities**

(1) Tobacco industry or any person or entity acting on their behalf, must not provide funding or any other form of support for any corporate social responsibility activities which have the direct or indirect aim or effect of the tobacco industry receiving public recognition for that support.

(2) Any person who fails to comply with this section commits an offence and is liable on conviction—

- in the case of an individual, to a fine not exceeding 100 penalty units; or
- in any other case, to a fine not exceeding 250 penalty units.

**26 Prohibited payments and engagements**

(1) A person representing tobacco industry must not make any payment, contribution, or provide any assistance, either directly or indirectly, to any political party, politician, or person who holds or seeks public office, or any member of (or candidate for election to) the Niue Assembly, or any village council member or any other community leader.

(2) A person representing tobacco industry must not offer to enter into a partnership, whether binding, enforceable or not with Government.

(3) A person representing tobacco industry must not offer assistance (whether monetary or not) to implement or enforce tobacco control policies such as, but not limited to providing tobacco control signage, conduct inspections or raids.

(4) Any person who fails to comply with this section commits an offence and is liable on conviction—

- in the case of an individual, to a fine not exceeding 100 penalty units or;
- in any other case, to a fine not exceeding 250 penalty units.

*Controls on sales of tobacco products*

**27 Sale of tobacco products to persons under 21 prohibited**

(1) A person must not sell or supply a tobacco product to a person younger than 21 years of age.

(2) Any person who wishes to sell or supply a tobacco product to a person who is 21 years of age or older must take reasonable precautions and exercise due diligence to establish that the intending purchaser is 21 years of age or older.

(3) It is not a defence in proceedings against a person who it is alleged sold or supplied a tobacco product to a person aged under 21 years, that that seller or supplier believed the person aged under 21 years was purchasing the tobacco on behalf of a parent or other adult.

(4) Every person who sells by retail a tobacco product must display clearly for the public a notice stating that the sale of tobacco products to people who are younger than 21 years is prohibited.

(5) Any notice under subsection (4) must comply with any requirements that may be prescribed in regulations made under this Act.

(6) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

**28 Restrictions on the sale of tobacco products in small quantities**

(1) A person must not —

- (a) sell by retail; or
- (b) offer to sell for sale by retail —
  - (i) loose cigarettes; or
  - (ii) loose tobacco,

commits an offence.

(2) A manufacturer, importer, distributor, or retailer must not sell or offer for sale —

- (a) cigarettes in a package that contains fewer than 20 cigarettes; or
- (b) loose tobacco or chewing tobacco in a package that contains less than 30 grams of tobacco.

(3) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

**29 Tobacco products not to be advertised or labelled as suitable for chewing**

(1) A person must not promote a tobacco product in a manner which directly states or indirectly suggests the product is suitable for chewing or for any other oral use (other than smoking).

(2) A person must not import for sale, sell, pack, or distribute any tobacco product labelled or otherwise described as suitable for chewing, or for any other oral use (other than smoking).

(3) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

**30 Vending machine sales and other methods of unsupervised tobacco sales prohibited**

(1) A person must not place, or cause or permit to be placed, a vending machine for sale of tobacco products or use by members of the public in any place within Niue;

(2) A person must not sell, supply or cause the sale or supply of tobacco products by post, courier, the Internet or other form of delivery or means by which the age of the purchaser or recipient of the tobacco product cannot be verified.

(3) The sale of a tobacco product on the Internet is deemed to take place in the country where the computer used by the person who orders the tobacco product is located.

(4) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

**31 Sales of tobacco products prohibited in certain places**

- (1) A person must not sell or otherwise distribute tobacco products in any—
- (a) Government facility;
  - (b) place where health care or rehabilitation services are rendered;
  - (c) childcare facility;
  - (d) educational facility serving persons aged under 21 years;
  - (e) sports or athletic facility;
  - (f) church or place of religious worship; or
  - (g) public place to which the public has access as designated by regulations made under this Act.
- (2) Any person who fails to comply with this section commits an offence and is liable on conviction—
- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
  - (b) in any other case, to a fine not exceeding 100 penalty units.

**32 Free distribution, promotional discounts, and rewards prohibited**

- (1) A person must not—
- (a) distribute any tobacco product free, at a reduced charge, or in exchange for an opinion or the like;
  - (b) supply any tobacco product to any person for distribution free, at a reduced charge, or in exchange for an opinion or the like; or
  - (c) in the case of a retailer, supply any tobacco product to any person for the purpose of that retailer's business free or at a reduced charge,
- (2) A person must not, in connection with the sale of a tobacco product, or for the purpose of promoting the sale of a tobacco product, supply to the purchaser of a tobacco product or any other person—
- (a) a prize, gift or other benefit; or
  - (b) a stamp, coupon, token, voucher, ticket or other thing by virtue of which the purchaser or any other person may become entitled to, or may qualify for a prize, gift or other benefit (whether the entitlement or qualification is absolute or conditional); or
  - (c) any thing which, or a copy or facsimile of which, is a necessary prerequisite to participation in, or is likely to confer an advantage in, any game, contest or other activity in which a participant may become entitled to, or may qualify for, a prize, gift, or other benefit (whether the entitlement or qualification is absolute or conditional).
- (3) Any person who fails to comply with this section commits an offence and is liable on conviction—
- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
  - (b) in any other case, to a fine not exceeding 100 penalty units.

*Tobacco Product Contents, Emissions, Testing and Reporting*

**33 Controls on the content and emissions of tobacco products**

- (1) A person must not manufacture, import, export, sell or otherwise distribute any tobacco product that does not comply with the requirements regulating the additives; ingredients; constituents; and product design characteristics, features, or attributes of tobacco products, or standards on matters regarding the safety, quality, performance, emissions and other attributes of tobacco products, in each case as prescribed by regulations made under this Act.

- (2) Any person who fails to comply with this section commits an offence and is liable on conviction—
- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
  - (b) in any other case, to a fine not exceeding 250 penalty units.

**34 Testing required**

(1) Every importer or manufacturer of a tobacco product must at least once in each calendar year provide, at their own expense, in accordance with any regulations made under this Act—

- (a) the results of testing of the constituents of each brand and brand variant of the tobacco product sold in Niue by the importer or manufacturer, and the respective quantities of those constituents; and
- (b) the results of testing of the smoke (emissions) of each brand and brand variant of the tobacco product sold in Niue by the importer or manufacturer and the respective quantities of those constituents;

to the Department of Health as is required by regulations made under this Act.

(2) Regulations made under this Act may set out the details of what tests are to be carried out, suitability criteria for any laboratory to undertake any testing of tobacco products required, and the means by which the results of these tests are to be reported to the Department of Health.

(3) In addition to the annual tests required by subsections (1) and (2), the Department of Health may, by notice in writing to the manufacturer or importer of a product to which that section applies, require a further test or tests to be conducted.

(4) The further test or tests must be conducted, in accordance with any prescribed regulations and with the product samples collected from the manufacturer, importer or retailer by an enforcement officer but at the expense in all respects of the manufacturer or importer.

(5) In any year, the Department of Health must not require tests under this section in respect of more than 10 brand and brand variant of products, to be designated by the Department, sold by a particular manufacturer or importer to which subsections (1) and (2) applies.

**35 Reports of tests, constituents, additives, and certain business information required**

(1) Every manufacturer, importer, and exporter of tobacco products must submit to the Department of Health on at least an annual basis, unless otherwise prescribed, reports and returns containing the information specified in regulations made under this Act.

(2) The information referred to in subsection (1) may include information relating to any or all of the following—

- (a) the results of all tests that, during the previous year, have been conducted by the manufacturer or importer for the purposes of section 34;
- (b) the characteristics or source of the tobacco used in the manufacture of tobacco products sold in Niue;
- (c) any specified design features of tobacco products;
- (d) the quantity of tobacco products manufactured or imported by that manufacturer or importer during the previous year in relation to—
  - (i) The total weight of tobacco used in the manufacture of each class of tobacco product manufactured or imported for sale in Niue; and
  - (ii) the total number of packages of each brand or brand variant manufactured or imported for sale in Niue;

- (e) the quantity of each brand or brand variant of tobacco product sold by that manufacturer or importer in Niue during the previous year;
- (f) the recommended retail price of each brand or brand variant sold by that manufacturer or importer in Niue during the previous year;
- (g) the total weight of each additive used in the manufacture of each class or each brand or brand variant of tobacco product sold by that manufacturer or importer in Niue during the previous year;
- (h) research activities underway or undertaken in Niue or relevant to Niue and the purpose or findings of that research;
- (i) marketing initiatives underway or undertaken in Niue including their focus, findings, and expenditure;
- (j) activities undertaken in the areas of lobbying and philanthropy in Niue, and the names of entities or agents acting for manufacturers, exporters, and importers in relation to those activities;
- (k) any other information that may be useful for the Department of Health in the setting of tobacco control policies and legislation.

(3) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

**36 Provision of false or misleading information**

Any person who provides false or misleading information in relation to information required to be provided under section 35 commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

**PART 3**

**CONSUMER INFORMATION REQUIREMENTS**

**37 Conformity with packaging and labelling requirements**

(1) A person must not sell, distribute, or display for sale any tobacco product that is not packaged and labelled in a manner that complies with all requirements of this Act and with any regulations made under this Act.

(2) A person must not purchase for resale tobacco products that are not packaged and labelled in a manner that complies with all requirements of this Act and with any regulations made under this Act.

(3) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

**38 Compulsory health messages**

(1) A person must not sell, distribute, or display for sale or distribution, any tobacco product unless it has permanently affixed on its package, or permanently affixed to an individual wrapper in the case of cigars, the health messages and other information prescribed by any regulations made under this Act.

(2) Any regulations made under this Act must provide that the package of any tobacco product sold in Niue, and all outside packaging and labelling of tobacco products, must carry health messages and other information, as specified in the regulations and that those health messages and other information:

- (a) are rotated so that a range of messages and other information is displayed on all tobacco brands and brand variants; and
- (b) are large, clear, visible, and legible; and
- (c) include elements in English; and
- (d) take up a minimum of 90 percent of the front and back principal display areas of tobacco packages.

(3) The regulations may provide that any or all packages of tobacco product sold in Niue must carry messages that are in the form of, or include, pictures or pictograms.

(4) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

**39 Constituent and additives disclosures required to be displayed on all tobacco product packages**

(1) A person must not sell, distribute, or display for sale or distribution any tobacco product unless it has permanently affixed on its package, or permanently affixed on an individual wrapper in the case of a cigar, a disclosure in a form and manner prescribed by regulations made under this Act of any or all of the following—

- (a) a message about the health hazards of constituents of tobacco products which are generally recognized as harmful including but not limited to tar, nicotine, and carbon monoxide; and/or
- (b) the product's additives.

(2) A person must not sell, distribute, or display any tobacco products that include any kind of date of manufacture or expiry on the tobacco packaging.

(3) A person must not sell, distribute, or display any tobacco products which display quantitative information on emissions yields (such as tar, nicotine, and carbon monoxide) on the tobacco packaging.

(4) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

**40 Recognized acceptable standard**

(1) For the purposes of this section “substantially to the same effect as required by the Act” means health messages and other information, or constituent information, which, while differing in some respects from the requirements of this Act are considered by the Minister, acting on advice from the Director of Health, to be, in all material respects, of a standard which meets or exceeds that required by sections 38 and 39 and by any regulations made under this Act.

(2) Despite section 38 and 39, but subject to their being a *Gazette* notice made under subsection (3), tobacco products that are packaged or labelled substantially to the same effect as required by the Act may be sold, distributed, displayed for sale or distribution, imported or exported.

(3) The Minister, acting on advice from the Director of Health, may, by notice in the *Gazette*, state that tobacco product labelling and the packaging of identified tobacco products, imported from an identified country or countries, is regarded by him/her as being substantially to the same effect as required by the Act.

**41 Misleading labelling prohibited**

(1) A person must not sell, distribute, or display for sale or distribution, or export any tobacco product that has packaging or labelling that—

- (a) promotes that tobacco product by any means that are false, misleading, deceptive, or likely to create an erroneous impression of the characteristics, health effects, hazards, or emissions of that product; or
- (b) includes any written term, descriptor, trademark, symbol, image, sign, mark, colour scheme, or other mechanism that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products.

(2) Examples of misleading words and descriptors that are prohibited for display on tobacco packaging under subsection (1) include, but are not limited to, “light”, “mild”, “low tar”, and “slim”.

(3) Regulations may prescribe further words and terms which are not to be used on the packaging or labelling of tobacco products by virtue of the fact that they are deemed to be misleading for the purposes of subsection (1).

(4) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

**PART 4**

**PROTECTION FROM EXPOSURE TO SECOND-HAND SMOKE**

**42 Smoking in enclosed public places and workplaces prohibited**

(1) A person must not smoke in any enclosed public place or workplace including but not limited to—

- (a) Health care and rehabilitation facilities;
- (b) Education facilities and grounds;
- (c) Government facilities;
- (d) Indoor offices and workplaces;
- (e) Restaurants, cafes, pubs, and bars;
- (f) Public transportation; and
- (g) Any public place to which the public has access as designated by regulations made under this Act.

(2) Any person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

**43 Display of No Smoking signs**

(1) The owner or occupier of any public place or workplace or their agents and employees, and the owner or operator of any public transport vehicle and their agents and employees, must ensure that signs are displayed prominently stating that smoking is not permitted in that public place, workplace, or public transport vehicle.

(2) The signs required by subsection (1) must comply with the requirements of any regulations made under this Act.

(3) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

**44 Obligations of owners or occupiers of premises and owners or operators of public transport**

(1) The owner or occupier of any public place or workplace, or their agents and employees, and the owner or operator of any public transport and their agents and employees must take all reasonable steps to ensure that people do not smoke in violation of the provisions of this Act.

(2) As well as posting signs stating that smoking is not permitted, taking reasonable steps includes, but is not limited to,—

- (a) asking an offending person to stop smoking;
- (b) requiring an offending person who continues to smoke to leave the premises and in the case of a public transport vehicle to leave the vehicle at the next scheduled stop;
- (c) seeking the assistance of law enforcement personnel in cases where the offending person refuses to stop smoking or leave the premises or vehicle.

(3) An employer, public place owner, or occupier, or public transport vehicle owner or operator must not retaliate against any employee or person who asserts his or her right to a smoke-free environment or who reports any violation of the provisions of this Part.

(4) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

**45 Declaration of smoke-free outdoor areas**

(1) Government authorities or any other person who legally owns or operates any ground, park, field, paddock, forest, plantation, scenic or tourist site or attraction, reserve, beach, stadium, stage, wharf/jetty, airport, bus stop, playground or recreational area, or other outdoor area in which groups of people congregate may, at their express discretion, declare those areas to be areas where smoking is not permitted.

(2) Any person declaring an area smoke-free under subsection (1) must publicise the decision to declare that area as smoke-free by way of public notice or announcement, or other communications to groups regularly using that area, or through other means likely to effectively inform users of the intended smoke-free designation and the date from which that designation is to apply.

(3) Any areas declared as smoke-free under subsection (1) must be clearly marked through the display of sufficient signage to communicate to all people entering those areas that smoking is not permitted.

(4) Any person who smokes in an area declared as smoke-free under subsection (1) who, on being advised by the owner or operator of that area, or by their agent or employee, to cease smoking, fails to do so, commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

**46 Identification of smoke-free villages**

(1) A smoke-free village means a village where within the village boundaries smoking is not permitted in any public place, whether inside a building or an outside place and where tobacco products may not be sold.

(2) A village council may, after consultation with its people, identify places within its village where smoking is not permitted.

(3) A person must not smoke in any place that a village council has identified as a non-smoking area in accordance with subsection (2).

(4) A village council may, after consultation with its people, identify its village to be a totally smoke-free village.

(5) A person must not smoke in any public area within a smoke-free village.

(6) A person must not sell tobacco products within the boundaries of a totally smoke-free village.

(7) Any village council that implements restrictions on smoking in accordance with subsection (2), or that identifies its village as a totally smoke-free village in accordance with subsection (4), must display prominent signs to advise residents of, and visitors to, that village of the smoking restrictions or prohibition within that village. These signs may be prescribed in regulations.

(8) Any person who smokes in an area of a village, or a village, declared as smoke-free under this section who, on being advised by another person to cease smoking, fails to do so, commits an offence and is liable on conviction to any fine prescribed in the village bylaws.

## PART 5 ENFORCEMENT

### 47 Powers of the Director

(1) The Director may issue a direction—

- (a) requiring a person to cease anything done, or prohibiting a person from commencing, anything to be done by or on behalf of that person that contravenes or would, if done, contravene this Act or any requirement imposed by or under this Act;
- (b) imposing a term or condition on a licence or on a class of licences issued under this Act;
- (c) requiring a licence holder who has breached the terms and conditions of their licence to take specified remedial action.

(2) Where any person fails to comply with or acts in contravention of a direction then, without affecting any right to prosecute that person under this Act, the Director may make application, on notice, to the High Court for an order against that person and against other persons or class of persons as may reasonably be necessary to compel the performance of or compliance with the direction and the Court may make orders as it thinks necessary to prevent any contravention of this Act or, as the case may be, to bring to an end the matters complained of in the direction.

(3) Without limiting the powers of the High Court under subsection (2), the Court may—

- (a) require a person to pay money to, or reimburse the Department for, any actual and reasonable costs and expenses that the Department has incurred or is likely to incur in avoiding, remedying, or mitigating any adverse effect arising from the failure of the person to comply with a direction earlier made against that person under subsection (1) of this subsection;
- (b) require a person to pay to the Department the Department's actual and reasonable enforcement costs in relation to a breach of this Act including the costs of investigation, supervision, and monitoring of the relevant situation, and the costs of any actions required to avoid, remedy, or mitigate an adverse effect relating to the breach of the Act.

(4) The Director may from time to time in writing either generally or particularly, delegate to any employee of the Department as he or she thinks fit all or any of the powers exercisable by him/her under any provision of this Act (or regulations made under this Act), including this present power of delegation.

- (5) Any person who fails to comply with a direction issued under subsection (1) commits an offence and is liable on conviction—  
(a) in the case of an individual, to a fine not exceeding 50 penalty units; or  
(b) in any other case, to a fine not exceeding 100 penalty units.

**48 Appointment of enforcement officers**

(1) The Minister may, by warrant and notice in the Niue Gazette appoint a person who is a public service employee as an enforcement officer, and each person so designated has the power to exercise and carry out the functions and powers of an enforcement officer under this Act.

(2) The Director must supply every enforcement officer with a warrant of designation that provides evidence of the identity of that person and of the designation of that person as an enforcement officer under this Act.

(3) The warrant must clearly state the functions and powers that the person concerned has been authorised to exercise and carry out under this Act.

(4) Every enforcement officer who exercises or purports to exercise any power conferred on him or her must have with him or her, and produce if required to do so, his or her warrant and evidence of his or her identity.

(5) Every enforcement officer who holds a warrant issued under this section must, on the termination of his/her appointment, surrender the warrant to the Director.

**49 Inspection and investigative powers of enforcement officers**

- (1) Enforcement officers shall have the following powers—  
(a) provided that the place is not a private residence, to enter the premises of any place where tobacco is manufactured, sold, transported, received, distributed, packaged, or otherwise found or likely to be found or have been present, and to enter any public place, including a workplace, to conduct inspections or investigations at any time during business or operating hours of a workplace or at any other reasonable or necessary time;  
(b) to examine, open, and test any equipment, tools, materials, packages, or anything the officer reasonably believes is used or capable of being used for the manufacture, packaging, labelling, storage, distribution, display, advertising, or promotion of tobacco products;  
(c) to examine any operation or process carried out on the premises;  
(d) to examine and make copies of or from any books, documents, notes, files, including electronic files, or other records the officer reasonably believes might contain information relevant to determining compliance with this Act or with regulations made under this Act;  
(e) to interview or question any licensee or other person involved in selling, advertising, or promoting, manufacturing, importing, exporting, growing, transporting, packaging, or distributing tobacco products; any owner of the premises; or any person using the premises, and his or her employees, agents, contractors and workers, all of whom must cooperate fully and truthfully with any inspection or investigation;  
(f) to take samples of tobacco or tobacco products or components of products anywhere they are found and have them tested;  
(g) to seize and detain, or order the storage without removal or alteration of, any tobacco or tobacco product, where ever they may be found, that the officer reasonably believes does not comply with the requirements of this Act or regulations made under the Act. Written notice of the seizure and detention and the grounds for it must be provided to the licensee or owner of the tobacco

products, or if he or she is unavailable, any other person on the place where the tobacco products are located. If any tobacco product so seized and detained is determined to meet the requirements of the Act or regulations made under the Act, it shall be returned immediately to the place from which it was seized. If any tobacco product is determined not to meet the requirements of the Act or regulations made under the Act, it may be confiscated and destroyed or subject to other disposal, as ordered by a court;

- (h) to seize, detain, and dispose of any tobacco product being sold by a person in a manner which contravenes the requirements of this Act.

(2) A member of the Police may accompany an enforcement officer exercising powers under this section.

(3) Subsection (1) does not prevent an enforcement officer from entering a private residence—

- (a) under authority given by or under an enactment other than this Act; or
- (b) with the consent of an occupier, only to the extent necessary for, the following purposes:
  - (i) finding out whether this Act or regulations made under this Act are being complied with in, or in respect of, the place entered;
  - (ii) finding out the extent to which this Act is not being complied with in, or in respect of, the place entered.

(4) Any person who threatens, assaults, or intentionally obstructs or hinders an enforcement officer who is acting in the exercise or performance of their powers under this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

## **50 Duties of enforcement officers**

An enforcement officer exercising powers under this Act must identify himself or herself as an enforcement officer to the person in charge of any premises where the officer intends to exercise his or her powers and, if asked to do so, must produce evidence of identity and his or her warrant issued under section 48.

## **51 Liability for the actions of agents or employees**

(1) Any act or omission on behalf of a body corporate or other person (both called “the principal”) by a director, agent, or employee (each called “the agent”) of the principal is to be treated for the purposes of this Act as being also the act or omission of the principal.

(2) Despite subsection (1), where a principal is charged under this Act in relation to the act or omission of an agent for an offence, it is a good defence to the charge if the principal proves either—

- (a) that the principal took all reasonable steps to prevent the commission of the offence or the commission of offences of that kind; or
- (b) that the agent acted otherwise than within the terms of his/her authority, agency or contract

## **52 Additional jurisdiction of the Court**

(1) In addition to the penalties for offences specified in this Act, upon the conviction of any person of an offence under this Act (or under regulations made under this Act), the High Court may order—

- (a) licence suspension, revocation, or limitation, as applicable, for any violation;

- (b) confiscation and forfeiture of equipment, machinery, materials, and related items used to publish, broadcast, display, or otherwise disseminate any advertisement or promote a tobacco product in violation of section 17;
- (c) confiscation and forfeiture of any tobacco or tobacco product in the possession or control of that person where that tobacco or tobacco product is packaged or labelled in a manner that does not conform to the requirements of Part 3;
- (d) confiscation and forfeiture of any tobacco or tobacco product in the possession or control of that person, however packaged or labelled, if that person is convicted of an offence under any one or more of sections 27, 28, 29, 30, 31, or 32;
- (e) confiscation and forfeiture of any equipment, machinery, raw materials, components, and any items used to manufacture or pack tobacco products in violation of section 28 or 37.

(2) Where an offence is committed under this Act on more than one occasion or on a continuing basis then a separate offence may be deemed to be committed on each day upon which the offence occurs.

(3) Compounded penalties shall be assessed for repeat violations.

(4) In determining an appropriate sentence, the Court can have regard to the extent, if any, to which the defendant has derived any pecuniary benefit by reason of the offence committed.

### **53 Enforcement cost recovery**

In addition to any other power vested in it, the High Court, upon convicting any person of an offence under this Act (or under regulations made under this Act) may order that person to pay the reasonable costs of or incurred by the Department associated with any inspection, investigation, and enforcement action to which that conviction relates.

## PART 6

### ENGAGEMENT WITH THE TOBACCO INDUSTRY

### **54 Permitted engagement with the tobacco industry**

(1) Government agencies must only interact with the tobacco industry when and to the extent strictly necessary to enable them to effectively monitor and regulate the tobacco industry.

(2) Where interactions with the tobacco industry are necessary, government agencies must ensure that all interactions are conducted transparently, with agendas, minutes, and other records of meetings or submissions received made publicly available at the soonest opportunity.

### **55 No partnerships permitted between Government agencies and the tobacco industry**

(1) Government agencies must not accept, support, or endorse partnerships, memoranda of understanding, non-binding or non-enforceable agreements, voluntary arrangements, or codes of conduct with the tobacco industry where legally enforceable tobacco control measures can be developed and implemented instead.

(2) Government agencies must not accept, support, or endorse any offer of assistance from the tobacco industry for the development of, or funding assistance for, tobacco control legislation, policy, or programmes.

(3) Government agencies must not allow any person representing the tobacco industry or representing the interests of the tobacco industry to participate in any government interagency, multi-sectorial committee, coordinating mechanism, or advisory group that sets public health policy.

(4) Government agencies must not endorse, support, form partnerships with, or participate in activities of, the tobacco industry with the direct or indirect aim or effect of promoting a positive image of the tobacco industry or their products.

(5) Government agencies must not accept, support, or endorse the tobacco industry organising, promoting, participating in, or performing, youth, public education, or any other initiatives that are directly or indirectly related to tobacco control.

**56 Government agencies must establish policies and procedures aimed at curbing the influence of the tobacco industry**

(1) All Government agencies who have, or are likely to have, any interaction with the tobacco industry must establish, implement, and periodically evaluate and enhance, policies and procedures on—

- (a) the disclosure and management of conflicts of interest by all persons involved in setting and implementing public health policies with respect to tobacco control, including government officials, employees, consultants, and contractors; and
- (b) codes of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry; and
- (c) ensuring that contracts for carrying out any work related to setting and implementing public health policies with respect to tobacco control are not awarded to individuals or organisations who have conflicts of interest as a result of their existing or past work for the tobacco industry; and
- (d) Requiring applicants for government positions which have a role in setting and implementing public health policies with respect to tobacco control to declare any current or previous occupational activity with any tobacco industry whether gainful or not; and
- (e) requiring that government position holders who have or have had a role in setting and implementing public health policies with respect to tobacco control inform their institutions about any intention to engage in an occupational activity within the tobacco industry, whether gainful or not, within a period of one year after leaving service; and
- (f) requiring government officials to declare and divest themselves of direct interests in the tobacco industry; and
- (g) prohibiting employees and agents of government agencies from accepting payments, gifts, or services, either monetary or in kind, from the tobacco industry.

(2) Government agencies must not allow any person employed by the tobacco industry or by any agency acting on behalf of the tobacco industry to be a member of any government body, committee, or advisory group that sets or implements tobacco control or public health policy.

(3) Government agencies must not nominate any person employed by the tobacco industry, or any entity working to further its interests, to serve on delegations to international meetings relating to tobacco control.

(4) Government agencies must not accept financial or other contributions from the tobacco industry, except where those contributions are mandated by law or result from legal action.

(5) Government agencies must not have any financial interest or investment in the tobacco industry.

**57 No active support for the tobacco industry**

(1) Government agencies must not provide any financial support in the form of subsidies, incentives, tax exemptions, research grants, or any other mechanism designed to support the establishment, expansion, or financial viability of the tobacco industry in Niue.

(2) Government agencies must not support, endorse, or advocate for the business interests of the tobacco industry outside Niue.

**58 Existing partnerships or relationships with the tobacco industry**

(1) Where any government agency has, prior to entry into force of this section, entered into a partnership or any other relationship with the tobacco industry that would otherwise be prohibited under sections 54 to 57 that government agency must take all reasonable steps to cancel that partnership or relationship, or bring that partnership or relationship to as speedy a conclusion as is reasonably practicable.

(2) The Public Service Commission may take the steps deemed necessary to monitor, and ensure, compliance by all government agencies with sections 54 to 57.

**PART 7**  
**MISCELLANEOUS MATTERS**

**59 Appeals**

A person aggrieved by any act or decision of the Department of Health under sections 8, 10, 11, 12, 13, 16 or 49 may—

- (a) request that the Department give a written statement of the reasons for its act or decision;
- (b) within 21 days of the act or decision, appeal to the Minister, or to a person authorised by the Minister to consider the appeal, whose decision is, subject to subsection (c), final; and
- (c) seek a judicial review of any decision made under subsection (b).

**60 Regulations**

(1) The Cabinet may from time to time make the regulations it considers necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power conferred by subsection (1), it is hereby declared that regulations may be made under this section for all of the following purposes—

- (a) prescribing the form and content of information, documents, forms, certificates, notices, leaflets, signs, displays, particulars, and notifications, and the persons by whom and the persons to whom any information, documents, forms, certificates, notices, leaflets, signs, displays, particulars, and notifications are to be supplied;
- (b) prescribing procedures and requirements with relation to licences and licence applications, including information requirements and fees;
- (c) prescribing records and registers for the purposes of the Act, the manner in which and the period during which any records and registers are to be kept; and the persons to whom, and the conditions on which, any records and registers may be available for searching, inspection, or copying;
- (d) prescribing the size, colour, content and number of price notices permitted under section 19(a), and the inclusion of a health message and other information on those notices;

- (e) prescribing additional places where it is prohibited to sell tobacco products for the purpose of section 31;
- (f) prescribing the form, size, and content of health messages and other information (including information about constituents) to be displayed with, on, or in packages of, tobacco products; and prescribing the circumstances and manner in which the messages and other information are to be so displayed, including—
  - (i) requiring tobacco products sold or offered for sale to display a photograph or picture intended to have effect as a warning relating to the effects of their use on health; or
  - (ii) specifying controls on the content of tobacco products;
- (g) specifying controls on the content of tobacco products including the setting of maximum and minimum limits for additives and constituents, the formulation of the product, product design characteristics, features or attributes, and any other matters required to give effect to the purpose of this Act;
- (h) prescribing the method and location for testing and determining the constituents of tobacco products and the constituents of smoke produced from their combustion, including any suitability criteria for any laboratory to be considered acceptable to undertake such testing;
  - (i) prescribing which variants of brands should be tested or whether they should all be for the purposes of section 34;
  - (j) prescribing the form and manner in which returns and reports are to be filed under section 35;
  - (k) requiring manufacturers and importers of tobacco products conducting tests for the constituents, and the respective quantities of those constituents of each brand sold by that manufacturers or importers to test each variant of the brand separately; or
  - (l) requiring manufacturers and importers of tobacco products conducting tests for the constituents, and the respective quantities of those constituents, in the smoke of each brand of the product sold by the manufacturers or importers that is intended to be smoked, to test each variant of the brand separately;
  - (m) requiring manufacturers and importers of tobacco products to file with the Director returns showing all additives used in the manufacture of the tobacco products sold by that manufacturer or importer, including whether those returns should be brand variant-specific or product class-specific;
  - (n) requiring manufacturers and importers of tobacco products to file with the Director returns showing by brand variant—
    - (i) the weight of tobacco (or the weight of tobacco and of each additive) used in the manufacture of the tobacco products sold by the manufacturer or importer; and
    - (ii) the quantity of each variant of a brand of tobacco product sold by the manufacturer or importer; and
    - (iii) the recommended price of each variant of a brand of tobacco product sold by the manufacturer or importer during the previous calendar year;
  - (o) prescribing the form, size, and content of information, including information about constituents, and the health messages and other information to be displayed with, on, or in packages of tobacco products; and prescribing the circumstances and manner in which the information and messages are to be so displayed, including—

- (i) Requiring tobacco products sold or offered for sale to display a photograph or picture intended to have effect as a warning relating to the effects of their use on health.
- (p) prescribing words, terms, descriptors, trademarks, symbols, signs, marks, colour schemes, or other techniques for branding tobacco packages that are considered misleading for the purposes of section 41;
- (q) prescribing the number, size, format, and content of no smoking signs for the purpose of section 43; and
- (r) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.



# TOURIST AUTHORITY ACT 1995

1995/200 – 2 November 1995

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## PART 1

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## To reconstitute the Tourist Authority Board as the Tourist Authority

### 1 Short title

This is the Tourist Authority Act 1995.

### 2 Interpretation

In this Act –

- “accommodation premises” means and includes hotels, motels, guesthouse, boarding houses and all land, buildings and premises used wholly or partly, or intended to be used wholly or partly to provide lodgings for tourists;
- “appointed member” means any member of the Board appointed under section 4(2)(a);
- “Authority” means the Tourist Authority established under section 3;
- “Board” means the Board of Directors of the Authority established under section 12;
- “Director” means the Director appointed under section 12;
- “Member” means a member of the Board;
- “Minister” means the Minister of Tourism;
- “tourism” means the provision of scenic attractions, recreational activities and services that attract tourists;
- “tourism industry” means and includes, not only accommodation, but tour operators, inbound operators, travel agents and airline agents.

PART 1  
TOURIST AUTHORITY

**3 Establishment of Tourist Authority**

(1) There shall continue to be an Authority to be called the Tourist Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal capable of suing and being sued and of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

**4 Board of Directors**

(1) There shall be a Board of Directors of the Authority which shall, subject to this Act, have overall control of the Authority.

(2) The Board shall consist of –

- (a) Six appointed members, being persons from among those of competence and experience in –
  - (i) The tourism industry; and
  - (ii) Private commercial interests and having personal attributes, qualifications and experience as will enable those persons to represent the tourist industry as well as the general community interests;
- (b) The Financial Secretary or an official of the Treasury nominated by the Financial Secretary who shall be an ex officio member;
- (c) The Director who shall be an ex officio member with no voting rights.

(3) The appointed members of the Board shall be appointed by Cabinet. Cabinet shall from among those appointed members appoint one as Chairperson of the Board.

(4) The powers of the Board shall not be affected by any extraordinary vacancy in its membership.

**5 Term of office of members of Authority**

(1) Except as otherwise provided in this Act every appointed member shall hold office for a term of 3 years but may be reappointed.

(2) Notwithstanding anything in this Act, every appointed member whose office is terminated by effluxion of time shall continue to hold office until his successor comes into office.

**6 Extraordinary vacancies**

(1) An appointed member of the Board may resign his office at any time by written notice given to the Minister.

(2) An appointed member may at any time be removed from office by Cabinet for disability, bankruptcy, neglect of duty or misconduct proved to the satisfaction of Cabinet.

(3) If an appointed member dies or resigns his office by written notice given to the Minister or is removed from office the vacancy shall be deemed to be an extraordinary vacancy.

(4) In the case of an extraordinary vacancy, Cabinet may subject to the criteria for the composition of the Board set forth in section 4(2) appoint any person to fill the vacancy.

(5) Any appointed member appointed to fill an extraordinary vacancy shall hold office only for the unexpired portion of the term of office of his predecessor, but may be reappointed.

**7 Meetings of Board**

(1) The first meeting of the Board shall be held on a day to be appointed by the Chairperson.

(2) Subsequent meetings shall be held at such times and places as the Board or the Chairperson may appoint.

(3) The Chairperson or any 2 members may at any time call a special meeting of the Board with 3 days notice.

(4) At all meetings a majority of the members for the time being of the Board shall form a quorum.

(5) The Chairperson shall preside at all meetings at which he is present. In the absence of the Chairperson from any meeting, the members present shall appoint one of their number to be Chairperson of that meeting.

(6) At any meeting the Chairperson shall have a deliberative vote and in the case of an equality of votes shall also have a casting vote.

(7) All questions arising at any meeting shall be decided by a majority of the valid votes of members recorded on it.

(8) The Minister should request the right to attend and address any meeting of the Board, but not to be present during voting.

(9) Subject to this Act and of any regulations made under it, the Board may regulate its procedure in such manner as it thinks fit.

**8 Minutes of meetings**

(1) The Board shall cause minutes to be kept in a book provided for the purpose, of all resolutions and proceedings of its meetings.

(2) The minutes shall be signed by the Chairperson at the next meeting.

(3) A copy of the minutes of every meeting shall be furnished to every member.

**9 Disclosure of conflicting interest**

(1) Any member who has a direct or indirect pecuniary interest in any matter before the Board or any committee of it (apart from any interest in common with the public or with any section of the public or with any section of the tourist industry affected by the matter in question) shall as soon as possible after the relevant facts have come to his notice, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under this section shall be recorded in the minutes of the meeting of the Board and the member shall not take part after the disclosure in any deliberation or decisions relating to the matter, but shall be counted as present for the purpose of forming a quorum of the Board for any such deliberation or decision.

**10 Board may refer matters for investigation**

The Board may appoint one or more of its members or any other qualified person to investigate and report to the Board on such matters as are referred to him or them by the Board for the purpose of the proper exercise of its powers or functions under this Act.

**11 Delegation of powers of Authority**

(1) The Authority may appoint a committee or committees consisting of two or more persons being members of the Board or officers of the Authority and may delegate to any such committee any of the powers or functions of the Authority except for the power of delegation conferred by this section.

(2) The Authority may delegate any of its powers to any member of the Board or officer or employee of the Authority except for the power of delegation conferred by this section.

(3) Subject to any general or special directions given or conditions imposed by the Authority or committee or person to whom any powers are delegated under this section the committee or person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(4) Every committee or person purporting to act under any delegation under this section shall be presumed to be acting under the terms of the delegation in the absence of proof to the contrary.

(5) Any delegation under this section may be made to a specified person or to persons of a specified class or may be made to the holder for the time being of a specified office or appointment or to the holders of officer or appointments of a specified class.

(6) Any delegation under this section may be revoked at any time.

(7) The delegation of any power by the Authority shall not prevent the exercise of that power by the Authority.

## **12 Director and other employees**

(1) The Authority shall appoint a Director of Tourism who shall be the Chief Executive Officer of the Authority.

(2) The Director in consultation with the Authority may appoint such other officers and employees including acting or temporary or casual officers and employees as it thinks necessary for the efficient exercise of its functions and powers.

(3) Any person in the service of the Crown may be appointed to be an officer or employee of the Authority but no such person shall be entitled to hold office concurrently as an officer or employee of the Authority and as a servant of the Crown except in the case of a person subject to the Public Service Commission, with the consent of the Commission.

(4) Subject to this Act the Authority may employ a Director of Tourism and other employees upon such terms and conditions and at such salaries and allowances as it thinks fit and may at any time remove any officer or employee from his office or employment.

(5) No person by reason only of being a director or employee of the Authority shall be deemed to be employed in the Public Service except that for the purpose of a government superannuation service as an officer or employee appointed under this Act shall be deemed to be Government Service.

## PART 2

### OBJECTIVES, FUNCTIONS AND POWERS

## **13 Objectives of the Authority**

The primary objective of the Authority shall be to encourage and promote the development of tourism in Niue in a manner which is appropriate to the interests of developing Niue as a tourist destination having regard also to the community at large and the objectives of Government as set out in the Niue Strategic Plan as promulgated from time to time.

## **14 Functions of Authority**

In pursuance of its objective the Authority shall have the following functions –

(a) As to policy and planning –

## Tourist Authority Act

- (i) To recommend for Cabinet approval national and regional policy for the development, promotion, regulation and control of tourism;
- (ii) To assist, and advise the Minister, in the implementation of national and regional tourism policy;
- (iii) To co-ordinate policy and planning for the development and promotion of tourism;
- (iv) To undertake such planning and research (not being undertaken by any other agency or department of the Government) as may be required to provide the Minister with advice and guidance on matters of policy and planning affecting the tourist industry;
- (v) To undertake such planning and research as may be required to enable the Authority to discharge any other of its functions under this section;
- (b) As to marketing and promotion –
  - (i) To promote and encourage travel by the public to Niue under policies as established;
  - (ii) To promote and encourage the development of those tourism facilities, attractions and services which are consistent with the requirements of the tourist industry from time to time;
  - (iii) To provide and co-ordinate national destination and other broad-spectrum marketing services as may be required to ensure orderly promotion of tourism in overseas markets;
  - (iv) To provide advisory and guidance services for travel agents, tour operators and others engaged in the business of encouraging tourists to visit Niue;
  - (v) To establish, maintain, develop and operate publicity, public relations and information services in respect of travel to Niue;
- (c) As to cultural and community issues –
  - (i) To establish and promote structures and procedures to facilitate dialogue and consultation on matters affecting tourism between and among the Government, those involved in the tourism industry in Niue and the general public of Niue;
  - (ii) To identify and promote those aspects of Niuean culture and entertainment of interest to tourists;
  - (iii) To advise and inform the Minister as required of matters of particular community concern;
  - (iv) To regulate and control in conjunction with other departments and agencies of the Government the use, development and maintenance of scenic attractions and recreational facilities, standards and licensing of accommodation and inbound operators in Niue;
  - (v) Tourism projects should be subject to environmental impact assessments and authority should have regard to the Niue environment management strategy and other Government policies concerning the environment;
- (d) As to education and training –
  - (i) To promote and co-ordinate with other departments and agencies of the Government an ongoing programme of education and training to improve levels of participation by Niueans and permanent residents of Niue in the tourist industry;
  - (ii) To establish and promote a continuing programme of community education as to the benefits and advantages of tourism;
- (e) As to general administration and other matters –

- (i) To hold such inquiries and gather such information as will enable it to determine the requirements of tourists and the public as to the provision of services of all kinds and other amenities on premises licensed under this Act;
- (ii) To conduct enquiries into any matters at the request of or with the approval of the Minister and to make recommendations to the Minister in respect of them;
- (iii) To do such other acts and things as the Authority may be required or authorised to do by this or any other Act or as may in the opinion of the Authority be necessary or desirable for the purposes of this Act.

## **15 Powers of the Authority**

The Authority shall have all the powers reasonably necessary for the effective performance of its functions –

- (a) Subject to the provisions of any enactment applicable to the Authority, fix regulate or make such charges as it determines for the use of service, works, recreation grounds, equipment, apparatus, attractions, amenities or facilities provided, maintained, controlled, or operated by the Authority;
- (b) Contract for the execution or provision by any person of any work or services authorised by this or any other Act to be executed or provided by the Authority in such manner and on and subject to such terms and conditions as the Authority thinks fit;
- (c) For the purpose of promoting and encouraging tourist traffic to Niue, act in combination or association with any person or body of persons whether incorporated or not and whether in Niue or elsewhere or any Government department or agency that may be engaged, concerned or interested in the promotion of tourist traffic from overseas and contribute to the expenses involved in any such combination or association;
- (d) To make recommendations to the Minister to regulate on standards to be complied with by hotels, accommodation, premises, restaurants, scenic attractions and recreational facilities together with services and amenities, in connection with them.

## **16 Authority to give effect to directions of Government**

(1) In the exercise of its functions and powers the Authority shall have regard to any general policy directions that may be made by Cabinet and conveyed to it by the Minister in respect of any functions or activities of the Authority and shall give effect to any decision of the Government in relation to it conveyed to the Authority in writing by the Minister.

(2) A copy of every written directive from the Cabinet shall be included in the annual report required to be made by the Authority to Cabinet under section 22.

## PART 3 FINANCIAL

## **17 Remuneration and allowances of members of the Board**

The members of the Board shall be paid out of the Niue Tourist Authority account.

**18 Application of fees**

All fees and other moneys paid under this Act shall be paid into the Niue Tourist Authority account and all expenses incurred in respect of the administration of this Act and regulations under it shall be paid out of such moneys as may be appropriated by the Assembly.

**19 Niue Tourist Authority Account**

(1) The Authority shall keep such bank account or accounts as may be approved by the Board.

(2) No money shall be withdrawn from any bank account except by cheque or other instrument (not being a promissory note or bill) signed by such person or persons in such manner as the Board may determine.

**20 Preparation of estimates**

(1) The Authority shall in each year prepare and submit annual estimates of revenue and expenditure, as the Minister responsible for finance directs, covering the operations of the Authority in the exercise of its powers and functions.

(2) The estimates may in respect of any undertaking of the Authority provide for finance by way of loans or overdraft the terms and conditions of which shall be subject to the approval of Cabinet.

(3) The Minister shall submit the estimates, with such recommendations to Cabinet for approval.

(4) A copy of the estimates as approved by Cabinet shall be attached to the estimates prepared under the Public Revenues Act 1959 as an appendix.

**21 Authorisation of expenditure**

(1) The Board may authorise expenditure in accordance with the estimates approved by the Assembly and as between items of expenditure in the approved estimates may, with the approval of the Cabinet exercise a power of virement to an extent not exceeding 20 per cent of the item to which funds are transferred.

(2) The Cabinet may authorise expenditure in excess of the total provided for in the estimates to the extent that receipts of the Authority exceed the amount estimated.

**22 Annual report and accounts**

(1) The Authority shall, as soon as practicable after 30 June in each year, furnish a report covering its activities for the year ending on 30 June, including financial statements showing estimates and actual expenditure and receipts together with such accounts as are appropriate to the nature of its financial operations.

(2) The financial statements required to be furnished to the Minister under subsection (1) shall be in such form as may be directed by the Minister responsible for finance and shall be completed and available no later than 2 months after the end of the financial year to which they relate.

PART 4  
MISCELLANEOUS

**23 Breach of Act or regulations**

Every person who commits or attempts to commit or is concerned in committing or attempting to commit a breach or violation of this Act or of any regulations made under this Act for which no special penalty is provided is liable for every offence to a fine not exceeding

10 penalty units and if the breach or violation is a continuing one to a further fine not exceeding 1 penalty unit for every day or part of a day during which the offence continues.

**24 Regulations**

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

(2) All such regulations shall be laid before the Assembly within 28 days after the making of it if the Assembly is then in session, and, if not, shall be laid before the Assembly at the commencement of the next ensuing session.

**25-26 [Spent]**

# TRANSPORT ACT 1965

1965/30 – 1 July 1965

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#### SCHEDULE

### To consolidate and amend various Acts relating to the control of vehicles, roads and road traffic

#### PART 1 PRELIMINARY

##### 1 Short title

This is the Transport Act 1965.

##### 2 –

### 3 Interpretation

In this Act –

“approved” means approved by the Chief Officer of Police;

“approved device” means a breathtest device approved by the Cabinet under section 45G(5);

“bicycle” includes a tricycle driven with pedals;

“breath test” means a test for the purpose of obtaining, by means of an approved device, a measurement that the proportion of alcohol in a person’s breath exceeds the prescribed limit or that the proportion of alcohol in a person’s blood is likely to exceed the prescribed limit;

“driver” includes the rider of a motorcycle or power cycle or pedal cycle;

“drug” includes any intoxicant other than alcohol;

“fail” includes refuse;

“goods” includes animals and mail;

“heavy motor vehicle” means a motor vehicle (other than a motor car that is not used, kept, or available for the carriage of passengers for hire or reward) the gross weight of which exceeds 2,000 kilograms;

“hospital” means an institution which provides medical or surgical treatment for in-patients or out-patients;

“hours of darkness” means –

(a) the period of time between half an hour after sunset on any one day and half an hour before sunrise on the next following day;

(b) Any other time when there is insufficient daylight to render clearly visible a person or vehicle at a distance of 150 feet;

“in charge of a motor vehicle” means to be seated in the motor vehicle with the intention of driving it or outside the motor vehicle attending to the mechanics or otherwise preparing to drive it;

“infringement offence” means an offence against this Act that is declared to be an infringement offence by regulations made under section 107.

“left side” in relation to a vehicle means its side to the left of the driver’s seat when facing forward;

“licensing year” means the year expiring on 31 March following the issue of an annual licence under Part 2;

“motor car” means a motor vehicle other than a motor cycle or power cycle designed exclusively or principally for the carriage of persons not exceeding 7 in number inclusive of the driver;

“motor cycle” means a motor vehicle running on 2 wheels or not more than 3 wheels when fitted with a sidecar, but does not include a power cycle;

“motor vehicle” means a vehicle that is drawn or propelled by mechanical power and includes a trailer and a tractor but does not include a vehicle normally propelled by mechanical power while it is being temporarily towed without the use of its own power;

“operate” means use or drive or ride or cause or permit to be driven or ridden or permit to be in any public place whether the person operating is present in person or not;

“owner” includes a bailee to whom a motor vehicle is bailed for any period exceeding 14 days and also includes a person in possession of a motor vehicle pursuant to a bill of sale; and where there are more owners of a motor vehicle than one, every such owner shall be deemed to be an owner for the purposes of this Act;

“passenger service vehicle” means a motor vehicle used for the carriage of passengers for hire or reward;

“power cycle” means a pedal bicycle or tricycle that for alternative propulsion is fitted with a motor attachment (whether detachable or not);  
“prescribed limit” means as the case may require –  
(a) 35 micrograms of alcohol in 100 millilitres of breath; or  
(b) 80 milligrams of alcohol in 100 millilitres of blood;  
“Registrar” means a Registrar of Motor Vehicles appointed under this Act;  
“registration plate” means a registration plate for a motor vehicle issued under Parts 2 and 3;  
“right of way” means the right of precedence in continuing on a course;  
“right side” in relation to a vehicle means its side to the right of the driver’s seat when facing forward;  
“taxicab” means a motor vehicle which –  
(a) Is designed exclusively or principally for the carriage of persons not exceeding 8 in number inclusive of the driver; and  
(b) Is used for hire or reward for the carriage of passengers otherwise than on defined routes; and  
(c) Is available for hire to any member of the public;  
“tractor” means a motor vehicle that is designed exclusively for the purposes of traction and not for the carriage of passengers (other than the driver) or of goods;  
“trade motor” means any motor vehicle other than a motorcar, motor cycle, power cycle or trailer;  
“trailer” means a vehicle without motive power that is drawn or propelled or is capable of being drawn or propelled by a motor vehicle from which it is readily detachable, but does not include a sidecar attached to a motor cycle;  
“use” in relation to a vehicle includes driving, drawing or propelling by means of another vehicle and permitting to be in any public place;  
“vehicle” means a contrivance that is equipped with wheels or revolving runners upon which it moves or is moved.

