



# FAMILY RELATIONSHIPS BILL 2022

Act No \_\_\_\_\_

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#### An Act to—

- (a) replace the law relating to—
  - (i) marriage and divorce:
  - (ii) adoption:
  - (iii) guardianship:
  - (iv) maintenance and affiliation orders; and
- (b) provide new law relating to—
  - (i) de facto relationships:
  - (ii) care and protection of children:
  - (iii) care of elderly parents:
  - (iv) domestic violence.



## **Family Relationships Bill 2022**

**The Assembly enacts as follows –**

**1 Title**

This Act is the Family Relationships Act 2022.

**2 Commencement**

This Act comes into force on the day after the date on which this Act becomes law in accordance with Article 34 of the Constitution.

### **Part 1**

#### **Preliminary matters**

**3 Purposes**

The principal purposes of this Act are –

- (a) to consolidate and simplify the law relating to marriage, and to provide for –
  - (i) no-fault divorce; and
  - (ii) the recognition of de facto relationships; and
  - (iii) a default position of a 50:50 division of assets when a marriage or de facto relationship ends; and

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- (iv) various forms of financial support to spouses and partners:
- (b) to confirm that the best interests of the child are the paramount consideration in all matters relating to parenting and the care and protection of children:
- (c) to confirm the responsibilities of parents to their children, and to update the law relating to adoption and guardianship:
- (d) to provide the Secretary to Justice with powers to arrange for the care of children in need of care and protection:
- (e) to provide a mechanism for the ongoing care of elderly parents whose children do not provide the care and support they need:
- (f) to provide effective mechanisms to protect the victims of domestic violence.

### **4 Act binds the Government**

This Act binds the Government.

### **5 Interpretation**

In this Act, unless the context otherwise requires,—

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**adoptive parent** means any person who adopts a child under an adoption order and, if 2 people jointly adopt a child, means both of those people

**carer** means a person appointed under section 81 to provide day-to-day care of a child who is in the care of the Department

**child** means a person under the age of 18 years

**court** means the High Court of Niue

**day-to-day care**, for a child, means providing for the child's practical daily needs and supervising the child to the degree appropriate to the child's age and maturity

**Department** means the department of the Niue Public Service for the time being responsible for the administration of this Act

**family member**, in relation to a person, means any of the following:

- (a) the person's spouse or partner:
- (b) any child or grandchild of the person or of the person's spouse or partner:
- (c) the person's grandparents, parents, aunts, and uncles, and the grandparents, parents, aunts, and

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uncles of the person's spouse or partner:

- (d) the children of the person's parents, aunts, and uncles, and the children of the parents, aunts, and uncles of the person's spouse or partner:
- (e) any other person who, in the context in which the issue arises, it is reasonable to treat as a member of the person's family

**guardian** means a guardian appointed under section 55 or a testamentary guardian appointed under section 59 and, if 2 people are jointly appointed as guardians of a child, means both of those people

**marriage celebrant** means any of the following:

- (a) the Registrar of the High Court:
- (b) a Judge or Commissioner of the High Court:
- (c) a person appointed as a marriage celebrant under section 15

**marriage register** or **register** means a marriage register kept by the Registrar under section 11

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**parent** means a natural parent or an adoptive parent

**parental responsibility** has the meaning given in section 34

**parenting order** means an order made under section 44

**party**, in relation to a marriage or a de facto relationship, includes a party to a former marriage or former de facto relationship

**Registrar** means the Registrar of the High Court, and includes the Deputy Registrar of the High Court

**regulations** means regulations made under this Act

**Secretary** means Secretary to Justice, the Head of the Department

**weapon** means anything that is capable of being used as a weapon and includes a firearm.

### Part 2

#### Relationships between adults

##### Subpart 1--Marriage

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### **6 Requirements for marriage**

- (1) Every marriage must –
  - (a) be between a man and a woman; and
  - (b) be solemnised by a marriage celebrant before 2 witnesses in accordance with section 9; and
  - (c) be recorded in the marriage register.
- (2) A marriage that does not comply with this section is void.

### **7 Capacity to marry**

- (1) No person may marry unless they are aged 18 years or older.
- (2) No person may marry another person who is related to them in a way set out in Schedule 1.
- (3) However, if the relationship is not a blood relationship, the parties may apply to the court for its consent to their marriage and the court may make an order that overrides the prohibition in subsection (2).

### *How to get married*

### **8 Formalities before marriage**

- (1) At least 3 working days before a marriage, one of the parties must go in person to the

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Registrar and give notice of the intended marriage.

- (2) The notice must be in the form prescribed by regulations and be accompanied by the prescribed fee.
- (3) On receiving a properly completed notice and the prescribed fee, the Registrar must give public notice of the intended marriage.
- (4) However, no marriage is void just because of a breach of this section.

### **9 Solemnisation**

- (1) A marriage may be solemnised in any manner that is in accordance with the regulations and that the marriage celebrant thinks fit, if at some point each party indicates that they –
  - (a) are freely entering the marriage; and
  - (b) know of no reason why the marriage should not be solemnised.
- (2) The marriage must be witnessed by 2 witnesses who are each of or over the age of 18 years.

### **10 Record of marriage in marriage register**

- (1) Before solemnising a marriage, the marriage celebrant must collect the marriage register

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and any other necessary forms from the Registrar.

- (2) Immediately after solemnising a marriage, the marriage celebrant must record the details of the marriage in the marriage register and the register must be signed by –
  - (a) both parties; and
  - (b) both witnesses.
- (3) The marriage celebrant must return the register to the Registrar as soon as practicable after the marriage.
- (4) No marriage is void just because of an error or a defect in the register or the details recorded in it.

### **11 Registrar to keep marriage register**

- (1) The Registrar must maintain the marriage register as if it were a record of the High Court.
- (2) The marriage register must be available to the public at all times when the court is open.
- (3) An entry in a marriage register must not be altered after the entry has been completed except at the direction of the Registrar, who may, if satisfied on the basis of evidence



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before them, require the correction in the register of any clerical error, or error of fact or substance, or any omission of a material fact.

- (4) On application by any person, and on payment of the prescribed fee, the Registrar must issue a certificate (a **marriage certificate**) showing the details of a specified marriage as recorded in the marriage register.
- (5) However, the Registrar may waive payment of the prescribed fee—
  - (a) in cases of genuine hardship; or
  - (b) where the marriage certificate is needed for an official purpose.
- (6) A marriage certificate issued by the Registrar must be received in any court as prima facie evidence of the marriage to which it relates.

### 12 **Discretion of Registrar**

The Registrar may waive strict compliance with any procedural provision of this subpart if they are satisfied that there is good reason why strict compliance is not possible or not necessary.

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### **13 Offences by parties to marriage**

- (1) A party or witness to a marriage commits an offence and is liable on conviction to a fine not exceeding 10 penalty units, if the person signs an entry in the marriage register knowing that the entry contains a statement that is false.
- (2) Any person who, by wilful misrepresentation made to a marriage celebrant, procures or attempts to procure the solemnisation of a marriage by the celebrant commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

### **14 Offence by marriage celebrant or supposed marriage celebrant**

- (1) Any person who is not a marriage celebrant commits an offence if they purport to act as a marriage celebrant and are liable on conviction to a fine not exceeding 10 penalty units.
- (2) A marriage celebrant commits an offence, and is liable on conviction to a fine not exceeding 10 penalty units, if they –
  - (a) breach any provision of this subpart; or

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- (b) sign an entry in the marriage register knowing that the entry contains a statement that is false.

### **15 Appointment of marriage celebrants**

- (1) Cabinet may appoint any minister of religion as a marriage celebrant, in which case the appointment is for all marriages within the period specified in the notice of appointment.
- (2) Cabinet may also appoint as a marriage celebrant any other person whom Cabinet believes to be a fit and proper person, in which case the appointment –
  - (a) is for a specific marriage, or for all marriages during a specific period, as set out in the notice of appointment; and
  - (b) is subject to any conditions set out in the notice of appointment.

### **16 Legal status of married people**

Marriage does not, of itself, –

- (a) confer on either party any rights to or in relation to the property of the other party, except for intestate succession; or
- (b) affect the domicile of either party.

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### *How marriages end*

#### **17 Divorce**

- (1) Either or both of the parties to a marriage may apply to the court for a divorce order.
- (2) On application for a divorce order, the court must, and may only, make a divorce order if it is satisfied that the parties to the marriage have been separated for a total period of at least 12 months.
- (3) The 12-month period of separation need not be continuous.
- (4) For the purposes of this section, being **separated** means no longer living together as a couple.

#### **18 Court may declare marriage void**

The court may of its own initiative or on application declare that 2 people who were purportedly married in Niue are not married, and that the marriage is void, if the court is satisfied that—

- (a) the marriage did not satisfy the requirements of section 6; or
- (b) at least one of the parties did not have the capacity to marry, as required by section 7.

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### Subpart 2--De facto relationships

#### **19 Definition of de facto relationship**

- (1) A **de facto relationship** is a relationship between a man and a woman who—
- (a) live together as a couple in a relationship in the nature of marriage; and
  - (b) are not married to each other; and
  - (c) are both aged at least 18 years.
- (2) In determining whether 2 people live together as a couple in a relationship in the nature of marriage, the court or person required to determine the question must have regard to—
- (a) the context, or the purpose of the law, under which the question is to be determined; and
  - (b) all the circumstances of the relationship.

#### **20 When de facto relationship ends**

A de facto relationship ends if—

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- (a) the de facto partners cease to live together as a couple in a relationship in the nature of marriage; or
- (b) the couple marry; or
- (c) one of the de facto partners dies.

### Subpart 3--Property and financial support

#### *Division of property*

#### **21 Definition of relationship property**

- (1) **Relationship property** is property acquired by a married couple or a de facto couple during any period when they have been married (but not separated) or in a de facto relationship, other than property that is—
  - (a) land; or
  - (b) property that the couple agrees, in writing, is not or will not be relationship property.
- (2) Property owned by a party to a marriage or a de facto relationship immediately before the marriage or the start of the de facto relationship remains that person's property, and does not become relationship property,

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unless the parties agree in writing that it is or will be relationship property.

- (3) The court may set aside an agreement referred to in subsection (1)(b) or (2) if it is satisfied that the agreement –
- (a) was obtained by duress or undue pressure; or
  - (b) is otherwise unconscionable.

### **22 Relationship property normally to be divided 50:50**

When a marriage or de facto relationship ends, the relationship property of the parties must be divided between them on a 50:50 basis, unless the parties agree otherwise, or the court orders a different division under section 23.

### **23 Court may determine how relationship property to be divided**

- (1) If the parties to a marriage or de facto relationship that ends cannot agree how their relationship property is to be divided, either party may apply to the court for an order under this section.

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- (2) The court must order that relationship property be divided in accordance with section 22 unless satisfied that –
- (a) a 50:50 division would be grossly unfair, given either or both of the following:
    - (i) the relative contributions of each party to the relationship;
    - (ii) the fact that one party has an occupation right over land owned by the other party; or
  - (b) an uneven distribution is justified because one party has entered into a agreement to provide domestic support to the other party, and that support requires the first party to retain more than 50% of the relationship property.
- (3) Any agreement referred to in subsection (2)(b) may be enforced as if it were an order of the court.

