

NIUE LAWS

TAU FAKATUFONO-TOHI A NIUE

LEGISLATION AS AT DECEMBER 2006

VOLUME 2

TOHI 2

STATUTES

CONSTITUTIONAL – M

GOVERNMENT OF NIUE, ALOFI
2006

Copyright 2006
All rights reserved

Enquiries concerning the copyright material
should be addressed to the
Crown Law Office, Alofi, Niue

VOLUME TWO

| | |
|--|------|
| Constitutional Polls Act 1977 | 585 |
| Consular Privileges and Immunities Act 1971 | 587 |
| Continental Shelf Act 1964 | 613 |
| Crimes against Internationally Protected Persons and Hostages Act 1984 | 617 |
| Crown Proceedings Act 1950 | 625 |
| Customs Act 1966 | 641 |
| Customs Tariff Act 1982 | 717 |
| Deaths by Accidents Compensation Act 1952 | 719 |
| Departure Tax Act 1996 | 727 |
| Development Investment Act 1992 | 729 |
| Diplomatic Privileges and Immunities Act 1968 | 743 |
| Dogs Act 1966 | 761 |
| Domestic Fishing Act 1995 | 769 |
| Education Act 1989 | 777 |
| Electric Power Supply Act 1960 | 793 |
| Entry, Residence and Departure Act 1985 | 799 |
| Environment Act 2003 | 809 |
| Extradition Act 1965 | 821 |
| Film and Public Entertainment Act 1979 | 823 |
| Financial Transactions Reporting Act 2006 | 837 |
| Fireworks Act 1958 | 859 |
| Food Control Act 1981 | 861 |
| Fugitive Offenders Act 1881 | 869 |
| General Agreement on Tariffs and Trade Act 1948 | 871 |
| General Laws Act 1968 | 873 |
| Geneva Conventions Act 1958 | 877 |
| Government Loans Act 1980 | 885 |
| Guardianship Act 1968 | 891 |
| Income Tax Act 1961 | 901 |
| Incorporated Societies Act 1908 | 965 |
| Inquest Act 1964 | 977 |
| International Finance Agreements Act 1961 | 989 |
| International Finance Agreements Amendment Act 1966 | 995 |
| Interpretation Act 2004 | 999 |
| Land Act 1969 | 1009 |
| Liquor Act 1975 | 1025 |
| Manufactured Goods Tax Act 1964 | 1031 |
| Marine Insurance Act 1908 | 1035 |
| Mercantile Law Act 1908 | 1059 |
| Merchandise Marks Act 1954 | 1073 |
| Mining Act 1977 | 1085 |
| Minors' Contracts Act 1969 | 1097 |
| Misuse of Drugs Act 1975 | 1103 |
| Mosquito Control Act 1980 | 1105 |
| Mutual Assistance in Criminal Matters Act 1998 | 1107 |

CONSTITUTIONAL POLLS ACT 1977

1977/28 – 14 April 1977

- | | |
|---|--|
| <p>1 Short title</p> <p>2 Special poll of electors as to Bills to which article 35 of the Niue Constitution applies</p> <p>3 Application of provisions of Assembly Act</p> <p>4 Electoral rolls</p> | <p>5 Declaration of result of poll and communication to the Speaker</p> <p>6 Regulations</p> |
|---|--|
- SCHEDULE

To provide for special polls relating to proposed amendments to the Niue Constitution Act 1974 or the Niue Constitution

1 Short title

This is the Constitutional Polls Act 1977.

2 Special poll of electors as to Bills to which article 35 of the Niue Constitution applies

(1) Whenever a Bill to which article 35 of the Niue Constitution applies, has satisfied the requirements of article 35 (1) (a), there shall be taken within the meaning of the Assembly Act 1966, a poll on the question whether the proposal in the Bill is supported or not supported.

(2) The poll shall be taken on a day to be fixed by the Speaker by notice in the *Gazette* or in a newspaper circulating in Niue and shall be a poll of the electors of the several village constituencies who are entitled to vote at a general election of members of the Niue Assembly.

(3) The question shall be submitted in the form in the Schedule.

3 Application of provisions of the Assembly Act

Subject to this Act and any regulations made under it, and subject to all necessary modifications, the poll shall be taken in the same manner as if it were a general election of members of the Niue Assembly and the Assembly Act 1966 and any other law relating to such elections, as far as they are applicable, shall apply accordingly.

4 Electoral rolls

(1) Subject to this section, the electoral roll for each village constituency at the poll shall be the roll as provided by the Assembly Act 1966.

(2) The electoral roll in each village constituency shall close 10 days before the date fixed for the taking of the poll.

(3) The electoral rolls to be used in each village constituency shall be the main and supplementary rolls used at the last general election, together with a further supplementary roll to be prepared by the Chief Electoral Officer and to include the names of all electors registered by him after the closing of the rolls for the last general election and remaining on the roll for each village constituency at its closing under subsection (2).

5 Declaration of result of poll and communication to Speaker

(1) After the close of the poll in each village constituency the Presiding Officer shall count the votes recorded for and against the proposal and shall reject all informal votes.

(2) Immediately after he has counted the votes he shall send to the Chief Electoral Officer a statement of the number of informal votes, and of the total number of valid votes recorded, and of the number of valid votes recorded for and against the proposal.

(3) On receipt of the statement from all Presiding Officers, the Chief Electoral Officer shall conduct the final count and declare –

- (a) The total number of valid votes recorded at the poll throughout Niue and in each village constituency for the proposal; and
- (b) The total number of valid votes recorded at the poll throughout Niue and in each village constituency against the proposals.
- (c) The total number of votes rejected as informal.

(4) The Chief Electoral Officer shall communicate to the Speaker and shall notify in the *Gazette* or in a newspaper circulating in Niue, the numbers of the votes as finally ascertained by him in respect of the whole of Niue and in respect of each village constituency, and the result of the poll as determined thereby in respect of the whole of Niue.

6 Regulations

The Cabinet may make regulations for any purpose for which regulations are required or contemplated by this Act.

SCHEDULE
VOTING PAPER – Section 2 (3)
Constitutional Amendment Poll
(article 35 Niue Constitution)

Consecutive Number

..... Village Constituency

DO YOU VOTE IN FAVOUR OF THE BILL?

YES

or

NO

DIRECTIONS TO VOTER

- 1 Place a tick (✓) by the answer you wish to give.
- 2 After voting, fold this paper and place it in the ballot box.
- 3 You must not take this paper outside the polling booth.
- 4 If you spoil this paper, return it to the Poll Clerk and obtain another.

CONSULAR PRIVILEGES AND IMMUNITIES ACT 1971

1971/11 (NZ) – 1 April 1972

| | | | |
|---|---|-------|--|
| 1 | Short title | 8 | Refunds or payments where fiscal privileges accorded |
| 2 | Interpretation | 9 | Certificate of the Cabinet |
| 3 | [Spent] | 10 | [Spent] |
| 4 | Consular privileges and immunities | 11 | Regulations |
| 5 | Immunities of certain employees of a consular post | 12-14 | [Spent] |
| 6 | Withdrawal of consular privileges and immunities | | SCHEDULE |
| 7 | Immunities of certain persons in service of Commonwealth or foreign countries | | |

To make provision with respect to consular privileges and immunities, and to give effect to the Vienna Convention on Consular Relations

- 1 Short title**
This is the Consular Privileges and Immunities Act 1971.
- 2 Interpretation**
In this Act –
- (a) “Convention” means the Vienna Convention on Consular Relations signed in 1863, a copy of the English text of which is set out in Schedule 1;
 - (b) Expressions defined in article 1 of the Convention have the meanings so defined.
- 3** [Spent]
- 4 Consular privileges and immunities**
(1) Subject to subsection (7) the following provisions of the Convention shall have the force of law in Niue, namely:
- (a) Articles 1, 5 and 15, article 17 (1), article 31 (1), (2), (4) and article 32, 33, 35 and 39, article 41 (1), (2), articles 43 to 45 and 48 to 54, article 55 (2) and (3), article 57 (2), articles 60 to 62, 66 and 67, and article 70 (1), (2) and (4);
 - (b) Article 58 (1), (2) and (3) except in relation to any articles referred to therein that do not have the force of law in Niue under paragraph (a);

(c) Article 71, except in relation to article 42.

(2) Subject to subsection (1), Cabinet may determine, either generally or in any case or class of case, the fiscal privileges which shall be accorded to any consular post or persons connected with any consular post, notwithstanding that the determination may extend treatment more favourable than that required by the provisions of the Convention, and may in like manner determine the terms and conditions on which those privileges may be enjoyed.

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

(b) Nothing in this subsection shall apply with respect to persons to whom section 5 applies.

(4) In subsection (2) "persons connected with any consular post" includes any person in respect of whom a regulation has been made for the purposes of section 7.

(5) In subsections (2) and (3) "treatment more favourable" includes the according of privileges or immunities, as the case may be, to persons who under the Convention may enjoy privileges and immunities only if and so far as these are granted to them by the receiving State.

(6) Where by virtue of this Act any immunity from jurisdiction is accorded to persons who do not enjoy immunity under the Convention, that immunity may be waived in the manner and subject to the conditions specified in article 45 of the Convention, and the waiver shall have the same consequences as a waiver under that article.

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

(a) A reference to the receiving State shall be construed as a reference to Niue;

(b) A reference to a national of the receiving State shall be construed as a reference to a New Zealand citizen;

(c) The reference in article 31 (2) to authorities of the receiving State shall be construed as including a reference to any constable and any person exercising a power of entry to premises;

(d) The reference in article 41 (1) to a grave crime shall be construed as a reference to any offence punishable with imprisonment for a term of 3 years or more or for life;

(e) The reference in article 44 (3) to matters connected with the exercise of the functions of members of a consular post shall be construed as references to matters connected with the exercise of consular functions by consular officers or consular employees;

(f) The reference in article 45 to waiver by the sending State shall be construed as including a reference to a waiver by the head, or by a person for the time being performing the functions of head, of the diplomatic mission of the sending State or, if there is no such mission, of the consular post concerned;

(g) Articles 50 to 52, 54, 62 and 67 shall be construed as granting the privileges or immunities that those articles require to be granted;

(h) The reference in article 50 (1) and in article 62 to such laws and regulations as the receiving State may adopt shall be construed as

including a reference to any law in force in Niue relating to the quarantine, or the prohibition or restriction of the importation into, or the exportation from Niue of animals, plants or goods, but any immunity from jurisdiction that a person may possess or enjoy by virtue of subsection (1) shall not be prejudiced;

- (i) The reference in article 57 (2) to the privileges and immunities provided in chapter 2 shall be construed as a reference to those provided in section 2 of that Chapter;
- (j) The reference in article 70 (4) to the rules of international law concerning diplomatic relations shall be construed as a reference to Part 1 of the Diplomatic Privileges and Immunities Act 1968;
- (k) The reference in article 71 (1) to any additional privileges and immunities that may be granted by the receiving State, and the reference in article 71 (2) to privileges and immunities so far as these are granted by the receiving State, shall, so far as they relate to fiscal privileges, be construed as references to such determinations as may be made by Cabinet under subsection (2) and, so far as they relate to immunities, be construed as references to such immunities as may be conferred by a regulation under subsection (3).

5 Immunities of certain employees of a consular post

Consular employees of a consular post headed by a career consular officer who are New Zealand citizens or are permanently resident in Niue shall be accorded immunity from jurisdiction in respect of all official acts performed in the exercise of their functions.

6 Withdrawal of consular privileges and immunities

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

7 Immunities of certain persons in service of Commonwealth or foreign countries

(1) Cabinet may, by regulation, confer on –
(a) Persons in the service of the Government of any country; and
(b) Persons in the service of the Government of any territory for whose international relations the Government of any Commonwealth country is responsible –
performing functions corresponding to those of a consular officer or consular employee, and holding such offices or classes of offices as are specified in the regulation, such immunity from jurisdiction and such inviolability, as are specified in the regulation.

(2) Cabinet may, by regulation declare that the provisions of this Act shall apply, to such extent as may be specified in the regulation, to persons appointed by the Government of any other Commonwealth country to serve as consular officers or consular employees in Niue.

(3) Any regulation made under this section may accord, to such extent as may be specified in the regulation, inviolability to the official premises and official

archives of any person in respect of whom a regulation has been made for the purposes of this section.

8 Refunds or payments where fiscal privileges accorded

(1) Cabinet may direct that such refunds or payments be made from any public fund or account or from the money of any local authority, public body, or person as may in the opinion of Cabinet be necessary to give effect to any fiscal privilege accorded under section 4.

(2) Where any loss is suffered by any public fund or account other than the Niue Government by reason of the conferring of any such privilege or by the making of any refund or payment directed under this section, the Cabinet may direct that such payments be made from the Niue Government Account to that other fund or account as may be necessary in the opinion of Cabinet to reimburse that loss.

(3) Where any loss is suffered by any local authority, public body, or person by reason of the conferring of any such privilege or by the making of any refund or payment directed under this section, the Cabinet may direct that such payments be made from the Niue Government Account to that local authority, public body, or person as may be necessary in the opinion of Cabinet to reimburse that loss.

(4) All refunds or payments directed under this section to be made from any public fund or account shall be made without further appropriation than this section.

9 Certificate of the Cabinet

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

10 [Spent]

11 Regulations

Cabinet may make regulations providing for such matters as are contemplated by or necessary for giving full effect to this Act and for the due administration of it.

12-14 [Spent]

SCHEDULE

Section 2

VIENNA CONVENTION ON CONSULAR RELATIONS
THE STATES PARTIES TO THE PRESENT CONVENTION,

RECALLING that consular relations have been established between peoples since ancient times,
HAVING IN MIND the Purposes and Principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,
CONSIDERING that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic Relations which was opened for signature on April 18, 1961,
BELIEVING that an international convention on consular relations, privileges and immunities would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,
REALIZING that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States,
AFFIRMING that the rules of customary international law continue to govern matters not expressly regulated by the provisions of the present Convention,
HAVE AGREED as follows:

ARTICLE 1
Definitions

1. For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them:
 - (a) "consular post" means any consulate-general, consulate, vice-consulate or consular agency;
 - (b) "consular district" means the area assigned to a consular post for the exercise of consular functions;
 - (c) "head of consular post" means the person charged with the duty of acting in that capacity;
 - (d) "consular officer" means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;
 - (e) "consular employee" means any person employed in the administrative or technical service of a consular post;
 - (f) "member of the service staff" means any person employed in the domestic service of a consular post;
 - (g) "members of the consular post" means consular officers, consular employees and members of the service staff;
 - (h) "members of the consular staff" means consular officers, other than the head of a consular post, consular employees and members of the service staff;
 - (i) "member of the private staff" means a person who is employed exclusively in the private service of a member of the consular post;
 - (j) "consular premises" means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;

(k) “consular archives” includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indexes and any article of furniture intended for their protection or safekeeping.

2 Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of the present Convention apply to consular posts headed by career consular officers; the provisions of Chapter III govern consular posts headed by honorary consular officers.

3 The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by Article 71 of the present Convention.

CHAPTER 1 – CONSULAR RELATIONS IN GENERAL

SECTION 1 – ESTABLISHMENT AND CONDUCT OF CONSULAR RELATIONS

ARTICLE 2

Establishment of consular relations

1. The establishment of consular relations between States takes place by mutual consent.

2. The consent given to the establishment of diplomatic relations between two States implies, unless otherwise stated, consent to the establishment of consular relations.

3. The severance of diplomatic relations shall not ipso facto involve the severance of consular relations.

ARTICLE 3

Exercise of consular functions

Consular functions are exercised by consular posts. They are also exercised by diplomatic missions in accordance with the provisions of the present Convention.

ARTICLE 4

Establishment of a consular post

1. A consular post may be established in the territory of the receiving State only with that State’s consent.

2. The seat of the consular post, its classification and the consular district shall be established by the sending State and shall be subject to the approval of the receiving State.

3. Subsequent changes in the seat of the consular post, its classification or the consular district may be made by the sending State only with the consent of the receiving State.

4. The consent of the receiving State shall also be required if a consulate-general or a consulate desires to open a vice-consulate or a consular agency in a locality other than that in which it is itself established.

5. The prior express consent of the receiving State shall also be required for the opening of an office forming part of an existing consular post elsewhere than at the seat thereof.

ARTICLE 5

Consular functions

Consular functions consist in:

- (a) Protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) Furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) Ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;
- (d) Issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) Helping and assisting nationals, both individuals and bodies corporate, of the sending State;
- (f) Acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- (g) Safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession *mortis causa* in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
- (h) Safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;
- (i) Subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;
- (j) Transmitting judicial and extra-judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;
- (k) Exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;

- (l) extending assistance to vessels and aircraft mentioned in subparagraph (k) of this Article, and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State;
- (m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

ARTICLE 6

Exercise of consular functions outside the consular district

A consular officer may, in special circumstances, with the consent of the receiving State, exercise his functions outside his consular district.

ARTICLE 7

Exercise of consular functions in a third State

The sending State may, after notifying the States concerned, entrust a consular post established in a particular State with the exercise of consular functions in another State, unless there is express objection by one of the States concerned.

ARTICLE 8

Exercise of consular functions on behalf of a third State

Upon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State.

ARTICLE 9

Classes of heads of consular posts

1. Heads of consular posts are divided into four classes, namely:
 - (a) consuls-general;
 - (b) consuls;
 - (c) vice-consuls;
 - (d) consular agents.
2. Paragraph 1 of this Article in no way restricts the right of any of the Contracting Parties to fix the designation of consular officers other than the heads of consular posts.

ARTICLE 10

Appointment and admission of heads of consular posts

1. Heads of consular posts are appointed by the sending State and are admitted to the exercise of their functions by the receiving State.
2. Subject to the provisions of the present Convention, the formalities for the appointment and for the admission of the head of a consular post are determined by the laws, regulations and usages of the sending State and of the receiving State respectively.

ARTICLE 11

The consular commission or notification of appointment

1. The head of a consular post shall be provided by the sending State with a document, in the form of a commission or similar instrument, made out for each appointment, certifying his capacity and showing, as a general rule, his full name, his category and class, the consular district and the seat of the consular post.

2. The sending State shall transmit the commission or similar instrument through the diplomatic or other appropriate channel to the Government of the State in whose territory the head of a consular post is to exercise his functions.

3. If the receiving State agrees, the sending State may, instead of a commission or similar instrument, send to the receiving State a notification containing the particulars required by paragraph 1 of this Article.

ARTICLE 12

The *exequatur*

1. The head of a consular post is admitted to the exercise of his functions by an authorization from the receiving State termed an *exequatur*, whatever the form of this authorization.

2. A State which refuses to grant an *exequatur* is not obliged to give to the sending State reasons for such refusal.

3. Subject to the provisions of Articles 13 and 15, the head of a consular post shall not enter upon his duties until he has received an *exequatur*.

ARTICLE 13

Provisional admission of heads of consular posts

Pending the delivery of the *exequatur*, the head of a consular post may be admitted on a provisional basis to the exercise of his functions. In that case, the provisions of the present Convention shall apply.

ARTICLE 14

Notification to the authorities of the consular district

As soon as the head of a consular post is admitted even provisionally to the exercise of his functions, the receiving State shall immediately notify the competent authorities of the consular district. It shall also ensure that the necessary measures are taken to enable the head of a consular post to carry out the duties of his office and to have the benefit of the provisions of the present Convention.

ARTICLE 15

Temporary exercise of the functions of the head of a consular post

1. If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, an acting head of post may act provisionally as head of the consular post.

2. The full name of the acting head of post shall be notified either by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, or, if he is unable to do so, by any competent authority of the sending State, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry. As a general rule, this notification shall be given in advance. The receiving State may make the admission as acting head of post of a person who is neither a diplomatic agent nor a consular officer of the sending State in the receiving State conditional on its consent.

3. The competent authorities of the receiving State shall afford assistance and protection to the acting head of post. While he is in charge of the post, the provisions of the present Convention shall apply to him on the same basis as to the head of the consular post concerned. The receiving State shall not, however, be obliged to grant to an acting head of post any facility, privilege or immunity which the head of the consular post enjoys only subject to conditions not fulfilled by the acting head of post.

4. When, in the circumstances referred to in paragraph 1 of this Article, a member of the diplomatic staff of the diplomatic mission of the sending State in the receiving State is designated by the sending State as an acting head of post, he shall, if the receiving State does not object thereto, continue to enjoy diplomatic privileges and immunities.

ARTICLE 16

Precedence as between heads of consular posts

1. Heads of consular posts shall rank in each class according to the date of the grant of the *exequatur*.

2. If, however, the head of a consular post before obtaining the *exequatur* is admitted to the exercise of his functions provisionally, his precedence shall be determined according to the date of the provisional admission; this precedence shall be maintained after the granting of the *exequatur*.

3. The order of precedence as between two or more heads of consular posts who obtained the *exequatur* or provisional admission on the same date shall be determined according to the dates on which their commissions or similar instruments or the notifications referred to in paragraph 3 of Article 11 were presented to the receiving State.

4. Acting heads of posts shall rank after all heads of consular posts and, as between themselves, they shall rank according to the dates on which they assumed their functions as acting heads of posts as indicated in the notifications given under paragraph 2 of Article 15.

5. Honorary consular officers who are heads of consular posts shall rank in each class after career heads of consular posts, in the order and according to the rules laid down in the foregoing paragraphs.

6. Heads of consular posts shall have precedence over consular officers not having that status.

ARTICLE 17

Performance of diplomatic acts by consular officers

1. In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.

2. A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any inter-governmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

ARTICLE 18

Appointment of the same person by two or more States as a consular officer

Two or more States may, with the consent of the receiving State, appoint the same person as a consular officer in that State.

ARTICLE 19

Appointment of members of consular staff

1. Subject to the provisions of Articles 20, 22 and 23, the sending State may freely appoint the members of the consular staff.

2. The full name, category and class of all consular officers, other than the head of a consular post, shall be notified by the sending State to the receiving State in sufficient time for the receiving State, if it so wishes, to exercise its rights under paragraph 3 of Article 23.

3. The sending State may, if required by its laws and regulations, request the receiving State to grant an *exequatur* to a consular officer other than the head of a consular post.

4. The receiving State may, if required by its laws and regulations, grant an *exequatur* to a consular officer other than the head of a consular post.

ARTICLE 20

Size of the consular staff

In the absence of an express agreement as to the size of the consular staff, the receiving State may require that the size of the staff be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the consular district and to the needs of the particular post.

ARTICLE 21

Precedence as between consular officers of a consular post

The order of precedence as between the consular officers of a consular post and any change thereof shall be notified by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

ARTICLE 22

Nationality of consular officers

1. Consular officers should, in principle, have the nationality of the sending State.

2. Consular officers may not be appointed from among persons having the nationality of the receiving State except with the express consent of that State which may be withdrawn at any time.

3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

ARTICLE 23

Persons declared non grata

1. The receiving State may at any time notify the sending State that a consular officer is *persona non grata* or that any other member of the consular staff is not acceptable. In that event, the sending State shall, as the case may be, either recall the person concerned or terminate his functions with the consular post.

2. If the sending State refuses or fails within a reasonable time to carry out its obligations under paragraph 1 of this Article, the receiving State may, as the case may be, either withdraw the *exequatur* from the person concerned or cease to consider him as a member of the consular staff.

3. A person appointed as a member of a consular post may be declared unacceptable before arriving in the territory of the receiving State or, if already in the receiving State, before entering on his duties with the consular post. In any such case, the sending State shall withdraw his appointment.

4. In the cases mentioned in paragraphs 1 and 3 of this Article, the receiving State is not obliged to give to the sending State reasons for its decision.

ARTICLE 24

Notification to the receiving State of appointments, arrivals and departures

1. The Ministry for Foreign Affairs of the receiving State or the authority designated by that Ministry shall be notified of:

- (a) The appointment of members of a consular post, their arrival after appointment to the consular post, their final departure or the termination of their functions and any other changes affecting their status that may occur in the course of their service with the consular post;
- (b) The arrival and final departure of a person belonging to the family of a member of a consular post forming part of his household and, where appropriate, the fact that a person becomes or ceases to be such a member of the family;
- (c) The arrival and final departure of members of the private staff and, where appropriate, the termination of their service as such;
- (d) The engagement and discharge of persons resident in the receiving State as members of a consular post or as members of the private staff entitled to privileges and immunities.

2. When possible, prior notification of arrival and final departure shall also be given.

SECTION 2 – END OF CONSULAR FUNCTIONS

ARTICLE 25

Termination of the functions of a member of a consular post

The functions of a member of a consular post shall come to an end *inter alia*:

- (a) On notification by the sending State to the receiving State that his functions have come to an end;
- (b) On withdrawal of the *exequatur*;
- (c) On notification by the receiving State to the sending State that the receiving State has ceased to consider him as a member of the consular staff.

ARTICLE 26

Departure from the territory of the receiving State

The receiving State shall, even in case of armed conflict, grant to members of the consular post and members of the private staff, other than nationals of the receiving State, and to members of their families forming part of their households irrespective of nationality, the necessary time and facilities to enable them to prepare their departure and to leave at the earliest possible moment after the termination of the functions of the members concerned. In particular, it shall, in the case of need,

place at their disposal the necessary means of transport for themselves and their property other than property acquired in the receiving State the export of which is prohibited at the time of departure.

ARTICLE 27

Protection of consular premises and archives and of the interests of the sending State in exceptional circumstances

1. In the event of the severance of consular relations between two States:
 - (a) The receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consular post and the consular archives;
 - (b) The sending State may entrust the custody of the consular premises, together with the property contained therein and the consular archives, to a third State acceptable to the receiving State;
 - (c) The sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.
2. In the event of the temporary or permanent closure of a consular post, the provisions of sub-paragraph (a) of paragraph 1 of this Article shall apply. In addition,
 - (a) If the sending State, although not represented in the receiving State by a diplomatic mission, has another consular post in the territory of that State, that consular post may be entrusted with the custody of the premises of the consular post which has been closed, together with the property contained therein and the consular archives, and, with the consent of the receiving State, with the exercise of consular functions in the district of that consular post; or
 - (b) If the sending State has no diplomatic mission and no other consular post in the receiving State, the provisions of sub-paragraphs (b) and (c) of paragraph 1 of this Article shall apply.

CHAPTER 2 – FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO
CONSULAR POSTS, CAREER CONSULAR OFFICERS AND OTHER
MEMBERS OF A CONSULAR POST

SECTION 1 – FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO A
CONSULAR POST

ARTICLE 28

Facilities for the work of the consular post

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

ARTICLE 29

Use of national flag and coat-of-arms

1. The sending State shall have the right to the use of its national flag and coat-of-arms in the receiving State in accordance with the provisions of this Article.
2. The national flag of the sending State may be flown and its coat-of-arms displayed on the building occupied by the consular post and at the entrance door thereof, on the residence of the head of the consular post and on his means of transport when used on official business.

3. In the exercise of the right accorded by this Article regard shall be had to the laws, regulations and usages of the receiving State.

ARTICLE 30

Accommodation

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

2. It shall also, where necessary, assist the consular post in obtaining suitable accommodation for its members.

ARTICLE 31

Inviolability of the consular premises

1. Consular premises shall be inviolable to the extent provided in this Article.

2. The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

3. Subject to the provisions of paragraph 2 of this Article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

4. The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

ARTICLE 32

Exemption from taxation of consular premises

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

ARTICLE 33

Inviolability of the consular archives and documents

The consular archives and documents shall be inviolable at all times and wherever they may be.

ARTICLE 34

Freedom of movement

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

ARTICLE 35

Freedom of communication

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

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

3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If his request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

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

5. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

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

7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorised port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

ARTICLE 36

Communication and contact with nationals of the sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

- (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

- (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;
- (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

ARTICLE 37

Information in cases of deaths, guardianship or trusteeship, wrecks and air accidents

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

- (a) In the case of the death of a national of the sending State, to inform without delay the consular post in whose district the death occurred;
- (b) To inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments;
- (c) If a vessel, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consular post nearest to the scene of the occurrence.

ARTICLE 38

Communication with the authorities of the receiving State

In the exercise of their functions, consular officers may address:

- (a) The competent local authorities of their consular district;
- (b) The competent central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usages of the receiving State or by the relevant international agreements.

ARTICLE 39

Consular fees and charges

1. The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.

2. The sums collected in the form of the fees and charges referred to in paragraph 1 of this Article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.

SECTION 2 – FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST

ARTICLE 40

Protection of consular officers

The receiving State shall treat consular officers with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

ARTICLE 41

Personal inviolability of consular officers

1. Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.

2. Except in the case specified in paragraph 1 of this Article, consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.

3. If criminal proceedings are instituted against a consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case specified in paragraph 1 of this Article, in a manner which will hamper the exercise of consular functions as little as possible. When, in the circumstances mentioned in paragraph 1 of this Article, it has become necessary to detain a consular officer, the proceedings against him shall be instituted with the minimum of delay.

ARTICLE 42

Notification of arrest, detention or prosecution

In the event of the arrest or detention, pending trial, of a member of the consular staff, or of criminal proceedings being instituted against him, the receiving State shall promptly notify the head of the consular post. Should the latter be himself the object of any such measure, the receiving State shall notify the sending State through the diplomatic channel.

ARTICLE 43

Immunity from jurisdiction

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.

2. The provisions of paragraph 1 of this Article shall not, however, apply in respect of a civil action either:

- (a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
- (b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

ARTICLE 44

Liability to give evidence

1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this Article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.

2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.

3. Members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

ARTICLE 45

Waiver of privileges and immunities

1. The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in Articles 41, 43 and 44.

2. The waiver shall in all cases be express, except as provided in paragraph 3 of this Article, and shall be communicated to the receiving State in writing.

3. The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under Article 43 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

ARTICLE 46

Exemption from registration of aliens and residence permits

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

2. The provisions of paragraph 1 of this Article shall not, however, apply to any consular employee who is not a permanent employee of the sending State or who carries on any private gainful occupation in the receiving State or to any member of the family of any such employee.

ARTICLE 47

Exemption from work permits

1. Members of the consular post shall, with respect to services rendered for the sending State, be exempt from any obligations in regard to work permits imposed by the laws and regulations of the receiving State concerning the employment of foreign labour.

2. Members of the private staff of consular officers and of consular employees shall, if they do not carry on any other gainful occupation in the receiving State, be exempt from the obligations referred to in paragraph 1 of this Article.

ARTICLE 48

Social security exemption

1. Subject to the provisions of paragraph 3 of this Article, members of the consular post with respect to services rendered by them for the sending State, and members of their families forming part of their households, shall be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this Article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition:

(a) that they are not nationals of or permanently resident in the receiving State; and

(b) that they are covered by the social security provisions which are in force in the sending State or a third State.

3. Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State.

ARTICLE 49

Exemption from taxation

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) dues or taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of Article 32;

(c) estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to the provisions of paragraph (b) of Article 51;

(d) dues and taxes on private income, including capital gains, having its source in the receiving State and capital taxes relating to investments made in commercial or financial undertakings in the receiving State;

(e) charges levied for specific services rendered;

(f) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of Article 32.

2. Members of the service staff shall be exempt from dues and taxes on the wages which they receive for their services.

3. Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving State shall observe the obligations which the laws and regulations of that State impose upon employers concerning the levying of income tax.

ARTICLE 50

Exemption from customs duties and inspection

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

- (a) articles for the official use of the consular post;
- (b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilisation by the persons concerned.

2. Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this Article in respect of articles imported at the time of first installation.

3. Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in sub-paragraph (b) of paragraph 1 of this Article, or articles the import or export of which is prohibited by the laws and regulations of the receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

ARTICLE 51

Estate of a member of the consular post or of a member of his family

In the event of the death of a member of the consular post or of a member of his family forming part of his household, the receiving State:

- (a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;
- (b) shall not levy national, regional or municipal estate, succession or inheritance duties, and duties on transfers, on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

ARTICLE 52

Exemption from personal services and contributions

The receiving State shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

ARTICLE 53

Beginning and end of consular privileges and immunities

1. Every member of the consular post shall enjoy the privileges and

immunities provided in the present Convention from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.

2. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this Article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.

3. When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment when the person concerned leaves the receiving State or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in paragraph 2 of this Article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.

4. However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.

5. In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving State or until the expiry of a reasonable period enabling them to do so, whichever is the sooner.

ARTICLE 54

Obligations of third States

1. If a consular officer passes through or is in the territory of a third State, which has granted him a visa if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other Articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.

2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.

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

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

ARTICLE 55

Respect for the laws and regulations of the receiving State

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

2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.

3. The provisions of paragraph 2 of this Article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not, for the purposes of the present Convention, be considered to form part of the consular premises.

ARTICLE 56

Insurance against third party risks

Members of the consular post shall comply with any requirement imposed by the laws and regulations of the receiving State in respect of insurance against third party risks arising from the use of any vehicle, vessel or aircraft.

ARTICLE 57

Special provisions concerning private gainful occupation

1. Career consular officers shall not carry on for personal profit any professional or commercial activity in the receiving State.

2. Privileges and immunities provided in this Chapter shall not be accorded:

- (a) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State;
- (b) to members of the family of a person referred to in sub-paragraph (a) of this paragraph or to members of his private staff;
- (c) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State.

CHAPTER 3—REGIME RELATING TO HONORARY CONSULAR OFFICERS AND CONSULAR POSTS HEADED BY SUCH OFFICERS

ARTICLE 58

General provisions relating to facilities, privileges and immunities

1. Articles 28, 29, 30, 34, 35, 36, 37, 38 and 39, paragraph 3 of Article 54 and paragraphs 2 and 3 of Article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles 59, 60, 61 and 62.

2. Articles 42 and 43, paragraph 3 of Article 44, Articles 45 and 53 and paragraph 1 of Article 55 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by Articles 63, 64, 65, 66 and 67.

3. Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.

4. The exchange of consular bags between two consular posts headed by honorary consular officers in different States shall not be allowed without the consent of the two receiving States concerned.

ARTICLE 59

Protection of the consular premises

The receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

ARTICLE 60

Exemption from taxation of consular premises

1. Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

ARTICLE 61

Inviolability of consular archives and documents

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade.

ARTICLE 62

Exemption from customs duties

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

ARTICLE 63

Criminal Proceedings

If criminal proceedings are instituted against an honorary consular officer, he must appear before the competent authorities. Nevertheless, the proceedings, shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary consular officer, the proceedings against him shall be instituted with the minimum of delay.

ARTICLE 64

Protection of honorary consular officers

The receiving State is under a duty to accord to an honorary consular officer such protection as may be required by reason of his official position.

ARTICLE 65

Exemption from registration of aliens and residence permits

Honorary consular officers, with the exception of those who carry on for personal profit any professional or commercial activity in the receiving State, shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

ARTICLE 66

Exemption from taxation

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions.

ARTICLE 67

Exemption from personal services and contributions

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

ARTICLE 68

Optional character of the institution of honorary consular officers

Each State is free to decide whether it will appoint or receive honorary consular officers.

CHAPTER 4 – GENERAL PROVISIONS

ARTICLE 69

Consular agents who are not heads of consular posts

1. Each State is free to decide whether it will establish or admit consular agencies conducted by consular agents not designated as heads of consular post by the sending State.

2. The conditions under which the consular agencies referred to in paragraph 1 of this Article may carry on their activities and the privileges and immunities which may be enjoyed by the consular agents in charge of them shall be determined by agreement between the sending State and the receiving State.

ARTICLE 70

Exercise of consular functions by diplomatic missions

1. The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.

2. The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

3. In the exercise of consular functions a diplomatic mission may address:
(a) the local authorities of the consular district;

(b) the central authorities of the receiving State if this is allowed by the laws, regulations and usages of the receiving State or by relevant international agreements.

4. The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this Article shall continue to be governed by the rules of international law concerning diplomatic relations.

ARTICLE 71

Nationals or permanent residents of the receiving State

1. Except in so far as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided in paragraph 3 of Article 44. So far as these consular officers are concerned, the receiving State shall likewise be bound by the obligation laid down in Article 42. If criminal proceedings are instituted against such a consular officer, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.

2. Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this Article, shall enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over those persons in such a way as not to hinder unduly the performance of the functions of the consular post.

ARTICLE 72

Non-discrimination

1. In the application of the provisions of the present Convention the receiving State shall not discriminate as between States.

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

ARTICLE 73

Relationship between the present Convention and other international agreements

1. The provisions of the present Convention shall not affect other international agreements in force as between States parties to them.

2. Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof.

CHAPTER 5 – FINAL PROVISIONS

ARTICLE 74

Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

ARTICLE 75

Ratification

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

ARTICLE 76

Accession

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in Article 74. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE 77

Entry into force

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

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

ARTICLE 78

Notifications by the Secretary-General

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in Article 74:

- (a) Of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Articles 74, 75 and 76;
- (b) Of the date on which the present Convention will enter in force in accordance with Article 77.

ARTICLE 79

Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 74.

CONTINENTAL SHELF ACT 1964

1964/28 (NZ) – 3 November 1964

| | |
|---|--|
| 1 Short title | 5 Mining for minerals on continental shelf |
| 2 Interpretation | 6 [Repealed] |
| 3 Exploration and exploitation of continental shelf | 7 Application of criminal and civil law |
| 4 Mining for petroleum on continental shelf | 8 Regulations |
| | 9 [Spent] |

To make provision as to the exploration and exploitation of the continental shelf of Niue and for matters connected with that purpose

- 1 Short title**
This is the Continental Shelf Act 1964.
- 2 Interpretation**
In this Act –
“continental shelf” means the seabed and subsoil of those submarine areas adjacent to the coast of Niue, but beyond the territorial limits of Niue, the surface of which lies at a depth no greater than 200 metres below the surface of the sea, or, where the natural resources thereof are capable of exploitation, at any greater depth;
“natural resources” means –

 - (a) The mineral and other natural non-living resources of the seabed and subsoil; and
 - (b) Living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil.
- 3 Exploration and exploitation of continental shelf**
All rights that are exercisable by Niue with respect to the continental shelf and its natural resources for the purpose of exploring the shelf and exploiting those resources are hereby vested in the Crown.
- 4 Mining for petroleum on continental shelf**
The Mining Act 1977 shall, as far as applicable and with any necessary modification, apply with respect to petroleum in the seabed and subsoil of the continental shelf.

5 Mining for minerals on continental shelf

(1) No person shall prospect or mine for, or carry on any operations for the recovery of, minerals in the seabed or subsoil of the continental shelf except in pursuance of a licence issued under this section.

(2) Cabinet may on application in that behalf, grant to any person a licence authorising the licensee to prospect and mine for, and carry on operations for the recovery of, minerals or of minerals of any specified kinds in any specified area of the continental shelf.

(3) Every licence granted under this section shall be subject to such conditions as the Cabinet, when granting the licence, thinks fit to impose in the circumstances of each particular case, including, but without limiting the generality of this section, conditions requiring the licensee –

(a) To comply with such conditions as to safety as are specified in the licence;

(b) To pay to the Crown in respect of minerals recovered by the licensee from the continental shelf such royalties as are specified in the licence.

(4) The grant of a licence under this section shall in every case be in the absolute discretion of Cabinet.

(5) Any number of licences under this section may be granted to the same person.

(6) [Repealed by 2004/270]

(7) Every person commits an offence, and is liable on conviction to a fine not exceeding 2 penalty units, who prospects or mines for, or carries on operations for the recovery of, minerals in the seabed or subsoil of the continental shelf otherwise than pursuant to a licence under this section and in accordance with the conditions of the licence (not being a condition relating to the payment of royalties to the Crown).

6 [Repealed by 2004/270]

7 Application of criminal and civil law

(1) Subject to the provisions of this Act, for the purposes of this Act and of every other enactment (whether passed before or after the passing of this Act) and of every rule of law for the time being in force in Niue –

(a) Every act or omission which takes place on or under or above or about any installation or device (whether permanent or temporary) constructed, erected, placed, or used in, on, or above the continental shelf in connection with the exploration of the continental shelf or the exploitation of its natural resources shall be deemed to take place in Niue; and

(b) Every such installation or device shall be deemed to be situated in Niue, and for the purposes of jurisdiction shall be deemed to be situated in that part of Niue above highwater mark at ordinary spring tides which is nearest to that installation or device; and

(c) Every court in Niue which would have jurisdiction (whether civil or criminal) in respect of that act or omission if it had taken place in Niue shall have jurisdiction accordingly; and

(d) Every power of arrest or of entry or search or seizure or other power that could be exercised under any enactment (whether passed before or after the passing of this Act) or under any rule of law in respect of any such act or omission or suspected act or omission if it had

taken place or was suspected to have taken place in Niue may be exercised on or in respect of any such installation or device as if the installation or device were in Niue; and

- (e) Subject to the custom laws, every installation or device, and any materials or parts used in the construction of an installation or device, which are brought into the waters above the continental shelf from parts beyond the seas shall be deemed to have been imported into Niue when the installation or device is constructed, erected, or placed in, on, or above the continental shelf in connection with the exploration of the continental shelf or the exploitation of its natural resources.

(2) [Spent]

(3) Nothing in this section shall limit the provisions of any enactment or rule of law relating to the liability of persons in respect of acts done or omitted beyond Niue or the jurisdiction of any Niue court under any such enactment or rule of law.

(4) Notwithstanding anything in any other enactment, proceedings for the trial and punishment of any person charged with having committed an offence in respect of which the courts of Niue have jurisdiction by virtue only of this section shall not be instituted in any court except with the certificate of Cabinet that it is expedient that the proceedings should be instituted:

(5) A person so charged may be arrested or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Cabinet to the institution of proceedings for the offence has not been obtained; but no further or other proceedings shall be taken until that consent has been obtained.

(6) In this section "device" includes any ship or floating platform or aircraft that is used in connection with any installation or device.

8 Regulations

- (1) Cabinet may make regulations for all or any of the following purposes –
- (a) Regulating the construction, erection, or use of installations or devices in, on, or above the continental shelf, or any specified part thereof, in connection with the exploration of the shelf or that part thereof or the exploitation of its natural resources;
 - (b) Prohibiting the construction, erection, placing, or use of installations or devices in, on, or above the continental shelf in places where they could cause interference with the use of recognised sea lanes essential to coastwise or international navigation;
 - (c) Establishing safety zones, extending to a distance not exceeding 500 metres measured from each point of the outer edge of the installation or device, around any such installations or devices in, on, or above the continental shelf;
 - (d) Prescribing such measures as the Cabinet considers necessary in any such safety zone for the protection of the installation or device with respect to which the safety zone is established;
 - (e) Regulating or prohibiting the entry of ships into any such safety zone;
 - (f) Prescribing measures to be taken in any such safety zone for the protection of the living resources of the sea and the natural resources of the continental shelf from harmful agents;

- (g) Prescribing the notice to be given of the construction, erection, or placing of installations or devices in, on, or above the continental shelf;
 - (h) Prescribing the permanent means to be installed for the purpose of giving warning to shipping and aircraft of the presence of installations or devices in, on, or above the continental shelf;
 - (i) Providing for the removal of installations or devices constructed, erected, or placed in, on, or above the continental shelf which have been abandoned or become disused;
 - (j) Prohibiting or restricting any exploration of the continental shelf or any specified part thereof or any exploitation of its natural resources which in the opinion of the Cabinet could result in an unjustifiable interference with navigation, fishing, or the conservation of the living resources of the sea, or could interfere with national defence or with oceanographic or other scientific research or with submarine cables or pipelines;
 - (k) Providing for such matters as are necessary for giving full effect to this Act and for its due administration;
 - (l) Prescribing penalties for breaches of the regulations, not exceeding a fine of 10 penalty units.
- (2) In this section "continental shelf" includes the seabed and subsoil of the submarine areas within the territorial limits of Niue.

9 [Spent]

CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS AND HOSTAGES ACT 1984

1984/86 – 27 September 1984

| | |
|---|---|
| <p>1 Short title</p> <p>2 Interpretation</p> <p style="text-align: center;"><i>Internationally Protected Persons</i></p> <p>3 Crimes against persons</p> <p>4 Crimes against premises or vehicles</p> <p>5 Threats against persons</p> <p>6 Threats against premises or vehicles</p> <p>7 Prosecution need not prove certain matters</p> <p style="text-align: center;"><i>Hostages</i></p> <p>8 Hostage-taking</p> | <p style="text-align: right;"><i>General Provisions</i></p> <p>9 [Spent]</p> <p>10 Crimes deemed to be included in extradition treaties</p> <p>11 Surrender of offenders</p> <p>12 Restrictions on surrender of offenders</p> <p>13 Further restrictions on surrender of offenders</p> <p>14 Consent of Cabinet required to prosecutions</p> <p>15 Evidence</p> <p>16 [Spent]</p> <p>17 Other Acts not affected</p> |
|---|---|

SCHEDULES

To give effect to the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, 1973, and the Convention Against the Taking of Hostages 1979, and for matters incidental to the implementation of those Conventions

- 1 Short title**
This is the Crimes against Internationally Protected Persons and Hostages Act 1984.
- 2 Interpretation**
- (1) In this Act –
- “Fugitive Offenders Act 1881” means the Fugitive Offenders Act 1881 of the Parliament of the United Kingdom (as amended by the Fugitive Offenders Amendment Act 1976);
- “internationally protected person” in relation to an alleged act or omission that constitutes a crime by virtue of or against any of sections 3 to 6 means –
- (a) A person who, at the time of the alleged act or omission, is –
- (i) a Head of State; or
 - (ii) a member of a body that performs the functions of a Head of State under the constitution of the State; or
 - (iii) a head of Government; or
 - (iv) a Minister of Foreign Affairs –

- and is outside the territory of the State in which he holds office;
- (b) A member of the family of any person referred to in paragraph (a) who is accompanying that person;
- (c) A person who, at the time of the alleged act or omission, is –
 - (i) a representative or an official of a State; or
 - (ii) an official or agent of an international organisation of an intergovernmental character –
 and is entitled under international law to special protection from attack on his person, freedom, or dignity;
- (d) A member of the family of any person referred to in paragraph (c) who is a member of that person's household;

“Secretary for Justice” means that member of the Niue Public Service for the time being holding the office of the head of the Justice Department;

“1973 Convention” means the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, opened for signature at New York on 14 December 1973;

“1979 Convention” means the Convention Against the Taking of Hostages, opened for signature at New York on 18 December 1979;

“vehicle” includes any means of conveyance.

(2) In paragraph (a)(i) of the term “internationally protected person” in subsection (1), the term “Head of State” includes, in relation to any Commonwealth country (other than the United Kingdom) of which Her Majesty the Queen is Head of State, the Governor-General or other person who performs the functions of the Head of State as Her Majesty's representative.

Internationally Protected Persons

3 Crimes against persons

(1) Without limiting the Niue Act 1966 every one commits a crime who, whether in or outside Niue, does or omits to do any act to, or in relation to any person whom he knows to be an internationally protected person, if that act or omission constitutes, or would, if done or omitted to be done in Niue, constitute –

- (a) A crime referred to or described in any of the provisions of the Niue Act 1966 specified in Schedule 1; or
- (b) An attempt to commit any such crime (where the crime is not itself constituted by a mere attempt).

(2) Every one who commits a crime against this section is liable on conviction to the same penalty to which he would have been liable had he been charged with a crime against the relevant provision of the Niue Act 1966.

4 Crimes against premises or vehicles

(1) Without limiting the Niue Act 1966, every one commits a crime who, whether in or outside Niue, does or omits to do any act –

- (a) To, or in relation to –
 - (i) any premises that he knows to be the official premises or private residence of any internationally protected person; or
 - (ii) any vehicle that he knows is used by an internationally protected person –

while an internationally protected person is present in those premises or that residence or vehicle; and

- (b) Which constitutes, or would, if done, or omitted to be done in Niue, constitute –
 - (i) a crime referred to or described in any of the provisions of the Niue Act 1966 specified in Schedule 2; or
 - (ii) an attempt to commit any such crime (where the crime is not itself constituted by a mere attempt).

(2) Every one who commits a crime against this section is liable on conviction to the same penalty to which he would have been liable had he been charged with a crime against the relevant provision of the Niue Act 1966.

5 Threats against persons

(1) Every one commits a crime who, whether in or outside Niue, threatens to do any act –

- (a) To, or in relation to, any person whom he knows to be an internationally protected person; and
- (b) Which constitutes a crime against section 3.

(2) Every one commits a crime against this section is liable on conviction to imprisonment for a term not exceeding the lesser of –

- (a) Seven years; or
- (b) The term of years prescribed by the relevant provision of the Niue Act 1966 in respect of the crime that he would have committed had he carried out his threat in Niue.

6 Threats against premises or vehicles –

(1) Every one commits a crime who, whether in or outside Niue threatens to do any act –

- (a) To, or in relation to –
 - (i) any premises that he knows to be the official premises or private residence of any internationally protected person; or
 - (ii) any vehicle that he knows is used by any internationally protected person; and
- (b) Which constitutes a crime against section 4.

(2) Every one who commits a crime against this section is liable on conviction to imprisonment for a term not exceeding 3 years.

7 Prosecution need not prove certain matters

Notwithstanding sections 3 to 6, in any proceedings brought under any of those sections, it shall not be necessary for the prosecution to prove the following matters:

- (a) In respect of any internationally protected person to whom paragraph (a) or paragraph (c) of the definition of that term in section 2(1) applies that the defendant knew, at the time of the alleged crime, the identity of that person or the capacity in which he was an internationally protected person;
- (b) In respect of any internationally protected person to whom paragraph (b) of that definition applies, that the defendant knew, at the time of the alleged crime, that the internationally protected person was accompanying any other person to whom paragraph (a) of that definition applies;
- (c) In respect of any internationally protected person to whom paragraph (c) of that definition applies, that the defendant knew, at the time of the alleged crime, that the internationally protected person was entitled under international law to special protection from attack on his person, freedom, or dignity;

- (d) In respect of any internationally protected person to whom paragraph (d) of that definition applies, that the defendant knew, at the time of the alleged crime, that the internationally protected person was a member of the household of any other person referred to in paragraph (c) of that definition.

Hostages

8 Hostage-taking

(1) Subject to subsection (2), every one commits the crime of hostage-taking who, whether in or outside Niue, unlawfully seizes or detains any person (in this section called the hostage) without his consent, or with his consent obtained by fraud or duress, with intent to compel the Government of any country or any international intergovernmental organisation or any other person to do or abstain from doing any act as a condition whether express or implied, for the release of the hostage.

(2) No one shall be convicted of the crime of hostage-taking if –

- (a) The act of hostage-taking takes place in Niue; and
- (b) The alleged offender and the hostage are New Zealand citizens; and
- (c) The alleged offender is in Niue.

(3) Every one who commits the crime of hostage-taking is liable on conviction to imprisonment for a term not exceeding 14 years.

General Provisions

9 [Spent]

10 Crimes deemed to be included in extradition treaties

(1) For the purposes of the Extradition Act 1965 and any Orders-in-Council made under section 3 of that Act or referred to in section 21 of that Act –

- (a) Each crime described in section 3 or section 4 or section 8 of this Act, including attempting to commit that crime (where it is not itself constituted by a mere attempt), aiding, abetting, inciting, counselling or procuring any person to commit any such crime, inciting, counselling, or attempting to procure any person to commit any such crime when it is not in fact committed, and being an accessory after the fact to that crime; and
- (b) Each crime described in section 5 or section 6 of this Act, –

shall, if not already described in the treaty, be deemed to be an offence described in any extradition treaty concluded before the commencement of this section and for the time being in force between Niue and any foreign country that is a party to the 1973 Convention or, as the case may require, the 1979 Convention.

(2) Notwithstanding subsection (1), no person shall be liable to be surrendered under the Extradition Act 1965 in respect of an act or omission that amounts to a crime to which that subsection applies if that act or omission occurred before the date on which the crime was deemed by that subsection to be an offence described in the relevant extradition treaty.

(3) For the purposes of this section, “foreign country” includes any territory for whose international relations the Government of a foreign country is responsible and to which the extradition treaty and the 1973 Convention or, as the case may require, the 1979 Convention, extends.

11 Surrender of offenders

(1) Where the surrender of a person is sought under either the Extradition Act 1965 or the Fugitive Offenders Act 1881 in respect of any act or omission –

(a) That amounts to –

(i) any crime described in section 3 or section 4 or section 8 of this Act, including attempting to commit any such crime (where it is not itself constituted by a mere attempt), aiding, abetting, inciting, counselling, or procuring any person to commit any such crime, inciting, counselling, or attempting to procure any person to commit any such crime when it is not in fact committed and being an accessory after the fact to any such crime; or

(ii) any crime described in section 5 or section 6 of this Act; and

(b) For which the person whose surrender is sought could be tried and punished in the country seeking surrender, being a country that is a party to the 1973 Convention, or, as the case may require, the 1979 Convention –

that act or omission shall be deemed to have been committed within the jurisdiction of that country notwithstanding that it was committed outside the territory of that country.

(2) Without limiting subsection (1) where any act or omission to which that subsection applies occurred in Niue, the Extradition Act 1965 and the relevant extradition treaty, or (as the case may require) the Fugitive Offences Act 1881, shall apply with any necessary modifications as if the act or omission had occurred outside Niue.

(3) In this section, “country” includes any territory for whose international relations the Government of a country is responsible and to which the extradition treaty (if any) and the 1973 Convention or, as the case may be, the 1979 Convention, extends.

12 Restrictions on surrender of offenders

(1) Notwithstanding sections 9 to 11 of this Act, or the Extradition Act 1965 or the Fugitive Offenders Act 1881, a person whose surrender is sought in respect of any act or omission that amounts to a crime under section 8 of this Act shall not be surrendered from Niue to another country if it appears to the Minister of Justice, or to the Court before which that person is brought, or to any Court or Judge on an application for a writ of habeas corpus, that –

(a) The surrender of the accused person, although purporting to have been sought in respect of such a crime, was sought for the purposes of prosecuting or punishing him on account of his race, ethnic origin, religion, nationality, or political opinions; or

(b) If the accused person is surrendered –

(i) he may be prejudiced at his trial, or punished, detained, or restricted in his personal liberty, by reason of his race, ethnic origin, religion, nationality, or political opinions; or

(ii) his position may be prejudiced because communication with him by the country that is entitled in international law to exercise rights of protection in respect to the accused person cannot be effected.

(2) Notwithstanding sections 9 to 11 of this Act, but without limiting section 6 of the Fugitive Offenders Act 1881, the Minister of Justice may decline under section 6 to order the surrender of a person from Niue to another Commonwealth

country in respect of any act or omission that amounts to a crime against any of sections 3 to 8 of this Act if it appears to the Minister that, in respect of the act or omission, the person has been sentenced to death or is liable to be so sentenced by the appropriate authority in the country to which his surrender is sought.

(3) Notwithstanding section 9 to 11 of this Act or section 14 of the Fugitive Offenders Act 1881, no Judge shall without the consent of the Minister of Justice, order the surrender under the said section 14 of a person from Niue to another Commonwealth country in respect of any act or omission that amounts to a crime against any of sections 3 to 8 of this Act if it appears to the Judge that, in respect of the act or omission, the person has been sentenced to death or is liable to be so sentenced by the appropriate authority in the country to which his surrender is sought.

13 Further restrictions on surrender of offender

(1) Notwithstanding sections 9 to 11 of this Act or the Extradition Act 1965 or the Fugitive Offenders Act 1881, no person shall be surrendered from Niue to another country in respect of any act or omission that amounts to a crime against any of sections 3 to 8 of this Act if proceedings have been brought in Niue against that person in respect of the act or omission.

(2) Notwithstanding sections 9 to 11 of this Act or the Extradition Act 1965 or the Fugitive Offenders Act 1881, but subject to subsection (3) of this section, the High Court of Niue shall not order the surrender, or the committal for the purposes of surrender, of a person to another country in respect of an act or omission that amounts to a crime against any of sections 3 to 8 of this Act if the Secretary for Justice certifies that the case is being or is about to be considered to determine whether or not proceedings should be brought in Niue against that person in respect of the act or omission.

(3) If, in any case to which subsection (2) of this section applies, it is subsequently determined that proceedings should not be brought in Niue against the person in respect of the act or omission, the Secretary for Justice shall advise the Court accordingly, and the Court shall proceed with the matter as if the certificate of the Secretary for Justice had never been given.

14 Consent of Cabinet required to prosecutions

(1) Subject to subsection (2) no proceedings for the trial and punishment of any person charged with a crime against any of sections 3 to 8 shall be instituted in any court except with the consent of the Cabinet.

(2) A person charged with a crime against any of those provisions may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Cabinet to the institution of a prosecution for the crime has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

15 Evidence

For any purpose in connection with this Act, a certificate, given by the New Zealand Representative or any other officer of the office of the New Zealand Representative in Niue, certifying –

- (a) Any fact relevant to the question of whether a person was or was not an internationally protected person at any material time; or
- (b) That any country is or is not, or was or was not at any material time, a party to the 1973 Convention or to the 1979 Convention; or

(c) That the Government of any country is or is not, or was or was not at any material time, responsible for the international relations of any territory – shall be sufficient evidence of that fact.

16 [Spent]

17 Other Acts not affected

Nothing in this Act shall limit or affect the Entry, Residence and Departure Act 1985, the Aviation Crimes Act 1973, nor, except as expressly provided in this Act, the Niue Act 1966.

SCHEDULES

SCHEDULE 1

Section 3 (1)(a)

Crimes Against Internationally Protected Persons

| Section of Niue Act 1966 | Subject-matter |
|--------------------------|-----------------------------------|
| 162 | Rape |
| 162 (3) | Attempt to commit rape |
| 134-135 | Murder |
| 139 | Manslaughter |
| 147 | Attempt to murder |
| 148 | Conspiracy and inciting to murder |
| 151 | Grievous bodily harm |
| 152 | Actual bodily harm |
| 157 | Assault |
| 160 | Abduction of children |
| 236 | Accessory after the fact |

SCHEDULE 2

Section 4(b)(i)

Crimes Against Premises or Vehicles or Internationally Protected Persons

| Section of Niue Act 1966 | Subject-matter |
|--------------------------|--|
| 154 | Intentionally endangering persons on aerodromes |
| 155 | Wantonly endangering persons on or near aerodromes |
| 212 | Arson |
| 213 | Wilful mischief to property |
| 229 | Attempts to commit offences |

CROWN PROCEEDINGS ACT 1950

1950/54 – 1 January 1952

| | |
|---|---|
| <p>1 Short title</p> <p>2 Interpretation</p> <p style="text-align: center;">PART 1 SUBSTANTIVE LAW</p> <p>3 Claims enforceable by or against the Crown</p> <p>4 [Repealed]</p> <p>5 Liability of the Crown under other Acts</p> <p>6 Liability of the Crown in tort</p> <p>7 Provisions as to industrial property</p> <p>8 Law as to indemnity, contribution, and joint and several tortfeasors</p> <p>9 [Repealed]</p> <p>10 Claims in respect of visiting forces</p> <p>11 [Repealed]</p> <p style="text-align: center;">PART 2 JURISDICTION, PROCEDURE, AND JUDGMENTS</p> <p>12 Civil proceedings by or against the Crown</p> <p>13 Interpleader</p> <p>14 Method of making Crown a party to proceedings</p> <p>15 [Repealed]</p> <p>16 Service of documents and time for filing defence by Crown</p> <p>17 Nature of relief</p> <p>18 Appeals, stay of execution, and costs</p> <p>19 Interest on debts and costs</p> | <p>20 Recovery of fines imposed otherwise than by judgment or conviction</p> <p>21 Recovery of debts due upon recognisance</p> <p>22 [Repealed]</p> <p>23 Judgments may be vacated by High Court</p> <p style="text-align: center;">PART 3 EXECUTION</p> <p>24 Satisfaction of orders against the Crown</p> <p>25 Execution by the Crown</p> <p>26 Attachment of money payable by the Crown</p> <p style="text-align: center;">PART 4 MISCELLANEOUS AND SUPPLEMENTAL <i>Miscellaneous</i></p> <p>27 Discovery</p> <p>28 Exclusion of proceedings <i>in rem</i></p> <p>29 Application of certain provisions</p> <p style="text-align: center;"><i>Supplemental</i></p> <p>30 Rules of Court</p> <p>31 General rules</p> <p>32-34 [Spent]</p> <p>35 Saving of certain rights</p> <p style="text-align: center;">SCHEDULES</p> |
|---|---|

To consolidate and amend the law relating to the civil liabilities and rights of the Crown and officers of the Crown, and to civil proceedings by and against the Crown

- 1 Short title**
This is the Crown Proceedings Act 1950.
- 2 Interpretation**
(1) In this Act –
“agent”, in relation to the Crown, includes an independent contractor employed by the Crown;
“civil proceedings” means any proceedings in any court other than criminal proceedings; but does not include proceedings in relation to habeas

- corpus, mandamus, prohibition, or certiorari or proceedings by way of an application for judicial review to the extent that any relief sought in the application is in the nature of mandamus, prohibition, or certiorari;
- “department” means any department or instrument of the executive government of Niue;
- “member of a visiting force” includes a member of any other force who is attached to a visiting force;
- “Niue armed forces” means the Niue Naval Forces, the Niue Army, and the Niue Air Force;
- “officer”, in relation to the Government of Niue, includes any Niue public servant, a member of Cabinet, and a member of the Niue armed forces, but does not include the Governor-General or any judicial officer;
- “order” includes a judgment, decree, rule, award, or declaration;
- “proceedings against the Crown” includes a claim by way of set-off or counterclaim raised in proceedings by the Crown;
- “servant” has the same meaning as officer;
- “ship” includes every description of vessel used in navigation not propelled by oars;
- “visiting force” means any naval, military, or air force of any country other than Niue which has been granted a right of entry into or passage through or over Niue.

(2) Any reference in this Act to the Crown, in relation to any civil proceedings, or in relation to any order or judgment debt or costs in connection with any civil proceedings, shall be construed as including a reference to the Cabinet or any Government department or officer of the Crown where the Cabinet, department, or officer is a party or third party to the proceedings under section 14.

(3) The Cabinet shall not be deemed to be the Crown in relation to any proceedings by reason only of the fact that the proceedings are brought by the Cabinet upon the relation of some other person.

PART 1

SUBSTANTIVE LAW

3 Claims enforceable by or against the Crown

- (1) (a) All debts, damages, duties, sums of money, land, or goods, due, payable or belonging to the Crown shall be sued for and recovered by proceedings taken for that purpose in accordance with this Act.
- (b) Nothing in paragraph (a) shall interfere with or restrict any special power or authority vested in the Crown, or in any person on its behalf, with respect to all or any of the matters mentioned in paragraph (a).
- (2) Any person may enforce as of right, by civil proceedings taken against the Crown for that purpose in accordance with this Act, any claim or demand against the Crown in respect of any of the following causes of action –
- (a) The breach of any contract or trust;
- (b) Any wrong or injury for which the Crown is liable in tort under any enactment which is binding on the Crown;
- (c) Any cause of action, in respect of which a claim or demand may be made against the Crown under any enactment which is binding on the Crown, and for which there is not another equally convenient or more convenient remedy against the Crown;

(d) Any cause of action, which is independent of contract, trust, or tort, or any Act, for which an action for damages or to recover property of any kind would lie against the Crown if it were a private person of full age and capacity, and for which there is not another equally convenient or more convenient remedy against the Crown.

(3) Any other cause of action in respect of which a petition of right would lie against the Crown at common law or in respect of which relief would be granted against the Crown in equity.

4 [Repealed by 2004/270]

5 **Liability of the Crown under other Acts**

Except as expressly provided by this Act or any other Act, this Act shall not be construed so as to make any Act binding upon the Crown which would not otherwise be so binding, or so as to impose any liability of the Crown by virtue of any Act which is not binding on the Crown.

6 **Liability of the Crown in tort**

- (1) (a) The Crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject –
- (i) in respect of torts committed by its servants or agents;
 - (ii) in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer; and
 - (iii) in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property.
- (b) No proceedings shall lie against the Crown by virtue of paragraph (a) in respect of any act or omission of a servant or agent of the Crown unless the act or omission would apart from this Act have given rise to a cause of action in tort against that servant or agent or his estate.

(2) Where the Crown is bound by a statutory duty which is binding also on persons other than the Crown and its officers, then, subject to this Act, the Crown shall, in respect of a failure to comply with that duty, be subject to all those liabilities in tort (if any) to which it would be so subject if it were a private person of full age and capacity.

(3) Where any functions are conferred or imposed upon an officer of the Crown and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Crown in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.

(4) Any enactment which negatives or limits the amount of the liability of any Government department or officer of the Crown in respect of any tort committed by that department or officer shall, in the case of proceedings against the Crown under this section in respect of a tort committed by that department or officer, apply in relation to the Crown as it would have applied in relation to that department or officer if the proceedings against the Crown had been proceedings against that department or officer.

(5) No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities which he has in connection with the execution of judicial process.

7 Provisions as to industrial property

(1) Where an officer or agent of the Government of Niue infringes an intellectual property right protected by the law of Niue and the infringement is committed with the authority of the Government, civil proceedings in respect of the infringement shall lie against the Government under this Act.

(2) [Repealed by 2004/270]

(3) Subject to subsection (1), no proceedings shall lie against the Crown by virtue of this Act in respect of the infringement of a patent, a registered trade mark, or of any such copyright as is mentioned in subsection (1).

8 Law as to indemnity, contribution, and joint and several tortfeasors

Where the Crown is subject to any liability by virtue of this Part, the law relating to indemnity and contribution shall be enforceable by or against the Crown in respect of the liability to which it is so subject as if the Crown were a private person of full age and capacity.

9 [Repealed]

10 Claims in respect of visiting forces

(1) Any person who suffers in Niue any damage, loss or injury by, through, or in connection with the use of any ship, vehicle, or aircraft belonging to any visiting force, or who has or deems himself to have any just claim or demand in respect of any cause of action to which this section applies against a member of any visiting force or a person acting for or on behalf of any visiting force, shall be entitled to make against the Crown any claim or demand which he would have been entitled to make under this Part if the ship or vehicle had belonged to the Crown, or the aircraft had been a service aircraft, or the member or the person so acting had been a member of the Niue armed forces, and if the Government of the country to which the visiting force belongs had been the Crown, and for the like amount (if any) and in the like form and manner as the amount, form, and manner of the claim or demand that he would have been entitled to make as aforesaid.

(2) This section shall apply to any cause of action which arises in Niue and which is in respect of the death of or bodily injury to any person or damage to any property.

(3) In respect of any claim or demand made under this section the Crown shall have, in relation to the person making it, the same rights and liabilities as the Crown would have had if the ship or vehicle belonging to the visiting force had belonged to the Crown or the aircraft belonging to the visiting force had been a service aircraft, or the member of the visiting force or the person acting for or on behalf of the visiting force had been a member of the Niue armed forces, as the case may be.

(4) In the determination of any such claim or demand made by any person against the Crown, regard shall be had to any payment which that person has received or is entitled to receive, whether from the Crown or from any other person or authority, in satisfaction, wholly or partly, of the claim or demand.

(5) For the purposes of this section all persons who, by the law of the country to which any visiting force belongs, are for the time being subject to the naval, military, or air force law of that country shall be deemed to be members of the visiting force.

(6) For the purposes of any proceedings to enforce a claim or demand made under this section, a certificate issued by or on behalf of such authority as may be appointed for the purpose by the Government of the country to which any visiting

force belongs stating that a person of the name and description specified in the certificate is, or was at a time so specified, subject to the naval, military, or air force law of that country shall be conclusive evidence of that fact.

(7) If in any proceedings as aforesaid the question is raised whether any person whose name appears in or in connection with the proceedings is or was at any time a member of any visiting force, any such certificate as aforesaid relating to a person bearing that name shall, unless the contrary is proved, be deemed to relate to that person.

(8) Any document purporting to be a certificate issued for the purposes of this section and to be signed by or on behalf of an authority described as appointed by the Government of any country for the purposes of this section shall be received in evidence and shall, unless the contrary is proved, be deemed to be a certificate issued by or on behalf of an authority so appointed.

11 [Repealed by 2004/270]

PART 2

JURISDICTION, PROCEDURE, AND JUDGMENTS

12 **Civil proceedings by or against the Crown**

All civil proceedings which must be taken by, or may be brought against, the Crown under this Act may be commenced, heard, and determined in the same Court and in like manner in all respects as in suits between subject and subject.

13 **Interpleader**

Without limiting any other provisions of this Act, it is hereby declared that the Crown may obtain relief by way of interpleader proceedings, and may be made a party to such proceedings, in the manner in which a subject may obtain relief by way of such proceedings or be made a party to it, and may be made a party to such proceedings notwithstanding that the application for relief is made by a sheriff or bailiff or other like officer; and all rules of Court relating to interpleader proceedings shall, subject to this Act, have effect accordingly.