## PART 2

### REGISTRATION AND ANNUAL LICENCES

#### **4 Use of motor vehicles prohibited unless Part 2 complied with**

Except as specially provided in this Act, no person shall in any licensing year knowingly use any motor vehicle in any public place, or permit any motor vehicle to be so used unless –

- (a) The motor vehicle is registered under this Act; and
- (b) A licence to use the motor vehicle for that licensing year has been issued; and
- (c) Registration plates for the motor vehicle have been issued and are affixed to it in the manner prescribed in this Act.

#### **5 Penalty for contravention**

(1) Every person who knowingly uses or permits to be used a motor vehicle in any public place without having it registered and licensed as required by this Act or, having it so registered and licensed, without having registration plates bearing the assigned registration number, duly affixed to it and every person who wilfully or negligently defaces any registration plate so affixed commits an offence and shall be liable on conviction to a fine not exceeding 3 penalty units.

(2) The fact that any motor vehicle is used in any public place without having registration plates affixed to it in the prescribed manner shall be sufficient evidence until the contrary is proved, that the motor vehicle has not been registered and licensed under this Act.

**6 Registrar and Register**

(1) There shall be appointed a Registrar of Motor Vehicles for the purposes of this Act.

(2) The Registrar shall compile and keep up to date at his office a register of all motor vehicles registered and of all registration plates and licences issued and also of the fees received in respect of it.

**7 Application for registration**

Application for the registration of any motor vehicle shall be made in the form numbered 1 in the Schedule or to the effect of it.

**8 Pneumatic tyres and right hand drive required**

Except with the written permission of Cabinet, no motor vehicle shall be registered under this Act unless all the wheels of it are fitted with pneumatic tyres and, where applicable, the motor vehicle has a right hand drive.

**9 Procedure for registration**

(1) On receipt of an application for registration of any motor vehicle under this Act the Registrar, if satisfied that the application is in order, shall assign a number to the motor vehicle to be shown on the motor vehicle, and shall issue to the applicant a certificate of registration of the motor vehicle in the form numbered 2 in the Schedule.

(2) The certificate of registration shall in the case of a trade motor specify the number of persons excluding the driver which the trade motor may lawfully carry at any one time, and shall also specify the maximum weight of goods or passengers or both which the trade motor may lawfully carry at any one time.

(3) No person shall drive a trade motor which is carrying at any one time a greater number of persons or a weight exceeding the maximum weight of goods or passengers or both specified in the certificate of registration under subsection (2).

**10 Issue and use of registration plates**

(1) On completion of the registration and on the issue of an annual licence as hereinafter provided, the Registrar shall supply to the owner of the motor vehicle appropriate registration plates on which every letter and figure shall be not less than 3 inches in height.

(2) Subject to subsection (1) all registration plates shall be of approved designs, colours, and distinguishing marks.

(3) (a) The number assigned to the motor vehicle by the registration shall be shown on 2 registration plates so supplied which shall be affixed one on the front and the other on the back of the motor vehicle in an upright position so that every letter and figure on the plate is upright and easily distinguishable.

(b) In the case of a power cycle or a trailer only one registration plate shall be affixed to the back of that motor vehicle in the manner hereinbefore described.

**11 Registration in force subject to cancellation**

Save as provided in this Act with respect to the cancellation of registration in special cases, the registration of any motor vehicle shall continue in force without renewal.

**12 Registration fees**

(1) There shall be payable for the registration of any motor vehicle such fees as Cabinet may prescribe by regulation.

(2) (a) Every application for the registration of a motor vehicle shall be accompanied by the amount of the appropriate fee.

(b) No fee shall be payable for the registration of any motor vehicle owned by the Government.

**13 Duty of owner to obtain annual licence**

(1) Save with respect to motor vehicles owned by the Government every owner of a motor vehicle shall obtain annually from the Registrar a licence to use the motor vehicle.

(2) Every such licence shall expire on 31 March following the issue of it and application for renewal of any licence so expiring shall be made on or before the date of expiration.

(3) No annual licence shall be issued in respect of any motor vehicle which has not been duly registered under this Act.

**14 Application for annual licence**

Subject to section 16(1), application for a licence shall be made in the form numbered 3 in the Schedule and the first such application shall be made together with the application for registration.

**15 Fees for annual licence**

(1) (a) There shall be payable for the issue of every annual licence for any motor vehicle such fees as Cabinet may prescribe by regulation.

(b) In the case of a licence issued for a period less than a year the prescribed licence fee shall be reduced by one-twelfth for every complete month by which that period is less than one year.

(2) Every application for an annual licence shall be accompanied by the amount of the appropriate fee.

**16 Issue of annual licence and duty to produce licence on demand**

(1) (a) The Registrar shall thereupon issue in the form numbered 4 in the Schedule a licence to use the motor vehicle.

(b) With respect to the renewal of any annual licence the Registrar may accept and issue applications and licences in a simplified form approved by Cabinet.

(2) While any such licence is in force and registration plates are affixed as prescribed the motor vehicle may be used in any public place on Niue during the licensing year for which the licence was issued.

(3) Every person operating any motor vehicle shall produce the annual licence for inspection whenever required so to do by any constable.

**17 Cancellation of registration**

(1) If any registered motor vehicle is destroyed or becomes permanently useless as a motor vehicle or is intended to be removed from Niue the owner shall forthwith give to the Registrar notice of that destruction, condition or removal, as the case may be, and shall deliver to the Registrar the certificate of registration and the licence issued for the then current licensing year and, if practicable, the registration plates issued and the Registrar shall thereupon cancel the registration of the motor vehicle and the annual licence.

(2) On the cancellation of registration and licence as aforesaid Cabinet may cause to be refunded by the Financial Secretary to the owner such sum as it thinks proper not exceeding one-twelfth part of the annual licence fee for every complete month between the date of cancellation of the licence and the end of the period for which the licence fee was paid.

(3) When the registration of a motor vehicle is cancelled the Registrar may assign to any other motor vehicle thereafter registered the number of the motor vehicle the registration whereof has been cancelled, if the registration plates assigned to that vehicle have been delivered or the Registrar is satisfied that no confusion is likely to arise from the assignment of the same number.

**18 Change of ownership**

(1) Within 7 days after the sale or other disposal of a motor vehicle the person selling it or otherwise disposing of it shall deliver to the Registrar the certificate of registration and the licence issued for the then current licensing year in respect of that motor vehicle and the Registrar shall endorse on the certificate and licence a memorandum of the change of ownership, and shall on the payment of a fee of \$10 issue the endorsed certificate and licence to the new owner.

(2) No person who becomes the owner of any motor vehicle under any sale or other disposal as aforesaid shall use or permit to use the motor vehicle in any public place unless and until he has received the endorsed certificate and licence.

**PART 3**

**LICENSING OF MOTOR DRIVERS**

**19 Unlicensed persons not to drive**

(1) Except as otherwise provided in this section it shall not be lawful for any person to drive a motor vehicle in any public place unless he is the holder of a motor driver's licence issued under this Part and for the time being in force and no person shall employ any other person so as to drive a motor vehicle unless the person so employed is the holder of a driver's licence as aforesaid.

(2) Any person who acts in contravention of this section commits an offence and shall be liable on conviction to a fine not exceeding 1 penalty unit.

(3) Subject to subsection (4), where any person (in this section called "the learner") is driving a motor vehicle and is accompanied by a person seated alongside him who is teaching the learner to drive and who is the holder of a driver's licence for the time being in force which authorises him to drive a motor vehicle of that class in a public place, the learner and any person permitting the learner to drive the motor vehicle shall be deemed not to be acting in contravention of subsection (1).

(4) Nothing in subsection (3) applies in any case where –

- (a) The learner has not attained the age that qualifies him to obtain a driver's licence to drive the motor vehicle that he is driving; or
- (b) The learner is subject to an order that disqualifies him from holding or obtaining a driver's licence.

**20 Application for driver's licence**

Subject to section 22(2) application for a motor driver's licence shall be made in the form numbered 5 in Schedule 1 or to the effect thereof and every such application shall clearly state the class or classes of motor vehicles in respect of which the licence is applied for.

**20A Prohibitions relating to drivers' licences**

(1) No person who is under the age of 14 years shall apply for or obtain a driver's licence, and any licence that is so obtained by any such person shall be of no effect.

(2) No person who is under the age of 18 years shall apply for or obtain a licence to drive a heavy motor vehicle, and any such licence that is so obtained shall be of no effect.

(3) No person who is under the age of 20 years shall apply for or obtain a licence to drive a passenger service vehicle, and any such licence that is so obtained shall be of no effect.

(4) An application for a licence to drive a passenger service vehicle must be accompanied by a medical certificate certifying the applicant medically fit to drive.

**21 Fees for driver's licence**

There shall be payable for the issue of a driver's licence such fees as Cabinet may prescribe by regulation and every application for a licence shall be accompanied by the amount of the appropriate fee.

**22 Procedure of licensing**

(1) On receipt of an application as aforesaid the Registrar shall issue a driver's licence to any applicant who satisfies him –

- (a) That the applicant is over the age of 14 years; and
- (b) That by practical test and oral examination or by other satisfactory evidence of fitness, the applicant is competent to drive the class or classes of motor vehicles in respect of which the licence is applied for; and
- (c) That, where the applicant is 65 or more years of age or where the Registrar considers it advisable, the applicant shall have obtained a certificate of physical fitness from a Medical Officer;
- (d) Cabinet may exempt any person or class of persons generally or otherwise from the requirements of this section.

(2) (a) Every driver's licence shall be issued in the form numbered 6 in the Schedule.

(b) With respect to the renewal of any driver's licence the Registrar may accept and issue applications and licences in a simplified form approved by Cabinet.

**23 Fees for driving test**

Where any applicant is required under this Part to undergo any practical driving test there shall be payable to the Department by which the test is carried out a testing fee of such sum as Cabinet may prescribe by regulation and such testing fee shall be payable whether or not a driver's licence is issued to the applicant.

**24 Expiration and renewal of licence**

(1) If not earlier cancelled or suspended as provided in this Act every driver's licence shall expire on 31 March following the date of issue and application for renewal of any licence so expiring shall be made on or before the date of expiration.

(2) Any motor driver's licence may be cancelled at any time by the Registrar upon receipt of a certificate from a Medical Officer that the holder is no longer physically fit to drive a motor vehicle of the class or classes for which he had obtained a driver's licence.

**25 L plates**

Every driver of a motor cycle issued with a driver's licence for the first time shall for three months or longer if the examining officer thinks necessary, display on his motor cycle an L plate (Learner's registration plate) to be supplied by the Registrar, and during this time he shall carry no passengers on his motor cycle.

**26 Charge for registration plates**

Except with respect to registration plates issued to the Government, a charge sufficient to cover the cost of any plates issued by the Registrar may be made on their issue.

**27 Driver to produce his licence on demand**

Every person driving any motor vehicle shall have his driver's licence with him and shall produce the same for inspection whenever required so to do by any constable.

**PART 4**

**RULES OF THE ROAD**

**28 Vehicles to keep to the left**

Every driver of a vehicle shall keep the vehicle as close as is practicable to the side of the roadway on his left.

**29 Driver of vehicle to give audible signal when overtaking**

Every driver of a vehicle shall, when overtaking any other vehicle, signal by use of the horn or other sounding device and then pass on his right or off side of the overtaken vehicle, and shall not then move into the line of passage of the other vehicle until clear from it by at least 18 feet.

**30 Overtaking involving risk prohibited**

No driver of any vehicle shall overtake or attempt to overtake any other vehicle proceeding in the same direction –

- (a) At any intersection, or within a distance of 100 feet before an intersection;
- (b) Unless the driver has a clear view of the road and traffic on it for a distance of at least 300 feet in the direction in which he is travelling.

**31 Right-hand turn at intersection**

Every driver of a vehicle intending to turn at an intersection from any roadway into another roadway to his right, shall when approaching and turning, maintain his position to his left of the centre of the roadway out of which he is turning until he enters the area of the intersection, and shall then turn into the roadway which he is entering as directly and quickly as he can with safety.

**32 Driver of vehicle to yield the right of way to vehicle on his right**

Every driver of a vehicle, when approaching or crossing any intersection which any other vehicle is approaching or crossing from his right shall, where there would be a possibility of a collision if both continued on their course, yield the right of way to such other vehicle and allow the same to pass him, and if necessary for that purpose stop his vehicle.

**33 Unsafe vehicles**

No person shall operate any vehicle in such conditions or so loaded or with a load so unsafely secured as to cause, or to be liable to cause, injury to any person or animal, or annoyance (by reason of noise or other cause) to any person, or damage to any property.

**34 Dangerous riding on vehicles**

No person shall ride, and the driver shall not permit any person to ride on any vehicle in a manner or position which may be liable to cause injury to that person or any other person.

**35 Motor driver's visible signals**

Every driver of a motor vehicle, whenever in view of other traffic and unless prevented by a sudden emergency, shall, before manoeuvring the vehicle in manner hereinafter described, give reasonable notice of his intention so to do as here provided –

- (a) If he is about to stop or reduce speed –
  - (i) he shall extend the right arm directly outwards from the right or off side of the motor vehicle with the upper arm horizontal and the forearm vertical; or
  - (ii) if the vehicle is equipped with approved automatic signalling devices at the rear of the vehicle he may indicate his intention by means of such devices;
- (b) If he is about to turn to his right or about to draw out from the roadside towards his right, or about to overtake a vehicle travelling in the same direction –
  - (i) he shall extend the right arm horizontally outwards from the right or off side of the vehicle;
  - (ii) if the vehicle is equipped with approved automatic signalling devices capable of giving a signal closely corresponding to the signal described in subparagraph (i) he may indicate his intention by means of such devices.

**36 Parking of motor vehicles**

(1) No person shall leave or park any motor vehicle upon any public place unless the motor vehicle is so located or during the hours of darkness so lighted that it is not a danger or a nuisance to any person or vehicle in the public place.

(2) A driver of a motor vehicle must ensure, when parking the vehicle on a prescribed road, that the vehicle is parked on the left side of the road.

(3) A prescribed road means a road prescribed by Cabinet from time to time.

**37 Towing of motor vehicles and leading of animals**

(1) No person shall operate any power cycle or any motor cycle (other than one to which a sidecar is attached) for the purpose of towing any trailer.

(2) No person shall operate any motor vehicle for the purpose of towing any other motor vehicle (except a trailer) unless such other motor vehicle is not in working order and is being temporarily towed without the use of its own power for the purpose of being repaired.

(3) No person shall lead or permit to be led any animal by or from any motor vehicle.

**38 Number of persons on motor cycles and power cycles and requirements as to safety helmets**

(1) No person shall drive a motor cycle in a public place –

- (a) Carrying any person upon the motor cycle in front of the driver; or
- (b) Without a sidecar carrying more than 2 persons inclusive of the driver, or carrying any person seated otherwise than astride and facing forward;
- (c) With a sidecar carrying more than 4 persons in all.

(2) No person shall drive a power cycle in a public place while it is carrying any person other than the driver.

**38A Safety helmets for motorcyclists**

(1) No person shall drive or be a passenger on a motor cycle unless that person is wearing an approved safety helmet of a type which has been approved under subsection (2), and which is securely fastened.

(2) (a) For the purposes of this section, “approved safety helmet” means a safety helmet for the time being approved by a competent authority in New Zealand, Australia, Japan or the United States of America.

(b) A helmet which bears the approval mark of such an authority shall in the absence of evidence to the contrary be deemed to be an approved safety helmet.

**PART 5**

**RECKLESS OR INTOXICATED DRIVERS**

**39 Penalties for causing death or bodily injury through reckless or negligent driving or through driving while intoxicated**

(1) Every person commits an offence against this Act who, without being guilty of the crime of manslaughter as defined in section 11 of the Criminal Law Code

- (a) Recklessly or negligently drives any motor vehicle and thereby causes bodily injury to or the death of any person; or
- (b) While under the influence of drink or a drug to such an extent as to be incapable of having proper control of the motor vehicle, is in charge of a motor vehicle and by an act or omission in relation to it causes bodily injury to or the death of any person.

(2) Every person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 5 years or to a fine not exceeding 15 penalty units or to both, and (without prejudice to the power of the Court to order a longer period of disqualification) the Court shall order him to be disqualified from holding or obtaining a driver’s licence for a period of one year, unless the Court for special reasons relating to the offence thinks fit to order otherwise.

**40 Penalties for reckless or negligent driving or driving while intoxicated**

(1) Every person commits an offence who –

- (a) Recklessly or negligently drives a motor vehicle in any public place; or
- (b) Drives any motor vehicle at a speed which, having regard to all the circumstances of the case, is or might be dangerous to the public;
- (c) [Repealed]
- (d) Drives a vehicle in a manner which having regard to all the circumstances of the case is or might be dangerous to the public or any person.

(2) (a) A person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive through drink or drugs, shall be guilty of an offence.

- (b) Without prejudice to paragraph (a), a person who, when in charge of a motor vehicle which is on a road or other public place is unfit to drive through drink or drugs, shall be guilty of an offence.
- (c) For the purposes of paragraph (b), a person shall be deemed not to have been in charge of a motor vehicle if he proves that, at the material time, the circumstances were such that there was no likelihood of his driving that vehicle so long as he remained unfit to drive through drink or drugs, but in determining whether there was such a likelihood the court may disregard any injury to him and any damage to the vehicle.

- (d) For the purposes of this subsection a person shall be taken to be unfit to drive if his ability to drive properly is for the time being impaired.
  - (e) A constable may arrest a person without warrant if he has reasonable cause to suspect that that person is or has been committing an offence under this subsection.
  - (f) For the purpose of arresting a person under the power conferred by paragraph (e) a constable may enter (if need be by force) any place where that person is or where the constable, with reasonable cause, suspects him to be.
- (3) Every person commits an offence against this Act and shall be liable on conviction to a fine not exceeding 5 penalty units and the Court may order him to be disqualified from holding or obtaining a driver's licence for a period not exceeding 3 months who drives a motor vehicle in any public place or without reasonable consideration for other persons using that public place.

#### **41 Constable may take steps to prevent incapable person from driving**

- (1) Any constable who believes that any person while for the time being in charge of any motor vehicle is, by reason of physical or mental condition, however arising, incapable of having proper control of the motor vehicle, may –
- (a) Forbid that person to drive the motor vehicle;
  - (b) Require that person to deliver up forthwith all ignition or other keys of the motor vehicle in his possession;
  - (c) Take such steps as may be necessary to render the motor vehicle immobile or to remove it to a place of safety.

(2) Every person commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding 5 penalty units and further, disqualified from holding or obtaining a driver's licence for up to 3 months who fails to comply with any direction given to him under subsection (1) or does any act that is for the time being forbidden under that subsection.

(3) No person shall be deemed to have committed an offence under this section unless the Court is satisfied that the constable had reasonable grounds for believing that in all the circumstances of the case the direction or prohibition was necessary in the interests of the defendant or of any other person or of the public.

#### **42 Duties of motor drivers in cases of accident**

(1) Where an accident arising directly or indirectly from the use of a motor vehicle occurs to any person or to any animal or vehicle in charge of any person, the driver of the motor vehicle shall stop and ascertain whether he has injured any person and in that event it shall be his duty to render all practicable assistance to the injured person.

(2) (a) In the case of any such accident (whether any person has been injured or not) the driver of the motor vehicle shall, if required, give to any constable or to any person concerned his name and address and also the name and address of the owner of the motor vehicle and, if any, the numbers to be shown on the registration plates and the annual licence of the vehicle.

(b) If the accident involves injury to any person the driver shall report the accident in person at the nearest Police Station or to any constable as soon as reasonably practicable, and in any case not later than 24 hours after the accident unless the driver is incapable of doing so by reason of injuries sustained by him as a result of the accident.

(3) Every driver who fails to comply with any duty imposed on him by subsection (1) in any case where any other person is injured in the accident commits an

offence and shall be liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding 5 penalty units and the Court may order him to be disqualified from holding or obtaining a driver's licence for a period not exceeding 3 months.

(4) Every driver who fails to comply with any duty imposed on him by subsection (1) in any case where no other person is injured in the accident commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding 5 penalty units.

(5) Every person who fails to comply with any duty imposed on him by subsection (2) commits an offence.

(6) In this section "injury" includes death.

#### **43 Arrest without warrant**

(1) Any constable who, on reasonable and probable grounds believes that any person has committed or attempted to commit an offence against section 41 or 42(1) or that any person, while under the influence of drink or a drug to such an extent as to be incapable of having proper control of a motor vehicle, has committed an offence against section 39 or 40(1) or (2) may arrest that person without warrant.

(2) Every driver of a motor vehicle shall stop at the request or signal of any constable in uniform, and on demand shall give him his name and address, and, if he is not the owner of the motor vehicle, also the name and address of the owner.

(3) Any driver who on demand fails to stop, or refuses to give any such name and address, commits an offence and may be arrested by any constable without warrant.

#### **44 Cancellation or suspension of licence or disqualification and endorsement of licence**

(1) The court before which any person is convicted of an offence against Part 4, 5 or 6 or of any offence in connection with the driving of a motor vehicle (other than a first or second offence consisting solely of exceeding any speed limit) may, in addition to or in lieu of any other penalty inflicted –

- (a) If the person convicted holds a motor driver's licence, order that the licence of such person be cancelled or suspended for such time as the court thinks fit and may also declare that a person whose licence is so cancelled shall be disqualified from obtaining a motor driver's licence for such time as the court thinks fit;
- (b) If the person convicted does not hold a motor driver's licence, declare him to be disqualified from obtaining any motor driver's licence or a motor driver's licence for specified classes of motor vehicles for such time as the court thinks fit.

(2) On any conviction involving cancellation or suspension of a motor driver's licence or disqualification of the driver under this section the court shall cause particulars of the conviction and any order of the court made in connection with it to be endorsed on the driver's licence.

#### **45 Penalties for driving while licence cancelled or while disqualified**

Where any person whose motor driver's licence is cancelled under this Act or who is disqualified from obtaining a driver's licence, drives a motor vehicle in any public place while his licence is so cancelled or while he is so disqualified, he commits an offence and shall be liable on conviction to a fine not exceeding 5 penalty units and (without prejudice to the power of the court to order a longer period of disqualification) the court shall order him to be

disqualified from holding or obtaining a driver's licence for a period of one year, unless the court for special reasons relating to the offence thinks fit to order otherwise.

#### **45A Limited licences**

(1) Except as provided in subsection (1A) this section applies in respect of any person who is disqualified by an order made under this Act from holding or obtaining a driver's licence.

(1A) Nothing in this section shall apply to any person who is disqualified from holding or obtaining a driver's licence as a result of a conviction for an offence –

(a) Against section 39; or

(b) Committed while driving a passenger service vehicle or a heavy motor vehicle.

(2) Subject to this section, on the making of the order of disqualification or at any time thereafter, the court, on the application of the person in respect of whom the order was made, may, if it is satisfied that the order of disqualification has resulted or will result in extreme hardship to the applicant (whether in relation to employment or otherwise) or undue hardship to a person other than the applicant (whether in relation to employment or otherwise), make an order under this section authorising him to obtain, immediately or after the expiration of such period as the Court may specify, a driver's licence (in this Part referred to as a limited licence) authorising him to drive to such extent (being the least extent that is necessary to alleviate that hardship) as the court specifies in the order.

(2A) Unless the court decides in any particular case that compliance with this subsection is impracticable, no order may be made under this section until every person who has made an affidavit filed in support of the application for the order has appeared before the court for examination on the contents of this affidavit.

(3) In making an order under this section, the court shall specify in the order the purpose for which the limited licence is issued, the particular vehicle or the type of vehicle which may be driven, the days of the week and times at which that vehicle may be driven, and such other matters as may be necessary to limit the order to alleviating the hardship which was alleged and proved and may specify in the order such other matters as the court thinks fit.

(4) If any application under this section is refused, a further application in respect of the same order shall not be entertained if made within 3 months after the date of that refusal.

(5) If the court makes an order under this section the constable may, notwithstanding anything in this Act to the contrary but otherwise subject to this Act, issue to the person entitled to it a limited licence under the terms of the order.

(6) Where at the time when the Court makes an order under this section the applicant is the holder of a driver's licence which is suspended by virtue of the order of disqualification and the period of disqualification will expire before the expiration of the term of the licence, the constable may, instead of issuing a limited licence, endorse the particulars of the order granting the limited licence on his existing licence, which shall thereafter have effect as a limited licence.

(7) Where the holder of a limited licence or any person who is authorised to obtain a limited licence but has not become the holder of such a licence is convicted of any offence, for which an order of disqualification is imposed, the limited licence shall be deemed to be revoked or shall not be issued, as the case may be, and the original order of disqualification shall revive and have effect for the balance of the term for which it was originally imposed; and, unless the court orders otherwise, the period of disqualification under the revived order of disqualification shall run concurrently with the order of disqualification in respect of the second offence.

(8) The holder of a limited licence that is deemed to be revoked under subsection (7) shall forthwith, and whether demand is made on him or not, surrender his licence to the court by which he is convicted or to a member of the Police.

## PART 5A

### ALCOHOL AND DRUG LEVELS

#### **45AA Driving with excessive breath-alcohol or blood-alcohol**

(1) If a person –

(a) Drives or attempts to drive a motor vehicle on a road or other public place; or

(b) Is in charge of a motor vehicle on a road or other public place,

after consuming so much alcohol that the proportion of it in his breath, or blood exceeds the prescribed limit he shall be guilty of an offence.

(2) It is a defence for a person charged with an offence under subsection (1)(b) to prove that, at the time he is alleged to have committed the offence, the circumstances were such that there was no likelihood of his driving a vehicle whilst the proportion of alcohol in his breath or blood remained likely to exceed the prescribed limit; but in determining whether there was such a likelihood the Court may disregard any injury to him and any damage to the vehicle.

#### **45B Breath tests**

(1) Where a constable has reasonable cause to suspect –

(a) That a person is driving or attempting to drive or is in charge of a motor vehicle on a road or other public place; or

(b) That a person has been driving or attempting to drive or has been in charge of a motor vehicle on a road or other public place,

then that constable may, subject to section 45D, require that person to provide a specimen of breath for a breath test.

(2) A person who, without reasonable excuse, fails to provide a specimen of breath for a breath test when required to do so under this section, shall be guilty of an offence.

(3) A constable may arrest a person without warrant if –

(a) As a result of a breath test he has reasonable cause to suspect that the proportion of alcohol in that person's breath or blood exceeds the prescribed limit; or

(b) That person failed to provide a specimen of breath for a breath test when required to do so under this section;

but a person shall not be arrested by virtue of this subsection when he is at a hospital as a patient.

(4) For the purpose of requiring a person to provide a specimen of breath for a breath test in a case where he has reasonable cause to suspect that the person has been involved in an accident involving injury to another person, or of arresting him in such a case under subsection (3), a constable may enter, if need be by force, any place where that person is or where the constable, with reasonable cause, suspects him to be.

#### **45C Provision of specimens for evidential analysis**

(1) In the course of an investigation whether a person has committed an offence under section 40(2) or 45 AA a constable may, subject to this section and section 45D, require that person:

(a) To provide a specimen of breath for analysis by means of an approved device; or

(b) To provide a specimen of blood for laboratory analysis.

(2) If a specimen of blood is required by a constable the person shall permit a registered medical practitioner to take such a specimen of blood unless the medical practitioner is of the opinion that for medical reasons a specimen of blood cannot or should not be taken.

(3) A person who, without reasonable excuse, fails to provide a specimen when required to do so under this section shall be guilty of an offence.

(4) On requiring any person to provide a specimen under this section, a police officer shall warn him that a failure to provide that specimen may render him liable to prosecution.

#### **45D Protection for hospital patients**

(1) While a person is at a hospital as a patient he shall not be required to provide a specimen of breath for a breath test or to provide a specimen of blood for laboratory analysis unless the medical practitioner in immediate charge of his case has been notified of the proposal to make the requirement, and

- (a) If the requirement is then made, it shall be for the provision of a specimen at the hospital; but
- (b) If the medical practitioner objects on the ground specified in subsection (2) then the requirement shall not be made.

(2) The ground on which the medical practitioner may object is that the requirement of the provision of a specimen would be prejudicial to the proper care and treatment of the patient.

#### **45E Evidence**

(1) The following provisions apply with respect to proceedings for an offence under section 40(2) or 45AA.

(2) Evidence of the proportion of alcohol or any drug in the specimen of breath or blood provided by the accused shall, in all cases, be taken into account and it shall be assumed that the proportion of alcohol or drugs in the accused's breath or blood at the time of the alleged offence was not less than the specimen; but if the proceedings are for an offence under section 40(2), 45AA or 45B in a case where the accused is alleged to have been unfit through drink, the assumption shall not be made if the accused proves –

- (a) That he consumed alcohol after he had ceased to drive, or attempted to drive or to be in charge of a motor vehicle on a road or other public place and before he provided the specimen; and
- (b) That had he not done so the proportion of alcohol in his breath or blood would not have exceeded the prescribed limit, or if the proceedings are for an offence under section 40(2), would not have been such as to impair his ability to drive properly.

(3) It shall be presumed that the result of the analysis of the breath or blood specimen is correct, unless the contrary is proven.

(4) Where the proportion of alcohol in a specimen of breath or blood provided by the accused is found to contain less than the prescribed limit, or to be such as would not render that person unfit to drive, it shall be open to the prosecutor to prove that, when that person was driving or attempting to drive or was in charge of a motor vehicle, the concentration of alcohol in his breath or blood would at that time have been above the prescribed limit, or would at that time have been at such a concentration as to have rendered that person unfit to drive.

(5) Evidence of the proportion of alcohol or a drug in the person's blood may, subject to subsections (7) and (8), be given by whichever of the following is appropriate, that is to say:

- (a) A statement automatically produced by the approved device by which the proportion of alcohol in the person's breath was measured, and a certificate signed by a constable (which may but need not be contained in the same document as the statement) that the statement relates to a specimen of breath provided by the accused at the date and time shown in the statement; or
- (b) Oral evidence from the operator of the approved device by which the proportion of alcohol in that person's breath was measured as to the breath alcohol concentration reading given by the device, together with the evidence that the device was a reliable device for the purposes of this Act; or
- (c) A certificate signed by a suitably qualified analyst as to the proportion of alcohol or any drug found in a specimen of blood provided by the accused and as identified in the certificate.

(6) Where, at the time a specimen of blood was provided by the accused, he asked to be supplied with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf to the prosecution unless –

- (a) The specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused was divided at the time it was provided; and
- (b) The other part was supplied to the accused.

(7) A document purporting to be such a statement or such a certificate, or both such a statement and such a certificate, as is mentioned in subsection (5)(a) is admissible in evidence on behalf of the prosecution in pursuance of this section only if a copy of it has either, been handed to the accused when the document was produced, or has been served on him not later than 14 days before the hearing, and any other document is so admissible only if a copy of it has been served on the accused not later than 7 days before the hearing.

(8) A copy of the document as defined in subsection (5)(a) or subsection (5)(c) must be served personally on the defendant or sent by registered post or recorded delivery service on him.

#### **45F Detention of persons affected by alcohol or a drug**

A person required to provide a specimen of breath or blood may be detained at a police station until it appears to a constable that, were that person then driving or attempting to drive a motor vehicle on a road he would not be committing an offence under section 40(2) or 45AA; but –

- (a) A person shall not be detained under this section if it appears to a constable that there is no likelihood of his driving or attempting to drive a motor vehicle whilst his ability to drive properly is impaired or whilst the proportion of alcohol in his breath or blood exceeds the prescribed limit; and
- (b) A constable shall consult a medical practitioner on any question arising under this section whether a person's ability to drive properly is or might be impaired through drugs and shall act on the medical practitioner's advice.

#### **45G Provision of specimens**

(1) A person does not provide a specimen of breath for a breath test or for analysis to be carried out and provided in such a way as to enable the objective of the test or analysis to be satisfactorily achieved. [sic]

(2) A person provides a specimen of blood if and only if he consents to it being taken by a suitably qualified person and it is so taken in such quantity and of such quality as is capable of being properly analysed for the purposes of this Act.

(3) A “reasonable excuse” for a person's failure to provide a specimen is only one which would make it physically impossible for that person to supply the

required specimen, or where the provision of that specimen would entail an actual and substantial risk to that person's health.

(4) Where the result or results from the approved device, as is used for the purposes of section 45C(1) (a), is or are given in terms of the blood alcohol concentration then it shall be assumed, in all cases, that the concentration of alcohol in a person's breath is a factor of 2300 times less than in his arterial blood.

(5) Cabinet approves the following breath test devices –

- (a) All breath test devices approved for use by law enforcement agencies in New Zealand;
- (b) All breath test devices manufactured by Lion Laboratories in Wales and specifically the Lion alcolmeter SD-400P device.

#### **45H Sentencing of offenders**

(1) Everyone who commits an offence under section 40(2) or this Part is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding 10 penalty units or both, and the Court may in addition order him to be disqualified for holding or obtaining a driver's licence for such period as the Court considers appropriate.

(2) In addition to the penalties specified in subsection (1) the Court may also upon conviction impose the sentence of community work.

### **PART 6 SPEED**

#### **46 Chief of Police may impose speed limits outside villages**

The Chief of Police may by notice published as he thinks fit, declare any area outside the boundaries of any village to be subject to speed limits for the purposes of this Part.

#### **47 Speed limits and penalties for exceeding speed limits**

(1) (a) Every person commits an offence who –

- (i) drives any motor vehicle in any public place within the boundaries of any village or of any other area where speed limits are imposed, at a greater speed than 40 kilometres per hour;
  - (ii) drives a motor vehicle (except a truck) in any public place other than aforesaid at a greater speed than 60 kilometres per hour, and a truck at a greater speed than 50 kilometres per hour;
  - (iii) drives a motor vehicle in any public place at a greater speed than 25 kilometres per hour when within 50 metres of the entrance to any school, church, meeting house or place of entertainment at a time when people are assembling or leaving.
- (b) Nothing in this section shall operate to make lawful in respect of any place for which a lower speed limit than that fixed by this section, is duly fixed by this Act or any other enactment for the time being in force, any speed in excess of that lower limit.

(2) The boundaries of any village shall for the purpose of this section be the boundaries defined by any enactment for the time being in force or, where no such enactment is in force or does not apply, by Cabinet and shall be clearly marked by suitable signs.

(3) Every person who commits an offence against this section shall be liable on conviction to a fine not exceeding 10 penalty units.

(4) It shall be a defence to any person charged with an offence against this section if he was driving a motor vehicle for the purpose of or in connection with –

- (a) The execution of his duties as a constable; or

- (b) The necessary attendance at fires; or
- (c) First aid or other urgent services rendered on behalf of a sick or injured person.

**48** [Repealed]

PART 7  
EQUIPMENT

**49 Light for vehicles and motor vehicles**

No person shall operate any vehicle during the hours of darkness without carrying a conspicuous light on the vehicle in such a manner that the light shall be distinctly visible to persons meeting or following the vehicle.

**50 Headlamps for motor vehicles**

No person shall operate a motor vehicle (other than a motor cycle, power cycle, or trailer) unless it is equipped with two headlamps attached to it, which shall –

- (a) Be of approximately equal candle power; and
- (b) Display beams of light of sufficient power to enable substantial objects and the nature of the road surface to be clearly visible during the hours of darkness under normal driving and atmospheric conditions to a driver of normal vision at a distance of at least 150 feet directly in front of the vehicle.

**51 Headlamps for motor cycles and power cycles**

(1) (a) No person shall operate any motor cycle or power cycle unless it is equipped with one headlamp attached to it which shall conform to the requirements of section 50 (b).

(b) The minimum distance specified in section 50(b) shall be only 100 feet for power cycles.

(2) No person shall operate any motor cycle having a sidecar attached unless the sidecar is also equipped with a lamp directing a beam of light forward and being attached to the front of the sidecar on the side of it farther from the motor cycle.

**52 Dipping of lights**

While meeting and passing another vehicle the driver of any motor vehicle shall dip his headlights.

**53 Rear lights and rear reflectors**

(1) No person shall operate a motor vehicle unless it is equipped with at least one rear lamp attached to the rear of the motor vehicle and showing a red light visible not less than 300 feet to the rearward.

(2) (a) No person shall operate a motor vehicle (other than a motor cycle or a power cycle) unless it is equipped with 2 red rear reflectors placed at the back of the motor vehicle so as to reflect directly to the rear any light shining towards it from rearward of the vehicle.

(b) Such reflectors shall consist of an approved material and shall be fitted so that they are displayed in a position within 6 inches of the rear extremity at each side of the motor vehicle.

(3) No person shall operate a motor cycle or power cycle unless it is equipped with one red rear reflector conforming to subsection (2).

**54 Registration plate to be lit up**

The registration plate affixed to the rear of every motor vehicle shall be illuminated by a beam of white light either from the rear light or, where there are 2 rear lights fitted at each side of the motor vehicle from a separate light, and in every case so arranged that every letter and numeral on the registration plate is plainly distinguishable under normal atmospheric conditions from a distance of at least 60 feet.

**55 Two independent brakes**

No person shall operate a motor vehicle (other than a motor cycle, power cycle, or a trailer) unless it is equipped with 2 independent brakes, namely –

- (a) A footbrake which is capable of bringing to a standstill the motor vehicle, without assistance from the compression of the engine, within a distance of 35 feet from a speed of 20 miles per hour upon a hard, dry, level roadway free of loose material; and
- (b) A handbrake which is capable of bringing the vehicle to a standstill within a distance of 70 feet from a speed of 20 miles per hour upon a hard, dry, level roadway free of loose material and is also capable of holding the vehicle at rest on a grade of one in 5.

**56 Brakes for heavy trailers**

No person shall operate a motor vehicle towing a trailer the weight of which with its load exceeds 2 tons, unless the trailer is equipped with a brake readily applicable by the driver from his normal driving position and complying with the requirements for a footbrake under section 55(a).

**57 Brakes for motor cycles**

No person shall operate a motor cycle, unless it is equipped with a brake acting on the rear which is capable of bringing to a standstill the motor cycle without assistance from the compression of the engine, within a distance of 35 feet from a speed of 20 miles an hour upon a hard, dry, level roadway free of loose material, and which is capable of easy adjustment.

**58 Brakes for power cycles**

- (1) No person shall operate a power cycle unless it is equipped with a reliable brake on each road wheel.
- (2) If the brake on the rear wheel is hand operated, it shall be readily operable with the left hand.

**59 All brakes to be properly maintained**

All brakes shall be maintained so that at all times they are efficient and in good working order.

**60 Sounding devices**

No person shall operate a motor vehicle (other than a trailer) unless it is equipped with an adequately audible warning device, and a trailer unless it is attached to a motor vehicle so equipped.

**61 Bells and sirens prohibited**

- (1) (a) No person shall operate a motor vehicle equipped with a bell as a warning device.
- (b) A power cycle may be fitted with a bell of an approved type as its sole warning device.

(2) Except with the written permission of the Cabinet, no person shall operate a motor vehicle equipped with a siren as a sole or additional warning device.

**62 Rear vision mirror**

No person shall operate any motor vehicle (other than a trailer) unless it is equipped with a mirror fitted in an approved position so as to reflect to the driver a view of the roadway to the rear sufficient for driving requirements.

**63 Steering**

No person shall operate a motor vehicle unless the steering gear and associated mechanism is in a safe and efficient working condition.

**64 Silencer**

No person shall operate any motor vehicle (other than trailer) unless it is equipped with an approved silencer or silencing device through which the exhaust is projected.

**65 Windscreen protection**

(1) No person shall operate any motor vehicle (other than a motor cycle, power cycle, or a trailer) fitted with a windscreen unless it is equipped with an efficient mechanically or electrically operated windscreen wiper to prevent interference with the driver's vision by weather conditions.

(2) No person shall drive any motor vehicle fitted with a windscreen forward of the driver unless such windscreen is at all times kept clean and clear so that the driver's view forward will not be impeded or obstructed.

**66 Dangerous fittings**

No person shall operate a motor vehicle having affixed to it any ornament, decoration, or fitting of such a nature and in such a position that it is likely to cause injury to any person with whom the motor vehicle may collide.

**67 Speedometer**

No person shall operate a motor vehicle (other than a trailer or a power cycle) unless it is equipped with an efficient speedometer in good working order.

**68 Footrests for motor cycles**

No person shall operate a motor cycle unless it is equipped with adequate footrests for the use of every person carried otherwise than in a sidecar.

**PART 8**  
**MOTOR VEHICLE INSPECTION**

**69 Testing authority**

There shall be for the purposes of this Part a testing authority which shall be the Chief of Police or any Government Department or person authorised in that behalf by Cabinet.

**70 Warrant of fitness on half-yearly inspection**

(1) No person shall operate a motor vehicle (other than power cycle) unless there is carried in or on that motor vehicle a warrant of fitness issued in respect of that motor vehicle and disclosing thereon a date of examination not earlier than 6 months before such operation.

(2) The warrant of fitness shall be in 2 portions as described in the form numbered 7 in the Schedule and shall be issued by the testing authority.

(3) The manner in which the portion of the warrant of fitness issued to the owner shall be affixed to the motor vehicle may be prescribed by the Chief of Police for specified classes of motor vehicles by notice published as the Chief of Police thinks fit.

(4) The owner of any motor vehicle who fails to affix any warrant of fitness issued to him in the manner prescribed or removes any warrant that should be affixed, commits an offence.

(5) The driver or the person in charge of the motor vehicle shall produce any warrant of fitness not affixed to the motor vehicle, for inspection whenever required to do so by any constable.

**71** [Repealed]

**72 Warrant of fitness for duly equipped motor vehicles**

No warrant of fitness shall be issued under this Part unless the motor vehicle for which the warrant is to be issued is equipped as required by this Act.

**73 Offence against Part 8**

(1) No person shall knowingly operate a motor vehicle in or on which a warrant of fitness is required to be carried, if the motor vehicle is no longer so equipped as to justify the issue of a warrant of fitness in terms of the warrant so required to be carried.

(2) It shall be a defence in any proceedings for an offence against this section or section 70(1) if the accused proves that the motor vehicle was being operated solely for the purpose of obtaining a warrant of fitness.

**74 Fees for warrants of fitness**

There shall be payable to the testing authority for the issue of every warrant of fitness such fees as Cabinet may prescribe by regulation.

**75 Warrant of fitness to be delivered on sale of motor vehicle**

Any person who sells a motor vehicle shall deliver to the purchaser at the time of delivery of the motor vehicle any current warrant of fitness which is not affixed to the motor vehicle.

**76 Inspection of motor vehicles after accidents**

The Chief of Police, if in his opinion any motor vehicle which has been damaged in an accident, has thereby been rendered unsafe for use, may by notice in writing given to the owner of the motor vehicle direct that the motor vehicle be not operated until such repairs have been carried out as may be necessary for a fresh warrant to be issued under this Part.

**PART 9**  
**TRAFFIC SIGNS**

**77 Traffic signs to be erected**

The Chief of Police shall cause traffic signs to be erected in any public place where necessary for the operation of this Act.

**78 Kind of traffic signs to be determined by Chief of Police**

The Chief of Police may determine –

- (a) The classes of traffic signs;
- (b) The language of traffic signs;
- (c) The description of any class of traffic sign;
- (d) The material including reflecting material of traffic signs.

**79 Maintenance of traffic signs**

The Chief of Police shall be responsible for the proper maintenance of every sign.

**80 Offences against Part 9**

Every person who wilfully or negligently removes, defaces or damages any traffic sign erected under this Part commits an offence.

**PART 10**

**PUBLIC PLACES TO BE KEPT FREE FROM OBSTRUCTIONS**

**81 Trimming of hedges and trees on adjacent land**

The Chief of Police may request any occupier of land adjacent to any public place to cut or trim hedges, trees or other herbage on such land that he considers dangerous to public safety or which obstructs a clear view of the public place.

**82 Weeding on roads**

- (1) Every owner or occupier of land adjacent to any public road shall keep the part of such road from the boundary of the land to the centre of the road at all times reasonably clean and free from rubbish, weeds, fungoid growths and long grass.
- (2) Every such owner or occupier shall during the first week of the months of March, June, September and December in each and every year, execute such work as aforesaid.

**83 Keeping public places tidy and safe**

- (1) No person shall deposit or throw on any public place –
  - (a) Rubbish of any kind;
  - (b) Glass or any other substance or matter likely to damage the tyres of any vehicle.
- (2) If any slippery substance or any piercing substance or glass falls from any vehicle upon any public place, it shall be the duty of the driver of any vehicle involved to remove or cause to be removed immediately that substance from the public place.

**PART 11**

**BICYCLES**

**84 Bicycles to comply with special requirements**

Without limiting in any way the provisions of this Act relating to vehicles, sections 85-94 shall apply with respect to bicycles.

**85 Headlamps**

No person shall ride a bicycle in any public place during the hours of darkness unless it has attached at the front a lamp displaying a light substantially white in colour of sufficient brilliance to be visible under normal atmospheric conditions for at least 300 feet in a forward direction.

**86 Rear reflectors**

No person shall ride a bicycle in any public place –

- (a) Unless it is fitted with an approved red reflector in a clean and efficient condition or approved reflecting red tape not less than 8 square inches in area placed at the back of the bicycle so as to reflect directly to the rear light shining towards it from the rearward of the bicycle; or
- (b) Unless it displays at the rear a white surface of at least 12 square inches (inclusive of the area taken up by an approved reflector) or approved reflecting red tape not less than 8 square inches in area maintained in a clean condition at a place where the surface or tape is not likely to be obscured by the rider or his clothes.

**87 Prohibited lights**

No person shall ride a bicycle in any public place if it is equipped with a lamp that displays towards the rear any light other than a red light or with a lamp or reflecting surface that displays towards the front any red or reddish light.

**88 Brakes**

No person shall ride a bicycle in any public place unless it is fitted with at least one efficient brake which operates on the rear wheel.

**89 Special equipment if infants are taken for a ride**

No person shall ride a bicycle in any public place –

- (a) Fitted with a pillion seat, unless adequate foot rests are fitted for any infant carried on the pillion seat; or
- (b) Fitted with any other seat or a container for the carriage of an infant, unless the legs of the infant are adequately protected by guards from coming into contact with the wheels of the bicycle.

**90 Riding prohibited on footpaths and over cultivated land**

No person shall ride a bicycle on any footpath or footway or on any lawn, garden, or other cultivation forming part of a public place.

**91 Towing prohibited**

No person riding a bicycle in any public place shall permit the bicycle to be towed by any other vehicle.

**92 Warning signal before right-hand turn**

Every person riding a bicycle when about to turn to his right in view of other traffic shall before doing so give reasonable notice of his intention by extending his full arm horizontally to the right.

**93 Riding in batches restricted**

Except when heavy traffic conditions make it unreasonable to do otherwise, no person shall ride a bicycle so that –

- (a) More than 2 bicycles remain abreast; or
- (b) Two bicycles remain abreast while overtaking and passing any other vehicle.

**94 Dangerous riding**

Every person commits an offence who rides a bicycle in any public place recklessly or negligently or at a speed or in a manner which is dangerous to any other person, having regard to the nature, condition, and use of the public place and all other circumstances of the case.

**PART 12**  
**PASSENGER SERVICES**

**95 No liquor on public transport**

(1) No person shall consume or attempt to consume or cause any other person to consume intoxicating liquor in or on any omnibus or vehicle serving for the time being as an omnibus, taxicab or any other vehicles for the time being designed, used, kept, or being available for the carriage for hire or reward of members of the public.

(2) In this section “intoxicating liquor” has the same meaning as in the Liquor Act 1975.

**96 Speed limit for trucks carrying passengers**

Notwithstanding anything in this Act no person shall drive a truck carrying passengers, whether for hire or reward or otherwise, under any circumstances (be it within the boundaries of any village or any area declared to be subject to speed limits or outside such boundaries or areas) at a greater speed than 25 miles per hour.

**PART 13**  
**MISCELLANEOUS PROVISIONS**

**98 Approval of equipment for a transition period and exemptions from equipment requirements**

(1) Cabinet may, by notice published as it directs and for any period of time as it thinks fit –

- (a) Approve of any equipment or type of equipment for use under this Act and the use of any equipment so approved or of a type so approved shall, while it is maintained in good working order and any conditions of the approval are complied with, be deemed to be a sufficient compliance with this Act;
- (b) Grant exemption in respect of any specified class of vehicle from any of the requirements relating to equipment prescribed by this Act, subject to such conditions as it thinks fit to impose.

(2) Any approval so given and any exemption so granted may be at any time withdrawn by Cabinet by notice as aforesaid.

**99 Compensation for conversion**

(1) (a) If any person is convicted of the offence of converting any vehicle or part of it under section 74 of the Criminal Law Code, the court may order the person so convicted to pay to the owner of the vehicle destroyed or damaged, by way of compensation for the destruction or damage, a sum not exceeding the amount of loss suffered by him.

- (b) The making or enforcement of an order as aforesaid shall not affect the right of the owner or any other person to recover by civil proceedings any damages in excess of the sum recovered under the order.

(2) Any order for payment under this section may be enforced in the same manner as a fine.

**100 Unlawful interference with vehicle**

Every person commits an offence and shall be liable to imprisonment for a term not exceeding 3 months or a fine not exceeding 5 penalty units who unlawfully and without colour of right interferes with or gets into or upon or attempts to get into or upon any vehicle.

**101 Power of Police**

Every constable in uniform may –

- (a) Direct the driver of any vehicle to stop his vehicle;
- (b) Inspect, test and examine the brakes or any other part of any vehicle or equipment of it;
- (c) Move or cause to be moved to any place of safety at the expense of the owner any vehicle if in the opinion of the constable it causes an obstruction in any public place or has some mechanical defect likely to impair its safe use in a public place or its removal is necessary for any other reason;
- (d) Generally take all steps necessary for the control of traffic in any public place under this Act.