### **24 Niuean land not affected**

- (1) Nothing in this Act allows a court to make an order alienating Niuean land or any legal or equitable interest in Niuean land.



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- (2) In making an order under section 23, the court may take into account the existence of a person's interests in Niuean land when determining what would be a fair division of property between a couple.
- (3) In this section, **Niuean land** has the same meaning as Niuean Land under section 3 of the Land Act 1969.

### *Domestic support*

#### **25 Nature of domestic support order**

- (1) A domestic support order is an order requiring one party to a marriage or de facto relationship (whether the relationship still exists or has ended) to provide material support (including money) to the other party on a regular basis.
- (2) The order must specify –
  - (a) the amount or type of support; and
  - (b) the frequency of provision; and
  - (c) the way in which the support is to be provided.

#### **26 Application for domestic support**

Any person present in Niue may apply for a domestic support order against the person's

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current or former spouse or de facto partner, whether or not the spouse or de facto partner is resident or present in Niue.

### **27 Court may make domestic support order**

- (1) The court may make a domestic support order requiring one party to a marriage or de facto relationship (the **respondent**) to provide domestic support to the other party.
- (2) If the respondent to an application cannot be found, the court may determine the application and make the order without notice to the respondent.
- (3) The court must consider the following when determining whether to make the order and, if the court makes the order, the amount of, and the method of providing, the support:
  - (a) the age and state of health of each party:
  - (b) the income, earning capacity, property, and financial resources of each party:
  - (c) whether either party has parental responsibility for a child or has any dependants:
  - (d) the ability of each party to support –
    - (i) themselves; and

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- (ii) any child for whom they have parental responsibility; and
  - (iii) any dependants:
- (e) the eligibility of either party for a pension, allowance, or benefit, whether the fund or scheme was established, or operates, within or outside Niue, and the rate of the pension, allowance, or benefit that is being paid, or will be paid, to either party:
- (f) the extent to which the payment of support to one party would increase the earning capacity of that person by enabling the person to –
  - (i) undertake a course of education or training; or
  - (ii) establish a business; or
  - (iii) obtain an adequate income or property:
- (g) the extent to which the party who has applied for support has made financial or non-financial contributions to the other party's –
  - (i) income; or
  - (ii) earning capacity; or

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- (iii) property; or
    - (iv) financial resources:
  - (h) the duration of the marriage or the de facto relationship and the extent to which it has affected the earning capacity of the party who applies for support:
    - (i) any fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.
- (4) In this section, a **dependant** is a person who relies on the material support provided by another person by reason of age, disability, or infirmity.

### **28 Expiry, discharge, suspension, and variation of domestic support order**

- (1) A domestic support order expires –
  - (a) on the date, or on the occurrence of any event or circumstance, specified in the order; or
  - (b) on the death of either party to the order.
- (2) The respondent under the order may at any time apply to the court to discharge, suspend, or vary a domestic support order on the grounds that the circumstances of

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either party, as specified in section 27, have changed to the extent that the order is no longer fair or reasonable.

- (3) The court may discharge, suspend, or vary the order, taking into consideration the matters specified in section 27, and may order that all or part of any support owing be remitted on the grounds that the respondent is not able to provide it.

### **29 Enforcement of domestic support orders**

- (1) The court may make a domestic support enforcement order under this section, on its own initiative or on application by the person in whose favour the order is made, if satisfied that the respondent under a domestic support order has failed to comply with the order.
- (2) A domestic support enforcement order may do any or all of the following:
  - (a) order the respondent to file with the court a written proposed maintenance plan:
  - (b) issue a wage deduction order to the employer of the respondent, for periodic payments:

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- (c) issue any other order necessary or desirable to ensure that—
  - (i) any arrears of domestic support are provided in accordance with the order; and
  - (ii) future provision is made as required by the order.
- (3) A person who fails to comply with a domestic support enforcement order commits an offence and is liable on conviction to either or both of the following:
  - (a) a fine not exceeding 10 penalty units;
  - (b) imprisonment for a term not exceeding 2 years.

### **Part 3 Children and parents**

#### **30 Purposes of this Part**

The purposes of this Part are—

- (a) to promote the welfare and best interests of children, and facilitate their development, by providing for appropriate arrangements to be in place for their care; and

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- (b) to recognise certain rights of the child; and
- (c) to ensure that children receive adequate and proper parenting to help them achieve their full potential; and
- (d) to ensure that parents fulfil their duties and meet their responsibilities concerning the care, welfare, development, and financial support of their children; and
- (e) to provide for the care of elderly parents whose adult children do not provide adequate care and support for them.

### **31 Determining child's best interests**

- (1) In order to determine what is in the best interests of a child, the court must consider all the following matters (unless the matters are inapplicable in the circumstances):
- (a) any wishes expressed by the child, with appropriate weight given to those wishes in the light of the child's maturity and level of understanding;
  - (b) the child's maturity, gender, and background:

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- (c) the cultural heritage and linguistic and racial identity of the child, and the child's need to maintain a connection with their lifestyle, culture, and traditions:
- (d) the nature of the relationship of the child with each of their parents and with any other significant person:
- (e) the likely effect that a change of circumstances will have on the child, including the likely effect of separation from either parent or any other child or other person with whom the child has been living:
- (f) the practical difficulty and expense of a child having contact with a parent and whether that difficulty will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis:
- (g) the capacity of each parent, or of any other person, to provide for the needs of the child, including emotional and intellectual needs:



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- (h) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents:
  - (i) whether the child has been exposed to family violence involving the child or any other person:
  - (j) the need to protect the child from physical or psychological harm caused, or that may be caused, by being subjected to abuse or ill-treatment, or being exposed to the abuse or ill-treatment of another person:
  - (k) any other fact or circumstance that the court thinks is relevant.
- (2) The court must consider the factors in subsection (1) even if it is asked to make an order with the consent of all parties.

### **32 Status of children**

- (1) For the purpose of determining the relationship of any person to their mother or father, it is irrelevant whether the mother and the father are, or ever have been, married to each other.

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- (2) However, subsection (1) does not apply, and the law that applied before the Niue Act 1966 came into force applies instead, to—
- (a) the will of any testator who died before 1 January 1967; and
  - (b) any other instrument executed before 1 January 1967; and
  - (c) the distribution of the estate of any person who died intestate before 1 January 1967.

### **33 Consent to medical procedures**

- (1) If the consent of any person is required before a medical, surgical, or dental procedure (including a blood transfusion) is carried out on a child, —
- (a) if the child is of or over the age of 16, the consent of the child is sufficient; and
  - (b) if the child is under the age of 16, consent may be given by —
    - (i) either parent of the child; or
    - (ii) any guardian of the child; or
    - (iii) if there is no parent or guardian of the child who can be found (after reasonable attempts to do so) or

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who is capable of giving consent,  
the court.

- (2) Nothing in this section limits or affects any enactment or rule of law under which –
- (a) no consent or express consent is necessary; or
  - (b) the consent of the child, in addition to that of any other person, is necessary; or
  - (c) the consent of another person instead of the consent of the child is sufficient.

### Subpart 1--Parents

#### **34 Parental responsibility**

- (1) Each parent of a child has parental responsibility for the child, except to the extent that this Act or an order of the court provides otherwise.
- (2) Having **parental responsibility** for a child means being responsible for –
- (a) providing, or knowing who is providing, day-to-day care of the child; and
  - (b) safeguarding and promoting the child's welfare, best interests, and development; and

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- (c) providing direction and guidance to the child, in a manner appropriate to the stage of development of the child; and
  - (d) contributing to the child's intellectual, emotional, physical, social, cultural, and other personal development; and
  - (e) maintaining personal relations and direct contact with the child on a regular basis if the child is not living with the parent; and
  - (f) acting as the child's legal representative; and
  - (g) determining major long-term issues affecting the child.
- (3) Other people, besides parents, may be responsible for exercising some or all parental responsibility for a child at different times, as provided in this Act.
- (4) Every person who has parental responsibilities for a child must exercise those responsibilities, as far as possible, in consultation with every other person who has parental responsibilities for the child.
- (5) A parent's parental responsibility for a child is not affected by changes in the nature of the relationship between the child's parents,

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such as separation or divorce, or either of them marrying or entering into a de facto relationship.

- (6) In this section, **major long-term issues**, in relation to a child, means issues about the care, welfare, and development of the child of a long-term nature and includes (but is not limited to) issues about –
- (a) the child’s education (both current and future); and
  - (b) the child’s religious and cultural upbringing; and
  - (c) the child’s health; and
  - (d) the child’s name; and
  - (e) changes to the child’s living arrangements that will make it significantly more difficult for the child to spend time with a parent or other family member.

### **35 Duty to maintain child**

- (1) Each parent of a child has a duty to maintain the child, unless or until an order of the court modifies that duty.

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- (2) Other persons (such as guardians) may also have a duty to maintain a child, but only as specified by this Act or a court order.
- (3) The Secretary may seek an order from the court requiring any person who has a duty under this section to maintain a child to comply with that duty.

### *Parentage*

#### **36 Determining who is child's father**

- (1) A man is presumed to be the father of a child if –
  - (a) he and the child's mother were married or in a de facto relationship –
    - (i) at the time of the child's conception;  
or
    - (ii) at the time of the child's birth; or
  - (b) he is named as the child's father on the child's birth certificate.
- (2) However, any of the following may apply to the court for a parentage order that determines who is the father of a child:
  - (a) either parent of the child:

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- (b) the child, if they are of an age and maturity to understand the consequences of a parentage order;
- (c) any guardian of the child.

### **37 Parentage orders**

- (1) On an application for a parentage order in relation to a child (whether under section 36 or otherwise), the court may make an order specifying that a named person is, or is not, a natural parent of the child.
- (2) The court may make a parentage order without hearing the evidence of a natural parent of the child.
- (3) If a natural parent of the child gives evidence in relation to a parentage order, corroboration of their evidence is unnecessary.
- (4) The court may recommend that a DNA parentage test be carried out on a child before making a parentage order.
- (5) In any proceedings, —
  - (a) a parentage order in relation to a child is conclusive evidence that the person against whom it is made is a natural parent of the child; and

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- (b) an order declaring a person is not a natural parent of the child is conclusive evidence that the person is not a natural parent of the child.

### Subpart 2--Parenting

#### **38 Agreements between parents**

As far as possible, the parents of every child must seek to agree upon how they care for the child and exercise their parental responsibilities, whether or not the parents live together, and regardless of the relationship between the parents.

#### *Parenting plans*

#### **39 Nature of parenting plans**

- (1) A parenting plan is a written agreement about a child that addresses the matters in subsection (2) and is made between—
  - (a) the parents of the child; or
  - (b) the guardians of a child; or
  - (c) any parent and any guardian of the child; or
  - (d) the Secretary and any parent, guardian, or carer of the child.