14 **Method of making Crown a party to proceedings**

- (1) Civil proceedings under this Act by the Crown may be instituted by –
- (a) The appropriate Government department in its own name if the department has power to sue apart from this section; or
 - (b) The appropriate officer of the Crown in the name in which he may sue on behalf of the Crown or of any Government department if the officer has power to sue on behalf of the Crown or of any Government department apart from this section; or
 - (c) The Cabinet, if there is no such appropriate department or officer or if the Cabinet has any reasonable doubt whether any and, if so, which department or officer is appropriate; or
 - (d) Any 2 or more of them jointly.
- (2) Civil proceedings under this Act against the Crown shall be instituted against –
- (a) The appropriate Government department in its own name if the department may be sued apart from this section; or
 - (b) The appropriate officer of the Crown in the name in which he may be sued on behalf of the Crown or of any Government department if the officer may be sued on behalf of the Crown or of any Government department apart from this section; or

- (c) The Cabinet if there is no such appropriate department or officer or if the person instituting the proceedings has any reasonable doubt whether any and, if so, which Department or officer is appropriate; or
 - (d) Any 2 or more of them jointly.
- (3) The Crown may be joined as a plaintiff to any civil proceedings to which it could be a plaintiff under this Act by joining as a plaintiff –
- (a) Any Government department by which, or officer of the Crown by whom, the proceedings could be instituted under subsection (1); or
 - (b) The Cabinet if there is no such department or officer or if the person seeking to join the Crown as a plaintiff has any reasonable doubt whether any and, if so, which department or officer should be so joined; or
 - (c) Any 2 or more of them jointly.
- (4) The Crown may be joined as a defendant or third party to any civil proceedings to which it could be a defendant under this Act by joining as a defendant or third party –
- (a) Any Government department against which, or officer of the Crown against whom, the proceedings could be instituted under subsection 2; or
 - (b) The Cabinet if there is no such department or officer or if the person seeking to join the Crown as a defendant or third party has any reasonable doubt whether any and, if so, which department or officer should be so joined; or
 - (c) Any 2 or more of them jointly.
- (5) (a) Where any civil proceedings against the Crown under this Act are instituted against the Cabinet or the Cabinet is joined as a party or third party to any such proceedings, an application may at any stage of the proceedings be made to the Court by or on behalf of the Cabinet to have one or more of the Government departments or officers of the Crown against which or against whom the proceedings could have been instituted under subsection (2), substituted for it as a party or third party to the proceedings; and where any such proceedings are brought against any such department or officer, or where any such department or officer is joined as a party or third party to any such proceedings, an application may at any stage of the proceedings be made to the Court on behalf of the department or officer to have the Cabinet or any such department or officer substituted for the applicant as a party or third party to the proceedings.
- (b) Upon any such application the Court may make an order granting the application on such terms as the Court thinks just, and the proceedings shall continue accordingly.
- (6) No proceedings instituted under this Act to which the Cabinet or any Government department or officer of the Crown is a party or third party shall abate or be affected by any change in the person holding the office of a Minister or any other office in the Government service or in the person or body of persons constituting the department.
- (7) Where the Cabinet or any Government department or officer of the Crown is a party or third party to any proceedings under this section, any order of the Court against or in favour of the Crown in those proceedings shall be made against or in favour of the Cabinet or the department or officer as the case may be.

15 [Repealed by 2004/270]

16 Service of documents and time for filing defence by Crown

(1) In any civil proceedings instituted against the Cabinet or to which the Cabinet is joined as a party or third party, as aforesaid, the first document required to be served on him, and any other document required to be served before an address for service has been given by him shall be served on the Cabinet by delivering it to the Registrar of the High Court of Niue or by leaving at the office of the Registrar at his said office or by sending it by post in a registered letter addressed to the Registrar of the High Court at his said office.

(2) In any civil proceedings against the Crown under this Act the time to be allowed in any writ or summons for the filing of a statement of defence or notice of intention to defend shall be not less than 28 days, or such further time as the Court may allow.

(3) Where any document is sent by post in the manner prescribed by subsection (1) it shall be deemed to have been served at the time at which the letter would have been delivered in the ordinary course of post.

17 Nature of relief

(1) In any civil proceedings under this Act by or against the Crown or to which the Crown is a party or third party the Court shall have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require.

(2) (a) Where in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the Court shall not grant an injunction or make an order for specific performance, but may instead make an order declaratory of the rights of the parties.

(b) In any proceedings against the Crown for the recovery of land or other property, the Court shall not make an order for the recovery of the land or delivery of the property, but may instead make an order declaring that any person is entitled as against the Crown to the land or property or to the possession of it.

(3) The Court shall not in any civil proceedings grant any injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.

18 Appeals, stay of execution, and costs

(1) Subject to this Act, all enactments and rules of court relating to appeals and stay of execution shall, with any necessary modifications, apply to civil proceedings by or against the Crown under this Act as they apply to proceedings between subjects; and the costs of suit shall follow on either side as in ordinary cases between other suitors.

(2) The Crown shall not be required under any rule of court or order to deposit or give security for the costs of any other party.

19 Interest on debts and costs

(1) Any judgment debt due from or to the Crown shall carry interest if it would carry interest if it were due from or to a subject, and any interest so payable shall be at the rate at which it would be payable if the judgment debt were due from or to a subject.

(2) Any costs awarded to or against the Crown shall carry interest if the costs would carry interest if they were awarded to or against a subject, and any interest so payable shall be at the rate at which it would be payable by a subject.

(3) Any judgment in any civil proceedings by or against the Crown may award interest to any party to whom interest could be awarded if the proceedings were between subjects at the rate at which interest could be so awarded.

20 Recovery of fines imposed otherwise than by judgment or conviction

(1) Notwithstanding sections 2 to 19 where a fine is imposed upon any person otherwise than by a judgment or conviction of some court, and no other procedure is provided by any Act or rule of court for the recovery of the fine, the court by which the fine was imposed shall, if the same is not immediately paid, by writing in the form numbered (1) in Schedule 3, certify the fact, together with the name and place of abode or business, of the person on whom the fine was imposed, and the cause and amount of the fine, and shall deliver or send by post the writing to the Cabinet who, upon receipt of it, shall cause a final judgment to be signed in the High Court for the amount of the fine, and a sum not exceeding 10 dollars for costs.

(2) Every such judgment may be in the form numbered (2) in Schedule 3 or to the like effect, and no appeal shall lie therefrom.

21 Recovery of debts due upon recognisance

(1) Notwithstanding sections 2 to 20 where any person has entered into a recognisance to Her Majesty, and the recognisance is forfeited, and no other procedure is provided by any Act or rule of Court for the estreat thereof, the Court before which, the same was forfeited may cause the recognisance to be estreated as provided in this section.

(2) The Judge shall, by writing under his hand in the form numbered (3) in Schedule 3, or to the like effect, certify that the forfeiture has taken place, and shall deliver or send by post the said recognisance and writing to the Cabinet who, upon receipt of it shall cause a final judgment to be signed in the High Court for the amount of the recognisance and a sum not exceeding 10 dollars for costs.

(3) Every such judgment may be in the form numbered (4) in Schedule 3 or to the like effect, and no appeal shall lie therefrom.

22 [Repealed by 2004/270]

23 Judgments may be vacated by High Court

(1) Where final judgment has been signed under section 20 or section 21, the High Court may order satisfaction to be entered upon the judgment, whether execution has been issued on it or not.

(2) Such an order shall not be made except upon notice calling upon the Cabinet to show cause, nor unless it is proved by affidavit to the satisfaction of the High Court either that the judgment has been satisfied, or that, according to equity and good conscience and the real merits and justice of the case, the defendant ought not to be required to satisfy the same.

PART 3
EXECUTION

24 Satisfaction of orders against the Crown

(1) Except as provided in this section, no execution or attachment or process in the nature of it shall be issued out of any court for enforcing satisfaction by the Crown, or by the Cabinet or any Government department or officer of the Crown of any order made in any civil proceedings under this Act.

(2) (a) Where in any civil proceedings any order (whether for costs or otherwise) is made by the court in favour of any person against the Crown or the Cabinet or any Government department or officer of the Crown, and the person in whose favour the order is made so requests, the proper officer of the court shall issue to that person, without payment of any fee, a certificate in the form numbered (5) in Schedule 3 or to the like effect.

(b) If the order provides for the payment of money, the court by which the order is made or any court to which an appeal against the order lies direct that, pending an appeal or otherwise, payment of the money so payable, or any part of it shall be suspended, and (if the certificate has not been issued) may order any such directions to be inserted in it.

(3) On receipt of any such certificate the Treasurer without further appropriation than this section, may cause to be paid to the person named in it the amount payable by the Crown under the order, together with any costs allowed him by the Court and the interest, if any, lawfully due and may also perform or give effect to the terms of the order so far as it is to be satisfied by the Crown.

(4) The Minister of Finance shall, forthwith after the end of each financial year, cause to be prepared, in such form as he approves or directs, a statement showing all amounts paid under this section without appropriation other than this section; and shall, as soon as practicable, cause the statement (duly audited by the Audit Office) to be laid before the Assembly.

25 Execution by the Crown

(1) Any order made in favour of the Crown against any person in any civil proceedings may be enforced in the same manner as an order made between subjects is enforced, and not otherwise.

(2) Nothing in this section shall affect any procedure which immediately before the commencement of the Act was available for enforcing an order made in favour of the Crown in proceedings brought by the Crown for the forfeiture or condemnation of any goods, or the forfeiture of any ship or any share in a ship.

26 Attachment of money payable by the Crown

(1) Any person who has obtained an order for the payment of money may take proceedings under rules of court, to obtain payment to him of the amount of any debt payable by or accruing due from the Crown to the person against whom the order was made, or so much thereof as may be sufficient to satisfy the order and the costs of the garnishee proceedings; and in any such case the court may make any order in respect of the amount payable by or accruing due from the Crown which it would be entitled to make if the whole proceedings were between subjects.

(2) Except as provided in any other Act, no such order shall be made in respect of –

- (a) Any wages, salary, honorarium, allowances, or expenses payable to any officer of the Crown as such;
- (b) Any money which is subject to the provisions of any enactment prohibiting or restricting assignment or charging or taking in execution.

PART 4

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

27 **Discovery**

- (1) Subject to and under rules of court –
 - (a) In any civil proceedings to which the Crown is a party or third party, the Crown may be required by the court to answer interrogatories if the Crown could be required to do so if it were a private person of full age and capacity; and
 - (b) In any such proceedings as aforesaid the Crown may be required by the Court to make discovery of documents and produce documents for inspection if the Crown could be required to do so if it were a private person of full age and capacity.
- (2) This section shall be without prejudice to any rule of law which authorises or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.
- (3) Any order of the Court made under subsection (1)(a) shall direct by what officer of the Crown the interrogatories are to be answered.
- (4) Without prejudice to subsection (2) any rules made for the purposes of this section shall be such as to secure that the existence of a document will not be disclosed if, in the opinion of the Cabinet, it would be injurious to the public interest to disclose its existence.

28 **Exclusion of proceedings *in rem***

- (1) Nothing in this Act shall authorise proceedings *in rem* in respect of any claim against the Crown, or the arrest, detention or sale of any ships or aircraft, or any cargo or other property belonging to Her Majesty, whether in right of the Government in Niue or otherwise, or give to any person any lien on any such ship, aircraft, cargo, or other property.
- (2) (a) Where proceedings *in rem* have been instituted in the High Court against any such ship, aircraft, cargo, or other property, the Court may, if satisfied, either on an application by the plaintiff for an order under this subsection or on application by the Crown to set aside the proceedings, that the proceedings were so instituted by the plaintiff in the reasonable belief that the ship, aircraft, cargo, or other property did not belong to the Crown, order that the proceedings shall be treated as if they were *in personam* duly instituted against the Crown under this Act, or duly instituted against any other person whom the Court regards as the proper person to be sued in the circumstances, and that the proceedings shall continue accordingly.
- (b) Any such order may be made upon such terms, if any, as the Court thinks just; and, where the Court makes any such order, it may make such consequential orders as the Court thinks expedient.

29 Application of certain provisions

This Act shall not prejudice the right of the Crown to take advantage of an Act although not named therein; and it is hereby declared that in any civil proceedings against the Crown any Act which could, if the proceedings were between subjects, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Crown.

*Supplemental***30 Rules of court**

(1) Any power to make, alter, or revoke rules touching or regulating the practice and procedure of any court shall include power to make, alter, or revoke rules for the purpose of giving effect to this Act, and any such rules may contain provisions to have effect in relation to any proceedings by or against the Crown in substitution for or by way of addition to any of the provisions of the rules applying to proceedings between subjects.

(2) Without prejudice to the generality of subsection (1), rules may be made with respect to the following matters –

- (a) For providing for service outside Niue of process or notice of it, in the case of proceedings by the Crown;
- (b) For securing that where any civil proceedings are brought against the Crown under this Act the plaintiff shall, before the Crown is required to take any steps in the proceedings, provide the Crown with such information as the Crown may reasonably require as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned;
- (c) For providing that in the case of proceedings against the Crown the plaintiff shall not enter judgment in default of appearance or pleading without the leave of the court to be obtained on an application of which notice has been given to the Crown;
- (d) For excepting proceedings brought against the Crown from the operation of any rule of court providing for summary judgment without trial;
- (e) For providing that a person shall not be entitled to avail himself of any set-off or counterclaim in any proceedings by the Crown for the recovery of taxes, duties, or penalties, or to avail himself in proceedings of any other nature by the Crown of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties, or penalties;
- (f) For providing that a person shall not be entitled, without the leave of the court, to avail himself of any set-off or counterclaim in any proceedings by the Crown if either the subject-matter of the set-off or counterclaim does not relate to the Government department or officer of the Crown in whose name the proceedings are brought or the proceedings are brought in the name of the Cabinet;
- (g) For providing that the Crown, when sued in the name of a Government department or of an officer of the Crown, shall not, without the leave of the court, be entitled to avail itself of any set-off or counterclaim if the subject-matter of it does not relate to that department or officer; and

- (h) For providing that the Crown, when sued in the name of the Cabinet shall not be entitled to avail itself of any set-off or counterclaim without the leave of the court.

31 General rules

The laws, statutes, and rules for the time being in force as to pleading, joinder of parties, third party procedure, evidence, hearing and trial, amendment, arbitration, special cases, the means of procuring and taking evidence, set-off, appeal, and all other laws, statutes, and rules for the time being available as between plaintiffs and defendants in personal actions between subjects, and the practice and course of procedure of the court in its legal and equitable jurisdiction respectively for the time being in reference to such suits and personal actions, shall, unless the court otherwise orders, be applicable, and apply and extend to civil proceedings by or against the Crown.

32-34 [Spent]

35 Saving of certain rights

(1) Nothing in this Act shall apply to or authorise proceedings by or against Her Majesty in her private capacity.

- (2) Except as expressly provided in this Act, nothing in this Act shall—
 - (a) Affect the law relating to prize salvage, or apply to proceedings in causes or matters within the jurisdiction of the High Court as a Prize Court, or to any criminal proceedings; or
 - (b) Authorise proceedings to be taken against the Crown under or in accordance with this Act in respect of any alleged liability of the Crown arising otherwise than in respect of the Government in Niue or affect proceedings against the Crown in respect of any such alleged liability as aforesaid; or
 - (c) Affect any proceedings by the Crown otherwise than in right of the Government in Niue; or
 - (d) Subject the Crown to any greater liabilities in respect of the acts or omissions of any independent contractor employed by the Crown than those to which the Crown would be subject in respect of the acts or omissions if the Crown were a private person; or
 - (e) Subject the Crown to any liability in respect of the acts or omissions of any medical practitioner, pharmaceutical chemist, midwife, maternity nurse, dentist, or any other person while any such person is rendering any professional or other service or supplying any medicine, drug, appliance unless the medical practitioner, pharmaceutical chemist, midwife, maternity nurse, dentist or other person is acting as a servant of the Crown at the time of the act or omission; or
 - (f) Subject the Crown, in its capacity as a highway authority, to any greater liability than that to which a local authority is subject in that capacity; or
 - (g) Interfere with or affect any Act that now is or hereafter may be in force whereby the Crown, or any of its officers and servants, is exempt from liability for anything done under the Act or affect any power, authority, or liability vested in or imposed upon the Crown or any of its officers or servants under any such Act; or

- (h) Affect any right of the Crown to control or otherwise intervene in proceedings affecting the Crown's rights, property, or profits.
- (3) A certificate of the Cabinet –
- (a) To the effect that any alleged liability of the Crown arises otherwise than in respect of Government in Niue; or
- (b) To the effect that any proceedings by the Crown are proceedings otherwise than in right of the Government in Niue –
- shall for the purposes of this Act, be conclusive as to the matter so certified.
- (4) Where any property vests in the Crown by virtue of any rule of law which operates independently of the acts or the intentions of the Crown, the Crown shall not by virtue of this Act be subject to any liabilities in tort by reason only of the property being so vested; but this subsection shall be without prejudice to the liabilities of the Crown under this Act in respect of any period after the Crown or any person acting for the Crown has in fact taken possession or control of any such property, or entered into occupation thereof.
- (5) This Act shall not operate to limit the discretion of the Court to grant relief by way of mandamus in cases in which such relief might have been granted before the commencement of this Act, notwithstanding that by reason of the provisions of this Act some other and further remedy is available.

SCHEDULES

SCHEDULE 1

Section 5(2)

Enactments to Bind the Crown

Bills of Exchange Act 1908
 Mercantile Law Act 1908: Part 2
 Interpretation Act 2004
 Sea Carriage of Goods Act 1940

SCHEDULE 2

[Repealed by 2004/270]

SCHEDULE 3
Section 20(1)
(1) CERTIFICATE OF FINE

This is to certify to the Cabinet that, at the _____ this day held at _____, the several persons whose names and places of abode or business are specified in the Schedule below were fined the several sums therein set opposite to their respective names, and that the cause of each such fine is duly and truly set forth in the said Schedule.

Schedule

| Full name | Place of Abode of Business | Cause of Fine | Amount |
|-----------|-------------------------------|---|-----------|
| | | Behaving and conducting himself in a disorderly manner in Court | £ s d |
| Total | | | £ |

Given under my hand this _____ day of _____ 20 ____ .
Judge.

Section 20 (2)
(2) JUDGMENT IN RESPECT OF FINE

In the High Court at _____ No. _____
Be it remembered that the Registrar of the High Court has informed the Court that at the _____ held at _____ on _____ the _____ day of _____, 20____, before _____ a fine of _____ was imposed and inflicted upon _____ because he, the said _____ (*behaved and conducted himself in a disorderly manner in the said Court, or as the case may be*) as by the certificate of the said _____ now filed of record appears. Therefore, on the _____ day of _____, 20____, it is adjudged by the Court here that the Crown do recover against the said _____ the sum of _____ and also the sum of _____ for costs, making together the sum of _____.
Dated at _____ this _____ day of _____ 20____ .
Registrar.

Section 21 (2)
(3) CERTIFICATE OF FORFEITURE OF RECOGNISANCE

This is to certify to the Cabinet of Ministers that, at the _____ this day held at _____ the recognisances hereunto annexed were forfeited, and were there and then caused to be estreated.
Given under my hand this _____ day of _____ 20____ .
Judge, Commissioner.

Section 21 (3)

(4) JUDGMENT IN RESPECT OF RECOGNISANCE

In the High Court at

Be it remembered that the Registrar of the High Court has informed the Court that at the
held at onthe day of
20, before the recognisance of one, by which he acknowledged to
owe to the Crown the sum of, was forfeited and estreated as by the said
recognisance and the certificate of the saidnow filed or record appears. Therefore, on the day of
, 20, it is adjudged by the Court here that the Crowndo recover against the said the said sum of,
and also the sum of for costs, making together the sum ofDated at this day of 20.
Registrar.

Section 24(2)

(5) CERTIFICATE OF JUDGMENT, ETC.

In the High Court at

Between, plaintiff,
and, Defendant.I hereby certify that, of, did on the
day of 20, in the High Court at, obtain a judgment
(order, decree, or declaration); and that by the judgment (order, decree, or declaration)
the Crown was ordered to pay to him the sum of (or as the case may be).Dated at this day of 20.
Registrar.

CUSTOMS ACT 1966

1966/19 – 1 January 1967

- | | |
|---|--|
| <p>1 Short title</p> <p>2 Interpretation</p> <p>3 Customs Acts defined</p> <p>4 Importers</p> <p style="text-align: center;">PART 1</p> <p style="text-align: center;">ADMINISTRATION</p> <p>5 Customs Department</p> <p>6 Financial Secretary</p> <p>7 Revenue Manager</p> <p>8 Officers of Customs</p> <p>9 Delegation of powers</p> <p>10 Seal of the Customs</p> <p>11 Customs flag</p> <p>12-13 [Repealed]</p> <p>14 Charges in respect of attendance of officers</p> <p>15 Districts</p> <p style="text-align: center;">PART 2</p> <p style="text-align: center;">CONTROL OF THE CUSTOMS, GENERAL PROVISIONS AS TO ENTRIES</p> <p style="text-align: center;"><i>Control of the Customs</i></p> <p>16 Control of the Customs</p> <p>17 Delivery for home consumption</p> <p>18 No responsibility for safe custody of goods</p> <p style="text-align: center;"><i>General Provisions as to Entries</i></p> <p>19 Making of entries</p> <p>20 Verification of entries</p> <p>21 Erroneous entries</p> <p>22 Passing of entries</p> <p>23 Cancellation and amendment of entry</p> <p>24 Amendment of entries by officers</p> <p>25 Goods to be dealt with according to entry</p> <p style="text-align: center;">PART 3</p> <p style="text-align: center;">IMPORTATION, EXPORTATION, REMOVAL WITHIN NIUE</p> <p style="text-align: center;"><i>Ports of Entry, Customs Airports</i></p> <p>26 Ports of entry</p> <p>27 Boarding stations</p> <p>28 Wharves</p> <p>29 Sufferance wharves</p> <p>30 Customs airports</p> <p>31 Examination stations at Customs airports</p> <p>32 Examining places</p> | <p>32A Customs container bases</p> <p>33 Duties of controlling authorities</p> <p>34 Storage charges</p> <p>35 Security</p> <p style="text-align: center;"><i>Arrival of Ships and Aircraft</i></p> <p>36 Ships to come into port of entry only</p> <p>37 Aircraft to land at Customs airport only</p> <p>38 Aircraft landing other than at Customs airport</p> <p>39 Transshipment of goods</p> <p>40 Interference with cargo</p> <p>41 Boarding of ships at sea</p> <p>42 Boarding of ships at boarding stations</p> <p>43 Stations of ships</p> <p>44 Aircraft brought to examination station</p> <p>45 Inward report</p> <p>46 Report of wrecked ships and aircraft</p> <p style="text-align: center;"><i>Importation</i></p> <p>47 "Importation" defined</p> <p>48 Prohibited imports</p> <p>49 Importation of brandy, whisky and rum</p> <p>50 Goods not to be landed or dealt with without permission</p> <p>51 [Repealed]</p> <p>52 Method of unshipment</p> <p>52A Removal of goods</p> <p>52B Manager's permits</p> <p>53 Kinds of entry of imported goods</p> <p>54 Passengers' effects exempt from entry</p> <p>54A Certain goods exempt from entry</p> <p>55 When entry to be made</p> <p>56 Vessels or aircraft imported</p> <p>57 Licence or permit for restricted goods</p> <p>58 Sight entries</p> <p>59 Delivery of goods on sight entry</p> <p>60 Goods for home consumption</p> <p>61 Importer may be required to furnish samples and illustrations</p> <p style="text-align: center;"><i>Removal within Niue Exportation</i></p> <p>62 Removal of imported goods within Niue</p> <p>63 Export subject to control of Customs</p> |
|---|--|

| | | | |
|-----|---|----------|--|
| 64 | Entry for export of goods not subject to control of Customs | 105 | Temporary removal of warehoused goods |
| 65 | Method of shipment | 106 | Liability for duty on missing goods |
| 66 | Goods not shipped according to entry | | <i>Clearance of Warehoused Goods</i> |
| 67 | Information and securities in respect of exported goods | 107 | Kinds of entry of warehoused goods |
| 68 | Exported goods not to be reloaded | 108 | Entry for home consumption |
| 69 | Time of exportation | 109 | Entry for export |
| 70 | Prohibited exports | 110 | Entry for removal |
| 71 | Ships in which goods may be exported | 111 | Constructive warehousing |
| | | 112 | Rewarehousing |
| | <i>Departure of Ships and Aircraft</i> | | <i>Crown Warehouses</i> |
| 72 | Clearance of ships and aircraft | 113 | Crown warehouses |
| 73 | Report outwards | 114 | Charges in Crown warehouses |
| 74 | Entitlement to clearance | 115 | Warehousing in Crown warehouses |
| 75 | Boarding of outward ships and aircraft | 116 | Licensed warehouses |
| 76 | Production of clearance | | <i>Special Provisions as to Manufacturing Warehouses</i> |
| 77 | Departure to be from port of entry or Customs airport only | 117-117A | [Repealed] |
| | <i>Stores for Ships and Aircraft</i> | 118 | Penalties for wrongful use of manufacturing warehouse |
| 78 | Stores exempt from duty | | |
| 79 | Stores subject to duty | | |
| | | | PART 5 |
| | PART 4 | 119-135 | [Repealed] |
| | WAREHOUSES | | |
| | <i>Licensed Warehouses</i> | | <i>Valuation of Goods</i> |
| 80 | Licensing of warehouses | 136 | "Current domestic value" defined |
| 81 | Application for licence | 137 | Production of invoice |
| 82 | Security for warehouse | 138 | "Invoice" defined |
| 83 | Grant of licence | 139 | Blank invoices |
| 84 | Harbour Boards and local authorities may hold licences | 140 | Valuation of goods by Collector |
| 85 | Licence fees | 141 | Valuation presumed to be correct |
| 86 | [Repealed] | 142 | Appeal to Minister from valuation |
| 87 | Termination of licence | 143 | Invoices in foreign currency |
| 88 | Cancellation of licence | 144 | Country of export |
| 89 | Transfer of licence | 145 | Current domestic value of goods imported through intermediate country |
| 90 | Surrender of licence | 146 | Valuation for assessment of duties |
| 91 | Closing of warehouse | 147 | Crown's right of compulsory purchase |
| 92 | Use of manufacturing warehouses | | <i>Origin of Imported Goods</i> |
| 93 | Structural alterations of warehouse | 148 | Determining country of origin |
| | <i>Warehousing of Goods</i> | 149 | Importer to state country of origin |
| 94 | Entry for warehousing | 150 | Entry of goods at preferential rates |
| 95 | Account of warehoused goods | 151 | Goods subject to forfeiture in case of false declaration |
| 96 | Receipt for warehoused goods | | <i>Assessment and Recovery of Duty</i> |
| 97 | Removal of goods to warehouse | 152 | Duty on imported goods a Crown debt |
| 98 | Packing of warehoused goods | 153 | Duty on goods produced in manufacturing warehouse a Crown debt |
| 99 | Repacking of warehoused goods | 154 | Duty a charge on goods |
| 100 | Duties of licensee | 155 | Goods not to be delivered till duty paid |
| 101 | Access of officers of Customs to warehouse | 156 | Payment of duty by one person not to affect liability of other persons |
| 102 | Restriction on right of warehousing | | |
| 103 | Sale of goods on which dues in arrear | | |
| 104 | Goods not to be removed without permission | | |

- 157 Incidence of altered duties
- 158-159 [Repealed]
- 160 Assessment of duty in particular cases
- 161 Alteration of goods
- 162 Minimum duty collectable
- 163 Essences and other preparations
- 164 Reimportation of goods
- 165 [Repealed]
- 166 [Repealed]
- 167 Power to suspend excise duties on goods supplied to certain organisations
- 168 Samples of goods
- 169 Duties on wrecked goods
- 170 Liability of owners of ships or aircraft for duty on missing goods

Refunds and Remissions of Duty

- 171 Recovery of duty paid in error
- 172 Secretary may refund duty paid in error
- 172A Secretary may refund duty on forfeited goods
- 173 Remission or refund of duty on damaged and faulty goods
- 174 Remission of duty on warehoused goods diminished in value
- 175 Remission or refund of duty on goods destroyed, pillaged, or lost
- 176 Remission or refund of duty on goods produced in a manufacturing warehouse
- 177 Remission of duty on goods not worth the duty
- 178 Duty on goods from countries not forming part of the Commonwealth
- 179 Duty may be reduced or remitted where prices of Niue goods increased
- 180 Refund of duty on materials used in manufacture of agricultural implements, machinery, ships and boats
- 181 Duty on goods temporarily imported
- 182 Recovery of duty refunded in error

Drawbacks

- 183 Drawbacks of duty on goods exported
- 184 Entry for exportation under drawback
- 185 Reimportation of goods exported under drawback
- 186 [Repealed]

PART 6

187-193 [Repealed]

PART 7

194-202 [Repealed]

PART 8

POWERS OF OFFICERS OF CUSTOMS

- 203 Examination of goods
- 204 Examination of goods no longer under control of Customs
- 205 Boarding of ships and aircraft
- 206 Searching of ships and aircraft
- 207 Boarding and searching Her Majesty's ships and aircraft
- 208 Firing on ships
- 209 Securing goods on ships and aircraft
- 210 Patrolling sea coast and aerodromes
- 211 Mooring vessels of Customs
- 212 Questioning persons
- 213 Searching persons
- 214 Examining goods carried by persons
- 215 Searching vehicles or boats
- 216 Customs warrants
- 217 Entry and search under Customs warrant
- 218 Requisition to produce documents
- 219 Documents in foreign language
- 220 Impounding documents
- 221 Taking samples
- 222 Permitting examination of goods
- 223 Mode of exercising power of sale
- 224 Duty payable on goods sold by Manager
- 225 Sale of forfeited goods
- 226 Payments by Manager
- 227 Expenses of removal and storage of goods by officers of Customs
- 228 Reasonable and probable cause
- 228A Protection of persons acting under authority of Act

PART 9

SECURITIES

- 229 Securities for payment of duty and compliance with Act
- 230 New securities may be required

PART 10

AGENTS AND CARRIERS

Customs Agents

- 231 Who may act as agent
- 232 Licensing of Customs agents
- 233 Written authority of agents
- 234 Liability of principal for acts of agent
- 235 Liability of agents

Customs Carriers

- 236 Conveyance of goods subject to the control of the Customs
- 237 [Repealed]

| | | | |
|------|---|-----|--|
| | PART 11 | 272 | Boats and vehicles forfeited |
| | OFFENCES | 273 | Equipment of forfeited boats, vehicles and animals |
| | <i>Offences in Relation to Officers</i> | 274 | Forfeiture to relate back |
| 238 | Influencing or resisting officer | | <i>Seizure</i> |
| 239 | Obstructing officers of Customs | 275 | Seizure of forfeited goods |
| 240 | Abusive or threatening language | 276 | Where goods may be seized |
| 241 | Personation of officer of Customs | 277 | Rescue of seized goods |
| | <i>Other Offences</i> | 278 | Notice of seizure |
| 242 | Smuggling | | <i>Condemnation</i> |
| 243 | Defrauding the revenue of Customs | 279 | Condemnation without suit |
| 244 | Erroneous drawbacks or refunds | 280 | Condemnation by High Court |
| 245 | Erroneous declarations | 281 | No other action competent while condemnation proceedings pending |
| 246 | Wilfully false declarations | 282 | [Repealed] |
| 247 | Production of false documents | 283 | Conviction to operate as a condemnation of forfeited goods |
| 248 | Interference with goods | | <i>Miscellaneous Provisions</i> |
| 248A | Unauthorised entry into passenger processing areas | 284 | Delivery of goods seized on deposit of value |
| 249 | Ship or aircraft used for smuggling | 285 | Sale of perishable articles seized |
| 250 | Ships and aircraft adapted for smuggling | 286 | Disposal of forfeited goods |
| 251 | Counterfeit seals or marks | 287 | [Repealed] |
| 252 | Failure to comply with conditions of entry | 288 | Application of forfeiture provisions |
| 253 | Possession or custody of uncustomed goods or prohibited imports | | PART 13 |
| 254 | Possession of concealed goods | | DETENTION OF SHIPS AND AIRCRAFT |
| 255 | Failure to answer questions truly | 289 | Ships and aircraft liable to detention |
| 256 | Liability of officers of body corporate | 290 | Seizure of ships and aircraft |
| 257 | Attempts | 291 | Where ships and aircraft may be seized |
| | <i>General Provisions as to Offences</i> | 292 | Rescue of seized ships and aircraft |
| 258 | Offences punishable on summary conviction | 293 | Security to be given before release of seized ship or aircraft |
| 259 | Information to be laid by Manager | 294 | Avoidance of security |
| 260 | Procedure | 295 | Enforcement of security |
| 261 | Value of goods for purpose of fine | 296 | Service of process |
| 262 | General penalty | | PART 14 |
| 263 | Imprisonment for second offence | | EVIDENCE |
| 264 | Court may order payment of money in respect of duty | 297 | Incriminating questions and documents |
| 265 | Penalties independent of forfeitures | 298 | Source of information need not be disclosed |
| 266 | Power of Manager to deal with petty offences | 299 | Burden of proof |
| 267 | Arrest of offenders | 300 | Burden of proof of justification |
| | <i>Rewards</i> | 301 | Presumption of authenticity of documents |
| 268 | Rewards for seizures and convictions | 302 | What evidence receivable |
| | PART 12 | 303 | Declarations under this Act |
| | FORFEITURES | | PART 15 |
| 269 | Application of this Part | | COOK ISLANDS AND NIUE |
| | <i>Forfeiture</i> | | 304 |
| 270 | Goods forfeited | | Goods may be imported from Cook Islands and New Zealand |
| 271 | Forfeiture of packages | | |

| | | |
|-----|-----------------------------------|--------------------|
| | PART 16 | |
| | MISCELLANEOUS PROVISIONS | 308 Regulations |
| 305 | Goods passing through Post Office | 309-313 [Repealed] |
| 306 | Regulations | |
| 307 | Penalties imposed by regulations | SCHEDULES |

**To consolidate and amend certain enactments relating to customs and excise
and to the importation and exportation of goods**

1 Short title

This is the Customs Act 1966.

2 Interpretation

(1) In this Act –

“aerodrome” means any defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, movement, and servicing of aircraft; and includes any buildings, installations, and equipment on or adjacent to any such area used in connection with the aerodrome or its administration;

“aircraft” means any machine that can derive support in the atmosphere from the reaction of the air;

“boat” means any vessel other than a ship;

“bulk cargo container” means an article of transport equipment, being a lift van, movable tank, or other similar structure –

(a) Of a permanent character and accordingly strong enough to be suitable for repeated use; and

(b) Specially designed to facilitate the carriage of goods by one or more modes of transport, without immediate repacking; and

(c) Fitted with devices permitting its ready handling and its transfer from one mode of transport to another; and

(d) So designed as to be easy to fill and empty; and

(e) Having an internal volume of one cubic metre or more –

and includes the normal accessories and equipment of the container, when imported with the container and used exclusively with it; but does not include any vehicle, or any ordinary packing case, crate, box, or other similar article used for packing;

“controlling authority” in relation to any wharf, customs airport, examining place, or customs containerbase, means the owner or occupier thereof, or any person having the control thereof; and includes any Harbour Board or local authority or public body having the control thereof;

“Customs” means the Customs Department;

“customs airport” means any aerodrome appointed as a customs airport under section 30;

“customs containerbase” means a place appointed under this Act for the reception, examination, or protection of goods subject to the control of the Customs and carried or to be carried in bulk cargo containers;

“declaration” means a declaration made under this Act;

“documents” includes books;

“dutyable goods” means goods of a kind subject to duty on their importation or on their manufacture in a manufacturing warehouse or on their entry for home consumption;

- “duty” means any duty payable on goods on the importation thereof, and includes duty payable under this Act on goods produced in a manufacturing warehouse;
- “examination station” means a place at a Customs airport appointed by the Secretary as an examination station under this Act;
- “examining place” means a place appointed under this Act for the examination by the Customs of goods subject to the control of the Customs;
- “forfeited goods” means any goods in respect of which a cause of forfeiture has arisen under the Customs Acts;
- “goods” means all kinds of movable personal property, including animals;
- “importer” means any person by or for whom any goods are imported; and includes the consignee of any goods and any person who is or becomes the owner of or entitled to the possession of or beneficially interested in any goods on or at any time after their importation and before they have ceased to be subject to the control of the Customs;
- “intent to defraud the revenue of Customs” means –
- (a) An intent to evade or to enable any other person to evade payment of the duty or any part of the duty payable on any goods; or
 - (b) An intent to obtain or to enable any other person to obtain, in respect of any goods, any drawback or refund of duty not authorised by law or in excess of that which is authorised by law; or
 - (c) An intent to evade or to enable any other person to evade payment of any money payable to the Crown under this Act;
- “Manager” means any officer appointed as Revenue Manager at any port or in respect of any district; and includes the Financial Secretary; and also includes the chief officer of Customs at any port or other place, and any proper officer acting for the time being in place of the Manager either generally or in respect of any of his powers or functions, whether during any vacancy in the office of Manager or otherwise;
- “manufacture”, in relation to tobacco, includes the processes of cutting, pressing, grinding, crushing, or rubbing any raw or leaf tobacco, or otherwise preparing raw or leaf tobacco or manufactured or partially manufactured tobacco, and of making cigarettes whether from duty-paid or from non-duty-paid tobacco, and of putting up for use or consumption in any way any scraps, waste, chippings, stems, or deposits of tobacco resulting from any processing of tobacco;
- “manufactured tobacco” means tobacco that has been manufactured or prepared by any means or in any shape for smoking or for any other purpose;
- “manufacturing warehouse” means any place for the time being licensed as a manufacturing warehouse under Part 4; and includes a tobacco-manufacturing warehouse;
- “master”, in relation to any ship, means the person (other than any person not belonging to the ship who has the lawful conduct of it for the time being in actual charge or command of the ship);
- “Minister” means the Minister of Foreign Affairs;
- “Normal Tariff” means the rates of duty and the exemptions from duty specified in the column headed “Normal Tariff” in the Tariff; and includes any modification or amendment thereof that may hereafter be made;
- “officer” means any person employed in the service of the Customs;

- “other preferential rates of duty” means the rates of duty and the exemptions from duty specified in the column headed ‘other preferential rates of duty’ in the Tariff; and includes any modification or amendment thereof that may hereafter be made;
- “owner” includes –
- (a) In respect of any ship or aircraft, any charterer of the ship or aircraft, and any person acting as agent for the owner or charterer;
 - (b) In respect of any goods, the importer or other person for the time being possessed of or beneficially interested in the goods;
- “package” includes every means by which goods for carriage may be cased, covered, enclosed, contained, or packed but does not include a bulk cargo container or a pellet;
- “pallet”, except in the Tariff, means a device on the deck of which a quantity of goods can be assembled to form a unit load for the purposes of transportation, handling, or stacking with the aid of mechanical devices; but does not include a bulk cargo container; and, in relation to a pallet that is imported laden, does not include any goods laden thereon”;
- “pilot”, in relation to any aircraft, means the person for the time being in charge or command of the aircraft;
- “port” means a port of entry appointed as such under section 26 and, where it is not inconsistent with the context, includes a Customs airport;
- “prohibited imports” means goods imported or landed in breach of any prohibition of importation contained in the Customs Acts;
- “proper officer” in relation to any matter, means any officer acting or employed in that matter by the order or with the concurrence (whether precedent or subsequent) of the Minister or the Secretary or under any other lawful authority;
- “raw tobacco” means unmanufactured tobacco, or the leaves and stems of the tobacco plant before they have passed through any process of manufacture;
- “restricted goods” means goods whose importation or exportation is prohibited by the Customs Acts, whether absolutely or subject to any exceptions or qualifications;
- “seal” means to affix the seal of the Customs;
- “Secretary” means the Financial Secretary and includes any officer of Customs acting for the time being, by direction of the Minister in the place of the Secretary, whether during any vacancy in the office of Secretary or otherwise;
- “ship” means any kind of vessel used in navigation, not propelled by oars only;
- “shipment” includes loading into an aircraft;
- “ships’ stores” includes aircraft’s stores;
- “smuggling” means importing, unshipping, landing, conveying, or otherwise dealing with any goods with intent to defraud the revenue of Customs;
- “Standard Tariff” means the Standard Tariff comprised in Part 1 of the Customs Tariff; and includes any modification or amendment thereof that may hereafter be made;
- “Tariff” means the Customs Tariff of Niue (comprising the Standard Tariff set out in Part 1 and the provisions set out in Part 2 as set out in Schedule 2 and includes all notes to the Tariff, or to any Part, section, chapter, subchapter, heading, subheading, or item thereof, set out in that Schedule; and also includes any modification or amendment of the Tariff or of the said notes that may hereafter be made;

“Tariff headings” or “headings”, means the headings of the Standard Tariff printed in bold type, being the headings of the Brussels Nomenclature established by the Convention for the Classification of Goods in Customs Tariffs signed in Brussels on 15 December 1950 and includes any modification or amendment of it that may hereafter be made;

“Tariff items” means the Tariff items of the Standard Tariff identified by 7 digits; and includes the headings to it so identified;

“Tariff subheading”, or “subheading”, means a subheading appearing in the Standard Tariff and not identified by any number;

“tobacco” includes cigars, cigarettes, and snuff;

“transit building” means a building or any part of a building for the reception, examination or protection of goods on their loading or unloading while subject to the control of the Customs;

“uncustomed goods” means any goods on which any duty has become due and payable and is unpaid;

“vehicle” means any conveyance of any kind whatsoever for use on land;

“warehouse” means a place of security licensed under section 80; and includes a crown warehouse;

“wharf” means a wharf or other landing place appointed as a wharf under this Act; and includes a sufferance wharf.

(2) Any reference in this Act to contravention of any provision of this Act, or of any regulations, licence, requirements, conditions, or directions thereunder, includes a reference to failure to comply with that provision.

3 Customs Acts defined

(1) In this Act, “Customs Acts” means this Act, the General Agreement on Tariffs and Trade Act 1948, the Niue Customs Tariff Act 1982, and all enactments made under any of these Acts.

(2) In its application to the subject-matter of any other of the Customs Acts this Act shall be read subject to the provisions of that other Act.

(3) Subject to subsection (2), the provisions of this Act, so far as they are applicable and with the necessary modifications, shall be deemed to be incorporated in and to form part of every enactment declared by this or any other Act to be a Customs Act.

(4) In the application of this Act to any Customs Act references to this Act shall, where necessary, be read as references to that Customs Act.

4 Importers

When in respect of any imported goods there are more importers than one (in accordance with the definition of the term “importer” in this Act) all the provisions of this Act with reference to the importer of those goods shall, except where the context otherwise requires, apply severally and independently to each of those importers.

PART 1
ADMINISTRATION

5 Customs Department

(1) There shall continue to be a Department of State to be known as the Customs Department.

(2) Subject to the control of the Minister, the Department shall be charged with the administration of the Customs Acts.

(3) The Department shall have such other functions as may be lawfully conferred on it.

6 Financial Secretary

There shall be appointed a Financial Secretary who, under the Minister, shall be the permanent head of the Customs and shall have the chief control of it.

7 Revenue Manager

At every port there shall be appointed an officer to be called the Revenue Manager who shall, subject to the Minister and the Secretary, have the chief control and management at that port of all matters relating to the Customs Acts.

8 Officers of Customs

There shall be appointed to the Customs such other officers as are considered necessary for the efficient administration of the Customs Acts.

9 Delegation of powers

(1) The Minister may, either generally or particularly, delegate to any officer of Customs all or any of the powers (except this present power of delegation) exercisable by him under the Customs Acts.

(2) With the written consent of the Minister, the Secretary may similarly delegate to any officer of Customs all or any of the powers (except this present power of delegation) exercisable by him under the Customs Acts.

(3) Subject to any general or special directions given or conditions imposed by the Minister or the Secretary, the officer to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this Act and not by delegation.

(4) Every officer of Customs purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(5) Any delegation under this section may be made to any specified person or to the holder or holders for the time being of any specified office or class of offices.

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

(7) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Minister or Secretary by whom it was made had ceased to hold office, and shall continue to have effect as if made by the successor in office of that Minister or Secretary.

10 Seal of the Customs

The seal of the Customs shall be the Royal Arms having the words "Niue – H.M. Customs" encircling the arms.

11 Customs flag

(1) The Customs flag shall be the Niue Ensign with the addition in the fly of the letters "H.M.C." in white in bold characters.

(2) The ships and boats employed in the service of the Customs shall be distinguished by the Customs flag.

12-13 [Repealed by 2004/270]

14 Charges in respect of attendance of officers

(1) Without limiting the power to make regulations conferred by section 306, Cabinet may make regulations in respect of the attendance of officers of Customs, whether or not within the working hours of the Customs, at any place for the purpose of performing or supervising any act required or permitted by the Customs Acts, and in particular –

- (a) Prescribing, except where otherwise provided in any of the Customs Acts, a rate or rates of charges for such attendance;
- (b) Providing for the liability of any person to pay any actual and reasonable expenses incurred by any officer in respect of the attendance;
- (c) Prescribing the person or persons or class or classes of persons by whom such charges and expenses shall be paid, or authorising the Manager to determine the person or persons by whom they shall be paid.

(2) All charges and expenses payable under this section shall constitute a debt due to the Crown.

(3) All charges and expenses paid under this section shall be receivable by the Secretary or the Manager and shall be paid into the Public Account.

15 Districts

(1) For the proper administration of the Customs Acts, the Secretary may by notice in the *Gazette* appoint adjacent to any port such district as he thinks fit; and the Manager at the port shall, subject to the control of the Minister and the Secretary have the chief control and management in that district of all matters relating to the Customs Acts.

(2) The Secretary may in like manner alter the boundaries of any such district.

PART 2

CONTROL OF THE CUSTOMS, GENERAL PROVISIONS AS TO ENTRIES

*Control of the Customs***16 Control of the Customs**

Goods shall be subject to the control of the Customs, within the meaning of this Act, as follows –

- (a) In the case of all goods imported, from the time of importation until delivery by the Customs for home consumption, or until exportation to any country outside Niue, whichever first happens;
- (b) In the case of all goods under drawback, from the time of the claim for drawback until exportation to any country outside Niue;
- (c) In the case of all goods for export that are subject to export duty, or the exportation of which is subject to any condition or restriction from the time when the goods are brought upon any wharf, or are waterborne for export, or are brought to any Customs airport or Customs containerbase for export until their exportation to any country outside Niue;

- (d) In the case of all goods on board any ship or aircraft and loaded in any country outside Niue, and in the case of ships' stores wherever loaded, at all times –
 - (i) While the ship is within the territorial limits of Niue; or
 - (ii) While the aircraft is at any place in Niue;
- (e) In the case of all goods produced in a manufacturing warehouse, from the time of their production until delivery by the Customs for home consumption or until exportation to any country outside Niue, whichever first happens;
- (f) In the case of spirits distilled, rectified, or compounded in Niue under a spirit maker's licence or a rectifier's and compounder's licence under the Liquor Act 1975, from the time when they are removed from the spirit store or distillery warehouse of any distiller, or from any other warehouse appointed for the lodging of spirits under that Act, until delivery by the Customs for home consumption or until exportation to any country outside Niue, whichever first happens;
- (g) In the case of spirits distilled pursuant to a vigneron's licence under the Liquor Act 1975, from the time when they are removed from the vigneron's storeroom under that Act until they have been used for fortifying wine produced from fruit grown in Niue or have been otherwise disposed of under that Act.

17 Delivery for home consumption

- (1) For the purposes of this Act, goods shall be deemed to be delivered by the Customs for home consumption –
 - (a) As soon as the proper officer gives to the owner of the goods notice of their unconditional delivery for home consumption; or
 - (b) On the fulfilment of any conditions included in any notice of the delivery of the goods for home consumption given by the proper officer to the owner.
- (2) Notice of delivery under this section shall be given in the prescribed form or manner.

18 No responsibility for safe custody of goods

- (1) Neither the Crown, nor the Minister, nor any officer of Customs shall be responsible to any person for the safe custody of any goods subject to the control of the Customs, or shall be under any liability in respect of the erroneous delivery of any goods from such control.
- (2) This section shall not apply to goods warehoused in a Crown warehouse.

General Provisions as to Entries

19 Making of entries

- (1) Every entry of goods under this Act shall be made by the delivery of the entry by the person making it to the Manager or other proper officer.
- (2) Any person making any entry shall truly answer all questions asked by the Manager or other proper officer relating to the goods referred to in the entry.
- (3) Every entry shall be in the prescribed form.

20 Verification of entries

The Manager may require from any person making entry of any goods proof by declaration or the production of documents (in addition to any declaration or documents otherwise required by this Act or by regulations thereunder) of the correctness of the entry, and may refuse to deliver the goods or to pass the entry pending such proof.

21 Erroneous entries

(1) Every person who makes any entry (whether for home consumption or otherwise) that is erroneous or defective in any particular commits an offence and shall be liable to a fine not exceeding 2 penalty units or 3 times the amount of any deficient duty, whichever sum is the greater.

(2) In this section, "deficient duty" means the full duty on the goods which are comprised or ought to have been comprised in the entry less the amount of duty (if any) payable if computed under the entry as actually made and as if the goods had been entered for home consumption.

(3) For the purposes of this section, every declaration, invoice, certificate or written statement required or authorised by or under this Act to be made or produced by the person making an entry shall be deemed to form part of that entry.

(4) For the purposes of this section, every amendment of an entry shall be deemed to form part of that entry, but not so as to relieve any person from any penalty incurred in respect of the entry before its amendment.

22 Passing of entries

(1) An entry shall be passed by the Manager or other proper officer signing the entry, and on the passing of the entry the goods shall be deemed to be entered.

(2) Any entry so passed shall be warrant for dealing with the goods in accordance with the entry.

23 Cancellation and amendment of entry

(1) With the permission of the Manager, any entry may, after it has been made but not later than one day after it has been passed and while the goods still remain subject to the control of the Customs, be cancelled or amended by the person making it.

(2) When the Secretary is satisfied that any entry has been made in error but in good faith, he may permit the entry to be cancelled or amended, by the person who made it, at any time while the goods remain subject to the control of the Customs or, subject to such conditions as the Secretary may impose, at any time after delivery of the goods from such control.

(3) No cancellation or amendment of an entry by the person who made it shall take away or affect any penalty, forfeiture, or criminal liability theretofore accrued or incurred in respect of the entry.

(4) The Manager may make a refund of duty under any such cancellation or amendment of an entry.

(5) The cancellation or amendment of any entry shall be made in the prescribed manner.

24 Amendment of entries by officers

(1) Any officer, for the purpose of correcting any part of any entry, may amend that entry before it is passed.

(2) No such amendment shall take away or affect any penalty, forfeiture, or criminal liability theretofore accrued or incurred in respect of the entry.

25 Goods to be dealt with according to entry

(1) All goods in respect of which any entry has been made and passed shall forthwith be dealt with in accordance with the entry and with the provisions of this Act in respect of goods so entered.

(2) Every person commits an offence against this Act who is knowingly concerned in any contravention of this section.

PART 3**IMPORTATION, EXPORTATION, REMOVAL WITHIN NIUE**
*Ports of Entry, Customs Airports***26 Ports of entry**

(1) The Minister may, by notice in the *Gazette*, appoint as a port of entry for the purposes of this Act any area specified in the notice, and fix the name of that port.

(2) A port of entry may be so appointed for any specified limited purposes exclusively, or for all purposes with specified exceptions, or without any such limitation; and if any such limitation is so imposed the port shall be deemed a port of entry in respect of the purposes so authorised only.

(3) The Minister may, by notice in the *Gazette*, declare that any port shall cease to be a port of entry for the purposes of this Act, or alter the limits or the name of any port, or impose any limitation on the purposes for which any port shall be a port of entry, or remove or alter any such limitation.

27 Boarding stations

(1) The Secretary may by notice in the *Gazette* –

(a) Appoint stations or places at which ships arriving at or departing from any port shall bring-to for the boarding or landing of officers of Customs;

(b) Appoint particular parts of any port at which ships laden with any particular cargo or class of cargo shall moor and discharge such cargo.

(2) Any such appointment may be in like manner revoked.

28 Wharves

(1) The Secretary may, by notice in the *Gazette*, appoint proper places within any port to be wharves for the loading and unloading of goods, and declare the limits of such wharves and fix the names thereof.

(2) The Secretary may in like manner impose such restrictions with respect to the use of any such wharf; and so long as any such restrictions exist the wharf shall be deemed to be a wharf under this Act for such purposes only as are consistent with those restrictions.

(3) The Secretary may declare that any wharf shall cease to be a wharf for the purposes of this Act, or may alter the limits or the name of the wharf, or alter or remove any restriction imposed upon its use.

29 Sufferance wharves

When the Secretary is satisfied that for any particular purpose there is no suitable wharf available he may, in writing, appoint any place within a port as a sufferance, wharf for that purpose, and permit its use for that purpose, subject to such conditions and restrictions and for such time as he thinks fit.

30 Customs airports

Subject to the concurrence of the Minister of Civil Aviation and to such conditions as to security and otherwise as that Minister thinks fit, the Minister of Foreign Affairs may, by notice in the *Gazette*, appoint any aerodrome to be a Customs airport, and may in like manner and with the like concurrence revoke any such appointment.

31 Examination stations at Customs airports

(1) Subject to the concurrence of the Secretary for Civil Aviation, the Secretary may by notice in the *Gazette* appoint for the purposes of this Act a place at any Customs airport to be an examination station for the loading and unloading of goods and for the embarking and disembarking of passengers.

(2) The Secretary may, with the like concurrence and in like manner –

(a) Alter the limits of any examination station;

(b) Impose such conditions and restrictions as he thinks fit in respect of the use of any examination station;

(c) Vary or revoke any such conditions or restrictions;

(d) Revoke the appointment of any examination station.

(3) Any examination station in respect of which any restrictions imposed pursuant to this section apply shall be deemed to be an examination station under this Act for such purposes only as are consistent with those restrictions.

32 Examining places

The Secretary, by writing under his hand, appoint at any port or Customs airport places for the examination by the Customs of goods subject to the control of the Customs and any such appointment may be in like manner revoked.

32A Customs container bases

(1) The Secretary may by notice in the *Gazette*, appoint places, at any port or Customs airport, to be Customs containerbases for the reception, examination, or protection of goods that are subject to the control of the Customs and are carried or to be carried in bulk cargo containers.

(2) The Secretary may impose such conditions and restrictions in respect of the use of any Customs containerbase, and vary or revoke any such conditions or restrictions.

(3) Subject to subsections (4) to (9), the Secretary may by notice in writing to the controlling authority of any Customs containerbase revoke the appointment of the containerbase.

(4) (a) Before revoking any such appointment the Secretary shall give to the controlling authority notice in writing stating that he intends to do so and that within 14 days after the receipt of the notice the controlling authority may appeal to the Minister against the Secretary's decision.

(b) The notice shall also state the reasons why he intends to revoke the appointment.

- (5) (a) Within 14 days after the receipt by the controlling authority of the notice under subsection (4), the controlling authority may appeal to the Minister by giving to the Manager a notice of appeal in writing addressed to the Minister.
- (b) The notice of appeal shall state fully the grounds of the appeal.
- (6) The Minister shall consider the notice of appeal, and any further representations made by the controlling authority within the 14 days or within such further period as he may allow, and, if the controlling authority so requests, shall afford to the controlling authority an opportunity of being heard by him within such period or further period as aforesaid.
- (7) On any such appeal the Minister may confirm or reverse the Secretary's decision, and the Minister's decision shall be final.
- (8) Where an appointment is revoked under this section, the revocation shall take effect on such date as is specified in the notice of revocation or, if no date is so specified, from the time of the receipt by the controlling authority of the notice of revocation.
- (9) Notice of the revocation of any such appointment shall be published by the Secretary in the *Gazette*.

33 Duties of controlling authorities

- (1) The controlling authority of every wharf or Customs airport or Customs containerbase shall provide and maintain at the wharf or airport, or containerbase to the satisfaction of the Minister –
- (a) Suitable office accommodation, at such place or places as the Minister may direct, for the exclusive use of officers of Customs employed at the wharf or airport or containerbase; and
- (b) Such suitable transit buildings as the Minister may declare to be requisite in respect of the wharf or Customs airport, or Customs containerbase together with suitable weighing appliances for use in such transit buildings by officers of Customs.
- (2) The controlling authority of every wharf or Customs airport or customs container base, shall store goods subject to the control of the Customs in such manner and in such place as the Manager or other proper officer of Customs may direct.
- (3) Every controlling authority who fails to comply with any provision of this section commits an offence and shall be liable to a fine not exceeding 2 penalty units for every month or part of a month during which the default has continued.

34 Storage charges

- (1) No charges shall be made by any controlling authority for the reception or storage in any transit building or on any wharf of any goods, being goods subject to the control of the Customs, during the period of 24 hours (exclusive of holidays) from the time of the landing of the goods.
- (2) Without limiting subsection (1), where any such goods are detained by any officer of Customs for examination, weighing, analysis, or testing for Customs purposes, no storage charges shall be payable to any controlling authority in respect of the storage of the goods in any transit building or on any wharf during any period of such detention up to 96 hours (exclusive of holidays) from the time of their landing; but after those goods cease to be so detained there shall be payable in respect of them by the importer or exporter such storage charges as the controlling authority determines by bylaws made in that behalf.

35 Security

(1) Before appointing any place to be a wharf, sufferance wharf, Customs containerbase or examining place under this Act, or as a condition of the continuance of any such appointment, the Secretary shall require the controlling authority or other person having the control or use of that wharf, containerbase or examining place to give security to the satisfaction of the Secretary for the payment of duty on all goods that are wrongfully removed by any person from that wharf, containerbase or examining place.

(2) To the extent of that security the controlling authority or other person having the control or use of a wharf, sufferance wharf, Customs containerbase or examining place duly appointed under this Act shall be liable for all duty payable on goods that the Manager is satisfied have been so wrongfully removed, in the same manner as if the goods had been imported by the controlling authority or other person and entered for home consumption, and he shall not be released from his liability under this section by virtue of any other provisions of the Customs Acts or because a security previously given has been cancelled or for any other reason.

(3) All the provisions of this Act as to securities required by the Manager, so far as they are applicable and with all necessary modifications, shall apply to securities under this section.

*Arrival of Ships and Aircraft***36 Ships to come into port of entry only**

(1) The master of any ship shall not, without the written permission of the Manager, cause or permit his ship to enter any place in Niue other than a port of entry, unless driven there by stress of weather, want of provisions, or other necessity.

(2) Every master who acts in contravention of this section commits an offence and shall be liable to a fine not exceeding 10 penalty units.

37 Aircraft to land at Customs airport only

(1) Subject to section 38, the pilot in command of any aircraft shall not, without the permission of the Secretary given with the concurrence of the Secretary for Civil Aviation, cause or permit the aircraft to land at any place other than a Customs airport –

- (a) For the first time on any journey from any country outside Niue; or
- (b) While it is carrying any goods brought in that aircraft from any country outside Niue and not yet delivered from the control of the Customs.

(2) A person importing or concerned in importing any goods in any aircraft shall not bring the goods into Niue at any place other than a Customs airport.

(3) Every person who acts in contravention of any provision of this section commits an offence and shall be liable to a fine not exceeding 10 penalty units.

38 Aircraft landing other than at Customs airport

(1) Section 37 shall not apply in relation to any aircraft flying from any country outside Niue if the aircraft is required under or by virtue of any enactment relating to air navigation or is compelled by accident, stress of weather, or other necessity to land at a place other than a Customs airport.

(2) The pilot in command of any aircraft that is so required or compelled to land –

- (a) Shall, unless the place of landing is an aerodrome, forthwith report to an officer of Customs or to a constable;

- (b) Shall, if the place of landing is an aerodrome, forthwith report the arrival of the aircraft and the place whence it came to the person for the time being in charge of the aerodrome;
 - (c) Shall not, without the consent of an officer of Customs, permit any goods carried in the aircraft to be unloaded from it or any of the crew or passengers to depart from its vicinity;
 - (d) Shall comply with any directions given by an officer of Customs in respect of any goods carried in the aircraft.
- (3) No passenger or member of the crew of any aircraft that is so required or compelled to land shall leave the vicinity of the aircraft without the consent of an officer of Customs or a constable.
- (4) Nothing in this section shall prohibit the departure of crew or passengers from the vicinity of an aircraft or the removal of goods from it if that departure or removal is necessary for reasons of health or safety, or for the preservation of life or property.
- (5) The pilot in command of any aircraft to which this section applies shall not be held to have committed a breach of this section if he proves that –
- (a) No officer of Customs or constable was readily accessible; and
 - (b) He did not permit any goods to be unloaded from the aircraft or any passengers to depart from its vicinity; and
 - (c) As soon as was practicable, he resumed and completed his flight.
- (6) Every person in charge of an aerodrome to whom a report is made under subsection (2) (b) shall forthwith report the arrival of the aircraft to an officer of Customs.
- (7) Every person who acts in contravention of this section commits an offence and shall be liable to a fine not exceeding 10 penalty units.

39 Transshipment of goods

- (1) Except as permitted by the Manager, the master of any coastal ship or the pilot in command of any aircraft (other than an aircraft arriving on a journey from any country outside Niue), shall not, at any place other than a port of entry or Customs airport, cause or permit any goods to be transhipped into his ship or aircraft from –
- (a) Any ship, except a coastal ship; or
 - (b) Any aircraft arriving on a journey from any country outside Niue.
- (2) This Part shall apply –
- (a) To any goods so transhipped otherwise than at a port of entry or Customs airport; and
 - (b) To any ship or aircraft into which such goods are transhipped – as if the goods had been loaded into that ship or aircraft in a country outside Niue.
- (3) Every master or pilot in command who acts in contravention of subsection (1) commits an offence and shall be liable to a fine not exceeding 10 penalty units.

40 Interference with cargo

- If at any time after any ship or aircraft carrying goods brought from any country outside Niue arrives within the territorial limits of Niue and, before a report is made in Niue under section 45 –
- (a) Bulk is broken; or
 - (b) Any alteration is made in the stowage of any goods carried, so as to facilitate the unloading of any part thereof before due report has been made; or

(c) Any part of the goods is staved, destroyed or thrown overboard, or any package is opened –
and the matter is not explained to the satisfaction of a Manager, the master of the ship or pilot in command of the aircraft shall be guilty of an offence and shall be liable to a fine not exceeding 4 penalty units.

41 Boarding of ships at sea

(1) The master of every ship arriving within the territorial limits of Niue shall bring his ship to for boarding on being approached by or hailed or signalled from any vessel in the service of the Customs having hoisted the Customs flag, or from any other vessel in the service of Her Majesty (whether in respect of the Government of Niue or otherwise) having hoisted the proper ensign and pendant; and shall by all reasonable means facilitate the boarding of the ship by the officers of Customs or by an officer of the vessel so approaching, hailing, or signalling.

(2) If the master fails to comply with this section he commits an offence and shall be liable to a fine not exceeding 4 penalty units.

42 Boarding of ships at boarding stations

(1) The master of every ship arriving at any port from any country outside Niue shall bring his ships to for boarding at the boarding station appointed for that port under this Act, and shall by all reasonable means facilitate the boarding of the ship by the officers of Customs.

(2) If the master fails to comply with this section he commits an offence and shall be liable to a fine not exceeding 2 penalty units.

43 Stations of ships

(1) The master of every ship, after his ship has been brought to at the boarding station and boarded by the officer, and after receiving permission from the proper officer of Customs, shall come up to the proper place of mooring or unloading as quickly as practicable without touching at any other place.

(2) After a ship has arrived at the proper place of mooring or unloading it shall not, except by the authority of the Manager or by direction of the harbour authority, be removed therefrom before the discharge of the cargo intended to be discharged at that port.

(3) If any provision of this section is contravened the master shall be guilty of an offence and shall be liable to a fine not exceeding 2 penalty units.

44 Aircraft brought to examination station

(1) The pilot in command of every aircraft arriving at a Customs airport –
(a) For the first time on any journey from any country outside Niue; or
(b) While it is carrying goods brought in that aircraft from any country outside Niue and not yet delivered from the control of the Customs –
shall, on landing, forthwith take his aircraft to the examination station at the airport.

(2) The pilot shall not be held to have committed a breach of subsection (1) if he satisfies the Manager that –

(a) He was prevented, by circumstances over which he had no control, from so taking his aircraft to the examination station; and

(b) After report had been duly made by him under section 45, all the goods carried in the aircraft were conveyed to the examining place at that airport.

(3) After an aircraft has arrived at the examination station it shall not, except by the authority of the Manager or by direction of the controlling authority of the Customs airport, be removed therefrom before the disembarkation of passengers and unloading of cargo intended for that airport has been completed.

(4) If any provision of subsection (1) or (3) is contravened the pilot shall be guilty of an offence and shall be liable to a fine not exceeding 2 penalty units.

45 **Inward report**

- (1) This section shall apply to –
- (a) Every ship, except a coastal ship; and
 - (b) Every aircraft arriving at a Customs airport –
 - (i) For the first time on any journey from any country outside Niue; or
 - (ii) While it is carrying any goods brought in that aircraft from any country outside Niue and not yet delivered from the control of the Customs.
- (2) On the arrival at any port or Customs airport of any ship or aircraft to which this section applies, the master or owner of the ship, or, as the case may be, the pilot in command or owner of the aircraft, shall within such time or times as may be prescribed –
- (a) Deliver to the Manager or other proper officer an inward report in such form and manner, containing such particulars verified by declaration, and with such supporting documents, as may be prescribed; and
 - (b) Answer all questions asked by the Manager or other proper officer relating to the ship or aircraft and its passengers, crew, cargo, stores and voyage.
- (3) If the master or owner or pilot fails to comply with subsection (2) he commits an offence and shall be liable to a fine not exceeding 2 penalty units.
- (4) If the inward report so delivered is false, misleading, or defective in any particular, or if any document so delivered is not genuine or is false or misleading, or if the answer to any question is false or misleading, the master or pilot and the owner shall each be guilty of an offence and shall be severally liable to a fine not exceeding 5 penalty units.

46 **Report of wrecked ships and aircraft**

- (1) When any ship or any aircraft carrying goods taken on board in any country outside Niue and not yet delivered from the control of the Customs is lost or wrecked within the territorial limits of Niue, the master or owner of the ship or, as the case may require, the pilot in command or owner of the aircraft, shall without unnecessary delay report the loss or wreck to the Manager at the port nearest to the place where the ship or aircraft was lost or wrecked, and shall comply, so far as it is possible for him to do so, with section 45(2) (a) and (b).
- (2) If any of the provisions of this section are not complied with, the master or pilot and the owner shall each be guilty of an offence and shall be severally liable to a fine not exceeding 2 penalty units.

Importation

47 **“Importation” defined**

- (1) For all the purposes of this Act, goods shall, except where otherwise expressly provided, be deemed to be imported into Niue if and so soon as in any manner whatever, whether lawfully or unlawfully, they are brought or come within the territorial limits of Niue from any country outside those limits.
- (2) Goods whose destination is outside the territorial limits of Niue, and ships' stores, shall not be deemed to have been so imported unless, while they are within those limits, they are removed from the ship or aircraft in which they arrived there, but if so removed they shall for all the purposes of this Act be deemed to have been brought within the territorial limits of Niue.

48 Prohibited imports

- (1) No person shall import into Niue any of the goods specified in Schedule 1.
- (2) Subject to subsection (3), the Cabinet may by regulation prohibit the importation into Niue of –
 - (a) Any specified goods;
 - (b) Goods of any specified class or classes;
 - (c) All goods except goods of a specified class or specified classes;
 - (d) All goods whatsoever (without specification of any such goods or of the class or classes to which they belong).
- (3) The Cabinet may exercise the powers conferred on it by subsection (2) if in its opinion such exercise is necessary –
 - (a) In the public interest; or
 - (b) For the protection of the revenue; or
 - (c) For the efficient administration of the Customs Acts; or
 - (d) For the prevention of fraud or deception, whether in relation to the Customs Acts or not; or
 - (e) For the prevention of any communicable disease; or
 - (f) In respect of goods whose sale in Niue would be an offence against the law.
- (4) Any prohibition imposed under this section –
 - (a) May be general; or
 - (b) May be limited to the importation of goods from any specified place or by or from any specified person or class of persons; or
 - (c) May, whether general or limited, be absolute or conditional.
- (5) Any such conditional prohibition may allow the importation of goods –
 - (a) Under the authority of a licence, or a permit (whether granted before or after the importation of the goods), or a consent to be granted by the Minister or by any other prescribed person upon or subject to such terms or conditions (if any), not inconsistent with the provisions of the prohibition, as may be imposed by the Minister or other person granting the licence, permit, or consent; or
 - (b) On or subject to any other prescribed conditions whatsoever.
- (6) [Repealed by 2004/270]
- (7) Every person commits an offence against this section who –
 - (a) Imports into Niue or unships or lands in Niue any goods whose importation is prohibited by this section; or
 - (b) Commits any breach of, or fails in any respect to comply with, any term or condition on or subject to which there has been granted, under any regulation made under this section, any licence, permit, or consent under the authority of which any goods are imported into Niue.
- (8) Every person commits an offence against this section who –
 - (a) Is knowingly concerned in any importation, unshipment, landing, breaching or non-compliance to which any provision of subsection (7) applies; or
 - (b) Without lawful justification or excuse, removes from any wharf, Customs airport, Customs containerbase or examining place any imported goods whose importation constitutes an offence against this section; or

- (c) Is knowingly concerned in or connives at the removal from any wharf, Customs airport, Customs containerbase or examining place of any goods whose importation constitutes an offence against this section.