**102 Offences**

Every person commits an offence who –

- (a) Fails to comply with a direction given under this Act by a constable, the Registrar, the Testing Authority, or any other person authorised to give directions under this Act;
- (b) Wilfully obstructs any person in the execution of any duty imposed on that person by this Act;
- (c) Fails to comply with any condition, duty, or obligation imposed on him by this Act;
- (d) Does or omits, or causes or knowingly permits or suffers to be done or omitted, any act, matter, or thing contrary to this Act;
- (e) Offends against or fails to comply with this Act;
- (f) Knowingly makes a substantially false statement in any application or notice under this Act or in connection with any information which he is required to furnish under this Act.

**102A Infringement offences**

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

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

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

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

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

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

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

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

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

(6) A person requests a hearing by providing to the Police, within the period specified in the infringement notice or reminder notice, as the case may be, a notice, signed by the person, requesting a hearing and accepting or rejecting liability and, if accepting liability, the reasons, if any, as to why the Court should impose a lesser fine than the infringement fee for the offence.

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

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

### **103 General penalties**

Every person who commits an offence against this Act for which no penalty is provided in this Act elsewhere than in this section or in the Criminal Law Code is liable to a fine not exceeding 1 penalty unit.

### **104 Act to bind the Crown**

Except as provided in this Act, this Act shall bind the Crown.

### **105 [Spent]**

### **106 Application of fees and fines**

All fees, fines and other moneys received under this Act shall form part of the public revenues of Niue and shall be paid into the appropriate account.

### **107 Regulations**

Cabinet may make regulations –

- (a) prescribing fines, not exceeding 10 penalty units, for the breach of any regulations made under this Act;
- (b) declaring the offences against this Act that constitute infringement offences;

- (c) prescribing infringement fees not exceeding 10 penalty units for infringement offences (which may be different fees for different offences, including different fees for a first, second, or subsequent offence);
  - (d) prescribing forms to be used for the purposes of this Act;
  - (e) providing for any other matters contemplated by this Act that are necessary for its full administration or necessary for giving it full effect.
- 

SCHEDULE

Form No. 1

Section 7

Transport Act 1965

FORM OF APPLICATION FOR REGISTRATION OF MOTOR VEHICLE

To the Registrar of Motor Vehicles:

I apply for registration of the motor vehicle particulars of which are given below:

Name of Owner:

Address:

Class of motor vehicle:

Make of motor vehicle:

Engine No.:

Chassis No.:

Seating Accommodation: \* persons

Intended for – Private use; or

Conveyance of passengers for hire; or

Conveyance of goods; or

Conveyance of passengers for hire and goods

Gross weight of motor vehicle unladen: \*\* lbs

Manufacturer's rating of weight carrying capacity: lbs

Dated this day of 20 .

..... (Signature of owner)

\*Not required for motor or power cycles

\*\*Not required for motor cycle, power cycle or private motor cars

Transport Act

Form No 2

Section 9

Transport Act 1965

CERTIFICATE OF REGISTRATION OF MOTOR VEHICLE

This is to certify that the motor vehicle, particulars of which are given below, has been registered under the above Act.

Description of Motor Vehicle:

Name of Owner:

Address:

Class of motor vehicle:

Make of motor vehicle:

Engine No.:

Chassis No.:

Seating Accommodation: \* persons

Intended for – Private use; or

Conveyance of passengers for hire; or

Conveyance of goods; or

Conveyance of passengers for hire and goods

Gross weight of motor vehicle unladen: lbs

Manufacturer's rating of weight carrying capacity: lbs

Registration No:

- (a) Number of persons, excluding the driver, which the vehicle may lawfully carry at any one time;
- (b) Maximum weight of goods, or passengers, or both, which the vehicle may lawfully carry.

Dated this this day of 20 .

.....Registrar of Motor Vehicles

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Form No 3

Section 14

Transport Act 1965

FORM OF APPLICATION FOR ANNUAL LICENCE TO USE MOTOR VEHICLE

To the Registrar of Motor Vehicles:

I apply for a licence to use the motor vehicle particulars of which are given below:

Name of Owner:

Address:

Class of motor vehicle:

Make of motor vehicle:

Engine No:

Chassis No:

Seating Accommodation: \* persons

Intended for – Private use; or

Conveyance of passengers for hire; or

Conveyance of goods; or

Conveyance of passengers for hire and goods

Gross weight of motor vehicle unladen: \*\* lbs

Manufacturer's rating of weight carrying capacity: lbs Registration No.

Dated at this day of 20 .

..... (Signature of owner)

\*Not required for motor or power cycles

\*\*Not required for motor cycles, power cycles or private motor cars

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Form No 4  
Transport Act 1965  
ANNUAL LICENCE TO USE MOTOR VEHICLE

Section 16

The motor vehicle, particulars of which are set out hereunder, may, in accordance with the above Act, be used on any road on Niue while this licence continues in force.

Description of Motor Vehicle:

Name of Owner:

Address:

Class of motor vehicle:

Make of motor vehicle:

Engine No:

Chassis No:

Seating Accommodation persons

Intended for – Private use; or

Conveyance of passengers for hire; or

Conveyance of goods; or

Conveyance of passengers for hire and goods

Gross weight of motor vehicle unladen: lbs

Manufacturer's rating of weight carrying capacity: lbs Registration No:

If trade motor –

- (a) Number of persons, excluding the driver, which the vehicle may lawfully carry at any one time;
- (b) Maximum weight of goods, or passengers, or both, which the vehicle may lawfully carry.

## Transport Act

Subject to the provisions of the Transport Act, this licence shall continue in force until 31 March 20

..... Registrar of Motor Vehicles

Form No. 5  
Transport Act

To the Registrar of Motor Vehicles:

I apply for the issue to me of a motor driver's licence under the Transport Act in respect of a motor vehicle of the following class (classes):

And I declare that to the best of my knowledge and belief the particulars here set forth are true and correct.

Full name of applicant:

### Place of residence:

**Occupation:**

Class or classes of motor vehicles in respect of which a driver's licence is applied for:

Is applicant above the age of 16 years?

If applicant has been the holder of any licence to drive a motor vehicle give particulars as to –

Name of authority by whom licence issued:

Date of issue:

Remarks:

Has applicant ever been refused a motor driver's licence?

If so, give particulars:

Has applicant ever been convicted of any offence arising out of the driving of any motor vehicle?

What is applicant's experience of motor driving?

.....Signature of Applicant

Niue Legislation 2019

Section 22

Form No. 6  
Transport Act  
MOTOR DRIVER'S LICENCE  
No  
To be produced on demand

Name of Licensee: \_\_\_\_\_ m/f \_\_\_\_\_ Date of birth: \_\_\_\_\_

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

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

This licence applies only to (insert class or classes of motor vehicle) This licence  
expires on the \_\_\_\_\_ day of \_\_\_\_\_ 20.

Date of issue: \_\_\_\_\_

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

Signature of Licensee: \_\_\_\_\_

Section 70

Form No. 7  
Transport Act 1965  
WARRANT OF FITNESS

To be retained by Testing Authority

No. \_\_\_\_\_ Make: \_\_\_\_\_

Regd No.: \_\_\_\_\_

Speedometer Reading: \_\_\_\_\_

Name of Owner: \_\_\_\_\_

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

Date of examination: / / \_\_\_\_\_

..... Signature of Testing Authority

To be issued to Owner  
(Front)

Warrant of Fitness No. \_\_\_\_\_

(Month of issue in letters)

(Month of expiry in figures)

(Back)

No.: \_\_\_\_\_

Issued by: \_\_\_\_\_

Regd No. and Make: \_\_\_\_\_

..... Expiry date: ..... / ..... / .....

# TRUSTEE ACT 1956

1956/61 (NZ) – 1 January 1957

1 Short title

## PART 1

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## To consolidate and amend the law relating to trusts and trustees

### 1 Short title

This is the Trustee Act 1956.

### PART 1 PRELIMINARY

### 2 Interpretation and application

(1) In this Act –

“authorised investments” means investments authorised for the investment of money subject to the trust by the instrument, if any, creating the trust or by this Act or any other Act;

“Bank” means a bank registered under the Niue Bank Act 1994;

“benefit”, in relation to any person, includes insurance on the life of that person;

“contingent right” as applied to land includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitations of the interest or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent;

“conveyance”, as applied to any person, includes the execution by that person of every necessary or suitable assurance for conveying, transferring, assigning, appointment, surrendering, or otherwise disposing of land whereof he is seized or possessed, or wherein he is entitled to a contingent right, either for his whole estate, or for any less estate, together with the performance of all formalities required by law for the validity of the conveyance;

“income” includes rents and profits other than profits which under any rule of law are in the nature of capital;

“instrument” includes an Act;

“land” includes land of any tenure, and mines and minerals, whether or not severed from the surface, buildings or parts of buildings, whether the division is horizontal, vertical, or made in any other way, and any other corporeal hereditament; and also includes a rent and other incorporeal hereditaments, and an easement, right, privilege, share, interest, or benefit in, over, or derived from land; and in this definition “mines and minerals” includes any strata or seams of minerals or substances in or under any land, and powers of working and getting the same; and in this definition “hereditaments” means real property which under an intestacy might at common law have devolved on an heir;

“lease” includes a bailment;

“mortgagee” includes every person having an estate or interest regarded at law or in equity as merely a security for money; and also includes every person deriving title to the mortgage under the original mortgagee;

“payment”, in relation to stocks and securities, includes the deposit or transfer of the same;

“personal representative” means the executor, original or by representation, or an administrator for the time being of a deceased person;

“possession” includes receipt of income or the right to receive the same, if any; and “possessed” applies to receipt of income of and to any vested estate less than a life interest, at law or in equity, in possession or in expectancy in any land;

“property” includes real and personal property, and any estate, share, and interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest, whether in possession or not;

“Registrar” means the Registrar of the Court, and includes a Deputy Registrar where there is no Registrar, or in any case where the Deputy may lawfully act for and on behalf of the Registrar;

“rent” includes a rent service or a rentcharge, or other rent, toll, duty, royalty, or annual or periodical payment in money or money’s worth reserved or issuing out of or charged upon land, but does not include mortgage interest;

“right” includes an estate or interest;

“sale” includes an exchange;

“securities” includes stock, funds, and shares;

“securities payable to bearer” includes securities transferable by delivery or by delivery and endorsement;

“stock” includes Government securities, and shares; and, so far as relates to vesting orders made by the Court under this Act, includes any fund, money, annuity, or security transferable in books kept by any corporation or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest in it;

“transfer”, in relation to stock or securities, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee;

“trust” does not include the duties incidental to an estate conveyed by way of mortgage, but with this exception it extends to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incidental to the office of an administrator within the meaning of the Family Law Code;

“trust for sale”, in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale;

“trustee for sale” means the person (including a personal representative) holding land on trust for sale.

(2) For the purposes of this Act a person shall be deemed to be under a disability while he is not of full age or full mental capacity.

(3) This Act, except where otherwise expressly provided, applies to trusts constituted or created either before or after the commencement of this Act.

(4) The powers conferred by or under this Act on a trustee who is not a corporation are in addition to the powers given by any other Act and by the instrument, if any, creating the trust; but the powers conferred on the trustee by this Act, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

(5) The powers conferred by or under this Act on a trustee that is a corporation are in addition to the powers given by the instrument, if any, creating the trust and to the powers given by or under the Act or any instrument by or under which the corporation is constituted and any other Act; but the powers conferred on the trustee by this Act, unless otherwise stated –

(a) Apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument;

(b) (i) Apply if and so far only as a contrary intention is not expressed in the Act or any instrument by or under which the corporation is constituted and any other Act and have effect subject to the terms of every such Act and instrument;

(ii) Nothing in this paragraph shall affect any Act which applies to all trustees, whether corporations or not.

### **3      Act to bind Crown**

This Act shall bind the Crown.

## PART 2 INVESTMENTS

### **4      Power to invest**

(1) A trustee may invest any trust funds, whether at the time in a state of investment or not, in any property.

(2) Subject to subsections (3) and (4), a trustee exercising any power of investment shall exercise the care, diligence, and skill that a prudent person of business would exercise in managing the affairs of others.

(3) Subject to subsection (4), where a trustee’s profession, employment, or business is or includes acting as a trustee or investing money on behalf of others, the trustee, in exercising any power of investment, shall exercise the care, diligence, and skill that a prudent person engaged in that profession, employment, or business would exercise in managing the affairs of others.

(4) The duty imposed on a trustee by subsection (2) or (3) shall apply to a trustee if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust or any Act, and shall have effect subject to the terms of that instrument or Act.

### **5-13 [Repealed]**

PART 3

GENERAL POWERS AND INDEMNITIES OF TRUSTEES

*General Powers*

**14 Powers to sell, exchange, partition, postpone, lease, purchase**

(1) Subject to this section, every trustee may exercise the following powers in respect of any property for the time being vested in him –

- (a) Sell the property;
- (b) Dispose of the property by way of exchange for other property in Niue of a like nature and a like or better tenure, or, where the property vested in him consists of an undivided share, concur in the partition of the property in which the share is held, and give or take any property by way of equality of exchange or partition;
- (c) Postpone the sale, calling in, and conversion of the property, whether or not it is of a wasting, speculative or reversionary nature:  
Provided that nothing in this paragraph shall permit a trustee to postpone the sale, calling in, or conversion of any property of a wasting or speculative nature for longer than is reasonably necessary to permit its prudent realisation;
- (d) Let or sublet the property at a reasonable rent for any term not exceeding one year, or from year to year, or for a weekly, monthly, or other like tenancy, or at will;
- (e) Grant a lease or sublease of the property for any term not exceeding 21 years to take effect in possession within one year next after the date of the grant of the lease or sublease at a reasonable rent, with or without a fine, premium or foregift:  
Provided that where a fine, premium or foregift is taken, the amount of it shall be deemed to be part of and an accretion to the rental, and shall, as between the persons beneficially entitled to the rental, be considered as accruing from day to day and be apportioned over the term of the lease or sublease;
- (f) At any time during the currency of a lease of the property, reduce the rent or otherwise vary or modify the terms of it;
- (g) In the case of property subject to a lease, grant to a sublessee (with the consent of the lessee) a lease direct from the trustee of the whole or any part of the land comprised in the original lease for the residue of the original term.

(2) Any trustee may purchase land in Niue in any of the following cases –

- (a) If the land being purchased adjoins other land which the trustee has power to retain and which is held by the trustee on the same trusts as the money expended in respect of the purchase of the land, and the amount so expended does not exceed \$2000;
- (b) If the land being purchased has a dwelling house on it and is required exclusively or principally as a home for the person entitled to the income of the money being expended in respect of the purchase.

(2A) Any trustee may erect a dwelling house on land that is subject to the same trusts as the money being expended in respect of the erection, or may purchase land in Niue and erect a dwelling house on it, if the dwelling house and land are required exclusively or principally as a home for the person entitled to the income of the money being expended in respect of the erection or the purchase and erection, as the case may be.

(2B) In any case where a trustee is authorised by or under this Act or any other enactment, or by the instrument creating the trust, to provide or acquire a home for any person, he shall have power, in addition to any authority so conferred –

- (a) To acquire a flat or apartment or the right to occupy a flat or apartment by any means which he may consider appropriate (whether by acquiring shares in a limited liability company or an undivided share or interest in the land on which the premises are erected or in any other way); and
- (b) To enter into any lease, licence, agreement, or other arrangement under which he or his nominee or the beneficiary who is to occupy the flat or apartment has the right to occupy it (including an arrangement whereby any shares in a limited liability company and the benefit of any such lease, licence, or agreement may be held by that beneficiary or by some other nominee or the trustee upon trust for him).

(3) Any trustee may accept or concur or join with any other person in accepting a lease or sublease of any property on such terms and subject to such covenants and conditions as he thinks fit; and may surrender or concur or join with any other person in surrendering any lease or sublease; and, if lessor or sublessor, may accept or concur or join in with any other person in the acceptance of the surrender of any lease or sublease.

(4) Any trustee may, on such conditions as he thinks proper, rescind or cancel or modify or vary any contract or agreement for the sale and purchase of any land, or agree to do so, or compromise with or make allowances to any person with whom such contract or agreement has been made, or who is the assignee of it in respect of any unpaid purchase money secured on mortgage or otherwise.

(5) In exercising any power of leasing or subleasing conferred by this section or by the instrument (if any) creating the trust, a trustee may –

- (a) Grant to the lessee or sublessee a right of renewal for one or more terms at a rent to be fixed or made ascertainable in a manner specified in the original lease or the original sublease, but so that the aggregate duration of the original and of the renewed terms shall not exceed the maximum single term that could be granted in exercise of the power;
- (b) Subject to this section, grant a lease with an optional or compulsory purchasing clause:  
Provided that this power shall not apply to the exercise of any power of sale conferred by any mortgage unless the mortgage confers authority to do so;
- (c) Grant to the lessee or sublessee a right to claim compensation for improvements made or to be made by him in, upon, or about the property which is leased or subleased.

(6) (a) No trustee shall, without the consent of the Court, exercise any power conferred on him by this section of granting a lease with an optional or compulsory purchasing clause, or of selling or exchanging any freehold and, in any case where the value of land (as determined under section 28) exceeds \$15,000.

- (b) A trustee may, without the consent of the Court, sell any such land for more than \$15,000 in exercise of the powers conferred on him by this section, if (under section 28) he has in good faith fixed the value of the land immediately before the sale at \$15,000 or less.

(6A) Where a person dies intestate as to any personal chattels within the meaning of the Family Law Code and leaves a husband or wife, the trustee of his estate shall not, without the consent of the Court or of the husband or wife, sell those chattels, unless a sale is required for purposes of administration owing to want of other assets.

(6B) Where upon inquiry the Court is satisfied that a partition of the real estate of a deceased person would be advantageous to the parties interested in it, the Court may order a partition or may appoint one or more arbitrators to effect a partition, and to exercise in regard to it, under its directions and control, such powers as it thinks

fit; and if the report and final award of the arbitrator are approved by the Court, the trustee shall, by conveyance or transfer, give effect to the same accordingly.

(7) (a) Where there is a power (statutory or otherwise) to postpone the sale of any land or authorised investment that a trustee has a duty to sell by reason only of a trust or direction for sale, then (subject to any express direction to the contrary in the instrument, if any, creating the trust), the trustee shall not be liable in any way merely for postponing the sale, in the exercise of his discretion, for an indefinite and unlimited period, whether or not that period exceeds the period during which the trust or direction for sale remains valid; nor shall a purchaser of the land or authorised investment be concerned in any case with any directions respecting the postponement of a sale;

(b) This subsection shall not apply to any property of a wasting or speculative nature.

## 15 Miscellaneous powers

(1) Every trustee may exercise the following powers in respect of any property for the time being vested in him –

- (a) Expend money subject to the same trusts for the repair, maintenance, upkeep, or renovation of the property, whether or not the work is necessary for the purpose of the salvage of the property; and (subject to the rules of law applicable in such cases and to any direction of the court to the contrary) apportion the cost of the work between capital and income or otherwise among the persons entitled thereto in such manner as he considers equitable, with power, in any case where the whole or part of the cost of the work is charged to capital, to recoup capital from subsequent income if such a course would be equitable having regard to all the circumstances of the case;
- (b) Expend money subject to the same trusts in the improvement or development of the property or in improving his title to the property or his tenure thereof, whether by the acquisition of an interest in reversion or otherwise:  
Provided that, in exercise of the power conferred by this paragraph, not more than \$10,000 may be so expended by a trustee without the consent of the Court for any one purpose.
- (c) Where the property is land and the land may be sold or let or leased or otherwise disposed of under any power or trust vested in the trustee, subdivide the land into sections and for that purpose construct and dedicate all such roads, streets, access ways, service lanes, and footpaths and make all such reserves, and do all such other things, and pay all such money, as he thinks necessary or as are required by any law or bylaw relating to subdivisions;
- (d) Contribute out of money subject to the same trusts such sum as he thinks reasonable towards the construction and maintenance of such roads, streets, access ways, service lanes, and footpaths, and such sewerage, water, electricity, drainage and other works as are in the opinion of the trustee likely to be beneficial to the property, notwithstanding that they are intended to be constructed wholly or in part on land not subject to the same trusts;
- (e) Grant easements and *profits à prendre* and enter into party wall agreements and agreements which relate to fencing and execute all necessary documents to give effect to it;
- (f) Pay rates, taxes, assessments, insurance premiums, and other outgoings in respect of the property out of money subject to the same trusts;
- (g) As mortgage or mortgagee, agree to the renewal, extension, or variation of the mortgage for such period and on such terms and conditions as he thinks fit:

Provided that the powers conferred by this paragraph may be exercised by a trustee as mortgagor for the purpose of raising additional money on the security of a mortgage of any property in any case where the trustee would have power under section 21 to raise money by a mortgage of the property, but not otherwise:

Provided also that nothing in this paragraph shall authorise any trustee to advance any money on the security of any mortgage that would not be an authorised investment in respect of the amount advanced;

- (h) Make such inquiries, by way of advertisement or otherwise, as he deems necessary for the purposes of ascertaining the next-of-kin or beneficiaries entitled to the property, and charge the cost of the inquiries and advertisements against the property;
- (i) Where the property includes a life policy and there is no money or insufficient money available for the payment of premiums on the policy, surrender the policy for money, or accept instead of the policy a fully paid up policy, or vary the terms of the policy in such manner as the trustee thinks fit;
- (j) Appropriate any part of the property in or towards satisfaction of any legacy payable or any share (whether settled, contingent or absolute) to which any person is entitled, and for that purpose value the whole or any part of the property under section 28 of this Act:  
Provided that before any such appropriation is effectual notice thereof shall be given to all persons of full age and full mental capacity who are interested in the appropriation, and any such person may within one calendar month after receipt of the notice apply to the Court to vary the same, and the appropriation shall be conclusive save as otherwise directed by the Court:  
Provided also that where the person interested is out of the jurisdiction the said period of one month may be extended by the court for such period as the Court thinks fit, on the application of the trustee or of any person interested;
- (k) Where provision is made in any instrument creating a trust for payment of annuity or other periodical payment, and notwithstanding that the annuity or payment may by the instrument be charged upon the trust property or upon any part of it, set aside and appropriate out of property available for payment of the annuity and invest a sum sufficient in the opinion of the trustee at the time of the appropriation to provide out of the income of it the amount required to pay the annuity or periodical payment, and, after the appropriation shall have been made, the residue of the trust property and the income of it shall no longer be liable for the annuity, and may be distributed forthwith under the trusts declared of and concerning the same;
- (l) Do or omit all acts and things and execute all instruments necessary to carry into effect the powers and authorities given by this Act or by or under the instrument creating the trust.

(2) (a) Where in the administration of any property employed in the production of income or from which income is derived a trustee considers that in the interests of the persons entitled or who may become entitled to the capital of the property it is equitable to set up a depreciation or replacement fund in respect of the property or in respect of any asset comprised in it, then, notwithstanding any rule of law to the contrary, it shall be lawful for but not obligatory upon him to do so, and to credit to the fund and accumulate by way of compound interest such part of the income so produced or derived as he considers equitable and also the resulting income from it.

(b) In any such case the fund shall follow the destination of the capital of the property and shall be subject to all the trusts, powers, and provisions applicable

to it; with further power to the trustee to apply as he thinks fit the fund and accumulations of income in or towards the replacement, repair or otherwise of property or assets of a like nature or which otherwise may advantageously be employed in conjunction with the property in producing or deriving the income as aforesaid.

**16 Power of trustee for sale to sell**

(1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior encumbrances or not, and either together or in lots, by public auction or by public tender or by private contract, subject to any such conditions respecting title or evidence of title or other matters as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss.

(2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part of it, whether the division is horizontal, vertical, or made in any other way, and also includes a trust or power to sell or dispose of any buildings, fixtures, timbers, or other things affixed to the soil apart and separately from the land itself.

(3) In exercise of any power of sale in respect of several properties held under one lease, the trustee may sell the properties separately on the terms that one of the purchasers shall take an assignment of the lease and grant subleases to the other purchasers, and that if any part of the property is not sold the trustee shall retain the lease and grant subleases of the portions sold.

(4) Where a trustee may sell any property at a fixed or specified time under any trust or power vested in him, the trustee may, with the consent of the persons (if any) entitled to sell the possession of it pending the sale of the property, sell the property at any time before the date originally appointed.

**17 Power to sell property on terms**

(1) A sale of property by a trustee in exercise of any power vested in him in that behalf by the instrument creating the trust or by or under this Act or any other enactment may be on terms of deferred payment or otherwise.

(2) The terms of deferred payment shall be such as a person acting with prudence would, if the property were his own, have accepted in the circumstances in order to sell the property to the best advantage, and, subject to it, may provide for the payment of the purchase money or any part thereof under an agreement for sale or for the conveyance of the property sold and the securing of the unpaid purchase money by mortgage of the property sold.

(3) Whether the sale is made under the order of the Court or otherwise, the Court may make such order as it thinks fit as to the terms of deferred payment.

(4) A trustee selling property on terms authorised by this section or by an order of the Court shall not be affected by section 4 or section 10 in respect of so much of the purchase money as is payable under an agreement for sale or is secured by a mortgage, and shall not be liable for any loss that may be incurred by reason only of the security being insufficient at the date of the agreement or mortgage.

(5) For the purposes of any consent or direction required by the instrument, if any, creating the trust or by statute, a trustee selling property on terms of deferred payment shall not be deemed to be lending money or investing trust funds.

**18 Sale subject to depreciatory conditions**

(1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) No sale made by a trustee shall, after the execution of the conveyance or transfer, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.

**19 Power of trustees to give receipts**

(1) The receipt in writing of a trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or delivering the same, and shall effectually exonerate that person from seeing the application or being answerable for any loss or misapplication of it.

(2) This section applies notwithstanding anything to the contrary in the instrument, if any, creating the trust.

**20 Power to compound liabilities**

A trustee may, if and as he thinks fit –

- (a) Accept any property, real or personal, before the time at which it is made transferable or payable; or
- (b) Sever and apportion any blended trust funds or property; or
- (c) Pay or allow any debt or claim on any evidence that he thinks sufficient; or
- (d) Accept any composition or any security, real or personal, for any property, for any debt or for any property, real or personal, claimed; or
- (e) Allow any time for payment of any debt; or
- (f) Surrender any leasehold property subject to onerous covenants of such a nature that it would not be to the advantage of the person beneficially interested to retain the property; or
- (g) Compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trust or to the trust property –

and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him seem expedient, without being responsible for any loss occasioned by any act or thing so done by him in good faith.

**21 Power to raise money by sale or mortgage**

(1) Where a trustee is authorised by the instrument, if any, creating the trust or by this Act or any other Act or by law to pay or apply capital money subject to the trust for any purpose or in any manner, he shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession.

(2) Without restricting the generality of subsection (1), the power conferred on the trustee by this section to raise any money that is required as aforesaid by the sale, conversion, calling in, or mortgage of all or any part of the trust property for the

time being in possession shall extend and be deemed always to have extended so as to confer on the trustee power so to raise money required for the purpose of meeting any debt or other liability of the trustee, whether secured or unsecured and whether owing or incurred at or before the commencement of the trust or subsequently.

**22 Protection of purchasers**

Where an instrument is made or executed in professed exercise of the power to sell, exchange, lease, or mortgage conferred by the instrument (if any) creating the trust or by this Act or any other Act, the title of the purchaser, transferee, lessee, or mortgagee shall not be impeachable except on the ground of fraud, or be affected on the ground that no case has arisen to authorise the sale, exchange, lease, or mortgage, or that the power was otherwise improperly or irregularly exercised; but any person damaged by an authorised or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power, and no purchaser, transferee, lessee, or mortgagee shall be concerned to see to the application of the money paid by him, or be responsible for the misapplication of it.

**23 Devolution of powers or trusts**

(1) Where a power or trust is given to or imposed on 2 or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.

(2) (a) Until the appointment of a new trustee, the personal representative for the time being of a sole trustee or (where there were 2 or more trustees) of the last surviving or continuing trustee shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees for the time being of the trust;

(b) In this subsection “trustee” does not include a personal representative as such.

(3) This section does not authorise the exercise or performance of any power or trust by an executor who has renounced or has not proved.

**24 Power to insure**

(1) A trustee may insure against loss or damage, whether by fire or earthquake or otherwise, any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding the full insurable value of the building or property, or (with the consent of the person entitled to the income of the Court) the full replacement value of the building or property; and may also insure against any risk or liability against which it would be prudent for a person to insure if he were acting for himself; and may pay the premiums for the insurance out of the income of the building or property concerned or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to that income.

(2) The trustee may recover the costs of any premiums paid in respect of any such insurance from the life tenant or other person entitled to or in receipt of the rents and profits of the building or property concerned.

(3) Nothing in this section shall impose any obligation on a trustee to insure.

**25 Application of insurance money where policy kept up under any trust, power or obligation**

(1) Money receivable by a trustee or any beneficiary under a policy of insurance against the loss of or damage to any property subject to a trust, whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf or under any power, statutory or otherwise, or in performance of any covenant or of

any obligation, statutory or otherwise, or by a tenant for life impeachable for waste, be capital for the purposes of the trust, except so far as it would be regarded as income under any rule of law.

(2) If any such money is receivable by any person other than the trustee of the trust, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue of it, after discharging any costs of recovering and receiving it, to the trustee of the trust, or, if there is no trustee capable of giving a discharge for it, to the Crown under section 77.

(3) Any such money –

- (a) If it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under the trust;
- (b) In any other case, shall be held upon trust corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) Any such money, or any part thereof, may also be applied by the trustee, or, if held by the Crown, under the direction of the Court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustee shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust.

(5) Nothing in this section shall prejudice or affect the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any statute or otherwise.

(6) This section applies to policies effected either before or after the commencement of this Act, but only to money received after the commencement.

## **26 Deposit of documents for safe custody**

A trustee may deposit any documents held by him relating to the trust, or to the trust property, with any bank or corporation whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of any such deposit shall be paid out of the income of the trust property, and so far as there is no available income out of the capital of the trust property.

## **27 Reversionary interests**

(1) Where trust property includes any share or interest in property not vested in the trustee, or the proceeds of the sale of any such property, or any other thing in action, the trustee, on the same falling into possession or becoming payable or transferable, may –

- (a) Agree or ascertain the amount or value of it or any part of it in such manner as he may think fit;
- (b) Accept in or towards satisfaction of it, at the market or current value, or upon any valuation or estimate of value which he may think fit, any authorised investments;
- (c) Allow any deductions for duties, costs, charges, and expenses which he may think proper or reasonable;
- (d) Execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of the release –

without being responsible in any such case for any loss occasioned by any act or thing so done by him in good faith.

(2) The trustee shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission –

- (a) To give any notice in respect of or apply for any charging or other like order upon any securities or other property out of or in which such share or interest or other thing in action as aforesaid is derived, payable, or charged; or
- (b) To take any proceedings on account of any act, default, or neglect on the part of the persons in whom the securities or other property or any of them or any part of it are for the time being, or had at any time been, vested –

unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to his satisfaction for payment of the costs of any proceedings required to be taken.

(3) Nothing in subsection (2) shall relieve the trustee of the obligation to get in and obtain payment or transfer of the share or interest or other thing in action on the same falling into possession.

## **28 Valuations**

(1) A trustee may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of this Act or any other Act, ascertain and fix the value of any trust property, or of any property which he is authorised to purchase or otherwise acquire, in such manner as he thinks proper; and where the trustee is not personally qualified to ascertain the value of any property he shall consult a duly qualified person (whether employed by him or not) as to that value; but the trustee shall not be bound to accept any valuation made by any person whom the trustee may consult.

(2) Any valuation made by the trustee in good faith under this section shall be binding on all persons beneficially interested under the trust.

## **29 Power to employ agents**

(1) A trustee may, instead of acting personally, employ and pay an agent, whether a solicitor, accountant, bank, trustee corporation, stockbroker, or other person, to transact any business or do any act required to be transacted or done in the execution of the trust or the administration of the trust property, including the receipt and payment of money, and the keeping and audit of trust accounts, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith.

(2) A trustee may appoint any person to act as his agent or attorney for the purpose of selling, converting, collecting, getting in, and executing and perfecting assurances of, or managing or cultivating, or otherwise administering any property, real or personal, movable or immovable, subject to the trust in any place outside Niue or executing or exercising any discretion or trust or power vested in him in relation to any such property, with such ancillary powers and with and subject to such provisions and restrictions as he may think fit, including a power to appoint substitutes, and shall not, by reason only of his having made any such appointment, be responsible for any loss arising thereby;

(2A) Without restricting the other powers conferred by this section, a trustee may –

- (a) Employ a trustee corporation to be his agent for the purpose of investing any trust funds in his possession, whether at the commencement of the employment in a state of investment or not, whether they came into his possession before or after the commencement of this section, and whether they comprise the whole or any part of the trust estate to which they belong; and

- (b) Pay or transfer any such trust funds to the trustee corporation so employed.
- (3) Without prejudice to such general power of appointing agents –
  - (a) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust by permitting the solicitor to have the custody of, and to produce a deed or instrument having in the body of it or endorsed on it a receipt for the money or valuable consideration or property, the deed or instrument being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration;
  - (b) A trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment, and the production of any such deed or instrument by the solicitor shall have the same validity and effect as if the person appointing the solicitor had not been a trustee;
  - (c) A trustee may appoint a bank or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance, by permitting the bank or solicitor to have the custody of and to produce the policy of insurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment.
- (3) Nothing in subsection (2) shall exempt a trustee from any liability which he would have incurred if this Act and any enactment replaced by this Act had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the bank or solicitor for a period longer than is reasonably necessary to enable the bank or solicitor, as the case may be, to pay or transfer the same to the trustee.

### **30 Power to concur with others**

Where an undivided share in any property is subject to a trust, the trustee may (without prejudice to any trust or power in relation to the entirety of the property) execute or exercise any trust or power vested in him in relation to that share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that the trustee or any one or more of several trustees may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

### **31 Power to delegate trusts**

- (1) A trustee who –
  - (a) Is for the time being out of Niue or is about to depart from it; or
  - (b) Expects that he may be absent from Niue during the administration of the trust; or
  - (c) Is or may be about to become temporarily incapable, by reason of physical infirmity, of performing all his duties as trustee; or
  - (d) Expects that he may be from time to time temporarily incapable, by reason of physical infirmity, of performing all his duties as a trustee –
- may, notwithstanding any rule of law or equity to the contrary, by power of attorney executed as a deed, delegate to any person the execution or exercise, during any period for which the trustee may be absent from Niue or incapable of performing all his duties as a trustee, of all or any trusts, powers, authorities, and discretions vested in him as such trustee, whether alone or jointly with any other person or persons:
- Provided that a person being the only other co-trustee and not being a trustee corporation shall not be appointed to be an attorney under this subsection.

(2) Where any such delegation has been duly made to and accepted by any person and is for the time being in operation, that person shall have, within the scope of the delegation, the same trusts, powers, authorities, discretions, liabilities, and responsibilities as he would have if he were then the trustee.

(3) In any proceedings brought by any person beneficially interested under the trust against the donor of a power of attorney given under this section in respect of any act or default of the donee of the power it shall be a defence for the donor to prove that the donee was appointed by him in good faith and without negligence.

(4) All jurisdiction and powers of any Court shall apply to the donee of the power of attorney in the same manner, so far as respects the execution of the trust or the administration of the estate to which the power of attorney relates, as if the donee were acting in relation to the trust or estate in the same capacity as the donor of the power.

(5) The power of attorney shall not come into operation unless and until the donor is out of Niue or is incapable of performing all his duties as a trustee, and unless the deed otherwise provides shall be deemed to be revoked by his return or by his recovery of that capacity, as the case may be.

(6) In favour of any person dealing with the donee of a power of attorney given under this section, any act done or instrument executed by the donee shall, notwithstanding that the power has never come into operation or has been revoked, whether by the Act of the donor of the power or by operation of law, be as valid and effectual as if the power had come into operation and remained unrevoked at the time when the act was done or the instrument executed, unless that person had at that time actual notice that the power had never come into operation or of the revocation of the power.

(7) A statutory declaration by the donee of a power of attorney relating to any trust or estate that the power has come into operation, or that in any transaction the donee is acting in the execution of the trust or the administration of the estate, shall in favour of a person dealing with the donee of the power be conclusive evidence of that fact.

(8) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any power of attorney or otherwise, that in any transaction the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person dealing in good faith with the donee with any notice of the trust.

(9) For the purpose of executing or exercising the trusts, powers, authorities, and discretions delegated to him the donee may exercise any of the powers, authorities and discretions conferred on the donor as trustee by statute or by the instrument creating the trust, except the power of delegation conferred by this section.

## 32 Power to carry on business

(1) Subject to any other Act, if at the time of his death any person (whether alone or in partnership) is engaged in carrying on a business, trade, or occupation, it shall be lawful for his trustee to continue to carry on the same in the same manner for any one or more of the following periods –

- (a) Two years from the death of that person;
- (b) Such period as may be necessary or desirable for the winding up of the business;
- (c) Such further period or periods as the Court may approve.

(2) In exercise of the powers conferred by this section or by the instrument creating the trust, a trustee may employ any part of the deceased's estate which is

subject to the same trusts; and may increase or diminish the part of the estate so employed; and may purchase stock, machinery, implements, and chattels for the purposes of the business; and may employ such managers, agents, servants, clerks, workmen, and others as he thinks fit; and may at any time enter into a partnership agreement to take the place of any partnership agreement subsisting immediately before the death of the deceased or at any time after it.

(3) Application to the Court for leave to carry on a business may be made by the trustee or any person beneficially interested in the estate at any time, whether or not any previous authority to carry on the business has expired; and the Court may make such an order, or may order that the business be not carried on, or be carried on subject to conditions, or may make such other order as in the circumstances seems proper.

(4) Nothing in this section shall prejudice any other authority to do the acts thereby authorised to be done.

(5) Where a trustee is in any manner interested or concerned in a trade or business, he may make such subscription as it would be prudent for him to make if he were acting for himself out of the income of the assets affected to any fund created for objects or purposes in support of trades or businesses of a like nature and subscribed to by other persons engaged in the like trade or business.

### **33 Power to convert business into a company**

A trustee may at any time, at the expense of the trust property, convert or join in converting any business into a company limited by shares in such manner as he may think fit; and may, at the like expense, promote and assist in promoting a company for taking over the business; and may sell or transfer the business and the capital and assets and goodwill of it, or any part of it, to the company, or to any company having for its objects the purchase of such a business, in consideration in either case, wholly or in part of ordinary or preference shares wholly or partially paid up of any such company, or wholly or in part of debentures, debenture stock, or bonds of any such company, and as to the balance (if any) in cash payable immediately, or by any instalments with or without security.

### **33A Trustee may sue himself in a different capacity**

(1) Notwithstanding any rule of law or practice to the contrary, a trustee of any property in that capacity may sue, and be sued by, himself in any other capacity whatsoever, including his personal capacity.

(2) In every such case the trustee shall obtain the directions of the Court in which the proceedings are taken as to the manner in which the opposing interests are to be represented.

#### *Indemnities*

### **34 Protection against liability in respect of rents and covenants**

(1) Where a trustee liable as such for –

- (a) Any rent, covenant, or agreement reserved by or contained in any lease; or
- (b) Any rent, covenant or agreement payable under or contained in any grant made in consideration of a rentcharge; or
- (c) Any indemnity given in respect of any rent, covenant or agreement referred to in paragraph (a) or (b) –

satisfies all liabilities under the lease or grant which may have accrued and been claimed up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property

demised or granted, although the period for laying out the same may not have arrived, then and in any such case the trustee may convey the property demised or granted to a purchaser, legatee, devisee, or other person entitled to call for a conveyance of it, and after it –

- (i) He may distribute the trust estate (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled to it, without appropriating any part, or any further part, as the case may be, of the trust estate to meet any future liability under the said lease or grant;
- (ii) Notwithstanding the distribution, he shall not personally be liable in respect of any subsequent claim under the said lease or grant.

(2) For the purposes of this section a trustee shall be deemed to be liable as such for any liabilities arising from privity of estate which he may incur under the obligations contained in a lease or grant if he is entitled to reimburse himself out of the trust property for all expenses he may incur in respect of the liabilities.

(3) This section operates without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the trust property or any part of it or any property representing the same into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the instrument, if any, creating the trust.

(4) In this section “lease” includes a sublease and an agreement for a lease or sublease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; “grant” applies to a grant whether the rent is created by limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant; and “lessee” and “grantee” include persons respectively deriving title under them.

### **34A Lien on policy money for premiums**

Where a trustee pays any premiums in respect of any policy of insurance he shall have a lien on the policy money for the amount of the premiums so paid, together with interest on it at the rate of 6 percent.

### **35 Protection against creditors**

(1) (a) Where a trustee has given notice by advertisement published at least once in a newspaper circulating in each locality in which in the opinion of the trustee claims are likely to arise requiring persons having claims to which this section applies to send to the trustee, within the time fixed in the notice, particulars of their claims and warning them of the consequences of their failure to do so, then, at the expiration of that time or at any time after it the trustee may administer or distribute the property or any part of it to which the notice relates to or among the persons entitled to it having regard only to the claims, whether formal or not, of which the trustee then has notice; and he shall not, as respects the property so administered or distributed, be liable to any person of whose claim he has not had notice at the time of the administration or distribution.

(b) Nothing in this section shall prejudice any remedy which the person may have under section 193 of the Family Law Code or any other right or remedy available to him against any person other than the trustee, including any right which he may have to follow the property and any money or property into which it is converted.

(2) (a) The time to be fixed as aforesaid by any such notice shall not be less than one month from the date on which the notice is given.

(b) Where the notice is given in a newspaper circulating mainly outside Niue the time to be fixed as aforesaid shall be not less than 2 months.

(3) In any case where the personal representative of a deceased person gives any such notice, the localities specified in subsection (1) shall include each locality in which the deceased resided or carried on business at any time during the year immediately preceding his death.

(4) Where the trustee is in doubt as to what advertisements should be published under this section he may apply to the Court for directions.

(5) Any advertisement published under this section may relate to more than one estate or trust property.

(6) This section shall apply notwithstanding anything to the contrary in the instrument, if any, creating the trust.

(7) Except as provided in subsection (8) this section shall apply to the claims, whether present or future, certain or contingent, against a trustee personally by reason of his being under any liability in respect of which he is entitled to reimburse himself out of the estate or property that he is administering.

(8) This section shall not apply to –

- (a) Any claim arising out of any contract to make a will containing certain provisions or not to revoke an existing will or a specified provision therein or not to make a will; or
- (b) Any claim by a person to be a beneficiary under the will or to be entitled on the intestacy of the deceased person or to be beneficially interested under the trust.

### **36 Protection in regard to notice**

A trustee acting for the purposes of more than one trust shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact, or thing in relation to any particular trust if he has obtained notice of it merely by reason of his acting or having acted for the purposes of another trust.

### **37 Exoneration of trustees in respect of certain powers of attorney**

(1) A trustee acting or paying money in good faith in reliance on any power of attorney and on a statutory declaration or other sufficient evidence that the power of attorney has not been revoked shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability, or bankrupt, or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying.

(2) (a) Nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made.

(b) The person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

### **38 Implied indemnity of trustees**

(1) A trustee shall be chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any bank, broker or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss unless the same happens through his own wilful default.

(2) (a) A trustee may reimburse himself or pay or discharge out of the trust property all expenses reasonably incurred in or about the execution of the trusts or powers; but, except as provided in this Act or any other Act or as agreed by the persons beneficially interested under the trust, no trustee shall be allowed the costs of any professional services performed by him in the execution of the trusts or powers unless the contrary is expressly declared by the instrument creating the trust.

(b) The Court may on the application of the trustee allow such costs as in the circumstances seem just.

**39 Protection of trustee who pays trust money to bankrupt**

(1) (a) If a trustee in good faith, without negligence, and without actual knowledge of the bankruptcy of any person, pays or transfers to or to the order of that person any trust money or trust property which he would have been entitled to receive (whether as a beneficiary or otherwise) if he had not been adjudged bankrupt, the trustee shall not be liable to the assignee in bankruptcy of the estate of the bankrupt for any money so paid or any property so transferred.

(b) Nothing in this section shall prejudice the right of the assignee in bankruptcy to follow the money or property or any part of it into the hands of the persons who have received the same.

(2) For the purposes of this section a trustee shall not be deemed to have actual knowledge of the bankruptcy of any person by reason merely of the fact that notice of the adjudication has been published in any newspaper or in the *Gazette*.

**39A Protection of trustee in handing over chattels to life tenant**

(1) Where any chattels are, under the provisions of any will, bequeathed to any person including an infant for life or for any limited interest, the trustee may cause an inventory to be made of the chattels, which inventory shall be signed by that person and retained by the trustee, and a copy of the inventory shall be delivered to that person.

(2) The trustee may thereupon deliver the chattels to that person on such terms and conditions as the trustee thinks fit, and shall not after it be bound to see to the repair or insurance of the chattels, and shall not be subject to any liability whatsoever by reason of the loss or destruction of the chattels or the neglect of that person to effect any such repairs or insurance.

(3) A copy of any such inventory, signed by that person and by the trustee shall be deemed to be an instrument within the meaning of the Chattels Transfer Act 1924, and may be registered accordingly.

**39B Protection of trustee in handing over chattels to infant**

(1) A trustee may in his discretion deliver to an infant, or to the guardian or any of the guardians of an infant, any chattels absolutely vested in the infant, and the receipt of the infant or guardian shall be a complete discharge to the trustee for any chattels so delivered.

(2) The powers conferred by this section are in addition to the powers conferred by section 41 and, for the purposes of section 41(2)(b) the value of the chattels delivered under this section shall not be taken into account in any way.

*Maintenance, Advancement and Protective Trusts*

**40 Power to apply income for maintenance**

(1) Where any property is held by a trustee in trust for any person for any interest whatsoever, whether vested or contingent, then, any prior interests or charges affecting that property –

- (a) During the infancy of any such person, if his interest so long continues, the trustee may, at his sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance or education (including past maintenance or education) or his advancement or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances be reasonable, whether or not there is –
  - (i) Any other fund applicable to the same purpose; or
  - (ii) Any person bound by law to provide for his maintenance, education, advancement, or benefit; and
- (b) If the person on attaining the age of 20 years has not a vested interest in that income, the trustee shall thenceforth pay the income of that property and of any accretion to it under subsection (2) to him until he either attains a vested interest in it or dies, or until failure of his interest:

Provided that, in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustee shall have regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where the trustee has notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the Court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

(2) During the infancy of any such person, if his interest so long continues, the trustee shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income of it in authorised investments, and shall hold those accumulations as follows:

- (a) If any such person –
  - (i) Attains the age of 20 years, or marries under that age, and his interest in the income during his infancy or until his marriage is a vested interest; or
  - (ii) On attaining the age of 20 years or on marriage under that age becomes entitled to the property from which the income arose in fee simple absolute or determinable, or absolutely –  
the trustee shall hold the accumulations in trust for that person absolutely, but without prejudice to any provision with respect to it contained in any settlement by him made under any statutory powers during his infancy, and so that the receipt of that person after marriage, and though still an infant, shall be a good discharge; and
- (b) In any other case the trustee shall, notwithstanding that that person had a vested interest in the income, hold the accumulations as an accretion to the capital of the property from which the accumulations arose and as one fund with that capital for all purposes –

but the trustee may, at any time during the infancy of that person if his interest so long continues, apply those accumulations, or any part of it, as if they were income arising in the then current year.

(3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing in the place of a parent to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient and subject to any rules of Court to the contrary) be that for the time being prescribed by or under section 186 of the Family Law Code.

(4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by a trustee in trust to pay the income of it to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the infancy of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely.

#### **41 Power to apply capital for maintenance**

(1) A trustee may at any time or times pay or apply any capital money or other capital asset subject to a trust, for the maintenance or education (including past maintenance or education), or the advancement or benefit, in such manner as he may in his absolute discretion think fit, of any person entitled to the capital of the trust property or of any share of it, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and any such payment or application may be made notwithstanding that the interest of that person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs.

(2) (a) The money or asset so paid or applied for the maintenance, education, advancement, or benefit of any person shall not exceed altogether half of the presumptive or vested share or interest of that person in the trust property where the value of that share or interest exceeds \$2,000 and in any other case shall not exceed altogether \$1,000 in amount or value; and

(b) Where that person or any other person is or becomes absolutely and indefeasibly entitled to the share of the trust property in which that person had presumptive or vested interest when the money or asset was so paid or applied, that money or asset shall be brought into account as part of that share in the trust property; and

(c) No such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money or asset paid or applied unless that person is in existence and of full age and consents in writing to the payment or application, or unless the Court, on the application of the trustee so orders.

#### **41A Conditional advances for maintenance**

(1) (a) Where a power to pay or apply any property for the maintenance, education, advancement, or benefit of any person, or for any one or more of those purposes, is vested in a trustee, the trustee when exercising the power shall have, and be deemed always to have had, authority to impose on the person any condition, whether as to repayment, payment of interest, giving security, or otherwise.

(b) At any time after imposing any such condition, the trustee may, either wholly or in part, waive the condition or release any obligation undertaken or any security given by reason of the condition.

(2) In determining the amount or value of the property which a trustee who has imposed such a condition may pay or apply in exercise of the power, any money repaid to the trustee or recovered by him shall be deemed not to have been so paid or applied by the trustee.

(3) Nothing in this section shall impose upon a trustee any obligation to impose any such condition; and a trustee, when imposing any condition as to giving

security as aforesaid, shall not be affected by any restrictions upon the investment of trust funds, whether imposed by this Act or by any rule of law or by the trust instrument (if any).

(4) A trustee shall not be liable for any loss which may be incurred in respect of any money that is paid or applied as aforesaid, whether the loss arises through failure to take security, or through the security being insufficient, or through failure to take action for its protection, or through the release or abandonment of the security without payment, or from any other cause.