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- (2) A parenting plan must set out the following:
  - (a) who has the day-to-day care of the child, and when and where:
  - (b) who (if anyone) the child may, or may not, have contact with, and any restrictions on or conditions of contact:
  - (c) the allocation of parental responsibilities for the child:
  - (d) how the parties will consult together:
  - (e) the forms of communication that the child may or must have with their parents, guardians, or with other persons:
  - (f) the process for resolving disputes about the operation of the plan, and for changing the plan.
- (3) The plan may also deal with any other aspect of the care, welfare, or development of the child, or any other aspect of parental responsibility for the child, including financial support.
- (4) Every person who signs the parenting plan is a party to the parenting plan.
- (5) Regulations made under this Act may set out a template for a parenting plan.

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### **40 Registering parenting plans**

- (1) Any party to a parenting plan may apply to the court to register the parenting plan.
- (2) The court must register the plan if it is satisfied that the plan is in the best interests of the child.
- (3) If the child concerned is of an age and maturity to understand the nature and effect of the plan, the court must take into account the views of the child on the matter.
- (4) If the court is not satisfied that the plan is in the child's best interests, the Registrar must set down the matter for a hearing and give notice to the parties identified by the court of the date, time, and place of the hearing.
- (5) Following the hearing, the court may, on its own initiative or on the application of any party to a parenting plan to review the plan, —
  - (a) vary the plan, with the agreement of the parties, and register it; or
  - (b) cancel the plan and make a parenting order.
- (6) A parenting plan that is registered has the same effect as a parenting order.

**41 Expiry, discharge, and variation of registered parenting plan**

- (1) Every parenting plan for a child expires when the child turns 18 years of age.
- (2) The following persons may apply to discharge or vary a registered parenting plan:
  - (a) any party to the parenting plan;
  - (b) any child to whom the plan relates, if the child is of an age and maturity to understand the nature and effect of the plan.
- (3) On an application for the discharge or variation of a parenting order, the court must—
  - (a) give each party to the parenting plan, and any affected child of an age and maturity to understand the nature and effect of the plan, an opportunity to make submissions on the application; and
  - (b) review the plan.
- (4) Following its review of the parenting plan, the court may, if satisfied that it is in the best interests of the child to do so,—
  - (a) vary the parenting plan; or

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- (b) discharge the plan; or
  - (c) confirm the plan.
- (5) A parenting plan that is varied by the court under this section has the same effect as if it were the plan originally agreed to and registered by the parties.

### *Parenting orders*

#### **42 Nature of parenting orders**

- (1) A **parenting order** is an order of the court that sets out or includes, in relation to a child, at least the following matters:
- (a) who has the day-to-day care of the child, and when and where:
  - (b) who (if anyone) the child may, or may not, have contact with, and any restrictions or conditions on contact:
  - (c) the allocation of parental responsibilities, including financial support, for the child.
- (2) A parenting order may also address any other matters the court considers relevant, such as--
- (a) directions for determining any specific question that has arisen, or that may

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arise, in connection with any aspect of parental responsibility for a child:

- (b) steps or actions that a parent or guardian cannot take without the consent of the court:
  - (c) the nature of the contact permitted with any person (for example, whether it is direct contact (that is, face to face) or some form of indirect contact (for example, by way of letters, phone calls, or email)):
  - (d) the place, duration, and timing of contact with another person, and whether another person must or may be present during contact.
- (3) If there is a conflict between a parenting order and a person's parental responsibilities, the parenting order takes priority.
- (4) All parties to a parenting order, and every person with parental or other responsibilities under the parenting order, must fully adhere to the order and not act in a way that is incompatible with it.

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### 43 Application for parenting order

Any of the following persons may apply for a parenting order:

- (a) either or both of the child's parents:
- (b) any guardian of the child:
- (c) the child, if the child is of an age and maturity to understand the nature and effect of the order:
- (d) with the leave of the court, a family member of the child.

### 44 Court may make parenting order

- (1) The court may make a parenting order for a child –
  - (a) on its own initiative, whether in the course of other proceedings or not; or
  - (b) on an application made under section 43.
- (2) The best interests of the child are the first and paramount consideration in determining whether to make a parenting order and, if an order is made, in determining its terms.
- (3) A person is a **party to a parenting order** concerning a child if, under the order, the person –

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- (a) is obliged or allowed to exercise parental responsibilities for the child; or
- (b) is specifically authorised to have contact with the child.

### **45 Application for direction on major long-term issues**

If there is a parenting order in force for a child, any of the following persons may apply to the court for directions on any major long-term issues affecting the child:

- (a) either or both of the child's parents;
- (b) any guardian of the child;
- (c) the child, if the child is at an age and maturity to understand the nature and effect of the order;
- (d) with the leave of the court, a family member of the child.

### **46 Court may give directions on major long-term issues**

The court may give directions on major long-term issues--

- (a) on its own initiative, whether in the course of other proceedings or not; or

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- (b) on an application made under section 45.

### **47 Expiry, discharge, and variation of parenting order**

- (1) A parenting order concerning a child expires when a child turns 18 years.
- (2) Any of the following persons may apply to the court to vary or discharge a parenting order:
  - (a) any party to the order;
  - (b) the child, if the child is of an age and maturity to understand the nature and effect of the plan;
  - (c) the Secretary.
- (3) The applicant, each party to the parenting order, and the child (if the child is of an age and maturity to understand the nature and effect of the order) must be given an opportunity to be heard or make submissions on an application to vary or discharge a parenting order.
- (4) The court may vary or discharge a parenting order only if it is satisfied that the variation or discharge is in the best interests of the child.



**48 Enforcement of parenting orders**

- (1) Any of the following persons may apply to the court to determine whether a party to a parenting order is not complying with it:
  - (a) any party to the parenting order;
  - (b) any child to whom the parenting order applies, if the child is of an age and maturity to understand the nature and effect of the order;
  - (c) the Secretary.
- (2) If satisfied that a person is not complying with the order, the court may do any of the following, if it is in the best interests of the child to do so:
  - (a) give further directions to the person who has breached the order (including requiring a person to pay a bond not exceeding \$5,000 into court);
  - (b) vary or discharge the order (by, for example, reducing the time during which the child is in the care of, or has contact with, the person in breach).
- (3) If the court is satisfied that a party to a parenting order has breached the order by not returning a child as required by the parenting order, the court may issue a

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warrant authorising a police officer or a person named in the warrant—

- (a) to take immediate custody of the child; and
  - (b) to deliver the child to the person to whom the child should have been returned under the parenting order.
- (4) If a person who has paid a bond into court breaches the parenting order or parenting enforcement order, the court may order that the bond be forfeited to the Crown, in whole or in part.

### Subpart 3--Financial support orders

#### *Child maintenance*

#### **49 Nature of child maintenance order**

- (1) A child maintenance order is an order requiring a person who has a duty under section 35 to maintain a child to provide financial or other material support for the benefit of a child to a person exercising some or all parental responsibilities for the child.
- (2) The making of a child maintenance order against one person for the support of a child does not reduce the liability of any other

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person who has a duty to maintain the child to provide that financial or material support.

### **50 Application for child maintenance**

- (1) Any of the following persons may apply to the court for a child maintenance order (whether or not the person is exercising parental responsibilities for the child):
- (a) a parent of the child;
  - (b) a guardian of the child;
  - (c) the Secretary;
  - (d) any family member of the child.

### **51 Court may make child maintenance order**

- (1) The court may make a child maintenance order if satisfied that it is reasonable to do so having regard to—
- (a) the proper needs of the child; and
  - (b) the type and extent of the parental responsibilities that the intended recipient is exercising; and
  - (c) the resources of the person from whom maintenance is sought.
- (2) In considering the proper needs of the child, the court must have regard to the following:
- (a) the age of the child:

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- (b) the need to provide suitable accommodation for the child:
  - (c) the health and any special medical needs of the child:
  - (d) the educational or training needs of the child:
  - (e) any special needs of the child:
  - (f) the financial circumstances of the child.
- (3) In considering the resources of the person from whom maintenance is sought, the court must have regard to the following:
- (a) the income, earning capacity, property, and financial resources of the person:
  - (b) the commitments of the person to support –
    - (i) themselves; and
    - (ii) any other child or other person that they have a duty to maintain:
  - (c) the direct and indirect costs incurred by the person in looking after the child:
  - (d) any special circumstances which, if not taken into account, would result in injustice or undue hardship to any person.

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- (4) A child maintenance order may require any or all of the following:
- (a) payment of a lump sum, whether in one amount or by instalments:
  - (b) payment of a weekly, monthly, yearly, or other periodic amount:
  - (c) that one person deliver goods specified in the order to a person who looks after the child.
- (5) A child maintenance order may –
- (a) be permanent or interim; or
  - (b) be made urgently, pending disposal of proceedings; or
  - (c) be for a fixed period, or until a particular event (such as the child turning a particular age); or
  - (d) be made by consent; or
  - (e) include any conditions.
- (6) In this section and sections 52 and 53,--
- adult child** means a son or daughter of or over the age of 18 years
- child** includes an adult child who--
- (a) is undergoing education; or
  - (b) suffers from a physical or mental disability.

**52 Expiry, discharge, suspension, and variation of child maintenance order**

- (1) A child maintenance order for a child expires when the child turns 18 years, unless the court specifies that child maintenance must continue to be paid for an adult child –
  - (a) to enable the adult child to complete their education; or
  - (b) because of a mental or physical disability of the adult child.
- (2) A child maintenance order also expires if –
  - (a) the child dies, is adopted, or marries; or
  - (b) the person liable to pay child maintenance dies; or
  - (c) the person entitled to receive child maintenance under the order dies.
- (3) The court may, on application by any party to the order, discharge, suspend, or vary a child maintenance order if satisfied that –
  - (a) the order was obtained by fraud or perjury; or
  - (b) since the order was made, new and material evidence has been discovered; or

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- (c) since the order was made, circumstances have so changed that the order ought to be cancelled or suspended, or a new order substituted.
- (4) The power to vary an order includes the power to remit any arrears owing under an order.

### **53 Enforcement of child maintenance orders**

- (1) The court may make a child maintenance enforcement order under this section on its own initiative or on application by a person in whose favour the order is made if satisfied that a person who is liable, under a child maintenance order, to pay child maintenance to another person has failed to comply with the order.
- (2) An order under this section may do 1 or more of the following:
  - (a) order the liable person to file with the court a written proposed maintenance plan;
  - (b) issue a wage deduction order to the employer of the liable person, for periodic payments;
  - (c) issue any other order necessary or desirable to ensure that –

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- (i) any arrears of child maintenance are paid in accordance with the order; and
- (ii) future payments are made as required by the order.

### *Birth expenses*

#### **54 Birth expenses order**

- (1) A birth expenses order is an order requiring the father of a child to make a proper contribution towards any of the following:
  - (a) the maintenance of the mother during pregnancy;
  - (b) the mother's reasonable medical expenses relating to the pregnancy and birth;
  - (c) if the mother dies as a result of the pregnancy or birth, the reasonable expenses of the mother's funeral;
  - (d) if the child is stillborn or dies, and the death is related to the birth, the reasonable expenses of the child's funeral.
- (2) The court may make a birth expenses order on an application by –



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- (a) the mother of the child; or
  - (b) if the mother is deceased, any family member of the mother.
- (3) Subsection (2) applies only if the father of the child is not married to the mother.
- (4) In determining the amount of contribution to order, the court must take into account only the following matters:
- (a) the income, earning capacity, property, and financial resources of the mother and father of the child:
  - (b) the requirement for the mother and the father of the child to support themselves and any child or other person that the person has a duty to maintain:
  - (c) any special circumstance that, if not taken into account, would result in injustice or undue hardship to any person.
- (5) An order under this section may be enforced as a debt due under a judgment of the court.