(9) Where any goods are imported into Niue under the authority of a licence or permit or consent granted under regulations made under this section, and any person has knowingly made any false declaration or statement –

- (a) For the purpose of obtaining that licence, permit, or consent; or
- (b) As to compliance with any condition on or subject to which the licence, permit, or consent was granted –

he shall be guilty of an offence against this section.

(10) Every person who commits an offence against this section is liable to a fine not exceeding 10 penalty units or 3 times the value of the goods to which the offence relates, whichever sum is the greater.

(11) Any goods in respect of which any offence against this section is committed shall be forfeited.

(12) No goods otherwise dutiable shall be exempt from duty because their importation is unlawful.

49 Importation of brandy, whisky and rum

(1) Except as provided in subsection (3), no brandy imported into Niue shall be delivered from the control of the Customs unless the Secretary is satisfied that –

- (a) It is wholly the distillate of the fermented juice of fresh grapes; and
- (b) It has been matured by storage in wood for a period of not less than 3 years.

(2) Except as provided in subsection (3), no whisky or rum imported into Niue shall be delivered from the control of the Customs unless the Secretary is satisfied that it has been matured by storage in wood for a period of not less than –

- (a) Three years in the case of whisky; and
- (b) Two years in the case of rum.

(3) Any brandy, whisky, or rum that does not conform to the requirements of this section may be delivered from the control of the Customs, by direction of the Secretary, if he is satisfied that it is intended for scientific or industrial use or for such other purposes as he may permit.

50 Goods not to be landed or dealt with without permission

(1) Except as provided by this Act, no goods that are subject to the control of the Customs, and no goods that would become subject to that control if unshipped or landed, shall be unshipped or landed from any ship or aircraft to which this subsection applies, except pursuant to –

- (a) An entry made and passed in respect of those goods; or
- (b) A written permit granted by the Manager in respect of it:

Provided that if the landing of goods from any ship or aircraft is necessary for reasons of health or safety, or for the preservation of life or property, and if the permission of the Manager or other proper officer cannot readily be sought, the goods may be landed without such permission.

(2) Subsection (1) shall apply to:

- (a) Every ship, except a coastal ship; and
- (b) Every aircraft arriving at a Customs airport while carrying any goods brought in that aircraft from any country outside Niue.

(3) Subsection (1) shall not apply to any pallet that has a value of less than 0.5 penalty units and is imported laden.

(4) Every person who acts in contravention of this section commits an offence and shall be liable to a fine not exceeding 4 penalty units and the goods in respect of which the offence is committed shall be forfeited.

51 [Repealed 11/31/1968 (NZ)]

52 Method of unshipment

(1) All goods on any ship that are subject to the control of the Customs, or that would be subject to that control if unshipped or landed, shall, if unshipped, be either –

- (a) Landed at a wharf directly, or after direct conveyance to a wharf by water within the limits of the port; or
- (b) Transshipped directly, or after direct conveyance by water within the limits of the port, to the ship into which they are to be transshipped for export or removal.

(2) All goods on any aircraft, being goods brought by that aircraft from any country outside Niue shall, if unshipped, be either –

- (a) Landed directly at an examination station or, if the aircraft does not come to an examination station, conveyed directly from the aircraft to the examining place at the Customs airport; or
- (b) Transshipped directly, or by direct conveyance within a Customs airport, to the aircraft into which the goods are to be transshipped for export or removal.

(3) Every person who is knowingly concerned in any dealing with goods in contravention of this section commits an offence and shall be liable to a fine not exceeding 2 penalty units.

52A Removal of goods

(1) Except as provided by this Act, no goods that are subject to the control of the Customs shall be removed from any wharf, Customs airport, Customs containerbase, or examining place except –

- (a) With the permission of the proper officer of Customs after entry has been made and passed in respect of it; or
- (b) In pursuance of a written permit granted by the Manager in respect of it.

(2) Any bulk cargo container (including its contents, if any) may, in pursuance of a written permit granted by the Manager, be removed by the holder of the permit –

- (a) From a wharf to a Customs containerbase or an examining place only; or
- (b) From an examination station or an examining place at a Customs airport to a Customs containerbase or an examining place only.

(3) Subsection (1) shall not apply to any pallet that has a value of less than twenty dollars and is imported laden.

(4) Every person who acts in contravention of any provision of this section commits an offence and shall be liable to a fine not exceeding 4 penalty units, and the goods in respect of which the offence is committed shall be forfeited.

52B Manager's permits

(1) Goods unshipped, landed, or removed under a Manager's permit shall be dealt with under the permit and with any directions given by the Manager.

(2) This Act shall apply to such goods in the same manner as if they had not been unshipped, landed, or removed, and for this purpose they shall be deemed to have remained upon or in the ship, aircraft, wharf, Customs airport, Customs containerbase, or examining place from which they were so unshipped, landed, or removed.

(3) If at any time such goods are dealt with by any person contrary to the terms of the permit or to the directions of the Collector, they shall be deemed for all the purposes of this Act to have been unlawfully unshipped, landed, or removed by that person as if the permit had not been granted.

(4) Any permit issued for the unshipment, landing, or removal of bulk cargo containers shall be issued to the controlling authority of a Customs containerbase or an examining place and shall relate to such containers generally.

(5) A permit for the unshipment, landing or removal of pallets may relate to pallets generally, or to pallets imported in any particular ship or aircraft, or to any specified class of pallets, or to pallets imported in specified circumstances.

(6) Any permit may be granted subject to such conditions and restrictions as the Manager thinks fit.

(7) Subject to subsections (8) to (12), if in the case of a permit granted to the controlling authority of a Customs containerbase or an examining place under subsection (4) the Manager has reasonable cause to believe that the controlling authority has committed a breach of this Act or of any regulations thereunder or of any condition or restriction imposed under this Act or such regulations, he may, by notice in writing to the controlling authority, revoke the permit, or suspend it for any period specified in the notice.

(8) Before revoking or suspending any such permit, the Manager shall give to the controlling authority notice in writing stating that he intends to do so and that within 14 days after the receipt of the notice the controlling authority may appeal to the Minister against the Manager's decision. The notice shall also state the reasons why he intends to revoke or suspend the permit.

(9) (a) Within 14 days after the receipt by the controlling authority of the notice under subsection (8), the controlling authority may appeal to the Minister by giving to the Manager a notice of appeal in writing addressed to the Minister.

(b) The notice of appeal shall state fully the grounds of the appeal.

(10) The Minister shall consider the notice of appeal, and any further representations made by the controlling authority within the said period of 14 days or within such further period as he may allow, and, if the controlling authority so requests, shall afford to the controlling authority an opportunity of being heard by him within such period or further period aforesaid.

(11) On any such appeal the Minister may confirm, reverse, or modify the Manager's decision and the Minister's decision shall be final.

(12) Where a permit is revoked or suspended under this section, the revocation or suspension shall take effect on such date as is specified in the notice of revocation or suspension or, if no date is so specified, from the time of the receipt by the controlling authority of the notice of revocation or suspension.

53 Kinds of entry of imported goods

Except as provided in section 54 or 54A all imported goods, when they have arrived at their port of discharge, or with the consent of the Manager at any time before their arrival, shall be there entered by the importer –

- (a) For home consumption; or
- (b) For warehousing; or
- (c) For export; or
- (d) For removal.

54 Passengers' effects exempt form entry

(1) Goods being the personal baggage or household or other effects belonging to and accompanying passengers in any ship or aircraft, and not being dutiable goods imported for the purpose of sale or exchange or as trade samples, may, subject to any prescribed conditions, be imported or exported without entry.

(2) The Manager may require entry of any such goods.

54A Certain goods exempt from entry

The following goods may, subject to any prescribed conditions, be imported or exported without entry –

- (a) Such bulk cargo containers, and such wagons, trolleys, or wheeled pallets specially designed for the handling of bulk cargo containers as may be prescribed;
- (b) Any pallet which has a value of less than twenty dollars and is imported laden:

Provided that in any case where the Collector is satisfied that the pallet is imported for sale or re-use in Niue he may require that entry be made;

- (c) Any pallet which has a value of less than twenty dollars and is imported unladen, and any pallet (whether imported laden or unladen) which has a value of twenty dollars or more, being in either case a pallet which is imported temporarily and in respect of which a Manager's permit for removal is granted under section 52A;
- (d) Such other goods or classes of goods as may be prescribed.

55 When entry to be made

(1) Subject to section 57, entries shall be made of all goods unshipped or to be unshipped at any port, or removed to any port, within such respective times after the arrival of the goods at that port as may be prescribed, or within such further time (if any) as the Manager may see fit to allow, but so that, if the goods are placed in quarantine, at least 7 days shall be allowed for entry after their release from quarantine.

(2) If default is made in the entry of any goods pursuant to this section, the Manager may cause the goods to be removed to a warehouse; and if the goods are not claimed and entries passed therefor within 3 months after such removal, duty shall thereupon become due and payable on the goods as if entered for home consumption, and the goods may be sold by the Manager.

(3) If any goods in respect of which default has been so made are, in the opinion of the Manager of a perishable nature, they may be sold at any time the Manager thinks fit, either before or after warehousing.

56 Vessels or aircraft imported

(1) Notwithstanding anything in this Act, entries shall be made in respect of such ships and other vessels, and in respect of such aircraft, being ships, vessels, and aircraft imported into Niue otherwise than as cargo, as the Minister may determine by notice in the *Gazette*.

(2) For the purpose of making entries in respect of any ship or vessel or aircraft imported into Niue otherwise than as cargo, and for all other purposes of the Customs Acts, every such ship, vessel, or aircraft shall be deemed to have been imported as cargo and to have been unshipped as such on its arrival.

57 Licence or permit for restricted goods

Where under any enactment the importation of any goods or of goods of any class or kind is prohibited except under the authority of a licence or permit, the Manager or other proper officer may refuse to accept an entry for those goods, or for any goods of that class or kind, until a licence or permit for their importation is produced to him.

58 Sight entries

(1) If the importer cannot immediately supply the full particulars for making an entry, and makes by himself or his agent a declaration to that effect before the Manager or other proper officer, he may make a sight entry in the prescribed form.

(2) A sight entry, on being passed by the Manager, shall be warrant for the landing and examination of the goods by the importer.

(3) The importer of the goods included in a sight entry shall, within 7 days after the passing of that entry, or within such further time as is allowed by the Manager, make complete entry of it; and if he makes default in doing so the goods may be dealt with by the Collector as if no sight entry had been made.

(4) Complete entry of the goods included in any sight entry shall be made in the same manner as if the sight entry had not been made.

59 Delivery of goods on sight entry

(1) The Manager may deliver goods from the control of the Customs for home consumption in pursuance of a sight entry, but only on receiving such security as he thinks sufficient to cover the full amount of duty.

(2) Complete entry of the goods for home consumption shall thereafter be made by the importer within such time as the Manager appoints; and if the importer makes default in making such entry he commits an offence and shall be liable to a fine not exceeding 2 penalty units.

(3) Goods so delivered on a sight entry shall, on such delivery, be deemed to have been entered for home consumption.

60 Goods for home consumption

Except as provided in section 181 when any imported goods have been entered for home consumption the importer shall forthwith pay to the Manager or other proper officer the duties (if any) payable thereon.

61 Importer may be required to furnish samples and illustrations

The importer of any goods shall furnish free of charge, for the use of the Customs, such samples or such illustrations, drawings, or plans relative to the goods as may be required by the Manager for purposes of analysis, classification, or record.

*Removal within Niue Exportation***62 Removal of imported goods within Niue**

(1) No imported goods subject to the control of the Customs shall be placed on any ship, boat, lighter, or other conveyance for removal within Niue until entry for removal has been duly made and passed therefor in the prescribed form and manner.

(2) When any imported goods have been entered for removal the importer shall forthwith remove them to another port of entry in accordance with the entry, without payment of duty in the first instance.

(3) The Manager may require from the importer security for the due removal of the goods in accordance with the entry, and for the payment of the duty thereon.

(4) When the goods so removed have arrived at their port of destination, or with the consent of the Manager at any time before their arrival, they shall be there entered for home consumption, warehousing, export, or further removal, in the same manner as if no former entry had been made therefor, and this Act shall apply accordingly.

(5) When any goods so entered for removal to another port arrive at that port they shall be forthwith brought to a wharf or an examining place or a Customs containerbase (as the case may require) appointed at that port for the examination of goods subject to the control of the Customs.

(6) If any goods are dealt with in contravention of subsection (1) they shall be forfeited; and any person so dealing with them commits an offence and shall be liable to a fine not exceeding 4 penalty units.

63 Export subject to control of Customs

(1) (a) No goods subject to the control of the Customs shall be placed on board any ship, boat, lighter, or other vessel or loaded into any aircraft or packed into any bulk cargo container in a Customs containerbase, to be shipped for export until entry has been duly made and passed therefor in the prescribed form and manner.

(b) Where the Manager is satisfied in respect of any goods that their exportation is not prohibited by any regulation made under section 70 he may permit such entry to be made within 6 days after the goods have been so shipped.

(2) When any imported goods have been entered for export the importer shall forthwith export them to a country outside Niue in accordance with the entry and with the provisions of this Act relating to the exportation of goods and, except as provided in section 181, no duty shall be payable thereon.

(3) If any goods are dealt with in contravention of subsection (1), they shall be forfeited; and any person so dealing with them commits an offence and shall be liable to a fine not exceeding 4 penalty units.

64 Entry for export of goods not subject to control of Customs

(1) When goods not subject to the control of the Customs are shipped for export, entry thereof for export shall be made in the prescribed form and manner, before shipment or within 6 days after the shipment, or within such further time as may be prescribed.

(2) If entry is not made in accordance with this section, the exporter and every person knowingly concerned in the exportation or intended exportation of the goods shall be guilty of an offence against this Act.

65 Method of shipment

(1) Goods subject to the control of the Customs for export or removal within Niue shall be brought to the ship, aircraft, or vehicle in which they are to be exported or removed by the most direct means reasonably available.

(2) Every person who deals with or is knowingly concerned in dealing with goods in contravention of this section commits an offence and shall be liable to a fine not exceeding 2 penalty units.

66 Goods not shipped according to entry

(1) If any goods entered for export or removal within Niue are not shipped according to the entry, the person making the entry shall immediately give to the Manager notice of the failure to ship and, as required by the Manager, cancel or amend the entry.

(2) Every person commits an offence against this Act who fails to comply with this section.

67 Information and securities in respect of exported goods

(1) When any goods have been entered for export the Manager may require the person making the entry to produce all documents relating to the goods, and, if the goods are subject to the control of the Customs, to give security that they will be landed at the place for which they are entered or otherwise accounted for to the satisfaction of the Manager.

(2) If required by the Secretary, a certificate in the prescribed form, to be given by such person as may be prescribed, shall be produced by the exporter in proof of the due landing, in accordance with the export entry, of any goods which at the time of shipment were subject to the control of the Customs.

(3) A Manager may refuse to allow any other goods subject to the control of the Customs to be exported by any person who fails within a reasonable time to produce any certificate so required of the landing of any such goods previously exported by him, or to account for such goods to the satisfaction of a Manager.

68 Exported goods not to be relanded

(1) No goods shipped for export shall be unshipped or landed, except in a country outside Niue, without the permission of the Manager or some other proper officer of Customs.

(2) If any goods which at the time of shipment were subject to the control of the Customs are unshipped or landed in breach of this section, they shall be forfeited.

(3) If any goods are unshipped or landed in contravention of this section, the master and owner of the ship, or the pilot in command and owner of the aircraft and every person knowingly concerned in such unshipment or landing, shall each be guilty of an offence and shall be severally liable to a fine not exceeding 2 penalty units.

69 Time of exportation

For the purposes of this Act the time of exportation of goods shall be deemed to be the time at which the exporting ship leaves the limits of her last port of call in Niue or at which the exporting aircraft departs from the last Customs airport at which it landed immediately before proceeding to a country outside Niue.

70 Prohibited exports

- (1) Cabinet may, by regulation, prohibit the exportation of any goods –
 - (a) Being arms, explosives, or military or naval stores, or being goods which in his opinion may, if exported, be used as or in the manufacture of arms, explosives, or military or naval stores or for any purpose of war; or
 - (b) Being goods the prohibition of whose exportation is in his opinion necessary for the preservation of the flora or fauna of Niue; or
 - (c) Being goods that have not been prepared or manufactured in accordance with or do not conform to any conditions as to purity, soundness, or freedom from disease imposed by any laws, rules, or regulations in force under any Act; or
 - (d) Being goods which would in his opinion be the source of danger to life or property at sea or in the air; or
 - (e) Being goods the prohibition of whose exportation is in his opinion necessary in the public interest.
- (2) The powers conferred by subsection (1) shall extend to authorise the prohibition of the exportation of –
 - (a) Any specified goods;
 - (b) Goods of any specified class or classes;
 - (c) All goods except goods of a specified class or specified classes;
 - (d) All goods whatsoever (without specification of such goods or of the class or classes to which they belong).
- (3) Any prohibition imposed under this section –
 - (a) May be general; or
 - (b) May be limited to the exportation of goods to any specified place or by or to any specified person or class of persons; or
 - (c) May, whether general or limited, be absolute or conditional.
- (4) Any such conditional prohibition may allow the exportation of goods –
 - (a) Under the authority of a licence, permit, or consent to be granted by the Minister or by any other prescribed person on or subject to such terms or conditions (if any), not inconsistent with the provisions of the prohibition, as may be imposed by the Minister or person granting the licence, permit, or consent; or
 - (b) On or subject to any other prescribed conditions whatsoever.
- (5) [Repealed by 2004/270]
- (6) Every person commits an offence against this section who –
 - (a) Exports or ships, with intent to export, or conspires with any other person (whether that other person is in Niue or not) to export, any goods from Niue, contrary to the terms of any prohibitions in force with respect to it; or
 - (b) Commits any breach of, or fails in any respect to comply with, any term or condition on or subject to which there has been granted, under any regulations made under this section, any licence, permit, or consent; or
 - (c) Knowingly makes any false declaration or statement for the purpose of obtaining any such licence, permit, or consent; or
 - (d) Is knowingly concerned in any exportation, shipment, breach, or non-compliance to which paragraph (a) or paragraph (b) applies.
- (6A) Any person who commits an offence against this section is liable to a fine not exceeding 10 penalty units or 3 times the value of the goods to which the offence relates, whichever is the greater.

(7) All goods shipped on board any ship or aircraft for the purpose of being exported contrary to the terms of any such prohibition in force with respect to it and all goods waterborne for the purpose of being so shipped and exported, shall be forfeited.

(8) No such prohibition shall apply to goods that are already loaded into the exporting ship or aircraft at the time when the prohibition comes into force.

(9) Any prohibition under this section of the exportation of any goods shall, unless otherwise specified, extend and apply to the shipment of such goods for use as ships' stores.

71 Ships in which goods may be exported

(1) Except by the permission of the Manager, no goods subject to the control of the Customs shall be exported in any ship of less than 50 tons gross register.

(2) If any such goods are exported or loaded on board any ship for the purpose of being exported in contravention of this section, the owner and the master of the ship, and any person knowingly concerned in such exportation or landing, shall each be guilty of an offence and shall be severally liable to a fine not exceeding 2 penalty units and the goods shall be forfeited.

Departure of Ships and Aircraft

72 Clearance of ships and aircraft

(1) Unless he has received from the Manager a certificate of clearance in the prescribed form –

(a) The master of any ship, except a coastal ship, shall not depart with his ship from any port; and

(b) The pilot in command of any aircraft shall not depart with his aircraft from any Customs airport for any country outside Niue.

(2) If any provision of this section is contravened, the master and the owner of the ship or the pilot in command and the owner of the aircraft, shall each be guilty of an offence and shall be severally liable to a fine not exceeding 10 penalty units.

(3) If the master of any ship or the pilot in command of any aircraft attempts or threatens to commit an offence against this section, the Manager or other proper officer may (in addition to any power of seizure and detention under Part 13 for any offence so committed) seize and detain the ship or aircraft until a certificate of clearance has been obtained, and section 292 shall apply in the same manner as if the ship or aircraft had been seized under Part 13.

73 Report outwards

(1) Before any certificate of clearance is granted to the master of any ship or the pilot in command of any aircraft, the master or pilot shall –

(a) Deliver to the Manager or other proper officer a report outwards in such form and manner, containing such particulars verified by declaration, and with such supporting documents, as may be prescribed; and

(b) Answer all questions asked by the Manager or other proper officer relating to the ship or aircraft and its passengers, crew, cargo, stores, and intended voyage or journey; and

(c) Produce such other documents as may be required by the Manager or other proper officer relating to the ship or aircraft and her cargo.

(2) If the report so delivered is false, misleading, or defective in any particular, or if the answer to any such question is false or misleading, or if any

document so delivered or produced is not genuine is false or misleading, the master or pilot shall be guilty of an offence and shall be liable to a fine not exceeding 5 penalty units.

74 Entitlement to clearance

- (1) Any ship or aircraft shall be entitled to a certificate of clearance when –
 - (a) Not less than 24 hours have elapsed after application for the clearance has been made to the Manager; and
 - (b) All inward cargo and stores of the ship or aircraft have been duly accounted for and all the other requirements of the law in regard to the ship or aircraft and her inward and outward cargo and stores have been duly complied with.
- (2) Nothing in this section shall prevent the Manager from granting the certificate at any time after application therefor if he is satisfied that subsection (1) (b) has been complied with.

75 Boarding of outward ships and aircraft

- (1) The master of every ship departing from any port shall, if required to do so by the proper officer, bring the ship to at the boarding station appointed for the port, and by all reasonable means facilitate boarding by officers of Customs.
- (2) The pilot in command of every aircraft departing from a Customs airport for any country outside Niue shall, if so required by the Manager or other proper officer, bring his aircraft to the examination station and by all reasonable means facilitate boarding by officers of Customs.
- (3) The master of any ship or pilot in command of any aircraft shall not depart with his ship or aircraft from any port or Customs airport with any officer of Customs on board in the discharge of his duty, without the consent of that officer.
- (4) If the master or pilot acts in contravention of this section he commits an offence and shall be liable to a fine not exceeding 4 penalty units.

76 Production of clearance

- (1) The master of every ship and the pilot in command of every aircraft to whom a certificate of clearance has been granted shall, on demand by an officer of Customs, produce the certificate for examination by the officer and answer any questions the officer may put to him concerning the ship or aircraft and its passengers, crew, cargo, stores, and intended voyage or journey.
- (2) If the master or pilot acts in contravention of this section he commits an offence.

77 Departure to be from port of entry or Customs airport only

- (1) Except with the prior permission of the Manager, no ship shall –
 - (a) Depart for any country outside Niue from any place in Niue other than a port of entry, save after being driven there by stress of weather, want of provisions, or other necessity; or
 - (b) Having cleared from any place in Niue for any country outside Niue, go to any place in Niue other than a port of entry, unless driven there by stress of weather, want of provisions, or other necessity.
- (2) Except with the prior permission of the Secretary, given with the concurrence of the Secretary for Civil Aviation, no aircraft shall –
 - (a) Depart from any place in Niue, other than a Customs airport, for any country outside Niue; or

- (b) Having obtained a certificate of clearance at any Customs airport in Niue, land at any place in Niue other than a Customs airport.
- (3) (a) Nothing in subsection (2) (b) shall apply in relation to any aircraft flying to any country outside Niue if the aircraft is required under or by virtue of any enactment relating to air navigation, or is compelled by accident, stress of weather, or other necessity, to land at a place other than a Customs airport.
- (b) Where any such aircraft is so required or compelled to land, section 38 (2) to (6) shall apply.
- (4) If any provision of this section, or of section 38 (2) to (5) (as applied by this section), is contravened, the master and the owner of the ship or the pilot in command and the owner of the aircraft shall be guilty of an offence and shall be severally liable to a fine not exceeding 5 penalty units.

Stores for Ships and Aircraft

78 Stores exempt from duty

(1) Subject to any prescribed restrictions, such an allowance of stores as the Manager thinks adequate for the use of passengers and crew and the service of every ship or aircraft about to depart (whether directly or otherwise) for any country outside Niue may be shipped free of duty on entry for export under section 53 or from any warehouse, or under drawback of duty.

(2) Such stores shall be shipped pursuant only to an order of the Manager on request made in the prescribed form and manner by the master or owner of the ship or by the pilot in command or owner of the aircraft.

(3) On the issue of any such order in respect of warehoused goods, the stores therein mentioned shall be forthwith shipped in pursuance of the order in the same manner as if they had been entered for export, and all the provisions of this Act as to warehoused goods entered or shipped for export, so far as they are applicable, shall apply to it accordingly.

(4) On the issue of any such order in respect of goods to be shipped under drawback, the goods shall be forthwith entered in the prescribed form and manner for shipment as ships' stores under drawback, and, save so far as is otherwise prescribed all the provisions of this Act relating to drawback, so far as they are applicable, shall apply thereto accordingly as if the goods were for export and as if the master or owner of the ship or the pilot in command or owner of the aircraft, as the case may be, were the exporter.

(5) –

(6) Without limiting the power to make regulations conferred by section 306, regulations may be made under that section –

- (a) Determining what classes of goods are, or are not, to be deemed stores within the meaning of this section;
- (b) Extending the provisions of this section, subject to such restrictions and conditions as are deemed necessary, to whalers and other ships departing from Niue and returning to it without going to countries outside Niue.

79 Stores subject to duty

(1) If any ship or aircraft not being entitled to receive stores free of duty under section 78 leaves any port of entry or Customs airport having on board dutiable stores shipped under the authority of that section or loaded elsewhere than in Niue, duty shall be payable on those stores as if imported and entered for home consumption so far as they are consumed at any place, or in the course of

any voyage or journey between any 2 places, within the territorial limits of Niue at any time before the ship or aircraft becomes entitled under the said section 78 to receive stores free of duty.

(2) Entries shall be made and passed and duty paid on such stores in the prescribed manner and at the prescribed time.

(3) The owner and master of the ship or the owner and pilot in command of the aircraft shall be deemed to be the importers of such stores.

(4) Any ship or aircraft to which this section relates shall not be entitled to a certificate of clearance at any port or Customs airport until duty under this section has been paid.

PART 4

WAREHOUSES

Licensed Warehouses

80 Licensing of warehouses

(1) Any place of security for the deposit, keeping, and securing of dutiable goods without payment of duty on it may be licensed under this Act for any one or more of the following purposes –

(a) As a warehouse for the warehousing of dutiable goods generally;
or

(b) As a warehouse for the warehousing of such class or classes of dutiable goods as may be specified in the licence; or

(c) As a manufacturing warehouse (including a tobacco manufacturing warehouse) in which dutiable goods may be warehoused for use in such manufacture or processing of goods as is permitted by this Act or by regulations under this Act to be carried on in manufacturing warehouses.

(2) Any 2 or more places of security may be licensed as one warehouse.

(3) Any such warehouse may be situated in any port or outside the limits of any port.

81 Application for licence

(1) Every person who desires to obtain a licence for a warehouse shall make application therefor to the Manager.

(2) The application shall be made by the occupier of the premises to which it relates.

82 Security for warehouse

(1) Before any licence for a warehouse is granted the applicant therefor shall, if the Secretary so requires, give such security as the Secretary approves, and in such sum as he requires, for the payment of all duties which may become payable by the licensee under this Act in respect of any goods warehoused in that warehouse.

(2) The Secretary may require such security to be given by any such licensee in substitution for any security theretofore given by him, and may cancel the last-mentioned security accordingly.

(3) If any licensee fails or refuses to give any security required from him under this section, his licence may be cancelled by the Secretary by notice published in the *Gazette*.

83 Grant of licence

On receipt of an application from the occupier of any warehouse, the Secretary may grant to the occupier a licence for the warehouse, subject to section 82 and to such conditions as he may direct, or may refuse the application.

84 Harbour Boards and local authorities may hold licences

Notwithstanding anything to the contrary in any Act, any Harbour Board or any public or local authority having the control of management of any harbour may receive and hold a licence under this Act in respect of any warehouse in the occupation of that Board or public or local authority, and shall as the licensee thereof be subject to the same provisions, obligations, and liabilities as any other licensee under this Act.

85 Licence fees

(1) There shall be payable to the Crown by the licensee of every warehouse an annual licence fee.

(2) The annual licence fee shall consist of –

- (a) A sum computed on the basis of the cubic contents of the warehouse or otherwise in accordance with prescribed scales; and
- (b) In the case of a warehouse which in the opinion of the Secretary on account of its distance from the Customhouse or for any other reason, requires supervision involving unusual expenditure, an additional sum to be determined by the Secretary, not exceeding in any case \$1,500 a year; and
- (c) In the case of any warehouse, if the Secretary determines, an additional sum, to be fixed by the Secretary sufficient to cover the reasonable expenses incurred by the supervising officer in travelling between his office or station and the warehouse.

(3) The measurement of the cubic contents of any warehouse shall be in accordance with regulations made under this Act.

(4) Every such licence fee shall be due and payable in advance on 5 January in each year.

(5) On the first grant of a licence a proportionate part of the proper annual licence fee, for the period elapsing between the time at which the licence takes effect and the next succeeding 5 January shall be due and payable by the licensee.

(6) On the cancellation, termination, or surrender of any licence, the licensee shall be entitled to a refund or remission of a proportionate part of the licence fee for the current year of the licence, calculated from the date of such cancellation, termination, or surrender to the end of that year.

86 [Repealed by 2004/270]

87 Termination of licence

Every licence for a warehouse shall be terminable by the Minister by not less than 3 months' notice in writing to the licensee.

88 Cancellation of licence

Any licence for a warehouse may be cancelled by the Secretary by notice published in the *Gazette* –

- (a) If any licence fee payable in respect of the warehouse is in arrear and unpaid for 1 month after the due date; or
- (b) If the licensee is convicted of any offence against the Customs Acts;

or

- (c) If the warehouse becomes, in the opinion of the Secretary, unfit for the purpose for which it was licensed; or
- (d) If the licensee becomes bankrupt or insolvent; or
- (e) If the warehouse ceases to be in the occupation of the licensee.

89 Transfer of licence

A licence for a warehouse may be transferred by the licensee, with the consent of the Secretary but not otherwise, to any successor of the licensee in the occupation of the warehouse.

90 Surrender of licence

A licence for a warehouse may be surrendered by the licensee by 1 month's notice in writing to the Secretary.

91 Closing of warehouse

On the termination, cancellation or surrender of the licence for any warehouse, or on any warehouse otherwise ceasing to be licensed under this Act, the warehouse shall be closed, and all goods therein that are subject to the control of the Customs shall be removed to some other warehouse by the owner of the goods, or shall be exported or entered for home consumption, or shall be otherwise dealt with as the Secretary may permit.

92 Use of manufacturing warehouses

The use of a manufacturing warehouse for the purpose of manufacture shall be subject to such conditions, restrictions, or exceptions as are prescribed by regulations under this Act or by the licence for that warehouse or by the directions of the Secretary.

93 Structural alterations of warehouse

(1) No structural additions to or structural alterations of any warehouse, and no new means of access or egress into or out of any warehouse, shall be made without the written permission of a Manager.

(2) If any provision of this section is contravened, the licensee shall be guilty of an offence and shall be liable to a fine not exceeding 2 penalty units.

Warehousing of Goods

94 Entry for warehousing

When any imported goods have been entered for warehousing the importer shall forthwith warehouse them in accordance with the entry without payment of duty in the first instance, except where otherwise provided in this Act.

95 Account of warehoused goods

(1) On the entry of any goods to be warehoused, the proper officer shall take an account of the goods in such manner and at such time and place as the Secretary may direct, either generally or in any particular case.

(2) Except where otherwise provided in this Act, the account so taken shall be that upon which all duties payable on those goods shall be ascertained and paid.

96 Receipt for warehoused goods

When any goods entered for warehousing have been duly deposited in the warehouse the licensee shall sign a receipt for them in the prescribed form.

97 Removal of goods to warehouse

If any goods entered to be warehoused are not forthwith warehoused accordingly by the importer, the Manager may remove them to a warehouse.

98 Packing of warehoused goods

Goods entered for warehousing shall be deposited in the warehouse in the packages in which they were imported, except goods repacked or skipped on a wharf with the permission of the Manager.

99 Repacking of warehoused goods

(1) The Manager may, as prescribed by regulations under this Act, permit the importer to sort, bottle, pack, or repack goods in any warehouse.

(2) In every such case a fresh account of the goods so dealt with shall be taken by the proper officer, and shall be substituted for the original account.

100 Duties of licensee

(1) The licensee of every warehouse shall –

- (a) Stack and arrange the goods in the warehouse so that reasonable access to and examination of every package may be had at all times;
- (b) Provide sufficient lights and just scales and weights for the use of the officers of Customs;
- (c) Provide all labour and materials requisite for the storing, examining, packing, marking, cooping, weighing, and taking stock of the warehoused goods whenever the Manager may desire.

(2) Every licensee who fails to comply with this section commits an offence and shall be liable to a fine of 0.5 penalty units for every day during which the offence has continued.

101 Access of officers of Customs to warehouse

The Manager and other proper officers shall at all hours of the day and night have access to every part of any warehouse and power to examine the goods in it, and may for that purpose break open the warehouse or any premises necessary to be passed through for obtaining access to it.

102 Restriction on right of warehousing

Without limiting the power to make regulations conferred by section 306, regulations may be made under that section –

- (a) Prescribing in respect of any class of goods the minimum quantity that may be entered for warehousing or cleared from a warehouse;
- (b) Prohibiting or imposing restrictions or conditions on the warehousing of dangerous goods, or of goods or classes of goods in respect of which any such prohibition, restriction, or condition is deemed necessary for any reason.

103 Sale of goods on which dues in arrear

If the warehouse dues on any warehoused goods are in arrear for 6 months or more, the goods may be sold by the Manager; but in the case of a licensed warehouse this power of sale shall not be exercised except at the request of the licensee.

104 Goods not to be removed without permission

(1) Except as provided by this Act, no goods that are subject to the control of the Customs shall be removed from any warehouse except –

- (a) With the permission of the proper officer of Customs after entry has been made and passed in respect of it; or
- (b) Under a written permit granted by the Manager in respect thereof.

(2) Every person who acts in contravention of this section commits an offence and shall be liable to a fine not exceeding 4 penalty units or the value of the goods in respect of which the offence is committed, whichever sum is the greater.

(3) Any goods removed in contravention of this section shall be forfeited.

105 Temporary removal of warehoused goods

(1) Subject to any regulations made under this Act, the Manager may permit the taking of warehoused goods out of the warehouse without payment of duty for any temporary purpose, for such convenient time and in such suitable quantities as he may approve, if sufficient security is taken for the return of the goods and payment of duty thereon.

(2) So long as any goods so removed remain subject to the control of the Customs they shall be deemed to be constructively warehoused in the warehouse from which they were so removed, and all the provisions of this Act shall continue to apply thereto accordingly.

106 Liability for duty on missing goods

(1) If any dutiable goods are removed from a warehouse by any person without the authority of the proper officer of Customs, or if any dutiable goods, after being warehoused, are not produced by the licensee to the Manager or other proper officer on demand made at the warehouse and are not accounted for as having been lawfully delivered from the warehouse, duty shall thereupon become due and payable on those goods as if entered for home consumption.

(2) The duty shall constitute a debt due to the Crown by the licensee and the importer, who shall be jointly and severally liable therefore, subject to this Act relating to refunds and remissions of duty.

(3) In this section, “licensee” includes any person who was the licensee of the warehouse at any time between the warehousing of the goods and the payment of the duties thereon, and all such persons shall be jointly and severally liable accordingly.

*Clearance of Warehoused Goods***107 Kinds of entry of warehoused goods**

Warehoused goods may be entered by the importer in the prescribed manner –

- (a) For home consumption; or
- (b) For export; or
- (c) For removal for warehousing elsewhere.

108 Entry for home consumption

When entry for home consumption has been made in respect of any warehoused goods the person making the entry shall forthwith pay to the Manager or other proper officer the duties, if any, payable thereon.

109 Entry for export

When any warehoused goods have been entered for export the person making the entry shall forthwith export the goods to a country outside Niue in accordance with the entry and with the provisions of this Act relating to the exportation of goods.

110 Entry for removal

(1) When any warehoused goods have been entered for removal for warehousing at any other warehouse (either at the same or any other port or place) they shall forthwith be removed in accordance with the entry, subject to such conditions as may be prescribed, and with such security for their due transmission and for the payment of the duty thereon as the Manager requires.

(2) On the arrival of the goods at the port or place of destination they shall be entered and warehoused in accordance with the entry for removal in the same manner and subject to the same provisions, so far as applicable, as in the case of the entry and warehousing of goods on the first importation thereof.

(3) Notwithstanding anything in section 62 (5) warehoused goods so removed may, with the permission of the Manager, be placed directly in a warehouse on their arrival at the port or place of destination.

111 Constructive warehousing

If, after any goods have been entered for warehousing either on importation or removal, and before they have been actually warehoused, they are entered for home consumption, exportation, or removal, they shall be considered as constructively warehoused and may be delivered for home consumption, exportation, or removal as if actually warehoused.

112 Rewarehousing

(1) When any goods have remained warehoused for 3 years (whether in the same or in different warehouses) the owner of them shall thereupon either –

- (a) Enter them for home consumption; or
- (b) Enter them for export; or
- (c) Rewarehouse them.

(2) No goods shall be rewarehoused without the permission of the Manager or other proper officer.

(3) Rewarehousing shall be effected as follows –

- (a) An application for rewarehousing shall be made by the owner to the Manager;
- (b) The goods shall be examined by the Customs at the expense of the applicant;
- (c) Duty shall, subject to this Act as to remission of duty, be paid on any goods found deficient;
- (d) A rewarehousing entry shall be made in the prescribed form for the goods according to the result of the examination;
- (e) On the passing of the entry a fresh account shall be substituted for the last account, and this shall complete the rewarehousing.

(4) When any goods have been rewarehoused this section shall thereafter apply to them as if they had been then warehoused for the first time.

(5) If in respect of any goods the owner acts in contravention of this section, duty shall forthwith become due and payable on those goods as if entered for home consumption, and they may be sold by the Manager.

*Crown Warehouses***113 Crown warehouses**

(1) The Secretary may, by notice in the *Gazette*, declare any building or other place in the occupation of the Crown and lawfully available for such use to be a Crown warehouse for the purpose of this Act.

(2) The Secretary may in like manner declare that any Crown warehouse shall no longer continue to be such.

114 Charges in Crown warehouses

Charges shall be made and payable in respect of goods warehoused in any Crown warehouse under the prescribed scale.

115 Warehousing in Crown warehouses

If any goods warehoused in a Crown warehouse are not lawfully removed within such period after warehousing as may be prescribed, duty shall become due and payable thereon as if entered for home consumption, and the goods may be sold by the Manager.

116 Licensed warehouses

Crown warehouses shall be wholly under the control of the Customs, and shall be specially available for the examination of goods and the storage of seized and unclaimed goods; but otherwise all the provisions of this Act relating to warehouses shall, so far as practicable, apply to Crown warehouses.

Special Provisions as to Manufacturing Warehouses

117-117A [Repealed by 2004/270]

118 Penalties for wrongful use of manufacturing warehouse

If the licensee of any manufacturing warehouse acts in contravention of any provision of any regulation made in relation thereto, or of any provision of his licence or of the directions of the Secretary, he commits an offence and shall be liable to a fine not exceeding 2 penalty units.

PART 5

119-135 [Repealed by 2004/270]

*Valuation of Goods***136 "Current domestic value" defined**

(1) When any duty is imposed on goods according to their value, or where for any other reason the value of any goods is to be determined for the purposes of the Tariff, such value shall be taken to be the fair market value of the goods when sold for cash in the ordinary course of business for home consumption in the principal markets of the country from which the goods are exported at the time when they were so exported.

(2) The value so taken is in this Act referred to as the current domestic value.

(3) Notwithstanding subsection (1), where for the purposes of any entry the amount of the current domestic value is required to be shown or declared, that amount shall be shown or declared, if it is not a whole number of dollars, at the nearest dollar, and, if it is a number of dollars and 50 cents exactly, at the dollar next below the amount.

(4) No deduction of any kind shall be allowed from the current domestic value of such goods because of any special or sample discount, or because of any special arrangement concerning the export of the goods or the exclusive right to their sale within certain territorial limits, or because of any royalty payable on patent rights but not payable when goods are so exported, or on account of any other consideration by which a special reduction in price has been or might be obtained.

(5) If it is proved to the satisfaction of the Manager that any drawback of import duty or excise duty has been paid or allowed on any parts, materials, or ingredients used in making any goods, or that any import duty or excise duty has been actually paid on the goods in the country from which they were exported or would have been payable on them in that country if they had been there entered for home consumption instead of being exported therefrom, the amount of that duty or drawback shall be deducted from the current domestic value of the goods as determined in accordance with the foregoing provisions of this section.

(6) When the current domestic value of any goods when sold for cash for home consumption as aforesaid depends in the ordinary course of business on the quantity sold, such value shall be determined by reference to the quantity actually imported at one and the same time by the same importer from the same seller or supplier, except that if the goods are imported under a bona fide contract of purchase made in the ordinary course of business and including a greater quantity of such goods than that which is actually imported at one and the same time the current domestic value of the goods shall be estimated by reference to the aggregate quantity so included in that contract and imported or to be imported in pursuance thereof within a period not exceeding twelve months.

(7) The determination of the Manager or, in the case of an appeal under section 142, the determination of the Minister, as to the existence and terms of any such contract as is referred to in subsection (6) and as to the quantity by reference to which the current domestic value of any goods is to be estimated in accordance with that subsection, shall be final and conclusive.

137 Production of invoice

(1) On the first entry (other than an entry for removal) of any goods, the importer or his agent shall produce to the Manager or other proper officer the invoice (as defined in section 138 for those goods, and make, and deliver to the Manager or other proper officer, a declaration in the prescribed form verifying that invoice and setting out the true value of the goods for the purposes of duty and such other particulars as may be prescribed.

(2) Unless the Secretary otherwise directs in relation to any class or classes of goods or transactions, the Manager or other proper officer shall retain the invoice so produced, or a legible copy thereof made by carbon or other duplicating process by or on behalf of the seller or consignor of the goods.

(3) If any failure to produce the invoice as required by this section is accounted for to the satisfaction of the Manager or other proper officer, proof of its contents by a copy of otherwise may be received in lieu of its production.

138 "Invoice" defined

(1) In this Act, "invoice" means –

- (a) In the case of goods imported on their sale, the original invoice prepared and issued by or on behalf of the seller showing –
 - (i) the true description of the goods; and
 - (ii) their current domestic value; and

- (iii) the actual money price paid or to be paid for them by the purchaser; or
 - (b) In the case of goods imported otherwise than on their sale, the original invoice prepared and issued by the consignor showing –
 - (i) the true description of the goods; and
 - (ii) their current domestic value.
- (2) Every invoice for imported goods shall be in the prescribed form.

139 Blank invoices

If any person has in his possession, without reasonable excuse, any blank or partly blank invoice forms, capable of being filled up and used as an invoice in such manner as to be likely to deceive the officers of the Customs, he commits an offence and shall be liable to a fine not exceeding 4 penalty units.

140 Valuation of goods by Collector

(1) Subject to this section, the amount of the invoice, after deducting therefrom all reasonable and lawful deductions in respect of discount, freight, insurance, and other charges, may be accepted by the Manager as sufficient proof of the current domestic value of the goods for purposes of duty, and he may value the goods and assess the duty accordingly.

(2) If the importer satisfies the Manager that the current domestic value of the goods for purposes of duty is less than the value as shown by the invoice after making such deductions as aforesaid, the Manager shall value the goods at the lower sum accordingly, and shall assess the duty on that value.

(3) If the Manager has reason to believe or suspect that the current domestic value of the goods for purposes of duty is greater than the amount of the invoice, after making such deductions as aforesaid, he may value the goods at such higher sum as he thinks proper, and assess the duty accordingly.

141 Valuation presumed to be correct

Every valuation made by the Manager under this Part (whether in accordance with the invoice or not) shall be taken to be correct, and duty shall be payable in accordance therewith, unless on appeal to the Minister under section 142 or in proceedings taken under this Act in a court of competent jurisdiction, a different amount is proved to be the correct value of the goods for the purpose of *ad valorem* duty.

142 Appeal to Minister from valuation

(1) From any valuation made by the Manager under this Part (whether in accordance with the invoice or not) the importer may appeal to the Minister.

(2) Notice of appeal under this section shall be given in writing to the Manager within 14 days after the assessment of duty, or without such further time as may be allowed by the Manager and while the goods still remain subject to the control of the Customs.

(3) On any such appeal the Minister shall, by himself or his lawful delegate, after giving a reasonable opportunity to the appellant to be heard, determine the true value of the goods for purposes of duty, and his decision on all questions of fact shall be final, except in the case of fraud.

(4) The Minister may delegate his power of hearing and determining any such appeal to any person or persons, whether officers of the Customs or not, but otherwise all the provisions of this Act as to the delegation of powers by the Minister shall apply to any delegation under this section.

(5) On any such appeal the burden of proving the true value of the goods shall be upon the appellant.

(6) If any such appeal is unsuccessful, the reasonable costs incurred by the Customs in the appeal, as fixed by the Minister or his delegate under such regulations (if any) as may be made in that behalf, shall be added to the duty and shall be paid by the appellant accordingly.

(7) If no appeal is so made to the Minister, the other provisions of this Act as to the recovery and refund of duty shall apply as if no such right of appeal has existed.

143 Invoices in foreign currency

(1) If the invoice shows the value of the goods in any currency other than that in force in Niue the value in Niue currency shall be ascertained according to a fair rate of exchange, to be declared in case of doubt by the Minister.

(2) For the purposes of this Act, the Minister may from time to time, by notice in the *Gazette*, determine the relation of Niue currency to the currency of any other country.

(3) Any such notice may at any time in like manner be amended or revoked.

144 Country of export

(1) Goods exported to Niue from any country but passing through any other country on their voyage to Niue (whether transshipped in that other country or not) shall be valued for duty as if they were imported directly from the first-mentioned country.

(2) The determination of the Manager as to the true country of export in any such case shall in every court or judicial proceeding be taken to be correct unless the contrary is proved.

145 Current domestic value of goods imported through intermediate country

(1) In this section, "intermediate country" means the country, not being the country of origin, from which any goods are imported into Niue.

(2) Notwithstanding section 136 the current domestic value of any goods imported into Niue from an intermediate country may, in such cases as Cabinet prescribes by regulation, be assessed at an amount exceeding, by such percentage as may be prescribed, the current domestic value of those goods in the country from which they were exported to the intermediate country at the time of their exportation to that country.

146 Valuation for assessment of duties

(1) If in the opinion of the Minister it is difficult, inequitable, or impracticable to determine the value of goods for the purposes of duty under section 136 because –

- (a) The goods are not sold for use or consumption in the country of export; or
- (b) They are not so sold in the ordinary course of business or in quantities similar to those imported into Niue; or
- (c) The exporter retains the property in them; or
- (d) They are not imported on their sale; or
- (e) They are not imported in pursuance of a bona fide contract of purchase made in the ordinary course of business; or
- (f) There is no reliable means of estimating their value owing to the imposition of a royalty on them; or

- (g) They are usually or exclusively sold or disposed of by or to agents, or re sold or imported in or under any other unusual or peculiar manner, conditions, or restrictions, either by way of limitation of purchases from or sales to any person or associations of persons or for any other reason –

the Minister shall determine the current domestic value of the goods in such manner and at such sum as he thinks just, and shall assess the duty accordingly, and his assessment shall be final.

(2) The current domestic value of goods as determined under this section shall not exceed the price at which the goods are, in the country of exportation and at the time when they were exported, sold in the ordinary course of business for domestic consumption to the ultimate consumer, if in the opinion of the Minister such price can be ascertained.

(3) Notwithstanding subsections (1) and (2), in the case of any goods being the produce or manufacture of a country not forming part of the Commonwealth, and being goods of a class or kind produced or manufactured in some part of the Commonwealth, the Minister may, in the exercise of the powers conferred on him by this section, determine a nominal value of those goods (whether such value is in his opinion that true current domestic value or not), if in his opinion the importation of those goods would, but for this section, be likely to affect prejudicially or injuriously any industry, trade, business, or occupation established or carried on in Niue or elsewhere in the Commonwealth.

(4) The nominal value determined under subsection (3) shall be such that the cost of the goods to the importer, including the duty payable thereon, shall not exceed by more than 20 percent the cost of similar goods, as determined by the Minister, including the duty on it, imported from and being the produce or manufacture of some part of the Commonwealth.

(5) The value so determined by the Minister shall be final, and for the purposes of the assessment of duties it shall be deemed to be the current domestic value.

147 Crown's right of compulsory purchase

(1) For the protection of the revenue against the undervaluation of goods subject to *ad valorem* duty, any goods of which entry is made may, at any time while they remain subject to the control of the Customs, be taken by the Crown at a price equal to their declared current domestic value, with the addition of such charges for freight, insurance, and other matters incidental to their importation as the Secretary thinks reasonable, and with the addition of any duties already paid thereon.

(2) The aforesaid right of taking goods shall be exercised only by the Secretary or the Minister, and the taking of the goods shall be deemed to have been effected as soon as a warrant for their taking has been signed by the Secretary or the Minister.

(3) On the signing of the warrant the goods shall become the property of the Crown, and shall be sold by the Manager, and the proceeds of such sale shall be accounted for as Customs revenue.

(4) The price payable by the Crown for the goods so taken shall be paid out of Customs revenue to the person making the entry.

(5) This section shall not be so construed as to restrict or take away any other powers possessed by the Customs in respect of the goods or any liability of the importer or any other person in respect of any offence committed in respect of the goods.

*Origin of Imported Goods***148 Determining country of origin**

(1) Without limiting the power to make regulations conferred by section 306, Cabinet may make regulations prescribing –

- (a) The classes of goods that shall be deemed for the purposes of the Customs Acts to be the produce or manufacture of any country;
- (b) The conditions to be fulfilled before any goods shall be deemed to be the produce or manufacture of any particular country.

(2) In respect of fish, whales, or other natural produce of the sea, or goods produced or manufactured wholly or partly therefrom at sea, anything done by or on board a ship belonging to any country shall be deemed for the purposes of this Act to have been done in that country, and any such produce of the sea or goods so produced or manufactured therefrom at sea, if brought direct to Niue, shall be deemed to be imported into Niue from that country.

(3) If any question arises as to the country to which any ship belongs for the purposes of subsection (2) the question shall be determined by the Minister, whose decision shall be final.

149 Importer to state country of origin

On making entry of any goods the importer or his agent shall state to the best of his knowledge, information, and belief the country of which the goods are the produce or manufacturer and shall satisfy the Manager of the truth of such statement, by declaration or otherwise, in the prescribed form.

150 Entry of goods at preferential rates

(1) Notwithstanding anything in section 119 or section 120 or elsewhere in the Customs Acts, the duty (if any) payable under the Normal Tariff shall be paid on all goods imported into Niue or entered therein for home consumption unless the following provisions of this section are complied with.

(2) Where it is claimed in respect of any goods that they are entitled to be entered free of duty or at any rate of duty lower than that set forth in the Normal Tariff in respect of such goods, they shall not be so entered unless, in verification of such claim, there is produced to the Manager in addition to an invoice of the goods, a certificate of origin in the prescribed form, signed by the seller or consignor.

(3) No such invoice as is referred to in subsection (2) shall be produced to the Manager at the time of making entry for those goods, or within such period as the Manager may allow.

(4) The certificate referred to in subsection (2) shall relate to any goods other than those to which the certificate mentioned in it refers.

(5) An extension of time under subsection (4) shall be granted on such conditions as to security for payment of duty, or as to payment of penalties, or otherwise, as may be prescribed, and on such further conditions (if any), as the Minister may in any case direct.

(6) In the case of goods sent by post or by airfreight or in such other cases (if any) as prescribed or with the consent of the Minister in any other case, the Manager may dispense with any certificate required by this section if evidence, satisfactory to him, is produced that the goods, if entered free of duty or at any rate of duty lower than that set forth in the Normal Tariff in respect of such goods, are entitled to be so entered pursuant to this Act.

(7) Nothing in subsection (1) shall be so construed as to affect the liability of any goods to duty under a tariff adopted under section 127.

151 Goods subject to forfeiture in case of false declaration

If the Manager has reason to believe that any goods referred to in any statement, declaration, invoice, or certificate under section 149 or 150 are not the produce or manufacture of the country mentioned in the statement, declaration, invoice, or certificate, he may detain them for examination; and if the statement, declaration, invoice, or certificate is false the goods shall be forfeited.

*Assessment and Recovery of Duty***152 Duty on imported goods a Crown debt**

(1) The duty on any imported goods shall, immediately on their importation, constitute a debt due to the Crown.

(2) Such debt shall be owing by the importer of the goods, and, if there are several importers (whether at or at any time after the time of importation), then jointly and severally by all of them.

(3) Subject to any special provisions made by this Act in that behalf, such debt shall become due and payable as soon as entry of the goods for home consumption has been made, or the goods have been wrongfully landed or otherwise wrongfully dealt with without having been entered for home consumption, or any other offence against this Act has been committed in respect of them.

(4) Such debt shall be recoverable by action at the suit of the Manager on behalf of the Crown.

(5) The right to recover duty as a debt due to the Crown shall not be affected by the fact that the goods have ceased to be subject to the control of the Customs, or that a bond or other security has been given for the payment of duty, or that no proper assessment of duty has been made in due course under this Act, or that a deficient assessment of duty has been made.

153 Duty on goods produced in manufacturing warehouse a Crown debt

(1) The duty on any goods manufactured in a manufacturing warehouse shall immediately on their manufacture constitute a debt due to the Crown.

(2) Such debt shall be owing by the person who is the licensee of the warehouse at the time when the goods are manufactured and by every person who thereafter becomes the licensee of that warehouse at any time before the duty has been fully paid, and by every person who is or becomes the owner of the goods at any time before the duty has been fully paid; and all such persons shall be jointly and severally liable for the duty.

(3) Section 152 (3) to (5) shall extend and apply to the duty referred to in this section.

154 Duty a charge on goods

(1) The duty on any goods shall constitute a charge on those goods until fully paid.

(2) If any duty so charged on any goods is due and unpaid, the Manager may take possession of the goods, and sell them or any part of them in satisfaction or part satisfaction of the charge.

155 Goods not to be delivered till duty paid

(1) Except as otherwise provided in this Act, no person shall be entitled to obtain delivery of any goods from the control of the Customs until the sum demanded by the Manager or other proper officer of Customs by way of duty on the goods has been paid in full.

(2) No action or other proceeding shall be instituted against the Crown or the Minister or any officer of Customs in respect of the detention of any such goods during any period before the payment of the full sum so demanded.

156 Payment of duty by one person not to affect liability of other persons

The liability of any person under this Act for the payment of duty on any goods shall not be extinguished or affected by the payment of the duty by any other person who may be liable for it under any other provision, whether or not the duty so paid has been refunded.

157 Incidence of altered duties

(1) In the case of any alteration in the law relating to the liability of any goods to duty or the rate of duty to which any goods are liable, such liability or rate shall, except where otherwise expressly provided, be determined –

- (a) In the case of goods warehoused or goods produced in a manufacturing warehouse (whether before or after such alteration in the law) by the law in force at the time when the goods are entered for home consumption;
- (b) In the case of all other goods, by the law in force at the time of importation or by the law in force at the time at which the goods are thereafter entered for home consumption, whichever is the more favourable to the importer.

(2) In this section, “alteration in the law” includes any variation which in any manner takes place at any time or periodically in the liability of goods to duty or in the rate of duty to which they are liable.

158-159 [Repealed by 2004/270]

160 Assessment of duty in particular cases

(1) When duties are imposed according to a specified quantity, weight, size, or value, the duties shall be charged proportionately on any greater or smaller quantity, weight, size or value.

(2) [Repealed 6/28/7970 (NZ)]

(3) Subject to the provisions of the Tariff, for the purposes of assessing duty on spirits –

- (a) The strength of any spirits shall be ascertained in the prescribed manner; and
- (b) If on entry for home consumption it is so ascertained that the strength of any spirits has increased or diminished by natural process of change while they were subject to the control of the Customs, duty shall be payable in accordance with the strength as so increased or diminished.

161 Alteration of goods

In such cases and under such conditions and restrictions as may be permitted by the Secretary, imported goods may be so altered as to fall under another item of the Tariff, and the liability of such goods to duty shall be determined accordingly and a refund or remission of duty may be made or allowed as the case may require.

162 Minimum duty collectable

Without limiting the power to make regulations conferred by section 306, regulations made under that section may prescribe the minimum amount of duty that need be collected on any goods; and any goods on which the duty if assessed under this Act would be less than the minimum so prescribed may, if the Manager thinks fit, be admitted free of duty.

163 Essences and other preparations

(1) Duty shall be charged on all essences, condensations, concentrations, or preparations of dutiable goods according to the quantity or equivalent of dutiable goods into which such essences, condensations, concentrations, or preparations can be converted according to a standard to be prescribed by regulations made under this Act.

(2) In default of any such regulations, or so far as they do not extend, duty shall be chargeable as if this section was not in force.

164 Reimportation of goods exported

Goods exported from Niue for such purposes as may be approved by the Minister, either generally or in any particular case, may on reimportation into Niue be admitted, subject to such conditions as the Minister may impose either generally or in any particular case, either free of duty or at such duty as may be determined by the Minister, not exceeding the duty that would be payable thereon if imported for the first time.

165 [Repealed 7/137/1967 (NZ)]

166 [Repealed by 2004/270]

167 Power to suspend excise duties on goods supplied to certain organisations

(1) Cabinet may by regulation suspend any excise duty in respect of any goods or classes of goods manufactured in Niue and –

(a) Supplied solely for the use of such organisations, expeditions, or other bodies as may be approved by the Minister and as may be established or temporarily based in Niue consequent on any agreement or arrangement entered into by or on behalf of the Government of Niue with the Government of any other country or with the United Nations; or

(b) Supplied solely for the use of persons temporarily resident in Niue for the purpose of serving as members of any such approved organisation, expedition, or other body.

(2) In respect of any goods or class of goods to which this section relates, the Secretary may impose such conditions as he thinks fit.

168 Samples of goods

Small samples of the bulk of any goods subject to the control of the Customs may, subject to such conditions as may be prescribed, be delivered free of duty.

169 Duties on wrecked goods

(1) All goods derelict, flotsam or jetsam, or landed, saved, or coming ashore from any wreck, shall be chargeable with duty as if imported in the ordinary course and entry thereof shall be forthwith made at the nearest port by the owner or person entitled thereto or having possession thereof; and all the provisions of this Act, so far as they are applicable, shall apply accordingly.

(2) If default is made in making such entry, duty shall become due and payable in the same manner as if the goods had been entered for home consumption.

170 Liability of owners of ships or aircraft for duty on missing goods

(1) If any cargo or ships' stores are smuggled into or unlawfully landed in Niue from any ship or aircraft being within the territorial limits of Niue or elsewhere, the owner and the master of the ship, or the owner and the pilot in command of the aircraft, shall (in addition to the liability of any other person) be jointly and severally liable for the payment of the duty on such cargo or stores, as if imported by them and entered for home consumption.

(2) The Manager at any port may demand from the owner or master of any ship, or the owner or pilot in command of any aircraft, at that port payment of any sum that he believes or suspects to be owing under the foregoing provisions of this section.

(3) So long as any sum so demanded by the Manager remains unpaid, the ship or aircraft shall not be entitled to a certificate of clearance.

(4) In all proceedings for the recovery of duty under this section, or for a refund of duty paid under this section, the sum so demanded by the Manager shall be presumed to be due and payable until the contrary is proved.

Refunds and Remissions of Duty

171 Recovery of duty paid in error

(1) At any time within one year after the payment of any sum by way of duty the person by whom payment was so made may institute proceedings against the Crown for a refund of such duty, or of any part thereof, on the ground that the duty was not lawfully chargeable, or was charged in excess, and whether the error alleged is one of fact or of law.

(2) Nothing in this section shall be so construed as to entitle any person to take proceedings for a refund of duty on any ground on which the determination of the Manager, or the Secretary, or the Minister is made final by this Act.

172 Secretary may refund duty paid in error

(1) If the Secretary is satisfied that any duty has been paid in error, whether of law or fact, he may refund it –

- (a) At any time within 3 years after it has been paid; or
- (b) At any later time, on an application made within such 3 years.

(2) If in any case, after any agreement is made, whether in Niue or elsewhere, for the sale of goods, the Secretary has authority to make a refund in respect of such goods, he may, before making the refund, require the production of evidence to his satisfaction that the importer has remitted to the buyer of the goods the amount of the refund.

172A Secretary may refund duty on forfeited goods

(1) When any duty or sales tax has been paid on any goods that are condemned or deemed to be condemned under Part 12, the Secretary may pay to any person appearing to him to be entitled to it a sum equal to the amount of that duty or tax –

- (a) At any time within 3 years after seizure of the goods; or
- (b) At any later time, on an application made within such 3 years.

(2) Such sum shall not exceed the amount that would be available for payment of duty under section 223 (3).

173 Remission or refund of duty on damaged and faulty goods

Whenever the Manager is satisfied that imported goods –

- (a) Have been damaged or have deteriorated in condition before importation; or
- (b) Are found, either before delivery from the control of the Customs or within such period after such delivery as may be prescribed, to be of faulty manufacture; or
- (c) Have been damaged or have deteriorated in condition after importation and while still subject to the control of the Customs, without the wilful act or the negligence of the importer or of the licensee of any warehouse in which they have been warehoused, or of the servants of the importer or licensee –

the importer shall be entitled to a remission or refund of duty on those goods to such extent and subject to such conditions and exceptions as may be prescribed.

174 Remission of duty on warehoused goods diminished in value

(1) When any imported goods have been warehoused for not less than 2 years and the Secretary is satisfied that, while so warehoused, they have diminished in value otherwise than by reason of damage or deterioration in condition, he may in such case and to such extent as may be prescribed allow to the importer a remission of duty on those goods.

(2) With the approval of the Minister in any case, the Secretary may allow a remission of duty under this section in respect of any warehoused goods, notwithstanding that they have been warehoused for less than 2 years.

175 Remission or refund of duty on goods destroyed, pillaged, or lost

(1) If the Manager is satisfied that any goods, at any time after their importation, and while still subject to the control of the Customs, have been destroyed, pillaged, or lost without the wilful act or the negligence of the importer or the licensee of any warehouse in which they have been warehoused or of the servants of the importer or licensee, the importer shall, subject to any prescribed exceptions, restrictions, or conditions, be entitled to a remission or refund of the duty on the goods.

(2) Except where an importer is entitled to exemption from duty under subsection (1), duty on all goods destroyed, pillaged, or lost after importation and while still subject to the control of the Customs shall be due and payable by the importer as if the goods had been entered by him for home consumption on their importation.

(3) When any goods have diminished in quantity or weight they shall to the extent of that diminution be deemed to have been lost within the meaning of this section.

(4) All goods specified in the inward report of any ship or aircraft or in an invoice produced in relation to any entry shall be presumed to have been actually imported unless the contrary is proved.

176 Remission or refund of duty on goods produced in a manufacturing warehouse

(1) Sections 173-175 shall extend and apply, with all necessary modifications, to goods manufactured in a manufacturing warehouse, as if the manufacture of those goods were their importation, and as if the licensee of the warehouse or the owner of the goods were the importer of the goods so manufactured.

(2) If the Secretary is satisfied that any waste of imported raw tobacco has resulted from any process of manufacture in a tobacco-manufacturing warehouse, he may permit a remission or refund of duty on the tobacco so wasted.

177 Remission of duty on goods not worth the duty

The Secretary may cause any dutiable goods that are subject to the control of the Customs and are not, in the opinion of the Manager, worth the duty payable on them to be destroyed or otherwise dealt with as the Secretary directs, and may remit the duty.

178 Duty on goods from countries not forming part of the Commonwealth

(1) In respect of any goods or of any class or classes of goods being the produce or manufacture of a country not forming part of the Commonwealth, the Minister may, on any of the grounds set out in subsection (2), direct that such goods or any goods of such class or classes be admitted as if they were the produce or manufacture of some part of the Commonwealth, or, in the alternative, that they be admitted at a rate of duty intermediate between the rate of duty or exemption from duty specified in the British Preferential Tariff and the rate otherwise applicable under the Standard Tariff.

(2) The Minister may exercise the powers conferred by subsection (1) on any of the following grounds, namely –

- (a) On the ground that he is satisfied that goods of a like kind are not economically produced or manufactured in the Commonwealth;
- (b) On the ground that goods of a like kind, being the produce or manufacture of the Commonwealth, are sold or offered for sale in Niue at unreasonably high prices and that in the opinion of the Minister the interests of the public are or will be thereby prejudicially affected;
- (c) On the ground that any conditions or restrictions attaching to the importation into Niue of goods of a like kind, being the produce or manufacture of the Commonwealth, or attaching to the sale or other disposition of such goods in Niue, are such that in the opinion of the Minister the interests of the public are or will be thereby prejudicially affected;
- (d) On the ground that goods of a like kind being the produce or manufacture of the Commonwealth, constitute an unduly large proportion of the total goods of that kind imported into Niue and that in the opinion of the Minister the interests of the public are or will be thereby prejudicially affected.

(3) Any direction given by the Minister under this section may in its application to any goods be revoked at any time before such goods are entered for home consumption.

(4) A direction under this section may in the discretion of the Minister be given in respect of any goods entered for home consumption before the date on which the direction is given, if an application for such a direction in respect of those goods has been made at a time not later than the date of entry of the goods for home consumption.

(5) Where the Minister gives a direction under subsection (4), a refund of the duty paid or of any portion of it may, subject to such conditions, if any, be made accordingly.

179 Duty may be reduced or remitted where prices of Niue goods increased

(1) This section shall apply only in cases where by this Act or by any other Act that may hereafter be passed goods of any class are made liable to Customs duty, or to an increase in the amount or the rate of Customs duty, as the case may be.

(2) The Minister may by order given under his hand and published in the *Gazette*, remit the duty payable on any such goods, or reduce the amount or the rate of duty on any such goods, if he is satisfied that the prices charged by the producers or manufacturers of similar goods being the produce or manufacture of Niue are in excess of the usual prices that were charged by producers or manufacturers of such goods immediately before the alteration of the law, and that the maintenance of the increased prices would be detrimental to the public interest.

(3) Every order under this section may in like manner be revoked or varied.

(4) Nothing in this section shall apply with respect to the duty on any goods imported into Niue if the Minister is satisfied that the whole of the increase in the prices of similar goods being the produce or manufacture of Niue is due to the increased cost of production, manufacture, or distribution, and has been fixed by the producers or manufacturers under any usual commercial practice followed before the alteration of the law or under a commercial practice adopted since such alteration and approved by the Minister for the purposes of this section.

180 Refund of duty on materials used in manufacture of agricultural implements, machinery, ships and boats

(1) In such cases and on such conditions as may be prescribed, but subject to subsection (2), any person who manufactures in Niue –

- (a) Agricultural implements of a kind mentioned in Schedule 4; or
- (b) Machinery of such a class that, if imported into Niue it would be liable to any duty imposed only on goods not produced or manufactured in the Commonwealth; or
- (c) Ships or boats –

shall be entitled to a refund of any duty paid on materials which have been used by him in such manufacture.

(2) Except in the case of materials used in the manufacture of agricultural implements of a kind mentioned in Schedule 4, no refund shall be granted under this section in respect of any materials not being the produce or manufacture of some part of the Commonwealth, unless the Secretary is satisfied that materials of the same class, being the produce or manufacture of some part of the Commonwealth, could not have been obtained on reasonable terms or conditions.

(3) In this section, “materials” means such materials used in the manufacture of any goods of a kind to which subsection (1) applies, and also such parts of any implements or machinery to which that subsection applies, and such parts of ships or boats (including machinery therefor), as cannot, in the opinion of the Secretary be advantageously manufactured or produced in Niue.

181 Duty on goods temporarily imported

(1) Where the Manager is satisfied that any goods have been temporarily imported, the duty payable on the goods may be secured by way of deposit of money or, in such cases or classes of cases as may be approved by the Secretary, but such other security as is provided for in this Act; and on receipt of such security the Manager may deliver the goods from the control of the Customs.