**42 Protective trusts**

(1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section called the principal beneficiary) for the period of his life or for any less period, then during that period (in this section called the trust period) the said income shall, without prejudice to any prior interest, be held on the following trusts, namely –

- (a) Upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens, other than an advance under any statutory or express power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part of it, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the said income shall fail or determine;
- (b) If the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for the application of it for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons, that is to say –
  - (i) The principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any; or
  - (ii) If there is no wife or husband or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if he were actually dead, be entitled to the trust property or the income of it or to the annuity fund, if any, or arrears of the annuity, as the case may be;

as the trustee in his absolute discretion, without being liable to account for the exercise of such discretion, thinks fit.

(2) This section shall not apply to trusts coming into operation before the commencement of this Act, and has effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.

(3) Nothing in this section shall operate to validate any trust which would, if contained in the instrument creating the trust, be liable to be set aside.

**PART 4**

**APPOINTMENT AND DISCHARGE OF TRUSTEES**

**43 Power of appointing new trustees**

(1) Where a trustee (whether original or substituted, and whether appointed by the Court or otherwise) –

- (a) Is dead; or
- (b) Remains out of Niue for the space of 12 months during which no delegation of any trusts, powers, or discretions vested in him as such trustee remains in operation under section 31; or

- (c) Desires to be discharged from all or any of the trusts or powers reposed in or conferred on him; or
- (d) Refuses to act; or
- (e) Is unfit to act; or
- (f) Is incapable of so acting; or
- (g) Being a corporation, has ceased to carry on business, is in liquidation, or is dissolved, then –

the person nominated for the purpose of appointing new trustees by the instrument (if any) creating the trust, or if there is no such person or no such person able and willing to act, then the surviving or continuing trustees for the time being, or the personal representatives of the last surviving or continuing trustee, may by deed appoint a person or persons (whether or not being the person or persons exercising the power) to be a trustee or trustees in the place of the first-mentioned trustee.

(2) On the appointment of a trustee or trustees for the whole or any part of trust property –

- (a) The number of trustees may be increased; and
- (b) A separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part, and whether or not new trustees are or are to be appointed for other parts of the trust property; and any existing trustee may be appointed or remain one of the separate set of trustees; or if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part; and
- (c) It shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section unless there will be either a trustee corporation or at least two individuals to act as trustees to perform the trust; and
- (d) Any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees shall be executed or done.

(3) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation had been dissolved, and this section shall apply accordingly.

(4) (a) The power of appointment given by subsection (1) or any similar previous enactment to the personal representatives of a last surviving or continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of that surviving or continuing trustee who have proved the will of their testator or by the administrators for the time being of that trustee without the concurrence of any executor who has renounced or has not proved.

- (b) A sole or last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have and shall be deemed always to have had power, at any time before renouncing probate, to exercise the power of appointment given by this section, or by any similar previous enactment, if willing to act for that purpose and without thereby accepting the office of executor.

(5) Where a sole trustee is or has been originally appointed to act in a trust, or where, in the case of any trust, there are not more than three trustees either original or substituted and whether appointed by the Court or otherwise, then and in any such case –

- (a) The person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or
- (b) If there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being –  
may, by writing, appoint a person or persons (whether or not being the person or persons exercising the power) to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee, unless the instrument, if any, creating the trust, or any statutory enactment provides to the contrary:  
Provided that an additional trustee or additional trustees shall not be appointed under this subsection without the consent of –
- (a) The trustee or trustees for the time being; or
- (b) The Court.
- (6) Every new trustee appointed under this section as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.
- (7) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee whether sole or otherwise in a will, and who dies before the testator; and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.
- (8) The provisions of this section relative to a person nominated for the purpose of appointing new trustees apply whether the appointment is made in a case specified in this section or in a case specified in the instrument, if any, creating the trust, but where a new trustee is appointed under this section in a case specified in that instrument, the appointment shall be subject to the terms applicable to an appointment in that case under the provisions of that instrument.
- (9) In this section “trustee” does not include a personal representative as such.

#### **44 Evidence as to a vacancy in a trust**

(1) A statement contained in any instrument coming into operation after the commencement of this Act by which a new trustee is appointed for any purpose connected with land as to how a vacancy in the office of trustee occurred shall, in favour of a purchaser of the land, be conclusive evidence of the matter stated.

(2) In favour of any such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, shall be valid.

#### **45 Retirement of trustee**

- (1) Where there are two or more trustees –
- (a) If one of them by deed declares that he is desirous of being discharged from the trust; and
- (b) If his co-trustees and such other person (if any) as is empowered to appoint trustees by deed consent to the discharge of the trustee, and to the vesting of the trust property in the co-trustees alone –  
then, subject to subsection (3), the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall by deed be discharged from it under this Act without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed and done.

(3) Except where only one trustee was originally appointed, a trustee shall not be discharged under subsection (1) unless there will be either a trustee corporation or at least two individuals to act as trustees to perform the trust.

**46 Discharge of trustee**

(1) Where any trustee is desirous of being discharged from his trust he shall be entitled to retire from it on passing his accounts before the Registrar, and giving notice of his retirement to his co-trustees (if any), and to such other person (if any) as is empowered to appoint new trustees.

(2) If such co-trustees, or such other person, as aforesaid empowered to appoint new trustees, or any of them, refuse or neglect to appoint a new trustee or to consent to such appointment in place of the trustee so retiring, or if the retiring trustee is the sole trustee having power to appoint a new trustee, but the exercise of that power is impracticable or difficult without the assistance of the Court, it shall be lawful for the retiring trustee to apply to the Court for the appointment of a new trustee in his place.

(3) The Court may, upon any such application, make an order appointing some proper person as trustee in place of the trustee so desirous of being discharged from his trust, and direct any accounts and inquiries to be made, and make an order discharging the trustee from the trust and from all liability in respect of it, and may make such order as to costs or otherwise as it thinks fit, and may exercise any of the powers contained in Part 5 and the person who upon the making of the order becomes trustee shall have the same rights and powers as he would have had if appointed by judgment in an action duly instituted.

**47 Vesting of trust property in new or continuing trustees**

(1) Where by a deed a new trustee is appointed to perform any trust then –

(a) If the deed contains a declaration by the appointor to the effect that any estate or interest in any land that is subject to the trust or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate or interest or right to which the declaration relates; and

(b) If the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary in it contained, operate as if it had contained such a declaration by the appointed extending to all the estates, interests, and rights with respect to which a declaration could have been made.

(2) Where by a deed a retiring trustee is discharged under the statutory power without a new trustee being appointed, then –

(a) If the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person (if any) empowered to appoint trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate or interest or right to which the declaration relates; and

(b) If the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary in it contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interests, and rights with respect to which a declaration could have been made.

(3) An express vesting declaration, whether made before or after the commencement of this Act shall, notwithstanding that the estate or interest or right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in subsections (1) and (2), as the case may require, such estates, interests, and rights as are capable of being and ought to be vested in those persons.

(4) This section does not extend –

- (a) To land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;
- (b) To land held under a lease (including a sublease and an agreement for a lease or sublease) which contains any covenant, condition, or agreement against assignment or disposing of the land without licence or consent, unless (before the execution of the deed containing expressly or impliedly the vesting declaration) the requisite licence or consent has been obtained, or unless (by virtue of any statute or rule of law) the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture;
- (c) To any share, stock, annuity, or property which is transferable only in books kept by a company or other body, or in the manner directed by or under any Act.

(5) For purposes of registration of the deed in any registry, the person or persons making the declaration expressly or impliedly shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

#### **48 Corporations acting as trustees**

(1) (a) Any trustee corporation may be appointed and may lawfully act as the sole trustee in respect of any trust, notwithstanding that the instrument creating the trust may provide for or direct the appointment of two or more trustees.

- (b) Nothing in this subsection shall prevent any other corporation from acting as a trustee under any authority vested in it in that behalf, whether by its memorandum of association or otherwise.
- (c) No corporation shall administer the estate of any deceased person unless expressly authorised to do so by any Act.

(2) This section shall not permit the appointment of a corporation as trustee if the instrument creating the trust forbids the appointment of the corporation.

(3) This section shall extend to all trusts and instruments, and to all appointments of trustees, whether created or made before or after the commencement of this Act.

#### **49 Advisory trustees**

(1) In the administration of any trust property any trustee may act, to the extent hereinafter provided, with an advisory trustee, which term includes, in its application to the estate of a mentally defective person, an advisory committee or advisory administrator of the estate.

(2) An advisory trustee may be appointed in respect of all or any part of the trust property –

- (a) By the testator, settlor, or other creator of the trust, in the instrument creating the trust; or

- (b) By order of the Court made on the application of any beneficiary or trustee or of any person on whose application the Court would have power to appoint a new trustee; or
- (c) By the responsible trustee or any person having power to appoint a new trustee; or
- (d) In respect of the estate of a mentally defective person, by order of the Court made on the application of the committee or person authorised to administer the estate.

(3) Where a trustee acts with an advisory trustee the trust property shall be vested in the first-mentioned trustee (in this section referred to as the responsible trustee), who shall have the sole management and administration of the estate and its trusts as fully and effectually as if he were the sole trustee:

Provided that –

- (a) The responsible trustee may consult the advisory trustee on any matter relating to the trusts or the estate;
- (b) The advisory trustee may advise the responsible trustee on any matter relating to the trusts or the estate, but shall not be a trustee in respect of the trust;
- (c) Where any advice or direction is tendered or given by the advisory trustee, the responsible trustee may follow the same and act on it and shall not be liable for anything done or omitted by him by reason of his following that advice or direction;
- (d) In any case where the responsible trustee is of opinion that such advice or direction conflicts with the trusts or any rule of law, or exposes him to any liability, or is otherwise objectionable, he may apply to the Court for directions in the matter, and the decision and order in it shall be final and shall bind the responsible trustee and the advisory trustee, and the court may make such order as to costs as appears proper:

Provided that nothing in this paragraph shall make it necessary for the responsible trustee to apply to the Court for any such directions.

- (e) Where advisory trustees are not unanimous, and tender to the responsible trustee conflicting advice or directions, the responsible trustee may similarly apply to the Court for directions;

(4) No person dealing with the responsible trustee in relation to any trust property shall be concerned to inquire as to the concurrence or otherwise of the advisory trustee, or be affected by notice of the fact that the advisory trustee has not concurred.

(5) Subject to the provisions of the instrument (if any) creating the trust and to any order made by the Court, in any case where remuneration is payable to the trustee of any trust property, remuneration or commission may be paid to both the responsible trustee and the advisory trustee, and subject as aforesaid the amount of it shall be determined by the responsible trustee if he is entitled to fix his own remuneration, or by the Court.

## 50 Custodian trustees

(1) Subject to this section and to the instrument (if any) creating the trust, any corporation may be appointed to be custodian trustee of any trust in any case where it could be appointed to be trustee, in the same manner as it could be so appointed.

(2) Subject to the provisions of the instrument (if any) creating the trust, where a custodian trustee is appointed of any trust –

- (a) The trust property shall be vested in the custodian trustee as if the custodian trustee were sole trustee, and for that purpose vesting orders may, where necessary, be made under this Act;

- (b) The management of the trust property and the exercise of all powers and discretions exercisable by the trustee under the trust shall remain vested in the managing trustees as fully and effectually as if there were no custodian trustee;
  - (c) The sole function of the custodian trustee shall be to get in and hold the trust property, and invest its funds, and dispose of the assets, as the managing trustees in writing direct, for which purpose the custodian trustee shall execute all such documents and perform all such acts as the managing trustees in writing direct;
  - (d) For the purposes of paragraph (c) a direction given by the majority of the managing trustees where there are more than one, shall be deemed to be given by all the managing trustees;
  - (e) The custodian trustee shall not be liable for acting on any such direction:  
Provided that if the custodian trustee is of opinion that any such direction conflicts with the trusts or the law, or exposes the custodian trustee to any liability, or is otherwise objectionable, the custodian trustee may apply to the Court for directions under section 66; and any order giving any such directions shall bind both the custodian trustee and the managing trustees; and the Court may make such order as to costs as it thinks proper;
  - (f) The custodian trustee shall not be liable for any act or default on the part of any of the managing trustees;
  - (g) All actions and proceedings touching or concerning the trust property shall be brought or defended in the name of the custodian trustee at the written direction of the managing trustees, and the custodian trustee shall not be liable for the costs of it apart from the trust property;
  - (h) No person dealing with the custodian trustee shall be concerned to inquire as to the concurrence or otherwise of the managing trustees, or be affected by notice of the fact that the managing trustees have not concurred;
  - (i) The power of appointing new trustees, when exercisable by the trustee, shall be exercisable by the managing trustees alone, but the custodian trustee shall have the same power as any other trustee of applying to the Court for the appointment of a new trustee.
- (3) On the application of the custodian trustee, or of any of the managing trustees, or of any beneficiary, and on satisfactory proof that it is the general wish of the beneficiaries, or that on other grounds it is expedient to terminate the custodian trusteeship, the Court may make an order for that purpose, and may also make such vesting orders and give such directions as in the circumstances seem to the Court to be necessary or expedient.
- (4) Subject to the provisions of the instrument (if any) creating the trust and to any order made by the Court, in any case where remuneration or commission is payable to the trustee of any trust property, remuneration may be paid to both the custodian trustee and the managing trustees, and subject as aforesaid the amount of it shall be determined by the managing trustees if they are entitled to fix their own remuneration or by the Court.

## PART 5

### POWERS OF THE COURT

#### *Appointment of New Trustees*

##### **51 Power of Court to appoint new trustees**

- (1) The Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the Court, make an order appointing a new trustee or new trustees, either

in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

(2) In particular and without prejudice to the generality of subsection (1), the Court may make an order appointing a new trustee in substitution for a trustee who —

- (a) Has been held by the Court to have misconducted himself in the administration of the trust; or
- (b) Is convicted, whether summarily or on indictment, of a crime involving dishonesty; or
- (c) Is a mentally defective person; or
- (d) Is a bankrupt; or
- (e) Is a corporation which has ceased to carry on business, or is in liquidation, or has been dissolved.

(3) An order under this section and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(4) Nothing in this section shall give power to appoint an executor or administrator.

(5) Every trustee appointed by the Court shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

#### *Vesting Orders*

#### **52 Vesting orders of land**

- (1) Subject to subsections (2) and (3) in any of the following cases, namely —
  - (a) Where the Court appoints or has appointed a trustee of any land or interest in it, or where a trustee of any land or interest in it has been appointed out of Court under any statutory or express power;
  - (b) Where a trustee entitled to or possessed of any land or interest in it, whether by way of mortgage or otherwise, or entitled to a contingent right in it, either solely or jointly with any other person —
    - (i) Is under disability; or
    - (ii) Is out of the jurisdiction of the Court; or
    - (iii) Cannot be found; or
    - (iv) Being a corporation, has ceased to carry on business or is in liquidation or has been dissolved;
  - (c) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any interest in land;
  - (d) Where it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is alive or dead;
  - (e) Where there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land;
  - (f) Where a deceased person was entitled to or possessed of any interest in land and his personal representative is under disability;

- (g) Where a trustee jointly or solely entitled to or possessed of any interest in land, or entitled to a contingent right in it, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a release of the right, to convey the land or interest or to release the right, and has wilfully refused or neglected to convey the land or interest or release the right for 28 days after the date of the requirement;
- (h) Where land or any interest in it is vested in a trustee whether by way of mortgage or otherwise, and it appears to the Court to be expedient – the Court may make an order (in this Act called a vesting order) vesting the land or interest in it in any such person in any such manner and for any such estate or interest as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct.

(2) Where any such order is consequential on the appointment of a trustee, the land or interest in it shall be vested for such estate as the Court may direct in the persons who on the appointment are the trustees.

(3) Where any such order relates to a trustee entitled or formerly entitled jointly with another person, and that trustee is under disability or out of the jurisdiction of the Court or cannot be found, or (being a corporation) has ceased to carry on business or is in liquidation or has been dissolved, the land, interest, or right shall be vested in the other person who remains entitled, either alone or with any other person that the Court may appoint.

### **53 Contingent rights of unborn persons**

Where any interest in land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect of it, become entitled to or possessed of that interest on any trust, the Court may make an order releasing the land or interest in it from the contingent right, or may make an order vesting in any person the estate or interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

### **54 Vesting order in place of conveyance by infant mortgagee**

Where any person entitled to or possessed of any interest in land, or entitled to a contingent right in land, by way of security for money, is an infant, the Court may make an order vesting or releasing or disposing of the interest in the land or the right in like manner as in the case of a trustee under disability.

### **55 Vesting order consequential on order for sale or mortgage of land**

Where the Court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of any interest in the land, or entitled to a contingent right in it, and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee for the purposes of this Act, and the Court may if it thinks expedient make an order vesting the land or any part of it for such estate or interest as the Court thinks fit in the purchaser or mortgagee or in any other person.

### **56 Vesting order consequential on judgment for specific performance**

Where a judgment is given for the specific performance of a contract concerning any interest in land, or for sale or exchange of any interest in land, or generally where any judgment is given for the conveyance of any interest in land, either in cases arising out of the doctrine of election or otherwise, the Court may declare –

- (a) That any of the parties to the action are trustees of any interest in the land or any part of it within the meaning of this Act; or
- (b) That the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any deceased person who was during his lifetime a party to the contract or transaction concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act –

and thereupon the Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

### **57 Effect of vesting order**

A vesting order under sections 52 to 56 shall, in the case of a vesting order consequential on the appointment of a trustee, have the same effect –

- (a) As if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate or interests as the Court directs; or
- (b) If there is no such person or no such person of full age and full mental capacity, as if such person had existed and been of full age and full mental capacity and had duly executed all proper conveyances of the land for such estate or interest as the Court directs;

and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full age and full mental capacity and had executed a conveyance or release to the effect intended by the order.

### **58 Power to appoint person to convey**

In all cases where a vesting order can be made under section 52 to 56, the Court may, if it is more convenient, appoint a person to convey the land or any interest in it or release the contingent right, and a conveyance, or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

### **59 Vesting orders as to stock and things in action**

- (1) Subject to subsections (2), (3) and (4) in any of the following cases, namely –
  - (a) Where the Court appoints or has appointed a trustee, or where a trustee has been appointed out of Court under any statutory or express power;
  - (b) Where a trustee entitled, whether by way of mortgage or otherwise, alone or jointly with another person to stock or to a thing in action –
    - (i) Is under disability; or
    - (ii) Is out of the jurisdiction of the Court; or
    - (iii) Cannot be found; or
    - (iv) Being a corporation, has ceased to carry on business or is in liquidation or has been dissolved; or
  - (v) Neglects or refuses to transfer stock or receive the dividends or income of it, or to sue for or recover a thing in action, under the direction of the person absolutely entitled to it for 28 days next after a request in writing has been made to him by the person so entitled; or
  - (vi) Neglects or refuses to transfer stock or receive the dividends or income of it or to sue for or recover a thing in action for 28 days next after an order of the Court for that purpose has been served on him;

- (c) Where it is uncertain who was the survivor of two or more trustees entitled to stock or to a thing in action;
- (d) Where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead;
- (e) Where there is no personal representative of a deceased person entitled to stock or to a thing in action or where it is uncertain who is the personal representative of a deceased person who is entitled to stock or to a thing in action;
- (f) Where stock is standing in the name of a deceased person whose personal representative is under disability;
- (g) Where stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the Court to be expedient –

the Court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income of it, or to sue for or recover the thing in action in any person as the Court may appoint.

(2) Where any such order is consequential on the appointment of a trustee, the right shall be vested in the persons who, on the appointment, are the trustees.

(3) Where the person whose right is dealt with by any such order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the Court may appoint.

(4) No such order shall be made vesting shares that are not fully paid up in any person unless he applies for the order or consents to the making of the order.

(5) In all cases, where a vesting order can be made under this section, the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer; and without restricting the powers of the Court under this subsection it is hereby declared that the person appointed to make or join in making a transfer of stock may be some proper officer of the bank or company or society or association in whose books the stock is to be transferred.

(6) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Act may transfer the stock to himself or any other person under the order, and all banks, societies, associations, companies, and persons shall obey every order under this section under its tenor.

(7) After notice in writing of an order made under this section it shall not be lawful for any bank, society, association, company, or person to transfer any stock to which the order relates or to pay any dividends on it except under the order.

(8) The Court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing in action vested under this Act is to be exercised.

## **60 Vesting orders in respect of shares in ships and industrial property**

The provisions of this Act as to vesting orders shall apply to shares in ships registered in Niue and to any intellectual property rights, as if they were stock.

## **61 Vesting orders of charity property**

The powers conferred by this Act as to vesting orders may be exercised for vesting any interest in any land, stock, or thing in action in any trustee of a charity or society over which the Court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the Court under its general or statutory jurisdiction.

**62 Orders made upon certain allegations to be conclusive evidence**

Where a vesting order is made as to any land under this Act or under any other Act founded on an allegation of any of the following matters, namely –

- (a) The personal incapacity of a trustee or mortgagee; or
- (b) That a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the Court or cannot be found, or (being a corporation) has ceased to carry on business or is in liquidation or has been dissolved; or
- (c) That it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor; or
- (d) That it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage is living or dead; or
- (e) That any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested –

the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any Court upon any question as to the validity of the order; but this section shall not prevent the Court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

**63 [Repealed]**

*Jurisdiction to Make Other Orders*

**64 Power of Court to authorise dealings with trust property and variations of trust**

(1) Subject to any contrary intention expressed in the instrument (if any) creating the trust, where in the opinion of the Court any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, retention, expenditure, or other transaction is expedient in the management or administration of any property vested in a trustee, or would be in the best interests of the persons beneficially interested under the trust, but it is inexpedient or difficult or impracticable to effect the same without the assistance of the Court, or the same cannot be effected by reason of the absence of any power for that purpose vested in the trustee by the trust instrument (if any) or by law, the Court may by order confer upon the trustee, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions (if any) as the Court may think fit, and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne, and as to the incidence of it between capital and income.

(2) Notwithstanding anything to the contrary in the instrument (if any) creating the trust, the Court, in proceedings in which all trustees and persons who are or may be interested are parties or are represented or consent to the order, may make such an order and may give such directions as it thinks fit to the trustee in respect of the exercise of any power conferred by the order.

(3) (a) The Court may rescind or vary any order made under this section, or may make any new or further order;

(b) No such rescission or variation of any order shall affect any act or thing done in reliance on the order before the person doing the act or thing became aware of the application to the Court to rescind or vary the order.

(4) An application to the Court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

**64A Powers of Court to authorise variations**

(1) Without limiting any other powers of the Court, it is hereby declared that where any property is held on trusts arising under any will, settlement, or other disposition, or on the intestacy or partial intestacy of any person, or under any order of the Court, the Court may by order approve on behalf of –

- (a) Any person having, directly or indirectly, an interest, whether vested or contingent, under the trusts who by reason of infancy or other incapacity is incapable of assenting; or
- (b) Any person (whether ascertained or not) who may become entitled, directly or indirectly, to an interest under the trusts as being at a future date or on the happening of a future event a person of any specified description or a member of any specified class of persons, so however that this paragraph shall not include any person who would be of that description, or a member of that class, as the case may be, if the said date had fallen or the said event had happened at the date of the application to the Court; or
- (c) Any unborn or unknown person; or
- (d) Any person in respect of any discretionary interest of his under protective trusts where the interest of the principal beneficiary has not failed or determined – any arrangement (by whomsoever proposed, and whether or not there is any other person beneficially interested who is capable of assenting to it) varying or revoking all or any of the trusts, or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts:

Provided that, except by virtue of paragraph (d), the Court shall not approve an arrangement on behalf of any person if the arrangement is to his detriment; and in determining whether any such arrangement is to the detriment of any person the Court may have regard to all benefits which may accrue to him directly or indirectly in consequence of the arrangement, including the welfare and honour of the family to which he belongs:

Provided also that this subsection shall not apply to any trust affecting property settled by any Act other than the Family Law Code.

(2) Any rearrangement approved by the Court under subsection (1) shall be binding on all persons on whose behalf it is so approved, and thereafter the trusts as so rearranged shall take effect accordingly.

(3) In this section –

“discretionary interest” means an interest arising under the trust specified in section 42 (1)(b) or any like trust;

“principal beneficiary” has the same meaning as in section 42(1);

“protective trusts” means the trusts specified in section 42 (1) (a) or (b) or any like trusts.

**65 [Repealed]**

**66 Right of trustee to apply to Court for directions**

(1) Any trustee may apply to the Court for directions concerning any property subject to a trust, or respecting the management or administration of any such property, or respecting the exercise of any power or discretion vested in the trustee.

(2) Every such application shall be served upon, and the hearing may be attended by, all persons interested in the application or such of them as the Court thinks expedient.

**67 Persons entitled to apply to Court**

(1) An order under this Act for the appointment of a new trustee or concerning any property subject to a trust may be made on the application of any person beneficially interested in the property, whether under disability or not, or on the application of any person duly appointed trustee of it or intended to be so appointed.

(2) An order under this Act concerning any interest in any property subject to a mortgage may be made on the application of any person beneficially interested in the property, whether under disability or not, or of any person interested in the money secured by the mortgage.

**68 Applications to Court to review acts and decisions of trustee**

(1) Any person who is beneficially interested in any trust property, and who is aggrieved by any act or omission or decision of a trustee in the exercise of any power conferred by this Act, or who has reasonable grounds to anticipate any such act or omission or decision of a trustee by which he will be aggrieved, may apply to the Court to review the act or omission or decision or to give directions in respect of the anticipated act or omission or decision; and the Court may require the trustee to appear before it, and to substantiate and uphold the grounds of the act or omission or decision that is being reviewed, and may make such order in the premises as the circumstances of the case may require:

Provided that no such order shall –

- (a) Disturb any distribution of the trust property made without breach of trust before the trustee became aware of the making of the application to the Court;
- (b) Affect any right acquired by any person in good faith and for valuable consideration.

(2) Where any such application is made, the Court may –

- (a) If any question of fact is involved, direct how the question shall be determined;
- (b) If the Court is being asked to make an order that may prejudicially affect the rights of any person who is not a party to the proceedings, direct that any such person shall be made a party to the proceedings.

**69 Protection of trustee while acting under direction of Court**

(1) Any trustee acting under any direction of the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the direction, notwithstanding that the order giving the direction is subsequently invalidated, overruled, set aside, or otherwise rendered of no effect.

(2) This section shall not extend to indemnify any trustee in respect of any act done under any such direction if he has been guilty of any fraud or wilful concealment or misrepresentation in obtaining the direction or in acquiescing in the Court making the order giving the direction.

**70 Powers of Court to give judgment in absence of a trustee**

Where in any proceedings the Court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the Court, and that he cannot be found, the Court may hear and determine the proceedings and give judgment against that person in his character of a trustee as if he had been duly served, or had entered an appearance in the action, and had also appeared by his counsel and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the proceedings in any other character.

**71 Power of Court to charge costs**

The Court may order the costs and expenses of and incidental to any application for any order under this Act, or of and incidental to any such order, or any conveyance or assignment in pursuance of it, to be raised and paid out of the property in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the Court may seem just.

**72 Commission**

(1) The Court may, out of the property subject to any trust, allow to any person who is or has been a trustee thereof or to that person's personal representative such commission or percentage for that person's services as is just and reasonable.

(1A) In considering under subsection (1) what commission or percentage is just and reasonable the Court shall have regard to the following circumstances, namely

- (a) The total amount that has already been paid to any trustee of the trust, whether under the trust instrument or to any earlier order of the Court or to any agreement or otherwise;
- (b) The amount and difficulty of the services rendered by the trustee;
- (c) The liabilities to which the trustee is or has been exposed, and the responsibilities imposed on him;
- (d) The skill and success of the trustee in administering the trust;
- (e) The value of the trust property;
- (f) The time and services reasonably required of the trustee;
- (g) Whether any commission or percentage that might otherwise have been allowed should be refused or reduced by reason of delays in the administration of the trust that were occasioned, or that could reasonably have been prevented, by the trustee; and
- (h) All other circumstances that the Court considers relevant.

(2) The Court may make any such allowance at any time, before or during the administration of the trust, or on the termination of the trust, and may, subject to such terms and conditions as the Court thinks fit, make any such allowance in respect of services to be rendered by the trustee during any specified period subsequent to the date of the order.

(3) Where the Court allows a commission or percentage under this section in any case in which 2 or more persons are or have been the trustees, whether acting at the same time or at different times, the amount so allowed shall be apportioned among the trustees as they mutually agree; and if there is no such agreement the Court may, apportion the total amount allowed among the trustees in such manner as it thinks fit, and, in particular, may divide the amount in unequal shares or may make the allowance to one or more of the trustees to the exclusion of the other or others.

**73 Power to relieve trustee from personal liability**

If it appears to the Court that a trustee, whether appointed by the Court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed the breach, then the Court may relieve him either wholly or partly from personal liability for the same.

**74 Power to make beneficiary indemnify for breach of trust**

Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Court may, and notwithstanding that the beneficiary may be a married woman restrained from anticipation, make such order as to the Court seems just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through him.

**75 Barring of claims**

(1) Where a trustee desires to reject a claim that has been made, or that he has reason to believe may be made –

- (a) To or against the estate or property that he is administering; or
- (b) Against the trustee personally by reason of his being under any liability in respect of which he is entitled to reimburse himself out of the estate or property that he is administering –

the trustee may serve upon the claimant or the person who may become a claimant as aforesaid a notice calling upon him, within a period of 3 months from the date of service of the notice, to take legal proceedings to enforce the claim and also to prosecute the proceedings with all due diligence.

(2) At the expiration of that period the trustee may apply to the Court for an order under subsection (3), and shall serve a copy of the application on the person concerned.

(3) If on the hearing of that application that person does not satisfy the Court that he has commenced the proceedings and is prosecuting them with all due diligence, the Court may make an order –

- (a) Extending the period, or barring the claim, or enabling the trust property to be dealt with without regard to the claim; and
- (b) Imposing such conditions and giving such directions, including a direction as to the payment of the costs of or incidental to the application, as to the Court seems just.

(3A) Where a trustee has served any such notices in respect of claims on two or more persons and the period specified in each of the said notices has expired, he may, if he thinks fit, apply for an order in respect of the claims of those persons in a single application, and the Court may on that application make an order accordingly.

(4) [Repealed]

(5) [Repealed]

(6) On an application by a trustee under this section, the persons beneficially entitled to the estate or property need not be made parties to the proceedings, and no order made by the Court on the application shall prejudice their right to contest the claim of the trustee to be entitled to indemnify himself out of the estate or property that he is administering if they have not been parties to the proceedings in which the order was made.

**76 Distribution of shares of missing beneficiaries**

(1) Where any property is held by a trustee and the property or any part of it cannot be distributed because the trustee does not know whether any person who is or may be entitled to it is or at any material date was in existence, or whether all of any of the persons who are members of any class who are or may be entitled to it are or at any material date were in existence, or because the trustee does not know whether any such person is alive or dead or where he is, the trustee may publish such advertisements (whether in Niue or elsewhere) as are appropriate in the circumstances calling upon every such person and every person claiming through any such person to send in his

claim within a time to be specified in the advertisements, not being less than 2 months in any case from the date on which the advertisement is published. Where the trustee is in doubt as to what advertisements should be published under this subsection, he may apply to the Court for directions in that regard.

(2) (a) Where the trustee has received (whether as a result of the advertisements or not) any claim to be a person to whom any such advertisement relates, or any notice that any person may claim to be such a person but the trustee is not satisfied that the claim is or would be valid, the trustee may serve upon the claimant or the person of whom the trustee has notice as aforesaid, a notice calling upon him, within a period of 3 months from the date of service of the notice, to take legal proceedings to enforce the claim, if he wishes to pursue it, and to prosecute the proceedings with all due diligence; and advising him that, if he fails to do so, his claim may be disregarded and application may be made to the Court without further notice for an order authorising the distribution of the property.

(b) Nothing in this subsection shall make it necessary for the trustee to serve such a notice on any such person; and the Court may make an order under this section, whether or not such a notice has been served on any such person, if it is satisfied that the information supplied to the trustee by that person or otherwise in the possession of the trustee indicates either that the person is not one of the persons specified in the advertisements or that he is not likely to be one of those persons.

(3) Upon proof by affidavit of the circumstances, and of the inquiries that have been made, and of the results of the inquiries and advertisements, and of the claims of which the trustee has received notice, and of the notices that the trustee has given to claimants under subsection (2), and of the action (if any) which the claimants have taken to enforce their claims, the Court may order that the trustee may distribute the property or part of it, subject to such conditions as the Court may impose –

(a) As if every person and every member of any class of persons specified in the order (being all or any of the persons specified in the advertisements) is not in existence or never existed or has died before a date or event specified in the order; and

(b) Where as a consequence of the order it is not possible or practicable to determine whether or not any condition or requirement affecting a beneficial interest in the property or any part of it has been complied with or fulfilled, as if that condition or requirement had or had not been complied with or fulfilled (as the Court may determine).

(4) In making any order under subsection (3), the Court may –

(a) Disregard (without express reference to it in the order) the claims of any persons who do not appear to the Court to be, or to be likely to be, any of the persons specified in the advertisements;

(b) Disregard (without express reference to it in the order) the claim of any person to whom the trustee has given notice under subsection (2) and who has failed to take legal proceedings to enforce the claim or to prosecute any such proceedings with all due diligence;

(c) Exclude from the operation of the order any person to whom the trustee has not given notice under subsection (2) and who in the opinion of the Court may be one of the persons specified in the advertisements, or any person whom the Court considers should for any reason be excluded from the operation of the order;

(d) Provide that the order shall not be acted on for such period or except on such conditions as may be specified in the order or that the effect of the order shall during a period so specified be advertised in such manner and form as may be specified in the order, or that the order be served upon such person or persons as are specified in it; and in the event of the Court exercising the jurisdiction conferred by this paragraph it may in the order direct that the same shall be of no effect in respect of any person specified in it in the event of that person instituting proceedings in Niue to enforce his claim and serving the proceedings upon the trustee within such period as is specified in the order.

(5) Any such order may be made notwithstanding that there has not been strict compliance with any directions as to advertisements previously given by the Court, or that an error has been made in any advertisement (whether or not any directions have previously been given by the Court) if the Court considers that the error would not be likely to have prejudiced or misled the persons to whom the advertisement relates.

(6) (a) Where the Court makes an order under this section that the trustee may distribute any property or part of it as if every person and every member of any class of persons specified in the order (not being a person expressly excluded from the operation of the order) is not in existence or never existed or has died before a date or event specified in the order, and the trustee distributes under the order, the trustee shall be exonerated from any further liability to any such person or to any member of any such class.

(b) Nothing in this subsection shall prejudice any remedy which any person may have against any person other than the trustee, including any right which he may have to follow the property and any money or property into which it is converted.

(7) The Court may make one or more orders under this section in respect of the same property.

(8) Any order made under this section may direct how the costs of the order and of advertising under or for the purposes of the order shall be borne.

(9) It shall not be necessary to serve notice of an application for an order under this section upon any person, unless the Court otherwise orders.

(10) Nothing in this section shall prejudice the right of the trustee to distribute under any other law or statutory provision or prejudice the protection thereby afforded when he makes distribution under any such law or provision.

## 76A Service of notices under sections 75 and 76

(1) Any notice, application, or order that is to be served under section 75 or section 76 or under any order made under section 76, may be served –

- (a) Either by delivering it to the person for whom it is intended or by sending it by post in a registered letter addressed to that person at his usual or last known place of abode or business; or
- (b) In such other manner as may be directed by an order of the Court.

(2) Where a notice is sent by post as aforesaid it shall be deemed to be served at the time at which the letter would have been delivered in the ordinary course of post.

### *Payment to Crown*

## 77 Payment by trustees to Crown

(1) (a) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may, on filing in the Court nearest

to which they or the majority of them reside an affidavit describing the instrument creating the trust and giving particulars of the persons beneficially entitled under the trust to the best of their knowledge and belief, and on serving a copy of the affidavit on the Financial Secretary, pay the money or transfer the securities (if they can legally be so transferred) to the Crown in the matter of the particular trust, which shall be described in the affidavit by the names of the parties as accurately as may be for the purpose of distinguishing it.

- (b) All money and securities so paid or transferred shall be administered in the Treasury.
- (c) All such money and all money derived from securities which have been transferred to or vested in the Crown under this section shall be credited by the Financial Secretary to a deposit account established under the Public Revenues Act to be dealt with as hereafter provided in this Act.

(2) The receipt of the Financial Secretary shall be a sufficient discharge to the trustees for the money or securities paid or transferred to the Crown under this section.

(3) Where money or securities are vested in any persons as trustees, and the majority are desirous of paying or transferring the same to the Crown as aforesaid, but the concurrence of the other or others cannot be obtained, the Court may order the payment or transfer to the Crown to be made by the majority without the concurrence of the other or others.

(4) Where any such money or securities are deposited with any banker, broker or other depositary, the Court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment or transfer to the Crown.

(5) Every transfer, payment, and deliver made under any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid, or delivered.

(6) The Financial Secretary may at any time sell any securities held by the Crown under this section.

(7) [Repealed]

(8) Where any trustee has obtained or is seeking a discharge in respect of any money or securities under this section or has obtained such a discharge under the corresponding provisions of any former section, the Financial Secretary may at any time require that trustee to give such information in his possession or control as he may require in relation to the persons beneficially entitled to the money or securities, including information as to the steps taken to trace those persons; and if any person refuses or wilfully neglects to give any such information that is in his possession or control when so required, or wilfully gives any false information in answer to any such requisition, he commits an offence and shall be liable on conviction to a fine not exceeding 2 penalty units.

## 78 Disposal of funds paid to Crown

(1) At the end of each financial year the Financial Secretary shall publish in the *Gazette* a statement of all money and securities then held by the Crown under section 77, being –

- (a) Money which has not previously been credited to the Niue Government Account under subsection (4);
- (b) Securities which were transferred to the Crown within the immediately preceding 6 years.

(2) Every statement so published in the *Gazette* shall contain sufficient particulars to show the matters in which the money and securities are held by the Crown and the amount held in respect of each matter.

(3) (a) All money and securities for the time being held by the Crown under section 77 (whether or not they are held in the Niue Government Account shall be so held to attend the order of the Court.

(b) Any such money or securities may be paid or transferred by the Financial Secretary to the person entitled to it upon his establishing a claim to it or may be paid or transferred to the person from whom they were received to be held by him as trustee if that person so requests.

(c) All costs and expenses reasonably incurred by the Crown or the Financial Secretary in connection with any such money or securities may be deducted out of the money or securities or out of any other money and securities which are for the time being held by the Crown and are subject to the same trusts.

(4) The Financial Secretary shall transfer to the Niue Government Account all money held under section 77, being money which was –

(a) Paid to the Crown more than 6 years previously; or

(b) Derived from securities which were transferred to the Crown, or transferred or deposited in the name of any Registrar, more than 6 years previously.

(5) Any money previously transferred to the Niue Government Account under subsection (4) which is paid or required to be paid under subsection (3) may be paid out of the Niue Government Account without further appropriation than this subsection.

(6) (a) Under no circumstances shall the liability of the Crown or the Financial Secretary in respect of any securities which are transferred to or vested in the Crown under section 77 exceed the value of those securities and of any other securities and money which are held by the Crown and subject to the same trusts at the time when demand is made for satisfaction of the liability.

(b) If the said securities and money are insufficient to meet any such liability, the claimant shall, in respect of any unpaid balance of the liability, have the same rights and remedies against the person beneficially entitled to the securities in respect of which the liability arose as he would if those securities were transferred to that person.

(7) Neither the Crown nor the Financial Secretary shall have the duties or liabilities of a trustee in respect of any money or securities for the time being held by the Crown under section 77 (whether in the Niue Government Account or not); and no interest shall be payable by the Crown or the Financial Secretary in respect of any money so held.

(8) Where any money or securities paid or transferred to any claimant under this section are afterwards claimed by any other person, the Crown and the Financial Secretary shall not be responsible for the payment or transfer of it but that person shall have recourse against the claimant to whom the money was paid or the securities were transferred.

## 79 Orders in respect of funds paid to Crown

(1) (a) Upon application made *ex parte* by such person or persons as are competent or necessary in that behalf, the Court may make such order as it thinks fit in respect of any money or securities for the time being held by the Crown under section 77 (whether in the Niue Government Account or not), and for the payment, transfer, and administration of it.

(b) The Court may direct service of the application on such persons as it thinks fit.

(2) Every such order shall have the same authority and effect and shall be subject to rehearing and appeal in the same manner as if it had been made in any action regularly instituted in the Court; and if it appears that any such money or securities cannot be safely distributed without the institution of one or more actions, the Court may direct any such action to be instituted.

**PART 6**  
**GENERAL PROVISIONS**

**80 Indemnity to banks and others**

This Act, and every order purporting to be made under this Act, shall be a complete indemnity to all banks, companies, societies, associations, and persons for any acts done pursuant to it, and it shall not be necessary for any bank, company, society, association, or person to inquire concerning the propriety of the order, or whether the Court had jurisdiction to make it.

**81 Operation on bank account of trustees**

(1) Where there are more trustees than one, and the trustees, by writing under their hands communicated to a bank at which their account is kept, arrange that the account may be operated upon by cheques or drafts signed by one or more of them, or by one of them and a delegate or delegates named in the writing of another or others of them, the bank shall be entitled to honour and pay the cheques or drafts as if they had been signed by all the trustees, until the bank receives notice in writing of the revocation, by death or otherwise, of the arrangement.

(2) Nothing in this section or in any rule of law shall prevent trustees from opening a bank account named as an imprest account and from authorising any one or more of their number or any other person or persons to operate upon the imprest account.

**82 [Repealed]**

**83 Special rules as to apportionment**

(1) For the purposes of this section –

- (a) The term “fixed-income asset” means an asset coming within any of the following classes –
  - (i) The securities mentioned in section 4 (1) (a), (c), (d), (e), (f), (g) and (i);
  - (ii) Debentures, bonds, and stock (other than shares) in which the trustee is authorised to invest trust money;
  - (iii) Any other asset bearing interest or carrying the right to a dividend if the interest or dividend is payable at a fixed rate and if the interest or dividend has been paid regularly in respect of the asset for at least 5 years before the material date and if the trustee has no reason to believe that the interest or dividend in respect of the period to which the apportionment relates will not be paid reasonably promptly after the same falls due;
- (b) The term “shares” means share or stock of any company, whether incorporated in or outside Niue except any such shares or stock which constitutes a fixed-income asset under paragraph (a) (iii);
- (c) An appropriation of shares (whether under the power conferred by section 15 (1) (j) or otherwise) shall be deemed to be a transfer of those shares to which subsection (4) applies.

(2) Where any payment received by a trustee in respect of a sale of any fixed-income asset is or includes payment for the right to receive income accrued from

that asset at the time of sale, though the income may not then be due, the amount of the accrued income shall, for the purposes of the trust, be deemed to have been received as income in respect of the period during which it so accrued.

(3) Where any payment made by a trustee in respect of a purchase of any fixed-income asset is or includes payment for the right to receive any income accrued from that asset at the time of the purchase, though the income may not then be due, the amount of the accrued income when received shall, for the purposes of the trust, be deemed to have been received as purchase money repaid.

(4) Where a trustee transfers any shares (not being a fixed-income asset) to the person entitled to it under the trust, then, unless the trustee in his absolute discretion having regard to all the circumstances of the case thinks that it is equitable, practicable, and convenient to make an apportionment, there shall be no apportionment of any dividends which have accrued at the date of transfer but have not then been declared, and no person who would have been beneficially interested in any such dividends if they had been declared and paid to the trustee shall have any claim in respect of it against the trustee or against the transferee of the shares.

(5) Where a trustee sells any shares that are not a fixed-income asset, no part of the proceeds of the sale shall, for the purposes of the trust, be deemed to have been paid for the right to receive dividends which have accrued in respect of the shares at the time of the sale, but have not then been declared, and there shall accordingly be no apportionment of the proceeds as between capital and income.

(6) Where a trustee purchases any shares that are not a fixed-income asset, no part of the purchase price shall, for the purposes of the trust, be deemed to be paid for the right to receive any dividends which have accrued in respect of the shares at the time of the purchase but have not then been declared, and there shall accordingly be no apportionment of the purchase price as between capital and income, nor shall any part of the dividends received by the trustee be deemed to have been received as purchase money repaid.

(7) Except as herein expressly provided, nothing in this section shall affect the rights and obligations of the trustee or of any other person in respect of apportionment of income on the sale or purchase of any asset or the transfer of it to any person beneficially entitled to it.

(8) Anything done by a trustee before the commencement of this section which would have been authorised by this section if then in force shall be deemed to have been authorised by this section.

(9) The provisions of this section shall apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument.

### **83A Examination of accounts of trust estates administered by trustee corporations**

In the case of any trust estate administered by a trustee corporation, a solicitor or accountant authorised in writing by a beneficiary shall be entitled as of right to examine at any reasonable time the accounts of that estate, and for the purpose shall have access to the trustee corporation's books and vouchers (but not the file) relating to that estate, and to the securities and documents of title held by the trustee corporation on account of that estate.

### **83B Audit of other trust estates**

Subject to the provisions of any regulations made under this Act, and unless the Court otherwise orders, the condition and accounts of any trust estate (being an estate which is not being administered by a trustee corporation) shall, on an application being made and notice of it being given in the prescribed manner by or on behalf of any trustee or beneficiary in that

estate, be investigated and audited by such solicitor or such member of the New Zealand Society of Accountants as may be agreed on between the applicant trustee and his co-trustees.

**84 Costs and testamentary expenses to be payable out of capital of settled residuary estate of deceased**

(1) (a) Where, under the provisions of the will of a person dying after the commencement of this Act (in this section referred to as the deceased) any real or personal property included either by specific or general description in a residuary gift is settled by way of succession, no part of the income of that property shall be applicable

in or towards the payment of the funeral, testamentary, and administration expenses, death duties, debts, legacies, and liabilities, or of the interest (if any) on it up to the date of the death of the deceased.

(b) This subsection shall not apply to any commission which is payable to the trustee in respect of any such income or to any testamentary or administration expenses which, apart from this subsection, would be payable wholly out of income.

(2) The income of the settled property shall be applicable in priority to any other assets in payment of the interest (if any) accruing due on the funeral, testamentary, and administration expenses, death duties, debts, legacies, and liabilities after the date of the death of the deceased and up to the payment of it, and the balance of that income shall be payable to the person for the time being entitled to the income of the property.

(3) Where, after the death of the deceased, income of assets comprised in the settled property which are ultimately applied in or towards payment of the funeral, testamentary, and administration expenses, death duties, debts, legacies and liabilities, arises pending that application, that income shall, for the purposes of this section, be deemed income of the residual estate of the deceased.

(4) This section shall only affect the rights of beneficiaries under the will as between themselves, and shall not affect the rights of creditors of the deceased or limit any other powers of the trustee.

(5) The provisions of this section shall apply if and so far only as a contrary intention is not expressed in the will, and shall have effect subject to the terms of the will and of any Act as to charges on property of the deceased.

(6) Nothing in this section shall apply to any annuity which is payable out of the estate of the deceased.

**85 Application of income of settled property pending conversion**

(1) Subject to this section, where under the will of any person any real or personal property included (either by specific or general description) in a residuary gift is settled by way of succession, then, notwithstanding that the property may be of a wasting, speculative, or reversionary nature –

(a) Pending any sale, calling in, or conversion of the settled property, the whole of the net income of property actually producing income shall be applied as income and no part of it shall be appropriated to capital; and

(b) On any such sale, calling in, or conversion, or on the falling in of any reversionary property, no part of the proceeds of the sale, calling in, conversion, or falling in, shall be applied as past income.

(2) This section shall apply only in respect of the wills of persons who die after the date of the commencement of this Act.

(3) This section shall apply if and so far only as a contrary intention is not expressed in the will of the deceased, and shall have effect subject to the terms of that will.

**86 Fees and commission deemed a testamentary expense**

The fees, commission, remuneration and other charges payable to a trustee in respect of the administration of the estate of a deceased person shall be deemed to be testamentary expenses.

**87 Costs of inquiring regarding beneficiaries**

The costs, expenses and charges of the trustee of any property in respect of any inquiries made by him to ascertain the existence and identity of any person or persons entitled to any legacy, money, or distributive share in the property or otherwise incurred in relation to it shall be borne by and paid out of the legacy, money, or distributive share of the person or persons in respect of whom the inquiries were made.

**88 Life tenant to have powers of a trustee in certain cases**

(1) In any case where there is no trustee of any land, but the land is for the time being lawfully vested in any person entitled to the possession of it or to the receipt of the rents and profits from it for an estate for life, or for a term of years determinable with his life, or for any greater estate, that person may exercise all the powers conferred on a trustee by this Act, and the Court may confer on that person all the powers which it could confer on a trustee under this Act; and anything done by any such person in exercise of any such power shall have the same force and effect as if it had been done by a trustee.

(2) Nothing in this section shall authorise any such person to sell any such land, or to raise any capital money by a mortgage of it or other dealing with it, unless the money paid on the sale or the capital money so raised is paid to a trustee who is duly appointed and entitled to receive it.

**89 [Spent]**

**90 Regulations**

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



## **TRUSTEE COMPANIES ACT 1995**

[EDITORIAL NOTE: This Act is not reproduced. With the repeal of the off-shore business legislation by the Companies Act 2006, this statute has little relevance and is listed for repeal.]



# TRUSTS ACT 1994

1994/182 – 28 March 1994

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**To make provision for the law relating to trusts and trustees and related matters**

**PART 1**  
**PRELIMINARY**

**1 Short title**

- (1) This Act is the Trusts Act 1994.
- (2) This Act applies only to trusts created on or after 28 March 1994.