### Subpart 4--Guardians

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### 55 Nature of guardianship order

- (1) A **guardianship order** is an order that appoints a person who is not a parent of a child to act in place of a parent of the child in accordance with the terms of the guardianship order and, in particular, –
  - (a) to exercise some or all parental responsibilities for the child; and
  - (b) if required by the guardianship order, to maintain the child.
- (2) If a guardianship order is made for a child who has a living parent, the parental responsibilities of the parent are subject to the terms of the guardianship order made for the child.
- (3) Every guardian of a child must exercise their responsibilities in consultation with any other guardian and with any other person who still has parental responsibilities for the child, as far as is reasonably practicable.

### 56 Application for guardianship order

- (1) An application for a guardianship order may be made only for a child who is physically present in Niue at the time of the application.
- (2) The application may be made by –

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- (a) a parent of the child, singly; or
  - (b) jointly by both parents of a child; or
  - (c) the Secretary; or
  - (d) a person applying to be appointed as the guardian, or 2 people applying jointly to be guardians, of the child.
- (3) An application for a guardianship order must—
- (a) identify the parental responsibilities that the proposed guardian will exercise; and
  - (b) state whether, or the extent to which, the proposed guardian will be responsible for the maintenance of the child; and
  - (c) include the written consent of the proposed guardian to the order; and
  - (d) if the application is made by one parent only, include either—
    - (i) the written consent of the other parent to the order; or
    - (ii) an explanation of why the written consent of the other parent is not included; and

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- (e) if the child concerned is of an age and maturity to understand the nature and effect of the order, include the written consent of the child to the application being made.

### **57 Court may make guardianship order**

- (1) The court may make a guardianship order for a child only if satisfied that—
  - (a) the child is present in Niue and either—
    - (i) neither of the child's parents is living in Niue; or
    - (ii) any parent of the child who is living in Niue is unable, unwilling, or unsuitable to exercise parental responsibilities for the child; and
  - (b) the order clearly identifies the parental and other responsibilities of the guardian; and
  - (c) the guardian is of or over the age of 21 years and—
    - (i) has consented to terms of the order; and
    - (ii) is suitable to be a guardian of the child; and

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- (iii) is able to comply with the terms of the order; and
  - (d) in all the circumstances, the order is in the best interests of the child.
- (2) The court must ensure, as far as possible, that the child's guardians are members of the child's family or magafaoa.
- (3) Every guardianship order for a child must—
  - (a) provide that the guardian of the child is responsible for providing day-to-day care of the child; and
  - (b) specify whether, and if so the extent to which, each of the child's parents may be consulted on the exercise of any other parental responsibilities for the child; and
  - (c) specify whether, or the extent to which, the guardian is responsible for maintaining the child.

### **58 Expiry, discharge, and variation of guardianship order**

- (1) A guardianship order expires on the earliest of the date on which--
  - (a) the child turns 18 years;
  - (b) the child dies;

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- (c) the order expires in accordance with its terms.
- (2) The court may vary or discharge a guardianship order only on the application of—
- (a) a guardian under the order; or
  - (b) the child under the order, if the child is of an age and maturity to understand the nature and effect of the discharge or proposed variation; or
  - (c) a parent of the child; or
  - (d) the Secretary.
- (3) The court may discharge a guardianship order only if satisfied,—
- (a) on the basis of evidence before it, that the discharge of the order is in the best interests of the child; and
  - (b) that, if the order is discharged, another guardian or a parent of the child is able, willing, and suitable to exercise parental responsibilities for and (if necessary) to maintain the child; and
  - (c) that the court has taken into consideration the views of the child, if the child is of an age and maturity to

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understand the nature and effect of the discharge.

- (4) The court may vary a guardianship order only if satisfied that—
- (a) the variation is in the best interests of the child in the circumstances; and
  - (b) the order as varied identifies who exercises what parental responsibilities for the child and (if necessary) who is to maintain the child; and
  - (c) the guardian consents to the variation and is able and willing to comply with the order as varied; and
  - (d) if the variation involves a change to the rights and responsibilities of any parent of the child, the parent has been given the opportunity to make submissions on the variation and the court has considered any submissions received; and
  - (e) if the child is of an age and maturity to understand the nature and effect of the proposed variation, the child's views have been sought and taken into consideration.

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### **59 Testamentary guardians**

- (1) Either parent of a child may, by will, appoint a person to be the child's testamentary guardian after the parent's death.
- (2) The testamentary guardian of a child has all the parental responsibilities of a guardian appointed under a guardianship order and the duty to maintain the child.
- (3) However, if a child has both a testamentary guardian and a living parent or a guardian appointed under a guardianship order, the testamentary guardian may exercise the parental responsibilities of a guardian, and is obliged to maintain the child, only in accordance with—
  - (a) a parenting plan entered into with the parent or other guardian; or
  - (b) an order of the court.

### Subpart 5--Preventing removal of child from Niue

### **60 Preventing removal of child from Niue**

- (1) The court must take steps to prevent the removal of a child from Niue if satisfied on reasonable grounds that a person is about to



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remove a child from Niue and the removal is likely to—

- (a) breach, or have the effect of breaching, an order made under this Act; or
  - (b) defeat the claim of a person who has applied for, or is about to apply for, an order under this Act.
- (2) To prevent the removal of a child from Niue, the court may do either of both of the following:
- (a) issue a warrant directing a police officer or a person named in the warrant to take immediate custody of the child (using such reasonable force as may be necessary) and to place the child in the care of the Secretary pending a further order of the court:
  - (b) order that any tickets or travel documents (including a passport) of the child or of the person believed to be about to remove the child from Niue, or of both, be surrendered to the police for whatever period and on any conditions the court determines necessary in the circumstances.

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- (3) Within 5 days after the issue of a warrant under subsection (2)(a), the matter must be brought before the court for determination.
- (4) A person against whom an order is made under subsection (2)(b) may apply to the court for the discharge of the order, and the court may discharge the order if it is satisfied that the circumstances that made it necessary to require the documents to be surrendered no longer exist.

### **61 Offence of taking child from Niue**

- (1) A person commits an offence if the person, without the leave of the court, removes or attempts to remove any child from Niue –
  - (a) knowing that a person has applied for, or is about to apply for, an order under this Act relating to the child; or
  - (b) knowing that an order under this Act is in force that –
    - (i) makes another person responsible for the day-to-day care of the child; or
    - (ii) authorises another person to have regular contact with the child.

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- (2) A person convicted of an offence against subsection (1) is liable to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 12 months, or both.

### Subpart 6--Adoption

#### **62 Application for adoption order**

- (1) An application for adoption may be made for any child.
- (2) Every person who applies to adopt a child must—
  - (a) be a Niuean, or be a permanent resident of, or habitually resident in, Niue; and
  - (b) be of or over the age of 21 years.
- (3) Every application must be in the prescribed form and include the consents required by section 64.

#### **63 Court may make adoption order**

- (1) The court may make an adoption order for a child only if satisfied of the following:
  - (a) that the applicant or applicants are fit and proper persons to take on parental responsibility for the child:

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- (b) that the applicant or applicants are able to maintain the child:
  - (c) that the adoption order will be in the best interests of the child:
  - (d) that each applicant is of or over the age of 21:
  - (e) that any consents required by section 64 have been given as required by that section.
- (2) If an application is made solely by a person who is married to, or in a de facto relationship with, another person, the court must be satisfied that the applicant's spouse or partner –
- (a) consents to the application (unless the 2 people are married but separated); and
  - (b) is a fit and proper person.
- (3) Before making an adoption order, the court must receive and consider a report on the application prepared by or on behalf of the Secretary.

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### **64 Consents required before adoption order made**

- (1) The consent of the mother of a child is required before the child can be adopted, unless subsection (3) applies.
- (2) The consent of the father of a child is required before a child can be adopted, unless subsection (3) applies, if the father is named on the birth certificate.
- (3) The consent of a parent is not required if the parent—
  - (a) is dead; or
  - (b) has abandoned or deserted the child; or
  - (c) is for any reason not fit to care for the child; or
  - (d) is not fit to give consent.
- (4) The consent of a child is required if the child proposed to be adopted is of or over the age of 12 years and capable of understanding the nature and effect of an adoption order.
- (5) Every consent required by this section must—
  - (a) be in writing; and
  - (b) be witnessed by a Commissioner or Registrar of the court, a lawyer, or a

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medical officer, who must certify that the person consenting fully understands the nature and effect of the adoption order.

- (6) A consent given by a mother must –
  - (a) have been given at least 10 days after the birth of the child; and
  - (b) if the mother is under the age of 18 years, have been given after the mother has received legal advice or counselling on the effects of adoption.

### **65 Revocation of consent**

- (1) The mother of a child who has consented, before the child is 30 days old, to the adoption of the child may revoke that consent and give notice to the court of the revocation of consent, at any time within that 30-day period.
- (2) If notice of the revocation of consent is received by the court within 30 days after the birth of the child, the court must –
  - (a) require the adoptive parent, or the agency having the care of the child, to return the child to the mother; and

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- (b) cancel any adoption order already made.
- (3) If an adoption order is cancelled under this section, the child is for all purposes deemed never to have been adopted.

### **66 Effect of adoption order**

- (1) When a child is adopted under an adoption order, —
  - (a) the child is regarded in law (including the law relating to land) as the child of the adoptive parent; and
  - (b) the child is regarded in law (including the law relating to land) as no longer the child of their previous mother or father; and
  - (c) the adoptive parents take on parental responsibility for the child and the responsibility to maintain the child; and
  - (d) the child's previous mother and father cease to have parental responsibility for the child or the responsibility to maintain the child; and
  - (e) any current guardianship order made for the child is discharged; and

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- (f) the child takes the name specified in the adoption order –
  - (i) by the adoptive parent; or
  - (ii) if the child is of or over the age of 12, by the child with the agreement of the adoptive parent.
- (2) An adoption order does not affect the race, nationality, or citizenship of the adopted child, except as provided in subsections (3) and (4).
- (3) If any adoptive parent is Niuean, the adopted child is deemed for all purposes to be Niuean.
- (4) If any adoptive parent is a permanent resident of Niue, the adopted child is a permanent resident of Niue.
- (5) Any child maintenance orders relating to a child cease to have effect if the child is adopted, but this does not prevent the recovery of any arrears due under any order before the adoption order is made.
- (6) Despite subsection (1), a person must continue to be treated as the child of their natural parents for the purpose of Schedule 1 (forbidden marriages) and the crime of incest.



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### 67 **Limit on further adoption**

During the lifetime of an adoptive parent, the adopted child may not be adopted by any other person except the spouse or de facto partner of the adoptive parent.