(2) Subject to subsection (3) and to such conditions (if any) as may be prescribed, the deposit so made shall be returned to the person by whom it was made, or, as the case may require, the security shall be released, if –

- (a) The goods, being goods imported to be used temporarily in Niue for industrial or commercial purposes, are exported within 12 months from the date of their landing (in this section referred to as the prescribed period) or within such longer period as the Secretary may determine in any particular case; or
 - (b) The goods, not being goods to which paragraph (a) applies, are exported –
 - (i) Within the prescribed period; or
 - (ii) Within such longer period as the Secretary may determine in any case where he is satisfied that the importer is prevented by *force majeure* from exporting them within the prescribed period; or
 - (c) The Secretary is satisfied that any such goods have been accidentally destroyed at any time within the period prescribed by or determined under this subsection.
- (3) Where in any case to which subsection (2) applies –
- (a) Goods imported to be used temporarily in Niue for industrial or commercial purposes are exported within the period prescribed by or determined under this section; or
 - (b) Any other goods, being goods on which in the opinion of the Minister duty should be paid, are so exported; or
 - (c) The Manager is satisfied that any such goods have been accidentally destroyed at any time within the period prescribed by or determined under this subsection –

duty shall be payable in respect of the goods on the amount by which their value for duty, as assessed by the Manager at the time of their exportation or destruction, is less than their value for duty, as ascertained in accordance with the Customs Acts, at the time of their importation.

(4) Where the Manager is satisfied that any goods have been shipped for export, or where any goods have been packed, for export, into a bulk cargo container in a Customs containerbase and the container has been secured to the satisfaction of the Manager, he may for the purposes of this section, treat them as having been exported.

(5) If at the expiry of the period prescribed by or determined under this section any security has not been dealt with in accordance with subsection (2) –

- (a) Any duty so secured by way of deposit of money shall be dealt with as Customs revenue; and
- (b) Any duty otherwise so secured shall be paid to the Manager by the importer within 14 days after the expiry of that period and on such payment the security shall be released.

182 Recovery of duty refunded in error

All money refunded by the Customs in error, whether of fact or law, shall be recoverable by action at the suit of the Manager on behalf of the Crown at any time within 3 years after the date of its payment, or without limit of time if the refund has been obtained by fraud.

*Drawbacks***183 Drawbacks of duty on goods exported**

(1) Drawbacks of duty on goods imported into Niue or produced in any manufacturing warehouse (whether before or after the commencement of this Act) may be allowed –

- (a) On the export of the goods; or
- (b) In respect of such imported or manufactured goods wrought into or attached to exported goods; or
- (c) In respect of such imported or manufactured goods, except fuel or plant equipment, consumed in the manufacture or production of exported goods.

(2) Drawbacks under this section shall be allowed in such cases, to such amount, on such conditions, and with such restrictions as may be prescribed.

(3) Where the Manager is satisfied that any goods have been shipped for export, or where any goods have been packed, for export, into a bulk cargo container in a Customs containerbase and the container has been secured to the satisfaction of the Manager, he may for the purposes of this section treat them as having been exported.

(4) Where drawback has been allowed on any goods so treated as exported, the goods shall not, without the permission of the Manager, be unshipped or reloaded or unpacked before export.

(5) If, where drawback has been allowed on any goods so treated as exported, drawback has been paid in respect of any goods that are unshipped or reloaded or unpacked before export, the amount of drawback allowed in respect of those goods shall, immediately on their unshipment or reloading, or unpacking constitute a debt due to the Crown and charged thereon; and such debt shall immediately be payable by the owner of the goods at the time of their unshipment or reloading or unpacking.

(6) Such debt shall be recoverable by action at the suit of the Secretary on behalf of the Crown.

(7) The right to recover drawback as a debt due to the Crown under this section shall not be affected by the fact that a bond or other security has been given in respect of the unshipment or reloading or unpacking of the goods before export.

(8) Every person commits an offence who is knowingly concerned in the unshipment or reloading or unpacking of any goods in contravention of subsection (4).

184 Entry for exportation under drawback

(1) Before any goods are shipped or waterborne to be shipped for exportation under drawback the exporter shall –

- (a) Make entry therefor in the prescribed form and manner; and
- (b) Produce the goods for examination by the Customs.

(2) The making of any such entry shall be deemed to be the making of a claim for drawback, and the goods shall forthwith become subject to the control of the Customs accordingly.

(3) If any goods are shipped or waterborne to be shipped for exportation before entry has been duly made and passed under this section, the right of drawback on those goods shall be forfeited unless the Secretary in any particular case determines otherwise.

185 Reimportation of goods exported under drawback

(1) Except in such cases and under and subject to such restrictions and conditions as may be prescribed, no goods shipped for export under drawback shall at any time thereafter be reimported into Niue.

(2) If any goods are reimported in contravention of this section they shall be forfeited and the importer or any person knowingly concerned in any such reimportation shall be guilty of an offence and shall be liable to a fine not exceeding 4 penalty units.

186–193 [Repealed by 2004/270]

PART 7

194-202 [Repealed by 2004/270]

PART 8

POWERS OF OFFICERS OF CUSTOMS

203 Examination of goods

(1) Any officer may examine, weigh, analyse, and test, or cause to be examined, weighed, analysed or tested, any goods subject to the control of the Customs, or any goods that he has reasonable cause to suspect are subject to the control of the Customs and may for this purpose open or cause to be opened any packages in which such goods are contained or suspected by him to be contained.

(2) All expenses so incurred by the Customs shall be a debt due to the Crown by the importer or exporter or the owner of the goods and shall be recoverable in the same manner as duty under this Act.

204 Examination of goods no longer under control of Customs

(1) After any goods have ceased to be subject to the control of the Customs the Secretary or any Manager if he has reasonable cause to suspect that any offence has been committed against the Customs Acts in respect of those goods, may, by warrant under the seal of the Customs, require any person who has or is supposed to have possession or control of those goods to produce them for inspection by the officers of Customs.

(2) Any officer may thereupon exercise in respect of the goods all the powers conferred by section 203 in respect of goods subject to the control of the Customs.

(3) If any person fails or refuses to produce any goods in accordance with such a warrant, or obstructs an officer in the exercise of his powers under this section, he commits an offence and shall be liable to a fine not exceeding 2 penalty units unless he proves that he had not possession or control of the goods or that he was otherwise unable to comply with the warrant.

205 Boarding of ships and aircraft

(1) While any ship or aircraft is within the territorial limits of Niue, any officer may board it.

(2) The Manager may station officers in any ship while it is within the limits of any port, and the master shall provide suitable accommodation below decks and suitable and sufficient food for those officers and also means of safe access to and egress from the ship in accordance with the requirements of any such officer.

(3) If the master fails to comply with subsection (2) he and the owner of the ship shall each be guilty of an offence and shall be severally liable to a fine not exceeding 0.5 penalty units for every day during which such default has continued.

206 Searching of ships and aircraft

(1) Any officer may search any ship or aircraft within the territorial limits of Niue.

(2) In the exercise of this power of search an officer may, by force if need be, enter every part of the ship or aircraft, and open any package, locker, or other place, and examine all goods found on the ship or aircraft.

207 Boarding and searching Her Majesty's ships and aircraft

The power conferred on an officer by this Act of boarding or searching any ship or aircraft shall extend –

- (a) To any ship or aircraft in the service of the Government of Niue; and
- (b) With the consent of the officer commanding or officer in charge, to any other ship or aircraft in the service of Her Majesty.

208 Firing on ships

The officer commanding or officer in charge of any ship in Her Majesty's service (whether in respect of the Government of Niue or otherwise) having hoisted and carrying the proper ensign and pendant or the Customs flag may, within the territorial limits of Niue, chase any ship which does not immediately bring-to when signalled or required to do so, and may, after having fired a gun as a signal, fire at or into the ship to compel her to bring-to.

209 Securing goods on ships and aircraft

(1) While any ship or aircraft is within the territorial limits of Niue, any officer of Customs may secure any goods on board that ship or aircraft and subject to the control of the Customs –

- (a) By fastening hatchways or other openings into the hold and by locking up, sealing, or marking the goods, or otherwise as may be thought necessary; or
- (b) By the removal of the goods to a Crown warehouse or other place of security.

(2) If any fastening, lock, mark or seal so placed by an officer upon any goods or upon any hatchway, opening, or place on any ship or aircraft is, except with the authority of an officer of Customs, opened, altered, broken, or erased by any person at any time while the ship or aircraft is at any place, or in the course of any voyage or journey between any 2 places, within the territorial limits of Niue, the person so acting, and the owner and master of the ship or, the owner and pilot in command of the aircraft, shall each be guilty of an offence and shall be severally liable to a fine not exceeding 4 penalty units.

210 Patrolling seacoast and aerodromes

Any officer and any person acting in his aid may –

- (a) Patrol upon and pass freely along and over any part of the seashore or on the shores or banks of any port, bay, harbour, or other waters, or over any part of the land immediately adjoining the seashore or such shores or banks as aforesaid; and
- (b) At any time enter and inspect any aerodrome and all buildings and goods therein.

211 Mooring vessels of Customs

The officer in charge of any boat or other vessel employed in the service of the Customs may haul the boat or vessel upon any part of the seashore or of the shores or banks of any port, bay, harbour, or other waters, or upon any part of the land immediately adjoining the seashore or such shores or banks as aforesaid, and may moor the boat or vessel on it.

212 Questioning persons

(1) Any officer may question any person who is on board any ship, boat, or aircraft, or who has within 48 hours landed from or got out of any ship, boat or aircraft, as to whether he has or within the said period of 48 hours has had in his possession any dutiable, restricted, uncustomed, or forfeited goods.

(2) Any person who, on being so questioned, refuses or fails to answer any question so put to him, or to answer any such question in writing if so required by the officer, or answers any such question incorrectly, commits an offence and shall be liable to a fine not exceeding 2 penalty units.

(3) Any dutiable, restricted, or uncustomed goods found in the possession of any such person shall be forfeited if, on being so questioned, he has denied or failed to disclose the possession of it.

(4) It is a defence to a charge under this section of answering any such question incorrectly to prove that the defendant did not know, and had no reason to know, that the goods were in his possession.

213 Searching persons

(1) If any officer or constable has reasonable cause to suspect that any person has unlawfully secreted about his person any dutiable, restricted, uncustomed, or forfeited goods, he may detain and search the person so suspected.

(2) Any person so detained may, before being searched, demand to be taken before the Manager.

(3) The Manager may order the person so detained to be searched, or may discharge him without search.

(4) A woman or girl may be detained as aforesaid but shall not be searched except by a female searcher appointed by the Manager either generally or for the particular case.

(5) No person shall be searched under this section unless he has first been informed of his right to be taken before a Manager.

214 Examining goods carried by persons

If any officer or constable has reasonable cause to suspect that any person is unlawfully carrying, otherwise than by secreting about his person, any dutiable, restricted, uncustomed, or forfeited goods, he may detain the person so suspected and examine any goods carried by him, and may for that purpose open any package carried by him.

215 Searching vehicles or boats

If any officer or constable has reasonable cause to suspect that any dutiable, uncustomed, restricted, or forfeited goods are contained in any vehicle or boat, he may stop it and search it.

216 Customs warrants

(1) The Secretary may grant a warrant in the form in Schedule 5 and under the seal of the Customs to any officer.

(2) Any such warrant, unless sooner revoked by the Secretary, shall remain in force so long as the person to whom it has been so granted remains an officer whether in the same capacity or not.

217 Entry and search under Customs warrant

(1) Subject to subsection (2) any officer having with him a Customs warrant granted to him under this Act may at any time in the day or night and on any day of the week enter into, by force if need be, and search any house, premises, or place in which he has reasonable cause to suspect that there are any uncustomed goods, or any goods subject to the control of the Customs, or any goods unlawfully imported, or any forfeited goods, or any goods in respect of which any offence has been committed against the Customs Acts, or any books or other documents relating to any such goods, or any books or other documents containing information that may lead to the recovery of any penalty or other money under the Customs Acts and may on any such entry break open and search any boxes, receptacles, packages, or places in which any such goods, books, or documents may be or may be supposed to be.

(2) On each occasion on which any officer proposes to use his warrant for the purposes of this section he shall first obtain the permission of the Manager who shall not grant permission unless he is satisfied that such reasonable cause as aforesaid exists.

(3) Any officer so acting under a Customs warrant may take with him and have the assistance of any constable and such other assistants as he thinks necessary.

(4) Any officer so acting under a Customs warrant shall show his warrant on demand to the occupier of the house, premises, or place that he so enters or proposes to enter.

(5) No officer or other person lawfully so entering in pursuance of any such Customs warrant shall be deemed to be a trespasser by reason of any act done by him after entry.

(6) When any entry has been so made any officer of Customs may make copies of or extracts from any books or documents as aforesaid; and in all Courts and in all proceedings such copies or extracts, if certified by an officer under the seal of the Customs, shall be received as evidence instead of the originals.

(7) Every person who obstructs an officer or constable or other authorised person in the exercise of any right of search or other right under this section or a Customs warrant commits an offence and shall be liable to a fine not exceeding 4 penalty units or to imprisonment for a term not exceeding 3 months, or to both.

218 Requisition to produce documents

(1) Whenever the Secretary has reasonable cause to suspect that goods have been unlawfully imported, exported, undervalued, entered, or otherwise unlawfully dealt with by any person contrary to the Customs Acts, or that it is intended by any person so unlawfully to import, export, undervalue, enter, or otherwise deal with any goods, or whenever any goods have been seized as forfeited under the Customs Acts, the Secretary may, by order under his hand and the seal of the Customs, require that person or any person whom the Secretary suspects to be or to have been the owner or importer of those goods immediately to produce and deliver to the Secretary or to any specified officer of Customs all invoices, bills, accounts, and statements of those goods, and of all goods imported

by the same person within 3 years next before the date of the order, and also immediately to produce for the inspection of the Secretary or any specified officer of Customs, and allow him to make copies of or extracts from, all books of account, invoice-books, or other books or records in which any entry or memorandum appears or may be supposed to appear respecting the purchase, importation, exportation, cost, or value of or payment for the said goods and any other goods so imported within the said period of three years.

(2) The Manager may, by order under his hand and the seal of the Customs, require any person (including any officer employed in or in connection with any Government department) to produce for inspection by him or by any specified officer of Customs all or any receipts, records, or other documents relative to any goods with reference to which any question has arisen under the Customs Acts; and to allow the Manager or other officer as aforesaid to make copies of or extracts from any such receipts, records, or documents; and to appear before the Manager or other specified officer as aforesaid, and to answer all questions put to him concerning any such goods, or such receipts, records, or documents as aforesaid.

(3) An order under this section may be directed to any corporation or local authority, or to any member, officer, or servant of any such corporation or local authority.

(4) Every person who fails or refuses to comply with any order made under this section commits an offence and shall be liable to a fine not exceeding 4 penalty units.

219 Documents in foreign language

When any document in a foreign language is presented to any officer for any purpose connected with the Customs Acts the Manager may demand to be supplied with an English translation of it, to be made at the expense of the person producing the document by such person as the Manager may approve, or verified in such manner as the Manager may require; and until the translation is produced the Manager or other proper officer may refuse to do any act in relation to the purposes for which the document was produced.

220 Impounding documents

The Manager may impound or retain any document presented in connection with any entry or required to be produced under this Act; but the person otherwise entitled to the document shall instead be entitled to a copy certified as correct by the Manager under the seal of the Customs, and the copy so certified shall be received in all courts as evidence instead of the original.

221 Taking samples

Samples of any goods subject to the control of the Customs may, for any purpose deemed necessary, be taken, used, and disposed of by any officer of Customs in the prescribed manner.

222 Permitting examination of goods

Subject to any regulations made under this Act, the Manager may permit any person to measure, count, weigh, gauge, test, or examine any goods subject to the control of the Customs.

223 Mode of exercising power of sale

Whenever the Manager is empowered by this Act to sell any goods the following provisions shall apply, except so far as different provision is made by this act in any particular case –

- (a) The goods shall be sold by auction or tender, after such public notice as may be prescribed or, if no such notice is prescribed, after reasonable public notice;
- (b) The price shall be paid in cash on the acceptance of the bidding or tender;
- (c) No bidding or tender shall be necessarily accepted, and the goods may be reoffered until sold at a price satisfactory to the Manager;
- (d) The Manager or any officer of Customs authorised by him may act as an auctioneer in the sale of the goods without being licensed in that behalf;
- (e) The proceeds of the sale shall be applied in the following manner and order of priority –
 - (i) In the payment of the expenses of the sale;
 - (ii) In payment of the duty, as if the goods had been entered for home consumption;
 - (iii) In payment of warehouse and other charges;
 - (iv) In payment of any freight due on the goods, if written notice claiming such freight has been given to the Manager;
- (f) The residue of the said proceeds shall be paid to the person appearing to the Manager to be entitled to it.

224 Duty payable on goods sold by Manager

(1) When any dutiable goods are sold by the Manager under the authority of this Act, duty shall be payable thereon by the purchaser in the same manner as if they had been entered by him for home consumption, and the duty so paid shall be deemed to be part of the proceeds of the sale.

(2) When the duty on any such goods is *ad valorem* the Manager may, and subject to any regulations made under this Act, accept as their value, for the purpose of assessing the duty, the price at which they are so sold, or any less sum, instead of their current domestic value as otherwise determined under this Act.

225 Sale of forfeited goods

Sections 223 and 224 so far as they are applicable, shall apply to the sale of forfeited goods or other forfeited articles.

226 Payments by Manager

Subject to any regulations made under any of the Customs Acts, a Manager may pay out of any revenue in his hands and received under the Customs Acts –

- (a) All lawful refunds of duty, export duty, excise duty, or licence fees under those Acts;
- (b) All lawful drawbacks of Customs duty or excise duty under those Acts;
- (c) The amount of any deposits returnable under those Acts;
- (d) The costs of any legal proceedings under those Acts;
- (e) All expenses lawfully incurred in the administration of those Acts;
- (f) All rewards payable to officers of Customs or other persons under those Acts;
- (g) All money declared by this Act to be payable out of Customs revenue.

227 Expenses of removal and storage of goods by officers of Customs

(1) All expenses lawfully incurred by the Customs under this Act in the removal or storage of goods subject to the control of the Customs shall constitute a debt due to the Crown by the importer or exporter of the goods, as the case may be, and shall be a charge on the goods and recoverable in the same manner as duty under this Act.

(2) In the case of storage of goods in a Crown warehouse, the expenses shall include storage charges at the prescribed rate.

228 Reasonable and probable cause

No person shall be liable for any arrest, seizure, detention, or sale under the Customs Act unless it is proved that there was no reasonable or probable cause for it.

228A Protection of persons acting under authority of Act

Neither the Crown nor any officer or constable shall be liable for the loss of or damage to any goods occasioned by anything done or omitted to be done or purporting to have been done by an officer or a constable in the exercise of any power conferred on him by this Act or any regulations made under this Act, unless he has not acted in good faith or has acted without reasonable care.

PART 9
SECURITIES

229 Securities for payment of duty and compliance with Act

(1) A Manager shall have the right to require and take securities for payment of duty and generally for compliance with this Act and for the protection of the revenue of Customs, and pending the giving of the required security he may refuse to pass any entry or to do any other act in the execution of his office in relation to any matter in respect of which the security is required.

(2) Any security under this Act may, as required by the Manager, be by bond (with or without sureties) or guarantee to Her Majesty the Queen, or by a deposit of cash, or by all or any of those methods, to the satisfaction of the Manager.

(3) Any such security may be given in relation to any particular transaction, or generally with respect to any class of transactions or to all transactions, and for such period and amount as the Manager thinks fit, and under such conditions as to forfeiture, penalty or otherwise as the Minister may direct.

(4) Any bond or other security entered into or given under this Act by a person under the age of 20 years (otherwise than as a surety or guarantor) shall have the same force, effect, and validity as if that person had been of full age.

(5) Without limiting the power to make regulations conferred by section 306, regulations made under that section may prescribe forms of bonds, guarantees, and other securities; and any security may be either in the prescribed form or to the like effect, or in such other form as the Secretary in any particular case approves.

230 New securities may be required

If the Manager is dissatisfied with the sufficiency of any security, he may require a new security in its place, or in addition; and if the new security is not given he may refuse to pass any entry or to do any other act in the execution of his office in relation to any matter in respect of which the new security is required.

PART 10
AGENTS AND CARRIERS
Customs Agents

231 Who may act as agent

(1) No person shall act as agent for any other person in the report, entry, or clearance of ships, aircraft, or goods or otherwise for the purposes of the Customs Acts in relation to ships, aircraft, or goods, unless the person so acting is either –

- (a) A servant or clerk in the exclusive employment of his principal; or
- (b) A Customs agent licensed under this Act; or
- (c) A servant or clerk in the exclusive employment of a licensed Customs agent, and approved as such by the Manager under regulations made under this Act.

(2) If the Secretary is satisfied on reasonable grounds that any servant or clerk is, whether by reason of bad character, misbehaviour, or incompetence, not a fit person to act as agent for his principal for any of the purposes of the Customs Acts, the Secretary may refuse to permit that servant or clerk so to act.

(3) Any person who acts as an agent in contravention of this section, or who acts as an agent for any other person in any matter relating to the Customs Acts without being authorised by that person so to act, commits an offence.

232 Licensing of Customs agents

Without limiting the power to make regulations conferred by section 306 Cabinet may make regulations –

- (a) Providing for the granting of Customs agents' licences or of different classes of such licences;
- (b) Prescribing the minimum qualifications required by applicants for such licences or, where applicants or licensees are bodies corporate, by their servants or clerks in respect of whom approval is sought under the regulations;
- (c) Providing for the revocation of any such licences or class of licences;
- (d) Prescribing conditions, whether as to security or otherwise, of the grant or continuance of such licences or of any such class of licences;
- (e) Prescribing any annual or other fees to be payable in respect of any such licences or class of licences.

233 Written authority of agents

Any officer may require any person acting as or holding himself out as the agent of any other person in any matter relating to the Customs Acts to produce a written authority from his principal, and if such an authority is not produced he may refuse to recognise the agency.

234 Liability of principal for acts of agent

(1) Every declaration made or other act done by an agent in the course of his agency in relation to the report, entry, or clearance of ships, aircraft, or goods, or otherwise in relation to the Customs Acts, shall be deemed to have been made or done by his principal also, and the principal shall be liable accordingly to all penalties imposed by the Customs Acts.

(2) For the purposes of this section the knowledge and intent of the agent shall be imputed to the principal in addition to his own.

(3) This section shall apply whether the appointment of the agent was made under this Act or not.

(4) For the purposes of this section the agent of an agent shall be deemed to be also the agent of the principal.

235 Liability of agents

When any person acts or assumes to act as the agent of any other person in relation to the entry of goods, or in relation to any other purposes or provisions of the Customs Acts, he shall be liable to the same penalties as if he were the principal for whom he so acts or assumes to act.

*Customs Carriers***236 Conveyance of goods subject to the control of the Customs**

(1) No person except a licensed Customs carrier shall convey any goods subject to the control of the Customs.

(2) Nothing in this section shall apply to –

(a) The conveyance of goods in any ship that is not a coastal ship, or in any aircraft that is in the course of any journey to or from any country outside Niue; or

(b) [Repealed by 2004/270]

(c) The carriage of goods by the servants of any Harbour Board or local or public authority having the control of any wharf or Customs airport.

(3) Every person who conveys or is concerned in conveying any goods subject to the control of the Customs contrary to this section commits an offence.

237 [Repealed by 2004/270]

PART 11

OFFENCES

*Offences in Relation to Officers***238 Influencing or resisting officer**

Every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years who –

(a) By threats or demands, attempts to influence or does influence any officer of Customs in the discharge of his duty; or

(b) Assaults, or by force resists, obstructs, intimidates, or endeavours to intimidate any officer of Customs or any person acting in his aid in the execution of his duties.

239 Obstructing officers of Customs

Every person commits an offence who, otherwise than by force, wilfully obstructs any officer of Customs in the exercise or performance of any power or duty conferred or imposed on him by the Customs Acts.

240 Abusive or threatening language

Every person commits an offence who uses abusive, insulting, obscene, or threatening language to an officer of Customs while in the execution of, or in relation to, his duties under the Customs Acts.

241 Personation of officer of Customs

Every person who, not being an officer of Customs, by words, conduct, or demeanour pretends that he is an officer, or puts on or assumes the uniform, name, designation, or description of an officer, commits an offence and shall be liable to a fine not exceeding 2 penalty units.

*Other Offences***242 Smuggling**

If any person smuggles any goods he commits an offence and shall be liable to a fine not exceeding 4 penalty units or 3 times the value of those goods, whichever sum is the greater, and the goods shall be forfeited.

243 Defrauding the revenue of Customs

If any person contravenes this Act, or does any other act, with intent to defraud the revenue of Customs –

- (a) By evading or enabling any other person to evade payment of duty or full duty on any goods; or
- (b) By obtaining or enabling any other person to obtain any money by way of drawback or refund of duty on any goods; or
- (c) In any other manner whatsoever in relation to any goods –

or conspires with any other person (whether that other person is in Niue or not) so to defraud the revenue of Customs in relation to any goods, he commits an offence and shall be liable to a fine not exceeding 4 penalty units or 3 times the value of those goods, whichever sum is the greater, and the goods shall be forfeited.

244 Erroneous drawbacks or refunds

If any person obtains any drawback, refund, or remission of duty by means of any erroneous or defective declaration or written statement, or by producing to any officer of Customs any declaration or other document of any kind whatsoever that is not genuine or that is in any respect erroneous or defective, he commits an offence and shall be liable to a fine not exceeding 2 penalty units or 3 times the amount of that drawback, refund, or remission, whichever sum is the greater.

245 Erroneous declarations

Every person who makes any declaration under this Act which is erroneous in any particular commits an offence and shall be liable to a fine not exceeding 2 penalty units.

246 Wilfully false declarations

Every person who knowingly makes any declaration under this Act which is erroneous in any particular commits an offence and shall be liable to a fine not exceeding 2 penalty units.

247 Production of false documents

Every person who produces or delivers to an officer in the execution of his office any document as genuine that is not genuine, or any document as true that is in any respect erroneous, commits an offence and shall be liable to a fine not exceeding 4 penalty units.

248 Interference with goods

(1) So long as any imported goods or goods for export remain subject to the control of the Customs it shall not be lawful for any person, except with the permission of the proper officer of Customs, to make any alteration either in the condition of those goods or in the packages containing them, or to unpack, or repack the goods or to remove them from any place in which an officer of Customs has directed that they shall be stored.

(2) Every person who acts in contravention of this section commits an offence and shall be liable to a fine not exceeding 4 penalty units.

248A Unauthorised entry into passenger processing areas

Every person who, without the permission of the proper officer of Customs, enters on or remains in any area set aside for the examination, for the purposes of this Act, or the personal baggage of passengers disembarking from or embarking on any ship or aircraft at any time when such area is being used for such examination, commits an offence and shall be liable to a fine not exceeding 2 penalty units.

249 Ship or aircraft used for smuggling

If the master or owner of any ship or the pilot in command or owner of any aircraft suffers his ship or aircraft to be used for the purpose of smuggling goods or for the unlawful importation, exportation, or conveyance of goods, he shall be guilty of an offence and shall be liable to the same penalty as if he had himself smuggled or unlawfully imported, exported, or conveyed the same goods.

250 Ships and aircraft adapted for smuggling

If any ship or aircraft comes or is found within the territorial limits of Niue having –

- (a) False bulkheads, bows, sides, or bottoms adapted for the purpose of concealing goods; or
- (b) Any secret or disguised place adapted for the purpose of concealing goods; or
- (c) Any hole, pipe, or device adapted for the purpose of smuggling or unlawfully importing or exporting goods –

the master and the owner in the case of a ship, or the owner in the case of an aircraft, shall be guilty of an offence and shall be severally liable to a fine not exceeding 10 penalty units.

251 Counterfeit seals or marks

(1) Every person commits an offence and shall be liable to a fine not exceeding 4 penalty units who, without reasonable excuse, has in his possession, or makes, or uses any counterfeit seal, stamp, or mark in imitation of or colourably resembling any seal, stamp, or mark used by the Customs for the purposes of the Customs Acts.

(2) Every person convicted of an offence against this section shall, in addition to any penalty imposed pursuant to this Act, forfeit to Her Majesty, by virtue of such conviction, all articles in respect of which the offence was committed and in his possession.

252 Failure to comply with conditions of entry

(1) When under this Act or of the Tariff any goods are, if entered for a particular purpose or under any condition prescribed by the Minister, exempt from duty or liable to a lower rate of duty than if entered otherwise than for that purpose or under that condition, and any goods have been entered under that provision, every person commits an offence who knowingly –

- (a) Uses those goods for any purpose other than that for which they have been so entered; or
- (b) Fails to comply with any condition prescribed by the Minister in respect of the goods so entered.

(2) If any person commits an offence under this section he shall be liable to a fine not exceeding 3 times the amount of the duty or additional duty that would have been payable if the goods had been entered otherwise than under the

provision under which they were entered, or 4 penalty units whichever sum is the greater, and the goods shall be forfeited.

(3) The Secretary may accept from the owner of any goods so entered for a particular purpose or under any condition prescribed by the Minister the amount of duty or additional duty that would have been payable on them if they had been entered otherwise than for that purpose or under that condition, and thereafter this section shall cease to apply in respect of those goods.

253 Possession or custody of uncustomed goods or prohibited imports

Every person who has in his possession or custody any uncustomed goods or any prohibited imports commits an offence and shall be liable to a fine not exceeding 4 penalty units unless he proves –

- (a) That he obtained possession or custody of them without knowledge that they were uncustomed goods or prohibited imports; or
- (b) That he obtained possession or custody of them with some other lawful justification.

254 Possession of concealed goods

Every person found in possession of any dutiable or restricted goods concealed in any manner on any ship, boat, or aircraft shall be guilty of an offence and shall be liable to a fine not exceeding 4 penalty units.

255 Failure to answer questions truly

Every person commits an offence and shall be liable to a fine not exceeding 2 penalty units who, when required under this Act to answer any question put to him, fails or refuses to answer it, or does not truly answer it.

256 Liability of officers of body corporate

If a body corporate commits an offence against this Act, every director, manager, secretary, or other similar officer of the body corporate, and every person purporting to act in any such capacity, shall also be guilty of that offence if the act or omission constituting the offence occurred with his knowledge and consent.

257 Attempts

Any attempt to commit an offence against this Act shall be an offence punishable in like manner and constituting the like cause of forfeiture as if the offence so attempted had been actually committed.

General Provisions as to Offences

258 Offences punishable on summary conviction

Except where this Act otherwise provides, every offence against this Act, or against any regulations made under this Act, shall be punishable on summary conviction.

259 Information to be laid by Manager

Every information for an offence against this Act shall be laid by a Manager.

260 Procedure

Any information for an offence against this Act may be laid at any time within 3 years after the date of the offence.

261 Value of goods for purpose of fine

When the amount of any fine under this Act is to be determined by reference to the value of any goods, their value shall be estimated according to the price for which goods of the like kind and of the best quality, on which the duties (if any) have been paid, are salable in Niue at the time of the offence.

262 General penalty

Every person who commits an offence against this Act for which no other penalty is provided shall be liable to a fine not exceeding 1 penalty unit.

263 Imprisonment for second offence

Any person who is convicted of an offence against this Act that is punishable by a fine only, and who has within 2 years before the conviction been convicted of the like offence or of any other offence against this Act, may, if the convicting court thinks fit, be sentenced to imprisonment for a period not exceeding 3 months, instead of or in addition to being sentenced to pay a fine.

264 Court may order payment of money in respect of duty

(1) In any proceedings for an offence under section 217 or section 218, if the court is of the opinion that the offence has been committed for the purpose of enabling the destruction or concealment of any evidence that would support a claim for duty or other money due to the Crown under the Customs Acts, it may, in addition to any other penalty, order the offender to pay to the Crown such further sum in respect of that claim as it thinks fit.

(2) Any order for payment under this section may be enforced in the same manner as a fine.

(3) The recovery of any amount under this section in respect of a claim shall not be deemed to extinguish the claim but shall be taken into account in determining the amount (if any) to be awarded in any subsequent proceedings that may be taken in respect of that claim.

265 Penalties independent of forfeitures

All penalties under this Act shall be in addition to and independent of any forfeiture, and all forfeitures under this Act shall, except where otherwise provided, be independent of any proceedings in respect of an offence.

266 Power of Manager to deal with petty offences

(1) This section applies to any offence against this Act that is committed in relation to any goods –

(a) Whose value does not exceed \$100; and

(b) On which any duty payable under the Tariff and this Act does not exceed \$20.

(2) If in any case to which this section applies any person admits in writing that he has committed the offence, and requests that the offence be dealt with summarily by the Manager, the Manager may at any time before an information has been laid in respect of the offence, accept from that person such sum, not exceeding 0.5 penalty units, as the Manager thinks just in the circumstances of the case, in full satisfaction of any fine to which that person would otherwise be liable under this Act.

(3) If the Manager accepts any sum under this section the offender shall not be liable to be prosecuted for the offence in respect of which the payment was made.

267 Arrest of offenders

Any officer of Customs or constable who has reasonable cause to suspect that any person has committed any offence against this Act with intent to defraud the revenue of Customs may, within 7 days after the supposed date of the offence, arrest that person without warrant.

*Rewards***268 Rewards for seizures and convictions**

(1) The Minister may order to be paid or distributed out of the revenue of Customs, to or among any officers or other persons by or through whom any seizure is made or fine recovered under the Customs Act, such rewards as the Minister thinks fit.

(2) Where any such seizure or fine results from an attempt to defraud the revenue of Customs, such rewards shall not exceed in the aggregate half the value as determined by the Minister of the goods seized or, as the case may be, half the amount of the fine.

PART 12**FORFEITURES****269 Application of this Part**

This Part shall apply to all forfeitures accruing either under this Act or under any other of the Customs Acts.

*Forfeiture***270 Goods forfeited**

In addition to all other goods elsewhere declared by the Customs Acts to be forfeited, the following goods shall be forfeited to the Crown –

- (a) All dutiable or restricted goods found on any ship, boat, or aircraft or bulk cargo container being unlawfully in any place;
- (b) All dutiable or restricted goods found on any ship or aircraft or bulk cargo container after arrival in any port from any country outside Niue, not being goods specified or referred to in the inward report, and not being baggage belonging to the crew or passengers, and not being accounted for to the satisfaction of the Manager;
- (c) All dutiable or restricted goods found concealed in any manner on a ship, boat or aircraft or bulk cargo container;
- (d) Any package having in it goods not enumerated in the entry;
- (e) All dutiable or restricted goods found so packed as to be likely to deceive the officers of Customs;
- (f) All uncustomed goods which are found in any place.

271 Forfeiture of packages

The forfeiture of any goods shall extend to the forfeiture of the case, covering, or other enclosure, not being a bulk cargo container or a pallet, in which the goods are contained at the time of seizure.

272 Boats and vehicles forfeited

Every boat, vehicle, or animal used in smuggling goods, or in unlawfully conveying goods with intent to defraud the revenue of Customs, or in the importation or conveyance of prohibited imports or forfeited goods, shall be forfeited.

273 Equipment of forfeited boats, vehicles and animals

When any boat, vehicle, or animal has become liable to forfeiture under the Customs Acts, whether by virtue of section 272 or otherwise, all equipment thereof shall also be liable to forfeiture.

274 Forfeiture to relate back

When it is provided by this Act or any other of the Customs Acts that any goods are forfeited, and the goods are seized under this Act or with the Act under which the forfeiture has accrued, the forfeiture shall for all purposes relate back to the date of the act or event from which the forfeiture accrued.

*Seizure***275 Seizure of forfeited goods**

(1) Any officer or constable may seize any forfeited goods or any goods which he has reasonable and probable cause for suspecting to be forfeited.

(2) In any such case such force may be used as is reasonably necessary for effecting the seizure and securing the goods.

(3) All goods so seized shall be taken to a Crown warehouse or to such other place of security as the Manager or other proper officer directs.

(4) No goods shall be so seized at any time except within 2 years after the cause of forfeiture has arisen.

276 Where goods may be seized

Goods may be seized as forfeited wherever found within the territorial limits of Niue.

277 Rescue of seized goods

Every person who, without the permission of the Manager or other proper officer of Customs, whether pretending to be the owner or not, either secretly or openly, and whether with or without force or violence, takes or carries away or otherwise converts to his own use any goods that have been seized as forfeited, at any time before they have been declared by competent authority to have been seized without due case, shall be deemed to have stolen the goods as if they were the property of the Crown and shall be guilty of theft accordingly.

278 Notice of seizure

When any goods have been seized as forfeited the Manager at or nearest to the place of seizure, or the Secretary shall, except when the goods are seized in the presence of some person having or claiming an interest therein, give immediate notice of the seizure, in the prescribed form, to the importer or some other person known or believed to have an interest in the goods, either by delivering the notice personally or by letter addressed to him and delivered at or transmitted by post to his last-known place of abode or business, but no seizure shall be invalidated or rendered illegal by any failure to give such notice.

*Condemnation***279 Condemnation without suit**

(1) All goods seized as forfeited shall be deemed to be condemned, as if by suit and judgment of condemnation, unless within one month after the day of the seizure some person gives notice in the prescribed form, verified by declaration in the prescribed form, to the Manager at or nearest to the place of seizure or to the Secretary, that he, or some one on whose behalf he acts, is entitled to the goods or to an interest in them and intends to dispute their forfeiture.

(2) The burden of proving in any proceedings that any such notice was duly given shall be on the person alleging it.

(3) Proceedings for the condemnation of any goods seized as forfeited may be commenced and prosecuted to judgment whether any such notice has been given or not.

280 Condemnation by High Court

(1) Proceedings for the condemnation of any goods seized as forfeited may in any case be instituted in the High Court by information in rem by the Manager.

(2) The procedure on any such information shall, subject to this Act, be in accordance with rules of court to be made in that behalf, and in default of such rules, or so far as they do not extend, then under the usual practice of the High Court in civil proceedings so far as applicable or, so far as not applicable, then on the directions of the Court or a Judge of it.

(3) On the filing of any such information in the High Court by the Manager notice of the proceedings shall be served on or given to such persons and in such manner as the Court or a Judge of it directs.

(4) Any person claiming any interest in the goods to which the information relates may within one month after the filing of the information, or within such further time as the Court or a Judge allows, file a statement of defence, and shall thereupon become a party to the proceedings.

(5) Every statement of defence shall set out the interest of the defendant in the goods to which the information relates, and shall be accompanied by an affidavit verifying the existence and nature of that interest.

(6) If no such statement of defence is duly filed by any person, judgment of condemnation of the goods to which the information relates shall be entered.

(7) Every such information shall be heard and tried before a Judge alone, unless the Court or a Judge is of opinion that it should be heard and tried before a jury and makes an order accordingly.

(8) On any such information costs may be awarded to or against the Manager or any other party to the proceedings.

281 No other action competent while condemnation proceedings pending

While any proceedings for condemnation are pending no action or other proceedings for the recovery of damages for the seizure of or the detention of the things seized, or for the recovery of possession of them, or for the recovery of money deposited in lieu of them, or of the proceeds of their sale, shall be commenced, or, if already commenced, shall be continued, without the leave of the High Court.

282 [Repealed by 2004/270]

283 Conviction to operate as a condemnation of forfeited goods

(1) Notwithstanding anything in the foregoing provisions of this Part relating to condemnation, but subject to subsection (2), when it is provided by this Act or by any other of the Customs Acts that on the commission of any offence any goods shall be forfeited, the conviction of any person of that offence shall have effect as a condemnation, without suit or judgment, of any goods –

(a) That have been seized in accordance with this Act or with the Act under which the forfeiture has accrued; and

(b) In respect of which the offence was committed.

(2) Subsection (1) shall not limit the right of any person, not being the convicted person or a person acting on his behalf, to claim that he is entitled to the goods or to an interest in them and to dispute their forfeiture under section 279.

*Miscellaneous Provisions***284 Delivery of goods seized on deposit of value**

(1) When any goods have been seized as forfeited the Manager at or nearest to the place of seizure may, if he thinks fit, at any time before their condemnation, deliver them to the owner or other person from whom they were seized, on the deposit with the Manager of a sum equal to their duty-paid value as determined by the Manager.

(2) The money so deposited shall be deemed to be substituted for the goods so seized, and all the provisions of this Act with respect to condemnation, so far as they are applicable, shall extend and apply to that money accordingly as if a claim thereto had been duly made under section 279 by the person depositing it.

285 Sale of perishable articles seized

(1) When any living creature or anything which, in the opinion of the Manager, is of a perishable nature has been seized as forfeited the Manager at or nearest to the place of seizure may, if he thinks fit, sell the thing so seized before its condemnation.

(2) The net proceeds of such sale shall be deemed to be substituted for the thing so sold, and all the provisions of this Act with respect to notice of claim and condemnation shall apply to those proceeds accordingly.

286 Disposal of forfeited goods

All forfeited goods shall, on forfeiture, become the property of the Crown, and shall be sold, destroyed, or otherwise disposed of as the Manager or the Minister may direct.

287 [Repealed by 2004/270]

288 Application of forfeiture provisions

All the provisions of this Act with respect to the forfeiture of goods shall extend and apply to any boat, vehicle, or other thing forfeited under the Customs Acts.

PART 13

DETENTION OF SHIPS AND AIRCRAFT

289 Ships and aircraft liable to detention

Any ship or aircraft shall be liable to detention under this Part when any offence has been committed for which the owner or master of the ship or the owner or pilot in command of the aircraft is liable as such to a penalty under this Act.

290 Seizure of ships and aircraft

(1) Any officer of Customs may seize any ship or aircraft that is liable to detention under this Act or which he has reasonable and probable cause for suspecting to be so liable.

(2) Any such seizure may be made in the same manner as a seizure of forfeited goods.

(3) No ship or aircraft shall be so seized at any time except within 2 years after the act or event that rendered it liable to detention.

291 Where ships and aircraft may be seized

No ship or aircraft shall be so seized elsewhere than within the territorial limits of Niue.

292 Rescue of seized ships and aircraft

(1) Every person who, without the permission of the Manager or other proper officer of Customs, whether under any claim or right or not, and either secretly or openly, and whether with or without force or violence, takes away any ship or aircraft seized as being liable to detention, at any time before it has been declared by competent authority to have been seized without due cause, shall be deemed to have stolen the ship or aircraft as if it were the property of the Crown, and shall be guilty of theft accordingly.

(2) For the purposes of this section the seizure of any ship or aircraft shall be deemed to be complete so soon as any officer of Customs has boarded the ship or aircraft and notified the master or the pilot in command or any other officer of the ship or aircraft that it is seized by the Customs, or so soon as any such officer of Customs has been resisted or obstructed in his endeavour to board the ship or aircraft for that purpose.

293 Security to be given before release of seized ship or aircraft

Every ship or aircraft so seized may be detained by the Customs until security is given to the satisfaction of the Manager or Secretary in such sum as he thinks sufficient, by or on behalf of the owner or master of the ship, or the owner or pilot in command of the aircraft, or some person claiming an interest in it, for the payment of any penalties and costs that may theretofore have been imposed or may thereafter be imposed on that owner or master or pilot in respect of the offence by which the liability of the ship or aircraft to detention accrued.

294 Avoidance of security

If no such penalty is imposed on the owner or master of the ship or the owner or pilot in command of the aircraft either before or within one year after the date of the seizure of the ship or aircraft, any such security shall become null and void, and the ship or aircraft, if no such security has been given, shall cease to be subject to detention.

295 Enforcement of security

If any such penalty is imposed on the owner or master of the ship or the owner or pilot in command of the aircraft either before or within one year after the date of the seizure of the ship or aircraft, any security so given shall become available for the recovery of the amount of the penalty and of any costs awarded.

296 Service of process

For the purpose of recovering any such penalty, any writ, summons, or other process may be served on the owner or master of any ship or the owner or pilot in command of any aircraft so seized (whether the defendant is within Niue or not) by leaving it or a copy of it on board the ship or aircraft; but nothing in this section shall preclude any other lawful method of service.

PART 14

EVIDENCE

297 Incriminating questions and documents

(1) In any civil proceedings in any court under or in pursuance of any provision of the Customs Acts, whether for the recovery of any duty or tax or in relation to any forfeiture or otherwise, no person, whether a party to the proceedings or not, shall be excused from answering any question put to him, by interrogatory or otherwise, or from producing or making discovery of any document, on the ground that the answer to the question or the production or discovery of the document may incriminate or tend to incriminate him.

(2) In any proceedings in any court for an offence against the Customs Acts, a person called as a witness (including a person charged with the offence and called as a witness on his own application) shall not be excused from answering any question put to him touching the alleged offence, on the ground that the answer may incriminate or tend to incriminate him.

(3) A statement made, in any proceedings to which subsection (1) or (2) applies, by any person (other than the person charged with the offence in proceedings to which the subsection (2) applies) in answer to any such question, or a document of which production or discovery is so made by him in any such civil proceedings, shall not, in any criminal proceedings, be admissible in evidence against him except on a charge of perjury in respect of his sworn testimony or on a charge of making a false statement on oath or on a charge of knowingly making a false declaration under section 246.

298 Source of information need not be disclosed

No officer of Customs or constable and no witness for the Crown in any prosecution for an offence against the Customs Acts, or in any proceedings relative to the seizure, detention, or condemnation of ships, aircraft, or goods under those Acts, shall be compellable to disclose the fact that he received any information, or its nature or source, or to produce or disclose the existence or nature of any reports made by or received by him in an official or confidential capacity.

299 Burden of proof

(1) In any proceedings against the Customs Acts instituted by or on behalf of or against the Crown every allegation made on behalf of the Crown in any statement of claim, statement of defence, plea, or information, and relating to the identity or nature of any goods, or to their value for *ad valorem* duty, or to the country or time of their exportation, or to the fact or time of their importation, or to their place of manufacture, production, or origin, or to the payment of any duty on them, or to any act done or omitted with respect to it by any person, shall be presumed to be true unless the contrary is proved.

(2) The said presumption shall not be excluded by the fact that evidence is produced on behalf of the Crown in support of any such allegation.

(3) For the purposes of this section a prosecution for an offence against the Customs Acts shall be deemed to be a proceeding instituted on behalf of the Crown.

(4) For the purposes of this section, every proceeding instituted by or against the Crown in which any question arises as to the rights, powers, obligations, or liabilities of the Crown or any other person under the Customs Acts shall be deemed to be a proceeding under those Acts.

(5) This section shall extend and apply to proceedings in which the existence of an intent to defraud the revenue of Customs is in issue.

300 Burden of proof of justification

In all proceedings that are instituted against the Crown, or against the Minister or an officer of Customs or a constable or any other person, for any seizure, arrest or other act done in pursuance of the Customs Acts, and in which the existence of reasonable or probable cause or of any other justification for such act is in issue, the burden of proving the want of reasonable or probable cause or the absence of such justification shall be on the plaintiff.

301 Presumption of authenticity of documents

All documents purporting to be signed by or on behalf of the Minister or Secretary, or to be sealed with the seal of the Customs, shall in all courts and in all proceedings under the Customs Acts be deemed to have been so signed or sealed with due authority, unless the contrary is proved.

302 What evidence receivable

In any action or other proceeding under the Customs Acts, whether civil or criminal (other than a prosecution for an indictable offence), the court may in proof of any fact in issue admit and accept as sufficient such evidence as it thinks fit, whether such evidence is legally admissible in other proceedings or not.

303 Declarations under this Act

(1) Every declaration required or authorised by this Act shall be made in the prescribed form.

(2) Where by any such form it is indicated that the declaration shall be made before any person, then it may be made before the Secretary or any Manager or other officer of Customs, or before any postmaster or person for the time being lawfully acting in the place of a postmaster or before any such other person as may be prescribed.

PART 15

COOK ISLANDS AND NEW ZEALAND

304 Goods imported from Cook Islands and New Zealand

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

(2) Nothing in this section shall apply to –

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

PART 16

MISCELLANEOUS PROVISIONS

305 Goods passing through Post Office

(1) Subject to this section and to any regulations made under this Act, the provisions of the Customs Acts shall apply to postal packets and to goods contained therein in the same manner as to any other goods.

(2) Without limiting the power to make regulations conferred by section 306, Cabinet may make regulations for the following purposes –

- (a) Modifying any provisions of the Customs Acts in their application to postal packets or to goods contained therein, or exempting such postal packets or goods from the application of any provisions of the Customs Acts, but not so as to affect the liability of any goods to duty or the rate of any duty or the law as to prohibited imports or exports;
- (b) Securing, in respect of such packets or goods, the observance of the Customs Acts and the payment of duty;
- (c) Enabling the officers of the Post Office to exercise or perform for the purpose of the Customs Acts all or any of the powers or duties of the importer or exporter, or of officers of Customs, in respect of such packets or goods;
- (d) Authorising the destruction or other mode of disposition of postal packets or goods in there on which duty is not paid within such time as may be prescribed;
- (e) Providing that any separate postal packets and any goods in it, whether addressed to the same or to different persons, may be treated for the purposes of the Customs Acts as a single package consigned to a single person, and that duty shall be payable thereon accordingly;
- (f) Prescribing the persons who shall be deemed for the purposes of the Customs Acts to be the importers or exporters of such postal packets or goods.

(3) In this section, “postal packet” means any letter, parcel, packet, or other article whatever received or transmitted by or through the Post Office.

306 Regulations

Cabinet may make regulations for the following purposes –

- (a) Prescribing the nature, size and material of the packages in which imported goods or goods for export or for removal within Niue are to be packed;
- (b) Prescribing the maximum weight or quantity of imported goods or goods for export or for removal within Niue that may be contained in any one package;
- (c) Prescribing the conditions of preparation or manufacture for export of any articles used for food or drink by man or used in the manufacture of articles so used;
- (d) Prescribing the conditions as to purity, soundness, and freedom from disease to be conformed to by goods for export;
- (e) Prescribing the manner in which goods shall be weighed or measured for the purposes of the Customs Acts, and the allowances or deductions that may be permitted in such weighing or measuring;
- (f) Modifying any provisions of the Customs Acts in their application to goods (not being goods passing through the Post Office) that are imported into Niue or exported from Niue by means of aircraft, but not so as to affect the liability of any goods to duty or the rate of any duty or the law as to prohibited imports or exports;
- (g) Prescribing forms for the purposes of this Act;
- (h) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of the Customs Acts and for the due administration thereof.

307 Penalties imposed by regulations

Any regulations made under this Act may prescribe fines, not exceeding in any case 2 penalty units for the breach of any such regulations.

308 Regulations

No regulation under this Act shall be invalid because it leaves any matter to the discretion of the Minister or of any other person, or because it authorises the Minister or any other person to give any consent or to issue any licence, permit, or other instrument on or subject to conditions to be imposed or approved by the Minister.

309-313 [Repealed by 2004/270]

Section 48 (1)

SCHEDULES

SCHEDULE 1
PROHIBITED IMPORTS

- Matches made with white phosphorus.
- All indecent documents and articles.
- False or counterfeit coin or banknotes; and any coin that is not of the established standard in weight or composition; and any coin or banknotes that are intended for circulation in Niue and are not legal tender in Niue.
- Goods manufactured or produced wholly or in part by prison labour, or within or in connection with any prison, jail, or penitentiary; also goods similar in character to those manufactured or produced in such institutions when sold or offered for sale by any person, firm, or corporation having a contract for the manufacture or production of such articles in such institutions, or by any agent of such person, firm, or corporation, or when originally purchased from or transferred by any such contractor.

SCHEDULE 2

THE CUSTOMS TARIFF OF NIUE
[Not reproduced, see now Customs Tariff Regulations 1982]

SCHEDULE 3

Section 134 (1) (a)

EXCISE DUTIES

| Goods | Unit | Rates of Duty |
|--|--|---------------|
| Alcohol used in manufacturing warehouses in the production of – | | |
| Perfumed spirit | per proof 1 | 80c |
| Toilet preparations | per proof 1 | 75c |
| Culinary and flavouring essences | per proof 1 | 44c |
| Medicaments (except medicated wine or wine mixed with food): | | |
| Containing more than 50% of proof spirit | per proof 1 | 10c |
| Other | | Free |
| Cigarette tubes, cigarette papers, and Cigarette paper manufactured in a Manufacturing warehouse | per 1,000 tubes or 1,000 papers or equivalent of 1,000 tubes or papers | 7c |
| Sugar of any degree of polarisation | | Free |
| Invert sugar and invert syrup | | Free |
| Liquid sugar solution: | | |
| On weight of sugar contained in the solution as determined by means of the Brix hydrometer or other similar instrument | | Free |
| Treacle, molasses, golden syrup, maple sugar and maple syrup | | Free |
| Tobacco, manufactured: | | |
| Cigars and snuff | per kg | \$6.57 |

Cigarettes:

| | | |
|----------------------------------|-----------|---------|
| Not exceeding in weight 1.134 kg | | |
| Per 1,000 | per 1,000 | \$11.90 |
| Exceeding in weight 1.134 kg | per kg | \$10.49 |
| Other manufactured tobacco | per kg | \$7.80 |

SCHEDULE 4
[Repealed by 2004/270]

SCHEDULE 5
CUSTOMS WARRANT

Section 216 (1)

To

Under the Customs Act 1966, you are hereby authorised to enter by day or night, and whether peaceably or by force if need be, any house, premises, or place in which you have reasonable cause to suspect that there are any uncustomed goods, or any goods subject to the control of the Customs or unlawfully imported, or any goods in respect of which an offence has been committed against the Customs Acts, or any books or other documents relating to any such goods, or any books or other documents containing information that may lead to the recovery of any penalty or other money under the Customs Acts, and to search any house, premises, or place so entered, and there to break open and search any boxes, receptacles, packages, or places in which any such goods, books, or documents may be or be supposed to be; and on any such entry to seize and take away any forfeited goods or any goods which there is reasonable cause to believe or suspect to be forfeited; and in so acting you are hereby authorised to take with you and have the assistance of any Constable and such other assistants as you deem necessary. For all which this shall be your sufficient warrant.

Given under my hand and the seal of the Customs, this day of 20
(Customs Seal)

Financial Secretary, Customs

CUSTOMS TARIFF ACT 1982

1982/77 - 30 September 1982

| | |
|-----------------------|---|
| 1 Short title | 6 Regulations |
| 2 Interpretation | 7 Modification of Tariff |
| 3 Customs Tariff | 8 Exemptions from duties |
| 4 [Spent] | 9 Procedures for making applications for exemptions |
| 5 Duties to be levied | |

1 Short title

This is the Customs Tariff Act 1982 and shall be read together with and deemed part of the Customs Act 1966 ('the Principal Act').

2 Interpretation

In this Act –

“regulations” means the regulations made under section 3.

3 Customs Tariff

Cabinet shall by regulation prepare a Customs Tariff setting out the Customs duties to be levied and collected on all goods imported into Niue.

4 [Spent]

5 Duties to be levied

(1) Subject to this Act and the Principal Act, customs duties shall be levied, collected and paid under the regulations made under section 3 on all goods imported into Niue or entered therein for home consumption.

(2) All duties levied, collected and paid under the regulations shall be deemed to have satisfied all requirements to levy, collect and pay duties under Schedule 2 of the Principal Act.

6 Regulations

Regulations made under this Act need not be printed in the Niuean language unless Cabinet otherwise determines.

7 Modification of tariff

Cabinet may by regulation modify in whole or in part the Customs Tariff contained in the regulations following the procedure prescribed in section 6.

8 Exemption from duties

(1) Notwithstanding the rates of duty specified in the Customs Tariff, Cabinet is empowered to make exemptions for payment of duties or to substitute reduced rates of duties.

(2) For the purposes of subsection (1) Cabinet shall determine the activities for which duty exemptions may be granted and the conditions for granting exemptions.

9 Procedures for making applications for exemption

(1) All applications for exemptions are in the first instance to be made through the Revenue Manager.

(2) On receipt of an application and any further information that the Revenue Manager may require, the Revenue Manager shall, as soon as possible and in no case later than 14 days from the date of receipt of such application, forward the application to the Minister of Customs and to the relevant department for comment, as the case may require, together with appropriate recommendations.

DEATHS BY ACCIDENTS COMPENSATION ACT 1952

1952/35 (NZ) – 1 January 1953

| | | | |
|----|--|-------|---|
| 1 | Short title | | PART 2 |
| 2 | Interpretation | | APPORTIONMENT OF DAMAGES |
| 3 | Act to bind the Crown | 11 | Interpretation |
| | PART 1 | 12 | Costs, medical and funeral expenses |
| | ACTIONS FOR DAMAGES | 13 | Damages may be allotted |
| 4 | Right of action when death is caused by negligence | 14 | Disposition of damages |
| 5 | Action to be for benefit of family | 15 | Class fund |
| 6 | Persons who may bring action | 16 | Power to authorise advances |
| 7 | Amount of damages | 17 | Variation of orders |
| 8 | Plaintiff to deliver full particulars | 18 | Considerations to be taken into account |
| 9 | Money paid into Court | 19 | Persons who may apply for order |
| 10 | Limitation of actions | 20 | [Spent] |
| | | 21-22 | [Repealed] |
| | | | PART 3 |
| | | 23 | [Repealed] |

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

- 1 Short title**
This is the Deaths by Accidents Compensation Act 1952.
- 2 Interpretation**
 - (1) In this Act –
 - “child”, in relation to any deceased person, means a son, daughter, grandson, granddaughter, stepson, or stepdaughter of the deceased person;
 - “dependant”, in relation to any deceased person, means any wife, husband, parent, or child of that person who has suffered injury as a result of the death of the deceased person or who might reasonably have expected to enjoy some actual pecuniary benefit if the deceased person had not died, whether or not the wife, husband, parent, or child was either wholly or partially dependent upon the deceased person before his death;
 - “parent”, in relation to any deceased person, means a father, mother, grandfather, grandmother, stepfather, or stepmother of the deceased person;
 - “wife”, in relation to any deceased person, means the person who is his wife at his death; and includes every other person who has been his wife and is maintained or entitled to be maintained by him either wholly

or partly at the time of his death or would have been so maintained or entitled but for the incapacity due to the accident from which his death resulted.

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

3 Act to bind the Crown

This Act shall bind the Crown.

PART 1

ACTIONS FOR DAMAGES

4 Right of action when death is caused by negligence

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

(2) [Spent]

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

5 Action to be for benefit of family

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

6 Persons who may bring action

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

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

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

7 Amount of damages

- (1) In every such action the Court may award –
- (a) Such damages as it may think proportioned to the injury resulting from the death to the person or persons for whose benefit the action is brought; and
 - (b) Damages in respect of the amount of actual pecuniary benefit which the person or persons for whose benefit the action is brought might reasonably have expected to enjoy if the death had not occurred, whether or not the person or persons have been either wholly or partially dependent upon the deceased person before his death; and
 - (c) Damages in respect of the medical and funeral expenses of the deceased person if the expenses have been incurred by the person or any of the persons by whom or for whose benefit the action is brought.
- (2) In awarding damages in any such action the court shall not take into account any gain, whether to the estate of the deceased person or to any dependant, that is consequent on the death of the deceased person.

8 Plaintiff to deliver full particulars

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

9 Money paid into Court

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

10 Limitation of actions

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

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

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

- (a) No other person has commenced an action under this Act in respect of the death of the deceased person or made an application for leave to bring such an action; and
 - (b) No grant of administration has been made in Niue in respect of the estate.
- (4) For the purposes of this section, a person shall be deemed to be under a disability while he is an infant or of unsound mind.

PART 2

APPORTIONMENT OF DAMAGES

11 Interpretation

For the purposes of this Part –

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

12 Costs, medical and funeral expenses

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

13 Damages may be allotted

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

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

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

14 Disposition of damages

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

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

- (a) The amount shall be invested and held by the trustee upon trust –
 - (i) to make such payments (if any) to the dependant out of the income and capital of the amount as the court may specify; and
 - (ii) to apply the income and capital of the amount or so much of it as the trustee thinks fit for or towards the maintenance or education (including past maintenance or education provided after the death of the deceased person) or the advancement or benefit of the dependant;
 - (b) The dependant shall have no power, either by himself or in conjunction with any other person or persons, to terminate the trusts upon which the amount is held or to modify or extinguish those trusts;
 - (c) The interest of the dependant in the income and capital of the amount shall not, while it remains in the hands of the trustee, be alienated, or pass by bankruptcy, or be liable to be seized, sold, attached, or taken in execution by process of law.
- (3) (a) Upon any dependant ceasing to be an infant or of unsound mind while any amount is held on trust for his benefit under subsection (2), the balance of that amount and of the income from it remaining in the hands of the trustee shall be paid to the dependant except in so far as the court may have ordered before the payment is made that the whole or any part of that amount shall continue to be held on trust under that subsection;
- (b) Where the trustee has notice that an application has been made to the court for such an order he shall not make any payment under this subsection until the application has been disposed of.
- (4) (a) The court may order that, if any dependant dies while any amount allotted to him is held on trust under subsection (2) (whether or not he is an infant or of unsound mind) any balance of the amount and of the income from it remaining in the hands of the trustee at his death, or so much of it as the court may specify, shall form part of the dependant's estate, or shall be added to the amount allotted to any other dependant or to the amounts allotted to all or any of the other dependants in such proportions as the court may specify or to any class fund set aside out of the balance of the damages, and shall be subject to the trusts of the amount or amounts or fund to which it is added.
- (b) If and so far as that balance is not wholly disposed of under any order of the court made during the lifetime of the dependant for whose benefit it had been held, or made on an application to the court made not later than 6 months after that dependant's death, it shall form part of his estate.

15 Class fund

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

them in such shares and proportions and generally in such manner as the trustee thinks fit; and may so apply the income and capital of that amount notwithstanding that only one of those dependants remains alive.

16 Power to authorise advances

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

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

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

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

17 Variation of orders

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

18 Considerations to be taken into account

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

(a) Any gain to any dependant that is consequent on the death of the deceased person; and

(b) Circumstances which have arisen after the date of the death of the deceased person; and

(c) The probable future needs of the dependants.

19 Persons who may apply for order

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

(a) Any dependant of the deceased person;

(b) The husband or wife of any such dependant;

- (c) Any near relation by blood or marriage of any such dependant;
- (d) [Repealed by 2004/270]
- (e) The trustee who holds the amount to which the application relates;
or
- (f) Any other person who adduces proof of circumstances which in the opinion of the court make it proper that he should make the application.

20 [Spent]

21-22 [Repealed by 2004/270]

PART 3

23 [Repealed by 2004/270]

DEPARTURE TAX ACT 1996

1996/212 – 3 October 1996

| | |
|-------------------------------|-----------------------------|
| 1 Short title | 5 Recovery of departure tax |
| 2 Interpretation | 6 Offences |
| 3 Departure tax | 7 Regulations |
| 4 Collection of departure tax | 8 [Spent] |

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

- 1 Short title**
This is the Departure Tax Act 1996.
- 2 Interpretation**
In this Act and its regulations –
 “Act” means the Departure Tax Act 1996;
 “child” means a person of 2 years of age and up to the age of 12 years;
 “diplomat” means a person who has accredited diplomatic status recognised by the Niue Government together with that person’s immediate family;
 “infant” means a person under the age of 2 years;
 “transit passenger” means a passenger who –
- (i) does not leave the airport or ship; or
 - (ii) leaves the airport or vessel only because of an interruption to the journey caused by unserviceability of that aircraft or vessel, or caused by any other delay beyond the control of the passenger or the operator concerned; or
 - (iii) stays on Niue solely for the purpose of securing onward travel to a country other than that from which the person arrived from, and departs Niue within 12 hours of arrival.
- 3 Departure tax**
 (1) Subject to subsection (2) every person departing Niue shall pay a departure tax.
 (2) The following persons shall not be liable to pay departure tax imposed by subsection (1) –
- (a) Any member of the crew of a scheduled, military, diplomatic, or licensed commercial aircraft or vessel;
 - (b) An infant or child;
 - (c) Any diplomat together with any member of his immediate family;
and
 - (d) Any transit passenger.

4 Collection of tax

(1) The Customs Department of Treasury, or any other person duly authorised by that department, shall be responsible for the collecting and receipting of all departure tax imposed on persons departing Niue.

(2) The Customs Department may direct any travel agent to collect departure tax on their behalf.

(3) Any person required to pay departure tax shall not be permitted to depart Niue without first paying departure tax.

(4) All departure tax shall be paid in cash in New Zealand dollars or the cash equivalent in the currency of either Australia or the United States of America.

5 Recovery of departure tax

Should any person, liable for payment of departure tax, fail to make such payment, then the Niue Government may recover such tax in any court of competent jurisdiction.

6 Offences

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

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

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

7 Regulations

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

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

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

8 [Spent]

DEVELOPMENT INVESTMENT ACT 1992

1992/164 – 1 October 1992

| | | | |
|----|---|-------|---|
| 1 | Short title | 20 | Variation, suspension and revocation of concessions |
| 2 | Interpretation | | |
| | PART 1 GENERAL | | PART 5 DISCLOSURE AND FILING OF INFORMATION |
| 3 | Purposes of Act | 21 | Disclosure and filing |
| 4 | Application of Act | | |
| 5 | Act binding on Crown | | PART 6 GUARANTEES TO FOREIGN ENTERPRISES |
| | PART 2 REGULATION OF FOREIGN ENTERPRISES | 22 | Guarantees to foreign enterprises |
| 6 | Restriction on carrying on business by foreign enterprise | | PART 7 JUDICIAL REVIEW |
| 7 | [Spent] | 23 | Application for review |
| 8 | Registration | 24 | Defects in form |
| 9 | Issue of certificate of registration | 25 | Interim orders |
| 10 | Variation of registration | 26 | Sufficiency of application |
| 11 | Revocation of registration | 27 | Procedure |
| 12 | Continuation of business | 28 | Savings |
| | PART 3 CONTROL OF TAKEOVERS | | PART 8 MISCELLANEOUS |
| 13 | Transfer of shares | 29 | Advisory committees |
| 14 | Change in status | 30 | Disclosure |
| | PART 4 INVESTMENT PRIORITIES AND INCENTIVES | 31 | Personal liability |
| 15 | Investment Code | 32 | Service of notices |
| 16 | Investment incentives and concessions | 33 | Offences |
| 17 | Application for incentives and concessions | 34 | Offences by corporations |
| 18 | Registration of foreign enterprise | 35 | Refund of concessions |
| 19 | Government departments or agencies to be informed | 36 | Regulations |
| | | 37-38 | [Spent] |
| | | | SCHEDULES |

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

1 Short title

This is the Development Investment Act 1992.

2 Interpretation

In this Act –

“activity” means an undertaking of whatever nature engaged in by an enterprise and includes each and every other undertaking that is associated with or incidental to that undertaking;

“book and document” and “book or document” includes all books, accounts, records, registers, rolls, computer tapes, discs, and printouts;

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

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

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

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

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

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

“foreign enterprise” means –

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

- (b) In the case of an enterprise other than a body corporate, an enterprise –

- (i) in which 50 percent or more of the members or partners are not local persons; or
- (ii) in which 50 per cent or more of the beneficial ownership of which is owned by persons who are not local persons.

- (c) An enterprise that is a person other than a local person –

“foreign interest” means –

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

- (b) In the case of an enterprise other than a body corporate the interest in which the beneficial ownership is owned or controlled by persons who are not local persons;

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

“local person” means –

- (a) A Niuean;
 (b) A person who has the status of a permanent resident under section 6 of the Entry, Residence and Departure Act 1985;

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

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

“trustee” includes an executor or administrator.

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

PART 1 GENERAL

3 Purposes of Act

The purposes of this Act are to –

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

4 Application of Act

(1) The provisions of the –

- (a) Income Tax Act 1961;
 (b) Customs Act 1966;
 (c) Customs Tariff Act 1982;
 (d) Entry Residence and Departure Act 1985;

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

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

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

5 Act binding on Crown

This Act shall bind the Crown.

PART 2

REGULATION OF FOREIGN ENTERPRISES

6 Restriction on carrying on business by foreign enterprise

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

7 [Spent]

8 Registration

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

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

- (a) The name of the enterprise;
- (b) The address of its registered office and principal place of business;
- (c) The proposed activities in respect of which registration is sought;
- (d) The names and addresses of its shareholders, or partners, directors, executive officers, secretary, accountant and auditor or of the persons carrying out those functions;
- (e) The legal and beneficial ownership of authorised, issued and paid-up capital, and the number, class, nominal and paid-up shares held by each shareholder:

Provided that where the enterprise has not divided its capital into shares, the information shall relate to any beneficial interest in the capital and profits of the enterprise held by or on behalf of any person or a trustee of any beneficiary;

- (f) Particulars of proposed capital expenditure together with the sources and forms of financing of the enterprise;
- (g) A balance sheet setting out its assets and liabilities;
- (h) The number of local persons and expatriate persons to be employed, and the provision for the training of local persons;
- (i) The proposed activity to be undertaken and the nature and source of raw materials to be used;
- (j) Such other information as Cabinet may require.

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

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

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

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

9 Issue of certificate of registration

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

10 Variation of registration

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

11 Revocation of registration

(1) Where a foreign enterprise has –
(a) Contravened any of the provisions of this Act; or
(b) Failed to comply with any term or conditions of its registration as a foreign enterprise,
and Cabinet, after due enquiry and having regard to the nature of the contravention or failure, considers that it is undesirable that the enterprise should continue to be registered under this Act, or registered in respect of a particular activity, Cabinet shall notify the foreign enterprise of its opinion and of the reasons for such opinion, and shall invite the foreign enterprise to make representations within a period specified by Cabinet, being in any event not less than 21 days, as to why registration of the enterprise as a foreign enterprise under this Act should not be revoked, either wholly or in respect of any particular activity.