**2 Interpretation**

- (1) In this Act –
  - “bankrupt”, in relation to a corporation, includes a corporation which is insolvent;
  - “beneficiary” means a person entitled to benefit under a trust, or in whose favour a power to distribute trust property may be exercised;
  - “breach of trust” means a breach of any duty imposed on a trustee by this Act or by the terms of the trust;
  - “corporate trustee” means a trustee which is a corporation;
  - “corporation” means a body corporate wherever incorporated;
  - “family” in relation to an individual means his father and mother, his spouse, the father and mother of his spouse, his brothers and sisters and the brothers and sisters of his spouse, his children and remoter issue and the spouses of such children and issue;
  - “functions” includes rights, powers, discretions, obligations, liabilities and duties;
  - “he”, “him”, and “his”, in relation to a corporation include “it” and “its”;
  - “insolvency” includes the making of an administration order, the appointment of a receiver and the bankruptcy of any person;
  - “insurance” includes assurance;
  - “interest”, in relation to a beneficiary, means interest of the beneficiary under a trust;
  - “Minister” means the Minister of Justice;
  - “minor” means a person who has not attained full age under the law of his domicile;
  - “ordinarily resident” has the same meaning as in article 17 of the Constitution;
  - “personal representative” means the executor or administrator of the estate of a deceased person;
  - “profit” includes gain or advantage;
  - “property” –
    - (a) means property of any description, wherever situated, including any share in it,
    - (b) In relation to rights and interests, includes rights and interests whether vested, contingent, defeasible or future;
  - “provisions of this Act” includes the provisions of any order under this Act;
  - “settlor” means a person who provides the trust property or makes a testamentary disposition on trust or to a trust;
  - “terms of a trust” means the written or oral terms of a trust, and any other applicable under its proper law;
  - “trust” includes –
    - (a) the trust property; and
    - (b) the functions, interests and relationships under a trust;
  - “trustee” has the meaning given by section 3, and includes a corporate trustee;
  - “trust property” means property held on trust;
  - “unit trust” means a trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by

them as beneficiaries under the trust in any profits or income arising from the acquisition, holding, management or disposal of property.

(2) For the purposes of this Act, a corporation is resident in the place in which it has its registered office.

### **3 Definition of trust**

A trust exists where a person (known as “a trustee”) holds or has vested in him, or is deemed to hold or have vested in him, property which does not form, or which has ceased to form, part of his own estate –

- (a) For the benefit of a beneficiary, whether or not yet ascertained or in existence; or
- (b) For any valid charitable or non-charitable purpose which is not for the benefit only of the trustee; or
- (c) For such benefit as is mentioned in paragraph (a) and also for any such purpose as is mentioned in paragraph (b).

### **4 Validity of trusts**

Subject to this Act, a trust is valid and enforceable in Niue.

### **5 Proper law of trusts**

(1) Subject to subsection (4), the proper law of a trust shall be –

- (a) The law expressed by the terms of the trust or intended by the settlor to be the proper law;
- (b) If no such law is expressed or intended, the law with which the trust has its closest connection at the time of its creation; or
- (c) If the law expressed by the terms of the trust or intended by the settlor to be the proper law, or the law with which the trust has its closest connection at the time of its creation, does not provide for trusts or the category of trusts involved, then the proper law of the trust shall be the law of Niue.

(2) In ascertaining the law with which a trust has its closest connection, reference shall be made in particular to –

- (a) The place of administration of the trust designated by the settlor;
- (b) The situs of the assets of the trust;
- (c) The place of residence or business of the trustee;
- (d) The objects of the trust and the places where they are to be fulfilled.

(3) The terms of a trust may provide for a severable aspect of the trust (particularly the administration of the trust) to be governed by a different law from the proper law of the trust.

(4) The terms of a trust may provide for the proper law of the trust or the law governing a severable aspect of the trust to be changed from the law of one jurisdiction to the law of another jurisdiction.

(5) Where the proper law of a trust or the law governing a severable aspect of a trust is changed from the law of another jurisdiction (here called “the old law”) to the law of Niue no provision of the old law shall operate so as to render the trust void, invalid, or unlawful or to render void, invalid or unlawful any functions conferred on the trustee under the law of Niue.

(6) Where the proper law of a trust or the laws governing a severable aspect of a trust is changed from the law of Niue to the law of another jurisdiction (here called “the old law”) no provision of the law of Niue shall operate so as to render the trust void, invalid or unlawful or to render void, invalid or unlawful any functions conferred on the trustee under the new law.

(7) This Act shall not apply and the Trustee Act 1956 shall continue to apply to a trust created on or after 28 March 1994 where –

- (a) The trust substantially provides benefits for an individual ordinarily resident in or domiciled in Niue; or
- (b) The trust substantially provides benefits for any corporation or other entity owned by an individual ordinarily resident or domiciled in Niue,

## 6 Creation of a trust

(1) A trust other than a unit trust may be created by an instrument in writing (including a will or codicil), by conduct, by operation of law, or in any other manner whatsoever.

(2) A unit trust may be created only by an instrument in writing.

(3) No formalities or technical expresses are required for the creation of a trust provided that the intention of the settlor to create a trust is clearly manifested.

(4) A trust (other than a trust by operation of law) respecting land situated in Niue shall not be enforceable.

## 7 Maximum duration of a trust and of accumulation of income

(1) Subject to subsection (2), the maximum duration of a trust shall be 120 years from the date of its creation and a trust shall terminate on the 120th anniversary of the date of its creation unless it is terminated sooner.

(2) Subsection (1) shall not apply to a trust established exclusively for a charitable purpose or purposes.

(3) The rule of law known as the rule against perpetuities shall not apply to any trust to which this section applies.

(4) The terms of a trust may direct or authorise the accumulation of all or part of the income of the trust for a period not exceeding the maximum duration of the trust.

## 8 Validity of a trust

(1) Subject to this Act, a trust shall be valid and enforceable in accordance with its terms.

(2) A trust shall be invalid and unenforceable –

- (a) To the extent that –
  - (i) it purports to do anything contrary to the law of Niue; or
  - (ii) it purports to confer any right or power or impose any obligation the exercise of which or the carrying out of which is contrary to the law of Niue; or
  - (iii) it has no beneficiary identifiable or ascertainable (unless the trust was created for a valid charitable or non-charitable purpose);
- (b) To the extent that the Court declares that –
  - (i) the trust was established by duress, fraud, mistake, undue influence or misrepresentation; or
  - (ii) the trust is immoral or contrary to public policy; or
  - (iii) the terms of the trust are so uncertain that its performance is rendered impossible (provided that a charitable purpose shall be deemed always to be capable of performance); or
  - (iv) the settlor was, at the time of its creation, incapable under the law in force in Niue of creating such a trust.

(3) Where a trust is created for two or more purposes of which some are lawful and others are not, or where some of the terms of a trust are invalid and others are not –

- (a) If those purposes cannot be separated or the terms cannot be separated, the trust is invalid;
- (b) If those purposes can be separated or the terms can be separated, the Court may declare that the trust is valid as to the terms which are valid and the purposes which are lawful.

(4) Where a trust is partially invalid the Court may declare what property is to be held subject to the trust.

(5) Property provided by a settlor and as to which a trust is invalid shall, subject to any order of the Court, be held by the trust for the settlor absolutely or, if he is dead, as if it had formed part of his estate at his death.

(6) Where a trust is created under the law of Niue, the Court shall not vary it or set it aside or recognise the validity of any claim against the trust property under the law of another jurisdiction or the order of a court of another jurisdiction in respect of –

- (a) The personal and proprietary consequences of marriage or the termination of marriage;
- (b) Succession rights (whether testate or intestate) including the fixed shares of spouses or relatives; or
- (c) The claims of creditors in an insolvency.

## **9      Property which may be held on trust**

(1) Any property may be held by or vested in a trustee upon trust.

(2) A trustee may accept from any person property to be held on trust.

(3) A trustee shall not be bound to accept property to be held on trust, but where a trustee accepts property subject to the performance of an obligation the trustee shall be deemed to have given to the obligee for good consideration an undertaking to perform that obligation.

(4) Where a settlor declares a trust respecting property he does not own at the time of the declaration, then –

- (a) The trust is incompletely constituted at the time of the declaration and no rights or duties arise thereunder, but
- (b) If the settlor subsequently receives property which was the intended subject matter of the declaration of trust, the Court shall at the instance of the beneficiary or the trustee (and whether the beneficiary has given consideration for the declaration of trust or not) compel the settlor to transfer that property to the trustee or to hold that property on the terms of the trust.

## **PART 2**

### **THE SETTLOR, BENEFICIARIES AND PURPOSES OF A TRUST**

## **10     Who may be the settlor of a trust**

(1) Any person who has under the law of Niue the capacity to own and transfer property may be the settlor of a trust.

(2) The settlor may also be a trustee, a beneficiary or a protector of the trust.

## **11     Beneficiaries of a trust**

(1) A beneficiary shall be identifiable by name or ascertainable by reference to a relationship of some person (whether or not living at the time of creation of the trust) or otherwise by reference to a description or to a class.

- (2) The terms of a trust may –
- (a) Provide for the addition of a person as a beneficiary or the exclusion of a beneficiary from benefit under the trust;
  - (b) Impose an obligation on a beneficiary as a condition of benefit under the trust;
- (3) Where a trust is in favour of a class of persons then, subject to the terms of the trust –
- (a) The class closes when it is no longer possible for any other person to become a member of the class;
  - (b) A woman over the age of 60 years shall be deemed to be no longer capable of bearing a child; and
  - (c) Where the interest of the class relates to income, and no member of the class exists, the income shall be accumulated and retained until a member of the class exists or the class closes.
- (4) A beneficiary may –
- (a) Disclaim his whole interest under a trust; or
  - (b) Subject to the terms of the trust, disclaim part of his interest under a trust (whether or not he has received some benefit from his interest);
- (5) Subject to the terms of the trust, a disclaimer –
- (a) Shall be in writing;
  - (b) May be temporary; and
  - (c) May, if the disclaimer so provides, be revoked in the manner and under the circumstances specified therein.
- (6) Where a beneficiary disclaims the whole or part of his interest under a trust the like consequences shall apply under section 7(5) as if the trust were invalid with respect to that interest or that part.

## **12 Nature of a beneficial interest**

- (1) The interest of a beneficiary is personal property.
- (2) Subject to the terms of the trust, the interest of a beneficiary may be sold, pledged, charged, transferred or otherwise dealt with in any manner whatsoever.

## **13 Protective or spendthrift trusts**

- (1) The terms of a trust may make the interest of a beneficiary –
  - (a) Subject to termination;
  - (b) Subject to restriction on alienation of or dealing in that interest or any part of that interest; or
  - (c) Subject to diminution or termination in the event of the beneficiary becoming insolvent or any of his property becoming liable to seizure or sequestration for the benefit of his creditors and such a trust shall be known as a protective or a spendthrift trust.
- (2) Where any property is directed to be held on a protective or spendthrift trust for the benefit of a beneficiary, the trustee shall hold that property –
  - (a) In trust to pay the income to the beneficiary until the interest terminates in accordance with the terms of the trust or a determining event occurs; and
  - (b) If a determining event occurs, and while the interest of the beneficiary continues, in trust to pay the income to such of the following (and if more than one in such shares) as the trustee in his absolute discretion shall appoint –
    - (i) the beneficiary and any spouse or child of the beneficiary; or

(ii) if there is no spouse or child of the beneficiary the beneficiary and the persons who would be entitled to the estate of the beneficiary if he had then died intestate and domiciled in Niue.

(3) In subsection (2) “determining event” means the occurrence of any event or any act or omission on the part of the beneficiary (other than the giving of consent to an advancement of trust property) which would result in the whole or part of the income of the beneficiary from the trust becoming payable to any person other than the beneficiary.

(4) Any rule of law or public policy which prevents a settlor from establishing a protective or a spendthrift trust of which he is a beneficiary is hereby abolished.

#### **14 Letters or memoranda of wishes**

(1) The settlor of a trust may give to the trustee a letter of his wishes or the trustee may prepare a memorandum of the wishes of the settlor with regard to the exercise of any functions conferred on the trustee by the terms of the trust.

(2) A beneficiary of a trust may give to the trustee a letter of his wishes or the trustee may prepare a memorandum of the wishes of the beneficiary with regard to the exercise of any functions conferred on the trustee by the terms of the trust.

(3) Where a trust is in favour of a class of persons then a member of that class may give to the trustee a letter of his wishes or the trustee may prepare a memorandum of the wishes of that member with regard to the exercise of any functions conferred on the trustee by the terms of that trust.

(4) Where a letter of wishes or a memorandum of wishes is given to or prepared by the trustee of a trust then –

- (a) The trustee may have regard to the letter or memorandum in exercising any functions conferred upon him by the terms of the trust; but
- (b) The trustees shall not be bound to have regard to that letter or memorandum and shall not be accountable in any way for his failure or refusal to have regard to that letter or memorandum.

(5) No fiduciary duty or obligation shall be imposed on a trustee merely by the giving to him of a letter of wishes or the preparation by him of a memorandum of wishes.

#### **15 Definition of charitable purposes**

(1) For the purposes of this Act, and subject to subsections (2) and (3), the following purposes shall be regarded as charitable –

- (a) The relief of poverty;
- (b) The advancement of education;
- (c) The advancement of religion;
- (d) The protection of the environment;
- (e) The advancement of human rights and fundamental freedoms;
- (f) The advancement of amateur sport;
- (g) Any other purposes which are beneficial to the community.

(2) A purpose shall not be regarded as charitable unless the fulfilment of that purpose is for the benefit of the community or a substantial section of the community having regard to the type and nature of the purpose.

(3) A purpose may be regarded as charitable whether it is to be carried out in Niue or elsewhere and whether it is beneficial to the community in Niue or elsewhere.

**16 Trusts for non-charitable purposes**

(1) A trust may be created for the purpose which is non-charitable provided that –

- (a) The purpose is specific, reasonable and capable of fulfilment;
- (b) The purpose is not immoral, unlawful or contrary to public policy; and
- (c) The terms of the trust provide for the appointment of a protector who is capable of enforcing the trust and for the appointment of a successor to any protector.

(2) If Cabinet, on the advice of the Minister, has reason to believe that there is no protector of a trust for a non-charitable purpose or the protector is unwilling or incapable of acting, it may appoint a person to be protector of the trust and such person shall from the date of appointment exercise the functions of protector of the trust.

**PART 3**  
**PROTECTORS AND TRUSTEES**

**17 The protector of a trust**

(1) The terms of a trust may provide for the office of protector of the trust.

(2) The protector shall have the following powers –

- (a) (Unless the terms of the trust shall otherwise provide) the power to remove a trustee and to appoint a new or additional trustee;
- (b) Such further powers as are conferred on the protector by the terms of the trust or of this Act.

(3) The protector of a trust may also be a settlor, a trustee or a beneficiary of the trust.

(4) In the exercise of his office, the protector shall not be accounted or regarded as a trustee.

(5) Subject to the terms of the trust, in the exercise of his office a protector shall owe a fiduciary duty to the beneficiaries of the trust or to the purpose for which the trust is created.

(6) Where there is more than one protector of a trust then, subject to the terms of the trust, any functions conferred on the protectors may be exercised if more than one half of the protectors for the time being agree on its exercise.

(7) A protector who dissents from a decision of the majority of protectors may require his dissent to be recorded in writing.

**18 Who may be the trustee of a trust**

(1) Any person who has under the law of Niue the capacity to own and transfer property may be the trustee of a trust.

(2) The trustee may also be a settlor, a beneficiary or a protector of the trust.

**19 The number of trustees**

(1) Unless the terms of the trust provide for a greater number, the minimum number of trustees shall be one.

(2) A trust shall not cease to be valid only on the ground that there is no trustee or fewer than the number of trustees required by the terms of the trust.

(3) Where there is no trustee or fewer than the number of trustees required by the terms of the trust, the necessary number of new or additional trustees shall be appointed and until the minimum number is reached the surviving trustee (if any) shall act only for the purpose of preserving the trust property.

(4) Except in the case of a trust established for a charitable purpose –

- (a) The number of trustees shall be not more than four; and
- (b) If at any time there are more than four persons named as trustees, only the first four persons so named shall be the trustees of the trust.

**20 Appointment of new or additional trustees**

- (1) Where the terms of a trust contain no provision for the appointment of a new or additional trustee, then –
  - (a) The protector (if any); or
  - (b) The trustees for the time being (but so that a trustee shall not be required to join in the appointment of his replacement); or
  - (c) The last remaining trustee; or
  - (d) The personal representative or liquidator of the last remaining trustee; or
  - (e) If there is no such person (or no such person willing to act) the Court may appoint a new or additional trustee.

(2) Subject to the terms of the trust, a trustee appointed under this section shall have the same functions and may act as if he had been originally appointed a trustee.

(3) On the appointment of a new or additional trustee, anything requisite for vesting the trust property in the trustees for the time being of the trust shall be done.

**21 Appointment of trustee resident in Niue**

(1) Where there is no trustee resident in Niue, a beneficiary may apply for the appointment of a person, resident in Niue and nominated in the application, as an additional trustee.

- (2) The Court –
    - (a) If satisfied that notice of the application has been served on the existing trustee;
    - (b) Having heard any representations; and
    - (c) Having ascertained that the person nominated is willing to act;
- may appoint that person as an additional trustee.

(3) Notwithstanding section 19, the power contained in this section may be exercised even if it results in there being more than four trustees for the time being of the trust.

(4) The terms of a trust may expressly exclude the operation of subsections (1) and (2).

**22 Renunciation of trusteeship**

(1) No person shall be obliged to accept appointment as a trustee, but a person nominated as trustee who knowingly intermeddles with the trust property shall be deemed to have accepted appointment as a trustee.

(2) A person who has not accepted and is not deemed to have accepted appointment as a trustee of a trust may within a reasonable period of time after becoming aware of this nomination as trustee –

- (a) Disclaim his appointment by notice in writing to the other trustees of such trust (if any); or
- (b) If there are no such other trustees or such other trustees cannot be contacted, apply to the Court for relief from his appointment and the Court may make such order as it thinks fit.

(3) A person nominated as a trustee who does not act under subsection (2) within a reasonable period of becoming aware of his nomination shall be deemed to have accepted appointment as a trustee.

**23 Resignation or removal of trustees**

- (1) A trustee other than a sole trustee may resign by notice in writing to his co-trustees.
- (2) A trustee shall cease to be a trustee immediately upon –
- (a) The delivery of a notice of resignation under subsection (1);
  - (b) His removal from office by the Court;
  - (c) His removal from office by the protector of the trust;
  - (d) The coming into effect of or the exercise of a power under a provision in the terms of the trust under which he is removed from, or otherwise ceases to hold, his office.
- (3) A person who ceases to be a trustee shall do everything necessary to vest the trust property in the new or continuing trustees.
- (4) When a trustee resigns or is removed –
- (a) He shall, subject to paragraph (b), daily surrender all trust property held by or vested in him or otherwise under his control;
  - (b) He may require that he be provided with reasonable security for liabilities (existing, future, contingent or other) before surrendering the trust property.
- (5) A former trustee shall not be liable to any trustee or to any beneficiary or other person interested under the trust for any act or omission in relation to the trust property or to his functions as a trustee, except for any liability –
- (a) Arising from a breach of trust to which the trustee (or, in the case of a corporate trustee, any of its officers or employees) was a party or was privy;
  - (b) In respect of an action to recover from the trustee (or, in the case of a corporate trustee, any of its officers or employees) trust property or the proceeds thereof in his possession or under his control.

**24 Nature of trustees' and protectors' interests**

- (1) Subject to subsection (2) –
- (a) The interest of a trustee or protector in the trust property is limited to that which is necessary for the proper performance of the trust; and
  - (b) The trust property does not form part of the trustee's or protector's estate.
- (2) Where a trustee or protector of a trust is also a beneficiary of it, subsection (1) does not apply to his interest as a beneficiary.
- (3) Where a trustee or protector becomes insolvent, or upon his property becoming liable to distress, seizure, sequestration or similar process of law, his creditors shall have no recourse against the trust property except to the extent that the trustee or protector himself has a claim against it or a beneficial interest in it.

**25 Corporate trustee may act by resolution**

A corporate trustee may –

- (a) Act in connection with a trust by a resolution of the corporate trustee or of its Board of Directors or other governing body; or
- (b) Appoint an officer or employee to act on its behalf in connection with the trust.

**26 Trustees of more than one trust**

- (1) A trustee is not, in the absence of fraud, affected by notice of any instrument, matter, fact or thing in relation to a trust if he obtained notice of it by reason of his acting or having acted as trustee of another trust.

(2) A trustee of a trust shall disclose to his co-trustees any interest which he has as trustee of another trust if any transaction in relation to the first mentioned trust is to be entered into with the trustees of the other trust.

**27 Dealings by trustees with third parties**

(1) Where, in a transaction or matter affecting a trust, a trustee informs a third party that he is acting as trustee, a claim by the third party in respect of the transaction or matter shall, subject to subsection (3), extend only to the trust property.

(2) If the trustee fails to inform the third party that he is acting as trustee –

- (a) He incurs personal liability to the third party in respect of the transaction or matter; and
- (b) He has a right of indemnity against the trust property in respect of his personal liability, unless he acted in breach of trust.

(3) Nothing in this section shall prejudice any claim for breach of warranty or authority.

(4) A bona fide purchaser for value without notice of a breach of trust –

- (a) May deal with a trustee in relation to trust property as if the trustee were the beneficial owner of it; and
- (b) Is not affected by the trusts on which the property is held.

(5) A third party paying or advancing money to a trustee is not concerned to see –

- (a) That the money is needed in the proper exercise of the trust functions;
- (b) That no more than is so needed is raised; or
- (c) That the transaction or the application of the money is proper.

(6) In this section “third party” means a person other than a settlor, trustee, protector or beneficiary of the trust.

**PART 4**

**DUTIES AND POWERS OF TRUSTEES**

**28 General duties of trustees**

(1) A trustee shall in the execution of his functions –

- (a) Act with due diligence; and
- (b) Observe utmost good faith; and
- (c) Act to the best of his skills and abilities; and
- (d) Exercise the standard of care of a reasonable and prudent man of business.

(2) A trustee shall carry out and administer the trust under this Act and, subject to it, in accordance with the terms of the trust.

(3) A trustee shall owe a fiduciary duty to the beneficiaries of the trust, the members of a class for whose benefit the trust was established, or the purpose for which the trust was established.

(4) Where a fiduciary duty is owed to a purpose for which a trust was established, that duty may be enforced by the protector of the trust or (in the case of a trust established for a charitable purpose) by the Minister.

(5) A trustee shall, subject to the terms of the trust and to the provisions of this Act –

- (a) Ensure that the trust property is held by or vested in him or is otherwise under his control; and
- (b) Preserve and, so far as is reasonable, enhance the value of the trust property.

(6) Except with the approval of the Court or in accordance with the terms of the trust or the provisions of this Act, a trustee shall not –

- (a) Derive, directly or indirectly, any profit from his trusteeship;
- (b) Cause or permit any other person directly or indirectly to derive any profit from his trusteeship; or
- (c) On his own account enter into any transaction with his co-trustees or relating to the trust property which may result in any such profit.

(7) The trustee of a trust shall keep accurate accounts and records of his trusteeship.

(8) A trustee shall keep trust property separate from his own property and separately identifiable from any other property of which he is a trustee.

## **29 Duty to supply information and duty of confidentiality**

(1) A trustee shall so far as reasonable and within a reasonable time of receiving a request in writing to that effect, provide full and accurate information as to the state and amount of the trust property and the conduct of the trust administration to

- 
- (a) The Court;
- (b) The settlor or protector of the trust;
- (c) In the case of a trust established for a charitable purpose, the Minister;
- (d) Subject to the terms of the trust, any beneficiary of the trust who is of full age and capacity; and
- (e) Subject to the terms of the trust, any charity for the benefit of which the trust was established.

(2) Subject to this Act and to the terms of the trust, and except as is necessary for the proper administration of the trust or by reason of any other Act, the trustee of a trust shall keep confidential all information regarding the state and amount of the trust property or the conduct of the trust administration.

(3) A trustee is not (subject to the terms of the trust and to any order of the Court) obliged to disclose documents which reveal –

- (a) His deliberations as to how he should exercise his functions as trustee;
- (b) The reasons for any decision made in the exercise of those functions;
- (c) Any material upon which such a decision was or might have been based.

## **30 Duty of trustees to act together**

(1) Subject to the terms of the trust, all the trustees of a trust shall join in the execution of the trust.

(2) Subject to subsections (3) and (4), no functions conferred on trustees shall be exercised unless all the trustees agree on their exercise.

(3) Subject to the terms of the trust and to subsection (4), any functions conferred on trustees of a charitable trust shall be exercised if more than one of the trustees for the time being of the trust agree on their exercise.

(4) The terms of a trust may empower the trustees to act individually or by a majority with respect to the exercise of some of all of the functions conferred on the trustees or to delegate the exercise of these functions to one or more trustees.

(5) A trustee who dissents from a decision of the majority of trustees or of a co-trustee or of the trustees to whom any functions have been delegated may require his dissent to be recorded in writing.

**31 Duty to act impartially**

(1) Subject to the terms of the trust, where a trust is established for one or more beneficiaries or purposes (whether concurrent or consecutive), a trustee (other than a trustee who is also a beneficiary) shall act impartially as between these beneficiaries and purposes.

(2) Subject to the terms of the trust and to the provisions of this Act, any rule of law which requires a trustee to buy, hold or sell certain investments or to apportion the capital or income of the trust fund between beneficiaries is hereby abolished.

**32 General powers of trustees**

(1) Subject to the terms of the trust and the provisions of the Act, a trustee shall have in relation to the trust property all the powers of a beneficial owner.

(2) Subject to the terms of the trust and the provisions of this Act, a trustee shall exercise his functions only in the interests of the beneficiaries or of the purpose for which the trust is established and in accordance with the terms of the trust.

(3) Where the terms of a trust provide that the trustee may add or remove beneficiaries or purposes for which the trust is established, then if such power is exercised properly and on the basis of valid considerations the exercise of the power shall not be regarded as a breach of the duty of the trustee under the trust.

(4) A trustee may sue and be sued as trustee.

(5) The terms of a trust may require a trustee to consult or obtain the consent of another person before exercising any functions under this trust.

(6) Where he considers it necessary or desirable in the interests of the good administration of the trust, a trustee may consult a lawyer, accountant, investment advisor or other person in relation to the affairs of the trust.

(7) A person shall not, merely by virtue of giving or refusing his consent to the exercise of any functions or being consulted in relation to the affairs of a trust, be deemed to be a trustee or to owe a fiduciary duty to the beneficiaries of the trust.

**33 Powers of investment**

(1) Subject to the terms of the trust and to the provisions of this Act, a trustee may invest any money requiring investment in any investment or property of whatsoever nature and wheresoever situated and whether producing income or not and whether involving any liability or not and upon such security (if any) as the trustee shall in his absolute discretion think fit as if the trustee were the absolute owner of it.

(2) Where the terms of a trust or any other instrument provide that any money requiring investing shall only be invested in "authorised trustee investments" (or any similar expression) then the money shall be invested only in such investments as are specified in Schedule 1.

(3) The terms of a trust may provide that Schedule 1 shall apply to the trust with such modifications as are specified by the terms of the trust.

(4) Cabinet may, on the advice of the Minister, by Order published in the *Gazette* amend the list of authorised trustee investments in paragraph 1 of Schedule 1.

(5) A trustee shall not be liable for breach of trust by reason only of continuing to hold an investment which has ceased to be an investment authorised by the terms of the trust or by the general law.

(6) Subject to the terms of the trust, in selecting investments a trustee or (as the case may be) any investment advisor or other person to whom the trustee has delegated the management of the trust property shall have regard –

- (a) To the need of diversification of investments in the trust, in so far as is appropriate to the circumstances of the trust; and
- (b) To the suitability to the trust of the investments proposed.

(7) Subject to the terms of the trust, before investing money in any investment a trustee shall consider whether he should obtain appropriate advice as to whether the investment is suitable and satisfactory and (if he considers that the obtaining of such advice is necessary) shall obtain and consider such advice accordingly.

(8) Subject to the terms of the trust, a trustee shall determine whether and at what intervals he should obtain appropriate advice as to whether the existing investments of the trust are suitable and satisfactory and (if he considers that the obtaining of such advice is necessary) shall obtain and consider such advice accordingly.

(9) For the purposes of subsections (7) and (8), advice is appropriate if it is the advice of a person who is reasonably believed by the trustee to be qualified to give such advice; and such advice may be given by a person notwithstanding that he gives it in the course of his employment (including employment with a trustee of the trust).

#### **34 Implied powers of trustee**

(1) Subject to the terms of the trust, the powers contained in Schedule 2 shall apply to all trusts to which this section applies.

(2) The terms of a trust may provide that some or all of the powers contained in Schedule 2 shall apply to that trust and with or without modification.

#### **35 Delegation by trustees**

(1) A trustee may not delegate the exercise of his functions unless permitted to do so by this Act or by the terms of the trust.

(2) Except where the terms of the trust provide to the contrary, a trustee may

- (a) Delegate the management of trust property to and appoint investment managers whom the trustee reasonably considers to be qualified to manage the investment of the trust property;
- (b) Appoint and employ any lawyer, accountant or other person to act in relation to any of the affairs of the trust or to hold any of the trust property; and
- (c) Authorise any such manager or person to retain or receive commission or other payment usually payable for services of the description rendered.

(3) A trustee shall not be liable for any loss arising to the trust from a delegation or appointment under subsection (2) or from the default of any such delegate or appointee provided that the trustee exercised the standard of care of a reasonable and prudent man of business in –

- (a) The selection of the delegate or appointee; and
- (b) The supervision of the activities of the delegate or appointee.

#### **36 Reimbursements of expenses**

A trustee shall be entitled to be reimbursed out of the trust property all expenses properly incurred by him in connection with the trust.

#### **37 Payment of trustees**

(1) Subject to the terms of the trust, an individual trustee engaged in any profession or business shall be entitled to charge and be paid all usual professional or other charges for business transacted, time spent and acts done by him or any partner

or employee of his or of his firm in connection with the trust including acts which a trustee not being engaged in any profession or business could have done personally.

(2) Subject to the terms of the trust, a corporate trustee shall be entitled to such remuneration as may from time to time be agreed in writing between such corporation and the settlor or protector of (in the absence of such agreement) in accordance with its standard terms and conditions as to the administration of trusts current from time to time.

(3) Where the terms of the trust provide that a trustee shall not receive any payment for acting as such, payment may nevertheless be authorised –

- (a) By the Court; or
- (b) By some or all of the beneficiaries of the trust:
  - Provided that a beneficiary may not authorise such payment if the beneficiary
    - 
    - (i) is a minor or a person under legal disability;
    - (ii) does not have full knowledge of all material facts; or
    - (iii) is improperly induced by the trustee to authorise such payment.

(4) Where only some of the beneficiaries authorise payment to a trustee under subsection (3), the payment shall be made out of the share of the trust property which in the opinion of the trustee is referable to the interests of those beneficiaries who so authorise payment.

### **38 Power to appropriate**

Subject to the terms of the trust, a trustee may, without the consent of any beneficiary, appropriate trust property in or towards satisfaction of the interest of a beneficiary in such manner and in accordance with such valuation as he considers appropriate.

### **39 Power and duty of maintenance**

Subject to the terms of the trust and to any prior interest or charge affecting the trust property, where any property is held by a trustee in trust for any beneficiary for any interest whatsoever –

- (a) While the beneficiary is a minor, the trustee –
  - (i) may pay to the parent or guardian of the beneficiary or otherwise apply the whole or part of the income attributable to that interest for or towards the maintenance, education or benefit of the beneficiary; and
  - (ii) shall accumulate the residue of that income as an accretion to the trust property and as one fund with the trust property for all purposes:
    - Provided that the trustee may while the beneficiary is a minor apply those accumulations as if they were income of the then current year; and
- (b) If the beneficiary is no longer a minor and his interest has not yet vested in possession, the trustee shall thenceforth pay the income attributable to the interest to the beneficiary until his interest vests in possession or terminates.

### **40 Power of advancement**

(1) Subject to the terms of the trust, a trustee may in his discretion pay or apply trust property for the advancement or benefit of any beneficiary whose interest in the trust has not yet vested in possession.

(2) (a) Any trust property so paid or applied shall be brought into account in determining the share of the beneficiary in the trust property.

- (b) No such payment or application shall be made which prejudices any person entitled to any prior interest unless such person is of full age and consents to

the payment or application or (if such person is not of full age) the Court consents.

- (c) The part of the trust property so paid or advanced shall not exceed the presumptive share of the beneficiary in the trust property.

#### **41 Accumulation and maintenance settlements**

Where property is directed to be held on accumulation and maintenance trusts for the benefit of a beneficiary or a class of beneficiaries, sections 40 and 41 (unless the terms of the trust otherwise provide) apply to the interest of such beneficiary or beneficiaries.

#### **42 Receipts of parents or guardians**

The receipt of a parent or guardian of a beneficiary who is a minor or is under legal disability shall be a sufficient discharge to the trustee for a payment made to or for the benefit of the beneficiary.

#### **43 Power of appointment**

The terms of a trust may confer on the trustee or any other person power to appoint all or any part of the trust property or any interest in the trust property to, or to trustees for the benefit of, any person or valid charitable or non-charitable purpose (whether or not such person was a beneficiary of the trust or such purpose was an object of the trust prior to such appointment).

#### **44 Power of revocation or variation**

(1) A trust and any exercise of a power or discretion under a trust may be expressed to be capable of revocation (in whole or in part) or of variation.

(2) No such revocation or variation shall prejudice anything lawfully done by a trustee in relation to the trust before he receives notice of the revocation or variation.

(3) Subject to the terms of the trust, if a trust is revoked in whole or in part, the trustee shall hold the trust property, or the part of the trust property which is the subject of the revocation, in trust for the settlor absolutely or, if he is dead, as if it had formed part of his estate at death.

(4) In so far as the terms of a trust make no provision for revocation of the trust, then the trust shall be irrevocable.

### **PART 5**

#### **TERMINATION OR FAILURE OF TRUSTS**

#### **45 Failure or lapse of interest**

(1) Subject to the terms of the trust and to any order of the Court, where –

- (a) An interest lapses;
- (b) A trust terminates; or

(c) There is no beneficiary and no person (whether or not then living) who can become a beneficiary in accordance with the terms of the trust;

the interest or property concerned shall be held by the trustee in trust for the settlor absolutely, if he is dead, as if it had formed part of his estate at death.

(2) Subsection (1) shall not apply to a trust established for a charitable purpose to which section 46 applies.

**46 Application of property held on charitable trusts**

- (1) Where trust property is held for a charitable purpose and –
- (a) The purpose has been, as far as may be, fulfilled;
  - (b) The purpose cannot be carried out at all, or not under directions given and to the spirit of the gift;
  - (c) The purpose provides a use for part only of the property;
  - (d) The property, and other property applicable for a similar purpose, can be more effectively used in conjunction, and to that end can more suitably be applied to a common purpose;
  - (e) The purpose was laid down by reference to an area which was then, but has since ceased to be a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason since ceased to be suitable or to be practicable in administering the gift;
  - (f) The purpose has been adequately provided for by other means;
  - (g) The purpose has ceased to be charitable (by being useless or harmful to the community or otherwise); or
  - (h) The purpose has ceased in any other way to provide a suitable and effective method of using the property;

the property, or the remainder of the property, as the case may be, shall be held for such other charitable purpose as the Court, on the application of the Minister or the trustee, may declare to be consistent with the original intention of the settlor.

(2) Where trust property is held for a charitable purpose, the Court, on the application of the Minister or the trustee, may approve any arrangement which varies or revokes the purposes or terms of the trust or enlarges or modifies the powers of management or administration of the trustee, if it is satisfied that the arrangement –

- (a) Is now suitable or expedient; and
- (b) Is consistent with the original intention of the settlor.

(3) The Court shall not make a declaration under subsection (1) or approve an arrangement under subsection (2) unless satisfied that any person with a material interest in the trust has had an opportunity of being heard.

**47 Termination of trusts**

(1) On the termination of a trust, the trust property shall, subject to subsection (2), be distributed by the trustee within a reasonable time in accordance with the terms of the trust to the persons entitled.

(2) The trustee may retain sufficient assets to make reasonable provision for liabilities (existing, future, contingent or other).

**48 Termination by beneficiaries**

(1) Without prejudice to any power of the Court and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained, and none is a person under legal disability or a minor, and all beneficiaries are in agreement so to do, they may require the trustee to terminate the trust and distribute the trust property as the beneficiaries direct.

(2) A beneficiary of an interest under a protective or spendthrift trust may not enter into such an agreement as is referred to in subsection (1).

PART 6  
VARIATION OF TRUSTS

**49 Variation of trusts**

(1) The Court may, on the application of any beneficiary, the trustee, the settlor or his personal representatives, or the protector of a trust, approve on behalf of –

- (a) A minor or a person under legal disability having, directly or indirectly, an interest, vested or contingent, under the trust;
- (b) Any person unborn;
- (c) Any person who is presently unascertained but who may become entitled, directly or indirectly, to an interest under the trust, as being (at a future date or on the happening of a future event) a person of any specified description or a member of any specified class; or
- (d) Any person, in respect of an interest that may accrue to him by virtue of the exercise of a discretionary power on the failure or determination of an interest under a protective or spendthrift trust –

any arrangement which varies or revokes the terms of the trust or enlarges or modified the powers of management or administration of the trustee, whether or not there is another person with a beneficial interest who is capable of assenting to the arrangement.

(2) The Court shall not approve an arrangement on behalf of a person mentioned in subsection (1) (a), (b) or (c) unless the arrangement appears to be for his benefit.

**50 Approval of particular transaction**

Where, in the management or administration of a trust, a transaction is, in the opinion of the Court, expedient, but cannot be effected because the necessary power has not been conferred on the trustee by the terms of the trust or by law, the Court, on the application of the trustee –

- (a) May confer upon the trustee, generally or in any particular circumstances, the necessary power, on such terms and subject to such conditions as the Court thinks fit; and
- (b) May direct the manner in which, and the property from which, any monies authorised to be expended, and the costs of any transaction, are to be paid or borne.

PART 7  
BREACH OF TRUST

**51 Liability for breach of trust**

(1) Subject to this Act and to the terms of the trust, a trustee who commits or concurs in a breach of trust is liable for –

- (a) Any loss or depreciation in value of the trust property resulting from the breach; and
- (b) Any profit which would have accrued to the trust had there been no breach.

(2) A trustee may not set-off a profit accruing from one breach of trust against a loss or depreciation in value resulting from another.

(3) A trustee is not liable for a breach of trust committed by another person prior to his appointment or for a breach of trust committed by a co-trustee unless –

- (a) He becomes or ought to have become aware of the breach; and
- (b) He actively conceals the breach, or fails within a reasonable time to take proper steps to protect or restore the trust property or to prevent the breach.

(4) Where trustees are liable for a breach of trust, they are liable jointly and severally.

(5) A trustee who becomes aware of a breach of trust shall take all reasonable steps to have the breach remedied.

(6) Nothing in terms of a trust shall relieve a trustee of liability for a breach of trust arising from his own fraud or wilful misconduct.

**52 Constructive trusts**

(1) A person who derives a profit from a breach of trust, or who obtains property in breach of trust, shall be deemed to be a trustee of the property, unless he derives or obtains it in good faith and without actual constructive or implied notice of the breach of trust.

(2) A person who becomes a trustee by virtue of subsection (1) shall deliver up the profit or property to the person properly entitled to it.

(3) This section does not exclude any other circumstances in which a constructive trust may arise.

**53 Tracing trust property**

Without prejudice to the personal liability of a trustee, trust property which has been charged or dealt with in breach of trust, or any property into which it has been converted, may be followed and recovered unless –

- (a) It is no longer identifiable; or
- (b) It is in the hands of a bona fide purchaser for value without actual, constructive or implied notice of the breach of trust.

**54 Beneficiary may relieve or indemnify a trustee**

(1) A beneficiary may relieve a trustee of liability to him for a breach of trust or indemnify a trustee against liability for a breach of trust.

(2) Subsection (1) does not apply if the beneficiary –

- (a) Is a minor or a person under legal disability;
- (b) Does not have full knowledge of all material facts; or
- (c) Is improperly induced by the trustee to act under subsection (1).

**55 Power to relieve trustees from personal liability**

The Court may relieve a trustee wholly or partly of liability for a breach of trust where it appears to the Court that the trustee has acted honestly and reasonably and ought fairly to be excused for the breach of trust or for omitting to obtain the directions of the Court in the matter in which the breach arose.

**56 Power to make beneficiaries indemnify**

Where a trustee commits a breach of trust at the instigation, at the request or with the concurrence of a beneficiary, the Court (whether or not the beneficiary is a minor or a person under legal disability) may impound all or part of his interest by way of indemnity to the trustee or any person claiming through him.

**57 Limitation and prescription**

(1) No period of limitation or prescription applies to an action brought against a trustee –

- (a) In respect of any fraud to which the trustee was a party or was privy; or
- (b) To recover from the trustee trust property or the proceeds of it –

- (i) held by or vested in him or otherwise in his possession or under his control; or
  - (ii) previously received by him or converted to his use.
- (2) Subject to subsection (1), the period within which an action founded on breach of trust may be brought against a trustee is –
- (a) Three years from delivery of the final accounts of the trust to the beneficiaries; or
  - (b) Three years from the date on which the plaintiff first has knowledge of the breach of trust,
- whichever period first begins to run.
- (3) Where the plaintiff is a minor or a person under legal disability, the period referred to in subsection (2) does not begin to run until his minority or disability, as the case may be, ceases.

## PART 8 POWERS OF THE COURT

### **58 Jurisdiction of the Court**

The Court has jurisdiction in respect of any matters concerning a trust where –

- (a) The proper law of the trust is the law of Niue;
- (b) A trustee of the trust is resident in Niue;
- (c) Any property of the trust is situated in Niue;
- (d) Any part of the administration of the trust is carried on in Niue.

### **59 General powers of the Court**

(1) On the application of a trustee, a beneficiary, a settlor or his personal representatives, a protector, (in the case of a trust established for a charitable purpose) the Minister or, with the leave of the Court any other person, the Court may –

- (a) Make an order in respect of –
  - (i) the execution, administration or enforcement of a trust;
  - (ii) a trustee, including an order as to the exercise by a trustee of his functions, the removal of a trustee, the appointment, remuneration or conduct of a trustee, the keeping and submission of accounts, and the making of payments whether into Court or otherwise;
  - (iii) a protector, including an order appointing a protector;
  - (iv) a beneficiary, or any person connected with a trust;
  - (v) any trust property, including an order as to the vesting, preservation, application, surrender or recovery of it;
- (b) Make a declaration as to the validity or enforceability of a trust;
- (c) Direct the trustee to distribute, or not to distribute the trust property;
- (d) Make such order in respect of the termination of the trust and the distribution of the property as it thinks fit;
- (e) Rescind or vary an order or declaration under this Act, or make anew or further order or declaration.

- (2) Where the Court appoints or removes a trustee under this section –
- (a) It may impose such requirements and conditions as it thinks fit, including provisions as to remuneration and requirements or conditions as to the vesting of trust property;
  - (b) Subject to the Court's order, a trustee appointed by the Court has the same functions, and may act in all respects, as if he had been originally appointed a trustee.

(3) If a person does not comply with an order of the Court under this Act requiring him to do any thing, the Court may, on such terms and conditions as it thinks fit, order that the thing be done by another person, nominated for the purpose by the Court, at the expense of the person in default (or otherwise, as the Court directs) and a thing so done has effect in all respects as if done by the person in default.

**60 Applications for directions**

A trustee may apply to the Court for directions as to how he should or might act in any of the affairs of the trust, and the Court may make such order as it thinks fit.

**61 Payment of costs**

The Court may order the costs and expenses of and incidental to an application of the Court under this Act to be paid from the trust property or in such manner and by such persons as it thinks fit.

**PART 9**

**VARIANT TYPES OF TRUST**

**62 Variant types of trust**

(1) A settlor may create a trust (in whatever form and whatever name it is known) of a type recognised by the law or rules of his religion or nationality or which is customarily used by his community, provided that –

- (a) There is a recital to that effect in the instrument creating the trust; and
- (b) The trust is of a type approved by the Minister by Order published in the *Gazette*.

(2) The instrument creating a trust may be written in a language other than English, provided that a version in the English language certified by the original trustee to be a true translation is appended to the instrument.

**63 Provisions of variant types of trust**

A trust of a type approved under section 62 (1) may provide that the trustee shall hold the trust property –

- (a) For a period not exceeding 120 years, to pay or apply the income and capital of it for the maintenance, education, advance or benefit of the family of the settlor, and/or for the purpose of performing acts or services in honour of the settlor or the ancestors of the settlor; and
- (b) Thereafter for the advancement of the settlor's religion, or for such other charitable purpose as the settlor may specify or, if the settlor has not specified a charitable purpose, for such charitable purpose as the trustee shall determine.

**PART 10**

**REGISTRATION OF TRUSTS AND EXEMPT TRUSTS**

**64 Facility to register trusts**

(1) The Registrar of the Court shall maintain a register of trusts.

(2) The settlor or a trustee of a trust may apply to the Registrar to enter the trust on the Register.

(3) An application for entry on the Register shall be accompanied by –

- (a) A certified copy of the instrument creating the trust (if any); and
- (b) A fee of \$300.

(4) The Registrar shall, on receipt of an application for registration, a certified copy of the instrument creating the trust (if any) and the required fee –

- (a) Enter on the Register the name of the trust (if any), the name of the settlor and the name of the beneficiary or the purpose for which the trust is established; and
- (b) Issue to the trustee a certificate of registration.

(5) Where the terms of a trust which has been registered are varied, the trustee shall send to the Registrar a notification of such variation together with a fee of \$150 and the Registrar shall amend the entry on the Register accordingly and issue an amended certificate of registration.

(6) Where a trust which has been registered terminates, the trustee shall notify the Registrar and return the certificate of registration and the Registrar shall then cancel the entry on the Register and the certificate of registration.

(7) The Register shall not be open for inspection except that the trustee of a trust may in writing authorise a person to inspect the entry of that trust on the Register.

(8) Notwithstanding subsection (7) and section 29, the Register shall be open to inspection by any foreign government or any court and tribunal of any other country including Niue but only if and to the extent that the Court so directs having been satisfied that the information is required and will be used solely for the purposes of an investigation or prosecution of any person in relation to the sale, or the laundering of the proceeds of sale, of any prohibited narcotic substances or the laundering of the proceeds gained from any other serious criminal activity whether that sale or laundering or other serious criminal activity occurred in Niue or elsewhere.

(9) The Minister may increase the fees payable under this section by Order in Cabinet.

(10) Nothing in subsection (7) shall prevent the Court from requiring any person to produce claimants or to give evidence in any proceedings of any facts relevant in such proceedings.

## **65 Exemption from taxes and duties**

(1) For the purposes of this Act a trust shall be an exempt trust in any year if –

- (a) The settlor is not resident in Niue during that year;
- (b) None of the beneficiaries are resident in Niue during that year; and
- (c) The trust property does not include any land situated in Niue.

(2) In any year when a trust is an exempt trust, then, notwithstanding any provision to the contrary in any enactment –

- (a) The income of the trust for that year shall be exempt from all provisions of the Income Tax Act 1961;
- (b) No estate, inheritance, succession or gift tax or duty shall be payable with respect to the trust property by reason of any death occurring during that year; and
- (c) All instruments executed in that year and relating to the trust property or to transactions carried out by the trustee on behalf of the trust shall be exempt from stamp duty.

(3) In this section “resident” means resident for the purposes of the Income Tax Act 1961.

SCHEDULE 1

Section 33

Authorised Trustee Investments

- (a) Securities issued by, or the payment of interest on which is guaranteed by, the Government of Niue or by any other sovereign state;
- (b) Securities issued by, or the payment of interests on which is guaranteed by, any of the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the European Economic Community, the European Investment Bank, the International Finance Corporation, the International Monetary Fund, or the International Bank for Reconstruction and Development;
- (c) Any trustee investments authorised by the Trustee Act 1956, the Commonwealth of Australia or any State or Territory of it, or the United Kingdom;
- (d) Securities issued by or deposits with any Bank registered with the relevant authorities in any of the jurisdictions in subparagraph (c) or in the United States of America, the Cook Islands, or Niue;
- (e) Freehold property situated in any of the jurisdictions in subparagraph (c) or leasehold property situated in Niue of which the unexpired term of the end of the investment is not less than 40 years.

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SCHEDULE 2

Section 34

Implied Powers of Trustees

**Trust for Sale and Investment**

**1** (1) The trustee shall hold real or immovable property included in the trust property on trust for sale with power to postpone the sale of the whole or any part of it for such period as he thinks fit and shall hold all other investments included in the trust property on trust either (at his discretion) to retain them for such period as he thinks fit or to sell or otherwise dispose of the whole or any part of them.

(2) The trustee shall hold all money received or held by him as capital money (including the net proceeds of such sale) on trust to invest it in any manner authorised by the terms of the trust as he thinks fit.

(3) The trustee may change investments included in the trust property into others authorised by the terms of the trust.

**Powers respecting trustee investments**

**2** (1) Where in the event that any land, building or chattel were producing income, the whole of such income would or might be payable to any person under the terms of the trust, the trustee may permit such person together with the members of his household to reside in and occupy such land or buildings or to enjoy the use or benefit of such chattels either gratuitously or on such terms as the trustee shall think fit.

(2) The trustee shall have power to purchase any land, building or chattel or any interest in it in any jurisdiction, provided that the power to purchase land in Niue shall be limited to the purchase of a leasehold interest only, for the use or occupation of any one or more persons (such use or occupation to be only under subparagraph (1) or partly for such use and partly as an investment).

(3) The trustee shall have power to employ any capital of the trust property or to take such other steps as may be requisite to insure, protect, maintain or preserve or to improve the value of or to guard against any loss of value of the trust property or the income thereof.