### 68 **Cancellation of adoption order**

- (1) An adoption order may be cancelled only –
- (a) under section 65 (where a mother revokes consent to adoption within 30 days after the birth of her child); or
  - (b) if –
    - (i) the court is satisfied that the adoption order was made by mistake as to a material fact because of a material misrepresentation; and
    - (ii) Cabinet approves the cancellation.
- (2) If an adoption order is cancelled under subsection (1)(b), –
- (a) the child is regarded as again being the child of their previous mother and father; and
  - (b) the adoptive parent of the child is treated as never having been the child's adoptive parent; and

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- (c) any child maintenance orders, so far as they relate to the child as a child of the adoptive parents, are cancelled, and any previous child maintenance orders, so far as they relate to the child as the child of their previous mother and father, are restored.

### **69 Prohibition on payment in consideration of adoption**

No person may give or receive, or agree to give or receive, any payment or reward in consideration for the making of arrangements for an adoption or a proposed adoption, except with the consent of the court.

### **70 Inspection of adoption records**

(1) Adoption records (including adoption orders) may be inspected by--

- (a) any person who needs to inspect those records for some purpose in connection with the administration of an estate or a trust of which that person is executor, administrator, or trustee:

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- (b) any person who was the subject of the adoption to which those records relate and their natural and adopted parents:
  - (c) the Registrar:
  - (d) the Secretary.
- (2) Except as ordered by the court, no other person has a right to inspect adoption records.

### **71 Adoption by Niuean custom invalid**

No adoption by Niuean custom made after 1 November 1969 has any force or effect, whether for intestate succession or otherwise.

### **72 Existing adoptions not affected by Part**

Nothing in this Part affects any adoption made, or deemed to be made, or treated as having the same force or effect as an adoption made, under the Niue Amendment Act (No 2) 1968.

### Subpart 7--Care of elderly parents

### **73 Nature of care of parent order**

- (1) A **care of parent order** is an order by the court giving the Secretary certain rights and

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responsibilities for an elderly parent whose adult children are not able or willing to care for the parent and who is in need of care and support.

- (2) Under a care of parent order, the Secretary –
  - (a) \_\_\_\_\_ is required to provide the parent with the care and support specified in the order; and
  - (b) \_\_\_\_\_ is permitted to have access to such income of the person as necessary to reimburse the Secretary for the cost of providing that care and support; and
  - (c) \_\_\_\_\_ may be permitted to apply the assets of the person for any specific purpose identified by the court that is related to the person’s need for care and support.
- (3) For the purposes of this subpart, a person is **in need of care and support** if –
  - (a) \_\_\_\_\_ the person –
    - (i) needs help at home with basic daily domestic tasks (such as cooking, washing, shopping, and maintaining contact with other people); and

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- (ii) the necessary help is not, or is no longer, provided on a consistent basis by family or others in the community; or
- (b) the person—
  - (i) has been admitted to hospital or an aged care facility; and
  - (ii) no child or other family member of the person is able or willing to visit the person regularly and assist the hospital or facility in providing suitable care to the person.

### **74 Application for care of parent order**

- (1) An application for a care of parent order may be made only by the Secretary.
- (2) The application must be supported by evidence that the Secretary has made reasonable attempts to contact the children of the person within the 6 months preceding the application.
- (3) If any child of the parent has advised the Secretary of their address and contact details, the Secretary must—
  - (a) advise the child, at least 1 month before making an

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application for an order, of any proposal to apply for a care of parent order; and

- (b) provide a copy of any application for a care of parent order to the child.
- (4) However, a failure to comply with subsection (3)(a) or (b) is not a ground for discharging a care of parent order.

### **75 Court may make care of parent order**

- (1) The court may make a care of parent order if it is satisfied that –
- (a) the person in relation to whom an application is made –
    - (i) is Niuean or a permanent resident of Niue; and
    - (ii) is living in Niue; and
    - (iii) is in need of care and support; and
    - (iv) has no children willing or able to provide that care and support; and
  - (b) a care of parent order is in the best interests of the person.

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- (2) Every care of parent order must include the following:
- (a) a description of the kind of care and support that the Secretary must provide under the order; and
  - (b) provisions that enable the Secretary to receive –
    - (i) a specified contribution towards the cost of providing care and support to the person; or
    - (ii) a specified proportion of the annual income (including of any pension) of the person; and
  - (c) provisions that enable the Secretary to take any steps in relation to the person's home or moveable property that are necessary or desirable to support the person's care (such as installing ramps, removing rubbish, or replacing clothing); and
  - (d) if requested by the Secretary, provisions enabling the Secretary to apply any assets of the person to pay for, or offset the cost of,

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particular capital expenditures that are necessary or desirable to provide care and support to the person (such as modifications to the home, or the provision of specialist medical facilities) and that are in addition to the regular costs of providing care and support.

- (3) A care of parent order does not require the Secretary to provide a level of care and support to a person that is greater than that which could reasonably be expected to be provided by the person's children if those children were providing the level of care and support ordinarily provided by children to parents in Niue.
- (4) As soon as practicable after the order is made, the Secretary must make all reasonable efforts to provide each child of a person who is subject to a care of parent order with a copy of the order.
- (5) In this section, **assets** includes—
  - (a) funds held in any bank account; and
  - (b) any income to which the person is entitled; and



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- (c) the proceeds of the sale of property or produce.

### **76 Expiry, discharge, and variation of care of parent order**

- (1) A care of parent order expires when the parent to whom it applies dies or leaves Niue.
- (2) An application to discharge or vary a care of parent order may be made—
  - (a) by the Secretary; or
  - (b) by any child of the person to whom it applies.
- (3) The court may discharge or vary a care of parent order if it is satisfied that, following the variation or discharge,—
  - (a) the person to whom it applies will receive a level of care and support at an equivalent standard of care to that ordinarily provided by children to parents in Niue; and
  - (b) any amounts owing to the Secretary under the order have been, or will be, paid; and

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- (c) the discharge or variation is in the best interests of the person to whom the order applies.

### Part 4

#### Children in need of care and protection

##### 77 Purposes of this Part

The purposes of this Part are –

- (a) to affirm that the best interests of a child, both in childhood and later life, are the paramount consideration in all matters relating to the care and protection of the child:
- (b) to assist parents and guardians to exercise their responsibilities to prevent children from experiencing harm, abuse, neglect, or deprivation:
- (c) to provide for the care and protection of children who have experienced harm, abuse, neglect, or deprivation:
- (d) to ensure that a child is removed from the child's home

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only if there is a serious risk of harm to the child:

- (e) to ensure that, if a child is removed from the child's home, the child lives, wherever practicable, in an appropriate family-like setting in which the child's links with family members and other relevant persons are maintained.

### 78 **When child in need of care and protection**

For the purposes of this Part, a child is **in need of care and protection** if--

- (a) the child is being, or is likely to be, harmed (whether physically, emotionally, or sexually), ill-treated, abused, or seriously deprived; or
- (b) the child's development or physical, mental, or emotional well-being is being, or is likely to be, impaired or neglected, and that impairment or neglect is, or is likely to be, serious and avoidable; or
- (c) the child has behaved, or is behaving, in a manner that is, or is likely to be, harmful to the

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physical, mental, or emotional well-being of the child or to others, and the parents or guardians of the child are unable or unwilling to control the child; or

- (d) the parents or guardians of the child are unwilling or unable to care for the child; or
- (e) the parents or guardians of the child have abandoned the child; or
- (f) serious differences exist between the child and the parents or guardians of the child so that the physical, mental, or emotional well-being of the child is being seriously impaired; or
- (g) serious differences exist between a parent or guardian of the child and the other parent or guardian, so that the physical, mental, or emotional well-being of the child is being seriously impaired.

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### **79 Duty of Secretary for child in need of care and protection**

- (1) The Secretary must take positive and prompt action and steps to implement the purposes of this Part.
- (2) In carrying out the duty imposed by subsection (1), the Secretary must establish services (such as social work services, family support services, and community-based services) designed to advance the care and protection of children in the community or the home.

### **80 Effect of placing child in care of Department**

- (1) When a child is in the care of the Department, the Secretary assumes parental responsibilities for the child (consistent with the circumstances or any order of the court).
- (2) The Secretary must ensure, for any child placed in the care of the Department, that—
  - (a) there is a suitable carer to provide day-to-day care for the child; and
  - (b) the child receives suitable and adequate care; and

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- (c) to the extent consistent with the reasons why the child is in the care of the Department, the child maintains contact with their parents and magafaoa.

### **81 Carers appointed by Secretary**

- (1) The Secretary may appoint any suitably experienced person to be the carer of a child who is in the care of the Department.
- (2) The appointment must specify that the carer –
  - (a) must provide day-to-day care of the child in a family-like setting as far as possible; and
  - (b) may exercise the parental responsibilities specified by the Secretary; and
  - (c) must comply with any other conditions specified by the Secretary in order to ensure that the child receives adequate and appropriate care.
- (3) The Secretary may pay any carer out of funds appropriated for the purpose.

**82 Notifying Secretary that child in need of care and protection**

- (1) A person who suspects that a child is in need of care and protection may notify the Department.
- (2) A police officer, a teacher at a school, a doctor, or a nurse must, as soon as practicable, notify the Department if—
  - (a) they believe on reasonable grounds that a child has experienced, or is experiencing,—
    - (i) sexual abuse; or
    - (ii) non-accidental physical injury; and
  - (b) the person's reasons for the belief arise from information obtained by the person during the course of, or because of, the person's work.
- (3) A person who notifies the Department under this section must provide—
  - (a) the child's name or description; and
  - (b) the reasons for the person's belief.
- (4) If a person referred to in subsection (2) fails, without reasonable excuse, to notify the

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Department as required, the person commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

- (5) The Secretary must record any notification received under this section and investigate the matter without delay.

### **83 Safety warrant for child in need of urgent care and protection**

- (1) On application by a police officer or the Secretary, the court may issue a safety warrant for a child if satisfied that the child is urgently in need of care and protection.
- (2) The safety warrant may authorise a police officer to do any of the following:
  - (a) enter and search, by force if necessary, any residence, building, vehicle, premises, or place where it is believed the child is located:
  - (b) remove or detain the child, by force if necessary:
  - (c) deliver the child to the Secretary.
- (3) A safety warrant authorises the placement of a child who is in urgent need of care and protection in the care of the Department.



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- (4) Unless subsection (5) applies, the Secretary must, within 7 days after the date on which a child is placed in the care of the Department, –
- (a) release the child from the care of the Department, but only if satisfied that the child is no longer in need of care and protection; or
  - (b) apply to the court for a care order.
- (5) If the Secretary believes that the child has been sexually or physically abused by a parent or guardian of the child, the Secretary must apply to the court for a care order and keep the child in the care of the Department –
- (a) until the child is brought before the court; or
  - (b) for any further period as may be directed by the court.
- (6) The Secretary may, at any time, release a child who is subject to a safety warrant if satisfied that the child is no longer in need of care and protection.