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

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

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

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

12 Continuation of business

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

PART 3
CONTROL OF TAKEOVERS

13 Transfer of shares

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

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

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

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

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

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

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

- (a) The transfer of shares or any proprietary interest;
- (b) The issue of new shares;
- (c) Any change in the governing rules,

shall be deemed for the purposes of this Act to be a transfer of shares in the enterprise carrying on business in Niue.

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

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

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

14 Change in status

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

PART 4

INVESTMENT PRIORITIES AND INCENTIVES

15 Investment Code

- (1) Cabinet shall determine and publish in the *Gazette*, an Investment Code.
- (2) The purpose of the Code shall be to inform potential investors as well as persons or bodies responsible for planning, promoting or encouraging investment in Niue of the priorities and reservations attached by Cabinet to investment in particular activities.
- (3) The Code shall include particulars of –
 - (a) Investments and activities which merit encouragement;
 - (b) Activities which may be eligible for incentives and concessions to be approved under section 17(3);
 - (c) General criteria by which any investment or new enterprise will be evaluated to determine its merits;
 - (d) Criteria by which foreign investment or a foreign enterprise will be evaluated;
 - (e) The kinds of activities reserved for local enterprises;
 - (f) Such other matters as Cabinet may decide.

16 Investment incentives and concessions

- (1) Incentives and concessions as specified in the Schedule to this Act are hereby established and shall be capable of being granted by Cabinet notwithstanding any other enactment to the contrary.
- (2) Cabinet may by regulation, amend, delete from or add to the Schedule, such incentives and concessions as Cabinet may determine.
- (3) All regulations made under this section shall be laid before the Assembly forthwith after the making of it if the Assembly is then in session, and if not, shall be laid before the Assembly at the commencement of the next ensuing session.

17 Application for incentives and concessions

- (1) An enterprise carrying on business in an activity which is eligible for incentives and concessions under the Investment Code may apply to Cabinet to be granted the incentives and concessions established by this Act.
- (2) Every application to Cabinet shall include, where applicable, the following information –
 - (a) The nature of the enterprise, and the product or service to be provided;
 - (b) The market potential for the product or service;
 - (c) The legal and beneficial shareholding and the names and addresses of all legal and beneficial shareholders of the enterprise together with details of directors and management personnel;
 - (d) The source and form of financing of the enterprise;
 - (e) The locality of the enterprise and the title to the site held or expected to be obtained;
 - (f) The number of persons to be employed and in particular details of expatriate personnel and the provision for the training of local persons;
 - (g) The nature and source of raw materials intended to be used;
 - (h) Details of proposed capital expenditure;
 - (i) The dates on which the enterprise will commence its establishment and on which the enterprise will commence business in Niue;
 - (j) The type and extent of the incentives, concessions or benefits sought;

- (k) The benefits that will accrue to Niue if the application is granted;
 - (l) Such other information as Cabinet may require.
- (3) Cabinet shall consider the application having regard to the Investment Code and may –
- (a) Approve the application on such terms and conditions (if any) as Cabinet may specify; or
 - (b) Decline the application.
- (4) Where an enterprise is granted incentives or concessions pursuant to subsection (3), such incentives or concessions and any terms or conditions shall be notified in writing to the enterprise.

18 Registration of foreign enterprise

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

19 Government departments or agencies to be informed

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

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

20 Variation, suspension and revocation of concessions

(1) Where Cabinet is of the opinion that a foreign enterprise has contravened or failed to comply with any term or condition of the granting to it of any incentive concession or benefit, and Cabinet, after due enquiry and having regard to the nature of the contravention or failure considers that it is undesirable that the enterprise or any activity carried on by it should continue to receive any incentive concession or benefit, Cabinet shall notify the enterprise of its opinion and of the reasons for such opinion, and shall invite the enterprise to make representations within a period specified by Cabinet, being in any event not less than 21 days, as to why the grant to the enterprise of any incentive concession or benefit should not be revoked.

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

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

PART 5

DISCLOSURE AND FILING OF INFORMATION

21 Disclosure and filing

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

- (a) The name of the enterprise;
- (b) The address of the registered office and principal place of business of the enterprise;
- (c) The activities of the enterprise;
- (d) The names and addresses of its directors, chief executive officer, secretary, accountant and auditor or the persons carrying out these functions;
- (e) Details of its shareholder as at the date of filing together with changes in it since the last date of filing with respect to –
 - (i) authorised, issued and paid-up shares; and
 - (ii) shareholders showing the number, class, nominal and paid-up shares held by each shareholder or on behalf of a beneficiary:

Provided that where the enterprise has not divided its capital into shares, the information shall relate to any beneficial interest in the capital and profits of the enterprise held by or on behalf of a person or beneficial owner;

- (f) The activities being carried on in Niue by the enterprise.

PART 6

GUARANTEES TO FOREIGN ENTERPRISES

22 Guarantees to foreign enterprises

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

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

PART 7

JUDICIAL REVIEW

23 Application for review

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

- (a) Revoke the registration of the enterprise as a foreign enterprise under section 11(3); or

- (b) Revoke the grant to the enterprise of any incentive, concession or benefit under section 20(2),

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

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

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

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

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

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

24 Defects in form

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

25 Interim orders

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

26 Sufficiency of application

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

27 Procedure

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

29 Savings

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

PART 8
MISCELLANEOUS

29 Advisory committees

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

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

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

30 Disclosure

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

31 Personal liability

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

32 Service of notices

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

33 Offences

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

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

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

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

34 Offences by corporations

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

35 Refund of concessions

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

36 Regulations

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

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

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

37-38 [Spent]

SCHEDULE
Section 16

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

1 Tariff protection

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

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

2 Import duty concessions**(a) Capital items**

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

- (i) where the establishment of a project extends over several years, the concession or exemption shall not extend for more than 2 years;
 - (ii) in the case of an existing or established enterprise, the replacement of capital items due to normal wear and tear or other causes together with consumable stocks shall not qualify for exemption from duty;
- (b) Raw materials
 Partial or full exemption from import duty may be granted to an enterprise in respect of any essential raw or processed materials used directly in any production or manufacturing process in an approved activity which is import substituting or export generating for any specified period of time not exceeding 5 years. Cabinet may extend such concession for up to 2 further periods not exceeding 5 years each.

3 Tax incentives

- (a) Tax concessions
 Where any new or existing enterprise establishes a new activity in Niue, or where an activity already existing in Niue is materially expanded by any new or existing enterprise, and Cabinet is satisfied that such establishment or expansion will contribute substantially to the economic development of Niue, Cabinet may grant to that enterprise such concessions in respect of taxation on the income derived from that activity as Cabinet thinks fit.
 A concession granted by Cabinet may take the form of a partial or full tax concession and may be granted for any period not exceeding 5 years to an enterprise engaged in an approved activity and may in special circumstances be renewed or extended up to 2 further periods of 5 years each.
- (b) Recruitment of skilled local persons domiciled overseas
 (1) 200 percent of the allowable expenditures and costs on the recruitment of an employee who is a local person ordinarily domiciled overseas may be granted to any enterprise as a deduction against the taxable income of the enterprise in the year it is incurred, provided the enterprise satisfies Cabinet that –
 (i) the person possesses the skill and expertise for the job or position designated; and
 (ii) the person will be employed by the enterprise; and
 (iii) the person intends to reside permanently in Niue.
 (2) The allowable expenditures and costs in each instance shall include –
 (i) one-way fares for the person, spouse and any children under 15 years of age;
 (ii) the cost of freight (to a maximum of \$5000) of personal effects;
 (iii) local establishment and relocation costs of up to \$5000.
- (c) Counterpart training
 (1) Where an enterprise employing an employee other than a local person, or an expatriate designates a local person to be trained to replace the expatriate employee in that position or job, up to 200 percent of the direct cost of training incurred during each year may be claimed against the taxable income of the enterprise over the

first 3 years of training.

(2) The allowance training costs shall include –

- (i) In the case of overseas training – tuition fees, costs of materials directly associated with the course, fares of the trainee, salary or bursary paid to the trainee during the period of training, provided however that the enterprise first satisfies Cabinet that the training cannot be adequately carried out in Niue; or
 - (ii) In the case of local training – tuition fees, costs of materials directly associated with the course, and where on-the-job training is provided by an expatriate, the portion of the salary of the expatriate directly related to the on-the-job training;
- (d) Depreciation allowances
Accelerated depreciation allowances up to 200 percent of the rate specified in the Income Tax Act 1961 may be granted on plant, machinery, equipment, and permanent buildings used or to be used in any approved activity.

5 Residence permits

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

6 Salary subsidy

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

DIPLOMATIC PRIVILEGES AND IMMUNITIES ACT 1968

1968/36 (NZ) – 1 January 1969

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

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

| | |
|---|--|
| <p>1 Short title This is the Diplomatic Privileges and Immunities Act 1968.</p> <p>2 [Repealed by 2004/270]</p> <p style="text-align: center;">PART 1</p> <p style="text-align: center;">DIPLOMATIC PRIVILEGES AND IMMUNITIES</p> <p>3 Interpretation In this Part –</p> <p style="padding-left: 20px;">(a) “Convention” means the Vienna Convention on Diplomatic Relations signed in 1961, a copy of the English text of which is set out in Schedule 1; “mission” means a diplomatic mission of any State.</p> <p style="padding-left: 20px;">(b) Expressions defined in article 1 of the Convention have the meanings so defined.</p> | |
|---|--|

4 Application of this Part

This Part shall, with respect to the matters dealt with there have effect in substitution for any previous enactment or rule of law in force in Niue immediately before the commencement of this Act.

5 Diplomatic privileges and immunities

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

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

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

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

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

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

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

(a) A reference in those provisions to the receiving State shall be construed as a reference to Niue;

(b) A reference in those provisions to a national of the receiving State shall be construed as a reference to a New Zealand citizen;

(c) The reference in article 22(1) to agents of the receiving State shall be construed as including a reference to any constable and any person exercising a power of entry to premises;

(d) The reference in article 32 to waiver by the sending State shall be construed as including a waiver by the head of the mission of the sending State or by a person for the time being performing the functions of the head of mission;

(e) Articles 35, 36 and 40 shall be construed as granting the privileges or immunities that those articles require to be granted;

(f) (i) the reference in article 36(1) to such laws and regulations as the receiving State may adopt shall be construed as including a reference to any law in force in Niue relating to the quarantine, or the prohibition or restriction of the importation into, or the exportation from, Niue of animals, plants, or goods;

(ii) any immunity from jurisdiction that a person may possess or enjoy by virtue of subsection (1) shall not be prejudice;

- (g) The reference in article 37(4) to the extent to which privileges and immunities are admitted by the receiving State, and the reference in article 38(1) to any additional privileges and immunities that may be granted by the receiving State, shall, so far as they relate to privileges, be construed as references to such determinations as may be made by the Cabinet under subsection (2) of this section, and, so far as they relate to immunities, be construed as references to such immunities as may be conferred by a Regulation under subsection (3) of this section;
- (h) The reference in article 38(2) to the extent to which privileges and immunities are admitted by the receiving State shall, so far as it relates to privileges, be construed as a reference to such determinations as may be made by Cabinet under subsection (2) of this section, and, so far as it relates to immunities, be construed, in relation to persons to whom section 6 applies, as a reference to immunities conferred by that section, and, in relation to other persons to whom that paragraph applies, as a reference to such immunities as may be conferred by regulations under subsection (3) of this section.

6 Immunities of staff of a mission

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

7 Withdrawal of privileges

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

PART 2

PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANISATIONS AND PERSONS CONNECTED THEREWITH

8 [Repealed by 2004/270]

9 Privileges, immunities, and capacities of certain international organisations

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

(2) Cabinet may, by regulation –

- (a) Provide that any organisation to which this section applies (hereinafter referred to as the organisation) shall, to such extent as may be specified in the order, have the privileges and immunities specified in Schedule 2 and shall also have the legal capacities of a body corporate;

- (b) Confer upon –
 - (i) any persons who are representatives (whether of Governments or not) on any organ of the organisation or at any conference convened by the organisation or are members of any committee of the organisation or of any organ thereof;
 - (ii) such officers or classes of officers of the organisation as are specified in the order, being the holders of such high offices in the organisation as are so specified;
 - (iii) such persons employed on missions on behalf of the organisation as are specified in the order – to such extent as may be specified in the order, the privileges and immunities specified in Schedule 3;
- (c) Confer upon such other classes of officers and servants of the organisation as are specified in the order, to such extent as may be so specified, the privileges and immunities specified in Schedule 4 –

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

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

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

- (1) Cabinet may by regulation –
 - (a) Provide that the Commonwealth Secretariat shall, to such extent as may be specified in the regulation, have the privileges and immunities specified in Schedule 2 and shall also have the legal capacities of a body corporate;
 - (b) Confer upon –
 - (i) any persons who are representatives (whether of Governments or not) on any organ of the Commonwealth Secretariat or at any conference convened by the Commonwealth Secretariat, or are members of any committee of the Commonwealth Secretariat or of any organ thereof;
 - (ii) such officers or classes of officers of the Commonwealth Secretariat as are specified in the order, being the holders of such high offices in the Commonwealth Secretariat as are so specified;
 - (iii) such persons employed on missions on behalf of the Commonwealth Secretariat as are specified in the order – to such extent as may be specified in the regulation, the privileges and immunities specified in Schedule 3;
 - (c) Confer upon such other classes of officers and servants of the Commonwealth Secretariat as are specified in the regulation, to such extent as may be so specified, the privileges and immunities specified in Schedule 4 –

and Schedule 5 shall have effect for the purpose of extending to the staffs or such representatives and members as are mentioned in paragraph (b) (i) and to the

members of the families forming part of the household of officers of the Commonwealth Secretariat any privileges and immunities conferred on the representatives, members, or officers under that paragraph, except in so far as the operation of Schedule 5 is excluded by the regulation conferring the privileges and immunities.

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

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

10 The International Court of Justice

Cabinet may, by regulation, confer on the Judges and Registrars of the International Court of Justice established by the Charter of the United Nations, and on suitors to that Court and their agents, counsel, and advocates, such privileges, immunities and facilities as may be required to give effect to any resolution of, or convention approved by, the General Assembly of the United Nations.

11 International conferences

Where –

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

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

12 Reciprocal treatment

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

PART 3

13-18 [Repealed 1977/14/77]

PART 4

MISCELLANEOUS PROVISIONS

19 Power to grant exemptions

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

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

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

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

20 General provisions as to exemptions

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

(2) [Repealed by 2004/270]

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

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

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

21 [Repealed by 2004/270]

22 Certificate of Cabinet

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

23 [Repealed by 2004/270]

24 Regulations

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

25-27 [Repealed by 2004/270]

SCHEDULES

SCHEDULE 1

Section 3

THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS

THE STATES PARTIES TO THE PRESENT CONVENTION,
RECALLING that peoples of all nations from ancient times have recognized the status of diplomatic agents,
HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,
BELIEVING that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,
REALISING that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,
AFFIRMING that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,
HAVE AGREED as follows:

ARTICLE 1

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

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

ARTICLE 2

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

ARTICLE 3

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

ARTICLE 4

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

ARTICLE 5

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

ARTICLE 6

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

ARTICLE 7

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

ARTICLE 8

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

ARTICLE 9

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

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

ARTICLE 10

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

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

2. Where possible, prior notification of arrival and final departure shall also be given.

ARTICLE 11

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

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

ARTICLE 12

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

ARTICLE 13

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

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

ARTICLE 14

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

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

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

ARTICLE 15

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

ARTICLE 16

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

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

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

ARTICLE 17

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

ARTICLE 18

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

ARTICLE 19

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

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

ARTICLE 20

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

ARTICLE 21

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

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

ARTICLE 22

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

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

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

ARTICLE 23

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

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

ARTICLE 24

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

ARTICLE 25

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

ARTICLE 26

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

ARTICLE 27

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

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

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

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

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

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

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

ARTICLE 28

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

ARTICLE 29

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

ARTICLE 30

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.
2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability.

ARTICLE 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:
 - (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
 - (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
 - (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.
2. A diplomatic agent is not obliged to give evidence as a witness.
3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.
4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

ARTICLE 32

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

ARTICLE 33

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

ARTICLE 34

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

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of the Article 39;
- (d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of Article 23.

ARTICLE 35

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

ARTICLE 36

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

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

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

ARTICLE 37

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

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

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

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may

enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

ARTICLE 38

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

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

ARTICLE 39

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

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

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

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

ARTICLE 40

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

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

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

4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official

communications and diplomatic bags, whose presence in the territory of the third State is due to *force majeure*.

ARTICLE 41

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

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

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

ARTICLE 42

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

ARTICLE 43

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

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

ARTICLE 44

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

ARTICLE 45

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

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

ARTICLE 46

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

ARTICLE 47

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

ARTICLE 48

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

ARTICLE 49

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

ARTICLE 50

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

ARTICLE 51

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

ARTICLE 52

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

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

ARTICLE 53

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

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

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

[Signatures not reproduced.]

SCHEDULE 2
Section 9(2)(a)

PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANISATIONS

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

SCHEDULE 3
Section 9(2)(b)

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

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

SCHEDULE 4
Section 9(2)(c)

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

1. Immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties.
2. Exemption from taxes in respect of emoluments received as an officer or servant of the organisation.

3. Exemption from taxes on the importation of furniture and effects imported at the time of first taking up post in New Zealand, that exemption to be subject to compliance with such conditions as the Minister of Customs may determine for the protection of the revenue.

SCHEDULE 5

Section 9(2)

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

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

2. Where any person is accorded any such privileges and immunities as are mentioned in Schedule 3 to this Act as an officer of the organisation, the members of the family of that person who form part of his household shall also be accorded those privileges and immunities to the same extent as the members of the family of a diplomatic agent who form part of his household are accorded the privileges and immunities accorded to that diplomatic agent.

DOGS ACT 1966

1966/35 – 1 July 1966

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

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

| | | |
|---|-----------------------|---|
| 1 | Short title | This is the Dogs Act 1966. |
| 2 | [Spent] | |
| 3 | Interpretation | In this Act – “owner” (of a dog) includes every person who – (i) has the dog in his keep, care, custody, charge, or possession for the time being, whether the dog is at large or in confinement; or |

- (ii) occupies any dwelling, business premises or other place in which the dog is usually harboured or permitted to remain; and

“registration label” means the label described in section 8 (1);

“Secretary” means the Financial Secretary appointed under the authority of the Customs Act 1966;

“vehicle” means any vehicle within the meaning of the Transport Act 1965;

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

PART 2

THE REGISTRAR

4 Registrar and Registration Office

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

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

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

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

5 Principal duties of Registrar

The principal duties of the Registrar shall be –

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

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

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

6 Register

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

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

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

PART 3

REGISTRATION

7 Dogs to be registered

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

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

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

8 Dog collars and registration labels

(1) There shall be kept at the office of the Registrar a supply of dog collars having a metal label securely affixed to each collar numbered consecutively from number one in each year upwards and marked with the year for which each collar is issued.

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

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

9 Mode of registration

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

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

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

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

(i) the name and residence of the owner;

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

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

(iv) such other particulars as Cabinet may determine.

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

10 Effect of registration

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

11 Annual registration

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

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

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

12 Registration fees and other charges

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

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

13 Change of ownership

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

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

14 Registration label

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

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

15 Offences

(1) Every person commits an offence who –

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

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

16 Dogs that may be destroyed

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

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

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

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

17 Burden of proof

In any proceedings under this Act –

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

18 Imposition of fine not to affect fees

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

19 Remission and refund of fees

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

PART 4

TOTAL NUMBER OF DOGS ON NIUE SUBJECT TO CONTROL

20 [Repealed by 1974/11/93]

21 [Repealed by 2004/270]

PART 5

LIABILITY FOR INJURIES OR DAMAGE CAUSED BY DOGS

22 Dangerous dogs may be destroyed

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

23 Dog attacks

(1) Where any dog –

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

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

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

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

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

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

24 Proof of mischievous propensity

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

PART 6

MISCELLANEOUS PROVISIONS

25 Protection of officers of police

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

26 No liability where dog wounded

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

27 No compensation for destruction of dogs

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

28 Fines not affected by destruction of dog

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

29 Destroyed dogs

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

30 Offences (General)

- (1) Every person commits an offence who –
 - (a) Fails to comply with any duty or obligation imposed on him by this Act; or
 - (b) Wilfully makes any false or misleading statement or any material omission in any application, information, or report to the police or the Secretary;
 - (c) Wilfully obstructs, hinders, or resists any person in the exercise or execution of any power, duty, or function conferred or imposed on such person by the provisions of this Act.
- (2) Every person who commits an offence against this Act for which no penalty is provided in this Act elsewhere than in this section or in the Niue Act 1966 is liable to a fine not exceeding 0.5 penalty units.

31-32 [Repealed by 2004/270]

33 Liability of owners of dogs

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

DOMESTIC FISHING ACT 1995

1995/199 – 10 August 1995

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

PART 1
PRELIMINARY

- 1 Short title**
This is the Domestic Fishing Act 1995.
- 2 Interpretation**
In this Act and its Regulations –
 “ammunition” includes any cartridges, cartridge cases, gunpowder, bullets, and shots;
 “annual licence fee” means the fee payable under this Act for a licence to operate a boat;
 “boat” means any vessel or sea craft whatsoever whether propelled by oars or motorised, but does not include –
 (a) A canoe;
 (b) A yacht not registered in Niue;
 (c) A yacht’s tender not used for hire or reward; or
 (d) A commercial cargo vessel having a gross tonnage, in excess of 5 tonne;
 (e) A barge.

- “destructive organism” means any aquatic organism, animal or any plant that is deemed destructive to any part of the marine environment by Regulation;
- “Director” means the Director in charge of the Department of Agriculture, Forestry and Fisheries in Niue;
- “explosive” includes any article of which an explosive forms part and which is capable of destructive effect by way of explosion;
- “firearm” includes any weapon from which a missile is discharged by the force of any explosive substance;
- “fish” means every aquatic plant (including algae, dinoflagellates, diatoms, sea grasses) or animal whether vertebrate or invertebrate and including their eggs, spawn, spat and juvenile stages and includes any terrestrial vertebrate or invertebrate animal that has marine life phase within its normal biological life cycle;
- “fishing” means –
- (a) Searching for, catching, taking or harvesting fish; or
 - (b) The attempted searching for, catching, taking or harvesting of fish; or
 - (c) Engaging in any activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish; or
 - (d) Fish processing within the fishery waters; or
 - (e) Transshipment within the fishery waters; or
 - (f) Any operation at sea in support of or in preparation of any activity described in this definition; or
 - (g) Taking or harvesting crabs, and live sea shells along the reef flats up to high water mark including diving for live sea shells and or corals;
 - (h) Taking or harvesting, crustaceans which are carrying eggs to deposit in the sea, including the Uga, Kalahimu and Kalavi but excludes the searching for, catching, or taking of any ‘destructive organism’;
- “fisheries officer” means any fisheries officer employed in the Fisheries Division of the Department of Agriculture, Forestry and Fisheries and includes the director or any person appointed by Cabinet by warrant;
- “fishery waters” includes the territorial seas;
- “licence” means a licence issued under section 18;
- “marine reserve” means a marine reserve declared by Cabinet under section 7;
- “net” means a mesh device used to catch fish that can be casted, set or dragged, it does not including a flying fish net;
- “prohibited fish exports” and “protected fish species” when referring to a species, includes –
- (a) A live species;
 - (b) A dead species;
 - (c) Any body parts cooked in part or whole.
- “quarantine officer” means any quarantine officer employed by the Department of Agriculture, Forestry and Fisheries or any person appointed by Cabinet by warrant;
- “take” (fish) includes pursuing, catching, removing, or extracting from the water or laying hold of by any means or device;
- “underwater breathing apparatus” means scuba gear, or hooker unit, made up of an air tank, and requires the use of a mask or mouth regulator;
- “vessel” means any boat, aircraft, ship or other sea-going craft.

PART 2

PROTECTION OF FISH

3 Prohibited use of illegal fishing means

(1) No person shall use –

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

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

(3) Every person who –

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

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

4 Power to destroy akau Niukini

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

5 Seizure and forfeiture

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

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

6 Arms Regulations

Nothing in this Act shall be construed to limit the Arms Regulations 2005.

7 Marine reserves and fono for fishing

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

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

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

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

8 Effect of a marine reserve or fono for fishing

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

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

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

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

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

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

9 Bait fishing

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

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

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

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

10 Restriction on taking of certain species

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

(a) Is carrying external eggs;

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

(c) Is in its soft shell stage.

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

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

11 Prohibited exports

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

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

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

12 Catch and size quota

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

PART 3

SUNDAY FISHING BAN

13 Sunday fishing prohibited

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

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

14 Powers to apprehend offenders

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

15 Penalty

Any person offending against section 13 shall be liable to –

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

PART 4
SAFETY AT SEA

16 Fisheries officer

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

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

17 Powers and duties of fisheries officer

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

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

18 Licensing of boats

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

19 Application for a licence

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

20 Grounds for refusal

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

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

21 Duration of licence

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

22 Fees and regulations

(1) No licence shall be issued under this Act until the annual licence fee has been paid.

(2) The annual licence fee shall be as determined by Cabinet by regulation.

(3) The annual fee determined by Cabinet shall be payable for each year.

23 Seaworthy condition required

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

24 Offences

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

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

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

25 Personal liability of officers

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

26 Offence of obstructing

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

27 Exemptions and requirements for boats

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

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

28 Regulations

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

29 [Spent]

EDUCATION ACT 1989

1989/130 - January 1989

| | |
|---|--|
| <p>1 Short title</p> <p>2 Interpretation</p> <p style="text-align: center;">PART 1</p> <p style="text-align: center;">CENTRAL ADMINISTRATION</p> <p>3 Department of Education</p> <p>4 Cabinet's powers and responsibilities</p> <p>5 General duties of the Minister</p> <p>6 Delegation of Minister's powers</p> <p>7 Director of Education</p> <p>8 Appointment of other officers</p> <p>9 Delegation of Director's powers</p> <p>10 Expenses of administration to be appropriated by the Assembly</p> <p style="text-align: center;">PART 2</p> <p style="text-align: center;">LOCAL ADMINISTRATION</p> <p>11 Prescribing zones of residence</p> <p>12 School committees</p> <p>13 Qualifications of members of school committees</p> <p>14 Vacancies of school committees</p> <p>15 Meetings of committees</p> <p>16 Committee to have management of school</p> <p>17 School funds</p> <p style="text-align: center;">PART 3</p> <p style="text-align: center;">ESTABLISHMENT OF SCHOOLS</p> <p>18 Establishment of Government schools</p> <p>19 Fees for education</p> <p>20 Establishment and registration of private schools</p> <p>21 Deregistration of private schools</p> <p>22 School principals</p> <p>23 Appointment of teachers and other staff</p> <p style="text-align: center;">PART 4</p> <p style="text-align: center;">ENROLMENT AND ATTENDANCE OF PUPILS</p> <p>24 Enrolment and attendance to be compulsory</p> | <p>25 Parents' responsibilities</p> <p>26 Exemption from enrolment</p> <p>27 Child be sent to a special school</p> <p>28 Penalty for failure to enrol child</p> <p>29 Exemption from attendance</p> <p>29A Exemption from attendance by children who have attained the age of 14 years</p> <p>30 Penalty for irregular attendance</p> <p>31 Principal to keep records</p> <p>32 Inspection of attendance</p> <p>33 Restriction on enrolment</p> <p>34 Suspension and expulsion</p> <p>35 Forbidding attendance in certain cases</p> <p style="text-align: center;">PART 5</p> <p style="text-align: center;">SCHOOL CLASSES, HOURS AND TERMS</p> <p>36 Classification of pupils</p> <p>37 Hours and terms of attendance</p> <p style="text-align: center;">PART 6</p> <p style="text-align: center;">COURSES OF INSTRUCTION</p> <p>38 Courses in Government schools</p> <p>39 Religious instruction</p> <p style="text-align: center;">PART 7</p> <p style="text-align: center;">INSPECTION OF SCHOOLS</p> <p>40 Inspection of schools</p> <p>41 Schools to be open for inspection</p> <p>42 Inspection of school accounts</p> <p style="text-align: center;">PART 8</p> <p style="text-align: center;">GENERAL PROVISIONS</p> <p>43 Guidance and counseling</p> <p>44 Closing of schools in emergency</p> <p>45 Wilful disturbance of schools</p> <p>46 Transport assistance</p> <p>47 Medical inspection</p> <p>48 Regulations</p> |
|---|--|

**To make provision for the education of the people of Niue under article 61(2)
of the Niue Constitution**

1 Short title

This is the Education Act 1989.

2 Interpretation

In this Act –

“Department” means the Department of Education constituted by this Act;

“Director” means the Director of Education and includes any person appointed as deputy of the Director;

“government school” means any school maintained from public funds and controlled and administered by the Department under this Act;

“Minister” means the Minister of Education;

“parent” in relation to any child, includes the legal adoptive parent or legal guardian of that child and any person who has actual custody of that child;

“primary school” means a school providing a 6 year course, or an 8 year course for pupils entering the school between the ages of 5 and 7 years;

“private school” means any private school that is registered under this Act;

“pupil” means any person who is enrolled on the register of pupils of any school and who has not attained the age of 21 years;

“school” means any institution which not fewer than 8 pupils or other persons normally attend for their education: and includes the assembly of not fewer than eight persons for that purpose; and also includes any institution from which regular educational instruction is given by correspondence; and also includes any class, division or section of any school; but does not include –

(a) Any institution or assembly in which instruction is given which is wholly or mainly of a religious character; or

(b) Any institution controlled by a religious organisation for the purpose of training persons for the ministry of religion or for admission to a religious order;

“school age” in relation to any child, means any age between the age of 5 years and the age of 16 years or any earlier age at which the child ceases to be required to have his name enrolled on the register of a school under Part 4; or in the case of any child who is deemed by the Director (after special examination by a medical officer or other officer appointed for the purpose) to require special tuition, between such ages as the Director may from time to time determine, but in no case shall any person who has attained the age of 21 years be deemed to be of school age;

“school committee” means a body of persons established under Part 2.

PART 1

CENTRAL ADMINISTRATION

3 Department of Education

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

4 Cabinet's powers and responsibilities

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

5 General duties of the Minister

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

6 Delegation of Minister's powers

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

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

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

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

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

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

7 Director of Education

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

8 Appointment of other officers

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

9 Delegation of Director's powers

- (1) (a) The Director may by writing either generally or particularly delegate to such officer or officers or employee or employees of the Department as he thinks fit all or any of the powers exercisable by him under this Act or any other enactment, including any powers delegated to him under this Act or any other enactment, but not including this present power of delegation.
- (b) The Director shall not delegate any power delegated to him by the Minister without the written consent of the Minister:
- (2) Subject to any general or special directions given or conditions or restrictions attached by the Director, the officer or employee to whom any powers as delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.
- (3) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Director.
- (4) Any such delegation shall until revoked, continue in force under its tenor, notwithstanding the fact that the Director by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that Director.

10 Expenses of administration to be appropriated by the Assembly

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

PART 2

LOCAL ADMINISTRATION

11 Prescribing zones of residence

- (1) The Director may, with the approval of the Minister, prescribe zones of residence of pupils, and any pupil ordinarily residing within any such zone who is not exempted from attendance at a school under Part 4 or who is not attending a private school shall attend the Government school which the Director prescribes as appropriate to that zone.
- (2) Notwithstanding subsection (1) the Director may, with the approval of the Minister, authorise a pupil to attend a school outside such pupil's zone of residence if it is proven to the satisfaction of the Director that it is in the best interests of the pupil to attend that other school.
- (3) For the purposes of this section a pupil shall be deemed to be ordinarily residing in a zone if he is actually residing in that zone.
- (4) The boundaries of any such zone shall be notified by the Director in the *Gazette*.

12 School committees

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

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

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

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

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

13 Qualifications of members of school committees

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

- (a) Mentally disordered under Part 26 of the Niue Act 1966; or
- (b) A bankrupt who has not obtained an order of discharge or whose order of discharge is suspended for a term not yet expired or is subject to conditions not yet fulfilled; or
- (c) A person convicted of any offence punishable by imprisonment, unless he has received a full pardon or has served his sentence or otherwise suffered the penalty imposed upon him.

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

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

14 Vacancies on school committees

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

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

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

15 Meetings of Committees

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

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

16 Committee to have management of schools

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

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

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

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

17 School funds

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

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

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

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

PART 3

ESTABLISHMENT OF SCHOOLS

18 Establishment of Government schools

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

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

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

19 Fees for education

- (1) All education provided in Government schools shall be free.
- (2) Cabinet may by regulations require fees to be paid in respect of certain schools, institutions or classes of learning and also prescribe the nature and level of fees to be paid.

20 Establishment and registration of private schools

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

- (2) (a) Every such application shall be made to the Director who may require the provision of any further information as the Director may require.
- (b) Upon satisfaction that all relevant information pertaining to the application have been obtained, the Director shall as soon as practicable forward the application, together with any recommendations, to the Minister for consideration by Cabinet.
- (3) On the approval of the application by Cabinet, the Director shall accordingly register the school as a private school and the registration shall be notified by him in the *Gazette*.

21 Deregistration of private schools

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

- (a) The school is conducted inefficiently or in a manner which is or is likely to be detrimental to the physical, mental, or moral welfare of the pupils attending; or
- (b) Any instruction has been imparted therein to any pupil which is prejudicial to the peace, order and good government of Niue; or
- (c) The school is carried on in premises which do not conform with the acceptable standards of health and hygiene.

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

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

22 School principals

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

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

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

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

23 Appointment of teachers and other staff

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

PART 4

ENROLMENT AND ATTENDANCE OF PUPILS

24 Enrolment and attendance to be compulsory

(1) Every child of school age who is in Niue and is ordinarily resident in Niue shall, unless exempted under this Part be enrolled at and shall attend, whenever it is open, the Government school which is appropriate to his zone of residence, or as directed by the Director under section 11(2) or a private school, or a special school or any other form of tuition as the Director deems necessary, during the whole of the period commencing on the child's fifth birthday (or on the next ensuing day on which any such school is open) and ending on the child's sixteenth birthday.

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

25 Parents' responsibilities

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

26 Exemption from enrolment

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

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

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

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

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

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

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

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

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

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

27 Child be sent to a special school

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

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

28 Penalty for failure to enrol child

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

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

29 Exemption from attendance

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The child has been offered employment or training; and

(b) It is in the child's best interest that the child should be so employed or trained instead of receiving instruction at a school.

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

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

(a) State the nature of the employment or training that the child is to undertake; and

(b) Be forwarded by the Director to the Minister within the 14 days after its issue.

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

(a) The child named in the certificate –

(i) is not employed or receiving the training specified in the certificate; or

(ii) has not attended the employment or undertaken the training on a regular basis; or

(b) It has not proved to be in the child's best interest that the child should be employed or trained as specified in the certificate instead of receiving instruction at a school.

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

30 Penalty for irregular attendance

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

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

31 Principal to keep records

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

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

32 Inspection of attendance

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

33 Restriction on enrolment

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

34 Suspension and expulsion

- (1) (a) Notwithstanding the foregoing provisions it shall be lawful for the principal of any Government school to suspend from attendance any child who, from gross misconduct or incorrigible disobedience, may be considered an injurious or dangerous example to other pupils, or whose attendance at school is likely for any serious cause to have detrimental effect upon himself or upon the other pupils.
- (b) No suspension of the pupil who is 14 years and under shall be for a period exceeding one week, except where extended as provided in this section.
- (2) Where any pupil 14 years and under is suspended from attendance under subsection (1) the following shall apply –
- (a) The principal shall immediately notify the parents or guardian of the pupil and the School Committee (if any) of the school of the suspension and the reasons therefore, and shall forward forthwith to the Director a full report of the suspension;
- (b) The Director on receiving the report may, after such enquiry as he considers necessary, either reinstate the pupil conditionally or unconditionally or extend the term of the suspension for such period as it deems fit;
- (c) Where after reasonable enquiries the Director is of the opinion that the pupil should not be reinstated in the school from which the pupil was suspended, the Director shall make arrangements for the re-establishing of the pupil in some other school providing education of the same kind which the pupil can conveniently attend, or if there is no such school available, the Director shall make arrangements for the pupil to be enrolled with a correspondence school whether established in Niue or elsewhere;
- (d) The name of every suspended pupil shall remain on the register of the school from which he is suspended until he has been placed at some other school, or has been enrolled in a correspondence school, or has been granted by the Director exemption from the obligation to be enrolled as a pupil of any school notwithstanding section 26(4) and the suspended pupil shall not be entitled to attend the school from which he is suspended while the suspension continues.

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

- (a) The principal shall immediately inform the parents or guardian of the pupil and the school committee (if any) of the school of the suspension and the reasons therefore, and shall forward forthwith to the Director a full report of the suspension;
- (b) The Director, on receiving the report shall thereupon investigate the matter as he considers necessary and may direct that the pupil be reinstated conditionally or unconditionally, or he may expel the child.

35 Forbidding attendance in certain cases

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

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

(3) In the case of the pupil whose attendance is forbidden on the grounds that the Principal has reasonable cause to suspect that he is suffering from any communicable disease the Principal shall, in addition to making the reports required by subsection (2) give immediate notice of the case to the Director of Health.

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

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

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

PART 5

SCHOOL CLASSES, HOURS AND TERMS

36 Classification of pupils

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

37 Hours and terms of attendance

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

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

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

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

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

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

PART 6

COURSES OF INSTRUCTION

38 Courses of instruction in Government schools

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

- (a) To adequately equip the people of Niue with knowledge and skills required to achieve national goals;
- (b) To provide the people of Niue with the highest possible standard of education;
- (c) To promote an understanding in the values of learning;
- (d) To continue to incorporate Niue's traditional arts, crafts and values in education development; and
- (e) To continue with the development of bilingualism (Niuean and English).

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

39 Religious instruction

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

- (2) (a) Such religious instruction shall be observed or conducted under syllabuses which are not contrary to Government policy and are given by voluntary instructors who must be approved by the Minister; and
- (b) Such religious instruction shall be of a non-denominational character; and
- (c) No teacher shall be compelled to give such instruction, or to attend while such instruction is being given against the dictates of his conscience; and
- (d) If a parent of any pupil applies to the Principal of any school for the pupil to be excused wholly or in part from attendance at religious instruction, the pupil shall be excused from such attendance in accordance with the terms of the application.

PART 7

INSPECTION OF SCHOOLS

40 Inspection of schools

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

41 Schools to be open for inspection

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

42 Inspection of school accounts

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

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

PART 8

GENERAL PROVISIONS

43 Guidance and counseling

It shall be the duty of the principal of each Government school to give guidance and counseling to the pupil attending the school and to notify the parents of any pupil of any condition or circumstances which in the principal's opinion is affecting the normal progress of the pupil through the school or is affecting the relationship of the pupil with the teachers, or with the other pupils of the school.

44 Closing of schools in emergency

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

45 Wilful disturbance of school

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

46 Transport assistance

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

47 Medical inspection

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

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

48 Regulations

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

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

ELECTRIC POWER SUPPLY ACT 1960

1960/6 – 1 September 1960

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

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

- 1 Short title**
This is the Electric Power Supply Act 1960.
- 2 Interpretation**
In this Act –
“Director” means Director of Works;
“electric line” or “line” or “electric line or work” means any wire or wires or other conductor, instrument, apparatus, device, or means used or intended to be used or reasonably capable of being used for transmitting, distributing, or otherwise conducting electrical energy, or for the consumption or application of electrical energy used under a licence under this Act; and includes a telephone line;
“maintenance” includes any alteration, examination, removal or repair;
“owner” includes occupier.
- 3 Licences required**
(1) No person shall lay, construct, put up, place, or use any electric line except under the authority of a licence issued to him by Cabinet.
(2) Every person who commits a breach of this provision is liable to a fine not exceeding 0.5 penalty units and where the offence is a continuing one to a further fine of 0.5 penalty units for each day during which the offence continues.
- 4 Inspection**
The Director may direct any officer appointed by him to inspect any electric line or work whether such electric line or work is the property of the Government or not and upon or after such inspection may require that such additions, alterations

or repairs shall be made thereto as in his opinion are necessary or desirable for the utility and safety of the undertaking and the public; all such additions, alterations or repairs shall be made in the manner to be approved by the Director or by an officer appointed by him for the purpose.

5 Notice regarding repairs or alterations

(1) Where in the opinion of the Director or any officer appointed by him any additions, alterations or repairs to any electric line or work are necessary the Director shall cause a notice to be served on the owner of the electric line or work or on the consumer of electricity setting out the work required to be done and the time (being not less than 14 days after service) within which such work shall be completed to the satisfaction of the Director or an officer authorised by him.

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

6 Power to enter premises

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

7 Hindering or obstructing the Director

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

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

8 Offence to repair or interfere with wires

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

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

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

(3) Notwithstanding anything to the contrary in this section, Cabinet, in addition to instituting any proceedings against any person for a breach of this section may also discontinue the supply of electricity to the person so offending (notwithstanding any agreement or contract previously existing).

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

9 Stealing electricity

Electricity is hereby declared to be a thing capable of being stolen within the meaning of section 188 of the Niue Act 1966 and any person who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes, or uses any electricity shall be guilty of theft and punishable accordingly.

10 Government not liable for failure of supply

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

11 Power to alter dangerous radio aerials

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

12 Sale of electrical appliances and fittings

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

13 Power to enter on land

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

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

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

14 Removal of trees

(1) If any tree growing on any land causes or is likely to cause damage to an electric line or work the Government may cause notice to be given to the owner of that land to remove the said tree or any part thereof and if the owner of that land fails to comply with the terms of such notice within the time specified therein (being not less than 7 days after service) the Government may enter upon that land and remove the tree or any part of it but so that no unnecessary damage is done or incurred thereby.

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

15 Compensation

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

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

16 General penalty for offences

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

17 Fines recoverable

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

18 Application of fees and fines

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

19 Regulations

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

- (a) Prescribing the forms of licences under this Act the conditions on which such licence may be issued and the fees payable on it;
- (b) So as to secure the protection of persons and property from injury or damage caused, either directly or indirectly, by electrical energy;
- (c) Prescribing conditions in respect of the construction, installation, maintenance, use, management, inspection, and testing of electric lines or works and of instruments, materials, appliances, apparatus, accessories, and equipment used or intended to be used in the construction, installation, maintenance, or use of electric lines or works or in the application of electrical energy;
- (d) Prohibiting the manufacture, importation, sale, and use of any materials, appliances, accessories, devices, and equipment which

do not satisfy any prescribed tests or standards, or the use of which may be dangerous to persons or property, or which do not comply with any regulations under this section;

- (e) Providing for the removal of lines laid or erected in breach of this Act, and of any line in the use of which any of the conditions of the licence under which it was laid or erected are not observed or complied with, and for the removal or alteration of any dangerous line (whether erected under the authority of a licence issued under this Act or any other Act or not), at the expense in each case of the owner of the line;
- (f) Defining what may be deemed a dangerous electric line or work for the purpose of any regulations;
- (g) Prescribing conditions for and controlling the supply of electrical energy;
- (h) Prescribing fees to be paid in connection with any inspection or testing authorised by any regulations;
- (i) Imposing fines not exceeding 0.5 penalty units for the breach of any regulation.

ENTRY, RESIDENCE AND DEPARTURE ACT 1985

1985/106 – 1 January 1986

| | |
|---|--|
| <p>1 Short title</p> <p>2 Interpretation</p> <p>3 Administration</p> <p>4 Application</p> <p>5 Application for permanent residence</p> <p>6 Granting of permanent residence</p> <p style="text-align: center;">PART 1 IMMIGRATION</p> <p>7 Restriction on landing</p> <p>8 Permits</p> <p>8A Conditions for granting of permits</p> <p>8B Clearance requirements</p> <p>9 Resident under permit</p> <p>10 Prohibited immigrants</p> <p>11 Application of deposits</p> | <p>12 Temporary prohibitions</p> <p>13 Inspection of vessels</p> <p>14 Deportation</p> <p>15 Declarations</p> <p style="text-align: center;">PART 2 DEPARTURE</p> <p>16 Right to depart</p> <p style="text-align: center;">PART 3 GENERAL</p> <p>17 General powers of exemption</p> <p>18 Regulations</p> <p>19 Offences</p> <p>20 [Spent]</p> |
|---|--|

To regulate the entry, the residence, and the departure of persons from Niue

- 1 Short title**
This is the Entry, Residence and Departure Act 1985.
- 2 Interpretation**
In this Act –
- “applicant” includes the applicant’s spouse and any other member of the applicant’s immediate family by birth or legal adoption, under the age or 18 years, who is included in the application;
- “application” means the form required to apply for a permit as prescribed by Regulations;
- “Director” means the Director of Health and includes a medical officer;
- “immigration officer” means a person appointed under section 3(1);
- “Minister” means the Minister of Immigration;
- “permanent resident” means any person who has been granted permanent resident status under section 6;
- “vessel” means any ship or aircraft and the meaning of “master”, “voyage”, “port” and any other such word or words which correspond with “vessel” shall be extended to have a meaning which corresponds with “aircraft”;
- “visitor” means any person not being a prohibited immigrant who enters Niue for a period not exceeding 30 days and who is in possession of a valid passport or other relevant travel document, and includes any one or more dependant members of the family of such person.

3 Administration

(1) There may be appointed by the Niue Public Service Commission an immigration officer who may hold office in addition to or in conjunction with any office in the Public Service.

(2) This Act shall be administered by the Immigration Officer under the control of Cabinet.

(3) The Cabinet may delegate to the Immigration Officer all or any of the functions or powers conferred upon Cabinet by this Act and may in like manner revoke any such delegation.

4 Application

(1) With the exception of section 15, this Act shall not apply to –

- (a) The sea, land and air forces of any Commonwealth country; or
- (b) Any person entitled to diplomatic privileges and immunities under the Diplomatic Privileges and Immunities Act 1968; or
- (c) Any person entitled to consular privileges and immunities under the Consular Privileges and Immunities Act 1971; or
- (d) Any person or class of persons in respect of whom the Cabinet in its discretion grants an exemption from all of the requirements of this Act.

(2) With the exception of section 15, Part 1 shall not apply to –

- (a) A permanent resident of Niue;
- (b) A Niuean who was born in Niue;
- (c) A person other than a Niuean who was born in Niue;
- (d) A person under the age of eighteen years either of whose parents is a permanent resident of Niue or, being a Niuean, was born in Niue; or
- (e) A New Zealand citizen permanently residing in Niue prior to 1 January 1996.

5 Application for permanent residence

(1) Any person other than a visitor, who enters Niue on a permit issued under section 8, wishing to be granted permanent resident status, shall apply in writing to the Immigration Officer.

(2) Applications for permanent resident status shall be submitted by the Immigration Officer to Cabinet for its decision.

6 Granting of permanent resident

(1) Cabinet may grant permanent resident status to any person seeking it provided the following conditions are met –

- (a) That the applicant has resided continuously in Niue for a period of 3 years immediately preceding the date of his application;
- (b) That the applicant has satisfied Cabinet of his intention to reside permanently in Niue;
- (c) That the applicant is of good character; and
- (d) That the applicant has sufficient knowledge of the responsibilities and privileges attaching to being a permanent resident of Niue.

(2) No applicant shall be entitled to claim any period of service in Niue under the Niue Public Service or any international organisation for the purposes of subsection (1)(a).

(3) Any person who has been granted permanent resident status under this section and who remains absent from Niue continuously for a period longer than 3 years shall no longer be deemed to be a permanent resident.

(4) Where Cabinet has granted permanent resident status to any person it shall issue a certificate approved by Cabinet and such certificate shall be conclusive proof that such person is a permanent resident.

PART 1
IMMIGRATION

7 Restrictions on landing

(1) No person, other than a visitor to Niue, shall land in Niue from any place outside Niue unless and until –

- (a) He shall be the holder of, or named in, a permit under section 8; and
- (b) He shall have made and completed a declaration in such form as may be approved by Cabinet; and
- (c) He shall have deposited or have had deposited such sum as the Immigration Officer may deem necessary to defray the cost of transporting such person to a place outside Niue where he will be permitted to land.

(2) Subsection (1)(c) shall not apply to any person who satisfies the Immigration Officer subject to such conditions as the Immigration Officer shall deem sufficient that such person is possessed of the means to enable his transportation from Niue and his maintenance in Niue pending such transportation.

(3) Any visitor landing in Niue who does not leave Niue within 30 days after the day on which he landed in Niue and who is not a holder of or named in, a permit issued in terms of section 8 to remain in Niue shall be deemed to be a prohibited immigrant within the meaning of this Act, but such visitor shall upon his departure from Niue, cease to be deemed to be a prohibited immigrant.

8 Permits

(1) An application for a permit to land or remain in Niue shall be in such form or forms as may be approved by Cabinet.

(2) The granting of the permit shall be at the discretion of the Minister for a period of up to 3 years and may be revoked as the Minister thinks fit.

(3) A permit may in the Minister's discretion include any one or more dependant members of the immigrant's family.

(4) A permit under this section shall be issued in writing in such form or forms as Cabinet may determine.

(5) No permit under this section shall be of any force or effect in respect of a person named therein who is a prohibited immigrant within the meaning of this Act.

(6) If the Immigration Officer is of the opinion that a permit has been obtained by fraud or misrepresentation he may withdraw the permit, and the permit shall thereupon cease to have any effect.

(7) Every permit to land shall cease to have effect at the expiration of 3 years from the date on which it was issued.

8A Conditions for granting of permits

(1) Subject to sections 4, 6, 7, and 17, every application for a permit to land or remain in Niue under section 8, may be granted by the Minister upon the grounds that –

- (a) The applicant is not a prohibited immigrant under section 10; and
- (b) The applicant has been sponsored by a permanent resident of Niue who is of Niuean descent, or a company, organisation, business or enterprise established or operating in Niue, or by the Government of Niue including any statutory corporations or bodies; and
- (c) The sponsor has provided sufficient proof to the satisfaction of the Cabinet as to the sponsor's ability to provide for the applicant suitable accommodation and means for the upkeep and general welfare of the applicant, including employment confirmation as the case may be, and including an undertaking by the sponsor to the extent that the sponsor guarantees payment for all costs incurred for the purposes of repatriating the applicant on the expiration of his permit and for any other debts or liabilities incurred by the applicant during the duration of his stay in Niue where the applicant is unable to meet any or all of such costs.

(2) The sponsor's obligation under subsection (1)(c) shall be for the duration of the applicant's stay in Niue, or as the case may be, until the applicant is granted permanent residence.

(3) Where the applicant is sponsored for the purpose of taking up paid employment in Niue, it shall be necessary for the sponsor to prove to the satisfaction of Cabinet that there is no suitable person in Niue who could undertake such employment and that the applicant is qualified and suited for such employment.

(4) Every application under section 8 shall be duly signed by the sponsor who shall be deemed to be acting as agent for and on behalf of the applicant.

8B Clearance requirements

(1) In addition to the requirements under section 8A every application for a permit under section 8 shall be accompanied by –

- (a) At least 2 character references of the applicant; and
- (b) A police report and health clearances from the relevant officials of the applicant's home country; and
- (c) Any other information that the Minister may specify or require.

(2) For the purposes of section 8A and of this section, "applicant" shall be construed to include the applicant's spouse and any member of the applicant's family included in the application.

9 Resident under permit

(1) Every person who has lawfully entered Niue pursuant to a permit issued under section 8 shall, for the period specified in the permit from the date of his entry, or any extension of that period granted under subsection (2), be deemed to be for the time being lawfully resident in Niue.

(2) The Minister may extend the period during which a person who has entered Niue pursuant to a permit is deemed to be for the time being lawfully resident in Niue, and any such extension may be revoked.

(3) If the Minister is of the opinion that a permit has been obtained by fraud or misrepresentation he may, by notice in writing given at any time to any person to whom the permit was issued or to any person to whom the permit relates, revoke the continuing effect of the permit as an authority for such person to be lawfully resident in Niue.

(4) Any person who having entered Niue pursuant to a permit to land remains in Niue after the permit has ceased to have any effect shall be deemed to be a prohibited immigrant within the meaning of this Act, but such person shall upon his departure from Niue, cease to be deemed to be a prohibited immigrant.

10 Prohibited immigrants

- (1) In this Act, “prohibited immigrant” means and includes –
- (a) Any person who in the opinion of the Director is a mentally defective person within the meaning of Part 26 of the Niue Act 1966; or
 - (b) Any person who in the opinion of the Director is suffering from a notifiable disease as defined or declared in terms of the Public Health Act 1965; or
 - (c) Any person who is notified by Cabinet that such person’s presence in Niue is injurious to the peace, order, or good government of Niue; or
 - (d) Any person who at any time within 2 years prior to the date of his arrival in Niue has been convicted of or been released from imprisonment after conviction in any place in respect of any criminal offence there punishable by imprisonment for more than one year.
- (2) It shall not be lawful for any prohibited immigrant to land in Niue.
- (3) Any prohibited immigrant may be arrested by any constable and placed and detained on board the vessel by which he arrived in Niue or on board any other vessel about to leave Niue, and shall pending his removal by such vessel be detained in such custody and in such place as the Immigration Officer shall direct.

11 Application of deposits

- (1) The monies lodged with the Immigration Officer under section 7 shall be repaid to the person depositing the same at the end of 3 years from the date of the deposit or on the departure of that person from Niue whichever shall be the earlier, but the Immigration Officer shall deduct from the said monies any cost incurred by the Government in connection with the maintenance of such person in Niue or his deportation therefrom.
- (2) Should the person who deposited the monies die before the said monies have been refunded, the Immigration Officer shall pay the same to the legal representative of such person, but less any of the costs aforesaid and the costs if any of burial paid by the Government.

12 Temporary prohibitions

- (1) The Immigration Officer may, by notice in writing under his hand delivered to the master of any vessel arriving at Niue, prohibit the landing in Niue of the master or any officer or member of the crew or passenger unless and until the master shall have executed and delivered a bond, with 2 sureties to be approved by the Immigration Officer in such sum as the Immigration Officer may determine, conditioned for the due departure of the master, officers, crew of the vessel and passengers when the vessel resumes its voyage from Niue.
- (2) Until the Immigration Officer by further notice in writing under his hand delivered to the master of such vessel notifies that a bond as aforesaid has been executed and delivered to his satisfaction the master or any officer or member of the crew or passengers of such vessel shall not be permitted to land in Niue.
- (3) If the Immigration Officer has reason to believe or suspects that any person arriving in Niue from beyond the seas or proposing to land in Niue is a prohibited immigrant, or is proposing to land in Niue in breach of this Act the Immigration Officer may, by notice in writing under his hand delivered to such person, temporarily prohibit that person from landing in Niue.
- (4) Every notice given under subsection (3) shall, unless sooner revoked, expire at the end of 48 hours after the time when it was delivered to the person to whom it relates.

(5) Any person landing in Niue in breach of a notice given under this section commits an offence.

13 Inspection of vessels

(1) For the purposes of ensuring compliance with this Act the Immigration Officer may board every vessel arriving from places beyond Niue forthwith after its arrival.

(2) The master of the vessel shall forthwith deliver to the Immigration Officer the passenger list and crew list, or a true copy of it, and shall truly answer any questions relating to the passengers and crew which may be put to him for the purposes of this Act.

(3) The master of the vessel shall make suitable arrangements to the satisfaction of the Immigration Officer to enable him to inspect and examine each passenger and each member of the crew, and shall also provide such writing materials and accommodation as may be required by that officer for the purposes of his inspection and examination.

(4) The Director shall inform the Immigration Officer as to any person on board the vessel who in his opinion comes within the restrictions of section 10(1)(a) or (b).

(5) The Immigration Officer may put such questions as he deems necessary for the purposes of this Act to any passenger or member of the crew.

(6) If the master or any passenger or any member of the crew fails or refuses to answer any question put under this section, or answers any such question in a manner which is false or misleading in any material particular, he shall be guilty of an offence.

(7) If any passenger or member of the crew of a vessel arriving at Niue from a place beyond the seas leaves the vessel before the Immigration Officer has notified the master that all examinations, inspections, and inquiries required to be made under this section have been completed, such person and the master shall each be guilty of an offence.

(8) If any person boards any ship arriving at Niue without the authority of the Immigration Officer he shall be guilty of an offence.

(9) The master of a ship or any officer or members of the crew of a ship if so directed by the master, shall have full power and authority to prevent any person on board the ship landing in Niue in breach of this Act and for that purpose to use such force and means of restraint as may be reasonably necessary.

14 Deportation in writing

(1) Cabinet may in writing order any immigrant to leave Niue in any of the cases following, that is to say –

(a) If the Cabinet has reasonable cause to believe that such immigrant is a source of danger to the peace, order, or good government of Niue;

(b) If Cabinet has reasonable cause to believe that the immigrant is without sufficient lawful means of support;

(c) If the immigrant is convicted in Niue of an offence punishable by imprisonment for one year or upwards; or

(d) If the immigrant is convicted of an offence under section 19.

(2) “Immigrant” means a person now or hereafter lawfully in Niue who is not –

- (a) A Niuean who was born in Niue;
- (b) A person belonging to any of the Polynesian races whether by pure or mixed descent who was born in Niue;
- (c) A person under the age of 21 years either of whose parents is a permanent resident of Niue or being a Niuean or any person defined in paragraph (b) was born in Niue.

(3) If any immigrant remains in Niue for 30 days after the day on which an order made under subsection (1) is served upon him, he shall be liable to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months or to both.

(4) An order made under subsection (1), duly authorised by Cabinet shall be conclusive evidence that the order has been duly made, and that all steps have been taken, all directions given, and all conditions fulfilled which may be necessary for the validity thereof.

(5) When any such order has been made Cabinet may at the same time or at any time thereafter and either before or after the expiration of the period of 30 days mentioned in subsection (2), order any constable to arrest the immigrant and to detain him in custody until he can be placed and detained on board a vessel about to leave for a port beyond Niue.

(6) No person who has been ordered to leave Niue as aforesaid shall at any time after compliance with the order, or after having been placed on board any vessel about to leave Niue, return to or land in Niue without the authority of Cabinet.

(7) Every person who returns to or lands in Niue in breach of subsection (5) shall be guilty of an offence.

15 Declarations

(1) No person shall enter Niue from any place outside Niue unless and until he has made and delivered to the Immigration Officer a declaration in the form approved by Cabinet and no child shall enter Niue unless and until a declaration in the said form has been made and delivered as aforesaid on his behalf by an accompanying adult.

(2) Subsection (1) shall not apply to a person entering Niue as the master or captain or member of the crew of the ship or aircraft which he enters.

PART 2 DEPARTURE

16 Right to depart

Subject to this Act and to any restrictions imposed by or under any other enactment, every person in Niue shall be at liberty to depart from Niue.

PART 3 GENERAL

17 General powers of exemption

(1) Cabinet may exempt from all or any of the requirements of this Act any person or class of persons entering or desiring to enter Niue or to remain in Niue.

(2) Any exemption granted by Cabinet under this section shall be subject to such conditions as Cabinet may impose.

(3) Every person who commits a breach of or fails to observe any such conditions is guilty of an offence against this Act.

(4) Cabinet may order in writing the person having custody of any person arrested and detained in custody under this Act to release such person from that custody upon such conditions as Cabinet may impose.

(5) Every person released from custody under subsection (4) who commits a breach of or fails to observe any conditions imposed upon his release guilty of an offence against this Act.

18 Regulations

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

(2) Without limiting the generality of subsection (1), the Cabinet may make regulations for all or any of the following purposes –

- (a) Prescribing forms for the purposes of this Act;
- (b) Prescribing fees in respect of any matters under this Act and providing for exemptions from or the refunds of any such fees, in whole or part, in any case;
- (c) Prescribing any procedural matters in relation to any applications under this Act;
- (d) Prescribing any procedural matters in relation to proceedings on appeal from any decisions on any applications under this Act;
- (e) Exempting any class of person from the requirement to obtain or to hold any permit;
- (f) Prescribing conditions in respect of permits or any type of permit;
- (g) Prescribing the duration, or maximum duration, for temporary permits or for any type or class of temporary permit;
- (h) Prescribing offences in respect of the contravention of or non-compliance with any regulations made for the purposes of this Act and the amounts of fines that may be imposed in respect of any such offences.

19 Offences

(1) Every person is guilty of an offence against this Act who –

- (a) Lands or remains in Niue in breach of any of the provisions of this Act; or
- (b) Wilfully assists any person to evade or contravene any of the provisions of this Act; or
- (c) Obstructs or hinders any officer in the discharge of his functions or duties under this Act; or
- (d) Wilfully assists a prohibited immigrant unlawfully to land or to remain in Niue; or
- (e) Makes any declaration or signs any application under this Act which is wilfully false or misleading.

(2) In every case where a prohibited immigrant unlawfully lands in Niue the master, charterer, and owner of the ship by which such prohibited immigrant was brought to Niue are jointly and severally liable to a fine not exceeding 2 penalty units in respect of each such immigrant, and also to defray the expenses incurred by the Government of Niue in removing any such immigrant from Niue and in detaining and maintaining him in Niue pending such removal.

(3) A certificate under the hand of the Immigration Officer shall be conclusive evidence of the amount of any expenses incurred as mentioned in subsection (2).

(4) Any expenses which are defrayable as provided by subsection (2) shall be recoverable against all persons jointly or any persons severally by whom the same are defrayable as a debt due to the Crown.

(5) Every person to whom a permit has been granted is guilty of an offence against this Act who –

(a) Fails to comply with the conditions, or any of them subject to which the permit was granted; or

(b) Remains in Niue beyond the time or any extended time for which a permit was granted or, in case of any such permit revoked by the Minister, if he does not leave Niue within such time after the revocation of his permit as the Minister prescribes.

(6) Every person who wilfully makes any false or misleading statement or representation for the purposes of obtaining any permit under this Act and who obtains such permit and enters or remains in Niue in accordance therewith is guilty of an offence against this Act.

(7) Upon the conviction of any person of an offence under subsection (6) the permit which was obtained by the false representation or statement shall become of no effect and shall be deemed never to have been granted.

(8) If the master, owner, or charterer of any vessel about to leave Niue refuses without lawful excuse to receive and retain on board any person to be deported from or otherwise lawfully ordered under this Act to leave Niue, whether temporarily or permanently, together with the escort if any accompanying such person, he is guilty of an offence against this Act.

(9) Any person guilty of an offence against this Act is liable to a fine not exceeding 5 penalty units or to imprisonment for a period not exceeding 6 months or to both.

ENVIRONMENT ACT 2003

2003/264 – 19 December 2003

| | |
|--|---|
| <p>1 Short title</p> <p style="text-align: center;">PART 1 PRELIMINARY</p> <p>2 Interpretation</p> <p>3 Objectives</p> <p>4 Matters to be taken into account</p> <p style="text-align: center;">PART 2 ADMINISTRATION <i>The Environment Department</i></p> <p>5 Establishment of the Department</p> <p>6 Functions of the Department</p> <p>7 Staff of the Department</p> <p>8 Annual Report of the Department</p> <p style="text-align: center;"><i>Director for Environment</i></p> <p>9 Functions of the Director</p> <p>10 Power of Director to delegate</p> <p style="text-align: center;"><i>Environment Officers</i></p> <p>11 Environment Officers</p> <p>12 Identification of Environment Officers</p> <p>13 Power of Environment Officer to inspect</p> <p>14 Power of Environment Officer to seize</p> <p style="text-align: center;"><i>Environment Council</i></p> <p>15 Establishment of the Environment Council</p> <p>16 Functions of the Council</p> | <p style="text-align: center;">PART 3 ENFORCEMENT</p> <p>17 [Repealed]</p> <p>18 Proceedings for restraint of breaches of Act</p> <p>19 Orders of the High Court</p> <p>20 Civil claims for environmental damage</p> <p>21 Common law causes of action</p> <p style="text-align: center;"><i>Environmental Offences</i></p> <p>22 Limitation period for offences</p> <p>23 Offences</p> <p>24 Liability of company</p> <p>25 Company liability in case of bankruptcy</p> <p style="text-align: center;"><i>Additional Penalties for Environmental Offences</i></p> <p>26 Additional penalties</p> <p>27 Community service orders</p> <p style="text-align: center;">PART 4 MISCELLANEOUS</p> <p>28 Application</p> <p>29 Effect of this Act on other Acts</p> <p>30 Non-exemption from environmental management responsibilities</p> <p>31 Environment Officers not personally liable</p> <p>32 Regulations</p> <p style="text-align: center;">SCHEDULE</p> |
|--|---|

To allow for the development of environmental policy and law, to establish an Environment Department and to provide enforcement powers to environment officers

- 1 Short title**
This is the Environment Act 2003.

PART 1
PRELIMINARY

- 2 Interpretation**
In this Act –
“Act” includes its regulations;

- “approval” includes any permit, consent or licence issued under this Act;
- “Council” means the Environment Council established by section 15;
- “Department” means the Environment Department established under Part 2;
- “development” means any project, undertaking or other activity proposed by any public authority or any other body or person which may significantly affect human health or society, the environment, or use of natural resources;
- “Director” means the Director for Environment appointed under this Act;
- “environment” includes all natural and social systems and their constituent parts, including people, communities, and economic, aesthetic, cultural and social factors; and all aspects of the surroundings of humans whether affecting them as individuals or in their social groupings;
- “judicial officer” means the Chief Justice, a Judge, a Commissioner, or 2 Justices of the Peace sitting together;
- “land” includes all things growing on land; buildings and other things permanently fixed to land; land covered by water, such as reefs and the seabed of the territorial sea;
- “Minister” means the Minister responsible for environmental matters;
- “NEMS” means the Niue Environment Management Strategy;
- “occupier” in relation to any land means any lessee, licensee, or other occupant of the land and includes the owner or the agent, or representative of the owner where there is no apparent occupier;
- “public authority” means any Ministry, Department, Division, Board, agency, authority, statutory body, statutory corporation, or administrative office and includes a member of staff or other person who exercises functions on behalf of a public authority;
- “rules” includes standards, guidelines, measures, codes of practice, operational procedures and technical specifications;
- “sustainable development” means development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs and involves using resources to improve the quality of human life while living within the carrying capacity of supporting ecological systems.

3 Objectives

The objectives of this Act are to –

- (a) Provide a mechanism for the development of environmental policy and law;
- (b) Establish an Environment Department; and
- (c) Provide enforcement powers for environment officers.

4 Matters to be taken into account

All persons exercising functions and powers under this Act shall take into account the following matters –

- (a) The maintenance and enhancement of the quality of the environment;
- (b) The efficient use and development of natural and physical resources;
- (c) The concept of sustainable development;
- (d) The protection of the water lens from contamination;
- (e) The protection of indigenous flora and indigenous fauna and their habitats;

- (f) The protection of the coastal zone from inappropriate use and development;
- (g) The protection of historic areas from inappropriate use and development;
- (h) The relationship of Niueans and their culture and traditions to their lands and historic areas;
- (i) The conservation and sustainable use of biological resources; and
- (j) Compliance with multilateral environment agreements to which Niue is a party.

PART 2

ADMINISTRATION

The Environment Department

5 Establishment of the Department

The Environment Department is established by this Act.

6 Functions of the Department

(1) The Department, in addition to any function specified elsewhere in this Act, has the following functions –

- (a) To administer and implement this Act;
- (b) To formulate environmental and resource management objectives;
- (c) To facilitate the formulation of environmental policies and legislation;
- (d) To design and implement programmes with line agencies for –
 - (i) environmental planning and natural resources management;
 - (ii) environmental impact assessment;
 - (iii) waste management and pollution control;
 - (iv) nature conservation;
 - (v) protection of historic areas; and
 - (vi) such other sectors as may be designated by the Council.
- (e) To promote environmental awareness, public information campaigns, and environmental education;
- (f) To review environmental legislation, including this Act, and where necessary to propose amendments and regulations;
- (g) To monitor, and enforce environmental laws and policies;
- (h) To act as a secretariat to the Council;
- (i) To oversee the formulation of collaborative policies and programmes with other public authorities and with non-governmental organisations on environmental matters and to advise on, promote, and assist in implementing these policies and programmes;
- (j) To promote the study of the environment through research and surveys, listings, classifications and compilation of databases;
- (k) To undertake studies and reports;
- (l) To promote community involvement in environmental decision-making;
- (m) To encourage and foster knowledge, innovations and practices embodying traditional lifestyles that promote the protection, conservation, improvement and management of the environment; and
- (n) To facilitate compliance with and implementation of multilateral environment agreements relating to the environment.

(2) The Director shall set priorities for the work of the Department.

7 Staff of the Department

The Department shall consist of a Director and such other officers to be appointed by the Niue Public Service Commission as may be necessary for the administration of this Act.

8 Annual Report of the Department

The Director for Environment shall furnish to the Minister a report each financial year regarding the operations of the Department and the discharge of its functions and shall include a copy of the accounts of the Department for that financial year.

*Director for Environment***9 Functions of the Director**

The Director is to –

- (a) Oversee the efficient, effective and economical management of the Department;
- (b) Give advice to such person as he or she is accountable to on matters concerning any aspect of the environment and concerning any function of the Department; and
- (c) Carry out any other acts necessary to properly discharge his or her functions.