**Corporations**

**3** (1) The trustee may promote or incorporate any corporation to carry on any trade or hold any investments.

(2) Where all or any part of the capital of a corporation is included in the trust property the assets of such corporation shall not be impressed with any of the trusts but the trustee may nevertheless cause or procure such corporation to do any act or thing as regards the assets of the corporation as he is empowered to do as regards the trust property.

### **Appropriation**

**4** The trustee shall have power to appropriate any investments or property forming part of the trust property in its actual state of investment in or towards the satisfaction of the beneficial interest of any person interested in the trust property upon making such valuation if any as the trustee may think fit and without the necessity of obtaining the consent of any person.

### **Holding and Custody of Investments**

**5** Investments included in the trust property may be held by or in the name of or under the control of any person (whether or not a trustee) as nominee or bailee for the trustee and in that case the trustee shall not be responsible for any default of such nominee or bailee of good standing appointed in good faith.

### **Land**

**6** Subject to the Land Act 1969, the Niue Amendment Act (No 2) 1968 and any relevant principles of land law applicable to Niue, where the trust property includes any land (in this paragraph called "the Land" –

- (a) The trustee may lease, mortgage, charge, grant any licence over (whether exclusive or not) and otherwise dispose of the Land or any interest in it provided that there shall be no power to sell, mortgage or exchange land in Niue;
- (b) The trustee may spend capital money on erecting buildings on the Land or on demolishing and rebuilding or on altering or improving buildings on it or otherwise on improving the Land as he thinks fit (and any certificate of any architect or surveyor employed by the trustee or of any trustee who is qualified as an architect or surveyor that the work specified in such certificate consists only of alteration or improvement shall be conclusive as between the trustee and all persons interested under the trust that any capital money spent on such work was properly spent by the trustee in exercise of the powers conferred by this subparagraph);
- (c) The trustee may observe and perform all obligations imposed on or incurred by him as owner or lessor or lessee of the Land and shall be entitled to be indemnified out of every part of the trust property against all personal liability imposed on him by or by any breach of any one or more of such obligations and in this subparagraph "obligations" includes every obligation whether imposed by contract or by general law or otherwise;
- (d) The trustee may employ any of the capital of the trust property in repairing, developing, enlarging, equipping, furnishing, insuring and maintaining the Land and buildings and fixtures on it.

**7** Where the trust property includes any chattel the trustee may employ any of the capital of the trust property in repairing or insuring such chattel and may store, lend or hire on such terms as he thinks fit.

### **Borrowing**

**8** (1) The trustee may borrow on such terms as he thinks fit and for such purpose may mortgage or charge all or any of the assets included in the trust property.

(2) The trustee shall hold any borrowed money as capital of the trust property and as one fund with other money and investments included in the trust property or as a separate fund as he shall think fit and shall invest, advance, distribute, pay or otherwise deal with such money in accordance with the trusts and powers relating to the capital of the trust property.

(3) The trustee may repay borrowed money and pay interest out of the capital of the trust property.

#### **Insurance**

**9** The trustee may effect and maintain out of the capital of the trust property any policy of insurance or assurance upon the life of any person or under which the death of any person is one of the events under which money becomes payable.

#### **Loans to Beneficiaries**

**10** Where in the event that any money forming part only of the trust property were producing income the whole of such income would or might be payable to any person under the terms of the trust the trustee may lend such money to that person either free of interest or upon such terms relating to interest and to repayment and either with or without security as the trustee thinks fit.

#### **Release of Powers**

**11** The trustee may in his absolute discretion at any time and by instrument in writing release or restrict the future exercise of any powers conferred on him by the terms of the trust or by the general law either wholly or to the extent specified in any such instrument.

#### **Trustees Appointed as Directors**

**12** Any trustee who shall be or become a director or the holder of any other office or employment in any company any of whose shares shall form part of the trust property shall be entitled to retain for his own use and benefit any reasonable fees or remuneration received by him in connection with such office or employment notwithstanding that his appointment to or retention of such office or employment may be directly or indirectly due to the exercise or non-exercise of any votes in respect of any of the shares forming part of the trust property.

#### **Associated Parties**

**13** If the trustee places or causes to be placed any banking, broking or other business with an associated or other person so that (but for this paragraph) he would be liable to account in any manner to the trust property he shall ensure that such business is done on such terms as that person would make with an unassociated customer or client and if he does so he shall not be required to account for any receipt from or profit of such person from such business.

#### **Sundry Powers**

**14** (1) The powers of the trustee shall extend to any and every act or omission of the trustee which is necessary or desirable for the due execution of the trust and the protection and realisation and the due administration of the investments in the trust property and the cost of and incidental to every act of the trustee shall be met out of income or capital of the trust property or partly out of each (as the trustee thinks fit).

(2) In addition to all the powers vested in the trustee by the terms of the trust or the general law the trustee shall have and may exercise the following powers

- (a) To compromise and settle for such consideration and upon such terms and conditions as the trustee may consider advisable all matters arising in relation to the trust;
- (b) To pay out of the income or capital of the trust property all the costs of and incidental to the preparation and execution of the trust instrument;
- (c) To receive any property from any person as an addition to the trust property either by gift inter vivos or by will or under the provisions of any other trust or otherwise.

#### **Revocable Appointments**

**15** Any revocable appointment, decision or resolution of the trustee may be treated by him for any purpose as irrevocable unless and until it is revoked.



# UNCLAIMED MONEY ACT 2014

2014/328 – 4 March 2014

1	Title		<i>Dealings with unclaimed money</i>
2	Commencement	10	Unclaimed money to be paid to Financial Secretary
	<i>Preliminary provisions</i>	11	Special arrangements may be made by Financial Secretary
3	Interpretation	12	Money may be treated as unclaimed money if entity ceases business
4	Act binds the Government	13	No further liability for unclaimed money paid to Financial Secretary
5	Money to which this Act applies		
	<i>Registers of unclaimed money</i>		
6	Financial institutions and other entities to establish registers of unclaimed money	14	<i>Other matters</i>
7	Registers of unclaimed money to be maintained and available for inspection	15	Examination of accounts
8	Entries in register of unclaimed money	16	Financial Secretary must pay claimant if satisfied of certain matters
9	Entities to notify owners and Financial Secretary of entries in register	17	Interest
		18	Secrecy
			Offences
			Schedule

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## An Act to provide protection for the owners of certain unclaimed money and the owners of money payable by entities that cease operating in Niue

### 1 Title

This Act is the Unclaimed Money Act 2014.

### 2 [Spent]

#### *Preliminary provisions*

### 3 Interpretation

(1) In this Act, unless the context otherwise requires —  
“dividends and rebates” means —

(a) money that is a dividend (other than a dividend payable by a mutual association in relation to money deposited with the association) payable by a company to any of its shareholders;

(b) money that—

(i) is a rebate payable by a mutual association (other than an insurance office or a company) to any of its members in relation to the trading transactions of the member with the association; but

(ii) is not a rebate payable in relation to money deposited with the association;

(c) money that is a benefit payable from a pension or superannuation fund;

“entity” —

(a) means a person or body that is —

(i) a body corporate incorporated in Niue; or

(ii) a body corporate incorporated outside Niue that carries on business in Niue; or

- (iii) a society within the meaning of the Public Service Savings and Loan Society Act 1980; or
  - (iv) an insurance office or company; or
  - (v) a financial institution; and
- (b) includes —
- (i) any person, firm, body, or institution carrying on the business of borrowing and lending money, in relation to any money borrowed by him, her, or it; and
  - (ii) an auctioneer, in relation to any balance of the proceeds of an auction sale; and
  - (iii) an accountant, lawyer, or sharebroker, in relation to money held on behalf of a client; and
  - (iv) a motor vehicle trader (whether or not a body corporate), in relation to money held on behalf of a person for whom the trader has acted as an agent in the course of selling a motor vehicle; and
  - (v) a liquidator, receiver, or personal representative of an entity (within the meaning of any of paragraphs (a) and (b)(i) to (iv)); and
  - (vi) any person acting for or on behalf of an entity (within the meaning of any of paragraphs (a) and (b)(i) to (v)); but
- (c) does not include —
- (i) a designated bank or an approved agent (as those terms are defined in section 84A of the Niue Bank Act 1994), in relation to any thing done or permitted to be done by the bank or agent under Part 7A of that Act; or
  - (ii) a person to whom section 40A of the Niue Bank Act 1994 applies
- financial institution means an institution that is a financial institution within the meaning of section 3 of the Financial Transactions Reporting Act 2006;

“Financial Secretary” means the person charged with the administration of the Income Tax Act 1961 under section 3(1) of that Act;

“mutual association” means a body or association of persons, whether incorporated or not, that enters into transactions of a mutual character with its members, whether or not it also enters into transactions with other persons;

“New Zealand account” has the meaning given in section 84A of the Niue Bank Act 1994;

“owner”, in relation to any money —

- (a) means the person entitled to the money; and
- (b) includes any other person claiming under or on behalf of that person;

“payable”, at any time, means payable —

- (a) at that time; or
- (b) at a future time that is certain; or
- (c) upon the happening of a future event, including a presentment or demand; or
- (d) at the discretion of the owner (whether at that time, at a future time that is certain, or upon the happening of a future event);

“register of unclaimed money” —

- (a) in relation to a financial institution, means a register kept under section 6(1); and
  - (b) in relation to any other entity, means the register kept under section 6(2) by that entity tax officer means any person employed in the Niue Tax Office
- unclaimed money means money to which this Act applies by virtue of section 5.

(2) For the purposes of this Act, person A is a representative of person B if person A —

- (a) is the liquidator, receiver, or personal representative of person B; or
- (b) is acting for or on behalf of person B.

(3) Nothing in paragraph (b) of the definition of entity in subsection (1) limits the generality of paragraph (a) of that definition.

#### 4 **Act binds the Government**

This Act binds the Government.

*Money to which this Act applies*

#### 5 **Money to which this Act applies**

(1) Except where expressly provided otherwise in this Act or any other enactment, this Act applies to money (other than dividends and rebates) of any of the following descriptions that is held by an entity in Niue —

- (a) money that —
  - (i) came into the entity's possession as money deposited so as to bear interest for a fixed term only; and
  - (ii) has been held by the entity for at least 6 years after the expiry of the term:
- (b) money that is held in an account at the entity that the depositor has not operated for at least 25 years (whether by deposit, withdrawal, or instruction in writing) and that came into the entity's possession as money deposited with the entity
  - - (i) to earn interest without limitation of time; or
    - (ii) to earn interest for a fixed term on whose expiry it was to be treated as reinvested if it were not withdrawn by the depositor:
- (c) money that —
  - (i) is held in an account at the entity that the depositor has not operated for at least 6 years (whether by deposit, withdrawal, or instruction in writing); and
  - (ii) came into the entity's possession as money deposited with the entity and not earning interest:
- (d) money that —
  - (i) is payable or distributable on or in consequence of the maturity of a policy of life assurance otherwise than by death; and
  - (ii) has been in the possession of the entity for at least 6 years after the policy matured:

- (e) money that—
    - (i) is or may be payable or distributable on or in consequence of the maturity of a policy of life assurance by death; and
    - (ii) has been in the possession of the entity for at least 6 years after the entity first had reason to suppose that the policy had matured by death:
  - (f) money of any other kind that—
    - (i) is owed by the entity; and
    - (ii) has been owed for at least 6 years from the date on which the money become payable by the entity.
- (2) Subsection (l)(d) and (e) apply even if the terms of the policy concerned provide that the money concerned is not payable or distributable except on proof of death or on proof of age or any other collateral matter.
- (3) Subsection (l)(e)(ii) applies whether or not the death concerned has been legally proved.

*Registers of unclaimed money*

- 6 Financial institutions and other entities to establish registers of unclaimed money**
- (1) As soon as practicable after the commencement of this Act, every financial institution must establish a register for the purposes of section 7.
- (2) On 1 June in each year (or if not a working day, the first working day after 1 June), every other entity must establish a register for the purposes of section 7 if—
  - (a) it does not already maintain a register of unclaimed money; and
  - (b) at the close of that day, it held money that became unclaimed money during the preceding 12-month period.
- (3) A register of unclaimed money must be established (and maintained) in hard copy, in the form set out in the Schedule.

- 7 Registers of unclaimed money to be maintained and available for inspection**
- (1) An entity that has a register of unclaimed money must ensure that the register is—
  - (a) maintained securely at the entity's head or principal office in Niue; and
  - (b) open to inspection at that office by all people (during the hours during which the entity's ordinary business is transacted).
- (2) The entity may refuse to allow any person to inspect the register unless the person pays a fee, not exceeding \$5, fixed by the entity.

- 8 Entries in register of unclaimed money**
- (1) On 1 June in each year (or if not a working day, the first working day after 1 June), an entity must enter in its register of unclaimed money information about money it held at the close of the previous day that became unclaimed money during the preceding 12-month period ending on that previous day.
- (2) The information must be as much of the information required by the form set out in the Schedule that is known to the entity.

**9 Entities to notify owners and Financial Secretary of entries in register**

(1) Every entity required by section 8(1) to enter in its register of unclaimed money on 1 June in any year information about any money —

- (a) must, not later than 30 June in that year, by letter addressed to the last known business or residential address of its owner, mail to the owner a notice stating the amount of the money and the fact that it is entered in the register as unclaimed money; and
- (b) must then enter in the register the date on which the notice was posted.

(2) On 1 October in that year (or if not a working day, the first working day after 1 October), each entity must give the Financial Secretary —

- (a) a copy of every entry made in its register on 1 June of that year; and
- (b) written notice stating which, if any, of the amounts of unclaimed money entered in the register on that date have been paid to the owners concerned.

*Dealings with unclaimed money*

**10 Unclaimed money to be paid to Financial Secretary**

(1) An entity that holds any unclaimed money must pay it to the Financial Secretary on 1 November in any year (or if not a working day, the first working day after 1 June) (the payment date) if —

- (a) the money became unclaimed money in the period of 12 months ending with 31 May of that year; and
- (b) the money has not been paid by the entity to its owner or a representative or a valid claim has not been established to the money before the payment date.

(2) The Financial Secretary may, on behalf of the Government of Niue, recover any money payable to him or her under subsection (1) —

- (a) as a debt due to the Government; and
- (b) by action, in his or her official name, against the entity concerned in any court of competent jurisdiction.

(3) All unclaimed money received by the Financial Secretary under this or any other Act must be paid into the Niue Government Account.

**11 Special arrangements may be made by Financial Secretary**

(1) The Financial Secretary may, by written agreement with any entity or entities, exempt the entity or entities from compliance with all or any of the provisions of sections 6 to 9 —

- (a) absolutely or conditionally; and
- (b) in respect of unclaimed money of all kinds or in respect of unclaimed money of stated kinds only.

(2) The Financial Secretary may —

- (a) by written agreement with the entity or entities, amend the exemption; or
- (b) by written notice to the entity or entities, cancel the exemption.

(3) Subsections (1) and (2) —

- (a) override other provisions of this Act to the contrary; but
- (b) do not affect an entity's liability to pay unclaimed money to the Financial Secretary.

*Money that may be treated as unclaimed money*

**12 Money may be treated as unclaimed money if entity ceases business**

- (1) This section applies to money —
- (a) that is held by or owed by or payable to—
    - (i) an entity that has ceased to carry on business in Niue; or
    - (ii) a representative of an entity that has ceased to carry on business in Niue; and
  - (b) that some other person is entitled to claim by virtue of an agreement, or transaction or other dealing (however described), with the entity that relates to the entity's carrying on of business in Niue; and
  - (c) that has not been claimed by or on behalf of the other person; and
  - (d) that—
    - (i) would become unclaimed money by operation of section 5(1) if the money were, or continued to be, held in Niue by the entity and were not claimed by the person referred to in paragraph (c); or
    - (ii) is dividends and rebates that would by operation of section 5(1) be unclaimed money if it were money to which that section applied and if it were held, or continued to be held, in Niue by the entity and were not claimed by the person referred to in paragraph (c).
- (2) An entity or representative that holds, owes, or has payable to it, money to which subsection (1) applies may pay the money to the Financial Secretary and give the Financial Secretary information about the payment and the person who is entitled to claim it, and, in that case, —
- (a) the money must be treated as unclaimed money; and
  - (b) this Act, with any necessary modifications, applies as if the entity had always held the money in Niue and the entity had not ceased to carry on business in Niue.
- (3) In this section, entity does not include an entity that is an individual.

*No further liability for unclaimed money paid to Financial Secretary*

**13 No further liability for unclaimed money paid to Financial Secretary**

- (1) The holder of unclaimed money is relieved of all further liability to any claimant in respect of the money as soon as the money is paid to the Financial Secretary under this Act.
- (2) In this section, holder means —
- (a) an entity to which section 10(1) applies; and
  - (b) an entity to which section 12(2) applies.

*Other matters*

**14 Examination of accounts**

- (1) At any time, the Financial Secretary may —
- (a) examine any register of unclaimed money and any accounts of the entity concerned relating to money that is or may be unclaimed money; and
  - (b) for that purpose, require the production of any book, voucher, or document relating to money that is or may be unclaimed money.

(2) If any error is found in the register, or in any notice sent to the owner of any unclaimed money, the Financial Secretary or any tax officer may (as the case requires) direct the entity to —

- (a) correct the register; or
- (b) send an amended notice to the owner.

(3) The entity must comply with a direction under subsection (2).

**15 Financial Secretary must pay claimant if satisfied of certain matters**

(1) The Financial Secretary must pay the amount of any money paid to him or her under this Act as unclaimed money to any claimant to the money if —

- (a) the claimant demands it from the Financial Secretary; and
- (b) the Financial Secretary is satisfied that the claimant is the person who would have been the entitled to claim that money from an entity, as the owner of the money, before the entity's liability was extinguished under section 13.

(2) All money paid by the Financial Secretary under subsection (1) must be paid out of the Niue Government Account without further appropriation than this Act.

(3) If any money paid to a claimant under subsection (1) is later demanded from the Financial Secretary by another claimant —

- (a) the Financial Secretary is not responsible for its payment; but
- (b) the other claimant may have recourse against the claimant to whom the money was paid.

**16 Interest**

No person is entitled to interest on any money —

- (a) paid to the Financial Secretary under this Act; or
- (b) paid to a person under section 15.

**17 Secrecy**

(1) The Financial Secretary and every tax officer —

- (a) must maintain and help to maintain the secrecy of all information that comes to his or her knowledge in the course of his or her duties under this Act; and
- (b) must not communicate any of the information to any person, except for the purpose of carrying this Act into effect or complying with an obligation to disclose the information under any other enactment.

(2) Subsection (1) does not prevent the Financial Secretary from making available for publication the names of owners of unclaimed money paid to the Financial Secretary under this Act and the amounts received belonging to those owners.

**18 Offences**

(1) Every person commits an offence, and is liable on conviction to a fine not exceeding 5 penalty units, who —

- (a) being a financial institution, or other entity holding unclaimed money, wilfully or negligently fails or refuses to comply with any provision of any of sections 6 to 9, or with any condition on which the Financial Secretary has granted an exception under section 11; or
- (b) being a director, manager, secretary, or other officer of the entity, authorises or permits the entity to fail or refuse to comply with the provision or condition.

(2) Every person who wilfully contravenes section 17 commits an offence and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding 2 penalty units.

## Schedule

ss 6(3), 8(2)

## Register of unclaimed money held by [name of entity] on 1 June [year]

# UNITED NATIONS ACT 1946

1946/7 (NZ) – 16 September 1946

- |  |                                       |
|--|---------------------------------------|
| 1 Short title                                | 3 Liability for breach of regulations |
| 2 Power to make regulations to enable effect | 4-5 [Spent]                           |
- 

## To confer on the Cabinet of Niue power to make regulations to enable New Zealand to fulfil the obligations undertaken by it under article 41 of the Charter of the United Nations

WHEREAS New Zealand is a member of the United Nations and as such is bound by the Charter of the United Nations signed at San Francisco on 26 June, 1945: And whereas article 41 of the Charter is in the following terms:

### *Article 41*

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, seal, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations:

AND WHEREAS it is desirable that provision should be made to enable New Zealand to fulfil its obligations under the said article:

#### **1 Short title**

This is the United Nations Act 1946.

#### **2 Power to make regulations to enable effect to be given to article 41**

(1) If, under article 41 of the Charter of the United Nations the Security Council of the United Nations calls upon the Government of New Zealand to apply any measures to give effect to any decision of that Council, the Cabinet of Niue may make all regulations as appear to it to be necessary or expedient for enabling those measures to be effectively applied.

(2) No regulation made under this Act shall be deemed to be invalid because it deals with any matter already provided for by any Act, or because of any repugnancy to any Act.

#### **3 Liability for breach of regulations**

Every person who commits, or attempts to commit, or does any act with intent to commit, or counsels, procures, aids, abets, or incites any other person to commit, or conspires with any other person (whether in Niue or elsewhere) to commit any offence against any regulations made under this Act shall be liable on summary conviction, in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding 2 penalty units or, in the case of a company or other corporation, to a fine not exceeding 20 penalty units.

**4-5 [Spent]**



# UNIVERSITY OF THE SOUTH PACIFIC CONVENTION ACT 2018

2018/346 – 25 December 2018

1	Title	6	Legal Status
2	Commencement	7	National Treatment
			<b>PART 3</b>
			<i>Miscellaneous</i>
	<b>PART 1</b>		
	<i>Preliminary Matters</i>		
3	Interpretation	8	Regulations
4	Act Binds the Government		
			<b>SCHEDULES</b>
	<b>PART 2</b>		
	<i>Implementation of the Convention</i>		
5	Application of the Convention		

**An Act to implement in the law of Niue the Convention recognising the University of the South Pacific in each Member Country of the University**

1 Title

This is the University of the South Pacific Convention 2018.

2 [Spent]

# PART 1

## *Preliminary Matters*

### 3 Interpretation

**Interpretation**

(1) In this Act, unless the context otherwise requires –

“Minister” means the Minister for Education;

“USP” means the University of the South Pacific;

“USP Charter” means the Royal Charter of the USP set out in Schedule 2;

“USP Convention” means the Convention Recognising the University of the South Pacific in Member Countries of the University set out in Schedule 1;

“USP Statutes” means the Statutes of the USP set out in Schedule 3.

(2) In interpreting the USP Convention, regard may be made to –

- (a) the USP Royal Charter; and
- (b) the USP Statutes.

(3) Unless a contrary intention appears, words and expressions used in this Act must be accorded the same meaning as used in the USP Convention.

(4) In this Act, a reference to the USP Convention, the USP Royal Charter or the USP Statutes is a reference to that document as amended, adapted or extended from time to time.

#### **4 Act binds the Government**

This Act binds the Government.

PART 2

*Implementation of the Convention*

**5 Application of the Convention**

(1) The USP Convention to the extent it applies to the recognition and operations of the University of the South Pacific in Niue, shall have the force of law in Niue.

(2) The Minister shall, as soon as practicable after any amendment to the USP Convention is made pursuant to the relevant Articles, cause a copy of the amendments to be published in the *Gazette*.

**6 Legal Status**

USP shall enjoy the legal status of a body corporate incorporated under the laws of Niue.

**7 National treatment**

(1) USP shall enjoy national treatment under the laws of Niue.

(2) For the purposes of this section –

“nationals” means legal entities incorporated under the laws of Niue as nationals of Niue; and

“national treatment” means that as regards the operations of USP in Niue, USP shall enjoy the same rights and all advantages that nationals of Niue are accorded in Niue.

PART 3

*Miscellaneous*

**8 Regulations**

Cabinet may make Regulations as are necessary for carrying out the purposes of this Act.

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SCHEDULE 1

Convention Recognising the University of the South Pacific in each Member Country of the University

[Schedule not reproduced. The text of the Convention can be accessed at <https://policylib.usp.ac.fj/>]

SCHEDULE 2

Royal Charter of the University of the South Pacific

[Schedule not reproduced. The text of the Royal Charter can be accessed at <https://policylib.usp.ac.fj/>]

SCHEDULE 3

Statutes of the University of the South Pacific

[Schedule not reproduced. The text of the Statutes can be accessed at <https://policylib.usp.ac.fj/>]

# VAGAHAU NIUE ACT 2012

2012/321 – 13 September 2012

1	Title	PART 3
2	Commencement	ESTABLISHMENT OF NIUE LANGUAGE COMMISSION
		8 Establishment of Niue Language Commission
		9 Commission's status and powers
		10 Commission's functions
		11 Membership of Commission
		12 Qualifications of members
		13 Further provisions relating to Commission and its members
		PART 4
		MISCELLANEOUS MATTERS
		14 Regulations
		15 All references to "Leveki Mangafaoa" amended
		Schedule
3	Interpretation	
4	Act binds the Government	
5	Vagahau Niue the official language of Niue	
6	Reports to the Assembly to be in Vagahau Niue and English	
7	Commission may certify interpreters and translators	
		PART 1
		PRELIMINARY MATTERS

## An Act to recognise Vagahau Niue as the official language of Niue and establish the Niue Language Commission in order to protect and promote Vagahau Niue

### 1 Title

This is the Vagahau Niue Act 2012.

### 2 [Spent]

### PART 1 PRELIMINARY MATTERS

### 3 Interpretation

(1) In this Act, unless the context otherwise requires —  
"Commission" means the Niue Language Commission established by section 8;  
"Department" means the Department of Tāoga Niue;  
"member" means a member of the Commission;  
"Minister" means the Minister who is responsible for the Department;  
"Vagahau Niue" means the Niue language.

(2) If there is any conflict between the Vagahau Niue version and the English version of this Act, the Vagahau Niue version prevails.

### 4 Act binds the Government

This Act binds the Government.

### PART 2 RECOGNITION OF VAGAHAU NIUE

### 5 Vagahau Niue the official language of Niue

(1) Vagahau Niue is the official language of Niue.

(2) A person may use Vagahau Niue as of right for all official and legal purposes in Niue, without any requirement to produce a translation in any other language, unless a law expressly provides otherwise.

**6 Reports to the Assembly to be in Vagahau Niue and English**

(1) Every report required by law to be made to the Assembly must be in Vagahau Niue and also in the English language.

(2) However, the Assembly may, by resolution, determine that any report be in Vagahau Niue or the English language only. .

(3) If, in accordance with subsection (2), a report is made to the Assembly in one language only, —

- (a) that report must be translated into the other language as soon as practicable; and
- (b) a copy of the translated report must be tabled before the Assembly at the first available meeting.

**7 Commission may certify interpreters and translators**

(1) The Commission may grant a certificate of competency in Vagahau Niue to any person who—

- (a) applies to the Commission for that certificate; and
- (b) satisfies the Commission that he or she is qualified to be a holder of that certificate.

(2) Every certificate of competency in Vagahau Niue must be one of the following 3 kinds:

- (a) a certificate of competency in the interpretation of Vagahau Niue; or
- (b) a certificate of competency in the translation of Vagahau Niue; or
- (c) a certificate of competency in the interpretation and translation of Vagahau Niue.

(3) The Commission must prepare criteria by which competence in the interpretation or translation of Vagahau Niue is to be assessed for the purposes of determining whether an applicant for a certificate of competency is qualified to hold one.

(4) Criteria prepared in accordance with subsection (3) must be set out in regulations made under this Act.

**PART 3**

**ESTABLISHMENT OF NIUE LANGUAGE COMMISSION**

**8 Establishment of Niue Language Commission**

The Niue Language Commission is established.

**9 Commission's status and powers**

(1) The Commission has—

- (a) the statutory powers conferred by this Act and any other Act; and
- (b) the powers necessary to enable it to perform its functions.

(2) The Commission may exercise its powers only for the purpose of performing its functions.

**10 Commission's functions**

- (1) The Commission's functions are—
- (a) to promote the use of Vagahau Niue; and
  - (b) to grant certificates of competency in Vagahau Niue in accordance with section 7; and
  - (c) to prepare criteria by which competence in the interpretation or translation of Vagahau Niue is to be assessed for the purposes of section 7; and
  - (d) to provide advice to the Government on policies and law to support Vagahau Niue; and
  - (e) to advise the Government on matters relating to the use of Vagahau Niue; and
  - (f) to assist the Government in developing Vagahau Niue programmes for study at early childhood, primary, secondary, tertiary, and continuing education levels in Niue and abroad; and
  - (g) to conduct regular surveys of community language attitudes and language use; and
  - (h) to coordinate views on the status, form, and usages of Vagahau Niue; and
  - (i) to inform and advise the public on the appropriate form of Vagahau Niue; and
  - (j) to make systematic decisions on orthography, standardisation, and modernisation; and
  - (k) to coordinate the implementation of language decisions within Government departments and in the community; and
  - (l) to promote and support research on Vagahau Niue; and
  - (m) to review translations submitted to it for scrutiny and to endorse works in Vagahau Niue before their publication; and
  - (n) to publish information on Vagahau Niue, material about Vagahau Niue, and works in Vagahau Niue; and
  - (o) to promote and assist coordination of the use of Vagahau Niue in Niue communities abroad, both with those communities and through New Zealand government agencies; and
  - (p) to serve as the liaison agency between Niue and language commissions and similar organisations abroad which are concerned with the development of language; and
  - (q) to carry out such other functions and duties relating to Vagahau Niue as may be assigned to it by the Government.
- (2) The Commission is the final authority on the use of Vagahau Niue.

**11 Membership of Commission**

- (1) The Commission consists of—
- (a) three members selected and appointed by Cabinet; and
  - (b) the Director of the Department (as a non-voting member); and
  - (c) the Director of Education (as a non-voting member); and
  - (d) the chairperson of the Niue Council of Women; and
  - (e) the chairperson of the Niue Youth Council.
- (2) Of the three members selected and appointed by Cabinet, one must be a representative of the churches of Niue.

**12 Qualifications of members**

To be qualified to be selected and appointed by Cabinet in accordance with section 11(l)(a), a person must —

- (a) have his or her primary residence in Niue; and
- (b) be widely regarded as being well-versed in either—
  - (i) Niue culture and heritage; or
  - (ii) matters of the Department; and
- (c) through his or her background, knowledge, or experience, be specially qualified in Vagahau Niue, including reading and writing it.

**13 Further provisions relating to Commission and its members**

The Schedule applies to the Commission and its members.

**PART 4**

MISCELLANEOUS MATTERS

**14 Regulations**

- (1) Cabinet may make regulations for the purposes of this Act.
- (2) Regulations made under this Act may set fees.

**15 [Spent]**

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Schedule

Section 13

Further provisions applying to Commission

**1 Procedure for appointing members**

- (1) Each of the members must be appointed by Cabinet.
- (2) The procedure for Cabinet selecting and appointing persons in accordance with section 11(l)(a) is as follows —
  - (a) the Director of the Department must recommend suitably qualified members of the public to Cabinet, setting out the relevant background, qualifications, and experience of each candidate; and
  - (b) Cabinet must appoint the candidate or (depending upon the number of vacancies) candidates that it considers is most qualified to be a member of the Commission.
- (3) The procedure in subclause (2) applies each time there is a vacancy in the membership of a person referred to in section 11(l)(a).

**2 Effect of vacancies and validity of members' acts**

- (1) A vacancy in the membership of the Commission does not affect—
  - (a) the validity of any Commission decision; or
  - (b) the powers and functions of the Commission.
- (2) The acts of a person as a member are valid even if—
  - (a) the person's appointment was defective; or
  - (b) the person is not qualified to be a member.

**3 Term of appointment**

- (1) A member selected and appointed by Cabinet in accordance with section 11 may be appointed for 3 years or any shorter period of time specified by Cabinet.
- (2) A member may be reappointed.

**4 Duties of members**

- (1) A member of the Commission must act—
- (a) in good faith; and
  - (b) with reasonable care, diligence, and skill; and
  - (c) with honesty and integrity; and
  - (d) in accordance with the Niue Public Service Code of Conduct.
- (2) The duties of members are owed to Cabinet and do not provide any ground of action for any other person.

**5 Collective duties of Commission**

The Commission must—

- (a) not contravene this Act; and
- (b) act in a manner consistent with the objectives and functions of the Commission; and
- (c) perform its functions efficiently and effectively and in a manner consistent with the spirit of service to the public.

**6 Liability of members**

No member is liable for any act or omission done, in good faith, in the performance or intended performance and exercise of the functions and powers of the Commission.

**7 Removal from office**

- (1) Cabinet may remove a member from the Commission by written notice to the member for any of the following reasons proved to the satisfaction of the Cabinet—
- (a) breach of the member's duties or the Commission's collective duties under this Act; or
  - (b) failure or inability to perform, or inadequate performance of, the member's duties and responsibilities as a member; or
  - (c) misconduct by the member; or
  - (d) any other just cause.
- (2) Cabinet must give the member a reasonable opportunity to be heard on the proposal to remove the member.
- (3) The notice of removal must state the reason for the removal.

**8 Member ceasing to hold office**

A member ceases to hold office if he or she—

- (a) is removed from office in accordance with clause 7; or
- (b) dies; or
- (c) resigns by giving written, signed notice to Cabinet; or

- (d) fails to attend 3 consecutive meetings of the Commission without the prior permission of the chairperson; or
- (e) ceases to have his or her primary residence in Niue.

## **9 No compensation for ceasing to hold office**

A member is not entitled to any compensation or other payment or benefit relating to his or her ceasing for any reason to hold office as a member of the Commission.

## **10 Chairperson and deputy chairperson**

- (1) Cabinet may appoint one of the members as the chairperson, and another member as the deputy chairperson, of the Committee by written notice to the Committee.
- (2) However, neither the Director of the Department or the Director of Education must be appointed as chairperson or deputy chairperson.
- (3) In the case of the absence or incapacity of the chairperson, the function of the chairperson must be performed by the deputy chairperson.

## **11 Meetings of Commission**

- (1) The Commission must meet—
  - (a) to the extent required in order for it to fulfil its functions; and
  - (b) at least 4 times in each 12 month period.
- (2) The Commission must meet at the time and place determined by the chairperson.
- (3) The quorum for a meeting of the Commission is 3 voting members.
- (4) Subject to this Act and any regulations made under this Act, the Commission may regulate its proceedings as it thinks fit.

## **12 Decisions of Commission**

- (1) All decisions made by the Commission must be made by consensus if this can be obtained.
- (2) If there is no consensus, the decision must be made by vote.
- (3) The Director of the Department and the Director of Education do not have a vote.
- (4) At any meeting, the person presiding has a deliberative vote and, in the case of an equality of votes, a casting vote.

## **13 Remuneration of members**

- (1) A member is entitled to receive remuneration for services as a member at a rate and of a kind set by regulations made by Cabinet.
- (2) However, the following office holders are not entitled to any remuneration for services as a member of the Commission in addition to the member's remuneration in respect of that office—
  - (a) a Judge;
  - (b) a member of the Assembly;

- (c) an employee (including a director) within any part of the Niue Public Service who is acting as a member of the Commission as a representative of all or any part of the Niue Public Service.

**14 Annual report**

- (1) The Commission must, before 31 March in each year, give a written report to the Minister on the operations of the Commission in the preceding year.
- (2) The report must be in Vagahau Niue and the English language.
- (3) The Minister must table a copy of the report before the Assembly at the first available meeting.

**15 Resources and facilities**

- (1) The Department must provide the resources and facilities that are necessary for the Commission to fulfil its functions.
- (2) The Government must allocate sufficient funding to allow the Commission to—
  - (a) fulfil its functions; and
  - (b) maintain the services, on a contract or consultancy basis, of an appropriate number of interpreters and translators who have been granted a certificate of competency under section 7.
- (3) The interpreters and translators of the Commission must be remunerated at the same base rate as a Commissioner of the Niue High Court and the remuneration is payable from the Niue Government Account without further appropriation than this clause.



# VILLAGE COUNCILS ACT 2016

2016/334 – 15 June 2016

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## An Act to provide for the establishment, membership, functions, and operation of village councils

### 1 Title

This Act is the Village Councils Act 2016.

### 2 [Spent]

PART 1  
PRELIMINARY MATTERS

**3 Interpretation**

In this Act, unless the context otherwise requires —

“Assembly member”, in respect of a village, means the member of the Niue Assembly representing the village;

“assets” means property of any kind, whether tangible or intangible;

“Chief Electoral Officer” means the Chief Electoral Officer appointed under section 3 of the Niue Assembly Act 1966;

“constituency electoral roll” means the constituency electoral roll referred to in section 13 of the Niue Assembly Act 1966;

“constituent notice”, in relation to a village council, means the notice or notices published under section 4;

“council area”, in relation to a village council, means the area in and for which the council is established;

“election” means an election of one or more village council members;

“Director” means the head of the department responsible for administering this Act;

“Director-General” means the head of the Ministry responsible for administering this Act;

“financial year” means the period of 12 months commencing on 1 July in any one year and ending on 30 June the following year;

“resident” in respect of a village, means a person whose name appears on the constituency electoral roll for the village;

“Secretary” means the person appointed as Secretary of a village council under section 32;

“village” means a village constituency established by section 5 of the Niue Assembly Act 1966;

“village council” or “council” means a village council established by or under this Act.

PART 2  
ESTABLISHMENT OF VILLAGE COUNCILS

**4 Establishment and constitution of village councils**

- (1) Cabinet may, by notice in the *Gazette* —
- establish a council in and for the village described in the notice;
  - provide for the manner in which the council is to be constituted;
  - provide for the boundaries of the council area in accordance with the Niue Assembly Act 1966;
  - provide for the manner of election to the council;
  - if there are less than three members of the council, provide for the meetings and procedure of the council.
- (2) A village council must consist of—
- not more than five members; and
  - unless otherwise specified in the constituent notice, not less than three members.
- (3) A village council is a body corporate as described in section 26 of the Interpretation Act 2004.

(4) After consultation with the village council concerned, Cabinet may, by notice published in the *Gazette*—

- (a) vary the boundaries of the council area in accordance with any change made in the boundaries of a constituency under the Niue Assembly Act 1966;
- (b) change the name of the council;
- (c) vary the constitution of the council;
- (d) vary any matter referred to in subsection (l)(d) or (e).

## 5 Electoral rolls and electors

(1) The electoral rolls to be used for village council elections are those required by section 13 of the Niue Assembly Act 1966.

(2) The provisions relating to the compulsory registration of electors in section 14 of the Niue Assembly Act 1966 apply in the same manner to village council elections.

(3) Before a village council election, the constituency electoral roll for that village must be closed on a date fixed by the Chief Electoral Officer.

(4) The Chief Electoral Officer must give public notice of the date fixed for the closing of the roll at least 10 clear days before that date.

(5) Except as otherwise provided in this Act, all other provisions relating to electors and electoral rolls in the Niue Assembly Act 1966 apply, with any necessary modifications, in respect of village council elections.

## 6 Elections of village council

(1) All village council elections must be conducted by secret ballot.

(2) Elections for individual councils must be held on the dates specified by Cabinet by notice in the *Gazette*.

(3) Except as otherwise provided in this Act and the constituent notice,—

- (a) the method of and the procedure to be followed at an election is the same as prescribed in the Niue Assembly Act 1966; and
- (b) in the conduct and supervision of any village council election, the Chief Electoral Officer must have due regard to the relevant provisions in that Act.

(4) Section 35(3) of the Niue Assembly Act 1966 does not apply to village council elections.

## 7 Where 5 candidates or less

If the number of candidates nominated for election to a village council is five or less, the Chief Electoral Officer must, by notice in the *Gazette*, declare those candidates to be elected as village council members on the date specified in the notice.

## 8 Qualifications of electors

A person is entitled to be an elector at a village council election if the person is enrolled on the constituency electoral roll for the village to which the election relates.

## 9 Qualifications of person nominating

(1) A person is entitled to nominate a candidate for election to a village council if—

- (a) the person is enrolled on the constituency electoral roll for the village to which the election relates; and
  - (b) the person is not—
    - (i) an officer or employee of the council; or
    - (ii) an undischarged bankrupt.
- (2) No elector may nominate more than one candidate.

**10 Qualification of candidates**

- (1) A person is entitled to be nominated as a candidate for election to a village council if—
  - (a) the person is enrolled on a constituency electoral roll; and
  - (b) the person is not a member of the Niue Assembly; and
  - (c) the person is not a candidate for election to, or a member of, another village council; and
  - (d) the person—
    - (i) is not an officer or employee of the council;
    - (ii) is not an undischarged bankrupt; or
    - (iv) has not been convicted of any offence involving the misappropriation of funds or fraud, being an offence that carried a maximum penalty of 12 months or more imprisonment.

(2) A person is entitled to be nominated as a candidate for election to a village council irrespective of whether the person is enrolled on the constituency electoral roll for that village.

**11 Term of office**

- (1) The term of office of village council members, is 3 calendar years from and including the day on which the previous election was completed.
- (2) A village councillor can be re-elected for 2 or more 3 year terms.
- (3) A member takes office when he or she has taken the oath under section 16.
- (4) Subsection (1) is subject to this Act and anything to the contrary in the constituent notice.

**12 When office becomes vacant**

The office of a village council member becomes vacant if the member—

- (a) refuses to take the oath under section 16; or
- (b) resigns by notice in writing to the Director; or .
- (c) is absent, without leave of the council, for 3 consecutive meetings of the council; or .
- (d) is convicted of any offence punishable by imprisonment for a term of 12 months or more; or
- (e) is incapable, because of any mental or physical infirmity, of performing his or her duties as a village council member; or
- (f) dies; or
- (g) is otherwise removed from office under section 13.

**13 Removal or suspension from office**

(1) The Cabinet may, on the recommendation of the Director, remove or suspend a village council member from office if—

- (a) the village council concerned has notified the Director of its concerns regarding the village council member; and
- (b) the Cabinet is satisfied on reasonable grounds that the member—
  - (i) has abused his or her powers; or
  - (ii) is incapable of exercising his or her powers justly; or
  - (iii) is not, for any other reason, a fit and proper person to continue in office; and
- (c) the member has been given a reasonable opportunity to answer any allegations made against him or her.

(2) The Director must not recommend the removal or suspension of a member until the Director has conducted, to his or her satisfaction, appropriate enquiry and consultation with the village and village council concerned.

(3) A removal or suspension takes effect on the date that the Cabinet notifies its decision to the village council,

(4) The member or village council concerned may appeal to the court against the decision of the Cabinet.

**14 Casual vacancies**

(1) If a casual vacancy occurs in the office of a village council member more than 6 months before the expiry date, the vacancy must be filled by election in accordance with section 6.

(2) If a casual vacancy in the office of a village council member occurs within 6 months before the expiry date, the Director-General may, after consultation with the council, appoint a suitably qualified person to hold the vacant office.

(3) A village council member elected or appointed under this section holds office for the balance of the term. of office of the member being replaced.

(4) In this section, expiry date, means the date on which a village council member's term of office expires under section 11.

**15 Chairperson and deputy chairperson**

(1) Each village council must elect a chairperson and a deputy chairperson.

(2) An Assembly member representing a village constituency holds office in the village council for that constituency as an ex officio member and must not vote in any meeting of the council.

**16 Village council members must take oath**

(1) Unless re-elected, village council members vacate office immediately after the new village council members take their oath, which oath must be taken within 7 calendar days after the date of their election.

(2) A person elected as a village council member must not sit or vote in a meeting of the village council until he or she has taken the following oath before the Assembly member, Director, or Minister:

I, [full name], swear by Almighty God that I will justly and faithfully carry out my duties as a village council member of the [name of village] village council according to law.

So help me God.

(3) If a village council member is unable to take his or her oath orally because he or she is overseas or hospitalised, he or she may instead take the oath by making a signed declaration in a form provided by the Director that contains the full oath set out in subsection (2).

### PART 3

#### FUNCTIONS AND POWERS OF VILLAGE COUNCILS

##### **17 Functions and powers of village council**

(1) The functions and powers of a village council are those specified in this Part, and are in addition to any functions and powers specified in this Act and any other enactment.

(2) The functions and powers of a village council that are specified in this Part are subject to any other law in force in Niue.

(3) Cabinet may direct a village council to perform a function specified in this Part, and it is the duty of the council to comply with that direction.

##### **18 General functions of village council**

The functions of a village council include—

- (a) the provision, construction, maintenance, and regulation of—
  - (i) bush roads other than public roads;
  - (ii) sea tracks and access to the sea and fishing grounds;
  - (iii) public parks, gardens, recreation areas, scenic sites and look-outs, and other public places, reserves, and land vested in the council or placed under its control either permanently or temporarily;
  - (iv) public bathing places, shelter sheds, and other places for public decency;
  - (v) buildings, places of public recreation, stalls, and stands on roads;
- (b) the provision of services relating to health, sanitation, prevention and suppression of infection diseases, and disposal of the dead, including—
  - (i) services for the purposes of establishing and maintaining village cleanliness;
  - (ii) the prevention of pollution of water sources and land resources;
- (c) the provision of services for the prevention and abatement of nuisances, including:
  - (i) imposition of fire bans and any other similar threats to persons or property;
  - (ii) the prevention and control of noise pollution;
- (d) the establishment, operation, and regulation of markets and commercial enterprises, including—
  - (i) village council markets and commodities sold in those markets;
  - (ii) the supply of planting materials;
- (e) the maintenance of the peace and security of the village residents in close co-operation with the Police;
- (f) any other function specified in this Act or any other enactment.

**19 Community facilities and activities**

A function of a village council is to establish or encourage the establishment of facilities it considers will benefit the residents of the village, including—

- (a) the establishment, operation, and maintenance of public halls, libraries, and community, cultural, or sports facilities;
- (b) the provision of community education schemes;
- (c) the provision of funding to associations for the promotion of handcrafts, recreation and sports, tourism, or the welfare of residents.

**20 Planning**

(1) A function of a village council is to establish and maintain plans for the following —

- (a) schemes or development schemes for any part or all of the council area;
- (b) adherence to safety at sea measures;
- (c) responses to natural disasters;
- (d) the sustainable use of coastal, reef, and sea foods.

(2) For the purpose of subsection (1)(c), any plans relating to natural disasters must—

- (a) identify assistance that residents are likely to require following natural disaster warnings;
- (b) make provision for ensuring the safety of residents;
- (c) make provision for safe houses to accommodate residents that are required to evacuate;
- (d) identify means of assistance for residents to evacuate to safe houses;
- (e) provide for the clearing and cleaning of debris and the preparation of roads for public access.

**21 Powers of village council**

(1) A village council may, in the performance of its functions or duties under this Act —

- (a) organise, finance, engage in, or assist any business or enterprise;
- (b) take any action it considers desirable to improve—
  - (i) the standards of housing; or
  - (ii) the standards of agricultural, pastoral, forestry, horticultural, or other methods;
- (c) carry out any works for the benefit of the council area or of its residents; or
- (d) borrow money.

(2) A village council must not borrow money under subsection (1)(d) without Cabinet approval.

(3) A village council may do anything it considers necessary or desirable for the performance of its functions or duties under this Act, including anything that is ancillary or incidental to the performance of those functions or duties.

(4) For the purposes of subsection (1)(b) and without limiting its generality, a village council may—

- (a) acquire by lease, or otherwise (but not including compulsory acquisitions) land or buildings;

- (b) develop or improve land;
  - (c) construct buildings;
  - (d) co-operate with the Government or other recognised authority or body in the provision of credit facilities;
  - (e) dispose of land or buildings.
- (5) A village council may—
- (a) provide assistance with any matter affecting the residents of the village; and
  - (b) make recommendations to the Government regarding matters affecting the village.

**22 Exercise of power not invalid or unlawful in certain circumstances**

- (1) If the Director gives his or her prior consent, the exercise by a village council of a power conferred by section 21 is not invalid or unlawful merely because—
- (a) it takes place outside the council area or is related to matters outside the council area; or
  - (b) it is for the benefit of only some of the persons in the council area or it is for the benefit of those persons jointly other persons.
- (2) The Director's consent must relate to exercise of the power in the manner described in subsection (1 )(a) or (b).

**23 Bylaws**

- (1) A village council may, with the approval of Cabinet, make bylaws for the performance of any of its functions.
- (2) A bylaw must not be inconsistent with this Act, any regulations made under this Act, and any other enactment,
- (3) A bylaw comes into force—
- (a) when it is approved by the Cabinet; or
  - (b) on any later date specified in the bylaw.
- (4) A village council must publish its bylaws—
- (a) as soon as possible after they have been approved by Cabinet; and
  - (b) in a manner that the council considers will best bring notice of the bylaws to the attention of the general public.
- (5) Money payable to a village council pursuant to a bylaw is a debt due to the council.
- (6) A fine imposed for an offence against a bylaw of a village council is payable to the council.
- (7) A bylaw may exempt in whole or in part any person or class of person from the payment of a fee or fine imposed under this Part.

**24 Fees for services**

A village council may, by bylaw or otherwise, and to the extent consistent with any regulations made under this Act, impose or charge fees for any services supplied or rendered, by or on behalf of the council.

**25 Fees may be recovered as debt**

Fees due to a village council under this Part may be recovered by the council as a debt.

**PART 4**  
**MEETINGS OF VILLAGE COUNCIL**

**26 First village council meeting**

(1) The first meeting of a village council must be called by the Assembly member by notice in writing within 7 consecutive days after the village council members are elected.

(2) If the first meeting is not called within 7 consecutive days after the village council members are elected, the Director must call the first meeting within the next 5 days (after the seventh day after the election).

(3) A notice under subsection (1) must—

- (a) state the date of the first meeting which must be within 7 consecutive days of the notice; and
- (b) be given to each member at least 3 days before the date of the meeting; and
- (c) state the date, time, and place for the meeting.

**27 Procedure at first village council meeting**

(1) At the first meeting of a village council,—

- (a) the Assembly member, or if the Assembly member is unavailable, the Director, presides until the chairperson is elected; and
- (b) each village council member must take his or her oath under section 16; and
- (c) after the oaths are taken, the chairperson and deputy chairperson must be elected and take office immediately.

(2) This section is subject to the constituent notice.