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### 84 Search without warrant

- (1) A police officer who believes on reasonable grounds that it is critically necessary to protect a child from injury or death may, without warrant, —
  - (a) enter and search, by force if necessary, any residence, building, vehicle, premises, or other place;
  - (b) remove or detain, by force if necessary, the child and place the child in the care of the Department.
- (2) A police officer who exercises any powers under subsection (1) must, on first entering the place, and if requested, at any later time, —
  - (a) produce evidence of identity; and
  - (b) disclose that the powers are being exercised under this section.
- (3) The police officer must also report to the Chief of Police, in writing, on the exercise of the powers under subsection (1) and the

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circumstances in which they came to be exercised.

- (4) The report required under subsection (3) must be made within 3 days after the powers are exercised.

### **85 Other children in need of care and protection**

- (1) This section applies if the Secretary is satisfied after investigation (whether following a notification under section 82 or otherwise) that there are reasonable grounds for believing a child is in need of care and protection, but that the need is not sufficiently urgent to warrant an application for a safety warrant under section 83.
- (2) If this section applies, the Secretary must—
  - (a) convene a family group conference with the parents or guardians of the child, and any others recently responsible for the care of the child, for the purpose of consulting them—
    - (i) on plans for the care and protection of the child; and

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- (ii) on the development, if appropriate, of a temporary care arrangement; or
- (b) apply to the court for a care order.

### *Temporary care arrangement*

#### **86 Nature of temporary care arrangements**

- (1) A **temporary care arrangement** is an arrangement under which a child is placed in the care of the Department for a period of up to 3 months.
- (2) While the child is in the care of the Department, the Secretary assumes all parental responsibilities for the child, except as otherwise agreed with the child's parents or guardians.

#### **87 Making temporary care arrangements**

- (1) A temporary care arrangement must be in writing and include the following:
  - (a) the name of—
    - (i) the child to whom it relates; and
    - (ii) the carer of the child under the arrangement; and

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- (iii) the person who most recently has had the care of the child; and
  - (iv) the names of the child's parents and guardians (if known):
- (b) the term (not being more than 3 months) of the arrangement:
  - (c) a statement that the arrangement may be terminated by either the Secretary or the person who requested the arrangement after giving 7 days' notice in writing:
  - (d) provisions relating to the care of the child during the arrangement, including, but not limited to,—
    - (i) the educational, social, and religious needs of the child; and
    - (ii) a programme for the provision of services and assistance for the benefit of the child; and
    - (iii) the responsibilities of the parents, the guardians, or any other person:
  - (e) the time or times when specified persons may or may not have contact with the child, and any

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conditions (such as when, where, and for how long contact may occur) that apply to the contact.

- (2) If, at the end of the period of temporary care, no parent or guardian is able or willing to exercise parental responsibilities for the child (whether as a parent or as a guardian), the Secretary must immediately apply to the court for a care order.
- (3) If the Secretary applies for a care order for a child who is subject to a temporary care arrangement, the temporary care arrangement continues in operation until the court has determined the application for a care order, despite anything in subsection (1).

### *Care orders*

#### **88 Nature of care order**

A **care order** is an order of the court that places a child in the care of the Department until either –

- (a) the child turns 18 years; or
- (b) the order is discharged.

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### 89 Application for care order

- (1) The Secretary may apply to the court for a care order for a child if they believe on reasonable grounds that the child is, or is likely to be, in need of care and protection.
- (2) Before an application for a care order is heard by the court, the court must be provided with a report by the Department that contains information concerning the child and their circumstances.
- (3) In preparing a report on a child, the Department must consult with—
  - (a) the child's school, including individual teachers if appropriate; and
  - (b) any health professionals who are, or have been, involved in the child's care; and
  - (c) the Police; and
  - (d) the village council of any village where the child has resided; and
  - (e) the child.
- (4) A health professional who is asked to contribute to a report prepared for the purpose of this section is authorised and

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required to release any information concerning the physical or mental health of the child, but not of any other person.

- (5) Every report under this section is subject to sections 90 and 91.

### **90 Court may make care order**

- (1) The court may make a care order if it is satisfied that—

(a) the child is in need of care and protection; and

(b) the child does not have a parent or guardian who is able, willing, and suitable to care for the child at the time the order is made and in the foreseeable future; and

(c) the care order is in the best interests of the child.

- (2) A care order may specify, or authorise the Secretary to specify from time to time,—

(a) who is the carer of the child; and

(b) who may or must exercise some or all parental responsibilities for the child; and



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- (c) who may or may not have contact with the child, and any conditions attaching to that contact; and
  - (d) who else has specific responsibilities for the child.
- (3) Unless it is not in the best interests of the child, the order must permit the child to have reasonable contact with—
- (a) the child's parents;  
and
  - (b) the child's other family members; and
  - (c) any person who was caring for the child immediately before the child became subject to the care order.

### **91 Expiry, discharge, and variation of care order**

- (1) A care order expires when a child turns 18 years of age.
- (2) On application by the Secretary, the child, or (with leave of the court) any other person, the court may vary a care order if satisfied that—

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- (a) it is in the best interests of the child to do so; and
  - (b) the circumstances of the child have changed and the order requires variation to safeguard or promote the child's welfare.
- (3) On application by the Secretary, the child, or (with leave of the court) any other person, the court may discharge a care order if satisfied that –
- (a) it is in the best interests of the child to do so; and
  - (b) the child is no longer in need of care and protection.

### **92 Access to reports**

- (1) A copy of every report provided to the court under section 89(2) must, subject to section 93, be given by the Registrar to –
- (a) each person entitled to appear and be heard in the proceedings to which the report relates; and
  - (b) each lawyer or other person representing –

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- (i) any person entitled to appear and be heard in the proceedings to which the report relates; and
  - (ii) the child to whom the proceedings relate; and
  - (iii) each parent and any guardian of the child; and
- (c) the Secretary; and
  - (d) any other person who the court considers has a proper interest in receiving a copy of the report.
- (2) Every copy must, wherever possible, be supplied no later than 1 working day before the sitting of the court.

**93 Court may order report not to be disclosed**  
Despite section 92, the court may direct that the whole or any part of a report provided under section 89(2) must not be disclosed to a person specified in the order if satisfied that such disclosure would be, or is likely to be, detrimental to the physical, mental, or emotional well-being of a child or any other person to whom the report relates.

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### 94 Fees for reports

The Department must pay the fees and expenses of any person who provides a report under section 89(2).

## Part 5 Domestic violence

### 95 Meaning of domestic relationship

A person (**person A**) is in a **domestic relationship** with another person (**person B**) if person A and person B—

- (a) are or were married to, or in a de facto relationship with, each other; or
- (b) are the parents of a child; or
- (c) are family members living in the same household; or
- (d) are or were engaged or in a courtship, or have or had an actual or perceived intimate or sexual relationship; or
- (e) share, or recently shared, the same residence; or

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- (f) live in the same household and one of them is wholly or partially dependent upon ongoing care by the other; or
- (g) are a parent and adult child, or a grandparent and adult grandchild, in relation to each other.

### 96 Meaning of domestic violence

- (1) In this Part, a person (**person A**) engages in **domestic violence** if--
  - (a) they commit, or threaten to commit, physical, sexual, psychological, or economic abuse against a person with whom they are in a domestic relationship (**person B**); and
  - (b) the abuse described in paragraph (a) harms, or is likely to harm, person B.
- (2) For the purposes of this section,—**economic abuse** occurs where person A—
  - (a) behaves in an unreasonably controlling manner that denies person B financial autonomy, or prevents person B from taking part in

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decisions over household expenditures or the disposition of joint property; or

- (b) \_\_\_\_\_ withholds the financial support reasonably necessary for the maintenance of person B or person B's household; or
- (c) \_\_\_\_\_ unreasonably prevents or restricts access to employment opportunities or access to education; or
- (d) \_\_\_\_\_ unreasonably or unilaterally disposes of, retains, or damages person B's property or property owned jointly by person A and person B

**physical abuse** occurs where person A –

(a) assaults or otherwise causes bodily pain or harm to person B; or

(b) puts person B's life or health in danger

**psychological abuse** occurs where person A –

(a) threatens physical, sexual, or economic abuse or abuse of person B of a kind described in paragraphs (b) to (g):

(b) insults or ridicules person B:

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- (c) displays obsessive possessiveness or jealousy that amounts to a serious invasion of person B's privacy, liberty, integrity, or security;
- (d) intimidates or harasses person B, including by –
  - (i) watching, or loitering in, or hindering access to a place where person B lives, works, studies, or happens to be; or
  - (ii) making unwarranted phone calls, or inducing another to make such phone calls, to person B, whether or not it results in a conversation; or
  - (iii) sending unwarranted texts or other electronic messages, or sending or delivering letters, faxes, parcels, or other objects to person B; or
  - (iv) sharing or disclosing any sensitive photographs of person B without their consent; or
  - (v) pursuing person B in an unwanted and unwelcome manner, whether in person or by way of direct or indirect communication (such as via social media):

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- (e) damages person B's property:
- (f) ill-treats household pets of person B or other animals whose welfare is likely to affect person B's well-being:
- (g) if person B is affected by age, disability, or a health condition, withdraws the care or charge of person B or hinders or removes access to any aid or device, medication, or other support that affects, or is likely to affect, person B's quality of life

**sexual abuse** occurs where person A commits sexual assault, or engages in any act or conduct that abuses, humiliates, degrades, or otherwise violates the sexual integrity and autonomy of person B, irrespective of the nature of the relationship between person A and person B.

### 97 **Special obligations of police in domestic violence cases**

- (1) Police officers must attend to incidents of domestic violence promptly.
- (2) If a police officer believes on reasonable grounds that a person has engaged, is engaging, or is about to engage, in domestic violence, the police officer may (with or



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without a warrant to arrest) take that person into custody.

- (3) A person who is taken into custody under subsection (2) must be released no later than 48 hours after being taken into custody unless, before that time, the person is arrested for an offence.
- (4) In dealing with any person adversely affected by domestic violence (whether directed against that person or any other person), every police officer must –
  - (a) advise the person about the availability of counselling and legal services; and
  - (b) make arrangements, if necessary, to ensure that the person is kept safe; and
  - (c) obtain medical treatment, if appropriate for the person; and
  - (d) arrange for counselling for the person, where needed; and
  - (e) if the person agrees, apply for a protection order or help the person to apply for one.

*Police safety orders*

**98 Nature of police safety order**

A **police safety order** is an order issued by a police officer against a person (**person A**) in order to provide immediate short-term safety from domestic violence to another person (**person B**), where person A and person B are or were in a domestic relationship.

**99 Issue of police safety order**

(1) A police officer may issue a police safety order against a respondent (**person A**) in favour of another person (**person B**) if the police officer has reasonable grounds to believe that person B is or was in a domestic relationship with person A and is at risk of domestic violence from person A.

(2) Before issuing a police safety order, the police officer must, without limitation, consider –

(a) the extent to which it is likely that person A has used or is engaging in domestic violence against person B; and

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- (b) the best interests of any child residing with either person A or person B; and
  - (c) the hardship that may be caused if the police safety order is issued; and
  - (d) whether the situation would be better dealt with by arresting person A.
- (3) A police safety order may be issued without the consent of person B.
- (4) Nothing in this section limits the responsibility of a police officer to investigate or take action under the Niue Act 1966 or any other enactment if there is evidence that a crime has been committed.