10 Power of Director to delegate

(1) The Director may delegate any of his or her functions and powers, other than this power of delegation, to any authorised person.

(2) In this section “authorised person” means a member of staff of any government department or statutory authority.

*Environment Officers***11 Environment Officers**

The Niue Public Service Commission may appoint in writing any appropriately qualified person to be an Environment Officer, including constables, quarantine officers, fisheries officers and public health inspectors.

12 Identification of Environment Officers

Each Environment Officer shall be furnished with an identification card which shall be produced –

- (a) If practicable, on each occasion before the Officer proceeds to act under this Act; and
- (b) On demand.

13 Power of Environment Officer to inspect

(1) It is a condition of every approval issued under this Act that the holder must permit an Environment Officer to carry out inspections authorised under this, or any other Act, of any place, other than private residential premises, to which the approval relates.

(2) The owner or occupier of any place in respect of which an Environment Officer is exercising powers or carrying out duties pursuant to this or any other Act, shall –

- (a) Give the Officer all reasonable assistance to enable him or her to exercise those powers and carry out those duties;

- (b) Furnish all information in relation to the exercise of those powers and the carrying out of those duties that the Officer may reasonably require; and
 - (c) Not be required to answer a question or give information tending to incriminate himself or herself and the Officer shall caution such person accordingly.
- (3) For the purpose of the administration of this Act, an Environment Officer may at any reasonable time –
- (a) Enter and inspect any place to which an approval has been issued under this Act to determine whether any activity is being undertaken in violation of that approval;
 - (b) Enter and inspect any place where the Officer has reasonable grounds to believe that documents pertaining to any offence under this Act may be found;
 - (c) Stop and inspect any aircraft, vessel or vehicle to ascertain whether it, or the manner in which it is being operated, complies with this Act; or
 - (d) Require the production of any documents that are required to be kept under this Act or any other documents that are related to the purpose for which the Officer is exercising any power or performing any duty under this Act.
- (4) Where a judicial officer is satisfied on evidence in writing made under oath by an Environment Officer that –
- (a) There are reasonable grounds to believe that it is appropriate for the administration of this Act for the Officer to do anything set out in subsection (3); and
 - (b) The Officer may not be able to carry out duties under this Act effectively without a search warrant issued under this subsection because –
 - (i) no person is present to grant access to a place that is locked or is otherwise inaccessible;
 - (ii) a person has denied the Officer access to a place or there is reasonable ground for believing that a person may deny the Officer access to a place;
 - (iii) a person has prevented the Officer from doing anything set out in subsection (3);
 - (iv) there are reasonable grounds to believe that an attempt by the Officer to do anything set out in subsection (3) without the order might defeat the purpose of the inspection or cause an adverse effect,
- the judicial officer may issue an order authorising the Officer to do anything set out in subsection (3) that is set out in the order, and the order must be exercised within 14 days of the date of issue.
- (5) An Environment Officer may not enter private residential premises except –
- (a) With the consent of the owner or occupier; or
 - (b) Under the authority of any search warrant issued under subsection (4).

14 Power of Environment Officer to seize

(1) An Environment Officer may, without a court order or a search warrant, seize any thing that is produced to the Officer, or that is in plain view during an inspection under this section, if the Officer has reasonable grounds to believe that there has been an offence committed under this Act and that the thing to be seized will afford evidence as to the commission of the offence.

- (2) An Environment Officer seizing any thing under subsection (1) shall –
- (a) Inform the person of the reason for the seizure;
 - (b) Give the person a receipt for the article that has been seized; and
 - (c) Remove the seized article to a place of safekeeping and deal with the seized article in the same manner as if it were seized under the authority of a search warrant.

*Environment Council***15 Establishment of the Environment Council**

(1) This section establishes the Environment Council.

(2) The Council shall be selected by Cabinet and comprise –

- (a) One member from each of the following public authorities: Health, Planning, Police, Public Works, Community Affairs and the Tourism Office;
- (b) Two members from Agriculture, Forests and Fisheries;
- (c) A member to be selected by the Chamber of Commerce to represent private sector commercial interest;
- (d) Two members to represent interest groups or the community generally, not effectively represented by members in the preceding paragraphs; and
- (e) The Director.

16 Functions of the Council

(1) The functions of the Council are –

- (a) To advise the Minister on environmental, planning, development and resource management policies and on ways of resolving conflicts between these policies;
- (b) To advise the Minister on draft laws and draft rules;
- (c) To advise the Minister on how to resolve conflicts in the implementation of the NEMS;
- (d) To review the work of the Department.

(2) Schedule 1 applies to the appointment of members and the procedures of the Council.

PART 3
ENFORCEMENT

17 [Repealed]

18 Proceedings for restraint of breaches of Act

Without prejudice to the power of the Court to strike out vexatious proceedings, any person may bring proceedings in the Court for an order to remedy or stop a breach of this Act, whether or not any right has been, or may be, infringed as a result of that breach.

19 Orders of the Court

(1) Where the Court is satisfied that a breach of this Act has occurred, or that a breach is likely to occur unless stopped by an order of the Court, it may make any order it thinks fit to remedy or stop the breach including enforcement orders, declarations, and injunctions.

(2) Where an injunction or other remedy is sought concerning any development, the Court must order that no person is required to give an undertaking as to damages or to provide security for costs.

(3) The Court must not award costs against a person who brings proceedings to stop any development or who asks for any order requiring compliance with this Act unless the Court is satisfied that the person has acted maliciously in bringing the proceedings and that the proceedings have no merit.

20 Civil claims for environmental damage

Notwithstanding the results of any criminal proceedings arising under this Act, a person who has suffered loss as a result of any environmental incident may bring civil proceedings which may include a claim for –

- (a) Economic loss resulting from a pollution incident or from activities undertaken to prevent, mitigate, manage, clean up or remedy any pollution incident;
- (b) Loss of earnings arising from damage to any natural resource;
- (c) Loss of any natural environment or resource.

21 Common law causes of action

Common law causes of action are preserved under this Act.

*Environmental Offences***22 Limitation period for offences**

A prosecution for an offence under this Act may not be commenced more than 3 years after –

- (a) The date on which the offence was committed; or
- (b) The date on which the evidence of the offence first came to the attention of the prosecuting body, whichever is later.

23 Offences

(1) Any person who –

- (a) Provides false or misleading information under a requirement under this Act to provide information;
- (b) Does not submit any report or provide information as required under this Act;
- (c) Submits any false or misleading report in respect of any tests or inspections required pursuant to this Act;
- (d) Hinders or obstructs an officer who is exercising powers or carrying out duties, or attempting to do so under this Act;
- (e) Fails to give all reasonable assistance to an officer who is exercising powers or carrying out duties, or attempting to do so, under this Act;
- (f) Offers or gives any inducement to any person exercising functions and powers under this Act which might reasonably be considered to have the purpose of influencing a decision of that person under this Act;

- (g) Fails to comply with any approval, requirement or condition imposed under this Act;
- (h) Fails to comply with any approval, requirement or condition imposed by any public authority under this Act;
- (i) Does not comply with the terms of any order of the court made under this Act and served on that person;
- (j) Is guilty of an offence and liable to a fine not exceeding 100 penalty units or to a term of imprisonment not exceeding 12 months, or both such fine and imprisonment.

(2) Where an offence under this Act is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

24 Liability of company

(1) If a company fails to comply with this Act, each person who is a director of the company or who is concerned in managing the company, is taken to have failed to comply with that provision, unless the person satisfies the court that –

- (a) He or she has no actual, imputed or constructive knowledge of the failure by the company to comply with the provision; or
- (b) He or she was not in a position to influence the conduct of the company concerning its failure to comply with the provision, or, if in such a position, he or she used all due diligence to prevent the failure to comply by the company.

(2) If a company fails to comply with any provision of this Act, each person who is a director of the company or who is concerned in managing it may be proceeded against and convicted whether or not the company has been proceeded against and whether or not it has been convicted.

(3) The company remains liable for any offence committed by it whether or not proceedings are commenced against the directors or those concerned with managing the company.

25 Company liability in case of bankruptcy

Where any company commits an offence under this Act, any penalty or award of environmental damages against that company shall take precedence over any secured or preferred claim lodged in any action for bankruptcy against that company.

Additional Penalties for Environmental Offences

26 Additional penalties

(1) The court may, in addition to any other punishment that may be imposed under this Act and having regard to the nature of the offence and the circumstances surrounding its commission, make an order –

- (a) For temporary or permanent closure or suspension of any activity or facility or cancellation or modification of any approval if the activity pollutes or damages human health or the environment beyond the limits set forth by this Act;
- (b) For indemnification of the Government, occupiers, or any person whose interest is affected by the damage caused to the environment or to human health;
- (c) For replacement and restitution to their natural state of things affected;

- (d) For rehabilitation of the environment affected at the cost of the party responsible for the offences;
- (e) Directing the offender to compensate any affected party, in whole or in part, for any environmental damage or the cost of any remedial or preventive action taken or caused to be taken as a result of the act or omission that constituted the offence;
- (f) Prohibiting the offender from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- (g) Directing the offender to take such action as the court considers appropriate to remedy or avoid any harm to the environment that results or may result from the act or commission that constituted the offence;
- (h) Directing the offender to post such bond or pay such amount of money to the Department or into court as will ensure compliance with any order made under this section;
- (i) Directing the seizure and forfeiture of any vessel, aircraft, or vehicle used in the commission of any offence;
- (j) Requiring the offender to comply with such other reasonable conditions as the court considers appropriate and just in the circumstances.

(2) Where an offender has been convicted of an offence under this Act, the court may, at the time the sentence is imposed and on the application of the person aggrieved, order the offender to pay to that person an amount by way of satisfaction or compensation for loss of or damage to property or income suffered by that person as a result of the commission of the offence.

(3) Where an amount that is ordered to be paid under subsections (1) or (2) is not paid within the specified time, a civil judgment may be filed with the court and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in the court in civil proceedings.

(4) The court may in addition to any other punishment that may be imposed under this Act impose a fine for each day the offence continues until compliance is fulfilled.

27 Community service orders

(1) Upon the conviction of any person, the prosecution may make submissions to the court on the appropriateness of a community service order and of the availability of any community service work.

(2) The court may sentence a person to a community service order instead of or in addition to a fine.

(3) The court may order a person sentenced to a community service order to work under appropriate supervision a specified number of hours for a charitable or community cause or organisation, and where possible, the work should relate to environmental matters.

(4) The court may specify whether the Director, a constable or some other person is to supervise the community service order work.

PART 4

MISCELLANEOUS

28 Application

(1) This Act applies to all areas under the jurisdiction of Niue.

(2) This Act applies to all persons, whether incorporated or unincorporated.

(3) This Act binds the Crown.

29 Effect of this Act on other Acts

(1) The provisions of this Act apply even if they are inconsistent with any other law.

(2) Compliance with the requirements of this Act does not relieve a person from separate compliance with any other law of Niue.

(3) This Act overrides any approval given under any other law or public authority.

(4) Law, for the purposes of this section, does not include the Constitution.

30 Non-exemption from environmental management responsibilities

This Act does not exempt other public authorities from the execution of their environmental management responsibilities.

31 Environment Officers are not personally liable

The Director, Environment Officers, staff of the Environment Department, members of the Council and authorised persons are not personally liable for anything done or omitted to be done in performing their functions in good faith under this Act.

32 Regulations

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

(2) Without limiting the generality of subsection (1), regulations may be made –

- (a) Prescribing the procedures and requirements for an environmental impact assessment;
- (b) Providing for planning and natural resource management;
- (c) Prescribing waste management and pollution control measures;
- (d) Providing for the regulation of hazardous substances;
- (e) Providing for the regulation of hazardous wastes;
- (f) Prescribing for the identification of species to be protected and their habitats;
- (g) Prescribing rules for the introduction or control of alien or non-native species;
- (h) Providing for the protection, preservation and management of historic areas; and
- (i) Providing for the rehabilitation of any contaminated or polluted land.

SCHEDULE

[Section 16]

Membership and Procedures of the Environment Council

1 Terms of office of members

Members representing the commercial sector and the community hold office for no longer than 2 years but are eligible for reappointment.

2 Remuneration

(1) Members may be paid allowances including travelling and subsistence allowances.

(2) The Cabinet is to decide the amount of the allowances.

3 Disclosure of financial interests

(1) A member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council if –

- (a) A member has a direct or indirect financial interest in a matter being considered or about to be considered at a meeting of the Council; and
- (b) The interest appears to raise a conflict with the proper performance of the member's duties.

(2) A member makes sufficient disclosure of the nature of the interest in any matter if the member discloses at a meeting of the Council that the member –

- (a) Is a member of, or is employed by a specified company or other body; or
- (b) Is a partner of, or is employed by a specified person; or
- (c) Has some other specified interest concerning a specified company, or other body, or a specified person.

(3) A member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council if –

- (a) A matter being considered or about to be considered at a Council meeting concerns bringing criminal or civil proceedings against a person; and
- (b) The member has any personal or financial interest in the matter.

(4) The Council must record particulars of any disclosure made under subsections (1), (2) and (3) in a book kept for that purpose. The book must be available for inspection by any person at all reasonable hours.

(5) After a member has disclosed the nature of an interest in any matter, the member must not be present during any Council deliberation concerning the matter, or take part in any Council decision concerning the matter, unless the Minister or the Council decides otherwise.

(6) A contravention of this section does not invalidate any decision of the Council.

4 General procedures

The Council may determine procedures for Council meetings and the conduct of business at those meetings subject to this Act.

5 Quorum

(1) The quorum for a meeting of the Council is 5 members.

(2) The Chairperson or Deputy Chairperson of the Council must be one of the quorum.

6 Presiding member

(1) The Minister must appoint the Chairperson and the Deputy Chairperson from among the members of the Council.

(2) The Chairperson and the Deputy Chairperson must hold those positions for no longer than 2 years.

(3) The Chairperson of the Council or, if absent, the Deputy Chairperson of the Council presides at Council meetings.

(4) The person presiding at any Council meeting has the decisive vote and, if the votes are equal, has a second or casting vote.

7 Voting

A decision supported by a majority of the votes cast at a Council meeting where a quorum is present is the decision of the Council.

8 Transaction of business outside meetings or by telephone

(1) The Council may carry out its business by circulating papers among all the members of the Council and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Council.

(2) The Council may carry out any of its business by a meeting at which members (or some members) participate by telephone or other means, but only if a member who speaks on a matter can be heard by all the other members constituting the quorum.

- (3) The Chairperson and each member have the same voting rights as they have at an ordinary Council meeting for the purpose of –
- (a) A resolution under subparagraph (1); or
 - (b) A meeting held under subparagraph (2).
- (4) A resolution approved under subparagraph (1) must be recorded in the minutes of the Council meetings.

EXTRADITION ACT 1965

[EDITORIAL NOTE. The law on extradition is found principally in the Extradition Act 1965 (NZ) which became law for Niue by the effect of section 320 of the Niue Act 1966. It has been subject to several amendments and these are listed in the Table of Acts in Force in this book. The Act is not reproduced. A reform Bill has been prepared for a new Act to replace the Extradition Act 1965 and the related legislation.]

FILM AND PUBLIC ENTERTAINMENT ACT 1979

1979/45 – 1 January 1980

| | | | |
|-----|---|--|--|
| | PART 1 | | PART 5 |
| | PRELIMINARY | | CONDUCT OF FILM EXHIBITION AND PUBLIC ENTERTAINMENTS |
| 1 | Short title | | 15 Film exhibition restriction |
| 2 | Interpretation | | 16 Children under 12 years |
| | PART 2 | | 17 Disqualified exhibitor |
| | FILM AND PUBLIC ENTERTAINMENT CONTROL BOARD | | 18 [Repealed] |
| 3 | Film and Public Entertainment Control Board | | 19 Late night entertainment prohibited |
| | PART 3 | | 20 Excessive noise prohibited |
| | LICENSING OF EXHIBITORS | | 21 Public entertainment restriction |
| 4 | Exhibitor's licences | | 22 No liquor near entertainment places |
| 5 | Suspension or revocation of exhibitor's licence | | 23 Penalty |
| 6 | Exhibitor's licence dispensed with in certain cases | | PART 6 |
| 7 | Duties of licensee | | PLACES OF ENTERTAINMENT |
| | PART 4 | | 24 Licensed premises |
| | CENSORSHIP OF FILMS | | 25 Attendance of responsible persons |
| 8 | Appointment of Censor | | PART 7 |
| 8A | Directions to the Censor | | GENERAL PROVISIONS |
| 9 | Films not to be exhibited unless approved | | 26 Supervision and control by police |
| 10 | Application for approval of film | | 27 Hindering or obstructing officers |
| 11 | Examination of films by Censor | | 28 Offences |
| 12 | Powers of Censor | | 29 General penalty |
| 13 | Classification of film approved by Censor | | 30 Proceedings before High Court |
| 14 | Certificates | | 31 Fees and penalties |
| 14A | Offence to mislead Censor | | 32 Regulations |
| 14B | Renter's licence | | 33 [Spent] |
| | | | SCHEDULES |

To make better provision for the regulation and control of the exhibition of films and public entertainment

PART 1 PRELIMINARY

- 1 Short title**
This is the Film and Public Entertainment Act 1979.

2 Interpretation

In this Act –

- “Board” means the Film and Public Entertainment Control Board established under section 3;
- “Censor” means the Censor of films appointed under section 13 and includes any assistant Censor appointed under that section;
- “Chairman” means the Chairman of the Board;
- “Chief of Police” includes any person authorised to exercise or perform any of the powers, duties, or functions of the Chief of Police;
- “exhibitor’s licence” means an exhibitor’s licence issued under section 4;
- “film” means a cinematograph film; and includes a videotape, and any other material record of visual moving images that is capable of being used for the subsequent projection of those images in a fixed sequence on to any screen; and also includes any part of any such film, and any copy or part of a copy of the whole or any part of a film;
- “film exhibition” means –
 - (a) The exhibition of a cinematograph film and any part of a cinematograph film; and
 - (b) Includes the production of any music, speech or other sound whatsoever in connection with the projection of a film;
- “Minister” means the Minister of Police;
- “natural scenery” means the landscape features of nature existing in its natural state;
- “premises” includes any building, enclosure, ground or open-air space;
- “projection” means the act of presenting film on a screen by means of a cinematograph machine or other apparatus;
- “public entertainment” means any concert, dance, boxing or any other form of public entertainment whatsoever;
- “renter” means any person who supplies any film to any other person whether for financial reward or other consideration;
- “scenario” means a statement or summary of the plot and of the incidents depicted in a film.

PART 2

FILM AND PUBLIC ENTERTAINMENT CONTROL BOARD

3 Film and Public Entertainment Control Board

- (1) There shall be established a board, to be known as the Film and Public Entertainment Control Board.
- (2) The members of the Board shall consist of –
 - (a) The Minister who shall be the chairman;
 - (b) The Chief of Police; and
 - (c) The Secretary to the Board who shall be appointed by the Public Service Commission and who may hold any other office which the Public Service Commission considers to be not incompatible therewith.
- (3) At all meetings of the Board the Chairman, or in his absence such member as the other members may select, shall preside.
- (4) Three members of the Board shall constitute a quorum at any meeting of the Board.
- (5) (a) At all meetings of the Board the decision of the majority of members present shall prevail.

- (b) In the event of equality of votes on any decision the person presiding shall have a second or casting vote.
- (6) Subject to this Act, the Board shall regulate its own procedure.
- (7) The Board shall cause a proper record of its proceedings to be kept.
- (8) Every licence or other document issued by the Board shall be signed by the Chairman and the Secretary of the Board.
- (9) The Cabinet may give the Board directions as to the policy to be adopted in the exercise of the powers and duties conferred and the duties upon the Board by or under this Act and the Board shall at all times act in compliance with such directions.

PART 3
LICENSING OF EXHIBITORS

4 Exhibitor's licences

- (1) Subject to subsection (7), no person shall exhibit, or cause or permit or suffer to be exhibited, any film unless he is the holder of a licence, hereinafter referred to as an exhibitor's licence, issued under this section and valid in respect of the exhibition of such film at the premises specified in such licence.
- (2) Any person who exhibits, or causes or permits or suffers to be exhibited, any film in contravention of subsection (1) or in contravention of any of the terms or conditions of any exhibitor's licence shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 2 penalty units.
- (3) Application for an exhibitor's licence shall be made, in the form prescribed in Schedule 1, to the Board for the area in which the premises in respect of which the licence is sought are situated.
- (4) The Board may –
 - (a) Refuse an application for an exhibitor's licence if it is satisfied that the premises do not comply with Part 6 or if the applicant is a person who has been convicted of an offence under this Act; or
 - (b) Grant such a licence –
 - (i) generally, in which case the licence shall, unless sooner revoked or surrendered, remain in force until 31 December following the date of its issue; or
 - (ii) specifically, in respect of any period not exceeding 7 days as may be specified in the licence.
- (5) (a) An exhibitor's licence shall be in the form prescribed in Schedule 2 and, on payment of the prescribed fee, may be granted subject to such terms and conditions as the Board considers necessary in the interests of the safety, health, and convenience of persons attending any film exhibition held under the authority of such licence.
- (b) The Board may remit or waive any fee payable under this subsection in the case of any film exhibition held for any charitable, educational or public purpose.
- (6) Every exhibitor's licence granted under this section shall be limited in its application so as to authorise the exhibition of films only at such premises as may be specified in such licence.
- (7) Films may be exhibited without an exhibitor's licence –
 - (a) In any premises to which the public are not admitted, for the purpose solely of entertaining the friends or employees of the occupier where no charge whatever is made for such film exhibition; or

- (b) In any hospital, nursing home, institution for the care of the aged or of children, or educational institution, where entrance to the film exhibition, is restricted to the inmates or students and the staff of such hospital, nursing home or institution; or
- (c) By any charitable, philanthropic, religious, educational, social or sporting body or organisation where –
 - (i) the film is exhibited to further the bona fide objects or purposes of the body or organisation, those objects or purposes being film; and
 - (ii) admission to the film exhibition is restricted to the members of that body or organisation and their families; and
 - (iii) the public generally is not invited by the public notice or advertisement, or by any communication of whatever nature addressed to the public at large, to attend that film exhibition; and
- (d) In any premises which are the subject of a liquor licence issued under the Liquor Act where no charge whatsoever is made for such film exhibition.

5 Suspension or revocation of exhibitor's licence

- (1) An exhibitor's licence may be suspended or revoked –
 - (a) By the Board, if in its opinion the safety, health or convenience of persons attending any film exhibition held under the authority of such licence is not adequately provided for;
 - (b) By the Board, if in its opinion the quality of sound and sharpness of image of any film approved by the Censor falls below a reasonable standard for public exhibition;
 - (c) By a court, if the holder of such licence has been convicted of any offence against this Act.
- (2) In the event of an exhibitor's licence being suspended or revoked under subsection (1), the Board shall not grant any further licence to such exhibitor while such suspension or revocation remains in force.

6 Exhibitor's licence dispensed with in certain cases

Notwithstanding anything contained in this Part, the Board may, if the Censor certifies that any film falls within any of the following categories, authorise in writing any person to exhibit such film in any suitable premises without an exhibitor's licence –

- (a) Films depicting wholly or mainly surgical or medical techniques and intended to be used for instructional purposes;
- (b) Films intended to be used wholly or mainly by educational institutions for educational purposes;
- (c) Films intended to be used wholly or mainly by religious organisations for purposes of religious instruction;
- (d) Films depicting wholly or mainly industrial or manufacturing processes;
- (e) Films being wholly or mainly commercial advertisements relating to the advertiser's or sponsor's activities;
- (f) Scientific films, including natural history films, intended to be used for educational purposes;

- (g) Films depicting wholly or mainly cultural, sporting or recreational activities, and intended to be used wholly or mainly by cultural, sporting or recreational organisations for instructional or educational purposes;
- (h) Films depicting wholly or mainly natural scenery.

7 Duties of licensee

Every holder of an exhibitor's licence shall ensure that every film exhibition is conducted in such a manner as to provide for the safety, convenience and good order of the persons attending the film exhibition and that there is a responsible, competent and sober person operating the projector used in the premises for the purpose of the film exhibition.

PART 4

CENSORSHIP OF FILMS

8 Appointment of Censor

- (1) (a) The Board shall appoint a suitable person to be the Censor and such other persons as it considers necessary, to be known as assistant Censors, to assist the Censor or to act in his stead.
- (b) No member of the Board may be appointed as the Censor or an assistant Censor.
- (2) (a) Subject to any directions given by the Censor, every assistant Censor shall have and may exercise all or any of the powers, duties, discretion and authorities conferred upon the Censor by or under this Act.
- (b) Every decision of an assistant Censor shall be signified in the name of the Censor and shall be deemed to be a decision of the Censor.

8A Directions to the Censor

(1) The Board may give the Censor directions as to the policy to be adopted in the exercise of the powers and duties conferred upon him by or under this Act and the Censor shall at all times act in compliance with such directions.

(2) The Board may, in giving directions to the Censor under subsection (1), place a prohibition either totally, or in respect of public or private viewing only, on films of a particular kind, or films displaying certain kinds of activities, and such a prohibition shall be binding on the Censor.

9 Films not to be exhibited unless approved

(1) Subject to subsection (2) no person shall exhibit any film (in public or in private) or make available for rent or exhibition any film unless and until that film has been examined and approved by the Censor.

- (2) (a) The Censor, after considering the application for approval, may exempt a film from the requirements of examination and may approve it for exhibition or rent without first examining it if he has reason to believe that the film as described in the application would otherwise meet the requirements for approval.
- (b) An exemption may be granted absolutely, or subject to such conditions as the Censor may impose.
- (3) (a) The Censor may at any time require a film that was granted an exemption from examination under subsection (2) to be resubmitted to him for examination and if necessary classification.
- (b) In any such case the earlier approval shall be deemed to be cancelled.

10 Application for approval of film

(1) Subject to section 14 (2) every application for the approval by the Censor of any film shall be made in writing on the form prescribed by the Censor and be accompanied by a scenario of that film and the prescribed fee.

(2) The Censor may dispense in a particular case with the requirement relating to the submission of a scenario.

11 Examination of films by Censor

(1) Where any film is submitted to the Censor for examination by him the Censor shall, unless he exempts the film from examination under section 9, as soon as practicable, examine the film at premises approved for such purposes by the Board.

(2) The Censor may require any film in respect of which his approval is sought under this Act to be exhibited before him for the purpose of censorship, at such time as he may determine and in a place approved by the Board for such purpose at the expense and risk of the applicant.

(3) Subject to subsection (4) in examining any film under this Act the Censor may consult any person whom he considers may be able to assist him in forming an opinion of the film on which to base his decision in respect of the film.

(4) (a) The Board may determine either generally or in respect to any particular film the eligibility of any person to be present with the Censor when he is examining a film and that decision shall be binding on the Censor.

(b) The applicant shall be entitled as of right to attend any such examination.

12 Powers of Censor

(1) After examining a film for the purposes of this Part the Censor shall either –

(a) Approve the film for exhibition or rental and classify it in accordance with section 13; or

(b) Return the film to the applicant specifying the part or parts of the film that would require to be omitted or altered in order to obtain the approval of the Censor; or

(c) Refuse to approve the film for exhibition or rental.

(2) The Censor shall not refuse to approve a film for exhibition, or rental other than under a direction under section 8A, without the film having first been examined under section 11.

(3) The Censor shall not approve any film or any part of a film for public exhibition which is, in his opinion, indecent, obscene, injurious to morality or likely to encourage public disorder or crime.

13 Classification of film approved by Censor

(1) The Censor shall give each film approved for exhibition or rental under section 12(1)(a) one of the following classifications –

(a) Approved for general exhibition; or

(b) Approved for exhibition to persons over the age of 13 years; or

(c) Approved for exhibition to adult audiences only; or

(d) Approved for restricted exhibition.

(2) Any film falling into subsection (1)(d) may be approved subject to –

(a) The condition that such film shall be exhibited only to a specified class or classes or description of persons; or

- (b) Any other condition that the Censor may consider necessary or advisable.
- (3) No person shall exhibit or cause to be exhibited any film approved under subsection (1) –
 - (a) In the case of a film in category (b) to any persons under the age of 13 years;
 - (b) In the case of a film in category (c), to any person who is not an adult;
 - (c) In the case of a film in category (d), except under the conditions subject to which such approval was granted.

14 Certificates

- (1) The Censor shall –
 - (a) Signify his approval of a film and the category into which he has classified it or his refusal to approve a film by a certificate prescribed in Schedule 3;
 - (b) Keep in his office a register of films in which shall be entered with respect to each film the several particulars set out in the certificate issued under this section and such other particulars as may be prescribed.
- (2) (a) A certificate issued under subsection (1)(a) shall be valid for a period of 2 years from the date of issue.
 - (b) Where upon the expiry of the said period, application is again made under section 10 for the approval of the same film, no fee shall be chargeable therefor.

14A Offence to mislead Censor

Every person commits an offence and shall be liable to a fine not exceeding 2 penalty units and to forfeiture of the films involved who knowingly misleads or attempts to mislead the Censor in respect to the content of any film submitted to him for approval or provides any false information to the Censor about such a film in the application for approval or elsewhere.

14B Renter's licence

(1) No person shall rent any film to any person unless he is the holder of a renter's licence granted under this section.

(2) An application for a renter's licence shall be made to the Board on the form provided and shall be accompanied by the prescribed fee.

(3) The Board may grant such renters' licences and impose such conditions upon such licences as it considers are necessary to meet the local conditions.

(4) Subject to any conditions imposed by the Board for a shorter term, every renter's licence unless sooner revoked, or surrendered shall remain in force for one year from the date of its issue, and may upon payment of the appropriate fee be renewed at the discretion of the Board.

(5) It shall be a condition of every renter's licence that the licensed renter shall not make available for rent any film that has not been approved by the Censor and shall comply with all conditions imposed by the Censor in respect of every film made available for rent.

(6) Any person who rents a film, or causes or permits or suffers to be rented any film in contravention of this section, or in contravention of any terms or conditions of a renter's licence shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 2 penalty units and where applicable to loss of the renter's licence for such period as the Court thinks fit, and to forfeiture of the films involved.

PART 5

CONDUCT OF FILM EXHIBITIONS AND PUBLIC ENTERTAINMENTS

15 Film exhibition restriction

(1) It shall be unlawful to exhibit, or cause or permit or suffer to be exhibited any film except as provided in this section.

(2) A film exhibition, not being a film exhibition for educational purposes only, may be given in villages or Alofi on any night of the week except Sunday.

(3) With the written consent of the Chief of Police a special film exhibition suitable for children may be given, either in Alofi or any village, on any night or afternoon to be stated in such consent.

(4) A film exhibition for educational purposes may be authorised by the Chief of Police in any village at any time during school hours; and at night in any village provided that in respect of any one village not more than one such film exhibition may be so given each week, and that no such film exhibition shall be given in any village on any night on which a film exhibition is being given in that village by a licensed exhibitor.

16 Children under 12 years

Except as provided by section 15(3), no child under 12 years of age shall be taken or admitted to any film exhibition held at night except on a Friday and Saturday night.

17 Disqualified exhibitor

Any licensed exhibitor who is disqualified from holding a licence under this Act shall be deemed to be disqualified from taking any active part in a film exhibition either as lecturer, raconteur, or in any capacity whatsoever.

18 [Repealed by 1992/169]

19 Late night entertainment prohibited

No film exhibition or public entertainment conducted in any hall, building or public place in Niue shall be continued after midnight without the prior written permission of the Board.

20 Excessive noise prohibited

It shall not be lawful for any person conducting or having the control of any film exhibition or public entertainment to permit such film exhibition or public entertainment to inconvenience any person not attending or to unnecessarily disturb the peace.

21 Public entertainment restriction

It shall not be lawful for any person to conduct or allow to be conducted without the written permission of the Board any film exhibition or public entertainment on Sunday.

22 No liquor near entertainment places

It shall not be lawful for any person to serve, consume, or be in possession of any intoxicating liquor in or in the vicinity of any building used for the film exhibition or public entertainment unless the said building is licensed and has been granted approval by the Liquor Board to sell liquor in conjunction with the said film exhibition or public entertainment.

23 Penalty

Any person acting in contravention of this Part commits an offence and is liable to a fine not exceeding 0.5 penalty units.

PART 6

PLACES OF ENTERTAINMENT

24 Licensed premises

(1) No premises shall be used for any film exhibition or public entertainment unless it is licensed under this section.

(2) The Board shall have authority to license premises for any film exhibition or public entertainment and before it issues a licence in respect of such building it shall have regard to the following –

- (a) That the premises is provided with an adequate number of exits clearly indicated and so placed and maintained as to readily afford the patrons ample means of egress;
- (b) That the doors of all exits are so constructed and maintained as to easily open outwards on being pressed from within;
- (c) That the furniture in the premises is so arranged as not to interfere with the free access to the exits;
- (d) That fire appliances suitable to the character of the building are provided and maintained in good working order to the satisfaction of the Chief of Police;
- (e) That the electrical work, apparatus and appliances are installed and maintained in accordance with the standard prescribed by the Electric Power Supply Act and any regulations made under it;
- (f) That adequate toilet facilities for the use of the patrons are supplied to the satisfaction of the Director of Health; and
- (g) That the premises are properly ventilated, kept clean and maintained to the satisfaction of the Director of Health.

(3) (a) A licence granted under this section may be granted in respect of a particular date or dates, or for a period of time not exceeding one year, and may be granted in respect of public entertainment generally, or for one or more particular types of public entertainment.

(b) A licence shall also specify the particular premises at which the public entertainment shall occur, and may be granted subject to such terms and conditions as the Board may determine.

(4) The Board may delegate its functions under this section to one or more of its members, and may at any time revoke such delegation.

25 Attendance of responsible persons

(1) In order to ensure the safety of the patrons, the person conducting or having control of any film exhibition or public entertainment, or some responsible person nominated by him for the purpose, shall be present on the premises during the whole time of any film exhibition or public entertainment.

(2) All persons responsible for or employed in or in connection with any film exhibition or public entertainment shall take due precautions for the prevention of accidents.

PART 7

GENERAL PROVISIONS

26 Supervision and control by police

(1) All film exhibitions or public entertainment shall be subject to the supervision and control by the Chief of Police.

(2) A constable at all reasonable times may enter any building in which he has reason to believe that a film exhibition or public entertainment is being or is about to be given with a view to seeing whether the provisions of this Act and the conditions of any permission granted under this or any other Act have been or are being complied with.

27 Hindering or obstructing officers

Every person commits an offence who prevents the Chief of Police or any constable from carrying out this Act or who obstructs or hinders the Chief of Police or any constable in the exercise of any power or function conferred on him by or under this Act.

28 Offences

Any person who conducts or in any way assists in conducting any film exhibition or public entertainment in contravention of this Act or of any conditions or restriction specified in any licence or any permission granted under this Act shall be guilty of an offence.

29 General penalty

(1) Every person who commits an offence against this Act or against any regulations made under this Act for which no penalty is provided elsewhere than in this section shall be liable on conviction to a fine not exceeding 2 penalty units.

(2) Where any person who is the holder of a licence under section 24 has breached any provision of Parts 5, 6 or 7 or a term or condition of any licence issued under section 24, the Court may, in addition to any other penalty prescribed by law, and after taking into account the views of the Board, and of the licensee, either –

- (a) Suspend such licence for such period (not exceeding one month) as the Court thinks fit, or
- (b) For a second or subsequent offence, and if it is necessary in the public interest, revoke such licence.

30 Proceedings before High Court

All proceedings under this Act for the recovery of any penalty shall be taken before the Court.

31 Fees and penalties

All fees paid and penalties recovered under this Act shall be paid into the Treasury, and shall form part of the general revenue of the Government.

32 Regulations

The Cabinet may, after consultation with the Board, make regulations for all or any of the following purposes –

- (a) Prescribing any fees payable under this Act;
- (b) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

33 [Spent]

SCHEDULES

SCHEDULE 1

Section 4(3)

APPLICATION FOR A LICENCE TO EXHIBIT FILMS

To the Secretary, Film and Public Entertainment Control Board,
Application is hereby made for a licence to exhibit films in accordance with the following particulars –

- 1. Name of applicant:
- 2. Occupation:
- 3. Address:
- 4. Location of premises where licence is sought:
- 5. Full description of premises (e.g. hall, building or not):
.....
- 6. Size and nature of premises (state whether licensed or not):.....
- 7. Proposed days and hours of operation:
.....
.....
- 8. Proposed charges:

SIGNED by or on behalf of the Applicant:

Signature:

Date:

FOR OFFICE USE ONLY

Application No: Date received

Previous Applications: GRANTED/REFUSED

Date this application presented to Board:

This application: GRANTED/REFUSED

Terms on which licence granted:

.....

.....
.....
.....

Fee payable:

SCHEDULE 2
Section 4(5)
EXHIBITOR'S LICENCE

..... having paid the prescribed fee of \$20, is hereby licensed to give film exhibitions in Niue, subject to the following conditions –

.....
.....
.....
.....
.....

Secretary Chairman

This licence expires on 31 December 20 ; but it may be revoked by the Board at any time if, in its opinion, the licensee has acted in a manner unfitting him to hold a licence or the licensee contravenes of the conditions laid down in this licence.

SCHEDULE 3
Section 14(1)(a)
APPROVAL CERTIFICATE OF CENSOR

Niue, 20

SUBJECT to the undermentioned conditions, the film

..... submitted by
..... is hereby approved for exhibition in Niue.

Conditions

.....

.....

.....

.....

FINANCIAL TRANSACTIONS REPORTING ACT 2006

2006/278 – 1 December 2006

| | | |
|----|--|--|
| | PART 1 | |
| | PRELIMINARY | |
| 1 | Short title | |
| 2 | Interpretation | |
| 3 | Meaning of financial institution | |
| 4 | Meaning of transaction | |
| 5 | Application | |
| | PART 2 | |
| | OBLIGATION TO REPORT | |
| 6 | Financial institution to report financial transaction | |
| 7 | Offence to conduct transactions for purpose of ensuring no report made under section 6 | |
| | PART 3 | |
| | OBLIGATION TO REPORT SUSPICIOUS TRANSACTIONS | |
| 8 | Financial institutions to report suspicious transactions | |
| 9 | Supervisory authority or auditor to report certain suspicious transactions | |
| 10 | Disclosure of suspicious transaction reports | |
| 11 | Restrictions on disclosure of certain information | |
| 12 | Protection of persons reporting suspicious transactions | |
| 13 | Other preventative measures by financial institutions | |
| | PART 4 | |
| | OBLIGATIONS TO KEEP RECORDS AND VERIFY IDENTITY | |
| 14 | Financial institutions to keep records of transactions | |
| 15 | Financial institutions to verify customers' identity | |
| 16 | Identification required to conduct business | |
| 17 | Financial institutions to keep records relating to customers | |
| 18 | Financial institutions to monitor transaction | |
| 19 | Financial institutions to include originator information with funds transfers | |
| | PART 5 | |
| | FINANCIAL INTELLIGENCE UNIT | |
| 20 | Establishment of Financial Intelligence Unit | |
| 21 | Functions and powers of the Unit | |
| 22 | Agreements for information exchange with outside agencies | |
| 23 | Search warrants | |
| 24 | Secrecy provision | |
| 25 | Direction to disclose information | |
| 26 | Secrecy of information disclosed under direction | |
| 27 | Evidential value of copies | |
| 28 | Protection of persons complying with directions | |
| 29 | Immunity | |
| | PART 6 | |
| | CURRENCY REPORTING AT THE BORDER | |
| 30 | Certain cash and instruments to be reported | |
| 31 | Powers of search | |
| 32 | Further provisions on search | |
| 33 | Seizure of cash or instruments | |
| 34 | Detention of cash or instruments seized | |
| 35 | Release of detained cash or instruments | |
| | PART 7 | |
| | OTHER MATTERS | |
| 36 | Opening accounts in false names | |
| 37 | Anonymous accounts prohibited | |
| 38 | Alternative remittance | |
| 39 | Regulations | |
| 40 | Repeals and Consequential Amendments | |
| | SCHEDULE | |

**To provide for the reporting of certain transactions
and the keeping of certain records, and for related purposes**

PART 1
PRELIMINARY

1 Short title

This is the Financial Transactions Reporting Act 2006.

2 Interpretation

In this Act –

“account” means any facility or arrangement by which a financial institution does any of the following:

- (a) accepts deposits of currency;
- (b) allows withdrawals of currency;
- (c) pays cheques or payment orders drawn on the financial institution, or collects cheques or payment orders on behalf of a person other than the financial institution;

and includes any facility or arrangement for a safety deposit box or for any other form of safe deposit;

“Attorney-General” has the same meaning as in section 2 of the Proceeds of Crime Act 1998;

“cash” means any coin or paper money that is designed as legal tender in the country of issue, and includes bearer bonds, traveller’s cheques, postal notes, and money orders;

“customer” means anyone to whom a financial service is rendered;

“Department” means either:

- (a) The Office of the Attorney-General; or
- (b) Any other Department or Office of the Executive Government of Niue if that other Department or Office is, with the authority of the Premier of Niue, for the time being responsible for hosting and supporting the Unit;

“financial institution” has the meaning given by section 3;

“financing of terrorism” means an offence against section 7 of the Terrorism Suppression and Transnational Crimes Act 2006;

“Minister” means the Minister for Finance;

“money laundering offence” means an offence within the terms of sections

“prescribed” means prescribed by regulations made under this Act;

“serious offence” has the same meaning as in section 4 of the Proceeds of Crimes Act 1998;

“supervisory authority”:

- (a) means a person within the Public Service designated as the “Bank Supervisor”
- (b) in relation to a financial institution that is a company incorporated under the Companies Act 2006 includes the Registrar (as defined in Part 13 of that Act); and

“suspicious transaction report” means a report prepared under section 8;

“transaction” has the meaning given by section 4;

“Unit” means the Financial Intelligence Unit established under Part 5.

3 Meaning of financial institution

For the purposes of this Act and every other enactment of Niue, each of the following is a “financial institution”:

- (a) A bank, being:
 - (i) a registered bank as defined in section 2 of the Niue Bank Act 1994; or
 - (ii) the Niue Bank constituted or established by section 4 of the Niue Bank Act 1994; or
 - (iii) any other person, partnership, corporation, or company carrying on in Niue the business of banking:
- (b) A person carrying on the business:
 - (i) as a trustee in respect of funds of other persons; or
 - (ii) as a trust or company service provider:
- (c) A person carrying on a business of an insurer, an insurance intermediary, a securities dealer, or a futures broker:
- (d) A person (other than a person mentioned in paragraph (a), (b), or (c)) carrying on a business of:
 - (i) exchanging money; or
 - (ii) collecting, holding, exchanging, or remitting funds, or otherwise negotiating funds transfers, on behalf of other persons; or
 - (iii) preparing pay-rolls on behalf of other persons, in whole or in part, from funds collected; or
 - (iv) delivering funds (including payrolls):
- (e) A person carrying on a business of:
 - (i) issuing, selling or redeeming traveller's cheques, money orders, or similar instruments; or
 - (ii) collecting, holding, cashing in, remitting and delivering cash as part of a business or providing payroll services;
 - (iii) dealers in precious metals and dealers in precious stones when they engage in any transaction with a customer equal to or above \$10,000 or its equivalent in foreign currency; or
 - (iv) acting as agents for clients in the buying and selling of real estate; or
 - (v) casinos or gambling houses, including a person who carries on that business through the internet, when their customers engage in transactions equal to or above \$10,000 or its equivalent in foreign currency:
- (f) A lawyer, a notary, an independent legal professional and an accountant when they prepare for or carry out transactions for their client relating to any of the following activities:
 - (i) buying and selling real estate, businesses, and business entities:
 - (ii) managing client money, securities, or other assets:
 - (iii) managing bank, savings, or securities accounts, including the crediting or debiting of accounts or causing this to be done:
 - (iv) organising contributions for the creation, operation or management of companies, legal persons or arrangements:
- (g) Renting of a safe deposit box:
- (h) Any other person prescribed by regulations.

4 **Meaning of transaction**

For the purposes of this Act, a “transaction” includes:

- (a) The opening of an account;
- (b) A deposit withdrawal, exchange, or transfer of funds (in any currency) whether –
 - (i) in cash; or
 - (ii) by cheque, payment order, or other instrument; or
 - (iii) by electronic or other non-physical means;
- (c) The use of a safety deposit box or any other form of safe deposit;
- (d) Entering into a fiduciary relationship;
- (e) A payment made in satisfaction, in whole or in part, of a contractual or other legal obligation;
- (f) The use of trust or company services;
- (g) Any other transactions prescribed by regulations.

5 **Application**

(1) This Act applies in relation to a transaction conducted through a financial institution.

(2) A financial institution must comply with the requirements of this Act despite an obligation as to secrecy, or other restriction on the disclosure of information, and regardless of whether that obligation or restriction is imposed by law (for example, by any other enactment) or otherwise.

PART 2

OBLIGATION TO REPORT

6 **Financial institution to report financial transaction**

(1) A financial institution must report each of the following to the Unit in writing (which may be given by way of electronic mail) or in any other form and manner that may be approved by the Minister:

- (a) A transaction of an amount in cash that exceeds \$10,000 or its equivalent in foreign currency, or any other amount that may be prescribed, in the course of a single transaction, unless the recipient and the sender is a financial institution;
- (b) The sending out of Niue at the request of a customer of any electronic funds transfer that exceeds \$10,000 or its equivalent in foreign currency, or any other amount that may be prescribed, in the course of a single transaction;
- (c) The receipt from outside Niue of an electronic funds transfer, sent at the request of a customer, of an amount that exceeds \$10,000 or its equivalent in foreign currency, or any other amount that may be prescribed, in the course of a single transaction.

(2) Subsection (1) (b) does not apply when the financial institution sends an electronic funds transfer to a person or entity in Niue, even if the final recipient is outside Niue.

(3) Subsection (1) (c) does not apply when the financial institution receives an electronic funds transfer from a person or entity in Niue, even if the initial sender is outside Niue.

(4) If a financial institution fails, without reasonable excuse, to comply with subsection (1), the financial institution is guilty of an offence punishable on conviction:

- (a) In the case of an individual - by a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or
- (b) In the case of a body corporate - by a fine not exceeding 10,000 penalty units.

7 Offence to conduct transactions for purpose of ensuring no report made under section 6

(1) A person commits an offence, and is liable on conviction to the penalty stated in subsection (3), if –

- (a) The person conducts 2 or more transactions or electronic funds transfers that are of an amount below the relevant threshold set out in section 6(1); and
- (b) It may reasonably be concluded, having regard to the matters specified in subsection (2), that the person conducted the transactions or transfers in that manner or form for the sole or dominant purpose of ensuring, or attempting to ensure, that no report in relation to the transactions or transfers would be made under section 6(1).

(2) The matters referred to in subsection (1) are –

- (a) The manner and form in which the transactions or transfers were conducted, including, without limitation, all or any of the following –
 - (i) the value of the currency involved in each transaction or transfer;
 - (ii) the aggregated value of the currency involved in the transactions or transfers;
 - (iii) the period of time over which the transactions or transfers occurred;
 - (iv) the interval of time between any of the transactions or transfers;
 - (v) the locations at which the transactions or transfers were initiated or conducted; and
 - (b) Any explanation made by the person as to the manner or form in which the transfers were conducted.
- (3) The penalty referred to in subsection(1) is –
- (a) In the case of an individual - a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or
 - (b) In the case of a body corporate - a fine not exceeding 10,000 penalty units

PART 3

OBLIGATION TO REPORT SUSPICIOUS TRANSACTIONS

8 Financial institutions to report suspicious transactions

(1) If –

- (a) A person conducts or seeks to conduct any transaction through a financial institution (whether or not the transaction or proposed transaction involves cash); and
- (b) The financial institution has reasonable grounds to suspect that the transaction or proposed transaction is or may be relevant to –
 - (i) the investigation or prosecution of any person for a money laundering offence, financing of terrorism, or any other serious offence; or
 - (ii) the enforcement of the Proceeds of Crime Act 1998;

the financial institution must prepare a report of the transaction or proposed transaction and give the report to the Unit as soon as possible, but no later than 2 working days after forming the suspicion.

(2) If a financial institution fails without reasonable excuse to comply with subsection (1), the financial institution is guilty of an offence punishable on conviction –

- (a) In the case of an individual - by a fine not exceeding 2,5000 penalty units or imprisonment for a term not exceeding 5 years, or both; or
 - (b) In the case of a body corporate - by a fine not exceeding 10,000 penalty units.
- (3) A suspicious transactions report must –
- (a) Be in writing and may be given by electronic mail or by any other approved form and manner; and
 - (b) Contain the details specified in the Schedule; and
 - (c) Contain a statement of the grounds on which the financial institution holds the suspicion; and
 - (d) Be signed or otherwise authenticated by the financial institution.
- (4) A financial institution that has given a suspicious transaction report to the Unit must –
- (a) Automatically monitor other transactions of the customer who produced a suspicious transactions report, and report any further suspicions found; and
 - (b) Provide to the Unit any further information that it has about the transaction or proposed transaction or information sent to the Unit as soon as possible and, in any event, within 2 working days.
- (5) If a financial institution fails without reasonable excuse to comply with subsection (4), the financial institution is guilty of an offence punishable on conviction –
- (a) In the case of an individual - by a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or
 - (b) In the case of a body corporate - by a fine not exceeding 10,000 penalty units

9 Supervisory authority or auditor to report certain suspicious transactions

A supervisory authority or auditor of a financial institution must report the information that it has about a transaction or attempted transaction (“the relevant information”) to the Unit if the authority or auditor “suspects on reasonable grounds that the relevant information may be –

- (a) Of assistance in the enforcement of the Proceeds of Crime Act 1998; or
- (b) Relevant to the detection, investigation, or prosecution of –
 - (i) a money laundering offence; or
 - (ii) financing of terrorism; or
 - (iii) a serious offence; or
- (c) Related to the commission of –
 - (i) a money laundering offence; or
 - (ii) financing of terrorism; or
- (d) Evidence of preparations by a person or persons for the commission of financing of terrorism.

10 Disclosure of suspicious transaction reports

- (1) A financial institution must not disclose to any person that the financial institution –
- (a) Is contemplating making a suspicious transaction report; or
 - (b) Has given a suspicious transaction report to the Financial Intelligence Unit; unless required to do so under this Act or any other Act.

- (2) If a financial institution contravenes subsection (1), the financial institution is guilty of an offence punishable on conviction –
- (a) In the case of an individual - by a fine not exceeding 2,500 penalty units or imprisonment for a term not exceeding 5 years, or both; or
 - (b) In the case of a body corporate - by a fine not exceeding 10,000 penalty units
- (3) Nothing in this section prevents the disclosure of any information contained in a suspicious transaction report in connection with, or in the course of, proceedings before a court.
- (4) Subsection (1) does not apply to disclosures made –
- (a) To an officer or employee or agent of the financial institution, for a purpose connected with the performance of that person's duties; or
 - (b) To a barrister or solicitor, for the purpose of obtaining legal advice or representation in relation to the matter; or
 - (c) To the supervisory authority of the financial institution, for the purposes of carrying out the supervisory authority's functions.
- (5) No person referred to in subsection (4)(b) to whom disclosure of any information to which that subsection applies has been made may disclose that information except to another person of the kind referred to in that subsection for the purpose of –
- (a) The performance of the first-mentioned person's duties; or
 - (b) Obtaining legal advice, or representation in relation to the matter.
- (6) No person referred to in subsection (4)(c) to whom disclosure of any information to which that subsection applies has been made may disclose that information except to a person referred to in that subsection for the purpose of giving legal advice or making representations in relation to the matter.

11 Restrictions on disclosure of certain information

- (1) This section applies to information that will identify, or is likely to identify, any of the following –
- (a) A person who has handled a transaction report in respect of which a suspicious transaction report has been made;
 - (b) A person who has prepared a suspicious transaction report;
 - (c) A person who has made a suspicious transaction report;
 - (d) Any information contained in a suspicious transaction report or information provided under section 8(4).
- (2) A person must not disclose the information except for any of the following purposes –
- (a) The enforcement of the Proceeds of Crimes Act 1998; or
 - (b) The detection, investigation, or prosecution of -
 - (i) a money laundering offence; or
 - (ii) financing of terrorism; or
 - (iii) a serious offence.
- (3) No person may be required to disclose any information to which this section applies in any judicial proceedings unless the Judge or other presiding officer is satisfied that the disclosure of information is necessary in the interests of justice.
- (4) A person who discloses information in contravention of this section is guilty of an offence punishable, on conviction, by a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.
- (5) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of an offence against section 10(2).

12 Protection of persons reporting suspicious transactions

- (1) No civil, criminal, or disciplinary proceedings may be taken against –
- (a) A financial institution; or
 - (b) An officer, employee, or agent of the financial institution acting in the course of that person's employment or agency;
- in relation to any action by the financial institution or the officer, employee or agent taken in good faith under section 8.
- (2) Subsection (1) does not apply in respect of proceedings for an offence against a section in this Part.

13 Other preventative measures by financial institutions

- (1) A financial institution must appoint a compliance officer to be responsible for ensuring the financial institution's compliance with the requirements of this Act.
- (2) The requirement in subsection (1) does not apply to an individual who, in the course of carrying on his or her business, does not employ, or act in association with, any other person.
- (3) A financial institution must establish and maintain internal procedures–
- (a) To screen prospective officers or employees of the institution to ensure, so far as practicable, that those persons do not have criminal backgrounds and, in particular, to ensure that they have had no involvement of any kind in money laundering or financing of terrorism; and
 - (b) To make the institution's officers and employees aware of the laws in Niue about money laundering; and
 - (c) To make the institution's officers and employees aware of the procedures, policies, and audit systems adopted by the institution to deal with money laundering; and
 - (d) To train the institution's officer and employees to recognise and deal with money laundering.
- (4) A financial institution must prepare a written statement of the institution's internal procedures and submit it to the Unit –
- (a) In the case of a financial institution carrying on business when this Act commences, within 3 months after that commencement; or
 - (b) In the case where an existing written statement has been updated, within 2 working days; or
 - (c) In any other case, within 3 months after the financial institution starts to carry on business.
- (5) The supervisory authority of a financial institution must –
- (a) Examine and supervise the financial institution to ensure compliance with this Act; and
 - (b) Adopt any necessary measures to prevent any person who is unsuitable from controlling or participating, directly or indirectly, in the directorship, management, or operation of the financial institution; and
 - (c) Co-operate with law enforcement agencies and the Unit, within or outside Niue, in any investigation, proceedings or prosecutions relating to money laundering, financing of terrorism or any other serious offence.

PART 4

OBLIGATIONS TO KEEP RECORDS AND VERIFY IDENTITY

14 Financial institutions to keep records of transactions

(1) A financial institution must keep the records of every transaction that is conducted through the financial institution that are reasonably necessary to enable the transaction to be readily reconstructed at anytime by the Unit.

(2) Without limiting subsection (1), those records must contain the following information –

- (a) The nature of the transaction;
- (b) The amount of the transaction and the currency in which it was denominated;
- (c) The date on which the transaction was conducted;
- (d) The parties to the transaction;
- (e) The place and time of the transaction;
- (f) The nationality of the parties to the transaction;
- (g) Details of any natural person's valid passport, drivers licence, or official identification;
- (h) Details of any legal entity's constitution, if not older than 3 months.

(3) The records required by subsection (1) must be kept for at least 6 years after whichever of the following dates applies –

- (a) If the transaction involves an account or is part of a business relationship, the date on which the account is closed or the business relationship ceases; and
- (b) In any other case, whichever is the later of the following dates –
 - (i) the date on which the financial institution last obtained information identifying the parties to the transaction; or
 - (ii) the date on which the financial institution last received or sent correspondence relating to the transaction; or
 - (iii) the date of the transaction.

(4) If a financial institution contravenes subsection (1) or (3), the financial institution is guilty of an offence punishable on conviction –

- (a) In the case of an individual - by a fine not exceeding 250 penalty units or imprisonment for a term not exceeding 2 years, or both; or
- (b) In the case of a body corporate - by a fine not exceeding 1000 penalty units

15 Financial institutions to verify customers' identity

(1) When establishing a business relationship or conducting a transaction with a person, a financial institution must, before carrying out the transaction, verify the identity of the person on the basis of any official or other identifying document or other evidence that is reasonably capable of verifying the identity of the person.

(2) Without limiting the generality of subsection (1) –

- (a) If the person is a legal entity, a financial institution must adequately verify its legal existence and structure, including information relating to –
 - (i) the person's name, legal form, address, and directors; and
 - (ii) the principal owners and beneficiaries; and
 - (iii) provisions regulating the power to bind the entity, provisions to verify that persons purporting to act on behalf of the customer are so authorised, and provisions to identify those persons; and

- (b) If the person is a politically exposed person, the financial institution must –
 - (i) adequately identify and verify the person’s identity as set out in this section; and
 - (ii) have appropriate risk management systems to determine whether the customer is a politically exposed person; and
 - (iii) obtain approval of senior management before establishing a business relationship with the person; and
 - (iv) take reasonable measures to establish the source of wealth and funds of the person; and
 - (v) conduct regular and ongoing enhanced monitoring of the business relationship; and
- (c) The financial institution must prescribe the official or identifying document required for the verification of any particular person or class of person.

(3) A financial institution must take reasonable measures to ascertain the purpose of any transaction and the origin and ultimate destination of the funds involved in that transaction.

(4) If a person conducts a transaction through a financial institution and the financial institution has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person or persons, then, in addition to complying with subsections (1), (2), and (3), the financial institution must verify the identity of the other person or persons for whom, or for whose ultimate benefit, the transaction is being conducted.

(5) If a financial institution contravenes any of subsections (1) to (4), the financial institution is guilty of an offence punishable on conviction –

- (a) In the case of an individual – by a fine not exceeding 250 penalty units or imprisonment for a term not exceeding 2 years, or both; or
- (b) In the case of a body corporate – by a fine not exceeding 1000 penalty units.

(6) Subsection (1) or (2) may be waived in each of the following circumstances –

- (a) If the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity or, depending on the transaction profile, if the transaction is a low risk bulk and regular transaction of institutions like utilities, pension funds and treasury, unless the financial institution has reason to suspect that the transaction is suspicious or unusual, or if the financial institution has reason to doubt the accuracy or veracity of previously obtained information about the identity of the person;
- (b) If the transaction is an occasional transaction not exceeding 1000 penalty units or its equivalent in foreign currency or any other amount that may be prescribed, unless the financial institution has reason to suspect that the transaction is suspicious or unusual;
- (c) any other circumstances that may be prescribed.

(7) For the purposes of subsection (6), “occasional transaction” means any transaction involving cash that is conducted by any person otherwise than through an account in respect of which the person is the holder.

16 Identification required to conduct business

If satisfactory evidence of the customer's identity is not produced to, or obtained by, a financial institution under section 15, the financial institution must not proceed any further with the transaction unless directed to do so by the Unit.

17 Financial institutions to keep records relating to customers

- (1) A financial institution must keep –
 - (a) If evidence of a person's identity ("the identified person") is obtained under section 15, a record that indicates the kind of evidence that was obtained, and comprises either a copy of the evidence or information that enables a copy of it to be obtained; and
 - (b) A record of all correspondence between the identified person and the financial institution.
- (2) The records referred to in subsection (1) must be kept for at least 6 years after whichever of the following dates applies –
 - (a) If the transaction involves an account or is part of a business relationship, the date on which the account is closed or the business relationship ceases; and
 - (b) In any other case, whichever is the later of the following dates:
 - (i) the date on which the financial institution last obtained evidence of a person's identity; or
 - (ii) the date on which the financial institution last received correspondence from, or sent correspondence to, the identified person; or
 - (iii) the date of the transaction.
- (3) If a financial institution contravenes subsection (1) or (2), the financial institution is guilty of an offence punishable on conviction –
 - (a) In the case of an individual – by a fine not exceeding 250 penalty units or imprisonment for a term not exceeding 2 years, or both; or
 - (b) In the case of a body corporate – by a fine not exceeding 1000 penalty units

18 Financial institutions to monitor transaction

- (1) A financial institution must pay special attention to the following if they have no apparent or visible economic or lawful purpose –
 - (a) Transactions that are complex, large, or unusual;
 - (b) Unusual patterns of transactions.
- (2) A financial institution must pay special attention to the following –
 - (a) Business relationships and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or the financing of terrorism;
 - (b) Wire transfers that do not contain complete originator information.
- (3) In relation to subsections (1) and (2), a financial institution –
 - (a) Must examine as far as possible the background and purpose of the transactions or business relations and record its findings in writing; and
 - (b) On request, must make available those findings to the Unit or to a law enforcement agency to assist the Unit or agency in an investigation relating to any of the following offences:
 - (i) a money laundering offence;
 - (ii) a serious offence;
 - (iii) financing of terrorism.

19 Financial institutions to include originator information with funds transfers

A financial institution must include accurate originator information on electronic funds transfers and on any other form of funds transfers and that information must remain with the transfers, except where –

- (a) The electronic funds transfers or any other form of funds transfer result from a transaction carried out using a credit card or debit card, and provided that the credit or debit card number is included in the information accompanying the transfers (except in the case where the credit or debit card is used as a means of payment to effect the electronic funds transfers or any other form of funds transfer, where the requisite originator information must be included and is to remain with the transfers); or
- (b) The electronic funds transfers are transfers or settlements between financial institutions, and where the originator and beneficiary of the transfers are acting on their own behalf.

PART 5

FINANCIAL INTELLIGENCE UNIT

20 Establishment of Financial Intelligence Unit

- (1) The Financial Intelligence Unit is hereby established.
- (2) The Unit operates within the Department.

21 Functions and powers of the Unit

- (1) The Unit has the following functions –
 - (a) To receive and analyse suspicious transactions reports and any other information given to, or obtained by the Unit; and
 - (b) To disseminate information based on reports received under paragraph (a) –
 - (i) to the Department; and
 - (ii) if the Attorney-General considers it appropriate, to the police, a law enforcement agency (whether within or outside Niue), or a supervisory body outside Niue; and
 - (c) To conduct examinations to ensure compliance with this Act by financial institutions; and
 - (d) To receive information from, and otherwise assist, the Department the police, a law enforcement agency (whether within or outside Niue), or a supervisory body outside Niue, in relation to –
 - (i) the detection, investigation or prosecution of a money laundering offence, financing of terrorism, or a serious offence; or
 - (ii) the enforcement of the Proceeds of Crime Act 1998; and
 - (e) to issue guidelines to financial institutions in relation to transaction record keeping and reporting obligations and measures to prevent the misuse of the financial institutions; and
 - (f) to provide training programmes for financial institutions about transaction record keeping and reporting obligations; and
 - (g) to prepare and present an annual report to the Niue Assembly.
- (2) The Unit may collect, free of charge and at the Unit's request, any information the Unit considers relevant to money laundering, financing of terrorism, and serious offences, whether or not that information is publicly available, including information that is collected or maintained in databases maintained by the Government.

(3) The head of the Unit is responsible for ensuring that the Unit performs its functions properly, efficiently, and effectively, and must report to the Minister of Finance quarterly.

(4) The Public Service Commission must appoint –

- (a) The Attorney-General or another employee of the Niue Public Service as the head of the Unit (who may exercise and perform the functions, powers, and duties of a member of the Unit, and report to the Minister); and
- (b) Employees of the Niue Public Service as members of the Unit (who report to the head of the Unit).

(5) Until an appointment is made under subsection (4) the Attorney-General must be taken to have been appointed under that subsection as the head of the Unit.

(6) A member of the Unit –

- (a) May enter the premises of any financial institution during ordinary business hours to inspect any records kept by the institution under Part 4, and make notes and take copies of the whole or any part of the record; and
- (b) May send any information derived from that inspection to the organisations mentioned in paragraph (1) (b); and
- (c) May analyse and assess all reports and information; and
- (d) May direct any financial institution or Government institution to take appropriate steps to facilitate any investigation being conducted by the Unit.

22 Agreements for information exchange with outside agencies

(1) In this section “agreement” means an agreement or arrangement in writing that relates to the exchange of information between the Unit and any law enforcement agency or supervisory body outside Niue.

(2) The Unit may, with the Minister’s approval, enter into an agreement with any of the following –

- (a) An institution or an agency of a foreign State, or an international organisation established by Governments of foreign states, that has powers and duties similar to those of the Unit;
- (b) Any other law enforcement agency or supervisory body outside Niue.

(3) The agreement must restrict the use of information to purposes relevant to the detection, investigation, or prosecution of –

- (a) A money laundering offence; or
- (b) A serious offence;
- (c) Financing of terrorism; or
- (d) An offence that is substantially similar to an offence referred to in any of paragraphs (a) to (c).

(4) The agreement must also stipulate that the information must be treated in a confidential manner and must not be further disclosed without the express consent of the Unit or the relevant law enforcement agency or supervisory body outside Niue.

23 Search warrants

(1) A member of the Unit may apply to a Judge of the High Court for a warrant –

- (a) To enter premises belonging to, or in the possession or control of, a financial institution or of any officer or employee of the institution; and
- (b) To search the premises and remove any document, material, or thing on the premises.

(2) The Judge must grant the application if he or she is satisfied that there are reasonable grounds for believing that –

- (a) The financial institution has failed to keep a transaction record or report a suspicious transaction as required by this Act; or
- (b) An officer or employee of a financial institution is committing, has committed, or is about to commit, a money laundering offence.

24 Secrecy provision

(1) This section applies to a person while the person is, or after the person ceases to be, an officer, employee, or agent of the Unit, of the Department, or of the police.

(2) The person must not, directly or indirectly, divulge or communicate to any other person, or make a record of –

- (a) Any information contained in a suspicious transaction report; or
- (b) Any information provided under section 21(1)(d) or any other provision of this Act; or
- (c) Any other sensitive information to which the person is or was directly or indirectly privy to in the carrying out of the tasks of the Unit;

except for one or more of the following purposes –

- (d) The detection, investigation or prosecution of a money laundering offence, financing of terrorism or any other serious offence;
- (e) The enforcement of the Proceeds of Crime Act 1998;
- (f) The exercise or performance of the person's functions, powers, or duties under this Act;
- (g) Obtaining of legal advice or representation in relation to the matter.

(3) Despite subsection (2)(b), nothing in this section applies to information disclosed to a person under section 25 or section 26.

(4) If a person contravenes subsection (2) that person is guilty of an offence punishable on conviction by a fine of not more than 200 penalty units or imprisonment for a term not exceeding 2 years or both.

25 Direction to disclose information

(1) The Attorney-General may issue a direction to the person in charge of a financial institution, Government department, or statutory body requiring that person to disclose to the Attorney-General, or to a police officer nominated by the Attorney-General in the direction, a document or other information –

- (a) That is not readily available to the public; and
- (b) To which that person may reasonably have access, or that is in the possession or under the control of that person.

(2) However, the Attorney-General may issue the direction only if satisfied that the document or other information is relevant to any or all of the following purposes:

- (a) The enforcement of this Act;
- (b) The detection, investigation, or prosecution of –
 - (i) a money laundering offence;
 - (ii) financing of terrorism;
 - (iii) a serious offence.

(3) The direction must be complied with by the person to whom it is issued, and applies notwithstanding any provision in any other law.

26 Secrecy of information disclosed under direction

(1) No person to whom information has been disclosed under a direction under section 25 must, directly or indirectly, divulge or communicate to any other person, or otherwise further disclose, or make a record of, the information, except for any or all of the following purposes –

- (a) the enforcement of this Act;
- (b) the detection, investigation, or prosecution of –
 - (i) a money laundering offence;
 - (ii) financing of terrorism;
 - (iii) a serious offence.

(2) A person to whom information has been disclosed in accordance with subsection (1) or with this subsection must not disclose the information to another person except for a purpose referred to in subsection (1)(a) or (b).

(3) Where information is communicated to a person under a direction under section 25 or subsection (1) or (2), the person –

- (a) Must not voluntarily give the information in evidence in a proceeding before the Court other than a proceeding for a purpose referred to in subsection (1)(a) or (b); and
- (b) Must not be required to communicate the information to the Court.

(4) A person who discloses information in contravention of this section is guilty of an offence punishable, on conviction, by a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

27 Evidential value of copies

(1) If a document is examined or provided pursuant to a direction under section 25 –

- (a) The person by whom it is examined or to whom it is provided, or any officer or person authorised for the purpose by the recipient of the direction, may make or cause to be made one or more copies of the document; and
- (b) A certified copy of the document is evidence of the nature and content of the original document, and has the same probative force as the original document would have had if it had been proved in the ordinary way.

(2) In subsection (1) –

“certified copy of the document”, in relation to a document examined or provided pursuant to a direction under section 25, means a copy of the document purporting to be certified –

- (a) By the recipient of the direction; and
- (b) As a copy made pursuant to this section; and

“recipient of the direction” means the person in charge of the relevant financial institution, Government department, or statutory body.