**28 Standing orders**

(1) A village council must, with the prior approval of the Director, adopt standing orders for—

- (a) the calling, regulation, and conduct of the meetings of the council; and
- (b) custody of the common seal of the council; and
- (c) custody or control of all assets of the council; and
- (d) any other matters that are necessary or convenient for the purposes of this Act.

(2) Standing orders must not be inconsistent with any provision of this Act.

**29 Regularity of meetings of village council**

(1) A village council must meet at least once every 6 weeks.

(2) The chairperson must call each meeting of the council by giving each member at least 7 days notice of the date, time, and place of the meeting.

(3) The chairperson must call a meeting of the council if requested to do so by at least 2 members.

(4) This section is subject to the constituent notice.

**30 Meetings of village council**

(1) This section applies to any meeting of a village council.

(2) The meeting must be presided over by—

- (a) the chairperson; or

- (b) if the chairperson is absent, the deputy chairperson; or
- (c) in any other case, a member chosen by the members present.

(3) One half of the total membership of the council, or 3 members, whichever is the greater number, constitutes a quorum for the meeting.

(4) All questions and matters before the council for decision must be determined by a majority of the votes of the members present.

(5) The member presiding has a deliberative vote, and if the votes are equal, a casting vote.

(6) Members of the public may attend the meeting unless the council determines otherwise.

(7) This section is subject to the constituent notice.

## **31 Meetings with residents**

(1) A village council must meet with the residents of the village at least once every 6 weeks.

(2) If the Chairperson does not call a meeting in accordance with subsection (1), a meeting may be called by—

- (a) any 2 members of the village council;
- (b) any 5 residents duly enrolled in the electoral roll of that village; or
- (c) the Assembly member representing that village constituency.

(3) The Director may direct the chairperson to call a meeting of the residents of the village at a place and time determined by the Director.

(4) A chairperson must—

- (a) call the meeting in accordance with any direction under subsection (2); and
- (b) preside, or arrange for another village council member to preside, over the meeting.

## **32 Administrative matters**

(1) A village council must ensure that—

- (a) documents to be considered at a council meeting are distributed to members before the meeting; and
- (b) minutes are made of each council meeting and confirmed by each member present at the original meeting; and
- (c) all minutes of council meetings are kept in a form in which they may be quickly retrieved for reference purposes; and
- (d) meeting minutes, correspondence, financial records, and other documents of the council are kept in safe custody; and
- (e) there is an up-to-date assets register of all assets of the council.

(2) The council may appoint a person, who may be a member, to be Secretary to the council.

(3) The functions of the Secretary are those set out in subsection (1).

(4) A person appointed as Secretary—

- (a) continues in office until the council ends the appointment or the person resigns from that position or dies; and
- (b) must, on ceasing to hold office as Secretary, ensure that any documents and records of the council in his or her custody are returned to the council.

**33 Village council members must disclose conflicting interests**

(1) If a village council member has a direct or indirect interest (other than as a resident of the village) in any transaction or matter by the village council — .

- (a) the member must, as soon as possible after becoming aware of that interest, disclose the interest at a meeting of the council; and
- (b) the council must ensure that the member's disclosure is recorded in the minutes of the meeting.

(2) The member who has made the disclosure—

- (a) must not take part in a deliberation or decision of the council relating to the agreement; but
- (b) may be counted, if present, for the purpose of forming a quorum of the council for the deliberation or decision.

(3) Nothing done by a council is invalid solely because at the time it was done a member had not disclosed an interest in accordance with this section.

**PART 5**

**VILLAGE COUNCIL MONEY AND ASSETS**

**34 Administrative costs**

Village councils may receive such amounts to cover administrative and development expenses as Cabinet determines from time to time from funds made available for that purpose by the Niue Assembly.

**35 Ownership and control of assets**

(1) All assets of a village council must be in the name of the council and be registered on the assets register.

(2) Until the council otherwise disposes of an asset, the asset—

- (a) remains the property of the council; and
- (b) must be in the control of the council at all times.

(3) The Director may at any time inspect the assets register of a council.

**36 Establishment of village council accounts**

(1) Every village council must establish a bank account to hold the funds of the council.

(2) The bank account must be in the name of the council.

(3) A council must ensure that all money that the council receives is paid into the bank account as soon as reasonably possible.

(4) No money may be withdrawn from that account except with the council's approval.

**37 Discretionary grants from public revenue**

In addition to any other money that may be paid or advanced to or on behalf of a village council, Cabinet may grant to a council, on any terms as it thinks fit, any money appropriated by Act for the purpose.

**38 Village councils may accept offers by Cabinet to advance money**

A village council may accept an offer by Cabinet to advance money for the purposes of the council on any terms that are agreed between the council and Cabinet.

**39 Reserve fund**

A village council must, unless otherwise authorised by the Director —

- (a) set aside during each financial year not less than one tenth of its recurrent revenue for that year as a reserve; and
- (b) build up and maintain at all times a reserve fund equal to 50% of its average annual revenue over the 5 financial years immediately preceding; and
- (c) once it has built up the reserve fund to the level prescribed by paragraph (b), comply with paragraph (a) only to the extent necessary to maintain the fund at the level prescribed by paragraph (b).

**40 Power to invest**

A village council may invest in the reserve fund (referred to in section 39)—

- (a) on deposit in a bank; or
- (b) in any other manner approved by Cabinet.

**41 Duty to keep proper accounts**

(1) A village council must keep proper accounts in accordance with an accounting practice approved by the Director.

(2) In particular, a council must keep records of—

- (a) its assets and liabilities; and
- (b) the money it receives and spends.

(3) A council must retain all financial records for a period of no less than 7 years.

**42 Write-off of irrecoverable amounts**

A village council may, subject to any directions or conditions specified by the Director, write off—

- (a) losses or deficiencies from its funds;
- (b) irrecoverable amounts of revenue;
- (c) irrecoverable debts or overpayments;
- (d) the value of lost, deficient, condemned, unserviceable, or obsolete stores.

**43 Village council accounts must be audited**

(1) The accounts of a village council must be audited by an auditor approved by Treasury.

(2) A person may be appointed to be the council auditor for more than one council.

**44 Village council must provide annual report**

(1) A village council must, within the 2 months after the end of a financial year, provide the Director with a report of its proceedings, operations, and transactions during that financial year, including the audited financial statement for that year.

(2) A village council must present its annual report to the village residents at a meeting before it is provided to the Director.

(3) Cabinet may withhold payments to a council until the annual report has been submitted to Cabinet to its satisfaction.

**45 Council may employ or engage persons to provide services**

A village council may employ or engage any person to provide services to the council on any terms and conditions determined by the council.

PART 6  
MISCELLANEOUS

**46 Remuneration of village council members**

The remuneration of village council members must be determined by Cabinet and paid out of funds made available for that purpose by the Niue Assembly.

**47 Village council members not personally liable for certain actions**

A village council member is not personally liable for an act or omission by the member in respect of a power or function conferred by this Act if done or omitted to be done in good faith.

**48 Suspension of village council**

(1) The Director must investigate any matter in respect of which the Director has reasonable cause to suspect that—

- (a) the affairs of the council are so negligently, inefficiently, or badly conducted that the council is not acting for the welfare of the council area or of the village residents; or
- (b) the council is not properly carrying out its duties under this Act or any other law in force in Niue.

(2) Following the investigation, the Director may direct the council to resolve the matter or report the matter to Cabinet.

(3) On receiving a report under subsection (2), Cabinet may, by written notice to the council concerned, suspend the operation of the council.

(4) If notice is given under subsection (3), Cabinet must appoint a manager to temporarily manage the affairs of the council.

(5) A notice under subsection (3) remains in force until Cabinet directs that the suspension be removed.

**49 Abolition of village council**

(1) During any period of suspension under section 48, the Director may, with the concurrence of the Director-General, recommend to Cabinet that the village council be abolished.

(2) Cabinet may, on receiving a recommendation under subsection (1) or on its own motion, by notice in the *Gazette*, abolish a village council.

(3) The powers and functions of the council cease on the date that the notice under subsection (2) is published or on any later date specified in the notice.

(4) In a notice under subsection (2) or by a subsequent notice, Cabinet must appoint a person to be the liquidator for the village council.

(5) A person appointed as liquidator must—

- (a) wind up the affairs of the council in accordance with any directions given by the Director; and
- (b) dispose of the council's assets in any manner that Cabinet determines; and
- (c) provide a report to Cabinet at the conclusion of the up and disposal of the assets of a council.

**50 Village council may be exempted from taxes**

Cabinet may, on receipt of written application from a village council, exempt the council from any tax, levy, duty or fee.

**51 Regulations**

Cabinet may make such regulations as it thinks fit for the purposes of this Act and in particular for providing for—

- (a) fees and allowances for village council members; and
- (b) the regulation of the imposition and collection of taxes and fees by village councils: and
- (c) the accounts and records to be kept by village councils; and
- (d) the forms for annual and financial reports and any other reports; and
- (e) the imposition of penalties not exceeding a fine of 100 penalty units (\$1,000) or imprisonment for one month, or both, for breaches of the regulations.

**52 Offences**

(1) A person commits an offence who—

- (a) consents to be nominated for election as a village council member, knowing that he or she is not qualified to be a candidate; or
- (b) nominates for election as a village council member, a person he or she knows is not qualified to be a candidate.

(2) A chairperson of a village council who fails to call a meeting of residents under section 31 when so required commits an offence.

(3) A person who has held the office of Secretary of a village council who fails to comply with 32(4)(b) commits an offence.

(4) Any person who fails to comply with a bylaw made by a village council under this Act commits an offence.

(5) Any person who obstructs or interferes with the lawful exercise, by a village council or an officer authorised by the council, of its powers or functions under this Act commits an offence.

(6) Any person who, whether intentionally or recklessly, misuses or abuses any funds for use by the village council or any council monies commits an offence and is liable on conviction to a fine not exceeding 100 penalty units.

(7) A village council member who does not return to the council any asset or other property belonging to the council that is held by the member at the end of his term or her term of office commits an offence.

(8) Any person who commits an offence against this section is liable on conviction to a fine not exceeding 100 penalty units.

**53 Application of fines**

All fines imposed for offences against this Act—

- (a) must be paid to the village council in respect of which the offence was committed; and
- (b) form part of the council's revenues.

**54      Judicial notice**

- (1) All courts and persons acting judicially must take judicial notice of—  
(a) all bylaws made by a village council; and  
(b) any act, matter, or thing that is directed by or under this Act to be published in the *Gazette*, when so published.
- (2) The common seals of all village councils must be judicially and officially noticed.

**55      Purposes of village council deemed to be public purpose**

The purposes of village councils and the purposes of a council are deemed to be a public purpose within the meaning of any law in force in Niue.

**56-57 [Spent]**



# VISITING FORCES ACT 1939

1939/36 (NZ) – 30 August 1940

1	Short title	5	Deserters from overseas forces
2	Interpretation	6	[Repealed]
3	Discipline and internal administration of visiting forces	7	Application of Act
4	Relations of visiting forces to the civil power and civilians	8	[Repealed]
		9	Limitation of penalties
		10	Regulations

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**To make provision with respect to forces of Her Majesty from other parts of the Commonwealth or from a colony when visiting New Zealand, and with respect to the exercise of command and discipline when forces of Her Majesty from different parts of the Commonwealth are serving together, and with respect to the attachment of members of one such force to another such force, and with respect to deserters from such forces**

## 1 Short title

This is the Visiting Forces Act 1939.

## 2 Interpretation

In this Act –

“court” includes a service court of inquiry and any officer of a visiting force who is empowered by the law of that part of the Commonwealth to which the force belongs to review the proceedings of a service court, or to investigate charges, or himself to dispose of charges; and “sentence” shall be construed accordingly;

“forces” includes reserve and auxiliary forces;

“home forces” means the naval, military and air forces of Her Majesty raised in New Zealand; and “home force” includes any body, contingent, or detachment of any of the home forces, wherever serving;

“internal administration”, in relation to any visiting force, includes the administration of the property of a deceased member of the force;

“member”, in relation to a visiting force, includes any person who is by law of that part of the Commonwealth to which the force belongs subject to the naval, military, or air force law of the part of the Commonwealth and who, being a member of another force, is attached to the visiting force or, being a civilian employed in connection with the visiting force, entered into the engagement outside New Zealand;

“part of the Commonwealth” means any country which Cabinet by regulation declares to be part of the Commonwealth for the purposes of this Act;

“visiting force” means any body, contingent, or detachment of the naval, military, or air forces of any part of the Commonwealth which is, with the consent of the Niue Government, lawfully present in Niue.

## 3 Discipline and internal administration of visiting forces

(1) When a visiting force is present in Niue it shall be lawful for the naval, military, and air force courts and authorities (the “service courts” and the “service authorities”) of that part of the Commonwealth to which the force belongs to exercise

within Niue in relation to members of such force in matters concerning discipline and in matters concerning the internal administration of such force all such powers as are conferred upon them by the law of that part of the Commonwealth.

(2) The members of any such service court as aforesaid exercising jurisdiction by virtue of this Act, and witnesses appearing before any such court, shall enjoy the like immunities and privileges as are enjoyed by a service court exercising jurisdiction by virtue of any enactment in force in New Zealand and by witnesses appearing before such a court.

(3) (a) Where any sentence has, whether within or without Niue, been passed upon a member of a visiting force by a service court of that part of the Commonwealth to which the force belongs, then for the purposes of any legal proceedings within Niue the court shall be deemed to have been properly constituted, and its proceedings shall be deemed to have been regularly conducted, and the sentence shall be deemed to be within the jurisdiction of the court and under the law of that part of the Commonwealth and, if executed according to its tenor, shall be deemed to have been lawfully executed, and any member of a visiting force who is detained in custody in pursuance of any such sentence, or pending the determination by such a service court as aforesaid of a charge brought against him, shall for the purposes of any such proceedings as aforesaid be deemed to be in lawful custody.

(b) For the purposes of any such proceedings as aforesaid a certificate under the hand of the officer commanding a visiting force that a member of that force is being detained for either of the causes aforesaid shall be conclusive evidence of the cause of his detention, but not of his being such a member, and a certificate under the hand of such an officer that the persons specified in the certificate sat as a service court of that part of the Commonwealth to which the force belongs shall be conclusive evidence of that fact.

(4) No proceedings in respect of the pay, terms of service, or discharge of a member of a visiting force shall be entertained by any court of Niue.

(5) For the purpose of enabling such service courts and such service authorities to exercise more effectively the powers conferred upon them by this section, Cabinet, if so requested by the officer commanding a visiting force or by the Government of that part of the Commonwealth to which the force belongs, may by general or special orders to any home force, direct the members of it to arrest members of the visiting force alleged to have been guilty of offences against the law of that part of the Commonwealth, and to hand over any person so arrested to the appropriate authorities of the visiting force.

#### 4 Relations of visiting forces to the civil power and civilians

(1) (a) Cabinet may by regulation authorise any Government department, Minister of the Crown, or other person in Niue to perform, at the request of such authority or officer as may be specified in the order, but subject to such limitations as may be so specified, any function in relation to a visiting force and members of it which that Department, Minister, or person performs or could perform in relation to a home force of like nature to the visiting force, or in relation to members of such a force, and for the purpose of the exercise of any such function any power exercisable by virtue of any enactment by the Department, Minister, or person in relation to a home force or members of it shall be exercisable in relation to the visiting forces and members of it.

(b) Nothing in this subsection shall authorise any interference in matters relating to discipline or to the internal administration of the force.

(2) [Repealed]

(3) If Cabinet by regulation so provides, members of a visiting force if sentenced by a service court of that part of the Commonwealth to which the force belongs to penal servitude, imprisonment, or detention may, under the authority of Cabinet, given at the request of the officer commanding the visiting force, be temporarily detained in custody in prisons or detention barracks in Niue; and, if so sentenced to imprisonment, may, under the like authority, be imprisoned during the whole or any part of the term of their sentences in prisons in Niue, and Cabinet may by regulation make provision with respect to any of the following matters –

- (a) The reception of such persons from, and their return to, the service authorities concerned;
- (b) Their treatment while in such custody or while so imprisoned;
- (c) The circumstances under which they are to be released; and
- (d) The manner in which they are to be dealt with in the event of their unsoundness of mind while in such custody, or while so imprisoned.

(4) Any costs incurred in the maintenance and return of or otherwise in connection with any person dealt with under subsection (3) shall be defrayed in such manner as may with the approval of the Minister of Finance be agreed between the Minister of Defence and the Government of that part of the Commonwealth which is concerned.

(5) Subject to this subsection and subsection (6), any enactment in force in Niue which –

- (a) Exempts, or provides for the exemption of, any vessel, vehicle, aircraft, machine, or apparatus of or employed for the purposes of the home forces or any of them from the operation of any enactment; or
- (b) In virtue of a connection with the home forces, or any of them, confers a privilege or immunity on any person; or
- (c) In virtue of such a connection excepts any property, trade, or business, in whole or in part, from the operation of any enactment, or from any tax, rate, imposition, toll, or charge; or
- (d) Imposes upon any person or undertaking obligations in relation to the home forces, or any of them, or any member or service court; or
- (e) Penalises misconduct by any person in relation to the home forces, or any of them, or any member or service court –

shall, with any necessary modifications, apply in relation to a visiting force as it would apply in relation to a home force of a like nature of the visiting force.

(6) Regulations made under this section may apply either generally or in relation to visiting forces from any particular part of the Commonwealth, or in relation to any particular visiting force, or in relation to any particular place.

## 5 Deserters from overseas forces

(1) The forces to which this section applies are such of the naval, military, and air forces of any part of the Commonwealth as Cabinet may by regulation direct.

(2) Subject to this section, the law in force in Niue relating to the apprehension of deserters and absentees without leave from a home force shall within Niue apply in relation to a deserter or an absentee without leave from any force to which this section applies (including any member of a reserve or auxiliary force who, having failed to obey a notice calling upon him to appear at any place for service, is by the law

of that part of the Commonwealth to which the force belongs, liable to the same punishment as a deserter, or to the same punishment as an absentee without leave), as they apply in relation to a deserter or absentee without leave from a home force.

(3) (a) No person who is alleged to be a deserter from any such force as aforesaid shall be apprehended or dealt with under this section except in compliance with a specific request from the Government of that part of the Commonwealth to which the force belongs, and a person so dealt with shall be handed over to the authorities of that part of the Commonwealth at such place in Niue as may be agreed.

(b) A person who is alleged to be a deserter or absentee without leave from a visiting force may also be apprehended and dealt with under this section in compliance with a request, whether specific or general, from the officer commanding that force, and shall, if that force is still present in Niue, be handed over to the officer commanding that force at the place where the force is stationed.

(4) For the purposes of any proceedings under this section –

- (a) A document purporting to be a certificate of Cabinet or of a prescribed officer that a request has been made under subsection (3) shall be admissible without proof as evidence of such a request;
- (b) A document purporting to be a certificate under the hand of the officer commanding a unit or detachment of any force to which this section applies that a named and described person was at the date of the certificate a deserter, or absentee without leave, from that force shall be admissible without proof as evidence of the facts so certified.

**6 [Repealed]**

**7 Application of Act**

Subject to such exemptions, adaptations, and modifications as Cabinet may by regulation direct –

- (a) This Act shall apply in relation to any naval, military, or air forces raised in any territory for whose international relations the Government of any part of the Commonwealth is responsible, as if those forces were part of the naval, military, or air forces of that part of the Commonwealth;
- (b) This Act shall apply in relation to any naval, military, or air forces raised in the Cook Islands, Niue, or Tokelau as if those forces were part of the home forces.

**8 [Repealed]**

**9 Limitation of penalties**

Nothing in this Act shall be construed to authorise any service court of any part of the Commonwealth to impose on a member of a visiting force in respect of any offence any penalty exceeding the penalty to which a member of the home forces would under the law of Niue be liable for a similar offence.

**10 Regulations**

Cabinet may make such regulations, not inconsistent with this Act, as may be deemed necessary or convenient for the purpose of giving full effect to this Act.

# WATER ACT 2012

2012/317 – 2 July 2012

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### To make provision for the investigation, extraction, use, control, protection and management of water and for related matters

#### PART 1 PRELIMINARY

##### **1 Name**

This is the Water Act 2012.

##### **2 Interpretation**

(1) In this Act –

- "activity" includes an industrial, agricultural or commercial activity or an activity of any other nature whatever (including the keeping of a substance or an animal, and the extraction of water);
- "bore" means any bore, well, gallery, cave or drive or any artificially constructed or improved underground cavity;
- "Crown land" has the meaning assigned to it under the Niue Amendment Act (No 2) 1968;
- "environment" has the meaning assigned to it under the Environment Act 2003;
- "Environment Director" means the Director of the public authority responsible for the environment;
- "groundwater" means any water occurring in or obtained from any geological structure or formation permeated or capable of being permeated usually or occasionally with water and includes any matter dissolved or suspended in such water;
- "Health Director" means the Director of the public authority responsible for health;
- "impactor pays principle" means the principle that any person using water or undertaking activities that has the potential to impact on the water shall pay for the impact on the water;
- "infringement notice" means a notice alleging the commission of an infringement offence;
- "infringement offence" means an offence against this Act or regulations made under this Act that is classified as an infringement offence by regulations made under this Act;
- "meter" means any device approved by the Public Works Director for measuring the amount of water extracted or used or the rate at which it is extracted or used, and

## Water Act

includes such fittings and ancillary equipment as may be necessary or desirable to so measure;

"Minister" means the Minister responsible for the water supply;

"occupier" in relation to any land includes any lessee, licensee, or other occupant of the land and includes the owner or the agent, or representative of the owner where there is no apparent occupier;

"pollution" means any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any water so as to render such water less fit for any beneficial purpose for which it is, or may reasonably be used, or to cause a condition which is hazardous or otherwise detrimental or potentially hazardous or otherwise detrimental to public health, safety or welfare, or to persons, animals, birds, wildlife, fish or aquatic life, or plants;

"premises" includes any structure, building or part of building, or land with or without buildings, or a mobile plant, vehicle, vessel or aircraft;

"private" in the expressions "private water works" and "private sewerage works" includes any works owned or operated by any person, village council or public authority;

"private water works" includes the pipes and all fittings, including taps, which extend from the main public water supply pipe to or within any premises;

"private sewerage works" shall include the soak hole disposal trench, disposal mound (to cover other possible effluent disposal methods) septic tank, vents, drain pipes, toilet pan, sink, shower, wash and hand basins;

"Public Works Director" means the Director of the public authority responsible for water supply;

"public water supply" means any waterworks constructed or operated by the Public Works Director for the purpose of supplying water under section 19;

"public authority" means any Ministry, Department, Division, Board, agency, authority, statutory body, statutory corporation, or administrative office and includes a member of staff or other person who exercises functions on behalf of a public authority;

"rainwater capture works" includes roofing, spouting, downpipes, rainwater holding tank, piping and taps used for the purpose of capture and use of rainwater;

"service provider accommodation" means such places that offer accommodation for a fee including and without limiting the foregoing, a hotel, a motel, a guest house, a resort and a hostel;

"sewage" means any matter, or any water contaminated by any matter in solution or suspension or carried along, that is derived from the use of water in connection with the life or vocations of mankind;

"sewerage works" includes all sewers, pipes, conduits, tanks, receptacles or other appliances and any works incidental thereto to be used or intended to be used for the reception, discharge, retention, removal, treatment or disposal of sewage;

"sustainable yield" of the water resource means the amount of water that can be taken from a groundwater source without depleting the resource in the long term, or changing the water quality, or having any significant impacts on groundwater dependent ecosystems. The sustainable yield is usually expressed as a volume per year, but can additionally be expressed as an extraction 'regime', that may vary

- from time to time, and takes into account the location and distribution of extraction points and the local rates of extraction;
- "system yield" in relation to a public water supply system means the maximum rate of extraction over a specified time period (typically per day) from an existing water supply work or group of works that can be maintained indefinitely without depleting the supply or changing the chemical composition (including salinity) of the water so supplied;
- "village council" means a village council established under the Village Councils Act 2016;
- "water" includes all groundwater, aquifers, cave waters, seawater and rainwater;
- "water works" includes any bores, catchments, reservoirs, tanks, cisterns, conduits, mains, pipes, meters, valves, hydrants, pumps, engines and all other structures or appliances used or constructed for the storage, treatment, conveyance, supply, measurement or regulation of water;
- "wellhead" includes a bore and any pump, valve, pipe, duct, channel, drain or any other means used or intended to be used to withdraw any water from a bore.

### **3 Objective**

- (1) The objective of this Act is to provide an administrative and regulatory framework for the sustainable, efficient and coordinated development, extraction, protection, management and use of the water resources of Niue for the benefit of both present and future generations, and in particular –
- (a) to provide for the sustainable and efficient management and development of water resources to meet current and future uses, including domestic use, watering of animals, irrigation and agricultural uses, rural, commercial, and industrial uses, and recreation uses;
  - (b) to protect, and where necessary restore, water quality, so as to reduce the risks to human health and prevent the degradation of the environment;
  - (c) to prevent and control pollution of water;
  - (d) to protect ecosystems that depends on water;
  - (e) to provide for the orderly, efficient, open and equitable sharing of water resources;
  - (f) to improve awareness and understanding of water resource issues;
  - (g) to encourage best practice in the extraction, management, protection and use of water;
  - (h) to provide opportunities for public participation in decisions regarding water resource allocation and protection;
  - (i) to assist the coordination and integration of the management of water resources with the regulation and management of other activities and natural resources which may influence the quality, quantity, distribution, use and management of water; and
  - (j) to ensure the application of appropriate standards and techniques for the investigation, use, control, protection, management and administration of water resources.

#### 4 Water Management Principles

The Cabinet, any public authority and any person exercising powers under this Act shall take all reasonable steps to do so in accordance with, and so as to promote, the following principles of the Act –

- (a) the social and economic benefits to the community of water use should be recognised;
- (b) extraction of water resources should remain within the assessed sustainable yield;
- (c) extraction of water resources should remain within the assessed system yield of each water supply system;
- (d) pollution of water resources should be minimised, and if necessary, water quality should be restored;
- (e) prevention of the discharge or seepage into the water of substances likely to cause harm to public health or environment should be prevented or reduced to harmless levels;
- (f) habitats, animals and plants that benefit from water should be protected and, if necessary, restored;
- (g) the cumulative impacts on water resources and their dependent ecosystems of water licences and pollution control licences and of other activities, should be considered and minimised;
- (h) geographical and other features of major cultural, heritage or spiritual significance that are dependent on water should be protected;
- (i) the principles of adaptive management should be applied, and should be responsive to monitoring and improvements in understanding of the water resource and dependent ecosystems;
- (j) public water supply catchment areas should be protected;
- (k) high conservation areas dependent on groundwater should be protected;
- (l) any impacts on other any existing activities that intercept or alter water flow must be avoided or minimised;
- (m) to apply the principle of impactor pays; and
- (n) multilateral environment agreements to which Niue is a party should be complied with.

#### 5 Vesting of groundwater in the Crown

(1) The right to the use, flow, piping, storage, sale and control to all groundwater is vested in the Crown.

(2) Subject to subsection (1), the Crown's water rights prevail over any authority conferred by or under any other Act or law, except to the extent to which this or any other written law expressly provides.

## PART 2

### FUNCTIONS AND POWERS OF DIRECTORS

#### 6 Functions of Public Works Director

(1) The Public Works Director shall be responsible to the Minister responsible for water supply and subject to this Act, shall be responsible for the

construction, management, regulation and protection of water supply, and shall have the following functions –

- (a) to investigate groundwater resources and collect data and disseminate information relating to it;
- (b) to design, construct, alter, operate, repair, maintain, decommission, manage, control and administer all public water supplies and all water works comprising such supplies;
- (c) to construct, maintain and operate water monitoring equipment;
- (d) to license, inspect, oversee and control the extraction and use of water from any bore or public water supply;
- (e) to manage, protect and treat by chemical or by other means water contained in water supply works, provided that the Public Works Director shall not so treat any such water without the prior consent of the Health Director;
- (f) to distribute and sell water from any public water supply;
- (g) to collect any fees, charges, or rates which may be imposed or levied in connection with the construction, alteration, repair or maintenance of any bore, any licence for the extraction of water, or any connection to or use of water from a public water supply;
- (h) to promote education and awareness of water supply issues;
- (i) to do anything to expedite the enabling the provisions of this Act and any regulations made under it to be attained.

## **7 Functions of Environment Director**

The Environment Director shall be responsible to the Minister responsible for the environment and subject to this Act, shall be responsible for water quality and its protection, and shall have the following functions –

- (a) to protect and mitigate the quality of groundwater;
- (b) to license, inspect, oversee and regulate activities that have the potential to pollute water;
- (c) to collect any fees, charges, or rates which may be imposed or levied in connection with pollution control licences;
- (d) to maintain and operate water quality monitoring equipment, and monitor the quality of groundwater;
- (e) to promote education and awareness of environmental issues concerning water management and conservation;
- (f) to do anything to expedite the enabling the provisions of this Act and any regulations made under it in relation to the environment, water quality and its protection to be attained.

## **8 Functions of the Health Director**

(1) The Health Director shall be responsible to the Minister responsible for the health and subject to this Act, shall be responsible for the monitoring of the quality of water in public water supply systems and to monitor the quality of water in any supply system.

(2) The monitoring of the quality of water in the public water supply systems shall be carried out every three months of each year.

**9 Powers of Directors to Delegate**

(1) A Director with functions under this Act may delegate to any authorised officer any of their functions and powers under this Act.

(2) In this section "authorised officer" means a member of staff of any government department or public authority who has been delegated authority pursuant to subsection (1).

**10 Powers of entry**

(1) A Director or an authorised officer may enter any land or premises for –

- (a) the purpose of inspecting any water works situated on the premises; or
- (b) the purpose of monitoring the extraction or use of water on the premises; or
- (c) the purpose of monitoring any activity occurring on the premises; or
- (d) the purpose of carrying out any surveys for the purposes of this Act; or
- (e) the purpose of taking measurements of any matter, or for reading any meter, for the purposes of this Act; or
- (f) the purpose of investigating the need for, or the serving of, a direction on the occupier; or
- (g) the purpose of investigating any alleged contravention of this Act or the regulations; or
- (h) the purpose of carrying out on those premises any function or work that by this Act the Director or an authorised officer is authorised to carry out.

(2) At all times while on premises under the power conferred by this section, an authorised officer must carry, and produce on demand, evidence of his or her authority to be on the premises.

(3) Except in the case of cyclone, earthquake, or any other emergency, or in the case of entry for the purpose of investigating any alleged contravention of this Act or the regulations, the powers conferred by this section may only be exercised during daylight hours, and on informing the occupier if possible.

(4) Where the land is expressly required for a bore site and/or reservoir site the Public Works Director must consult with the occupier of the land and seek written agreement for the proposed site of the water bore and/or reservoir site.

(5) A Director or an authorised officer may not enter a private residential dwelling house except –

- (a) with the verbal or written consent of the occupier; or
- (b) under the authority of a search warrant issued under subsection (6).

(6) Where a judicial officer is satisfied on evidence in writing made under oath by an authorised officer that –

- (a) there are reasonable grounds to believe that it is appropriate for the administration of this Act for the authorised officer to do anything set out in subsection (1), and
- (b) the authorised officer may not be able to carry out duties under this Act effectively without a search warrant issued under this subsection because –
  - (i) no person is present to grant access to a place that is locked or is otherwise inaccessible; or

(ii) a person has denied the authorised officer access to a place or there is reasonable ground for believing that a person may deny the authorised officer access to a place; or

(iii) a person has prevented the authorised officer from doing anything set out in subsection (1); or

(iv) there are reasonable grounds to believe that an attempt by the authorised officer to do anything set out in subsection (1) without the order might defeat the purpose of the inspection or cause an adverse effect,

the judicial officer may issue an order authorising the authorised officer to do anything set out in subsection (1) that is set out in the order, and the order must be exercised within 14 days from the date of issue.

**11 Power to impose fees**

(1) Subject to any regulations made under this Act, the Cabinet may impose fees or charges for the doing of any act, the considering of any application or the issuing of any licence or approval under this Act on any person, public authority or village council –

- (a) who or which extracts any water under an extraction licence granted under this Act;
- (b) served by the construction, alteration, repair, maintenance or operation of any bore or any public water supply;
- (c) to whom or which the Director of Public Works supplies or sells any water under this Act.

(2) Subject to any regulations made under this Act, the Cabinet may impose fees or charges on any person, public authority or village council for –

- (a) the doing of any act, the considering of any application, or the issuing of any pollution control licence or approval under this Act;
- (b) whom or which a pollution control licence or an extraction licence is granted under this Act.

**PART 3**

**WATER INVESTIGATION, MONITORING, AND COMPLIANCE PROGRAMME**

**12 Directors may conduct programmes**

(1) The Public Works Director may cause a programme of investigation and monitoring of water resources to be prepared, which may provide for the collection, collation and analysis of data including, without limitation –

- (a) the location, levels, pressure, composition and movement of groundwater;
- (b) the properties of groundwater or of the rock or coral containing groundwater or through which such groundwater percolates;
- (c) any other matters in connection with the availability of groundwater or its suitability for use or its protection from depletion, wastage or pollution or its replenishment.

(2) The Environment Director may cause a programme of investigation and monitoring of water quality to be prepared, which may provide for the collection, collation and analysis of data including, without limitation, the quality of water resources.

(3) The Health Director may cause a programme of investigation and monitoring of public water supply quality to be prepared, which may provide for the collection, collation and analysis of data including, without limitation, the quality of water in the public water supply system.

(4) The responsible Director may do anything necessary or expedient for or in connection with the carrying out of the programmes.

### **13 Village inspections**

For the purpose of minimising water wastage, and protecting public health and water quality, a Director of Water Supply, Environment or Health may conduct a village inspection on –

- (a) connections to a public water supply system;
- (b) private water works; or
- (c) private sewerage works.

### **14 Power to require samples**

(1) The Public Works Director may require any person who is the holder of any licence issued under the Mining Act 1977 to supply the Public Works Director with such samples from the core or water of any bore constructed under such licence and any details concerning such bore and its operation.

(2) The Public Works Director or the Environment Director may require any person who is the holder of any licence issued under Parts 4 or 5 of this Act to provide such samples of water and analysis of such samples of water.

## PART 4

### WATER SUPPLY

#### *Construction of bores*

### **15 Power to construct bores**

(1) No person other than the Public Works Director or an authorised officer shall construct, alter, repair or maintain, or decommission any bore for the purpose of extracting water or cause any such bore to be constructed, altered, repaired or maintained.

(2) The Public Works Director may, with the consent of the Environment Director as to the proposed location of it, construct any bore for the extraction of water for the purposes of Part 4, Division 4. .

(3) Any person, public authority or village council may apply to the Public Works Director to have a proposed bore constructed, or any bore altered or maintained, in the manner provided for in the Regulations.

(4) The Public Works Director, with the consent of the Environment Director, may grant an application under subsection (3) subject to such terms and conditions as the Public Works Director thinks fit or may refuse to grant such an application.

(5) The costs associated with any construction, alteration or maintenance of a bore applied for under subsection (3), and any conditions associated with an approval to construct, alter or maintain such a bore, will be borne by the applicant.

(6) Where any person holding a licence under Part 4 of the Mining Act 1977 has constructed or proposes to construct a bore which has encountered or may encounter any groundwater, the person must notify the Public Works Director, and the Public Works Director may require such precautions to be taken or work to be done in relation to such bore as he or she deems necessary for the protection of such groundwater and may exercise the powers conferred by Part 4 Division 5 in relation to any such bore.

*Water source sustainable yield and water supply system yield*

**16 Determination of sustainable yield**

- (1) From time to time, the Public Works Director may, by order in writing, determine the sustainable yield of the total groundwater resources of Niue.
- (2) Before making a determination under subsection (1), the Public Works Director must obtain the consent of the Environment Director.

**17 Determination of water supply system yield**

- (1) From time to time, the Public Works Director may, by order in writing, determine the system yield of each public water supply system.
- (2) Before making a determination under subsection (1), the Public Works Director must consult with the Environment Director.

*Extraction and use of water*

**18 Extraction licence**

(1) No extraction or use of water or natural depositaries of water by any person, public authority or village council holding a licence under Part 4 of the Mining Act 1977 shall be deemed lawful, except as authorised by the Minister responsible for water supply and with Cabinet's approval and under the conditions of an extraction licence issued under this Division 3 of Part 4 of this Act.

(2) No person, public authority or village council shall cause or permit any water to be extracted or used from any water works, other than public water supply water works or rainwater capture works, except as authorised by the Minister responsible for water supply and with Cabinet's approval and under the conditions of an extraction licence issued under this Division.

(3) No person, public authority or village council shall cause or permit water to be extracted or used from any public water supply water works if the extraction exceeds the volumes, or is proposed to be used for the activities, specified in Schedule 1 to this Act, except as authorised by the Minister responsible for water supply and with Cabinet's approval and under the conditions of an extraction licence issued under this Division.

(4) Subject to any conditions specified in the licence and the provisions of this Act, an extraction licence entitles its holder to –

- (a) extract the volume of water over the time, from the work, and at the location specified in the licence, and
- (b) use the water so extracted for the purpose specified in the licence.

**19 Applications for granting of an extraction licence**

(1) An occupier of premises may make an application for a licence to extract and use water.

(2) An application for an extraction licence shall be made in writing and lodged with the Public Works Director in the prescribed form, with the prescribed fee and accompanied by the prescribed plans and descriptions, together with a statement of the purposes for which it is proposed to use the water.

(3) The Public Works Director with the approval of the Minister responsible for water supply may –

- (a) require an applicant for an extraction licence to provide additional information within a specified time;
- (b) delay consideration of the application until the information is provided or, if the information is not provided within the time specified, may refuse to consider the application.

(4) The Public Works Director may refuse to accept an application for an extraction licence if it appears to the Public Works Director that the application is incomplete.

**20 Objections to granting of extraction licences**

(1) On receipt of an application, the Public Works Director shall advertise for two weeks in the *Gazette* and in the media including radio, or public notice –

- (a) providing a brief description of the application; and
- (b) requesting all interested persons to inform the Public Works Director whether they support the application or object to it, and if they do so object, the reasons for that objection; and
- (c) stating the last day on which such information will be received and the name or official designation and address of the person to whom it should be sent.

(2) The Public Works Director may –

- (a) require an objector or an applicant to provide additional information within a specified time;
- (b) delay consideration of the objection or response until the information is provided or, if the information is not provided within the time specified, may refuse to consider the objection or response.

(3) Before making a determination on an application for an extraction licence in respect of which any objection has been made, the Public Works Director must endeavour to resolve the issues raised by the objection by means of consultation with the applicant and the objector, with a view to reaching agreement on the matters raised by the objection.

**21 Determination of an application for an extraction licence**

(1) The Minister responsible for water supply may, on an application made under section 19 and with Cabinet's approval determine an application for an extraction licence by granting or refusing to grant the licence.

(2) An extraction licence is not to be granted unless the Minister responsible for water supply is satisfied that –

- (a) the applicant is a fit and proper person;

- (b) the granting of the extraction licence will not exceed the sustainable yield of the system;
- (c) the granting of the extraction licence will not exceed the system yield of the water supply system;
- (d) the granting of the extraction licence will not result in unacceptable impacts on existing uses, groundwater levels, or groundwater quality in the vicinity of the extraction to which the application relates; and
- (e) adequate arrangements and conditions are in place to ensure the purpose and principles of this Act are upheld.

(3) After determining an application under this Division, the Public Works Director must cause notice of the determination to be given to the applicant and to each person who has made an objection in connection with the application.

## **22 Conditions of an extraction licence**

(1) An extraction licence is subject to such conditions as the Minister responsible for water supply may direct the Public Works Director to impose on the extraction licence from time to time, including but not limited to the following conditions –

- (a) to give effect to any agreement between an applicant and objector;
- (b) to give effect to the purpose and principles of this Act; and
- (c) relating to the monitoring and reporting of water extraction and use.

(2) Conditions may not be imposed on an extraction licence after it has been granted unless the Minister has –

- (a) given written notice to the holder of the extraction licence that the Public Works Director proposes to impose such conditions; and
- (b) given the holder of the extraction licence a reasonable opportunity to make submissions to the Public Works Director with respect to the proposed conditions; and
- (c) considered such submission.

## **23 Duration of extraction licences**

An extraction licence granted in accordance with Division 3 of Part 4 of this Act will remain in force for 3 years from the date it was granted.

## **24 Renewal of extraction licences**

A licence may be renewed from time to time by the Minister responsible for water supply and with Cabinet's approval on application by the holder of the licence in the manner prescribed by the Regulations to this Act.

## **25 Amendment of an extraction licence**

(1) An extraction licence may be amended at any time during its currency on application by the holder of the licence or on the initiative of the Public Works Director as approved by the Minister responsible for water supply.

(2) Subject to 21(2), the Minister responsible for water supply, may amend any extraction licence, and may, without limitation, add to, vary or revoke –

- (a) the specified volume of water authorised by the extraction licence; or

- (b) the specified work or location at which the extraction licence may be exercised; or
- (c) the specified purpose for which the water may be used; or
- (d) any conditions under the extraction licence.

(3) The holder of an extraction licence may apply in writing and lodged with the Public Works Director for approval to amend an extraction licence in the manner provided for in the Regulations.

(4) Section 24 applies to an application for amendment made under this section.

(5) The Minister responsible for water supply shall grant such an application subject to such conditions as the Public Works Director thinks fit or as provided for in the Regulations or may refuse to grant such an application.

(6) No person or public authority or any person who has constructed a bore under a licence granted under Part 4 of the Mining Act 1977 shall amend the purpose for which any bore is used unless written approval has been obtained from the Minister responsible for water supply under this section.

(7) The Minister responsible for water supply shall not amend any extraction licence if such an amendment is inconsistent with the requirements of section 21(2).

## **26 Suspension and cancellation of an extraction licence**

(1) The Minister responsible for water supply may direct the Public Works Director to suspend or cancel an extraction licence on any one or more of the following grounds –

- (a) that the holder of the licence has failed to comply with the conditions to which the licence is subject;
- (b) that the holder of the licence has been convicted of an offence against this Act or the regulations;
- (c) if any fees, charges or civil penalties in respect of the licence have not been paid;
- (d) that the water extracted pursuant to the licence is polluted or likely to cause pollution.

(2) During any period of suspension of an extraction licence –

- (a) the holder of the extraction licence is not authorised by such licence or otherwise to extract or use any water as authorised by such licence; and
- (b) fees and charges payable under this Act in respect of the extraction licence will continue to apply.

## *Public water supply*

## **27 Power to supply water**

(1) The Public Works Director may, subject to this Act, extract and collect water from any bore constructed for the purpose of supplying water, and may store, supply and sell any such water to any person, public authority or any village council.

(2) The Public Works Director shall not be obliged to supply or sell water to any person, public authority or any village council and may refuse the supply of it to any person, public authority or village council if any fees, rates or charges have not been paid.

**28 Public water supply connections to be approved and registered**

(1) No person, public authority or village council, other than the Public Works Director shall make, alter or repair a connection to a public water supply system.

(2) All works provided by the Public Works Department pursuant to the subsection (1) and any meter connected thereto shall be and remain the property of the Department.

(3) The Public Works Director must cause to be kept a register of connections to the public water supply.

(4) The Public Works Director may enter into agreements to supply water from the public water supply to consumers, including any person, village council or public authority, and such agreements shall specify the rights and obligations of consumers.

**29 Application for approval of private water works**

(1) Before the fitting of any private water works on any premises the owner or occupier shall apply to the Public Works Director for approval.

(2) Any such application shall contain a full description of the private water works proposed and any other information or drawings as may be required of the Public Works Director.

(3) The Public Works Director may grant such an application subject to such conditions as the Public Works Director may see fit, or refuse such an application.

(4) No fitting of any private water works on any premises shall commence or proceed except in accordance with a permit granted by the Public Works Director pursuant to this section, and all such private water works shall be carried out in accordance with the provisions of the National Building Code for Niue.

**30 Power to install meters**

(1) The Public Works Director may install meters for the purpose of measuring any water extracted, supplied or sold under this Act and where water is supplied without any meter being installed, the measurement of water supplied shall be calculated by such means as the Public Works Director may determine.

(2) Any person or body corporate using water for any purpose, including for undertaking any commercial activity such as but not limited to accommodation providers, commercial farming and animal husbandry and any swimming pool may be charged a levy for the supply and use of water and may be subject to any regulations prescribed under this Act.

(3) Any levy charged under subsection (2) shall be measured in accordance with subsection (1).

**31 Power to disconnect supplies**

The Public Works Director may disconnect the supply of water to any person, public authority or village council where –

- (a) any deposit or advance payment required by the Public Works Director has not been paid;
- (b) the payment of any fee, charge or rate made or levied under this Act is in arrears;
- (c) in the opinion of the any person consuming water from that supply allows or has allowed any water from that supply to run to waste;
- (d) any person, public authority or village council is in breach of the conditions of any agreement or extraction licence under which water is supplied, or has failed to comply with this Act or the Regulations;
- (e) any person, public authority or village council is in breach of any order issued under Division 5 of this Part, or of the provisions of this Act or any regulations made under it.

**32 Power to suspend supplies**

The Public Works Director may restrict, suspend or stop the supply of water under section 32 to any public or private water works –

- (a) whenever, in the opinion of the Public Works Director, there is an actual or anticipated shortage of water;
- (b) whenever it may be expedient or necessary for the purposes of extending, altering, testing, treating, maintaining or repairing the water works or for the purposes of the connection of services or for the fighting of fires;
- (c) whenever any water works are damaged or there is any breakdown in the water works.

**33 Powers of the Health Minister**

Where the Health Director is of the opinion that any water contained in any bore, private or public water supply is likely or may become polluted or there is likely to be, or may become, a threat to public health, the Health Director, after consultation with the Public Works Director and, where appropriate, with any person, public authority or village council may –

- (a) require the Public Works Director to restrict, suspend or stop the supply of water to any person, public authority or village council;
- (b) treat or require the Public Works Director to treat any water contained in any water works associated with such supply.

**DIVISION 5**  
**WATER SUPPLY, EXTRACTION AND USE ORDERS**

**34 Temporary water restrictions**

(1) If satisfied that it is necessary or expedient to do so in the public interest (for example such as to cope in times of actual or anticipated shortage of water, or for reasons of public health or emergencies) the may, by order in writing –

- (a) restrict the amount of water which may be extracted or maximum rate at which water may be extracted from any bore, water reservoir, or public water supply; or

(b) prohibit the taking of such water.

(2) As soon as practicable after making such an order under subsection (1), the Public Works Director must cause notice of the order to be broadcast on television and/or radio and or published in any newspaper.

(3) An order under this section –

(a) ceases to have effect if it is repealed; or

(b) where the order provides that it ceases to have effect on a specified day or on the expiry of a specified period, ceases to have effect on that day or on the expiry of that period, whichever first occurs.

(4) In making an order under subsection (1) to cope with actual or anticipated shortage of water, the Public Works Director shall give priority to providing water for efficient domestic household use and essential community services.

(5) In the case of a declared national disaster, the mandate of the National Disaster Council supersedes the mandate of the Public Works Director under this section.

### **35 Rainwater capture works**

The Minister responsible for water may act through the Public Works Director require any person, public authority or village council to install and maintain rainwater capture works.

### **36 Production of information**

The Public Works Director may, by order in writing served on any person, public authority or village council who is extracting water from any bore, water reservoir, public water supply, or rainwater capture works, direct the person, public authority or village council to furnish the Minister with specified information in relation to the condition of any bore or water works, or the extraction and use of water.

### **37 Water conservation orders**

(1) Despite the provision of this Act or any other written law, where the Minister is satisfied that any act or omission by any person or public authority or village council may result, directly or indirectly, in the inequitable distribution, loss, wastage or undue depletion of any water, the may by order direct to do any one or more of the following –

- (a) to close and shut off the supply of water from any bore, public water supply or private water works;
- (b) to restrict or limit the amount of water taken from any bore, public water supply or private water works;
- (c) to discontinue the use of any bore, public water supply or private water works;
- (d) to use, or to cease using, the water extracted from any bore for such purposes as may be specified in the order;
- (e) to deal with any water extracted from any bore or contained in any public water supply or private water supply in such manner as may be specified in the order;
- (f) to cease or to refrain from doing any act or omission on any land which could or may be likely to harm Niue's water lens, storage or supply, as may be specified in the order;

- (g) to erect such structures or to carry out such works, including water works, or to repair, maintain, alter or remove such structures or works as may be specified in the order;
- (h) to take measures to repair any damage caused by the extraction or use, or misuse, or lack of maintenance of a bore or private water work;
- (i) to take any other measures that Public Works Director considers to be necessary or expedient to promote the purpose and principles of this Act.

(2) An order made under subsection (1), and the terms of any such order, shall remain in force for the period specified in the order or until such order is revoked.

(3) If any person, public authority, village council or the occupier of any land to whom an order under this section is addressed shall fail to comply with any direction contained in such order within such time as is specified in the order, the Public Works Director may cause the provisions of the order to be carried out and may recover any expenses incurred from the person, public authority, village council or occupier of land to whom the order was addressed.

**PART 5**  
**WATER QUALITY PROTECTION**  
*Water pollution control licence*

**38 Water pollution control licence**

(1) Subject to the provisions of this Part 5, no person or public authority shall cause or permit any matter to be disposed of underground by means of a water bore, or in such a way as may pollute any groundwater.

(2) Any person, village council or public authority wishing to undertake any activity listed in Schedule 2 to this Act shall apply to the Environment Director for a water pollution control licence in accordance with this Division.

(3) Subject to any conditions specified on the licence and the provisions of this Act, a water pollution control licence entitles its holder to carry out the scheduled activities at locations or premises specified in the licence.

**39 Application for granting of a water pollution control licence**

(1) An occupier of premises may make an application for a water pollution control licence.