### **100 Service and notice of police safety order**

- (1) A police safety order against a respondent (**person A**) –
- (a) must be served as soon as practicable on person A, and comes into force upon being served on person A; and
  - (b) remains in force until –

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- (i) the date and time specified in the order (which must not exceed 7 days after the order is issued); or
  - (ii) if no date and time are specified, until the close of the seventh day after its date of issue. (For example, if the order is issued at midday on Saturday 4 June, it remains in force until midnight on Saturday 11 June.)
- (2) When a police safety order is served on a respondent, the person serving the order must explain to the respondent –
  - (a) the purpose, duration, and effect of the order; and
  - (b) the consequences that may follow if the person fails to comply with the order.
- (3) The person in whose favour the police safety order is issued must be notified as soon as the order is served on person A and must be told of its duration and effect.
- (4) If a police safety order is issued but not served on person A within 7 days after its date of issue, the order lapses.

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- (5) When a police officer issues a police safety order, they must, as soon as practicable, file a report on it to the Chief of Police and attach a copy of the police safety order.

### **101 Effect of police safety order**

- (1) When a respondent (**person A**) is served with a police safety order, they –
- (a) must leave any land or buildings occupied by the person in whose favour the order is made (**person B**), whether or not person A has a legal or customary interest in the land or buildings; and
  - (b) must not engage in, or threaten to engage in, any form of domestic violence against person B or any of person B's family members or people with whom person B is in a domestic relationship; and
  - (c) must comply with any additional conditions of the order, including (without limitation) an order to immediately surrender to the police any specified types of weapons in their possession or control; and

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- (d) must not make contact with person B, other than contact that is—
  - (i) authorised by a police officer; or
  - (ii) reasonably necessary in an emergency.

### **102 Enforcing police safety order**

- (1) If a police officer believes on reasonable grounds that a respondent on whom a police safety order has been served is failing, or has failed, to comply with the order, the police officer must (with or without a warrant for arrest) take the respondent into custody.
- (2) If a person is taken into custody under subsection (1), a police officer must ensure that—
  - (a) the respondent is brought before the court; or
  - (b) the respondent is released from custody and issued with a summons requiring them to attend at court at the time specified in the summons.
- (3) If a respondent who has been released from custody and issued with a summons does

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not attend personally as required by the summons, the court may issue a warrant to arrest the respondent and bring them before the court.

- (4) When a respondent comes before the court under this section, the court may, if satisfied that the respondent has failed to comply with the police safety order, —
- (a) direct that a further police safety order be issued against the respondent; or
  - (b) make a temporary protection order under section 105; or
  - (c) give any other direction the court considers appropriate.

### *Protection orders*

#### **103 Nature of protection order**

- (1) A protection order is an order issued by the court that prohibits a respondent from engaging in any form of domestic violence against a complainant, where the respondent and the complainant are or were in a domestic relationship.

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- (2) A protection order may be either a temporary protection order (*see* section 105) or a full protection order (*see* section 106).
- (3) A respondent who is subject to a protection order –
  - (a) must not engage in, or attempt or threaten to engage in, domestic violence against the complainant or any member of the complainant’s family; and
  - (b) must comply with all conditions of the order.
- (4) The court may include any or all of the following as conditions of a protection order:
  - (a) prohibiting the respondent from approaching the complainant;
  - (b) prohibiting the respondent from being in or near specified premises or land, including premises where the complainant lives or works or that the complainant frequents, even if the respondent would otherwise have a right to be there;
  - (c) prohibiting the respondent from having any form of



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communication with the complainant, except as may be necessary to make arrangements for the welfare of their children:

- (d) prohibiting the respondent from doing any specified act or type of act that does not promote, encourage, or facilitate harmonious family relationships:
- (e) prohibiting the respondent from encouraging or causing another person to engage in conduct prohibited by the order:
- (f) prohibiting the respondent from possessing any specified type of weapon:
- (g) requiring the respondent to dispose of any specified type of weapon, either permanently or temporarily:
- (h) prohibiting the respondent from damaging or taking any property of the complainant:
- (i) requiring the respondent to return any specified personal property to the complainant,

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or to allow the complainant to recover, have access to, or make use of any specified personal property:

- (j) granting the complainant exclusive occupancy of a residence or specified part of a residence, whether or not the residence is solely owned or leased by the respondent;
  - (k) requiring the respondent to undertake counselling.
- (5) The court may specify that some or all the conditions of the order apply also for the benefit of any family member of the complainant, but only if –
- (a) in the case of a temporary protection order, the family member is at risk of personal injury; or
  - (b) in the case of a full protection order, the complainant has engaged in, or is likely to engage in, domestic violence against the family member.

**104 Applying for temporary or full protection order**

- (1) An application for a protection order may be made by –
- (a) the complainant; or
  - (b) any of the following persons, if the complainant gives written or oral consent to the application:
    - (i) a friend or family member of the complainant;
    - (ii) a lawyer;
    - (iii) a police officer; or
  - (c) any other person, if the person has reason to believe that domestic violence is being committed against the complainant, but the complainant is unable or unwilling to give consent to an application because the complainant is –
    - (i) a child; or
    - (ii) mentally incapacitated; or
    - (iii) unconscious; or
    - (iv) regularly under the influence of alcohol or drugs; or

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- (v) at risk of serious physical harm from the other person with whom they are or were in a domestic relationship with; or
  - (vi) illiterate or otherwise unable to provide written consent to an application.
- (2) An application for a temporary or full protection order may be made in writing, or orally, and by any medium (for example, by formal application form, or any form of informal writing, including email and text, or by phone or in person).
- (3) If an application is made orally, the court must reduce the application to writing as soon as practicable.
- (4) If an application for an order is made in any form of informal writing, the court may require the person making the application to provide evidence of their identity that is acceptable to the court.
- (5) An application for a temporary protection order must be determined on the day the application is filed, unless there are exceptional circumstances.

**105 Court may make temporary protection order**

- (1) The court may make a temporary protection order, without giving notice to the respondent, if satisfied that—
  - (a) the complainant and the respondent are or were in a domestic relationship with each other; and
  - (b) the complainant, or any child of the complainant who lives with the complainant, is in danger of personal injury from the respondent.
- (2) The court may, on its own initiative, make a temporary protection order in favour of a complainant if, in the course of any criminal or family proceedings before it, it considers that the health, safety, or well-being of the complainant requires it.
- (3) Before the expiry of a temporary protection order, the court may set down a hearing for the making of a full protection order—
  - (a) on application by the complainant, or any other person with the written consent of the complainant; or

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- (b) on its own initiative.

### **106 Court may make full protection order**

- (1) The court may make a full protection order on –
  - (a) an application made under section 104; or
  - (b) its own initiative in the course of proceedings relating to the complainant and the respondent.
- (2) The court may make a full protection order only if satisfied that –
  - (a) the complainant and the respondent are or were in a domestic relationship; and
  - (b) the respondent has engaged in, or is engaging in, domestic violence against the complainant; and
  - (c) the complainant has reasonable grounds to fear –
    - (i) that the respondent will commit domestic violence against them; or
    - (ii) that the respondent, or any child of the complainant who lives with the complainant, will suffer harm from

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the respondent if a protection order is not issued.

- (3) In considering whether to make a full protection order, or the conditions to be imposed by a full protection order, the court must consider –
- (a) the need to ensure that the complainant and their family members are protected from domestic violence by the respondent; and
  - (b) the well-being and accommodation needs of the complainant and other family members who normally live with the complainant; and
  - (c) whether the domestic violence by the respondent is part of a pattern of behaviour or is likely to be temporary; and
  - (d) the effect of the respondent's behaviour on, in particular, any children who normally live with the complainant; and
  - (e) any other matter the court considers relevant.

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- (4) A full protection order may be issued only following a hearing, and where the respondent has had notice of the hearing.
- (5) The court must not refuse to make a protection order merely because of the existence of other legal proceedings involving the respondent and the complainant.

### **107 Duration of protection order**

- (1) A protection order comes into force at the time it is made.
- (2) A temporary protection order lasts for the period specified in the order, which can be no longer than 30 days, and may be renewed once only (on the application of the complainant), for a further period of up to 30 days, without the need for a hearing or for notice to be given to the respondent.
- (3) A full protection order lasts until, or for as long as, the court specifies, but if no time is specified, it lasts for 1 year.

### **108 Service of protection order**

- (1) A protection order must be served personally on the respondent and on the complainant, and the date and time of



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service must be reported to the Registrar of the court.

- (2) A copy of every protection order must be forwarded to the Chief of Police.
- (3) When making a protection order, the court must explain to any party present—
  - (a) the purpose, terms, and effect of the order; and
  - (b) the consequences of failing to comply with the order; and
  - (c) how the order can be varied or revoked.

### **109 Variation or revocation of temporary or full protection order**

- (1) A court may vary or revoke a temporary or a full protection order—
  - (a) on an application by the respondent, the complainant, or any other person affected by the order; or
  - (b) on the court's own initiative, during the course of any proceedings that affect both the respondent and the complainant.

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- (2) The court must not vary or revoke a protection order unless each party to the order has been served with the application to vary or revoke the order (unless the variation or revocation is done on the court's own initiative).
- (3) The court may vary a protection order by –
  - (a) varying the conditions of the order; or
  - (b) varying the duration of the order.
- (4) When a protection order is varied or revoked, the court must –
  - (a) ensure that a copy of the variation or revocation is served personally on the complainant and the respondent; and
  - (b) send a copy of the variation or revocation to the Chief of Police.

### **110 Enforcement of protection order or registered foreign protection order**

- (1) A police officer may, without a warrant, arrest a person if the police officer is satisfied that the person –

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- (a) \_\_\_\_\_ is the respondent named in a protection order or registered foreign protection order; and
  - (b) \_\_\_\_\_ is failing, or has failed, to comply with any condition of the order.
- (2) The respondent named in a protection order or registered foreign protection order commits an offence if they fail to comply with any condition of the order.
- (3) A person convicted on an offence under this section is liable, –
- (a) \_\_\_\_\_ on a first conviction under this section, to a term of imprisonment not exceeding 12 months or to a fine not exceeding 15 penalty units, or both; or
  - (b) \_\_\_\_\_ on a second or subsequent conviction under this section (whether or not relating to the same protection order), to a term of imprisonment not exceeding 3 years or a fine not exceeding 20 penalty units, or both.
- (4) Payment by a respondent of compensation under section 112, or of any form of

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reparation, is not a defence to a charge under this section.

- (5) In this section, **registered foreign protection order** means an order registered under section 111.

### **111 Registration of foreign protection orders**

- (1) The Registrar of the court must register in the court a foreign protection order if the Registrar receives, for the purposes of registration, —
- (a) a certified copy of the order; and
  - (b) a certificate that —
    - (i) is signed by an officer of a court in the country in which the order was made; and
    - (ii) contains a statement that the order is, at the date of the certificate, enforceable in the country in which it was made.
- (2) The registration is done by filing in the court a certified copy of the order.
- (3) A person who holds a foreign protection order and is intending to be in Niue for less than 1 month may, instead of registering the

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order in court, file a copy of the order with the Chief of Police, and the order is then to be treated as a registered foreign protection order.