28 Protection of persons complying with directions

- (1) This section applies to an action taken –
- (a) In compliance or purported compliance with a direction under section 25; and
 - (b) By an officer, employee, or agent of a financial institution, Government department, or statutory body acting in good faith and in the performance of that person's functions, powers, or duties, or in the course of that person's employment or agency.
- (2) No civil or criminal proceedings may be taken, in relation to the action, against either or both of the officer, employee, or agent, and the financial institution, Government department, or statutory body.
- (3) Nothing in this section prevents proceedings to enforce compliance with a direction under section 25.

29 Immunity

No action lies against any of the following for anything done in good faith in the exercise or performance, or purported exercise or performance, of any function, power, or duty under this Act –

- (a) The Attorney-General;
- (b) The head or any member of the Unit;
- (c) Any agent or employee of the Unit;
- (d) Any person acting at the direction of the head of the Unit.

PART 6

CURRENCY REPORTING AT THE BORDER

30 Certain cash and instruments to be reported

(1) An individual who arrives in, or is leaving, Niue with more than the prescribed sum in cash or negotiable bearer instruments (as defined in section 31(1)) on his or her person, or in his or her luggage, must make or cause to be made to a Customs officer a report that complies with subsection (3) and, if the individual fails to do so, he or she is guilty of an offence punishable on conviction by a fine of not more than 20 penalty units.

- (2) Until another sum is prescribed instead, the prescribed sum is \$10, 000.
- (3) A report complies with this subsection if it –
- (a) Is in writing and in the prescribed form or, if no form is prescribed, in a form approved by the Customs officer; and
 - (b) Contains the following details in relation to the cash or negotiable bearer instruments to which the report relates –
 - (i) the nature and amount of each type of cash or negotiable bearer instrument; and
 - (ii) the total amount of the cash or negotiable bearer instruments; and
 - (c) Is made by the individual himself or herself (or, if he or she is, by reason of age or disability, incapable of complying with the requirements of this section, by a parent or guardian or other person for the time being having the care of the individual, and on the individual's behalf); and
 - (d) Is signed by the person who made the report or, as the case requires, on whose behalf the report is made; and
 - (e) Is given to the Customs officer before the cash or negotiable bearer instruments leave the control of the Customs.

(4) It is a defence to a charge under this section against a person in relation to a failure to make or cause to be made a report to a Customs officer before cash or a negotiable bearer instrument leaves the control of the Customs if the defendant proves —

- (a) That the failure was due to some emergency or to any other circumstance outside the reasonable control of the defendant; and
- (b) That the defendant made or caused to be made a report in respect of that cash or negotiable bearer instrument as soon as practicable after the obligation to make the report arose.

31 Powers of search

(1) In this section and sections 32 to 35 —

“authorised officer” means —

- (a) A police officer; or
- (b) A Customs officer; or
- (c) A member of the Unit;

“negotiable bearer instrument”, without limiting the definition of the term “cash” in section 2(1) —

- (a) Means a document representing ownership of debts or obligations; and
- (b) Includes a bill of exchange, promissory note, or certificate of deposit, whether made payable to the bearer or not.

(2) Subsections (3) and (4) apply to a person who—

- (a) Is about to leave, or has arrived in, Niue; or
- (b) Is about to board or leave, or has boarded or left, a ship or aircraft that is about to leave, or has arrived in, Niue.

(3) An authorised officer may detain a person to whom this subsection applies and examine an article that the person has with him or her, or in his or her luggage, for the purpose of determining whether the person has in his or her possession cash or negotiable bearer instruments in respect of which a report under section 30 is required.

(4) An authorised officer may detain and search a person to whom this subsection applies if the authorised officer suspects on reasonable grounds that an offence against section 30 is being, or may have been, committed by the person.

32 Further provisions on search

(1) Reasonable force may be used if it is necessary to effect a detention, or examination, or search under section 31 (3) or (4).

(2) An authorised officer may exercise a power under section 31(3) or (4) with any assistance that may be reasonable and necessary.

(3) A person may be searched under section 31(4) only by a person of the same sex, and no search under section 31 (4) may be carried out in the view of a person who is not of the same sex as the person to be searched.

(4) Every search under section 31(4) must be conducted with decency and sensitivity and in a manner that affords to the person being searched the greatest degree of privacy and dignity consistent with the purpose of the search.

(5) An authorised officer, and any person assisting that officer, may stop, board, and search a ship, aircraft, or conveyance for the purposes of exercising the powers conferred by section 31 (3) or (4).

33 Seizure of cash or instruments

(1) An authorised officer may seize and, in accordance with section 34, detain cash or negotiable bearer instruments found in the course of an examination or search under section 31 (3) or (4) if the officer believes, on reasonable grounds, that the cash or negotiable bearer instruments may be evidence of the commission of –

- (a) A money laundering offence; or
- (b) Financing of terrorism; or
- (c) An offence under section 30 of this Act; or
- (d) A serious offence.

(2) An authorised officer who seizes cash or a negotiable bearer instrument under subsection (1) must report the seizure to the Unit.

(3) An authorised officer may seize and, in accordance with section 34, detain cash or a negotiable bearer instrument that is being (in any form or manner) imported into, or exported from, Niue if the cash or negotiable bearer instrument comes to the attention, or into the possession, of the authorised officer in the exercise or performance of his or her official powers, functions, or duties, and he or she has reasonable grounds for suspecting that it is derived from, or intended by a person for use in the commission of –

- (a) A money laundering offence; or
- (b) Financing of terrorism; or
- (c) A serious offence.

34 Detention of cash or instruments seized

(1) Cash or a negotiable bearer instrument seized under section 33 must not be detained by the authorised officer for longer than 48 hours after seizure, unless the High Court makes an order of continued detention for a period not exceeding 3 months from the date of seizure.

(2) The Court may make an order of continued detention under subsection (1) only if satisfied on a written application for the purpose –

- (a) That there are reasonable grounds to suspect that the cash or negotiable bearer instrument was derived from, or is intended by a person for use in the commission of, an offence of the kind specified in section 33(3)(a) to (c); and
- (b) That the continued detention of the cash or negotiable bearer instrument is justified while its origin or derivation is further investigated.

(3) Having made an order of continued detention under subsection (1), the Court may later (and once only) order, if it has taken all reasonable steps to notify and hear all parties concerned, and is satisfied of the matters specified in subsection (2)(a) and (b), the continued detention of the cash or negotiable bearer instrument.

(4) However, the total period of detention under any later order must not exceed 2 years from the date of that order.

35 Release of detained cash or instruments

(1) The authorised officer must release cash or a negotiable bearer instrument detained under section 34, or under an order made under that section, to the person from whom it was seized or to any other person claiming an interest in that cash or negotiable bearer instrument if –

- (a) The High Court orders (on a written application made by, or on behalf of, that person, and after the Court has considered any views of the Unit and the authorised officer to the contrary) that its continued detention is no longer justified; or
 - (b) The authorised officer is satisfied that its continued detention is no longer justified.
- (2) The continued detention of cash or a negotiable bearer instrument detained under section 34 is justified for the purposes of subsection (1) so long as the cash or negotiable bearer instrument is relevant to –
- (a) An investigation or prosecution of –
 - (i) a money laundering offence or any other offence against the Proceeds of Crime Act 1998; or
 - (ii) financing of terrorism; or
 - (iii) a serious offence; or
 - (b) Any other investigation, or any other proceeding, under the Proceeds of Crime Act 1998.

PART 7

OTHER MATTERS

36 Opening accounts in false names

A person who opens or operates an account with a financial institution in a false name is guilty of an offence punishable on conviction by –

- (a) In the case of an individual - imprisonment for a term of not more than 4 years or a fine of not more than 1000 penalty units or both; or
- (b) In the case of a body corporate - a fine of not more than 5000 penalty units.

37 Anonymous accounts prohibited

(1) A financial institution must not open, operate, or maintain an anonymous account or an account in a false name.

(2) If a financial institution contravenes subsection (1), the financial institution is guilty of an offence punishable on conviction by:

- (a) In the case of an individual - imprisonment for a term of not more than 4 years or a fine of not more than 1000 penalty units or both; or
- (b) In the case of a body corporate - a fine of not more than 5000 penalty units.

(3) However, a financial institution does not contravene subsection (1) just because the financial institution operates, on or after the commencement of this Act and in what appears to the financial institution to be the account holder's true name, an account that –

- (a) Existed on the commencement of this Act; and
- (b) Was at that time an anonymous account.

38 Alternative remittance

(1) For the purposes of this section a “funds or assets transfer system” is one that consists of a financial service that accepts cash, cheques or any other instrument of payment or stores of value at a given location and pays an equal amount in cash or in any other form to a beneficiary located in another geographical area by means of a method of communication, a message, transfer, compensation or clearing system to which the funds or assets transfer system belongs.

(2) A person who is not a financial institution and who, on behalf of, or in the name of, another person operates a funds or assets transfer system as a principal or essential part of his or her activities must be authorized to do so by the relevant supervisory authority.

(3) A person who operates a funds or assets transfer system is subject to Parts 2 and 3 and any other requirements prescribed by the relevant supervisory authority.

(4) A person commits an offence who operates a funds or assets transfer system in contravention of this section and is liable on conviction –

- (a) In the case of a natural person, to a fine not exceeding 2,500 penalty units or a term of imprisonment not exceeding 5 years; and
- (b) In the case of a body corporate, to a maximum fine of 10,000 penalty units.

39 Regulations

Cabinet may make such regulations as are necessary or convenient for the purposes of this Act.

40 [Spent]

SCHEDULE

[Section 8(3)]

DETAILS THAT MUST BE INCLUDED IN SUSPICIOUS TRANSACTION REPORTS

- 1 The name and address of the financial institution, including the branch of the institution (if applicable) at which the transaction was conducted.
- 2 The nature of the transaction.
- 3 The date of the transaction.
- 4 The total amount involved in the transaction.
- 5 The type of currency involved in the transaction, and its equivalent in the local currency.
- 6 For each person conducting the transaction with the financial institution:
 - (a) The name of the person; and
 - (b) The business or residential address of the person; and
 - (c) The occupation, business, or principal activity of the person; and
 - (d) The nationality and date and place of birth of the person; and
 - (e) In the case of a natural person, details of the person's current passport, official government identification or driving licence; and
 - (f) In the case of a body corporate, details of its Constitution (if it is not older than 3 months); and
 - (g) The method used by the financial institution to verify the identity of the person; and
 - (h) The place and time of the financial transaction; and
 - (i) whether the transaction was conducted on behalf of the person or on behalf of another person.

- 7 For any person on whose behalf the transaction was conducted:
- (a) The name of the person; and
 - (b) The address of the person; and
 - (c) The occupation of the person (or, where appropriate, the business or principal activity of the person); and
 - (d) The nationality and date and place of birth of the person.

FIREWORKS ACT 1958

1958/56 – 5 June 1958

- | | |
|--|---------------------------------|
| 1 Short title | 6 Offences and penalties |
| 2 Interpretation | 7 Cabinet may impose conditions |
| 3 Construction or manufacture of fireworks | 8 Fireworks may be seized |
| 4 Written consent of Cabinet required | 9 Fireworks seized |
| 5 Permit to discharge fireworks | 10 Offences and penalties |

To make provision for the control of the manufacture, importation and use of fireworks

- 1 Short title**
This is the Fireworks Act 1958.
- 2 Interpretation**
In this Act –
“fireworks” means any explosive and any firework composition enclosed in any case or contrivance or otherwise manufactured so as to form a squib, cracker, serpent, rocket (other than a ship safety rocket), maroon, lance wheel, Chinese fire, Roman candle or other article made or adapted for the production of pyrotechnic effects and includes sparklers, matches, and throwdowns;
“import” means to bring or cause to be brought or sent or to introduce in any other way whatever into Niue.
- 3 Construction or manufacture of fireworks**
No person in Niue shall construct or manufacture any fireworks or produce fireworks in any manner or by any method whatever whether by making a new article or adapting any existing article.
- 4 Written consent of Cabinet required**
(1) No person shall import any fireworks without having first obtained the written consent of Cabinet.
(2) Any officer of Police or Customs may detain and examine the contents of any imported package in respect whereof a breach of this section is reasonably suspected and any fireworks found to be imported contrary to this section shall be seized.
- 5 Permit to discharge fireworks**
(1) No person shall discharge any fireworks in Niue except pursuant to a permit granted by Cabinet and subject to such terms and conditions in the permit

as Cabinet imposes having regard to the interests of the public safety and of the safety of any person.

(2) Every person who commits a breach of this section is liable to a fine not exceeding 0.5 penalty units.

6 Offences and penalties

(1) Every person commits an offence under this Act who discharges any fireworks in any place with intent to do bodily harm to any person or sends or delivers to or causes to be received by any person any fireworks.

(2) Every person who commits an offence against this section shall be liable to a fine not exceeding 2 penalty units or to imprisonment not exceeding 3 months.

7 Cabinet may impose conditions

(1) Any consent or permit granted by Cabinet under this Act may be given subject to such terms and conditions as Cabinet, in its discretion, may impose.

(2) Cabinet may delegate its functions under this Act to an officer of Police or Customs and any functions so delegated shall be exercised subject to any general or specific directions which may be given by Cabinet in that behalf.

8 Fireworks may be seized

Any officer of Police, on being authorised so to do by warrant under the hand of a Commissioner or Registrar of the Court, may, by force if need be, enter and search any land or buildings in or upon which he has reasonable cause to believe that there are any fireworks in respect of which a breach of this Act has been committed, and any such fireworks found on such land or buildings shall be seized.

9 Fireworks seized

Any fireworks seized under this Act shall become the property of Her Majesty free and discharged from all rights, title, estate or interest possessed in respect of it by any other person and shall be destroyed or otherwise disposed of as in any case Cabinet may direct.

10 Offences and penalties

(1) Every person commits an offence against this Act who –

- (a) Fails to comply with any lawful requirements of Cabinet under this Act; or
- (b) In any manner obstructs an officer of Police or Customs in the lawful exercise of any power, function, or authority conferred on him by or under this Act; or
- (c) With intent to procure by purchase or otherwise any fireworks contrary to this Act deceives, or attempts to deceive, any officer in the performance of his duty under this Act; or
- (d) Discharges any fireworks in a public place or so near to it as to endanger, annoy or frighten any persons; or
- (e) Discharges any fireworks in any public place or while so situated that any property whether movable or immovable is thereby liable to catch fire.

(2) Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable to a fine not exceeding 1 penalty unit.

(3) Every corporate body committing an offence against this Act shall be liable to a fine not exceeding 2 penalty units.

FOOD CONTROL ACT 1981

1981/70 - 18 December 1981

| | |
|---|--|
| <p style="text-align: center;">PART 1 PRELIMINARY</p> <p>1 Short Title</p> <p>2 Interpretation</p> <p style="text-align: center;">PART 2 GENERAL</p> <p>3 Prohibition against sale of poisonous, unwholesome or adulterated food</p> <p>4 Misleading or deceptive labeling</p> <p>5 Standards for foods</p> <p>6 Prohibition against sale of food not of the nature, substance or quality demanded</p> <p>7 Sale and preparation of food under unsanitary conditions</p> <p>8 Medical examination for persons engaged in the handling of food</p> <p style="text-align: center;">PART 3 IMPORTATION, WARRANTIES AND DEFENCES</p> <p>9 Importation</p> <p>10 Warranties</p> <p>11 Defences</p> | <p style="text-align: center;">PART 4 REGULATIONS</p> <p>12 Regulations</p> <p style="text-align: center;">PART 5 ADMINISTRATION</p> <p>13 Powers of Inspectors</p> <p>14 Analysis of samples</p> <p>15 Restriction of appointment of Inspectors</p> <p>16 Power of the Director to obtain particulars of certain food ingredients</p> <p style="text-align: center;">PART 6 LEGAL PROCEEDINGS</p> <p>17 Power of Cabinet</p> <p>18 Prosecution</p> <p>19 Offences</p> <p>20 Certificate of analysis</p> <p style="text-align: center;">PART 7 SAVINGS</p> <p>21 Savings</p> |
|---|--|

To protect the public against health hazards in the sale and use of food to supplement the public Health Act 1965

| | |
|--|--|
| <p style="text-align: center;">PART 1 PRELIMINARY</p> <p>1 Short title This is the Food Control Act 1981.</p> <p>2. Interpretation In this Act – “advertisement” includes any representation by any means whatsoever for the purpose of promoting directly or indirectly the sale or disposal of any food; “article” includes – (a) any food and any labeling or advertising materials in respect; or (b) anything used for the preparation, preservation, packing or storing of any food;</p> | |
|--|--|

- “certificate of registration” includes every renewal of it;
- “Director” means the Director of Health
- “engaged in the handling of food” means the handling of food as employer or employee or sole proprietor or in any capacity whatsoever whether for remuneration or not;
- “food” means any article manufactured sold or represented for use as food or drink for human consumption;
- “handling of food” means taking part in the manufacture, preparation, storage, packing, carriage or delivery of food for sale or in the retail of food;
- “Inspector” means any Food Inspector appointed under section 7 of the Public Health Act 1965;
- “unsanitary conditions” means such conditions or circumstances as might cause contamination of any food with dirt or filth or might render the same injurious or dangerous to health;
- “label” includes any tag, brand, mark, pictorial or other descriptive matter, written, printed, stenciled, marked, embossed or impressed on, or attached to or included in, belonging to, or accompanying any food;
- “package” includes anything in which any food is wholly or partly placed or packed and includes any basket, pail, tray or receptacle of any kind whether open or closed;
- “premises” means and includes any premises or buildings or any room or other part thereof or any place in or on which food is handled;
- “preparation” includes manufacture processing and any form of treatment;
- “sell” includes to barter or to offer or attempt to sell or receive for sale or send forward for sale or deliver for sale or cause or suffer or allow to be sold, offered or exposed for sale and to supply meals at any restaurant, hotel or boarding-house;
- “ship” includes any boat or craft
- “vehicle” has the meaning as in section 3 of the Transport Act 1965.

PART 2
GENERAL

3 Prohibition against sale of poisonous, unwholesome or adulterated food

Any person who prepares or sells any food that –

- (a) Has in or upon it any substance which is poisonous, harmful or otherwise injurious to health; or
- (b) Consists in whole or in part of any filthy, putrid, rotten, decomposed or diseased substance or foreign matter, is unwholesome or is otherwise unfit for human consumption; or
- (c) Is adulterated;

commits an offence.

4 Misleading or deceptive labeling

Any person who labels, packages, prepares, sells or advertises any food in a manner that is false, misleading or deceptive as regards its character, nature, value, substance, quality, composition, merit or safety, or in contravention of any regulation made under this Act, commits an offence.

5 Standards for foods

Where a standard has been prescribed by regulation under this Act for any food, any person who labels, packages, prepares, sells or advertises any food which does not comply with that standard, in such a manner that it is likely to be mistaken for food of the prescribed standard, commits an offence.

6 Prohibition against sale of food not of the nature, substance or quality demanded

Any person who sells to the prejudice of the purchaser any food which is not of the nature, substance or quality of the article demanded by the purchaser commits an offence.

7 Sale and preparation of food under unsanitary conditions

Any person who sells, prepares, packages or stores for sale any food under unsanitary conditions commits an offence.

8 Medical examination for persons engaged in the handling of food

(1) Every person who is engaged in the handling of food shall undergo such medical examinations as is prescribed by the Director, who shall certify the suitability or otherwise of that person.

(2) No person shall be engaged in the handling of food unless he has received a certificate declaring him to be suitable to be so engaged.

(3) Every certificate issued under this section shall be renewable annually.

(4) The costs of any medical examination pursuant to this section shall be met by the employer of the person to be engaged in the handling of food.

PART 3**IMPORTATION, WARRANTIES AND DEFENCES****9 Importation**

(1) Subject to subsection (2), the importation of any article which does not comply with this Act or any regulations made under this Act, is prohibited.

(2) Where an article sought to be imported into Niue would, if sold in Niue, constitute a contravention of this Act or any regulation made under this Act, the article may be imported into Niue for the purpose of satisfactorily relabelling or reconditioning the same so that this Act or the regulations are complied with and, where such relabelling or reconditioning is not carried out within 3 months of the importation, such article shall be exported by the importer within a further period of one month or such other period as Cabinet may direct and, where it is not so exported, it shall be forfeited and disposed of as the Director may direct.

10 Warranties

(1) No manufacturer or distributor of, or dealer in, any article shall sell such article to any vendor unless he gives a warranty in writing in the prescribed form as to the nature and quality of such article to the vendor specifying that the article may lawfully be sold under this Act or the regulations.

(2) Any person who contravenes subsection (1) or gives a warranty which is false commits an offence.

11 Defences

In any proceedings for an offence under this Act it shall be a sufficient defence for the defendant to prove –

- (a) That he purchased the food from another person who furnished a written warranty in compliance with section 9, and sold the food in the same condition the article was in at the time he purchased it; and
- (b) That he could not, with reasonable diligence, have ascertained, that the sale of the article would be in contravention of this Act or the regulations;
- (c) In relation to an offence concerning the publication of an advertisement, that he received the advertisement for publication in the ordinary course of business and had no reason to believe that an offence would be committed.

PART 4 REGULATIONS

12 Regulations

(1) Cabinet may make regulations for the purposes of this Act.
 (2) Without prejudice to the generality of subsection (1), the Cabinet may make regulations –

- (a) Declaring that any food or class of food is adulterated if any prescribed substance or class of substance is presented in it or has been added to it or extracted or omitted from it;
- (b) In respect of –
 - (i) the labeling and packing and the offering, exposing and advertising for sale of food;
 - (ii) the size, dimension, fill and other specifications of packages of food;
 - (iii) the sale or the conditions of sale of any food; and
 - (iv) the use of any substance as an ingredient in any food, to prevent the consumer or purchaser of it from being deceived or misled as to its quality, quantity, character, value, composition, effect, merit or safety or to prevent injury to the health of the consumer or purchaser;
- (c) Prescribing standards of composition, strength, potency, purity, quality or other property of any food;
- (d) In respect of the importation or exportation of food, in order to ensure compliance with this Act;
- (e) In respect of the method of preparation, preserving, packing, storing, conveying and testing of any food, in the interests of, or for the prevention of injury to, the health of the consumer, user or purchaser, and for the observance of adequate standards of hygiene in the carrying out of these activities;
- (f) In respect of the carriage of goods subject to this Act, including the licensing of vehicles used in such carriage;
- (g) Requiring persons who sell food to maintain such books and records as Cabinet considers necessary for the proper enforcement and administration of this Act;
- (h) Providing for the analysis or examination of food for the purposes of this Act or for any other purpose and prescribing methods of analysis;

- (i) Providing for the taking of samples of any articles for the purpose of this Act or for any other purposes;
 - (j) Exempting any food from all or any of the provisions of the Act and prescribing the conditions of such exemption;
 - (k) In respect of the premises in which foods are prepared, packaged, stored or sold;
 - (l) Providing for the registration of premises in which food is prepared;
 - (m) Prescribing anything which is to be or which may be prescribed under this Act.
- (3) (a) Before making any regulations Cabinet shall consult with such organizations as appear to them to be representative of interests substantially affected by the regulations.
- (b) In cases of urgency they may make regulations without such consultations.
- (4) It shall be an offence for any person to commit any act in contravention of any regulation made under this section.

PART 5
ADMINISTRATION

13 Powers of Inspectors

- (1) An Inspector may, at any reasonable hour for the proper performance of his duty –
- (a) Enter any premises where he believes any article to which this Act applies is prepared, preserved, packaged, stored or conveyed, examine any such article and take samples and examine anything that he believes is used or capable of being used for such preparation, preservation, packaging, storing, or conveying;
 - (b) Stop or search or detain any aircraft, ship or vehicle in which he believes on reasonable grounds that any article subject to this Act is being conveyed and examine any such article and take samples for the purpose of this Act;
 - (c) Open and examine any receptacle or package which he believes contains any article to which this Act applies;
 - (d) Examine any books, documents or other records found in any premises mentioned in paragraph (a) that he believes contain any information relevant to the enforcement of this Act with respect to any article to which this Act applies and make copies or take extracts; and
 - (e) Seize and detain for such time as may be necessary any article by means of or in relation to which he believes this Act or the regulations has been contravened.
- (2) An Inspector acting under this section shall, if so required, produce his authority.
- (3) Any owner, occupier or person in charge of any premises entered by an inspector under subsection (1) (a), or any person found there, who does not give to the inspector all reasonable assistance in his power and furnish him with such information as he may reasonably require, commits an offence.
- (4) Any person who obstructs or impedes any inspection in the course of his duties or prevents or attempts to prevent the execution by the inspector of his duty under this Act commits an offence.
- (5) Any person who knowingly makes any false or misleading statement either orally or in writing to any inspector engaged in carrying out his duties under this Act commits an offence.

(6) An Inspector shall release any article seized by him under this Act when he is satisfied that all the provisions of this Act or the regulations with respect to it have been complied with.

(7) Where an Inspector has seized an article under this Act and the owner or the person in whose possession the article was at the time of seizure consents to its destruction, the article may be destroyed or otherwise disposed of as the Inspector may direct; if the owner or the person does not consent to the destruction of the article, the Inspector may apply to the court for the destruction or disposal of such article and the court may make such order as it thinks fit.

(8) Where any article has been seized under subsection (1)(e) and the owner has been convicted of an offence under this Act, the article may be destroyed or otherwise disposed of as the court may direct.

(9) Any person who removes, alters, or interferes in any way with any article seized under this Act without the authority of an Inspector commits an offence.

(10) Any article seized under this Act may at the option of an Inspector be kept or stored in the premises where it was seized or may at the direction of an inspector be removed to any other place.

(11) Any Inspector may submit any article seized by him or any sample from it or any sample taken by him to a laboratory for analysis or examination.

14 Analysis of samples

Any sample taken under this Act shall be analysed or examined as soon as practicable by a suitably qualified person, and the person carrying out the analysis or the examination shall give the inspector who took the sample a certificate specifying the results of the analysis or examination, and such certificate shall be in such form as may be prescribed by the Director.

15 Restriction on appointment of Inspectors

No person shall be appointed as an Inspector for any area in which he is engaged directly or indirectly in any trade or business connected with the sale of food.

16 Power of Director to obtain particulars of certain food ingredients

(1) The Director may direct any person who at the date of the direction or at any subsequent time carries on a business which includes the production, importation or use of any substances to which this Act applies to furnish to him within such time as may be specified in such direction, such particulars, as may be so specified, of the composition, and use of any such substance sold or for sale in the course of that business or used in the preparation of food.

(2) Without prejudice to the generality of subsection (1), a direction made under it may require the following particulars to be furnished in respect of any substance –

- (a) Particulars of the composition and chemical formula of the substance;
- (b) Particulars of the manner in which the substance is used or proposed to be used in the preparation of food;
- (c) Particulars of any investigations carried out by or to the knowledge of the person carrying on the business in question, for the purpose of determining whether and to what extent the substance or any product formed when the substance is used as aforesaid is injurious to or in any other way affects health;

- (d) Particulars of any investigations carried out by or to the knowledge of the person carrying on the business in question, for the purpose of determining the cumulative effect on the health of a person consuming the substance in ordinary quantities.

PART 6
LEGAL PROCEEDINGS

17 Power of Cabinet

(1) On the conviction of any person for any offence under this Act, Cabinet may, direct that any licence issued to such person under any regulations made under this Act, be revoked.

(2) Where a person has been convicted of an offence under this Act, the court may order that any article by means of or in relation to which the offence was committed or anything of a similar nature belonging to or in the possession of the convicted person or found with such article, be forfeited, and upon such order being made such articles and things may be disposed of as the Court may direct.

18 Prosecution

(1) Where a person having analysed or examined any article to which this Act applies, has given his certificate and from that certificate it appears that an offence under this Act has been committed, an Inspector may take proceedings under this Act before the court.

(2) In any proceedings under this Act, the contents of any package appearing to be intact and in the original state of packing by the manufacturer shall be deemed, unless the contrary is proved, to be an article of the description specified on the label.

(3) In any proceedings taken under this Act, it shall not be necessary to prove knowledge or intention on the part of the accused.

19 Offences

(1) A person found guilty of an offence under this Act for which no special penalty is provided shall be liable on conviction –

(a) In the case of a first offence, to a fine not exceeding 1 penalty unit or to an imprisonment for a term not exceeding 3 months, or to both such fine and imprisonment;

(b) In the case of a subsequent offence, to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

(2) If a person found guilty of an offence is found to have committed the offence with the intent to defraud or mislead he shall be fined a sum not exceeding 5 penalty units or imprisonment for a term not exceeding 6 months or both.

20 Certificate of analysis

(1) In any proceedings under this Act –

(a) A certificate or analysis purporting to be signed by a person carrying out an analysis or examination shall subject to subsection (2) be accepted as prima facie evidence of the facts stated in it;

(b) Evidence that the package containing any article to which this Act applies, bore a name, address or registered mark of the person by whom it was manufactured or packed shall be prima facie evidence that such article was manufactured or packed by that person;

- (c) Any substance commonly used for human consumption if sold or offered, exposed or kept for sale, shall be presumed, until the contrary is proved, to have been sold or to have been or to be intended for sale for human consumption;
 - (d) Any substance commonly used for human consumption which is found on premises used for the preparation, storage or sale of that substance and any substance commonly used in the manufacture of produces for human consumption which is found on premises used for the preparation, storage or sale of those products, shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale, for human consumption;
 - (e) Any substance capable of being used in the composition or preparation of any substance commonly used for human consumption which is found on premises on which that substance is prepared shall until the contrary is proved, be presumed to be intended for such use.
- (2) (a) The party against whom a certificate or analysis is produced under subsection (1) may require the attendance of the person performing the analysis for the purpose of cross-examination; the accused, if found guilty, will be liable for the costs of the attendance at the proceedings of the person performing the analysis.
- (b) No certificate under subsection (1) of a person carrying out an analysis or examination shall be received in evidence unless the party intending to produce it has before the trial given the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate.

PART 7
SAVINGS

21 Savings

This Act shall be additional to and not in derogation of any other legislation.

FUGITIVE OFFENDERS ACT 1881

[EDITORIAL NOTE: The Fugitive Offenders Act 1881 (UK) which is law for Niue by virtue of section 16 of the Crimes Against Internationally Protected Persons and Hostages Act 1984.

This Act is not reproduced. It will be repealed by the Bill which reforms the laws on extradition.]

**GENERAL AGREEMENT ON TARIFFS
AND TRADE ACT 1948**

[EDITORIAL NOTE: This Act is not reproduced. The text can be found in *Niue Legislation as at 1 August 1990* vol 2 p 181.]

GENERAL LAWS ACT 1968

1968/52 – 1 November 1968

| | |
|--|--|
| <p style="text-align: center;">PART 1 PRELIMINARY</p> <p>1 Short title</p> <p>2 –</p> <p>3 Interpretation</p> <p>4 Chief of Police to administer Act</p> <p style="text-align: center;">PART 2 UNAUTHORISED PERSONS ON BOARD SHIP</p> <p>5 Application of Part 2</p> <p>6 [Spent]</p> <p>7 Disobedience when ordered to leave ship</p> <p>8 Arrest without warrant</p> <p>9 Offence of obstructing or resisting</p> <p style="text-align: center;">PART 3 CONTROL OF WHARF</p> <p>10 Closing order</p> | <p>11 Public to be duly warned</p> <p>12 Effect of closing order</p> <p>13 Restricted admittance to closed area</p> <p>14 Offences</p> <p>15 Aggravated offences</p> <p style="text-align: center;">PART 4 OFFENCES INJURIOUS TO PUBLIC MORALITY</p> <p>16 Adultery by married persons</p> <p>17 Adultery with married persons</p> <p>18 Scandalous conduct</p> <p style="text-align: center;">PART 5 MISCELLANEOUS</p> <p>19 [Spent]</p> <p>20 Application of fines</p> <p>21 Power to make regulations</p> |
|--|--|

To make better provision for the order and good government of Niue

| | |
|---|--|
| <p style="text-align: center;">PART 1 PRELIMINARY</p> <p>1 Short title This is the General Laws Act 1968.</p> <p>2 –</p> <p>3 Interpretation In this Act – “Chief of Police” means the Chief of Police in Niue.</p> <p>4 Chief of Police to administer Act The Chief of Police shall be charged with the administration of this Act under the general direction and control of Cabinet.</p> | |
|---|--|

PART 2

UNAUTHORISED PERSONS ON BOARD SHIP

5 Application of Part 2

(1) This Part shall apply to every ship calling on Niue from the time of here arrival in the roadstead until the time of her departure from it.

(2) In this Part, "ship" includes every description of vessel used for overseas voyages, however propelled, but does not include ships of the naval forces of any country.

6 [Spent]

7 Disobedience when ordered to leave ship

Every person who not being a person bound or entitled to sail on the ship or a person duly authorised to be on the ship for any purpose recognised by law) refuses or fails to leave the ship when ordered so to do by the master or any officer of the ship or by any officer of Police or Customs or, after having complied with an order to leave the ship or after being taken ashore, re-enters or attempts to re-enter the ship commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units or to imprisonment for a term not exceeding 3 months.

8 Arrest without warrant

The master or any officer of the ship or any officer of Customs may take ashore or, as circumstances require, take into custody any person who acts in contravention of section 7 and deliver him to a constable and any constable may arrest without warrant any person so acting or so delivered to him.

9 Offence of obstructing or resisting

Every person who wilfully obstructs, hinders, or resists any person in the exercise or execution of any power, duty or function conferred or imposed on such person by this Part commits an offence and, unless the Niue Act 1966 provides a more severe penalty in respect of the same offence, shall be liable on conviction to a fine not exceeding 0.5 penalty units.

PART 3

CONTROL OF WHARF

10 Closing order

The Chief of Police in concurrence with the Revenue Manager shall have power to close at any time and for any period of time the wharf or any portion of it, or any building, machinery, or other construction erected on or near the wharf (in this Part referred to as the closed area).

11 Public to be duly warned

The Chief of Police shall in such customary and practicable manner as he deems fit make generally known to the public every order under section 10 specifying the closed area and the hours of commencement and termination of the order.

12 Effect of closing order

The effect of any order so made shall be that, for the period of time specified in the order, any closed area shall be deemed not to be open to the public as of right.

13 Restricted admittance to closed area

(1) Except with the permission of the constable on duty on the wharf, no person shall enter any closed area unless his presence is required for the working of the wharf or for the pursuit of any legitimate and customary other work or business in connection with it.

(2) Any constable may remove from the closed area any person found there in contravention of this Part.

14 Offences

Every person who acts in contravention of this Part commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units.

15 Aggravated offences

Every person who, after being ordered or removed from any closed area re-enters or attempts to re-enter that closed area commits an offence and, unless the Niue Act 1966 provides a more severe penalty in respect of the same offence, shall be liable on conviction to a fine not exceeding 0.5 penalty units or to imprisonment for a term not exceeding 3 months.

PART 4

OFFENCES INJURIOUS TO PUBLIC MORALITY

16 Adultery by married persons

Every married person who commits adultery shall be guilty of an offence and liable on conviction to a fine not exceeding 0.5 penalty units.

17 Adultery with married person

Every unmarried man who commits adultery with a woman whom he knows to be married, and every unmarried woman who commits adultery with a man whom she knows to be married shall be guilty of an offence and liable to a conviction to a fine not exceeding 0.5 penalty units.

18 Scandalous conduct

Persons of the opposite sex who, without being married to each other, live together as husband and wife to the annoyance of the public commit an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units.

PART 5

MISCELLANEOUS

19 [Spent]**20 Application of fines**

All fines paid or collected under this Act shall form part of the public revenues of Niue and shall be paid into the appropriate account.

21 Power to make regulations

(1) Cabinet may make regulations –

(a) For the purposes of this Act, and

(b) For the implementation of the International Convention for the Safety of Life at Sea 1974, the International Shipping and Port Security Code and any other international standard, requirement or recommended practice relating to maritime and port security.

- (2) Regulations made under this section may make provision for –
 - (a) Fees and charges, and
 - (b) Offences and penalties for the contravention of such regulations.

GENEVA CONVENTIONS ACT 1958

1958/19 (NZ) – 18 September 1958

[EDITORIAL NOTE: The Schedules to this Act are not reproduced. They provide the texts of:

- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949;
- Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949;
- Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949;
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949.

Access to these Conventions is available at: <http://www.unhchr.ch/html/intlinst.htm> and in *Niue Legislation as at 1 August 1990* vol 2 p. 222.]

| | |
|--|--|
| <p>1 Short title</p> <p>2 Interpretation</p> <p style="text-align: center;"><i>Punishment of Offenders against Conventions</i></p> <p>3 Punishment for grave breaches of Conventions</p> <p style="text-align: center;"><i>Provisions as to Certain Legal Proceedings</i></p> <p>4 Notice of trial of protected persons to be served on protecting power</p> <p>5 Legal representation of prisoners of war</p> <p>6 Appeals by protected persons</p> | <p>7 Reduction of sentence, and custody of protected prisoners of war and internees</p> <p style="text-align: center;"><i>Prevention of Abuse of Red Cross and Other Emblems</i></p> <p>8 Use of Red Cross and other emblems</p> <p style="text-align: center;"><i>Miscellaneous</i></p> <p>9 Regulations</p> <p>10-11 [Spent]</p> <p style="text-align: right;">SCHEDULES</p> |
|--|--|

To enable effect to be given to certain International Conventions done at Geneva on 12 August 1949, and for purposes connected therewith

- 1 Short title**
This is the Geneva Conventions Act 1958.
- 2 Interpretation**
 - (1) In this Act –
 - “the First Convention” means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 1;
 - “the Second Convention” means the Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annex to that Convention) is set out in Schedule 2;

- “the Third Convention” means the Geneva Convention relative to the Treatment of Prisoners of War adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 3;
- “the Fourth Convention” means the Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 4;
- “Conventions” means the First Convention, the Second Convention, the Third Convention, and the Fourth Convention;
- “Court” does not include a Court Martial;
- “Niue aircraft” means any aircraft that is registered or required to be registered in Niue and includes any aircraft belonging to or in the service of Her Majesty in right of Niue, whether a civil or a military aircraft;
- “Niue ship” means a “Niue ship” or “ship belonging to Her Majesty” and includes an unregistered ship which required by the law of Niue to be registered in Niue or in some other Commonwealth country;
- “protected internee” means a person protected by the Fourth Convention and interned in Niue;
- “protected prisoner of war” means a person protected by the Third Convention;
- “protecting power”, in relation to a protected prisoner of war or a protected internee, means the power or organisation which is carrying out, in the interests of the power of which he is a national, or of whose forces he is, or was at any material time, a member, the duties assigned to protecting powers under the Third Convention or the Fourth Convention, as the case may be.

(2) If the ratification on behalf of Niue of any of the Conventions is subject to a reservation or is accompanied by a declaration, that Convention shall, for the purposes of this Act, have effect and be construed subject to and in accordance with that reservation or declaration.

Punishment of Offenders Against Conventions

3 Punishment for grave breaches of Conventions

(1) Any person who in Niue or elsewhere commits, or aids or abets or procures the commission by another person of, a grave breach of any of the Conventions is guilty of an offence.

(2) For the purposes of this section –

- (a) A grave breach of the First Convention is a breach of that Convention involving an act referred to in article 50 of that Convention committed against persons or property protected by that Convention;
- (b) A grave breach of the Second Convention is a breach of that Convention involving an act referred to in article 51 of that Convention committed against persons or property protected by that Convention;
- (c) A grave breach of the Third Convention is a breach of that Convention involving an act referred to in article 130 of that Convention committed against persons or property protected by that Convention;

(d) A grave breach of the Fourth Convention is a breach of that Convention involving an act referred to in article 147 of that Convention committed against persons or property protected by that Convention.

(3) This section applies to persons regardless of their nationality or citizenship.

(4) The punishment for an offence against this section shall be –

(a) Where the offence involves the wilful killing of a person protected by the relevant Convention, the same as that for the time being for murder;

(b) In any other cases, imprisonment for a term not exceeding 14 years.

(5) No one shall be prosecuted for an offence under this section without the leave of Cabinet.

(6) The provisions of section 5 (other than subsection (2)) shall apply in relation to the trial of a person who is not a protected prisoner of war for an offence against this section in like manner as they apply in relation to the trial of a protected prisoner of war.

(7) If in proceedings under this section in respect of a grave breach of any of the Conventions any question arises under article 2 of that Convention (which relates to the circumstances in which the Convention applies), that question shall be determined by the Minister of Foreign Affairs and a certificate purporting to set out any such determination and to be signed by or on behalf of that Minister shall be received in evidence and be deemed to be so signed without further proof, unless the contrary is shown.

(8) The enactments relating to the trial by Court Martial of persons who commit civil offences shall have effect for the purposes of the jurisdiction of Court Martial convened in Niue as if this section had not been passed.

Provisions as to Certain Legal Proceedings

4 Notice of trial of protected persons to be served on protecting power

(1) The court before which –

(a) A protected prisoner of war is brought up for trial for any offence;
or

(b) A protected internee is brought up for trial for an offence for which that court has power to sentence him to death or to imprisonment for a term of 2 years or more –

shall not proceed with the trial until it is proved to the satisfaction of the court that a notice containing the particulars mentioned in subsection (2), so far as they are known to the prosecutor, has been served not less than 3 weeks previously on the protecting power (if there is a protecting power), on the accused, and (if the accused is a protected prisoner of war) on the prisoners' representative.

(2) The particulars referred to in subsection (1) are –

(a) The full name and description of the accused, including the date of his birth and his profession or trade, if any, and, if the accused is a protected prisoner of war, his rank and his army, regimental, personal, or serial number;

(b) His place of detention, internment, or residence;

(c) The offence with which he is charged; and

(d) The court before which the trial is to take place and the time and place appointed for the trial.

- (3) For the purposes of this section a document purporting –
- (a) To be signed on behalf of the protecting power or by the prisoners' representative or by the person accused, as the case may be; and
 - (b) To be an acknowledgement of the receipt by that power, representative or person on a specified day of a notice described in it as a notice under this section –

shall, unless the contrary is shown, be sufficient evidence that the notice required by subsection (1) was served on that power, representative, or person on that day.

(4) In this section "prisoners' representative" in relation to a particular protected prisoner of war at a particular time means the person by whom the functions of prisoners' representative within the meaning of article 79 of the Third Convention were exercisable in relation to that prisoner at the camp or place at which that prisoner was, at or last before that time, detained as a protected prisoner of war.

(5) Any court which adjourns a trial for the purpose of enabling the requirements of this section to be complied with may, notwithstanding anything in any other enactment or any rule of law, remand the accused for the period of the adjournment.

5 Legal representation of prisoners of war

(1) The court before which a protected prisoner of war is brought up for trial for any offence shall not proceed with the trial, unless –

- (a) The accused is represented by counsel; and
- (b) It is proved to the satisfaction of the court that a period of not less than 14 days has elapsed since instructions for the representation of the accused at the trial were first given to counsel for the accused;

and if the court adjourns the trial for the purpose of enabling the requirements of this subsection to be complied with, then, notwithstanding anything in any other enactment or rule of law, the court may remand the accused for the period of the adjournment.

(2) In the absence of counsel accepted by the accused as representing him, counsel instructed for the purpose on behalf of the protecting power shall, without prejudice to the requirements of subsection (1)(b) be regarded for the purposes of that subsection as representing the accused.

(3) If the court adjourns the trial under subsection (1) by reason that the accused is not represented by counsel, the court shall direct that a counsel be assigned to watch over the interests of the accused at any further proceedings, in the absence of counsel either accepted by the accused as representing him or instructed as mentioned in subsection (2), counsel assigned under this subsection shall, without prejudice to the requirements of subsection (1)(b) be regarded for the purposes of the said subsection (1) as representing the accused.

(4) (a) A counsel shall be assigned under subsection (3) in such manner as may be prescribed by regulations made under this Act, and any counsel so assigned shall be entitled to receive, out of money appropriated by the Assembly for the purpose, such remuneration and disbursements as may be in like manner prescribed.

- (b) While there are no regulations for the purposes of this section or so far as any such regulations do not apply, the Offenders Legal Aid Act 1954 (NZ) and of any regulations made under that Act shall apply to the assignment, remuneration, and disbursement of counsel under this section.

6 Appeals by protected persons

(1) Where a protected prisoner of war or a protected internee has been sentenced by a court to death or to imprisonment for a term of 2 years or more, the time allowed in relation to the institution of an appeal or an application for leave to appeal against the conviction or sentence shall, notwithstanding anything to the contrary in any other enactment, be the period from the date of his conviction or, in the case of an appeal against sentence, of his sentence to the expiration of 28 days after the date on which the convicted person receives a notice that the protecting power has been notified of his conviction and sentence, being a notice given –

- (a) In the case of a protected prisoner of war, by an officer of the New Zealand armed forces; or
- (b) In the case of a protected internee, by or on behalf of the person in charge of the prison or place in which he is confined.

(2) [Repealed 1971/208/53 (NZ)]

(3) Where subsection (1) applies in relation to a convicted person, then, unless the Court otherwise orders, an order of the Court relating to the restitution of property or the payment of compensation to an aggrieved person shall not take effect, and any provision of law relating to the revesting of property on conviction shall not take effect in relation to the conviction, while an appeal by the convicted person against his conviction or sentence is possible.

(4) Subsections (1) and (2) shall not apply in relation to an appeal against a conviction or sentence if, at the time of the conviction or sentence, there is no protecting power.

(5) Notwithstanding anything to the contrary in any other Act, where a protected prisoner of war has been sentenced by a court to death, the sentence shall not be executed before the expiration of 6 months from the date specified in article 101 of the Third Convention.

(6) Notwithstanding anything to the contrary in any other act, where a protected internee has been sentenced by a court to death, the sentence shall not be executed before the expiration of 6 months from the date specified in article 74 of the Fourth Convention.

7 Reduction of sentence, and custody of protected prisoners of war and internees

(1) When a protected prisoner of war or a protected internee is convicted of an offence, the court shall –

- (a) In fixing a term of imprisonment in respect of the offence, deduct from the term which it would otherwise have fixed any period during which the convicted person has been in custody in connection with that offence before the trial; and
- (b) In fixing any penalty other than imprisonment in respect of the offence, take that period of custody into account.

(2) Where the Minister of Justice is satisfied that a protected prisoner of war accused of an offence has been in custody in connection with that offence, while awaiting trial, in a place other than a camp or place in which protected prisoners of war are detained, for an aggregate period of not less than 3 months, that Minister may direct that the prisoner shall be transferred from that custody to the custody of an officer of the New Zealand armed forces and thereafter remain in military custody at a camp or place in which protected prisoners of war are detained, and be brought before the court at the time appointed for his trial.

*Prevention of Abuse of Red Cross and Other Emblems***8 Use of Red Cross and other emblems**

(1) Subject to this section, it shall not be lawful for any person, without the authority of the Minister of Defence or a person authorised by him in writing to give consent under this section, to use for any purpose whatsoever any of the following emblems, designations, designs, or wordings:

- (a) The emblem of a red cross with vertical and horizontal arms of the same length on, and completely surrounded by, a white ground, or the designation "Red Cross" or "Geneva Cross";
- (b) The emblem of a red crescent moon on, and completely surrounded by, a white ground, or the designation "Red Crescent";
- (c) The following emblem in red on, and completely surrounded by, a white ground, that is to say, a lion passing from right to left of, and with its face turned towards, the observer, holding erect in its raised right forepaw a scimitar, with, appearing above the lion's back, the upper half of the sun shooting forth rays, or the designation "Red Lion and Sun";
- (d) Any design consisting of a white or silver cross with vertical and horizontal arms of the same length on, and completely surrounded by, a red ground, being the heraldic emblem of the Swiss Confederation, or any other design so nearly resembling that design as to be capable of being mistaken for that heraldic emblem;
- (e) Any design or wording so nearly resembling any of the emblems or designations specified in the foregoing provisions of this subsection as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems.

(2) If any person contravenes the foregoing provisions of this section he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding 1 penalty unit and to forfeit any goods upon or in connection with which the emblem, designation, design, or wording was used.

(3) The Minister of Defence or a person authorised by that Minister to give consents under this section shall not refuse to give such a consent, and shall not withdraw such a consent, except for the purpose of giving effect to the provisions of the Conventions.

(4) In the case of a trade mark registered before the passing of this Act, the foregoing provisions of this section shall not apply by reason only of its consisting of or containing a design or wording which reproduces or resembles an emblem or designation specified in subsection (1)(b) or (c).

(5) Where a person is charged with using a design or wording to which subsection (4) applies for any purpose and it is proved that he used it otherwise than as, or as part of, a trade mark registered as aforesaid, it shall be a defence for him to prove –

- (a) That he lawfully used that design or wording for that purpose before the passing of this Act; or
- (b) In a case where he is charged with using the design or wording upon goods, that the design or wording had been applied to the goods before he acquired them by some other person who had manufactured or dealt with the goods in the course of trade and who lawfully used the design or wording upon similar goods before the passing of this Act.

(6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the body corporate, or any person purporting to act in any such capacity he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(7) This section extends to the use in or outside Niue of an emblem, designation, design, or wording referred to in subsection (1) on any Niue ship or Niue aircraft.

(8) No one shall be prosecuted for an offence under this section without the leave of Cabinet.

Miscellaneous

9 Regulations

(1) The Governor-General, may by Order in Council, make all such regulations as may be necessary or expedient for giving full effect to this Act and for the due administration of it.

(2) All regulations made under this section shall be laid before Parliament within 28 days after the date of the making of it if Parliament is then in session and, if not, shall be laid before Parliament within 28 days after the date of the commencement of the next ensuing session.

10-11 [Spent]

SCHEDULES
[Not reproduced]

GOVERNMENT LOANS ACT 1980

1980/56 – 25 June 1980

| | |
|---------------------------------------|--|
| 1 Short title | 13 Niue stock |
| 2 Interpretation | 14 Stock register |
| 3 Authority to raise loans | 15 Stock certificates |
| 4 Methods of raising loans | 16 Transfer and transmission of stock |
| 5 Charge on Niue Government Account | 17 Stock holders of unclaimed interests |
| 6 Issue of debentures | 18 Closing of register |
| 7 Redemption of debentures | 19 Interest and payment |
| 8 Interest on debentures | 20 Redemption of stock |
| 9 Form of debentures and coupons | 21 Withdrawal from Niue Government Account |
| 10 Transfer of debentures and coupons | 22 Sinking fund |
| 11 Register of debentures | |
| 12 Redeemed debentures | |

To make provision for the raising of loans both locally and overseas by the Government

- 1 Short title**
This is the Government Loans Act 1980.
- 2 Interpretation**
In this Act –
“debenture” means any debenture issued under this Act;
“loans” means loans raised under this Act;
“register” includes any book kept by any registering authority under this Act;
“registering authority” means the Treasury;
“stock” means stock issued under this Act and includes any share or interest in such stock;
“stockholder” means any person holding stock and entered as proprietor of it in the register.
- 3 Authority to raise loans**
(1) Cabinet is hereby empowered, subject to this Act, to raise internally or externally loans of such sums of money as the Assembly may authorise by resolution.
(2) All moneys borrowed under the authority of this Act shall be applied for such purposes as shall be specified by the resolution authorising the borrowing of such moneys.

4 Methods of raising loans

Loans may be raised under this Act –

- (a) By the issue of securities in the form of debentures payable to bearer;
or
- (b) By the creation and issue of registered or inscribed stock which shall be known as Niue stock; or
- (c) In such other manner as Cabinet may, in consultation with any lender, decide.

5 Charge on Niue Government Account

The principal moneys and interest represented by loans issued under this Act are hereby charged upon and shall be payable out of the Niue Government Account.

6 Issue of debentures

(1) Where Cabinet deems it expedient to raise money by debentures, such debentures may be issued by the Treasury on behalf of the Government upon the best and most favourable terms that can be obtained, and to such amounts and on such conditions, subject to this Act, as Cabinet may direct.

(2) Debentures shall be of such denominations as the Cabinet may determine.

7 Redemption of debentures

Debentures shall be redeemable either –

- (a) At par on a fixed date to be declared on the issue of the debentures: Provided that Cabinet may reserve the option to redeem the debentures prior to such date on such conditions as may be declared at the time of issue; or
- (b) By annual drawings at par; or
- (c) At the option of Cabinet by purchase.

8 Interest on debentures

(1) The interest upon the principal represented by each debenture shall run from the date of issue named in that behalf in the debenture, and shall be paid half-yearly on the dates named in that behalf in the debenture.

- (2) (a) There shall be attached to every debenture coupons for the payment of interest to become due in each half year upon the principal represented by the debenture.
- (b) The coupons shall be sufficient in number to provide for the payment of interest either during the whole period for which the debenture has to run or for such limited period as Cabinet may determine.

9 Form of debentures and coupons

The debentures and coupons shall be in such form as Cabinet may direct.

10 Transfer of debentures and coupons

Every debenture and coupon, and the right to receive the principal and interest represented by it shall be transferable by delivery.

11 Register of debentures

Every debenture shall, before being issued, be registered in a register book to be kept for that purpose by the Treasury.

12 Redeemed debentures

(1) Upon the repayment of the principal moneys secured by any debenture, the debenture shall, and on the redemption by purchase of any debenture the debenture may, together in either case with all outstanding coupons, be delivered up to the issuing authority for cancellation.

(2) Debentures redeemed by purchase which are not delivered up for cancellation shall be deemed part of the sinking fund and may in all respects be dealt with as such.

13 Niue stock

Niue stock may be issued in Niue or elsewhere, upon the directions of Cabinet upon the best and most favourable terms that can be obtained, and to such amounts and on such conditions, subject to this Act, as Cabinet may before the issue direct.

14 Stock register

(1) A register shall be kept in which –

- (a) All stock issues under this Act shall be registered, or, in the case of inscribed stock, inscribed;
- (b) All transfers, transmissions and other dealings in such stock under this Act shall be registered; and
- (c) All other matters and things which by this Act are required to be entered therein shall be entered.

(2) Issues of inscribed stock shall be inscribed in the register by entering the name of the stock holder, the amount of such stock and such other particulars as may be prescribed.

(3) The register shall be prima facie evidence of title of any person in respect of any stock of which he is entered as the stockholder.

(4) The register shall be kept by the Treasury.

15 Stock certificates

(1) (a) The registering authority shall within 30 days of receipt of the final instalment payable on any stock send to the stockholder a certificate, which shall be known as a stock certificate, showing that stock to the value specified in it has been registered or inscribed in the name of the stockholder.

(b) In the case of inscribed stock a stock certificate need not be issued unless demanded by the stockholder.

(2) (a) Such stock certificate shall be prima facie evidence of the title of the stockholder to the stock specified in it.

(b) In the case of inscribed stock the want of such certificate shall not prevent the owner of any stock from disposing of it.

16 Transfer and transmission of stock

(1) Stock shall be transferable by an instrument of transfer to be approved by Cabinet, and a certificate issued, at the request of the transferee, by the registering authority in pursuance of such transfer and in respect of the stock so transferred shall be prima facie evidence of the title of the holder of the certificate to the stock specified.

(2) Any person to whom any stock is transmitted may apply in such form as may be approved by the Cabinet to the registering authority by which the register in which such stock is registered or inscribed to be registered as the proprietor of such stock.

(3) Every transmission application shall be verified by statutory declaration or in such other manner as may be approved by Cabinet and shall be supported by the production to the registering authority of the original or certified true copies of all documents under which the applicant claims to be entitled to be registered as the proprietor of the stock.

(4) If the registering authority is satisfied that a person applying under subsection (2) to be registered as the proprietor of any stock, is entitled so to be registered, it shall register such transmission by entering the name of such person in the register as the proprietor of such stock.

(5) No person shall have any claims against the Government in respect of any transmission registered under subsection (4) but nothing in this subsection shall relieve the person to whom the stock is transmitted from any liability to account for or deal with the stock in accordance with law.

17 Stock holders of unclaimed interests

The registering authority shall keep, in a separate book, a list of the stock holders on whose stock the interest has been unclaimed for 5 years, together with their registered addresses, and such list shall be open for inspection without payment of a fee.

18 Closing of register

(1) (a) The registering authority may, for a period not exceeding 14 days prior to each payment of interest on any stock registered or inscribed under this Act, close the register of that stock as regards transfer upon giving not less than 7 days notice of such closing.

(b) Such notice shall be published in the *Gazette* in the case of stock issued in Niue and in a newspaper circulating in the country concerned in the case of other stock.

(2) The persons who on the day of such closing are registered as stockholders shall, as between them and their transferees, be entitled to the interest then next payable on the stock.

19 Interest and payment

Interest shall be payable on stock half-yearly by the registering authority, at the rate fixed by Cabinet at the time of the issue of such stock.

20 Redemption of stock

(1) (a) Stock shall be redeemable at par on a date to be named in that behalf by Cabinet or the registering authority when issuing the stock.

(b) Cabinet or the registering authority may reserve the option to redeem the stock in whole or in part, by drawings or otherwise at any time prior to such date on such conditions as may be declared at the date of issue.

(2) From and after the date appointed for the redemption of the stock or any part of it all the interest on the principal moneys secured thereby shall cease and determine, whether payment of the principal shall have been demanded or not.

21 Withdrawal from Niue Government Account

So long as any portion of any loan remains outstanding, Cabinet shall in each half-year withdraw from the Niue Government Account a sum equal to one-half year's interest on the whole of that loan outstanding, and shall authorise the payment out of such sum of the then current half-year's interest on the date on which it falls due.

22 Sinking fund

- (1) (a) Cabinet shall in each half-year ending with the day on which the interest on any loan falls due withdraw from the Niue Government Account for formation of a sinking fund for repayment of that loan at par a sum equal to one-half of the annual contribution specified in the prospectus, or in the case of a loan not issued publicly, in the terms of issue relating to the loan.
(b) The said contribution shall in respect of any money raised under this Act commence not later than 3 years after the date from which the interest on such money shall commence to run.
- (2) The amounts withdrawn from the Niue Government Account under subsection (1), less any amounts utilised under subsection (5), shall be invested in investments approved by the Cabinet and, if invested in Niue, shall be invested in any one or more of the following –
 - (a) On deposit with the Niue Post Office;
 - (b) On deposit in any savings bank outside Niue; and
 - (c) In any security issued by the Government or by any statutory organisation in Niue.
- (3) All investments made under subsection (2) shall be retained as a sinking fund for the final extinction of any loan for which the sinking fund has been formed and any dividends, interest or produce of or arising out of or in consequence of any such investments may be invested in any similar manner to that authorised by subsection (2) and any such investment may at any time with the approval of Cabinet be changed to any other investment authorised by subsection (2).
- (4) In case the sinking fund provided for by this section shall be insufficient for the payment of all the principal moneys borrowed under the authority of this Act in respect of any particular loan at the time the same shall have become due Cabinet shall make good the deficiency out of the Niue Government Account or by a loan authorised by section 3.
- (5) Cabinet may authorise the utilisation of any amount withdrawn from the Niue Government account for contribution to the sinking fund prescribed by subsection (1) for the purchase of debentures or Niue stock for which the sinking fund has been established.
- (6) Cabinet may authorise the utilisation of the whole or any part of the sinking fund for the repayment in part or in whole of any loan for which the sinking fund has been established, whether or not such loan has become due for repayment.

GUARDIANSHIP ACT 1968

1968/63 (NZ) – 1 January 1970

| | | | |
|----|--|-------|--|
| 1 | Short title | | <i>Variation and Enforcement of Orders</i> |
| 2 | Interpretation | 17 | Variation or discharge of orders |
| 3 | Definition of custody and guardianship | 18 | Effect of custody agreements |
| | <i>Jurisdiction</i> | 19 | Enforcement of custody and access rights |
| 4 | [Repealed] | 20 | Preventing removal of child from Niue |
| 5 | Personal jurisdiction | | <i>Marriage of Child</i> |
| | <i>Natural Guardianship</i> | 21 | Termination of guardianship |
| 6 | Guardianship of children | 22 | Domicile of married minor |
| 6A | Declaration as to guardianship of father | | <i>Miscellaneous Provisions</i> |
| | <i>Appointment and Removal of Guardians</i> | 23 | Welfare of child paramount |
| 7 | Testamentary guardians | 24 | Custody of children over 16 |
| 8 | Court-appointed guardians | 25 | Consents to operations |
| 9 | Wards of Court | 26 | [Repealed] |
| 10 | Removal of guardian | 27 | Procedure and costs |
| 11 | Custody orders | 28 | Evidence |
| 12 | Orders in other proceedings | 29 | [Repealed] |
| | <i>Disputes</i> | 30 | Solicitor or counsel may be appointed |
| 13 | Disputes between guardians | 31 | Appeals |
| 14 | Review of guardian's decision or refusal to give consent | 32 | Regulations |
| | <i>Access</i> | 33 | Act to be code |
| 15 | Access rights | 34 | [Repealed] |
| 16 | Access of other relatives on death of parent | 35-38 | [Spent] |

SCHEDULE

To define and regulate the authority of parents as guardians of their children, their power to appoint guardians, and the powers of the courts in relation to the custody and guardianship of children

- 1 **Short title**
This is the Guardianship Act 1968.

- 2 **Interpretation**
In this Act –
“child” means a person under the age of 20 years;
“near relative” means a step-parent, grandparent, aunt, uncle, brother, or sister; and includes a brother or sister of the half-blood as well as of the full-blood;
“upbringing” includes education and religion.

3 **Definition of custody and guardianship**

For the purposes of this Act –

“custody” means the right to possession and care of a child;

“guardianship” means the custody of a child (except in the case of a testamentary guardian and subject to any custody order made by the Court) and the right of control over the upbringing of a child, and includes all rights, powers, and duties in respect of the person and upbringing of a child that were at the commencement of this Act vested by any enactment or rule of law in the sole guardian of a child.

Jurisdiction

4 [Repealed by 2004/270]

5 **Personal jurisdiction**

(1) The Court shall have jurisdiction under this Act –

- (a) Where any question of custody, guardianship, or access arises as an ancillary matter in any proceedings in which the Court has jurisdiction; or
- (b) Where the child who is the subject of the application or order is present in Niue when the application is made; or
- (c) Where the child, or any person against whom an order is sought, or the applicant, is domiciled or resident in Niue when the application is made.

(2) Notwithstanding subsection (1) the Court may decline to make an order under this Act if neither the person against whom it is sought nor the child is resident in Niue and the Court is of the opinion that no useful purpose would be served by making an order or that in the circumstances the making of an order would be undesirable.

Natural Guardianship

6 **Guardianship of children**

(1) Subject to this Act, the father and the mother of a child shall each be a guardian of the child.

(2) Subject to this Act, the mother of a child shall be the sole guardian of the child if –

- (a) She is not married to the father of the child, and either –
 - (i) has never been married to the father; or
 - (ii) her marriage to the father of the child was dissolved before the child was conceived; and
- (b) She and the father of the child were not living together as husband and wife at the time the child was born.

(3) Where the mother of a child is, or was at the time of her death, its sole guardian by virtue of subsection (2) the father of the child may apply to the Court to be appointed as guardian of the child, either in addition to or instead of the mother or any guardian appointed by her, and the Court may make such order on the application as it thinks proper.

(4) On the death of the father or the mother the surviving parent, if he or she was then a guardian of the child, shall, subject to this Act, be the sole guardian of the child.

6A Declaration as to guardianship of father

Any man who alleges that he is a guardian of a child by virtue of section 6 (other than by a virtue of an order under subsection (3)) may apply to the Court for an order declaring that he is a guardian of the child, and, if it is proved to the satisfaction of the Court that the allegation is true, and that the man has not been deprived of his guardianship the Court may make the order.

*Appointment and Removal of Guardians***7 Testamentary guardians**

(1) The father or the mother of a child (including an unborn child) may by deed or will appoint any person to be a guardian of the child after his or her death, and that person is in this Act referred to as a testamentary guardian.

(2) If the person appointing a guardian under subsection (1) is himself a guardian of the child at his death, the testamentary guardian shall thereupon if he is of full age and capacity be either sole guardian or a guardian in addition to any other guardian.

(3) If the person appointing a guardian under subsection (1) is not himself a guardian at his death, the testamentary guardian may apply to the Court, and the Court may appoint him as a guardian accordingly.

(4) Notwithstanding any enactment or rule of law, a child may appoint a guardian by deed or will under subsection (1).

8 Court-appointed guardians

(1) Subject to the provisions of this section, the Court may on application made for the purpose or on the making of an order under section 10, appoint a guardian of a child either as sole guardian or in addition to any other guardian, and either generally or for any particular purpose, and either until the child attains the age of 20 years or sooner marries, or for any shorter period.

(2) The High Court shall have exclusive jurisdiction to appoint and remove a guardian *ad litem* in respect of any proceedings before that or any higher court, and may appoint or remove a guardian *ad litem* in respect of any proceedings before any other court.

9 Wards of Court

(1) The Court may upon application order that any unmarried child be placed under the guardianship of the Court, and may appoint any person to be the agent of the Court either generally or for any particular purpose.

- (2) An application under subsection (1) may be made –
- (a) By a parent, guardian or near relative of the child;
 - (b) [Repealed by 2004/270]
 - (c) By the child, who may apply without guardian *ad litem* or next friend;
 - (d) With the leave of the Court, by any other person.
- (3) (a) Between the making of the application and its disposal, and after it if an order is made, the Court shall have the same rights and powers in respect of the person and property of the child as the Court possessed immediately before the commencement of this Act in relation to wards of Court.
- (b) The Court shall not direct any child of or over the age of 18 years to live with any person unless the circumstances are exceptional.
 - (c) Where any child under the guardianship of the Court marries without the Court's consent the Court shall not have the power to commit that child or his or her spouse for contempt of Court for so marrying.

(4) A child who has been placed under the guardianship of the Court shall cease to be under such guardianship when the Court so orders or when the child reaches the age of 20 years or sooner marries, whichever first occurs.

10 Removal of guardian

(1) The Court may on application by the other parent or by a guardian or near relative or, with the leave of the Court, by any other person deprive a parent of the guardianship of his child or remove from his office any testamentary guardian or any guardian appointed by the Court.

(2) No parent shall be deprived of the guardianship of his child under subsection (1) unless the Court is satisfied that the parent is for some grave reason unfit to be a guardian of the child or is unwilling to exercise the responsibilities of a guardian.

11 Custody orders

(1) Subject to section 24 the Court may on application by the father or mother, or a step-parent, or a guardian, of a child or with the leave of the Court by any other person, make such order with respect to the custody of the child as it thinks fit.

(2) Any order made under subsection (1) may be made subject to such conditions as the Court thinks fit.

12 Orders in other proceedings

(1) Subject to section 24, in any proceedings for nullity, separation or divorce the Court may, before or by or after the principal decree or order, make such order (whether an interim order or a permanent order) as it thinks just with respect to the custody and upbringing of any child of the marriage.

(2) In any such case the Court may make a guardianship order vesting the sole guardianship of the child in one of the parents, or make such other order with respect to the guardianship of the child as it thinks fit.

(3) An order may be made under subsection (1) or (2) and any such order may be varied or discharged, notwithstanding that the Court has refused to make a decree or to give any other relief sought.

(4) Unless the Court makes a guardianship order every person who was a guardian of the child shall continue to be a guardian of the child.

Disputes

13 Disputes between guardians

(1) When more than one person is a guardian of a child, and they are unable to agree on any matter concerning the exercise of their guardianship, any of them may apply to the Court for its direction, and the Court may make such order relating to the matter as it thinks proper.

(2) Where more than one person has custody of a child, and they are unable to agree on any matter affecting the welfare of the child, any of them may apply to the Court for its direction, and the Court may make such order relating to the matter as it thinks proper.

(3) Where under an order of the Court more than one person is a guardian or has custody of a child the Court shall have exclusive jurisdiction to settle disputes.

14 Review of guardian's decision or refusal to give consent

A child of or over the age of 16 years who is affected by a decision or by a refusal of consent by a parent or guardian in an important matter may apply to the Court which may review the decision or refusal and make such order in respect of the matter as the Court thinks fit.

*Access***15 Access rights**

(1) On making any order with respect to the custody of a child the Court may make such order with respect to access to the child by a parent who does not have custody of it under the order as it thinks fit.

(2) A parent who does not have custody of his child may apply to the Court for an order granting him access to the child, and the Court may make such order as it thinks fit.

(3) In this section "parent" includes a step-parent, and "child" has a corresponding meaning.

16 Access of other relatives on death of parent

If a parent of a child has died, the Court may order that the parents of the deceased parent, or either of them, or any brother or sister of the deceased parent, or any brother or sister of the child, shall have access to the child at such times and places as the Court thinks fit.

*Variation and Enforcement of Orders***17 Variation or discharge of orders**

(1) The Court may vary or discharge any order with respect to the custody or upbringing of a child, or with respect to access to a child.

(2) (a) The Court may vary or discharge any order vesting the guardianship of a child in one parent or in any other person or persons.

(b) If any such guardianship order is discharged, and no other guardianship order is made, guardianship shall vest in the person (if any) who would be the guardian if the order discharged had not been made.

(3) An application to vary or discharge any order to which this section applies may be made by any person affected by the order, or by any person on behalf of the child who is the subject of the order.

(4) This section does not apply to an interim order or to an adoption order.