(2) An application for a water pollution control licence shall be made to the Environment Director in the prescribed form, with the prescribed fee and, be accompanied by such information as is required by the Environment Director or prescribed by the regulation.

(3) The Environment Director may –

- (a) require an applicant for a water pollution control licence to provide additional information within a specified time; and
- (b) delay consideration of the application until the information is provided or, if the information is not provided within the time specified, may refuse to consider the application.

(4) The Environment Director may refuse to accept an application for a water pollution control licence if it appears to the Environment Director that the application is incomplete.

**40 Objections to granting of water pollution control licence**

(1) On receipt of an application, the Environment Director shall advertise for a two week period in the *Gazette* or media, a public notice –

- (a) providing a brief description of the application, and
- (b) requesting all interested persons to inform the Public Works Director whether they support the application or object to it, and if they do so object, the reasons for that objection; and
- (c) stating the last day on which such information will be received and the name or official designation and address of the person to whom it should be sent.

(2) The Environment Director may –

- (a) require an objector or applicant to provide additional information within a specified time;
- (b) delay consideration of the objection or response until the information is provided or, if the information is not provided within the time specified, may refuse to consider the objection or response.

(3) Before making a determination on an application for a water pollution control licence in respect of which any objection has been made, the Environment Director must endeavour to resolve the issues raised by the objection by means of consultation with the applicant and the objector, with a view to reaching agreement on the matters raised by the objection.

**41 Determination of an application for a water pollution control licence**

(1) The Environment Director, after consultation with the Public Works Director and the Health Director may grant such an application subject to such conditions as the Directors shall see fit, or as are provided for in regulations, or may refuse to grant such an application.

(2) A water pollution control licence is not to be granted unless the Environment Director is satisfied that the applicant is a fit and proper person;

(3) The Environment Director shall not approve an application in respect of a water pollution control licence which in the opinion of the Environment Director, the Health Director, or the Public Works Director, would or may be, or is likely, to cause the pollution of any groundwater or be detrimental to any public water supply or to public health.

(4) A water pollution control licence is not to be granted unless the Environment Director is satisfied that adequate arrangements and conditions are in place to ensure the purpose and principles of this Act are upheld.

(5) A water pollution control licence is not to be granted if the granting of the licence would be inconsistent with any provision of the Environment Act 2003.

(6) After determining an application under this Division 1 of Part 5 of this Act, the Environment Director must cause notice of the determination to be given to the applicant and to each person who has made an objection in connection with the application.

**42 Conditions of a water pollution control licence**

(1) A water pollution control licence is subject to such conditions as prescribed by Regulations under this Act and as the Environment Director may from time to time impose on the licence, including conditions –

- (a) to give effect to any agreement between an applicant and objector;
- (b) to give effect to the purpose and principles of this Act;
- (c) relating to monitoring and reporting requirements of the licence holder.

(2) Conditions may not be imposed on a water pollution control licence after it has been granted unless the Environment Director –

- (a) has given written notice to the holder of the water pollution control licence that the Environment Director proposes to impose such conditions; and
- (b) has given the holder of the water pollution control licence a reasonable opportunity to make submissions to the Environment Director with respect to the proposed conditions; and
- (c) has taken any such submissions into consideration.

(3) The holder of water pollution control licence may be charged a levy for the activity to which the licence relates and may be subject to any regulations prescribed under this Act.

**43 Duration of a water pollution control licence**

A pollution control licence granted in accordance with this Division will remain in force for 3 years from the date it was granted.

**44 Renewal of a water pollution control licence**

A pollution control licence may be renewed from time to time by the Environment Director on the application of the licensee in the manner prescribed by the regulation to this Act.

**45 Amendment of a water pollution control licence**

(1) A water pollution control licence may be amended at any time during its currency on application by the holder of the licence or on the initiative of the Environment Director.

(2) The Public Works Director may amend a water pollution control licence, and may, without limitation, add to, vary or revoke –

- (a) the activities authorised by the licence; or
- (b) any conditions applying to that licence.

(3) Section 44 applies to an application for amendment made under this section, other than an application to amend the holder of the water pollution control licence.

(4) The Environment Director shall not amend any water pollution control licence under subsections (1) or (3) if such an amendment is inconsistent with the requirements of section 42.

**46 Suspension and cancellation of a water pollution control licence**

(1) The Environment Director may suspend or cancel a water pollution control licence on any one or more of the following grounds —

- (a) the holder of the pollution control licence has failed to comply with the conditions to which the licence is subject;
  - (b) the holder of the pollution control licence has been convicted of an offence against this Act or the regulations;
  - (c) any fees, charges or civil penalties in respect of the pollution control licence have not been paid.
- (2) During any period of suspension of a water pollution control licence —
- (a) the holder of the pollution control licence is not authorised by such licence or otherwise to undertake any activity as authorised by such licence, and
  - (b) fees and charges payable under this Act in respect of the pollution control licence will continue to apply.

**47 Water pollution order**

- (1) Despite this Act or any other written law, where the Environment Director is satisfied that any act or omission by any person or public authority or village council may result, directly or indirectly, in water pollution, the Environment Director may by order direct the doing of any one or more of the following —
- (a) to cease or to refrain from doing any act or omission on any land which could or may be likely to harm Niue's water lens, storage or supply, as may be specified in the order;
  - (b) to discontinue the use of any sewerage works or any water works associated with it or connected to it;
  - (c) to erect such structures or to carry out such works, including private sewerage works, or to repair, maintain, alter or remove such structures or works as may be specified in the order;
  - (d) to treat any sewage or waste in a manner specified in the order;
  - (e) to prevent the amount of waste entering any groundwater, sea or cave in the manner specified in the order;
  - (f) to take action to remediate any land or water that has been contaminated in a manner specified in the order;
  - (g) to take any ancillary measures that the Water Supply Director considers to be necessary or expedient to promote the purpose and principles of this Act;

(2) An order made under subsection (1), and the terms of any such order, shall remain in force for the period specified in the order or until such time such order is revoked.

(3) If any person, public authority, village council or the occupier of any land to whom an order under this section is addressed fails to comply with any direction contained in such order within such time as is specified in the order, the Environment Director may cause the provisions of the order to be carried out and may recover any expenses incurred from the person, public authority, village council or occupier of land to whom the order was addressed.

*Sewerage and wastewater works*

**48 Sewerage works to be registered**

The Public Works Director is to keep a register of all sewerage works, which, without limitation, shall include —

- (a) The location of the work;
- (b) The occupier of the land on which the work is situated;
- (c) The type of work;
- (d) The age of the work; and
- (e) The maintenance history of the work.

**49 Application for an approval of private sewerage works**

(1) Before the fitting of any private sewerage works on any premises the occupier shall apply to the Public Works Director for approval.

(2) An application shall be in the prescribed form with the prescribed fee and contain a full description of the private sewerage works proposed and any other information or drawings as may be required of the Public Works Director.

(3) The Public Works Director may grant such an application subject to such conditions as the Public Works Director may see fit, or refuse such an application.

(4) No fitting of any private sewerage works on any premises shall commence or proceed except in accordance with a permit granted by the Public Works Director pursuant to this section, and all such private sewerage works shall be carried out in accordance with the provisions of the National Building Code for Niue.

**50 Disposal of wastewater**

The outlet from sinks, basins, washing machines or swimming pools or water catchment on any premises shall be fed into a soak hole constructed to the satisfaction of the Environment Director or shall be disposed of in such other manner as the Environment Director may require.

*Wellhead protection*

**51 Wellhead protection plans**

(1) The Public Works Director, in consultation with the Environment and Health Directors, may prepare a wellhead protection plan for a public water supply bore.

- (2) Without limitation, a wellhead protection plan may include —
  - (a) an assessment of potential sources of pollution, and of the susceptibility of the water supply to pollution;
  - (b) the establishment of wellhead protection zones within which —
    - (i) activities listed in Schedule 2 may be subject to specified conditions;
    - (ii) activities listed in Schedule 2 may be prohibited;
    - (iii) activities not listed in Schedule 2 may require a water pollution control permit, and be subject to specified conditions; or
    - (iv) activities not listed in Schedule 2 may be prohibited;
  - (c) contingency plans in case of emergencies affecting the quality of water from the public water supply bores to which the plan relates;
  - (d) such other measures determined by the Public Works Director as may be necessary or expedient to protect the public water supplies; and
  - (e) implementation actions and timeframes.

(3) Where a wellhead protection plan contains prohibitions or specified conditions of kinds specified in subsections (2)(b)(ii), (2)(b)(iii), or (2)(b)(iv), such activities and the prohibitions or conditions shall be made as a regulation to this Act.

**PART 6**  
**OFFENCES AND PENALTIES**

**52 Offences and Penalties**

- (1) Any person commits an offence who —
- (a) constructs, alters, repairs or maintains a bore or public water supply works, or causes any such bore or public water supply works to be constructed, altered, repaired or maintained, unless authorised to do so by the Public Works Director.
- Penalty: In the case of an individual: an amount not exceeding 5 penalty units;  
In the case of a body corporate: an amount not exceeding 5,000 penalty units and/or a term not exceeding 10 years imprisonment for a director of the body corporate.
- (b) extracts or uses water from any bore or other water works, other than public water supply water works or rainwater capture works, except as authorised by an extraction licence granted under Part 4 of this Act.
- Penalty: In the case of an individual: an amount not exceeding 5 penalty units;  
In the case of a body corporate: an amount not exceeding 5,000 penalty units and/or a term not exceeding 10 years imprisonment for a director of the body corporate.
- (c) extracts or uses water from any public water supply works in excess of the volume or rates specified in Schedule 1 to this Act, or uses the water so extracted for purposes or for activities specified in Schedule 1 to this Act, except as authorised by an extraction licence granted under Part 4 of this Act.
- Penalty: In the case of an individual: an amount not exceeding 50 penalty units;  
In the case of a body corporate: an amount not exceeding 10,000 penalty units and/or a term not exceeding 20 years imprisonment for a director of the body corporate.
- (d) makes a connection to, or disconnect from, any public water supply works.
- Penalty: In the case of an individual: an amount not exceeding 5 penalty units;  
In the case of a body corporate: an amount not exceeding 5,000 penalty units and/or a term not exceeding 10 years imprisonment for a director of the body corporate.
- (e) causes or permits any matter to be disposed of underground by means of a water bore, or in such a way as may pollute any groundwater.
- Penalty: In the case of an individual: an amount not exceeding 5,000 penalty units;  
In the case of a body corporate: an amount not exceeding 10,000 penalty units and/or a term not exceeding 20 years imprisonment for a director of the body corporate.
- (f) causes or permits either directly or indirectly any water to be polluted or causes or permits the doing of an act likely to lead to the pollution of any water, other than in accordance with a water pollution control licence issued under Part 5 of this Act.
- Penalty: In the case of an individual: an amount not exceeding 5,000 penalty units;  
In the case of a body corporate: an amount not exceeding 10,000 penalty units and/or a term not exceeding 20 years imprisonment for a director of the body corporate.
- (g) carries out activities on premises other than in accordance with a wellhead protection plan.
- Penalty: In the case of an individual: an amount not exceeding 5,000 penalty units;  
In the case of a body corporate: an amount not exceeding 10,000 penalty units and/or a term not exceeding 20 years imprisonment for a director of the body corporate.

- (h) contravenes an order made under Parts 4 or 5 of the Act.
- Penalty: In the case of an individual: an amount not exceeding 5,000 penalty units;  
In the case of a body corporate: an amount not exceeding 10,000 penalty units and/or a term not exceeding 20 years imprisonment for a director of the body corporate.
- (i) Wilfully damages, destroys or interferes with, or attempts to damage, destroy or interfere with any bore, water storage tank, meter or public water supply works or water works.
- Penalty: In the case of an individual: an amount not exceeding 5,000 penalty units;  
In the case of a body corporate: an amount not exceeding 10,000 penalty units and/or a term not exceeding 20 years imprisonment for a director of the body corporate.
- (j) fails to comply with the terms of any order of the court made under this Act and served on that person.
- Penalty: In the case of an individual: an amount not exceeding 5,000 penalty units;  
In the case of a body corporate: an amount not exceeding 10,000 penalty units and/or a term not exceeding 20 years imprisonment for a director of the body corporate.
- (2) Subsections (l)(a) to (l)(d) do not apply to the Public Works Director or any person authorised by the Public Works Director.
- (3) Any person who —
- (a) opens any ground, exposes any pipe or other work of a water supply authority
- 
- (i) without lawful excuse, or  
(ii) without having given the water supply authority at least 2 days' written notice of intention to open the ground.
- Penalty: In the case of an individual: an amount not exceeding 5 penalty units;  
In the case of a body corporate: an amount not exceeding 100 penalty units and/or a term not exceeding 20 years imprisonment for a director of the body corporate.
- (b) Obstructs or hinders an authorised officer in the exercise of the authorised officer's functions under this Act,
- Penalty: In the case of an individual: an amount not exceeding 5 penalty units;  
In the case of a body corporate: an amount not exceeding 100 penalty units.
- (c) Provides false or misleading information under a requirement under this Act to provide information,
- Penalty: In the case of an individual: an amount not exceeding 5 penalty units;  
In the case of a body corporate: an amount not exceeding 100 penalty units.
- (d) fails to submit any report or provide information as required under this Act,
- Penalty: In the case of an individual: an amount not exceeding 5 penalty units;  
In the case of a body corporate: an amount not exceeding 100 penalty units.
- (e) fails to give all reasonable assistance to an authorised officer who is exercising powers or carrying out duties, or attempting to do so, under this Act;
- Penalty: In the case of an individual: an amount not exceeding 5 penalty units;  
In the case of a body corporate: an amount not exceeding 100 penalty units.
- (f) Offers or gives any inducement to any authorised officer exercising functions and powers under this Act which might reasonably be considered to have the purpose or effect of influencing a decision of that person under this Act.
- Penalty: In the case of an individual: an amount not exceeding 5 penalty units;  
In the case of a body corporate: an amount not exceeding 100 penalty units.

**53 Limitation period for offences**

A prosecution for an offence under this Act may not be commenced more than 3 years after the alleged commission of the offence.

**54 Infringement offences**

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

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

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

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

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

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

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

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

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

(6) A person requests a hearing by providing to the Director, within the period specified in the infringement notice or reminder notice, as the case may be, a notice, signed by the person, requesting a hearing and accepting or rejecting liability and, if accepting liability, the reasons, if any, why the Court should impose a lesser fine than the infringement fee for the offence.

(7) A person found guilty at a hearing held for the purposes of subsection (6) is liable to a fine equal to the amount of the infringement fee (unless the Court

imposes a lesser amount) together with costs in the prescribed amount, but no conviction is entered against the person.

(8) To avoid doubt, if a person commits an infringement offence and proceedings against the person are taken in the normal manner under subsection (1)(a), the person is liable to pay not the infringement fee but the amount that the Court determines in accordance with section 52. However, no conviction may be entered against the person.

**55 Community service orders**

(1) Upon the conviction of any person for any offence committed against section 52 or of this Act or regulations, the prosecution may make submissions to the court on the appropriateness of a community service order and of the availability of any community service work.

(2) The court may sentence a person to a community service order instead of or in addition to a fine.

(3) The court may order a person sentenced to a community service order to work under appropriate supervision a specified number of hours for a charitable or community cause or organisation, and where possible, the work should relate water resource or environmental matters.

(4) The court may specify whether the responsible Director or a nominated person is to supervise the community service order work.

**56 Civil claims for water pollution damage**

Despite the outcome of any criminal proceedings under this Act, a person who has suffered loss as a result of any water pollution incident may bring civil proceedings against the person or entity that caused the pollution which may include a claim for —

- (a) economic loss resulting from a water pollution incident or from activities undertaken to prevent, mitigate, manage, clean up or remedy any pollution incident;
- (b) loss of earnings arising from water pollution incident;
- (c) loss of any water resource.

**57 Common law causes of action**

Common law causes of action are preserved under this Act.

**58 Proceedings for restraint of breaches of Act**

Without prejudice to the power of the Court to strike out vexatious proceedings, any person may bring proceedings in the Court for an order to prevent or remedy or cease a breach of this Act, whether or not any right has been, or may be, infringed as a result of that breach.

**59 Orders of the Court**

(1) Where the Court is satisfied that a breach of this Act has occurred, or that a breach is likely to occur unless prevented by an order of the Court, it may make any order it thinks fit to prevent, remedy or cease the breach including enforcement orders, declarations, and injunctions.

(2) Where an injunction or other remedy is sought concerning any activity governed by this Act, the Court must order that person who brings such proceedings to give an undertaking as to damages or to provide security for costs.

(3) The Court must not award costs against a person who brings proceedings to stop any activity or who asks for any order requiring compliance with this Act unless the Court is satisfied that the person has acted vexatiously or maliciously in bringing the proceedings and that the proceedings have no merit.

**60 Appeal**

(1) An appeal against any of the following decisions made by the Directors with functions under this Act shall lie with each responsible Minister and to Cabinet:

- (a) a decision refusing to grant, or the imposition of conditions on, or renew a licence under Part 4 or 5 of this Act;
- (b) a decision to grant a licence under Part 4 or 5 of this Act, if the appellant was an objector to the granting or amendment of the licence; or
- (c) a decision suspending or cancelling a licence granted under Part 4 or 5 of this Act;
- (d) a decision refusing to amend a licence granted under Part 4 or 5 of this Act in accordance with an application made by its holder.

(2) Any person who makes an appeal to the responsible Minister or Cabinet for a review of a decision made under this Act shall further appeal to the Court and any such appeal to Court is to be made in accordance with rules of court, but may not be made more than 28 days after the date on which the decision was made.

(3) The lodging of an appeal does not operate to stay action on the decision appealed against, except to the extent that the Court otherwise directs.

**PART 7**

**INTEGRATED WATER RESOURCE MANAGEMENT PLAN**

**61 Integrated water resource management plan**

(1) The Public Works Director may direct an authorised officer to prepare and implement an integrated water resource management plan for a designated area.

- (2) The integrated water resource management plan shall –
- (a) identify the area to which it relates;
  - (b) set out the objectives to be achieved by the plan; and
  - (c) specify the management measures to be adopted to achieve those objectives; and
  - (d) specify what protection is to be given to the designated area;
  - (e) specify the limits within which the water may be extracted; and
  - (f) specify what licensing requirements (if any) are to apply to anyone who wants to operate within such an area; and
  - (g) specify what protection is to be given to any other designated water area (whether by way of management measures, habitat protection, exploitation limits or licensing requirements) for the purpose of –
    - (i) ensuring the conservation and sustainability of the integrated water resource management plan of the water area in accordance with its integrated water resource management plan; or
    - (ii) ensuring the objectives set out in the plan can be achieved.

**62 Variation of integrated water resource management plan**

(1) If the Public Works Director thinks that a integrated water resource management plan should be varied in order to ensure the effective conservation or the efficient use of the water area to which it relates, the Director may, in writing, prepare a variation of the plan and submit it to Cabinet for approval.

(2) A variation takes effect when it is approved by Cabinet or at such other time as Cabinet determines.

**63 Exemptions**

(1) Cabinet may, on application made by or on behalf of a person or a group of persons, declare that an integrated water resource management plan, or a specified part of such plan, is not to apply to a person or group.

(2) Cabinet may think a declaration subject to such conditions, if any, as Cabinet thinks necessary in order to ensure the effective conservation or efficient use of the water to which the integrated water resource management plan relates.

**64 Revocation of integrated water resource management plan**

If Cabinet is satisfied that the objectives set out in an integrated water resource management plan have been achieved, the Cabinet may revoke the plan by notice in the *Gazette*.

**65 Offences**

(1) A person may not contravene or fail to comply with a provision of an integrated water resource management plan that applies to the person.

(2) A person must not contravene or fail to comply with a direction given to the person by an authorized officer, being a direction that is consistent with an integrated water resource management plan, or part of such a plan, that applies to the person.

Penalty: In the case of an individual: 5 penalty units;

In the case of a body corporate: 5000 penalty units.

**PART 8**  
**MISCELLANEOUS**

**66 Regulations**

The Cabinet may make regulations not inconsistent with this Act for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary, convenient or expedient to be prescribed for carrying out or giving effect to this Act and, without limitation, for or with respect to —

- (a) the forms to be used in connection with the administration of this Act;
- (b) the fees and charges to be imposed in connection with the administration of this Act, and the circumstances under which fees and charges may be waived, reduced or remitted;
- (c) declaring which offences against this Act or regulations made under this Act constitute infringement offences;

- (cc) prescribing infringement fees not exceeding 5 penalty units for infringement offences (which may be different fees for different offences, including different fees for a first, second, or subsequent offence);
- (d) provision for or with respect to the exemption of any person, matter or thing from the operation of this Act or any specified provision of this Act, either unconditionally or subject to conditions;
- (e) amend or replace the Schedules to this Act; and
- (f) establishing a Committee or Advisory Body for the purposes of administration of this Act.

**67 Schedules 1 and 2**

(1) The activities listed in Schedules 1 and 2 are "scheduled activities" for the purposes of this Act.

(2) A specified activity or premise is a scheduled activity for the purposes of this Act only in specified circumstances or only in specified areas or only under specified conditions.

**68 Personal liability of officers**

No person shall be personally liable for any act done by them in good faith in the exercise of any duties, powers, or authorities imposed or conferred on him by this Act unless the performance of any duties, powers or authority is exercised in a negligent manner.

**69 Exclusion of Crown liability**

(1) Neither the Crown nor any public authority is subject to any action, liability, claim or demand arising —

- (a) from the unavailability of water; or
- (b) from any failure in the quality or quality of water; or
- (c) as a consequence of anything done or omitted to be done in good faith by a Director with responsibilities under this Act, or by a person authorised by that Director, in the exercise any functions under this Act unless any such functions are exercised in negligent manner.

(2) Neither the Crown nor any public authority is subject to any action, liability, claim or demand arising as a consequence of —

- (a) the use in good faith of any public water supply work; or
- (b) the release of water from any public water supply work, by the Water Supply Director, or person authorised by the Public Works Director, in the exercise of any functions under this Act unless any such functions are exercised in negligent manner.

**70 Compensation**

Whenever, for the purposes of Part 4, it becomes necessary to acquire or to resume any land or interest under sections 11 or 14 of the Niue Amendment Act (No 2) 1968, compensation under section 13 shall only be payable —

- (a) in respect of land that any storage tank, bore or equipment is erected upon and the land surrounding such storage tank, bore and equipment as long as the bore, storage tank and equipment is in use or is likely to be used;

- (b) in respect of any damage occasioned and not made good in the course of constructing, altering, repairing or maintaining any public water works; and not otherwise.

**71 Effect of this Act on other Acts**

- (1) The provisions of this Act apply even if they are inconsistent with any other law.
- (2) Compliance with the requirements of this Act does not relieve a person from separate compliance with any other law of Niue.
- (3) This Act overrides any approval given under any other law or public authority.
- (4) Law, for the purposes of this section, does not include the Constitution.

**72 [Spent]**

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**SCHEDULE 1**  
(Sections 9 and 22(3))  
Activities requiring an extraction licence under Part 4

The following activities require an extraction licence in accordance with Part 4 of this Act —

- (1) All extraction of water for any purpose from bores or works other than public water supply works or rainwater capture works;
- (2) All extraction of water from public water supply works for commercial or experimental or research purposes of an amount that is determined from time to time by the Public Works Director;
- (3) All extraction and use of water for non-subsistence agricultural irrigation activities;
- (4) All extraction and use of water for mining operations, whether for use or dewatering;
- (5) All extraction and use of water for commercial manufacturing or processing operations;
- (6) All extraction and use of water for service provider accommodation of more than ten beds including grounds maintenance and a swimming pool;
- (7) All extraction and use of water for marine purposes;
- (8) All extraction and use of water for horticultural purposes;
- (9) All extraction and use of water for commercial farming and animal husbandry.

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**SCHEDULE 2**  
(Sections 9, 42(2) and 55(2))

The following activities require a water pollution control licence in accordance with Part 5 of this Act —

- (1) Food, livestock or agricultural processing, including fish processing;
- (2) Timber milling;
- (3) Power generating facilities;
- (4) Aircraft facilities;

- (5) Fuel storage facilities and retail outlets;
- (6) Service stations;
- (7) Mechanical repair depots;
- (8) Waste collection and disposal sites and facilities;
- (9) Hospitals;
- (10) Sewage treatment and conveyance or disposal operations;
- (11) Premises storing more than 1000 lit-res of oil;
- (12) Premises storing commercial quantities of agricultural chemicals or pesticides;
- (13) Chemical storage facilities;
- (14) Chemical industries or works for the commercial production of, or research into, chemical substances;
- (15) Extractive industries;
- (16) Commercial intensive livestock activities including piggeries;
- (17) Logging operations;
- (18) Mining exploration and operations;
- (19) Manufacturing and processing industries including desalination;
- (20) Tourism operations of more than ten beds;
- (21) Wash down pads and premises;
- (22) Marine powered vessels.

# **WILDLIFE ACT 1972**

1972/74 – 9 March 1972

1	Short title	5	Powers of wildlife wardens
2	Interpretation	6	Forfeiture of property
3	Powers of Cabinet	7	Prohibition orders
4	Protection of animals	8	[Spent]

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## **To make provision for the protection in Niue of wild animals and wild birds**

### **1 Short title**

This is the Wildlife Act 1972.

### **2 Interpretation**

In this Act –

“absolutely protected animal” means any animal of a species which is under section 3 declared to be an absolutely protected species;

“animal” means any mammal which is a wild species or any bird which is of a wild species, but does not include any mammal of a domesticated species or any bird of a domesticated species although it may be existing in a wild state;

“bag limit” means the maximum number of partly protected animals of any one particular species which, during any one day outside any protection period relating to that species, any one person may kill or trap;

“carcass” means the whole or any part of the dead body of any animal;

“partly protected animal” means any animal of a species which is under section 3 declared to be a partly protected species;

“protected animal” means —

(i) any absolutely protected animal; or

(ii) during any protection period relating to it, any partly protected animal;

“protection period” means any period of time in any year during which under any notice issued under section 3, any partly protected animal is a protected animal;

“vehicle” means any motor vehicle, any bicycle, any boat or any canoe, and includes any wheeled trailer towed or capable of being towed behind any motor vehicle;

“wildlife warden” means any constable.

### **3 Powers of Cabinet**

(1) (a) Cabinet may, by notice in the *Gazette* declare, for the purposes of this Act, any species of animal to be an absolutely protected species or a partly protected species.

(b) Any such notice may state that it is to have effect with reference only to some part or parts of Niue specified in the notice.

(2) Cabinet shall, in any notice issued under subsection (1) declaring any species of animal to be a partly protected species, specify the period or periods of time in the year in which such species is a protected animal and shall, if it thinks fit, also specify in such notice a bag limit relating to that species.

(3) Cabinet may, by notice in the *Gazette*, revoke, vary or amend any notice issued under subsection (1) or (2).

#### 4 Protection of animals

- (1) No person shall, without the prior written permission of Cabinet –
- (i) Kill, injure or trap, or attempt to kill, injure or trap any protected animal; or
  - (ii) Destroy, damage or take, or attempt to destroy, damage or take the egg of any bird which is a protected animal; or
  - (iii) Disturb or attempt to disturb the nest or nesting place of any bird which is a protected animal; or
  - (iv) Disturb or attempt to disturb the lair or roosting place of any protected animal.

(2) Any permission referred to in subsection (1) may be given either unconditionally or subject to any conditions which, in its absolute discretion, Cabinet may in writing deem fit to impose, and any such permission may be revoked by Cabinet.

(3) (a) Any person who acts contrary to subsection (1) or who acts in breach of any conditions imposed under subsection (2) by Cabinet, commits an offence and, on conviction, shall be liable to a fine not exceeding forty dollars or to imprisonment for a term not exceeding one week;

(b) No person shall be convicted of an offence under this subsection if he proves to the satisfaction of the Court that the act constituting the offence with which he is charged was, on his part, accidental and unintended.

(4) Any person who in any one day kills or traps any number of partly protected animals of a particular species in excess of the bag limit relating to such species, commits an offence and, on conviction, shall be liable to a fine not exceeding 0.5 penalty units for each animal so killed or trapped by him in excess of such limit, or to imprisonment for a term not exceeding one week.

(5) Any person who is, by a wildlife warden, found to have in his possession, custody or control any animal or carcass shall be presumed, in the absence of proof to the contrary, to have trapped or killed the animal concerned during the period of one day immediately preceding the point of time at which he is so found.

#### 5 Powers of wildlife wardens

(1) Where any wildlife warden has reason to believe that any person has committed an offence mentioned in section 4 he may, subject to subsection (2), exercise all or any of the following powers –

- (a) He may require that person immediately to give to him true and full particulars of such person's full names, occupation and place of abode and, if such person fails to do so, or if the wildlife warden has reason to believe that all or any of such particulars are false, he may, without warrant, arrest such person;
- (b) He may, without warrant, search any such person or any container or vehicle in the possession or control, or in the apparent possession or control, of such person;
- (c) He may, without warrant, seize and take into his custody –
  - (i) Any animal or the carcass of any animal in the possession or control, or in the apparent possession or control, of such person;
  - (ii) Any firearm, ammunition, trap, snare or other device in the possession or control, or in the apparent possession or control, of such person used or capable of being used for killing or trapping any animal.

(2) A wildlife warden shall not, without the prior written permission of a Judge of the Court or of a Commissioner, exercise in any private dwelling house or in any private garden adjacent to any private dwelling house, any one or more of the powers conferred upon a wildlife warden by subsection (1) (b) and (c).

(3) Any person who, when lawfully required so to do, fails immediately to give to a wildlife warden all the particulars referred to in subsection (1) (a) or who otherwise resists or obstructs a wildlife warden in the lawful exercise of any one or more of the wildlife warden's powers under that subsection commits an offence and, on conviction, shall be liable to a fine not exceeding 0.5 penalty units or to imprisonment for a term not exceeding 2 weeks.

**6 Forfeiture of property**

Where any person is convicted of an offence mentioned in section 4 (3) or (4), the Court may order that any protected animal trapped by such person, or the carcass of any protected animal killed by such person, or any egg taken by such person in the course of committing the offence, or any firearm, trap, snare or other device (other than a vehicle) owned by such person and used by such person for the purposes of committing the offence, shall be absolutely forfeited to the Crown; and, upon any such forfeiture, the animal carcass, egg or other thing so forfeited shall become the absolute property of the Crown and shall be disposed of in such manner as Cabinet may specify.

**7 Prohibition orders**

(1) Where any person is convicted of an offence contrary to this Act, the Court may make an order prohibiting such person from killing, attempting to kill, trapping and attempting to trap any protected animal for any period not exceeding 2 years from and including the date of the conviction.

(2) The Court may cancel any such order or reduce the period mentioned in the order.

(3) Any person, in respect of whom any such order has been made and who, during the subsistence of the order, acts contrary to the order, commits an offence and, on conviction, shall be liable to a fine not exceeding 1 penalty unit or to imprisonment for a term not exceeding 3 weeks.

**8 [Spent]**



# WRECK AND SALVAGE ACT 1968

1968/53 – 4 November 1968

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## To provide for wrecks and salvage and for matters incidental and related

### 1 Short title

This is the Wreck and Salvage Act 1968.

### 2 Interpretation

In this Act –

“boat” means any small craft, whether open or deck, and includes barges, lighters and like vessels;

“master” means any person (except a pilot) having command or charge of any ship;

“Receiver” means the Receiver of wreck for Niue as specified in section 3(1) and includes any person appointed by him under section 3(2);

“salvage” includes all expenses properly incurred by the salvor in the performance of the salvage services;

“ship” means any vessel customarily used for the carriage of passengers or goods but does not include barges, lighters and like vessels;

“wreck” includes any property which a Receiver is required or authorised by this Act to take into his possession and includes jetsam, flotsam, ligan and derelict found in or on the shores of the sea.

### 3 Superintendence and Receiver of wreck

(1) The Financial Secretary shall be the Receiver of wreck for Niue and shall have the general superintendence throughout Niue of all matters relating to wreck and salvage.

(2) The Financial Secretary may appoint any person to act for him and to perform all such duties of the Receiver as are mentioned in this Act, and that person may exercise those powers in the same manner and with the same effect as if they had been conferred upon him directly by this section; and any person preparing to act with the authority of the Receiver under this section shall be presumed to be acting in accordance with authority in the absence of proof to the contrary.

**4 Duties of Receiver when ship or aircraft in distress**

(1) Where a ship or aircraft is wrecked, stranded or in distress at any place on or over or near the coast of Niue, the Receiver shall upon being informed of the circumstance, forthwith proceed there and, upon his arrival shall take the command of all persons present and shall assign such duties and give such directions to each person as he thinks fit for the preservation of the ship or aircraft and the lives of the persons (shipwrecked persons) and of the cargo and equipment of the ship or aircraft.

(2) The Receiver shall not interfere between the master and the crew of the ship, or, as the case may be between the person in command and the crew of the aircraft; nor shall the Receiver take into his possession any ship or aircraft or any cargo or equipment belonging to it, while that ship or aircraft remains in the possession of the master or person in command of it, unless he is requested to do so by that master or person in command.

**5 Powers of Receiver in preserving ship or aircraft**

(1) The Receiver may, with a view to preservation of the ship or aircraft or of the lives of the shipwrecked persons or of its cargo or equipment –

- (a) Require such persons as he thinks necessary to assist him;
- (b) Require the master or other person having the charge of any ship or other vessel or boat near at hand to give such aid with his men or ship or other vessel or boat as may be in his power; and
- (c) Demand the use of any vehicle or horses that may be at hand.

(2) Every person commits an offence against this Act who –

- (a) Wilfully disobeys the lawful direction of the Receiver; or
- (b) Refuses without reasonable cause to comply with any lawful requisition or demand made by the Receiver under this section.

**6 Right of passage over adjoining lands**

(1) Where a ship or aircraft is wrecked, stranded, or in distress as aforesaid, all persons may, for the purpose of rendering assistance to the ship or aircraft, or of saving the lives of the shipwrecked persons, or of saving the cargo or equipment of the ship or aircraft, unless there is some public road equally convenient, pass and repass, either with or without vehicles or horses, over any adjoining lands without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also on the like condition, deposit on those land any cargo or other article recovered from the ship or aircraft.

(2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights given by this section shall be a charge on the ship or aircraft or cargo or articles in respect of or by which the damage is occasioned; and the amount payable in respect of the damage shall in case of dispute be determined, and shall in default of payment be recoverable, in the same manner as the amount of salvage is under this Act determined or recoverable.

(3) Every owner or occupier of land commits an offence against this Act who –

- (a) Impedes or hinders any person in the exercise of the rights given by this section, by locking his gates, or refusing upon request to open the same, or otherwise; or
- (b) Impedes or hinders the deposit on the land of any cargo or other article recovered from the ship or aircraft as aforesaid; or

- (c) Prevents or endeavours to prevent any such cargo or other article from remaining deposited on the land for a reasonable time until it can be removed to a safe place of public deposit.

**7      Receiver to suppress plunder and disorder**

Where a ship or aircraft is wrecked, stranded, or in distress as aforesaid, and any person plunders, creates disorder, or obstructs the preservation of the ship or aircraft or of the shipwrecked persons or of the cargo or equipment of the ship or aircraft, the Receiver may cause that person to be apprehended.

**8      Receiver to make inquiry**

(1) Where any ship or aircraft is or has been in distress on or over or near the coasts of Niue, the Receiver shall, as soon as conveniently may be, examine on oath or affirmation any person belonging to the ship or aircraft, or any other person who may be able to give an account of it or of its cargo or stores as to the following matters –

- (a) The name and description of the ship or aircraft;
- (b) The names of the owners and the master of the ship, or, as the case may be, the names of the owners and the person in command of the aircraft;
- (c) The names of the owners of the cargo;
- (d) The ports from and to which the ship or aircraft was bound;
- (e) In the case of a ship, the occasion of its distress;
- (f) The services rendered; and
- (g) Such other matters or circumstances relating to the ship or aircraft, or to the cargo or store of it as the Receiver holding the examination thinks necessary.

(2) The Receiver holding the examination shall take the same down in writing, and shall send it to the Cabinet who shall take such action to advise the owners of the ship or aircraft or of the cargo and such other persons as he thinks fit.

**9      Dealing with wreck**

(1) Where any person finds or takes possession of any wreck within Niue or takes possession of and brings within the limits of Niue and wreck found outside those limits, he shall –

- (a) If he is the owner, give notice to the Receiver, stating that he has found or taken possession of the wreck, and describing the marks by which the same may be recognised;
- (b) If he is not the owner, as soon as possible deliver the same to the Receiver.

(2) Any person who fails without reasonable cause to comply with this section commits an offence against this Act and shall in addition, if he is not the owner, forfeit any claim to salvage, and shall be liable to pay to the owner of the wreck if it is claimed, or, if it is unclaimed, to the person entitled to the same, double the value of it, to be recovered in the same way as a fine of a like amount under this Act.

**10     Articles washed ashore**

(1) Where a ship or aircraft is wrecked, stranded, or in distress at any place on or over or near the coasts of Niue, any cargo or equipment or other articles belonging to or separated from the ship or aircraft which may be washed on shore, or otherwise lost or taken from the ship or aircraft, shall be delivered to the Receiver.

(2) Every person, whether the owner or not, who secrets or keeps possession of any such cargo or equipment or article, or refuses to deliver the same to the Receiver or any person authorised by him to demand the same, commits an offence against this Act.

(3) The Receiver or any person authorised as aforesaid may take any such cargo or equipment or article by force from the person so refusing to deliver the same.

## 11 **Claim to wreck**

(1) Where the Receiver takes possession of any wreck, he shall within 48 hours make the same known by public notice given in his name and such notice shall include a description of the wreck and of any marks by which it is distinguished.

(2) The owner of any wreck in the possession of the Receiver, upon establishing his claim to the same, to the satisfaction of the Receiver within one year from the time at which the wreck came into the possession of the Receiver shall, upon paying the salvage, fees, and expenses due, be entitled to have the wreck or the proceeds delivered to him.

(3) Where any ship or aircraft is wrecked, stranded or abandoned on or near the coasts of Niue and there is no owner or agent of the owner or other person present in Niue authorised to protect the interests of the owners, the Receiver shall make known to the owners in New Zealand, if the ship or aircraft is registered there, or to a trade or other representative in New Zealand of the Commonwealth country, or, as the case may be a consular representative in New Zealand of a foreign country, in which that ship or aircraft may have been registered or to which that ship or aircraft may have belonged, the facts of the wreck, stranding or abandonment, and shall act under instructions received from the owners or trade or other representative or consular representative as the case may be, or from any agent, duly appointed as far as related to the custody and disposal of that ship or aircraft.

(4) Where any wreck, whether or not belonging to or separated from any ship or aircraft to which subsection (3) applies, is found within the limits of Niue or is brought within those limits, and it does not appear that the wreck belongs to persons resident in Niue or in New Zealand, a trade or other representative in New Zealand of the Commonwealth country, or as the case may be, a consular representative of the foreign country, to which the owners of the wreck may belong shall, be deemed in the absence of the owners and of any other agent of the owners, to be the agent of the owners, as far as relates to the custody and disposal of the wreck.

## 12 **Wreck may be sold immediately in certain cases**

(1) The Receiver may at any time sell any wreck in his custody, if in his opinion –

- (a) It is under the value of \$10; or
- (b) It is so much damaged or of so perishable a nature that it cannot with advantage be kept; or
- (c) It is not of sufficient value to pay for warehousing.

(2) The proceeds of the sale shall, after defraying the expenses, be held by the Receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold.

## 13 **Wreck claimed by two or more persons, or unclaimed**

(1) Where a dispute arises between 2 or more persons as to the title to the wreck, the dispute may be determined in the same manner as if it were a dispute as to salvage to be determined under this Act.

(2) Upon delivery of wreck or the payment of the proceeds of sale of wreck by the Receiver, he shall be discharged from all liability in respect of it; but the delivery of it shall not prejudice or affect any question which may be raised by third parties concerning the right or title to the wreck.

(3) Where no owner establishes a claim to any wreck found within the limits of Niue, and in the possession of the Receiver, within one year after it came into his possession, it shall be the property of Her Majesty, and the Receiver shall sell the same and shall pay the proceeds of sale (after deducting from it the expenses of sale and any other expenses incurred by him, and his fees, and paying thereout to the salvors such amount of salvage as Cabinet may in each case, or by any general rule, determine) into the Niue Government Account.

#### **14 Removal of wrecked ships and aircraft**

(1) If any ship or aircraft is sunk stranded or abandoned on or near the coasts of Niue, and there is no authority in any other Act or rule or regulation to remove or destroy that ship or aircraft, Cabinet may, and shall, if in his opinion the ship or aircraft is, or is likely to become an obstruction to navigation (or danger to property, life or limb) direct the Receiver to cause that ship or aircraft to be removed.

(2) On receiving such a direction, the Receiver, by notice in writing given to the owner or master of the ship or any agent of the owner or, as the case may be, to the owner or person in command of the aircraft or to any agent of the owner, shall require the owner to remove that ship or aircraft, or any part of it, in a manner satisfactory to, and within a time to be notified by, the Receiver.

(3) If the owner fails to comply with the notice, or if neither the owner nor the master of the ship, or as the case may be, neither the owner nor the person in command of the aircraft, nor in either case may agent of the owner can be found, the Receiver may –

- (a) Take possession of and remove or destroy the whole or any part of the ship or aircraft; and
- (b) Sell, in such manner as he thinks fit, the ship or aircraft, or any part of it, so removed, and also any property recovered from it in the exercise of his powers under this section; and, out of the proceeds of any such sale, without any reference to the articles from the same of which those proceeds arise, reimburse the Crown for the whole of the expenses of removal; and
- (c) If the proceeds of the sale are insufficient to pay the whole of the expenses of removal, recover the balance from the owner of the ship or aircraft or from the owner of any other ship or aircraft or from any other person if the sinking, stranding or abandonment occurred through the fault or negligence of that other ship, aircraft or person.

(4) Subject to subsection (5), the Receiver shall hold and dispose of the surplus (if any) of the proceeds of any sale under this section in accordance with the provisions of this Act relating to wreck.

(5) This subsection shall apply to every article belonging to or forming part of a ship or aircraft, as it applies to a ship or aircraft; and the proceeds of the sale under this section of any ship or aircraft or part of it or other property recovered shall be regarded as a common fund.

(6) In this section “owner”, in relation to any ship or aircraft which has been sunk, stranded, or abandoned, includes not only the owners of the ship or aircraft at the time of its sinking, standing or abandonment, but also any subsequent purchaser of the ship or aircraft or of any article belonging to it or forming part of it as long as the ship or aircraft remains sunk, stranded or abandoned.

**15 Offences in respect of wreck**

(1) Any person who takes into any port out of Niue any ship or aircraft, stranded, derelict, or otherwise in distress, found on or near the coasts of Niue, or any part of the cargo or equipment of it, or anything belonging to it, or any wreck found within those limits, and there sells the same, commits an offence against this Act and shall be liable on conviction or indictment to imprisonment for a term not exceeding 5 years or to a fine not exceeding 20 penalty units.

(2) Every person, not being a Receiver or a person lawfully acting as such or a person acting by the command of any such person as aforesaid, commits an offence against this Act who boards or endeavours to board any ship or aircraft which is wrecked, stranded, or otherwise in distress on or near the coasts of Niue unless he acts with the leave of the master of the ship or, as the case may be, the person in command of the aircraft, and every such master or person in command may repel him by force.

(3) Every person commits an offence against this Act who –

- (a) Impedes or hinders, or endeavours in any way to impede or hinder, the saving of any ship or aircraft stranded or in danger of being stranded or otherwise in distress on or over or near the coasts of Niue, or of any part of the cargo or equipment of any ship or aircraft or of any wreck; or
- (b) Secretes any wreck, or defaces or obliterates any marks on it;
- (c) Wrongfully carries away or removes any part of a ship or aircraft stranded or in danger of being stranded or otherwise in distress on or near the coasts of Niue, or any part of the cargo or equipment of any such ship or aircraft, or any wreck,

and every such person shall be liable for each offence to a fine not exceeding 1 penalty unit, and that penalty may be inflicted in addition to any other penalty to which that person may be liable by law under this Act or otherwise.

**16 Receiver may seize concealed wreck**

(1) Where the Receiver suspects or receives information that any wreck is secreted or in the possession of some person who is not the owner of it, or that any wreck is otherwise improperly dealt with, he may apply to any Judge of the Court for a search warrant and such Judge shall have power to grant such a warrant, and the Receiver, by virtue of it, may enter any house or other place, wherever situate, and also any ship, and search for, seize, and detain any such wreck found there.

(2) If any such seizure of wreck is made in consequence of information given by any person to the Receiver, on a warrant being issued under this section the informant shall be entitled by way of salvage to such sum, not exceeding in any case \$10 as the Cabinet allows.

**17 Salvage**

(1) Where services are rendered –

- (a) Wholly or in part within Niue waters in saving life from any ship or aircraft; or
- (b) Elsewhere in saving life from any Commonwealth ship or any unregistered ship which is owned wholly by persons qualified to own a registered New Zealand ship, or any aircraft which is registered in or belongs to any Commonwealth country –

there shall be payable to the salvor by the owner of the ship or aircraft or cargo or equipment saved a reasonable amount of salvage, to be determined in case of dispute in manner hereinafter mentioned.

(2) Salvage in respect of the preservation of life, when payable by the owners of the ship or aircraft, shall be payable in priority to all other claims for salvage.

(3) Where the ship or aircraft and its cargo and equipment are destroyed, or their value is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage payable in respect of the preservation of life, Cabinet may award to the salvor, out of any money appropriated by the Assembly for the purpose, such sum as he thinks fit in whole or part satisfaction of any amount of salvage so left unpaid.

(4) Where –

(a) Any ship or aircraft is wrecked, stranded, or in distress on or over or near the coasts of Niue, and services are rendered by any person in assisting that ship or aircraft, or in saving the cargo or equipment of it or any part of it, or

(b) Services are rendered by any person other than the Receiver in saving any wreck;

there shall be payable to the salvor by the owners of the ship or aircraft or cargo or wreck a reasonable amount of salvage, to be determined in case of dispute in manner hereinafter mentioned.

## 18 Determination of salvage disputes

(1) Disputes as to the amount of salvage, whether of life or property, arising between the salvor and the owners of any ship or aircraft or cargo or equipment or wreck shall, if not settled by agreement, arbitration or otherwise, be determined by the Court.

(2) Disputes relating to salvage may be determined on the application either of the salvor or of the owner of the property saved, or of their respective agents.

(3) The Court may, for the purpose of determining any dispute relating to salvage, call to its assistance as assessor any person conversant with maritime or aeronautical affairs, and there shall be paid, as part of the cost of the proceedings, to every such assessor in respect of his services such sum as Cabinet directs.

(4) Any party aggrieved by the decision of the Court may, if the sum in dispute exceeds \$400, appeal to the Court of Appeal.

## 19 Enforcing payment of salvage

(1) Where salvage is due to any person under this Act the Receiver shall –

(a) If the salvage is due in respect of services rendered in assisting any ship or aircraft, or in saving life from it, or in saving the cargo and equipment of it, detain the ship or aircraft and cargo or equipment; and

(b) If the salvage is due in respect of the saving of any wreck, and the wreck is not sold as unclaimed under this Act, detain the wreck.

(2) Subject as hereinafter mentioned, the Receiver shall detain the ship or aircraft and the cargo and equipment, or the wreck (detained property), until payment is made for salvage, or process is issued for its arrest or detention by a competent court.

(3) The Receiver may release any detained property if security is given to his satisfaction or, if the claim for salvage exceeds \$400 and any question is raised as to the sufficiency of the security, to the satisfaction of the Court.

(4) Any security given for salvage under this section to an amount exceeding \$400 may be enforced by the Court in the same manner as if bail had been given in that Court.

**20 Receiver may sell wreck in case of non-payment**

(1) The Receiver may sell any detained property if the persons liable to pay salvage in respect of which the property is detained are aware of the detention, in the following cases –

- (a) Where the amount is not disputed, and payment of the amount due is not made within 90 days after the amount is due; or
- (b) Where the amount is disputed, but no appeal lies from the first court to which the dispute is referred, and payment is not made within 90 days after the decision of the first court; or
- (c) Where the amount is disputed, and an appeal lies from the decision of the first court to some other court, and within 90 days of the decision of the first court neither payment of the sum due is made nor evidence is produced that proceedings are to be commenced for the purpose of appeal.

(2) The proceeds of sale of detained property shall, after payment of the expenses of sale, be applied by the Receiver in payment of the expenses, fees, and salvage, and the surplus (if any) shall be paid to the owners of the property or any other persons entitled to receive the same.

**21 Foreign wreck subject to duties as an importation**

(1) All wreck, being goods brought or coming into Niue from parts beyond the seas shall be subject to the same duties as if the same was imported into Niue, and if any question arises as to the origin of the goods they shall be deemed to be the produce of such country as Cabinet may on investigation determine.

(2) Cabinet may permit all goods saved from any ship or aircraft stranded or wrecked on her homeward voyage to be forwarded to the port of her original destination, and all goods saved from any ship or aircraft stranded or wrecked on her outward voyage to be returned to the port at which they were laden, but Cabinet shall take security for the revenue in respect of those goods.

(3) In this section “goods” includes any part of any ship or aircraft and the cargo, machinery, and equipment and any other property belonging to it.

**22 Offences**

(1) Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section shall be liable in respect of each offence to a fine not exceeding 2 penalty units.

(2) Where an offence against this Act is a continuing one, and no penalty is provided for the continuance of it elsewhere than in this section, every person who commits that offence shall, in addition to any other liability, be liable to a fine not exceeding 0.5 penalty units for every day or part of a day during which the offence continues.

**23 Limitation of time in proceedings**

No conviction for an offence shall be made under this Act other than for an offence under section 15, unless such proceeding is commenced within one year after the commission of the offence.