(4) An order filed with the Chief of Police under this section ceases to be treated as a registered foreign protection order on the earlier of –

(a) the day after the person leaves Niue; or

(b) the day that is 1 month after the order is filed with the Chief of Police.

(5) In this section, **foreign protection order** –

(a) means an order made by an overseas court of competent jurisdiction, being –

(i) an order to protect a person from behaviour by the person against whom the order is made where, if the behaviour occurred in Niue, it would be behaviour for which a protection order could be made under this Act; or

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- (ii) an order that varies, discharges, or is made in substitution for such an order; but
- (b) does not include—
  - (i) an order made without notice; or
  - (ii) an interim order.

### **112 Compensation for injuries and losses and for expenses**

- (1) The court may order a respondent named in a protection order to pay the complainant under the order compensation for injuries and losses incurred as a result of acts of domestic violence committed by the respondent.
- (2) Injuries and losses able to be compensated under subsection (1) include, but are not limited to,—
  - (a) pain and suffering;
  - (b) physical and mental injury;
  - (c) the cost of any medical treatment incurred by the complainant;
  - (d) any loss of earnings suffered by the complainant:

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- (e) the value of any property of the complainant that was removed, damaged, destroyed, or disposed of:
  - (f) injuries and losses sustained before or after the protection order is made.
- (3) The court may order a respondent to pay compensation to a complainant for expenses that have been incurred, or will be incurred, by the complainant in establishing a separate household.
- (4) Expenses able to be compensated under subsection (3) include, but are not limited to, the following:
- (a) reasonable accommodation expenses:
  - (b) reasonable moving expenses:
  - (c) any other expenses reasonably associated with establishing a separate household.

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### *Procedures under this Part*

#### **113 Application for full protection order**

- (1) If an application is made for a full protection order, the court must—
  - (a) issue a warrant for the arrest of the respondent, if satisfied that the safety of the complainant is at risk; or
  - (b) issue a summons directing the respondent to attend at the court at the time and place specified.
- (2) Two copies of the warrant or summons must be given to the Chief of Police, who must immediately arrange for the warrant to be executed or the summons to be personally served on the respondent.
- (3) The hearing for a full protection order may proceed in the absence of the respondent as long as the court is satisfied that—
  - (a) the respondent was served with a summons to appear at the hearing; or
  - (b) the respondent was released on bail and a condition of bail



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was that they must appear at the hearing; or

- (c) all reasonable efforts have been made to give notice to the respondent of the time and place of the hearing.

### **114 Hearings for protection order**

- (1) Any hearing for a protection order must not be open to the public.
- (2) The complainant at a hearing for a protection order is entitled to have a person with them throughout the proceedings to provide support and other assistance.
- (3) In proceedings for a protection order, the court must decide questions of fact on the balance of probabilities.

### **115 Withdrawal of complaint**

If, before the hearing of an application for a protection order, the complainant applies to withdraw the application, the court must, before granting or dismissing that application, —

- (a) investigate the reasons for the withdrawal; and

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- (b) give any directions necessary to ensure the safety and well-being of the complainant and any of their family members.

### **116 Publication of proceedings**

The court may order, on application by any party or on its own motion, that all or specified details relating to a proceeding under this Part must not be published.

### **117 No application fees payable**

- (1) No fees or charges are payable by any person for making an application for a protection order or police safety order.
- (2) The court must not award costs in proceedings for a protection order, unless satisfied that the proceedings are based on a frivolous or vexatious claim.

### *Offence*

### **118 Assault on person in domestic relationship**

- (1) Everyone is liable to imprisonment for a term not exceeding 2 years who--
- (a) assaults another person; and

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- (b) \_\_\_\_\_ is, or has been, in a domestic relationship with that other person.
- (2) In subsection (1), **domestic relationship** has the same meaning as in section 95.

### Part 6 Miscellaneous provisions

#### 119 Jurisdiction of court

The Civil Division of the court has jurisdiction in all proceedings under this Act, other than criminal proceedings.

#### 120 Evidence generally

In proceedings under this Act (other than criminal proceedings), the court may receive any evidence that the court regards as suitable, whether or not the evidence is otherwise admissible in court.

#### 121 Appeals

- (1) An appeal may be made within the prescribed period from any order or decision of the court under this Act, other than from—
- (a) \_\_\_\_\_ a divorce order; or

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- (b) an adoption order.
- (2) Except on an appeal on a point of law, the Court of Appeal may rehear the whole or any part of the evidence, or may receive further evidence, if it thinks that the interests of justice require it.
- (3) Except as provided in Article 55 of the Constitution, the decision of the Court of Appeal is final in every case.

### **122 Court must appoint representative for child**

- (1) If a child who is the subject of, or a party to, proceedings under this Act is not of an age or maturity to understand the proceedings or, for any other reason, is unable to express their views, the court must—
  - (a) appoint a representative for that child; and
  - (b) ensure that the representative makes submissions to the court regarding the best interests of the child.
- (2) If the court appoints a lawyer to act for a child, the Secretary must pay the cost.
- (3) If the court appoints any other person as a representative for the child, the court may

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require the Secretary to pay or contribute to any associated costs.

### **123 Evidence of child**

- (1) In any proceedings under this Act relating to a child, the court may hear any evidence in any way it thinks fit including, without limitation, doing 1 or more of the following:
  - (a) requiring a person to withdraw from the court while the child gives evidence:
  - (b) requiring that cross-examination be conducted by video link with a screen:
  - (c) excusing the child from cross-examination if the child is not of an age or maturity to understand the proceedings:
  - (d) conferring in private with the child in the presence of the child's representative:
  - (e) receiving the evidence of the child by written or recorded statement.
- (2) The manner in which a child gives evidence in proceedings under this Act must minimise

any trauma or negative consequences that may occur to the child as a result of giving that evidence.

**124 Court may conduct hearings in private**

The court may hear any proceedings under this Act in private, and may exclude any person from the court.

**125 Content and explanation of court orders**

- (1) If any affected party is present when the court makes an order, the Registrar must explain the nature and effect of the order, and of non-compliance with the order, by telling the party about the order.
- (2) Every order made under this Act must contain an explanation, based on the terms of the particular order made, of –
  - (a) the effect of the order (for example, who must do what); and
  - (b) how the order can be varied or discharged; and
  - (c) when it will expire (if applicable); and
  - (d) the consequences that may follow if the order is breached.

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- (3) Any lawyer acting for, or person representing, a party to an application for an order must explain the effect of the order to the person making the application or receiving notice of it.
- (4) The explanations required by subsections (1) to (3) must be given in a manner and in a language that the person receiving the explanation can understand.
- (5) A lawyer acting for, or person representing, a child, must take all reasonable steps to ensure that the effect of any order relating to the child is explained to the child to an extent, and in an age-appropriate manner, and in language that the child understands.
- (6) A failure to comply with the requirements of this section does not affect the validity of any order concerned.

### **126 Regulations**

- (1) Cabinet may, on the recommendation of the Minister, make regulations for any of the following purposes:
  - (a) prescribing forms to be used for the purposes of this Act:
  - (b) regulating the way in which marriages are solemnised:

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- (c) prescribing matters for which fees are payable under this Act, and the amount of, or method of calculating, those fees:
- (d) prescribing procedures, including time frames, for proceedings under this Act:
- (e) prescribing the amount, or a method of calculating the amount, to be paid to carers appointed by the Secretary to provide day-to-day care of a child:
- (f) providing for exemptions from, or a reduction in, fees or charges payable under the regulations allowing the Secretary or the Registrar of the court to exercise their discretion in exempting or reducing fees and charges payable:
- (g) allowing the Secretary or the Registrar of the court to reduce fees and charges payable under the regulations, in accordance with any prescribed criteria:
- (h) providing for any other matters contemplated by this Act,



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necessary for its administration, or necessary for giving it full effect.

- (2) Any fees prescribed under this Act--
- (a) are not limited by reference to the amount of administrative or other costs incurred, or likely to be incurred, in relation to the application or service to which the fees relate; and
  - (b) may differ according to whether the person required to pay the fee is Niuean or not Niuean, or on the basis of any other specified matter.

### **127 Transitional provisions**

- (1) This section applies to any orders lawfully made before this Act comes into force under enactments repealed by this Act.
- (2) Any orders to which this section applies continue in force, and may be amended or discharged,--
- (a) as if this Act were not in force; and

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- (b) as if the enactments under which they were made had not been repealed.
- (3) A person who, immediately before the commencement of this Act, was a marriage celebrant continues to be a marriage celebrant, and section 15 does not apply to that person.
- (4) Any marriage that was lawfully solemnised before the commencement of this Act continues to be a valid marriage for the purposes of this Act, even if the parties could not have lawfully married under this Act (for example, because a party was under the age of 18 years).

### **128 Repeals**

- (1) Section 162(4) of the Niue Act (which provides a marital defence to rape) is repealed (*see* section 35(4) of the Criminal Code 2007).
- (2) Sections 16, 17 and 18 of the General laws Act 1968 (which are offences injurious to public morality) are repealed (*see* sections 48,49 and 50 of the Criminal Code 2007)
- (3) The enactments listed in Schedule 2 are repealed.

**Schedule 1**  
**Forbidden marriages**

s 7

- 1 A person may not marry the person's –
- (a) grandparent:
  - (b) grandparent's spouse:
  - (c) parent:
  - (d) parent's spouse:
  - (e) parent's sibling:
  - (f) a child of a parent's sibling:
  - (g) child:
  - (h) child's spouse:
  - (i) grandchild:
  - (j) grandchild's spouse:
  - (k) sibling:
  - (l) sibling's child:
  - (m) spouse's parent:
  - (n) spouse's grandparent:

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(o) spouse's child:

(p) spouse's  
grandchild.

2 The prohibited degrees of marriage apply whether the relationships described are by the whole blood or by the half blood.

3 In this schedule, **spouse** includes a former spouse, whether alive or deceased, and whether the marriage was terminated by death or divorce or otherwise.

**Schedule 2**  
**Repealed enactments**

s 128

Adoption Act 1955 (*see* sections 35 and 37 of Family Law Code 2007)

Guardianship Act 1968 (*see* sections 38 to 68 of Family Law Code 2007)

Niue Act 1966, section 69, Parts 21 to 23 (*see* sections 1 to 13, 15 to 26, 69, and 87 to 116 of Family Law Code 2007)

Niue Amendment Act (No 2) 1968, Part 8 (*see* sections 29 to 34, and 36 of Family Law Code 2007)

Property Law Act 1952, section 133 (*see* section 14 of Family Law Code 2007)

Marriage Regulations 1970



**Family Relationships Bill 2022**

I, Hima Douglas, Speaker of the Niue Assembly, certify that the requirements of Article 34 of the Niue Constitution have been complied with.

**SIGNED AND SEALED** at the Assembly Chambers this            day of            2022.

\_\_\_\_\_  
Speaker of the Niue Assembly

**COUNTERSIGNED** in the presence of the Speaker

\_\_\_\_\_  
Clerk of the Niue Assembly

\_\_\_\_\_  
This Act is administered by the Department of Justice, Lands, and Community Services.

This Act was passed by the Niue Assembly on the            day of            \_\_\_\_\_ 2022.