18 Effect of custody agreements

An agreement between the father and mother of a child with respect to the custody or upbringing of or access to the child shall be valid, whether or not either of the parties is a minor, but shall not be enforced if the Court is of opinion that it is not for the welfare of the child to give effect to it.

19 Enforcement of custody and access rights

(1) (a) Where any person is entitled to the custody of a child, whether under this Act or to the order of a court, the Court may on the application of the person so entitled to custody, issue a warrant authorising any constable or social worker or any other person named in the warrant to take possession of the child and to deliver him to the person entitled to custody.

(b) Where more than one person is entitled to the custody of a child no warrant issued under this subsection shall authorise the removal of the child from the possession of one of those persons and the delivery of him to another of them.

(2) The Court may on the application of the person entitled to access to a child under an order of the Court, issue a warrant authorising any constable or social worker or any other person named in the warrant to take possession of the child and deliver him to the person entitled to access in accordance with the order.

(3) The powers conferred on a court by subsections (1) and (2) may be exercised on the making of the order.

(4) For the purpose of executing any warrant issued under subsection (1) or (2), any constable or social worker or any other person named in the warrant, may enter and search any building, aircraft, ship, vehicle, premises, or place, with or without assistance and by force if necessary.

(5) The constable, social worker or other person executing any such warrant shall have it with him and shall produce it if required to do so.

(6) Every person who wilfully resists or obstructs any person in the execution of any such warrant, or who wilfully fails or refuses to afford to any person engaged in the execution of any such warrant immediate entrance to any premises or to any part of them, commits an offence and shall be liable on conviction to a fine not exceeding 4 penalty units.

(7) Nothing in subsections (1) to (3) shall limit or affect any other power to enforce a right of custody or access exercisable by any court at the commencement of this Act.

(8) Where the Court declines to enforce a right of custody or access it may of its own motion vary or discharge any existing order of custody or access accordingly.

(9) Subject to section 9(3)(b) in considering an application under subsection (1) or (2) of this section, or any other application to enforce a right of custody or access, the Court shall not grant the application contrary to the wishes of the child if the child is of or over the age of 18 years.

20 Preventing removal of child from Niue

(1) A Judge or the Registrar of the Court who has reason to believe that any person is about to take a child out of Niue with intent to defeat the claim of any person who has applied for or is about to apply for custody of or access to the child, or to prevent any order of any Court as to custody of or access to the child from being complied with, may issue a warrant directing any constable or social worker to take the child (using such reasonable force as may be necessary) and place it in the care of some suitable person pending the order or further order of the court having jurisdiction in the case.

(2) Any person who without the leave of the Court takes or attempts to take any child out of Niue knowing that proceedings are pending or are about to be commenced under this Act in respect of the child or that an order of any Court conferring custody of or access to the child on any other person is in force or with intent to prevent any order of any Court as to custody of or access to the child from being complied with commits an offence and shall be liable on conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 3 months or to both.

(3) No proceedings for contempt of court shall be taken against any person in respect of any act to which this section applies.

*Marriage of Child***21 Termination of guardianship**

(1) Guardianship of a child shall terminate when the child attains the age of 20 years or marries under that age.

(2) Nothing in subsection (1) shall limit or affect the appointment of a guardian *ad litem* or the powers of the Court in respect of any such guardian.

22 Domicile of married minor

The domicile of a minor who is or has been married shall be determined as if the minor were an adult.

*Miscellaneous Provisions***23 Welfare of child paramount**

(1) (a) In any proceedings where any matter relating to the custody or guardianship of or access to a child, or the administration of any property belonging to or held in trust for a child, or the application of the income thereof, is in question, the Court shall regard the welfare of the child as the first and paramount consideration.

(b) The Court shall have regard to the conduct of any parent to the extent only that such conduct is relevant to the welfare of the child.

(2) In any such proceedings the Court shall ascertain the wishes of the child, if the child is able to express them, and shall, subject to section 19(9), take account of them to such extent as the Court thinks fit, having regard to the age and maturity of the child.

(3) Nothing in this section shall limit sections 64 and 64A of the Trustee Act 1956.

24 Custody of children over 16

(1) An order with respect to the custody of a child of or over the age of 16 years shall not be made unless there are special circumstances.

(2) An order in respect of a child under the age of 16 years in so far as it relates to custody shall expire when the child attains that age unless the Court in special circumstances otherwise orders at the time of making the order or subsequently.

(3) Nothing in this section shall limit or affect the power of the Court to make orders in respect of the upbringing of a child, or to appoint or remove guardians.

(4) Nothing in this section shall apply in respect of children who are under the guardianship of the Court.

25 Consents to operations

(1) Subject to subsection (6), the consent of a child of or over the age of 16 years to any donation of blood by him, or to any medical, surgical, or dental procedure (including a blood transfusion) to be carried out on him for his benefit by a person professionally qualified to carry it out, shall have the same effect as if he were of full age.

(2) The consent of or refusal to consent by a child to any donation of blood or to any medical, surgical, or dental procedure (including a blood transfusion) whether to be carried out on him or on any other person, shall if the child is or has been married have the same effect as if he were of full age.

(3) Where the consent of any other person to any medical, surgical, or dental procedure (including a blood transfusion) to be carried out on a child is necessary or sufficient, consent may be given –

- (a) By a guardian of the child; or
- (b) If there is no guardian in Niue or no such guardian can be found with reasonable diligence or is capable of giving consent, by a person in Niue who has been acting in the place of a parent; or
- (c) If there is no person in Niue who has been so acting, or if no such person can be found with reasonable diligence or is capable of giving consent, by the Court.

(4) Where a child has been lawfully placed for the purpose of adoption in the home of any person that person shall be deemed to be a guardian of the child for the purposes of subsection (3).

(5) Nothing in this section shall limit or affect any enactment or rule of law whereby in any circumstances –

- (a) No consent or no express consent is necessary; or
- (b) The consent of the child in addition to that of any other person is necessary; or
- (c) Subject to subsection (2), the consent of any other person instead of the consent of the child is sufficient.

26 [Repealed by 2004/270]

27 Procedure and costs

(1) All proceedings under this Act shall, unless the Court otherwise directs, be heard in private.

(2) In any proceedings under this Act the Court may make such order as to costs as it thinks fit.

28 Evidence

In all proceedings under this Act (other than criminal proceedings), and whether by way of hearing in the first instance or by way of appeal, or otherwise howsoever, the Court may receive any evidence that it thinks fit, whether it is otherwise admissible in a court of law or not.

29 [Repealed by 2004/270]

30 Solicitor or counsel may be appointed

The Court may appoint a solicitor or counsel to assist it or to represent any child who is the subject of or who is otherwise a party to proceedings under this Act, and where any solicitor or counsel is so appointed his fees and expenses shall be paid by such other party or parties to those proceedings as the Court shall order or, if the Court so decides, shall be paid out of money appropriated for the purpose by Assembly.

31 Appeals

(1) [Repealed by 2004/270]

(2) An appeal shall lie to the Court of Appeal from any order or decision of the High Court under this Act, other than an order or decision under section 13.

(3) Except on an appeal on a question of law, the Court of Appeal may rehear the whole or any part of the evidence, or may receive further evidence, if it thinks that the interests of justice so require.

(4) The decision of the Court of Appeal shall in every case be final.

32 Regulations

Cabinet may make regulations for the purposes of this Act and for providing for the enforcement in Niue of orders with respect to the custody and upbringing of and access to children made in other countries, and relating to the enforcement in other countries of orders made in Niue with respect to the custody and upbringing of and access to children.

33 Act to be code

(1) Except as otherwise expressly provided in this Act, this Act shall have effect in place of the rules of the common law and of equity relating to the guardianship and custody of children.

(2) (a) Subject to section 9, no person shall be appointed as or shall have any powers as guardian of the property of any child.

(b) Nothing in this Act shall limit or affect any power of the Court in relation to any property held on trust or to the administration thereof.

(3) In matters not provided for by this Act, the Court shall have all the powers in respect of the persons of children as does the High Court of New Zealand.

34 [Repealed by 2004/270]

35-38 [Spent]

SCHEDULE
[Not reproduced]

INCOME TAX ACT 1961

1961/9 – 16 March 1961

| | | | |
|----|--|-------|--|
| 1 | Short title | | |
| | PART 1 | | PART 4 |
| | INTERPRETATION | | OBJECTIONS TO ASSESSMENT |
| 2 | Interpretation | 26 | How objections originated |
| | PART 2 | 27 | Treasurer may amend assessment |
| | ADMINISTRATION | 28 | Hearing of objections by High Court |
| 3 | Treasurer to administer Act | 29 | Burden of proof on objector |
| 4 | Officers to maintain secrecy | 30 | Costs |
| | PART 3 | 31 | Court may confirm, cancel or alter the assessment |
| | RETURNS AND ASSESSMENTS | 32 | Appeals to Court of Appeal |
| 5 | Annual returns by taxpayers for purposes of income tax | 33 | Appeals from assessments |
| 6 | Returns to annual balance date | 34 | Obligation to pay tax not suspended by objection or appeal |
| 7 | Consequential adjustments on change in return date | 35 | Determination of objection not to affect other income |
| 8 | Returns by partners co-trustees and joint adventurers | 36 | [Repealed] |
| 9 | Returns by executors or administrators | | PART 5 |
| 10 | Special returns and special assessments | | INCOME TAX |
| 11 | Other annual returns | 37 | Meaning of "absentee" |
| 12 | Dates by which returns to be furnished | 38 | Income tax imposed |
| 13 | Treasurer may require other returns to be made | 39 | Rates fixed |
| 14 | Presumption as to authority | 40 | When non-assessable income to be taken into account |
| 15 | Treasurer to make assessments | | <i>Special Exemptions</i> |
| 16 | Rates of income tax | 41 | Personal rebate |
| 17 | Arbitrary assessment | 41A | Low income rebate |
| 18 | Assessment where default made in furnishing returns | 42-44 | [Repealed] |
| 19 | Amendment of assessments | 45 | Rebate for support of dependant relatives |
| 20 | Limitation of time for amendment of assessments | 46 | [Repealed] |
| 21 | Validity of assessments not affected by failure to comply with Act | 47 | Special exemption for life insurance premium and superannuation fund contributions |
| 22 | Except in proceedings on objection assessments deemed correct | 47A | Special exemption for primary produce income |
| 23 | Evidence of returns and assessments | 47B | Rebate for church donations |
| 24 | Notice of assessment to taxpayer | 48 | Apportionment of special exemptions and rebates |
| 25 | [Repealed] | | <i>General Exemptions</i> |
| | | 49 | Incomes wholly exempt from taxation |

| | | | |
|----|--|-----|--|
| | <i>Assessable Income and Deductions</i> | 77 | Interest on debentures issued in substitution for shares |
| 50 | Exemption in respect of industries contributing to economic development | 78 | Payment of excessive remuneration or share of profits to relatives in certain cases |
| 51 | Items included in assessable income | | Excessive remuneration by company to shareholder or director |
| 52 | Income from use or occupation of land | 79 | |
| 53 | Income credited in account or otherwise deal with | | |
| 54 | Deductions for repair, maintenance and depreciation | | <i>Country of Derivation of Income</i> |
| 55 | Deductions in respect of buildings on Niuean leaseholds | 80 | Liability for assessment of income derived from Niue and abroad |
| 56 | Other deductions not permitted from assessable income | 81 | Place of residence, how determined |
| 57 | Deductions of expenditure or loss from income | 82 | Classes of income deemed to be derived from Niue |
| 58 | Losses incurred may be set off against future profits | 83 | Apportionment where income derived partly in Niue and partly elsewhere |
| 59 | Amounts remitted to be taken into account in computing income | 84 | Relief from double taxation |
| 60 | Apportionment of income received in anticipation | 85 | Arrangements for relief from double taxation |
| 61 | Expenditure incurred in borrowing money or obtaining lease | | <i>Income derived by a Trustee</i> |
| 62 | Deduction in respect of premium paid on account of leased machinery | 86 | Special provisions with respect to trustees |
| 63 | Income derived from disposal of trading stock | 87 | Income received by trustee after death of deceased person |
| 64 | Valuation of trading stock, including livestock | 88 | Deduction from estate income of irrecoverable book debts of deceased taxpayer |
| 65 | Sale of trading stock for inadequate consideration | | |
| 66 | Assessment and deduction of patent rights and expenses, and trade mark renewals | | |
| 67 | Deduction for scientific research | | |
| 68 | Deduction of testamentary annuities charged on property | | |
| 69 | Contributions to employee's superannuation fund | | |
| 70 | Treasurer may make arrangements for first three income years | | |
| | <i>Provisions relating to Companies and Associations</i> | | |
| 71 | Profits of mutual associations in respect of transactions with members | 89 | PART 6 |
| 72 | Overseas insurance companies other than life insurance companies | 90 | AGENTS AND NON-RESIDENTS |
| 73 | Companies with substantially the same shareholders or under the same control | 91 | <i>Interpretation</i> |
| 74 | Liability of new companies for tax payable by former companies with substantially the same share holders or under the same control | 92 | "Absentee" defined |
| 75 | Defining when a company is under the control of any person | 93 | Rate and amount of tax payable by agent |
| 76 | Floating rate of interest on debentures | 94 | Liability of principal not affected |
| | | 95 | Agent may recover tax from principal |
| | | 96 | Agent may retain from moneys of principal amount required for tax |
| | | 97 | Assessment deemed authority for payment of tax by agent |
| | | 98 | Agents to be personally liable for payment of tax |
| | | 99 | Agents to make returns and be assessed as principal |
| | | 100 | Relation of principal and agent arising in effect |
| | | 101 | <i>Special Cases of Agency</i> |
| | | | Liability of mortgagee in possession |
| | | | Guardian of person under disability to be his agent |
| | | | Local and public authorities and companies deemed agent of debenture holders |
| | | | Modification in respect of income from company debentures, or local or public authority debentures |

| | | | |
|-----|---|-----|--------------------------------------|
| 149 | In cases of serious hardship Treasurer may grant relief to taxpayer | 151 | Debentures issued free of income tax |
| 150 | Agreements purporting to alter incidence of taxation to be void | 152 | Extension of time |
| | | 153 | Airlines liable for taxation |

SCHEDULES

1 Short title

This is the Income Tax Act 1961.

PART 1

INTERPRETATION

2 Interpretation

In this Act –

“agent” means any person declared by this Act to be an agent for the purposes of income tax:

“assessable income” means income of any kind which is not exempted from income tax otherwise than by way of a “special exemption” expressly authorised as such by this Act:

“book and document” and “book or document” include all books, accounts, rolls, records, registers, papers and other documents:

“business” includes any profession, trade, manufacture, or undertaking carried on for pecuniary profit:

“charitable purpose” includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community;

“Collector” means the Collector of Inland Revenue and includes any person for the time being authorised to exercise or perform any of the powers or functions of the Collector;

“company” means a Niuean company or any body corporate whether incorporated in Niue or elsewhere, but does not include a local or public authority;

“debentures” includes debenture stock, and “debenture-holder” includes the owner of debenture stock;

“dependant” in relation to an employee means a person in terms of section 113E;

“dividends” in relation to any company shall be deemed to include –

- (a) All sums distributed in any manner and under any name among all or any of the shareholders of the company;
- (b) Any credit given by the company without fully adequate consideration in money or money’s worth to any of its shareholders in respect of the amount unpaid on any shares that are not fully paid up;
- (c) The paid up value of any share allotted by the company to any of its shareholders as such to the extent to which that value exceeds the value of the consideration in money or money’s worth (if any) paid or given by the shareholders to the company in respect of the shares allotted;
- (d) The value of any other property of any kind whatsoever distributed by the company to any of its shareholders as such;
- (e) All amounts received by any shareholder in respect of his shares (whether in money or money’s worth) upon the winding up of the company in excess of the amount paid up on his shares;

- (f) Where any property of the company is sold or otherwise disposed of to a shareholder without consideration or for a consideration which in the opinion of the Treasurer is less than its market price or its true value, the excess of the market price or its true value, the excess of the market price of that property on the day it was sold or disposed of over the price (if any) realised on the sale or disposition or, if there is no market price, the excess of the price deemed to have been realised pursuant to a determination of the Treasurer under section 53(2)(b) over the price (if any) realised on the sale or disposition, and it shall be ground for an objection to an assessment of income tax under Part 3 that any determination of the Collector made for the purposes of this paragraph is erroneous in fact, and subject to the taxpayer's right of objection to the Treasurer's assessment under Part 3 shall also include any moneys advanced by the company to or for the benefit of any of its shareholders irrespective of the year in which the moneys were advanced if, in the opinion of the Treasurer, the making of the advance was not a bona fide investment by the company, but was virtually a distribution of profits, but shall not in any case include any payment or other transaction which, in the opinion of the Treasurer, is or is equivalent to a return of share capital:

Provided that where any moneys advanced by a company to or for the benefit of any shareholders and deemed by virtue of this section to constitute a dividend are subsequently repaid to the company, the Treasurer may amend in such manner as may be thereby rendered necessary the assessment made in respect of income derived by that shareholder, during the income year in which the advance was made, and may at any time refund any tax found to have been paid in excess of the amount properly payable, notwithstanding anything to the contrary in section 147:

Provided also that if in any case the Treasurer sees fit, the expression "dividends" shall be deemed not to include any payment or other transaction to the extent to which, in the opinion of the Treasurer, that payment or transaction constitutes a return to shareholders of premiums paid to the company in respect of the issue of share capital by the company:

Provided also that where any company that has reduced the amount of the paid up capital of any shareholder by writing off losses incurred by the company –

- (i) Subsequently gives credit without fully adequate consideration in money or money's worth to that shareholder in respect of the amount unpaid on any shares in the company, or
- (ii) Subsequently allots shares to that shareholder the paid up value of which shares exceeds the value of the consideration in money or money's worth (if any) paid or given by the shareholder to the company for the shares – the expression "dividends" shall for the purposes of this Act be deemed not to include the credit so given or the paid up value of the shares so allotted, as the case may be, to the extent that the Treasurer thinks just and reasonable, having regard to the amount of the paid up capital lost by the shareholder and any other relevant considerations;

"employee" means a person who receives or is entitled to receive a source deduction payment;

"employer" means a person who pays or is liable to pay a source deduction payment and includes -

- (a) The manager or other principal officer in the case of an unincorporated body of persons;
- (b) Each partner in the case of a partnership;
- (c) Each person in whom the property has become vested or to whom the control of the property has passed in the case of the estate of a deceased person, a trust, a company in liquidation, or an assigned estate, or in any other case where property is vested or controlled in a fiduciary capacity;

“income year” means in respect of the income of any person, the year in which that income has been derived by him;

“lease” means any disposition whatever by which a leasehold estate is created;

“leasehold estate” includes any estate howsoever created, other than a freehold estate;

“local authority” means a Village Council and includes any incorporated instrument of local government in Niue whether possessing rating powers or not;

“minerals” includes all minerals, metals, coal, oil, clay, stone, gravel, sand, and precious stones;

“non-assessable income” shall have the meaning assigned to it in section forty hereof;

“non-resident agent” means an agent within the meaning of this Act who, being in Niue, has no fixed and permanent place of business or abode there;

“notice” means a notice in writing given by causing the same to be delivered to any person, or to be let at his usual or last know place of abode or business in Niue or elsewhere, to be sent by post addressed to such usual or last known place of abode or business, or if there are several such places o business, then to any of them;

“officer” includes any person employed by the Niue Public Service Commission acting under the authority of the Treasurer;

“overseas company” means any company other than a native company or one incorporated in Niue;

“person” includes a local or public authority;

“prescribed” means prescribed by the Treasurer;

“public authority” means the Departments or other instruments of the Government;

“salary or wages” in relation to any person means salary, wages, or allowances (whether in cash or otherwise), including all sums received or receivable by way of overtime pay, bonus, gratuity, extra salary, commission, or remuneration of any kind in respect of and in relation to the employment of that person;

“shareholder” includes any member of a company, whether the capital of that company is divided into shares or not; and “share” includes any interest in the capital of a company;

“source deduction payment” means a payment by way of salary or wages, an extra emolument of a withholding payment;

“superannuation fund” means the Niue Government Superannuation Fund and any superannuation fund established for the benefit of the employees of any employer and approved for the time being by the Treasurer for the purposes of this Act;

“tax” means income tax;

- “taxable income” means the residue of assessable income after deducting the amount of all special exemptions to which the taxpayer is entitled;
- “taxpayer” means a person chargeable with income tax, whether on his own account or as the agent or trustee of any other person, and includes the executor or administrator of a deceased taxpayer;
- “trustee” includes an executor and administrator;
- “year” means a year commencing on 1 April and ending on 31 March, both of these days being included;
- “year of assessment” means the year for which income tax is payable.

PART 2

ADMINISTRATION

3 Treasurer to administer Act

(1) The Treasurer, subject to the control of Cabinet shall be charged with the administration of the Act.

(2) Any certificate, notice, or other document bearing the written, stamped, or printed signature of the Treasurer relating to any matter provided for in this Act shall, until the contrary is proved, be deemed to have been duly signed by the person by whom it purports to have been signed.

(3) Judicial notice shall be taken of every such signature and of the fact that the person whose signature it purports to be holds or has held the office of Treasurer.

4 Officers to maintain secrecy

(1) The Treasurer and every other officer of the Government –

(a) Shall maintain and aid in maintaining the secrecy of all matters relating to this Act which come to his knowledge and shall not communicate any such matters to any person except for the purpose of carrying into effect this Act or any other enactment imposing taxes or duties payable to the Government; and also

(b) Shall before he begins to perform any official duty under this Act, take and subscribe an oath of fidelity and secrecy to maintain secrecy in conformity with this section.

(2) Without limiting the generality of subsection (1)(a), it is hereby declared that no officer of the Government shall be required to produce in any court any book or document or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties as an officer of the Government, except when it is necessary to do so for the purpose of carrying into effect the Act or any other enactment imposing taxes or duties payable to the Government.

(3) Every person who wilfully acts in contravention of this section or in contravention of the true intent of any such oath shall be liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding 2 penalty units.

PART 3

RETURNS AND ASSESSMENTS

5 Annual returns by taxpayers for purposes of income tax

(1) For the purpose of the assessment and levy of income tax every taxpayer shall in each year furnish to the Treasurer a return setting forth a complete statement of all the assessable income derived by him during the preceding year together with such other particulars as may be prescribed.

(2) Except as otherwise provided, every return of income under the Act shall –

- (a) Be made and furnished in such of the forms prescribed by the Treasurer for the purpose as is applicable;
- (b) Contain the information and particulars mentioned or referred to in that form;
- (c) Be verified by declaration as therein set forth;
- (d) Be accompanied by all such balance sheets, profit and loss accounts, statements, and other documents as are mentioned in the form or are otherwise required by the Treasurer.

(3) Any further or other return which a person is required to make or furnish to the Treasurer under section 11 or 13 or in pursuance of any other statutory provision shall, unless the form is prescribed by the statutory provision, be made and furnished in the form prescribed by the Treasurer.

(4) Annual returns of income shall be made –

- (a) By all companies and all persons in business whether for the whole or part of the income year irrespective of whether a profit has been made or a loss incurred provided that this requirement shall not apply to any planter whose total income from all sources during the year does not exceed \$600;
- (b) By all other persons, whether taxpayers or not, who derive income from salary, wages, interest, rent, annuity, dividend or other sources where the total income so derived exceeds three hundred pounds per annum.

- (5) (a) All returns of income and any other returns required the Act to be furnished to the Treasurer shall be furnished by posting or delivering the same to the Treasurer or other authorised officer at the office of the Treasurer or at such other place as the Treasurer may direct.
- (b) Such direction may be given by the insertion of a general direction in any return form prescribed for use in any year of assessment or in such other manner as the Treasurer thinks fit.

(6) Wherever a person is required by this Act or the Treasurer to furnish a return to the Treasurer, it shall be the duty of that person to procure and make the required return and to take all steps necessary to ensure that the return is received at the place where or the person to whom under this Act the return is required to be furnished.

- (7) (a) Every person who furnishes a return shall, in the return, state his postal address, and shall, within one month of any change in his postal address, give to the Treasurer at the place where he furnished his return notice in writing of the change, and of his new postal address.
- (b) The posting of any notice addressed to a person at the last address given by him under this Act shall be sufficient service of notice on him for the purposes of the Act.

6 Returns to annual balance date

(1) In lieu of furnishing a return under section 5 for any year ending on 31 March of that year, any taxpayer may with the consent of the Treasurer elect to furnish a return for the year ending on the date of the annual balance of his accounts, and in any such case the income derived during any year ending on a date between 1 October and the next succeeding 30 September inclusive, shall for the purposes of this Act be deemed to have been derived during the year ending on 31 March falling between the same two dates.

(2) Any election made by a taxpayer for the purposes of this section shall continue in force unless and until it is altered by the taxpayer with the prior approval in writing of the Treasurer.

7 Consequential adjustments on change in return date

(1) In this section –

“new return date” means in the case of a taxpayer who has changed his return date, the date to which the change was made or, if he has made more than one change, means the date to which the last change was made;

“original return date” means in the case of a taxpayer who has changed his return date, the return date immediately prior to the new return date;

“return date” means the last day of the period for which a return of income is required to be made;

(2) Where, in any case a new return date has been approved by the Treasurer, the taxpayer shall furnish a return to the original return date and another return for the period between the original return date and the new return date.

(3) All returns of income made under subsection (2) to a date falling between 1 October and the next succeeding 30 September inclusive shall be deemed to be returns of income derived during the year ending on 31 March falling between those same two dates, and the income derived by a taxpayer during that period shall for the purposes of assessment, be added to any other income derived for the same year, and he shall be assessed and liable for income tax accordingly.

(4) Where, for the purposes of this section, a taxpayer is assessed for income tax on a return made for a period of less than a year, he shall be entitled, by way of special exemptions, only to an amount bearing to the total exemptions to which he would be entitled for a full year the same proportion as the number of days in that period bears to the number of days in a year; and where a taxpayer is assessed on a return or returns for a period of more than a year, the deduction to which he shall be entitled by way of special exemptions shall be proportionately increased.

(5) Where, for the purposes of this section, a taxpayer is assessed for income tax on returns made for a period that is less or greater than a year, the rate of tax shall be determined as for a year, and for the purposes of this subsection the taxable and non-assessable income of a taxpayer shall be deemed to have been derived at a uniform daily rate throughout the period for which the returns have been made and where that period is less than a year that daily rate shall be deemed to have continued for a year.

(6) Where a taxpayer has been assessed for income tax on a return made to any date other than 31 March in any year, the income derived by that taxpayer shall be deemed to have been assessed for tax to that other date, and not to 31 March.

(7) For the purposes of giving effect to this section and section 6, the Treasurer may, for any year or years of assessment, make all such assessments or additional assessments as he may deem necessary, notwithstanding anything to the contrary in this Act.

8 Returns by partners, co-trustees and joint adventurers

(1) When income is derived by two or more persons jointly as partners, co-trustees or otherwise, the following provision shall apply –

(a) In the case of trustees, they shall make a return of that income, and shall be jointly assessable thereon and jointly and severally liable for the tax so assessed.

- (b) In the case of partners –
 - (i) they shall make a joint return of the income of the partnership, setting forth the amount of that income and the shares of the several partners therein and every such return shall be signed by all the partners;
 - (ii) each partner shall make a separate return of all income derived by him and not included in any such joint return;
 - (iii) there shall be no joint assessment but each partner shall be separately assessed and liable for the tax payable on his total income, including his share of the income of any partnership in which he is a partner.
- (c) In any case other than that of co-trustees or partners, each person by whom income is so derived shall include in his return the amount of his share in the joint income and shall be assessed and liable accordingly.

(2) Where a husband and wife are carrying on business together or deriving income jointly without any formal partnership agreement, the whole of the income derived from the business or jointly shall, for the purposes of assessment, be deemed to have been equally split between the husband and wife and subsection (1)(b) shall in all respects apply as if there is a bona fide partnership agreement.

9 Returns by executors or administrators

(1) The executor or administrator of a deceased taxpayer shall, in respect of all income derived by that taxpayer in his life-time, make the same returns as the taxpayer ought to have made or would have been bound to make if he had remained alive, and the Treasurer may require the executor or administrator to make such further returns relative to that income as the Treasurer thinks necessary and may assess the executor or administrator for income tax on that income in the same manner in which the taxpayer might have been assessed had he remained alive.

(2) The tax so assessed shall be deemed to be a liability incurred by the deceased taxpayer in his lifetime, and the executor or administrator of the taxpayer shall be liable for the same accordingly.

10 Special returns and special assessments

(1) This section applies to the following persons –

- (a) An agent;
- (b) A non-resident trader;
- (c) A person who is believed by the Treasurer to be about to leave Niue or to be about to discontinue the carrying on of business in Niue;
- (d) A person who has ceased to carry on business in Niue or to derive assessable income;
- (e) The executors or administrators of a deceased taxpayer in respect of income derived by him in his lifetime;
- (f) A person who has become bankrupt, or a company which is in course of being wound up.

(2) The Treasurer may at any time during the income year or in any subsequent year, require any person to whom this section applies to make a return of income derived from any specified transaction or transactions or during any specific period, and may assess him for income tax on the income so returned, or when default is made in making such a return, or the Treasurer is dissatisfied therewith, then on such sum as the Treasurer thinks reasonable, and shall give notice of the assessment to the person so assessed.

(3) Any person so assessed shall have the same right of objection as if he had been assessed in the ordinary course.

(4) Tax so assessed shall be payable on demand, which may be made in and by the notice of assessment, or at any later date, and the tax shall be recoverable in the same manner as income tax assessed in the ordinary course.

(5) No assessment made under this section shall in any manner preclude a subsequent assessment of the same person in the ordinary course in respect of the whole of the income derived by him during the income year with respect to which the assessment under this section was made, but in such case the tax paid under the earlier assessment shall be credited in the subsequent assessment.

11 Other annual returns

In addition to the foregoing returns every person, whether a taxpayer or not, shall make to the Treasurer such annual returns as may be prescribed for the purposes of this Act.

12 Dates by which returns to be furnished

(1) The above-mentioned returns shall be made in each year on or before a date or dates of which the Treasurer gives public notice.

(2) Such notice shall be given by publishing the same in the *Gazette* or any newspaper published in Niue or in such other manner as the Treasurer may think necessary and sufficient.

13 Treasurer may require other returns to be made

In addition to the returns above-mentioned, every person, whether a taxpayer or not, shall as and when required by the Treasurer make such further or other returns as the Treasurer requires for the purposes of this Act.

14 Presumption as to authority

A return purporting to be made by or on behalf of any person shall for all purposes be deemed to have been made by that person or by his authority, as the case may be, unless the contrary is proved.

15 Treasurer to make assessments

(1) From the returns made as aforesaid and from any other information in his possession the Treasurer shall in and for every year and from time to time and at any time as may be necessary, make assessments in respect of every taxpayer, setting forth the amount upon which tax is payable and the amount of the tax.

(2) Every such assessment shall be made in such form and manner as the Treasurer thinks fit, and shall be signed by him.

16 Rates of income tax

(1) The Treasurer shall in any year of assessment assess the income tax of any taxpayer at the rates as set out in Schedule 1.

(2) If in any year of assessment the rates of tax as set out in Schedule 1 are varied by the passing of an amending Act, every assessment of income tax made in respect of that year before the passing of any such amending Act may be amended and reassessed on the basis of the new rates.

17 Arbitrary assessment

- (1) Where any business carried on in Niue –
- (a) Is controlled exclusively or principally by persons not resident in Niue, or
 - (b) Is carried on by a company not resident in Niue, or by a company in which more than one half of the shares are held by persons not resident in Niue, or
 - (c) Is carried on by a company which holds, or on behalf of which other persons hold, more than one half of the shares in a company not resident in Niue –

and it appears from the returns made to the Treasurer that the business produces no taxable income or less than the amount of taxable income which in the opinion of the Treasurer might be expected to arise from the business, the person carrying on the business in Niue shall, notwithstanding anything to the contrary in this Act, be assessable for and liable to pay income tax on a taxable income of such amount as the Treasurer determines, being at the option of the Treasurer either such proportion as he determines of the total receipts (whether cash or credit) of the business or such proportion as he determines of the total purchase moneys paid or payable (whether in cash or by the granting of credit) in the conduct of the business.

(2) For the purposes of this section the place of residence of any person other than a company and the place of residence of any company shall be determined under section 80.

18 Assessment where default in furnishing returns

If any person makes default in furnishing any return, or if the Treasurer is not satisfied with the return made by any person, or if the Treasurer has reason to suppose that any person although he has not made a return is a taxpayer, he may make an assessment of the amount on which in his judgment tax ought to be liable to pay the tax so assessed, save in so far as he establishes on objection that the assessment is excessive or that he is not chargeable with tax.

19 Amendment of assessments

(1) The Treasurer may make all such alterations in or additions to an assessment as he thinks necessary in order to ensure the correctness of it, notwithstanding that tax already assessed may have been paid.

(2) If any such alteration or addition has the effect of imposing any fresh liability or increasing any existing liability, notice of it shall be given by the Treasurer to the taxpayer affected, who shall, unless the alteration or addition was made with his consent, be entitled to object to it under the provisions as to objections hereinafter contained.

20 Limitation of time for amendment of assessment

When any person has made returns and has been assessed for income tax for any year, it shall not be lawful for the Treasurer to alter the assessment so as to increase the amount of it after the expiration of 4 years from the end of the year in which the assessment was made or (in any case where in the opinion of the Treasurer the returns so made are fraudulent or wilfully misleading or omit all mention of income which is of a particular nature or was derived from a particular source, and in respect of which a return is required to be made) after the expiration of 10 years from the end of the year in which the assessment was made.

21 Validity of assessment not affected by failure to comply with Act

The validity of an assessment shall not be affected by reason that any of the provisions of this Act have not been complied with.

22 Except in proceedings on objection assessments deemed correct

Except in proceedings on objection to an assessment under the provisions hereinafter contained, no assessment made by the Treasurer shall be disputed in any Court or in any proceedings either on the ground that the person so assessed is not a taxpayer or on any other ground, and except as aforesaid, every such assessment and all the particulars thereof shall be conclusively deemed and taken to be correct, and the liability of the person so assessed shall be determined accordingly.

23 Evidence of returns and assessments

The production of any documents under the hand of the Treasurer purporting to be a copy of extract from any return or assessment shall in all Courts and in all proceedings be sufficient evidence of the original, and the production of the original shall not be necessary, and all Courts shall in all proceedings take judicial notice of the signature of the Treasurer either to the original or to any such copy or extract.

24 Notice of assessment to taxpayer

(1) As soon as conveniently may be after an assessment is made the Treasurer shall cause notice of the assessment to be given to the taxpayer.

(2) The omission to give any such notice shall not invalidate the assessment or in any manner affect its operation.

25 [Repealed 3/83/1984]

PART 4**OBJECTIONS AND ASSESSMENTS****=26 How objections originated**

(1) Any person who has been assessed for income tax may object to that assessment by delivering or posting to the Treasurer a written notice of objection stating shortly the grounds of his objection so that it reaches the Treasurer within the time specified in that behalf in the notice of assessment, not being less than 6 weeks after the date on which that notice of assessment is given.

(2) [Repealed by 2004/270]

(3) No notice of objection given after the time so specified shall be of any force or effect unless the Treasurer in his discretion accepts the same and gives notice to the objector accordingly.

27 Treasurer may amend assessment

The Treasurer shall consider all such objections and may alter the assessment pursuant to it; but if an objection is not allowed by the Treasurer, the objector may, within 6 months after the date on which notice of the disallowance is given to him by or on behalf of the Treasurer, by notice in writing to the Treasurer require that the objection be heard and determined by the Court before a Judge, and in that event the objection shall be heard and determined in the Court; and the Court shall for the purpose of hearing and determining the objection, whatever the amount involved, have all the powers vested in it in its ordinary civil jurisdiction as if in an action between the objecting taxpayer and the Treasurer.

28 Hearing of objections by High Court

The procedure for the institution, hearing and determination of such proceedings in the High Court shall be in accordance with the ordinary practice of that Court.

29 Burden of proof on objector

On the hearing and determination of all objections to assessments of income tax the burden of proof shall be on the objector, and the Court may receive such evidence as it thinks fit, whether receivable in accordance with law in other proceedings or not.

30 Costs

On the determination of any objection the Court may award such costs as it deems just either against the Treasurer or against the objector.

31 Court may confirm, cancel or alter the assessment

On the determination of any such objection the Court may either confirm or cancel the assessment, or increase or reduce the amount, and the assessment shall be altered by the Treasurer, if necessary, so as to conform to that determination.

32 Appeals to Court of Appeal

The determination of the High Court on any such objection shall be subject to appeal to the Court of Appeal on any question of law but shall be final and conclusive on any question of fact unless the High Court is satisfied that the amount of tax bona fide in dispute between the objector and the Treasurer exceeds \$1000 in which case the Treasurer or the objector may appeal to the Court of Appeal on any question of fact.

33 Appeals from assessments

(1) In this Act "appeal" means a proceeding in the High Court, or an appeal to the Collector under this Act, for the determination of an objection made under the Act to an assessment of income tax, and the term "appellant" means the person by whom any such objection has been made.

(2) The parties to the appeal shall be the appellant and the Treasurer as respondent.

(3) (a) For the purpose of every appeal the Treasurer shall state and sign a case setting forth the facts as alleged by him, the nature of the assessment made by him, the ground of objection thereto, and the question for the determination of the Court or Collector as the case may be.

(b) The case, so stated and signed, shall be filed by the Treasurer in the High Court or with the Collector, as the case may be, and the filing of the case shall be deemed to be the institution of the appeal.

(c) A copy of the case so filed shall be sent by the Treasurer to the appellant, either through the post office or otherwise.

(4) Within fourteen days after the filing of the case by the Treasurer or within such further time as the Treasurer may allow the appellant may, if he thinks fit file an answer to the case. The answer shall set forth the facts as alleged by the appellant and the grounds of his appeal.

(5) The case as stated and filed by the Treasurer shall not be conclusive as to the matters set forth in it, either against the appellant or the Treasurer, except so far as agreed to in writing by or on behalf of the Treasurer and the appellant.

(6) After the filing of the case by the Treasurer the Registrar of the Court, or the Collector as the case may be, shall on the application of the Treasurer or of the appellant, appoint a time and place for the hearing of the appeal, that time not being earlier (except with the consent of the Treasurer and the appellant) than 21 days after the date of the filing of the case.

(7) Reasonable notice by post or otherwise of the time and place so appointed shall be given by the person on whose application the appointment has been made to the other party to the appeal.

(8) At the time and place so appointed, a Judge of the High Court or in the absence of a Judge the Registrar of the Court or the Collector, as the case may be, may adjourn the hearing to any other time or place, and so on from time to time.

(9) If either party fails to appear at the hearing, the Court or the Collector, as the case may be, shall in its or his discretion either adjourn the hearing or determine the appeal in the same manner as if both parties were present.

(10) The procedure at the hearing of the appeal shall be the same, with all necessary modifications, as if the appeal were an action which the appellant is he plaintiff and the Treasurer is the defendant.

34 Obligation to pay tax not suspended by objection or appeal

The obligation to pay and the right to receive and recover any tax shall not be suspended by any objection, or appeal, but if the objector succeeds the amount (if any) of the tax received by the Treasurer in excess of the amount which, according to the decision on the hearing of the objection, or appeal, was properly payable shall forthwith be repaid to him by the Treasurer.

35 Determination of objection not to affect other income

The determination of an objection under any of the foregoing provisions shall relate solely to the income which is the subject of the assessment objected to and shall not affect the right of the Treasurer to assess any other income of the objector, or to amend the assessment objected to in any manner rendered necessary by the assessment of such other income.

36 [Repealed 5/83/1984]

PART 5 INCOME TAX

37 Meaning of "absentee"

(1) "Absentee" in this part means a person whose home has not been in Niue during any part of the income year.

(2) A taxpayer shall not be deemed to be an absentee within the meaning of this Part if the Treasurer is satisfied that the absence of the taxpayer from Niue during the income year has been for the sake of his or her health, or of the health of the husband or wife, as the case may be, or of any child of the taxpayer

(3) No person who is absent from Niue in the service in any capacity of the Government nor the wife of any such person if she is absent from Niue with him, shall by reason of such absence be deemed to be an absentee within the meaning of this Part.

38 Income tax imposed

(1) Subject to this Act, there shall be levied and paid for the use of the Crown for the year commencing on 1 April in each year, a tax herein referred to as income tax.

(2) Subject to this Act income tax shall be payable by every person on all income derived by him during the year for which the tax is payable.

(3) The year in which income is so derived is in this Act referred to as the income year, and the year for which income tax is payable is in this Act referred to as the year of assessment.

39 Rates fixed

Income tax shall be assessed and levied on the taxable income of every taxpayer at such rate or rates as are set out in Schedule 1.

40 Where non-assessable income to be taken into account

(1) Where in any income year any taxpayer has derived assessable income and has also derived any non-assessable income from a source referred to in subsection (2), then, notwithstanding anything to the contrary in this Act, the rate of tax payable on this taxable income shall be computed as if the non-assessable income derived by him as aforesaid were assessable income.

(2) The non-assessable income referred to in subsection (1) includes –

- (a) (i) Income derived from securities issued by the Government subject to the condition that the income derived therefrom shall be exempt from income tax;
- (ii) Such income when payable out of Niue to an absentee shall not be so included;
- (b) Income derived from debentures issued by companies on terms providing for the payment of income tax by such companies as proved by section 150, and income derived from debentures to which sections 75 and 76 apply;
- (c) Dividends or other profits derived from shares or other rights of membership in companies save that such dividends or other profits when derived by an absentee from sources out of Niue shall not be so included.

41 Personal rebate

In the assessment of every taxpayer, other than an absentee, company, public authority, or unincorporated body, there shall be allowed as a rebate of income tax for that income year the sum of \$156.

Special Exemptions

41A Low income rebate

- (1) A person, other than –
- (a) An absentee; or
 - (b) A company,

with an assessable income of less than \$20,000 is entitled to a rebate on the income tax that is payable or would otherwise be payable on that income.

(2) The rebate referred to in subsection (1) shall be at the rate set out in Schedule 3.

42 – 44[Repealed 2/118/1987]

45 Rebate for support of dependent relatives

(1) In the assessment of every taxpayer, (other than an absentee) who contributes towards the support of any relative during any income year there shall, subject to this section, be allowed as a rebate of income tax for that income year in respect of each such dependant relative, the sum of \$26.

- (2) (a) Where a person is a dependant relative for the purposes of this section only one rebate shall be allowed in respect of that person notwithstanding that more than one taxpayer may have contributed towards the support of that relative.
- (b) In the case of 2 or more taxpayers claiming a rebate in respect of the same dependant relative the Treasurer shall allow the rebate for the taxpayer who in his opinion has made the greatest financial contribution to the support of that dependant relative.
- (3) No rebate shall be allowed under this section in respect of any relative if the Treasurer is satisfied that the relative has sufficient income or capital for his own support and that the contributions towards his support were not necessary.
- (4) For the purpose of this section "relative" means –
- (a) A child, step-child, or adopted child who at any time during the income year is under the age of eighteen years, or who, being over the age of eighteen years, is suffering from any permanent mental or physical infirmity and is thereby permanently incapacitated from earning his or her own living or is attending full-time a university or educational institution recognized by the Treasurer; and
- (b) Any other person proved to the satisfaction of the Treasurer to be a relation of the taxpayer by blood, marriage, or adoption (not being the wife or husband of the taxpayer); including a former wife of a taxpayer; and including also any child, not being a child, step-child or adopted child of the taxpayer who is supported by the taxpayer as a foster child and who otherwise satisfies the requirements of paragraph (a): Provided that:
- (i) where the wife of a taxpayer is not living with him she shall be deemed to be a relative of the taxpayer for the purposes of this section;
- (ii) a rebate under this section in respect of the wife of a taxpayer shall be allowable only where the amount of it exceeds the amount of the rebate to which the taxpayer is entitled in respect of his wife under section 42 and shall be allowable in substitution for the last-mentioned rebate;
- (iii) for the purpose of this section the wife of a taxpayer shall be deemed to be living with him unless the Treasurer is satisfied that she is in fact separated and living separate and apart from him, whether pursuant to a decree, order, or judgment of any Court, or pursuant to an agreement for separation, or by reason of the desertion of one of the parties by the other of them, or otherwise.

46 [Repealed by 2/118/1987]

47 Special exemption for life insurance premiums and superannuation fund contributions

(1) Every taxpayer, (other than an absentee,) who has effected an insurance on his own life for his own benefit or for the benefit of his wife or his children shall be entitled to a deduction by way of special exemption from his assessable income of the amount of premium paid in the income year in respect of that insurance.

(2) [Repealed by 1999/241]

(3) The deductions by way of special exemption provided for in this section shall not in any case exceed in the aggregate the sum of \$800.

(4) Notwithstanding subsection (1) a special exemption shall not be allowed under that subsection in respect of the premiums paid on any pure endowment policy, that is to say, a policy of life insurance which does not provide for the payment of a specified capital sum on the death of the assured.

47A Special exemption for primary produce income

(1) Subject to subsection (2), the first \$5,000 income earned by a taxpayer during the income year that derives from the production of primary produce, or from the making of plaited baskets, trays, table-mats, grass skirts or any other plaited ware or handwork shall be exempt from taxation.

(2) Cabinet may issue instructions as to the nature of receipts that shall be required to be produced in order to qualify for the exemption give under subsection (1).

47B Rebate for church donations

(1) In the assessment of every taxpayer (other than an absentee) who during the income year makes cash donations to any Church situated in Niue and which in the opinion of the Treasurer is a recognized religious organization there shall be allowed as a rebate of income tax for that income year an amount equal to 20 cents for every complete dollar up to a maximum of \$100 donated to any such church or religious organization.

(2) For the purpose of this section all donations must be in cash and evidenced by a receipt.

48 Apportionment of special exemptions and rebates

(1) Every person arriving in or departing from Niue during any income year, shall be entitled to a deduction by way of special exemption from his assessable income, or to a rebate of income tax in his assessment for that income year, of –

- (a) An amount equal to the same proportion of every deduction by way of special exemption or rebate to which he would have been entitled under sections 45, 47A and 47B, as the proportion that the number of days during which the income is deemed to have been earned bears to the numbers of days in the income year; and
 - (b) Such allowance under sections 46 and 47 as the Treasurer may consider appropriate.
- (2) (a) For the purposes of this section an “absentee” shall be considered to be entitled to the same special exemptions under sections 45, 47, 47A and 47B as if he were a taxpayer other than an absentee.
- (b) Nothing in this subsection shall entitle an “absentee” to the special exemptions or rebates provided under sections 45, 47, 47A and 47B in circumstances other than as provided in this section.

General Exemptions

49 Incomes wholly exempt from taxation

(1) The following incomes shall be exempt from taxation –

- (a) The income, other than income received in trust, of a local authority, or of any public authority;
- (b) Income derived from sinking funds in respect of any public debt or of the debt of any local authority;

- (c) Income derived by any person from any pension or allowance granted by any Government in respect of any war or in respect of any disability or disablement attributable to or aggravated by service in any naval, military, air, or police force;
- (d) Dividends and other profits derived from shares or other rights of membership in companies other than companies which are exempt from income tax;
- (e) Income derived by women in the form of payments in the nature of alimony or maintenance made to her by her husband or former husband out of income belonging to him;
- (f) Income derived by the trustees of a superannuation fund;
- (g) Income (not being income of the kind referred to in paragraph (h)) derived by trustees in trust for charitable purposes, or derived by any society or institution established exclusively for such purposes and not carried on for private pecuniary profit;
- (h) Income derived directly or indirectly from any business carried on by or on behalf of or for the benefit of trustees in trust for charitable purposes within Niue, or derived directly or indirectly from any business carried on by or on behalf of or for the benefit of any society or institution established exclusively for such purposes and not carried on for private pecuniary profits:
Provided that if the aforesaid purposes are not limited to Niue the Treasurer may apportion the income in such manner as he deems just and reasonable between such purposes within Niue and the like purposes out of Niue, and may allow to the trustees, society or institution a partial exemption accordingly;
- (i) Income derived by any society or association, whether incorporated or not, which is, in the opinion of the Treasurer, established substantially or primarily for the purpose of promoting any amateur game or sport if that game or sport is conducted for the recreation or entertainment of the general public, and if no part of the income or other fund of the society or association is used or available to be used for the private pecuniary profit of any proprietor, member or shareholder of it;
- (j) Income derived by any society or association whether incorporated or not, which is, in the opinion of the Treasurer, established substantially or primarily for the purpose of advertising, beautifying or developing the island of Niue or any village or district therein so as to attract trade, tourists, visitors, or population, or to create, increase, expand or develop amenities for the general public, if no part of the income or other funds of the society or association is used or is or may become available to be used for any other purpose, not being a charitable purpose;
- (k) Income derived by any person from any maintenance or allowance provided for or paid to him in respect of his attendance at an educational institution in terms of a scholarship or bursary;
- (l) Income derived by any person, in respect of any period of incapacity for work, from any sick pay or other allowance paid to him from any sick, accident or death benefit fund to which he was a contributor at the date of commencement of that period of incapacity;

- (m) Income derived by any trustee in trust for any sickness, accident, or death benefit fund, not being income derived directly or indirectly from any business carried on by or on behalf of or for the benefit of that trustee;
- (n) Income expressly exempted from income tax by any other Act to the extent of the exemption so provided;
- (o) Moneys received by a wife from her husband or a husband from his wife;
- (p) Income derived by any life insurance company in so far as that income is derived from life insurance premiums;
- (q) Income and profits derived by any cooperative society registered under the Cooperative Societies Regulations 1953;
- (r) Income derived from any bonds or securities issued exempt from tax by the Government or by any local or public authority:

Provided that the approval of the Government has been obtained for the issue of the bonds or other securities to be issued exempt from tax;

- (s) Income of the South Pacific Commission and the income in so far as it is derived from the funds of the South Pacific Commission of persons employed by the Commission;
- (t) Income of the United Nations or of any specialised agency of the United Nations and the income in so far as it is derived from the funds of the United Nations or any such agency of persons employed by the United Nations or any such agency;
- (u) Such allowances or class or classes of allowances as Cabinet may declare to be exempt from taxation either wholly or in part;
- (v) Income derived by any person from any pension or benefit granted to him under the Pensions and Benefits Act 1991;
- (w) Income derived by the Niue Bank;
- (x) Income derived from a periodic payment by way of superannuation, pension, retiring allowance or annuity in respect of or in relation to past employment of that person or any person of whom that person is or has been the wife, or husband, or a child or dependent.

(2) For the purposes of this section “sickness, accident, or death benefit fund” means any fund established for the benefit of the employees of any employer or of the members of any incorporated society or for the benefit of the widows and dependants of any deceased employees of any employer, or of any deceased members of any incorporated society, and approved for the time being by the Treasurer.

Assessable Income and Deductions

50 Exemptions in respect of industries contributing to economic development

(1) Where any new industry or enterprise is established in Niue or where any industry or enterprise already existing in Niue is materially expanded, and where Cabinet is satisfied that such establishment or expansion as the case may be will contribute substantially to the economic development of Niue, Cabinet may grant to the enterprise, or to the person or persons contributing to the establishment or expansion of that industry or enterprise such concessions in respect of taxation on the income derived whether directly or indirectly from that industry or enterprise as may be specified by Cabinet.

(2) Concessions granted by Cabinet under the authority of this section may take the form of exemption of all or part of the income from taxation, reduction in the rates of taxation on all or part of the income, extension of the period during which losses may be carried forward, allowance of special deductions from assessable income, or may be in such other form as Cabinet considers desirable and appropriate to the particular application.

(3) A grant made under this section shall specify the period (not exceeding 5 years) during which any concession is to apply, and the period as specified may be extended by Cabinet.

(4) Any grant made under this section may be made upon or subject to such conditions as Cabinet thinks fit and may at any time be revoked by Cabinet if the taxpayer fails to comply with any such conditions.

51 Items included in assessable income

Without in any way limiting the meaning of the term, the assessable income of any person shall for the purposes of this Act be deemed to include, save so far as express provision is made in this Act to the contrary, all income derived from the following sources –

- (a) All profits or gains derived from any business (including any increase in the value of stock in hand at the time of the transfer or sale of the business, or on the reconstruction of a company);
- (b) All salaries, wages, or allowances (whether in cash or otherwise), including all sums received or receivable by way of bonus, gratuity, extra salary, or emolument of any kind, in respect of or in relation to the employment or service of the taxpayer:

Provided that where any bonus, gratuity, or retiring allowance (not being moneys paid to any director of a company pursuant to its articles of association) is paid in a lump sum in respect of the employment or service of the taxpayer on the occasion of his retirement from such employment or service only 5 per cent of that lump sum shall be deemed to be income; and

Provided also that, without limiting the meaning of “allowance” as used in this paragraph the said term shall be deemed to include (in the case of a taxpayer who in any income year has been provided in respect of any office or position held by him with board or lodging, or the use of a house or quarters, or has been paid an allowance in lieu of being so provided with board or lodging or with the use of a house or quarters the value of such benefits, such value to be determined in case of dispute by the Treasurer, subject to the Treasurer’s assessment under Part 4:

Provided also that the Treasurer may determine whether and to what extent any allowance in respect of or in relation to the employment or service of any person constitutes a reimbursement or expenditure exclusively incurred by him in the production of his assessable income, and the allowance shall to the extent so determined be exempt from income tax, and in such case the determination of the Treasurer shall be final and conclusive, save that the taxpayer may have a right of appeal under section 36 (2);

- (c) All profits or gains derived from the sale of other disposition of any real or personal property or any interest therein, if the business of the taxpayer comprises dealing in such property, or if the property was acquired for the purpose of selling or otherwise disposing of it, and all profits or gains derived from the carrying on or carrying out of any undertaking or scheme entered into or devised for the purpose of making a profit;

- (d) All rents, fines, premiums, or other revenues (including payments for or in respect of the goodwill of any business, or the benefit of any statutory licence or privilege) derived by the owner of land from any lease, licence, or easement affecting the land or from the grant of any right of taking the profits of it;
- (e) All royalties or other like payments dependent upon production from or the use of any real or personal property, whether or not they are instalments of the purchase price of any property;
- (f) All interests, dividends, annuities and pensions:

Provided that where any securities have been acquired by purchase or otherwise during the income year, the Treasurer may, where he considers it equitable so to do, apportion between the transferor and the transferee any interest due or accruing due at the date of the transfer and not then paid;

- (g) Income derived from any other source whatsoever.

52 Income from use or occupation of land

(1) Without limiting section 51(c) the assessable income of any person shall, for the purposes of this Act, be deemed to include –

- (a) All profits or gains derived from the use or occupation of any land;
- (b) All profits or gains derived in any income year from the extraction, removal, or sale of any minerals, or timber whether by the owner of the land from which they are obtained or by any other person, reduced by an amount equal to the cost of those minerals or of that timber.

(2) For the purposes of subsection 1(b) “timber” shall be deemed to include standing timber, and “sale” shall be deemed to include any dispositions by way of a licence or easement, or the grant of any right of taking any profits or produce from land.

53 Income credited in account or otherwise dealt with

For the purposes of this Act every person shall be deemed to have derived income although it has not been actually paid to or received by him, or already become due or receivable, but has been credited in account, or re-invested, or accumulated, or capitalised, or carried to any reserve, sinking or insurance fund, or otherwise dealt with in his interest or in his behalf.

54 Deductions for repair, maintenance and depreciation

- (1) (a) In calculating the assessable income derived by any person from any source no deduction shall be made in respect of any of the following sums or matters – the repair of premises, or the repair, alteration, or supply of implements, utensils, or machinery used in the production of income, beyond the amount expended in any year for those purposes.
- (b) Where depreciation of such premises, implements, utensils or machinery, whether caused by fair wear and tear or by the fact of such premises, implements, utensils, or machinery becoming obsolete or useless, cannot be made good by repair, the Treasurer may allow such deductions as he thinks just up to but not exceeding the rates of depreciation as set out in Schedule 2 except that in the year in which any implements, utensils, or machinery are disposed of or discarded, the Treasurer may allow such further deductions as he thinks just.

- (c) Where the Treasurer has for any year of assessment allowed a deduction in respect of the depreciation of any premises, implements, utensils, or machinery, and the taxpayer at any time afterwards sells such premises, implements, utensils, or machinery at a price in excess of the amount to which the value of those assets has been reduced by such allowance, the Treasurer may make a revised assessment for that or any subsequent year without allowing such deduction or without allowing such portion of it as he thinks fit, and may recover the additional amount of income tax accordingly. For the purpose of giving effect to this proviso the Treasurer may at any time alter any assessment, notwithstanding anything to the contrary in section 20.
 - (d) Where the Treasurer is satisfied that any repairs or alterations of any plant, premises or machinery do not increase the capital value of the plant, premises or machinery, or that the repairs or alterations increase that value by an amount less than the cost of the repairs or alterations, he may allow such deductions as he thinks just.
- (2) For the purposes of subsection (1)(c) –
- (a) Where any asset has been sold together with other assets of a business, the part of the consideration attributable to that asset shall be determined by the Treasurer, and the part of the consideration so determined shall be deemed to be the price at which that asset was sold by the vendor and purchased by the purchaser;
 - (b) Where any property is sold, distributed or otherwise disposed of without consideration or for a consideration which, in the opinion of the Treasurer, is less than the market price for the true value of the property on the day it was sold, distributed or otherwise disposed of, that property shall be deemed to have been sold at and to have realised such market price or, if there is no market price, shall be deemed to have been sold at and to have realised such price as the Treasurer determines.
- (3) It shall be ground for an objection to an assessment of income tax under Part 4 that any determination of the Treasurer made for the purpose of subsection (2) is erroneous in fact.
- (4) Without limiting the discretion of the Treasurer under subsection (1), it is hereby declared that he has power to refuse in whole or in part to allow any deduction under that subsection in any case where he is not satisfied that complete and satisfactory accounts have been kept by or on behalf of the taxpayer and that sufficient depreciation has been provided for in the taxpayer's accounts.
- (5) Sections 58, 61, 62 and 66(3) shall have effect notwithstanding anything to the contrary in this section and sections 56 and 57.

55 Deductions in respect of buildings on Niuean leaseholds

- (1) The Treasurer, in calculating the assessable income derived by any taxpayer during any income year, may allow such deductions as he thinks fit in respect of any sum expended by the taxpayer –
- (a) In acquiring or erecting any building on any Niuean freehold land which the taxpayer holds on lease; or
 - (b) In purchasing the unexpired period of any lease of Niuean freehold land.

- (2) (a) In ascertaining the amount that may be deducted under this section in respect of any income year, the amount expended by the taxpayer in respect of the acquisition or erection of the building or in respect of the purchase of the lease shall be apportioned by the Treasurer over the unexpired period of the lease (including any period in respect of which a right of renewal exists) calculated from the date of the acquisition or erection or purchase as the case may be and the amount deducted in respect of any income year shall not in any case exceed the amount apportioned to that year.
- (b) In ascertaining the amount to be deducted the Treasurer shall take into account the amount by which the value of any building has already been reduced by the allowance of depreciation under the provisions of corresponding New Zealand legislation relating to the payment of income tax.
- (c) Where the unexpired portion of a lease is sold to any company over which the vendor has control as defined by section 75 or to any partnership over which the vendor has control the amount of the annual deductions shall be limited to the amount by which the vendor would have been entitled had the sale not taken place.
- (3) Where the Treasurer has, for any year of assessment, allowed a deduction under this section and the taxpayer at any time afterwards sells the unexpired period of the lease, the Treasurer may make a revised assessment in respect of that year of assessment without allowing that deduction or without allowing such portion of it as he thinks fit, and may recover the additional amount of income tax accordingly.
- (4) For the purpose of giving effect to subsection (3) the Treasurer may at any time alter any assessment, notwithstanding section 20.
- (5) For the purposes of this section, where the unexpired period of the lease has been sold together with other assets of a business the consideration attributable to the sale of the lease and of any buildings erected on the demised land shall be determined by the Treasurer, and the part of the consideration so determined shall be deemed to be the price at which the lease and buildings were sold by the vendor and purchased by the purchaser.
- (6) A taxpayer to whom this section applies may elect whether he will claim a deduction hereunder or will claim a deduction for depreciation under section 54, but any deduction made under this section shall be in substitution for any deduction for depreciation which may be allowable under section 54.

56 Other deductions not permitted from assessable income

In calculating the assessable income derived by any person from any source, no deduction except as expressly provided in this Act shall be made in respect of any of the following sums or matters –

- (a) Investments, expenditure, loss, or withdrawal of capital; money used or intended to be used as capital; money used in the improvement of premises occupied; interest which might have been made on such capital or money if laid out at interest;
- (b) Bad debts, except debts which are proved to the satisfaction of the Treasurer to be in fact bad and to have been actually written off as bad debts by the tax payer in the income year;
 Provided that all amounts at any time received on account of any such bad debt shall be credited as income in the year in which they are received, and shall be subject to tax accordingly:

Provided further that if in the opinion of the Treasurer the amount of debts written off as bad in any income year is excessive, he may, notwithstanding section 20, reopen the assessments made in any previous years in which he considers that the debts had in fact become bad;

- (c) Any expenditure or loss recoverable under any insurance or contract of indemnity;
- (d) Payments of any kind made by a husband to his wife or by a wife to her husband;
- (e) Rent of any dwelling house or domestic offices, save that, so far as such dwelling house or offices are used in the production of the assessable income, the Treasurer may allow a deduction of such proportion of the rent as he may think just and reasonable;
- (f) Income tax;
- (g) Interest, except so far as the Treasurer is satisfied that it is payable on capital employed in the production of the assessable income.

57 Deduction of expenditure or loss from income

- (1) (a) In calculating the assessable income of any person deriving such income from one source only, any expenditure or loss exclusively incurred in the production of the assessable income for any income year may except as expressly provided in this Act be deducted from the total income derived for that Act.
 - (b) In calculating the assessable income of any person deriving such income from 2 or more sources, any expenditure or loss exclusively incurred in the production of assessable income for any income year may except as expressly provided in this Act be deducted from the total income derived by the taxpayer for that year from all such sources as aforesaid.
- (2) In calculating the non-assessable income of any person any expenditure or loss exclusively incurred in the production of the non-assessable income for any income year may be deducted from such income derived for that year. Any such expenditure or loss deductible under this subsection shall be determined in the same manner as if the non-assessable income was assessable.
- (3) Except as expressly provided in this Act no deduction shall be made in respect of any expenditure or loss of any kind for the purpose of calculating the assessable income of any taxpayer.

58 Losses incurred may be set off against future profits

- (1) For the purpose of this section any loss incurred by a taxpayer shall be ascertained under this Act for the calculation of assessable income.
- (2) (a) Any taxpayer who satisfies the Treasurer that he has in any year incurred a loss shall be entitled to claim that such loss be carried forward, and, so far as may be, deducted from or set off against his income for the 6 years succeeding the year in which the loss was incurred.
- (b) No claim to a deduction or set-off will be allowed under this section in respect of any loss which has been deducted from or set-off against the assessable income of the taxpayer under the provisions of the corresponding New Zealand legislation relating to income tax.

- (c) Any relief under this section shall be given so far as possible from the first succeeding assessment, and so far as it cannot then be given, shall be given from the next succeeding assessment, and so on.
 - (d) In no case shall a loss of assessable income be set off against non-assessable income nor shall a loss of non-assessable income be set off against assessable income.
 - (e) (i) Where, if a profit has been made from the transaction in which the loss was incurred, the amount of the profit would have been assessable or non-assessable income as the case may be, no relief shall be given under this section in respect of that loss.
 - (ii) Where, if a profit had been made as aforesaid, the amount of the profit would have been assessable or non-assessable income, the amount of the loss carried forward to any year shall be deducted from or set off against the taxpayer's assessable or non-assessable income, as the case may be, for that year so far as that income extends.
- (3) (a) Notwithstanding subsections (1) and (2) if in any year of assessment any taxpayer, being a company, claims to carry forward any loss made by it in any former income year, the claim shall not be allowed unless the Treasurer is satisfied that the shareholders of the company on the balance date of the company for the year to which the loss claimed is to be carried forward were substantially the same as the shareholders of the company on the balance date of the company for the year in which the loss was incurred.
- (b) For the purposes of this subsection the shareholders of a company at any date shall not be deemed to be substantially the same as the shareholders on any other date unless, on both such dates, not less than two-thirds in nominal value of the allotted shares in such company were held by or on behalf of the same persons.
- (c) For the purposes of this subsection shares in a company held by or on behalf of another company shall be deemed to be held by the shareholders of such last mentioned company and shares held by or on behalf of the trustee of the estate of a deceased shareholder, or by or on behalf of the persons entitled to those shares as beneficiaries under the will or intestacy of a deceased shareholder, shall be deemed to be held by that deceased shareholder.

59 Amounts remitted to be taken into account in computing income

(1) Where the amount of any expenditure or loss incurred by a taxpayer has been taken into account in calculating his assessable income for any income year, and subsequently the liability of the taxpayer in respect of that amount is remitted in whole or in part, the assessable income derived by the taxpayer during that year shall be deemed to be increased by the amount so remitted, and the taxpayer shall be assessable and liable for income tax accordingly.

(2) Where the amount of any expenditure or loss incurred by a taxpayer has been taken into account in calculating for the purposes of section 58 the amount of any loss incurred by him in any income year, and subsequently the liability of the taxpayer in respect of that amount has been remitted in whole or in part, the amount of the loss that may be carried forward under section 58 shall be deemed to be reduced by the amount so remitted.

(3) For the purposes of this section a liability in respect of any expenditure or loss shall be deemed to have been remitted to the extent to which the taxpayer has been discharged from that liability without fully adequate consideration in money or money's worth.

(4) For the purposes of giving effect to this section, the Treasurer may at any time alter any assessment, notwithstanding section 20.

60 Apportionment of income received in anticipation

(1) When income is derived by any person in any year by way of fines, premiums, or payment for goodwill on the grant of a lease, or in any other like manner by way of anticipation, the Treasurer may at the request of that person during the next succeeding year, apportion that income between the income year and any number of subsequent years not exceeding 5, and the part so apportioned to each of those years shall be deemed to have been derived in that year, and shall be assessable for income tax accordingly.

(2) Any such apportionment may be at any time cancelled by the Treasurer, and thereupon the income so apportioned or the part of it on which income tax has not yet been paid shall become assessable for income tax as if derived during the year preceding that in which the apportionment was so cancelled.

61 Expenditure incurred in borrowing money or obtaining lease

The Treasurer may, in calculating the assessable income of any taxpayer, allow such deduction as he thinks fit in respect of expenditure incurred by the taxpayer during the income year for the preparation, stamping, and registration of any lease of property used in the production of his assessable income, or of any renewal of such lease, or in borrowing of money employed by the taxpayer as capital in the production of assessable income.

62 Deduction in respect of premium paid on account of leased machinery

(1) The Treasurer may, in calculating the assessable income of any taxpayer, allow such deduction as he thinks fit in respect of any premium, fine, or foregift, or any consideration in the nature of a premium, fine, or foregift, paid by the taxpayer in respect of the lease of any machinery used by him in the production of income, or in respect of the renewal of any such lease, or in respect of the assignment of transfer of any such lease.

(2) In ascertaining the amount that may be deducted in any year under this section the total amount paid by the taxpayer as aforesaid shall be apportioned by the Treasurer over the period of the lease unexpired at the date of payment, and the amount deducted for any year shall not in any case exceed the amount apportioned to that year.

63 Income derived from disposal of trading stock

(1) Where any trading stock is sold together with other assets of a business the part of the consideration attributable to the trading stock shall, for the purposes of this Act, be determined by the Treasurer, and the part of the consideration so determined shall be deemed to be the price paid for the trading stock by the purchaser.

(2) For the purpose of this section any trading stock which has been disposed of otherwise than by sale shall be deemed to have been sold, and any trading stock so disposed of and any trading stock which has been sold for a consideration other than cash shall be deemed to have realised the market price of the day on which it was so disposed of or sold, but, where there is no market price, trading stock shall be deemed to have realised such price as the Treasurer determines.

(3) For the purposes of this section “trading stock” includes anything produced or manufactured and anything acquired or purchased for purposes of manufacture, sale or exchange; and also includes any other real or personal property sold or disposed of by the taxpayer where the business of the taxpayer comprises dealing in such property or the property was acquired by him for the purpose of sale or other disposal; and also includes livestock.

(4) It shall be grounds for objection to an assessment of income tax under Part 4 that any determination of the Treasurer made for the purpose of this section is erroneous in fact.

64 Valuation of trading stock, including livestock

(1) For the purposes of this Act “trading stock” includes anything produced or manufactured, and anything acquired or purchased for purpose of manufacture, sale or exchange and also includes livestock but does not include land.

(2) Where any taxpayer owns or carries on any business the value of his trading stock at the beginning and at the end of every income year shall be taken into account in ascertaining whether or not he has derived assessable income during that year.

(3) (a) The value of the trading stock of any taxpayer to be taken into account at the beginning of any income year shall be its value as at the end of the last preceding income year.

(b) Where the taxpayer’s business is commenced and his trading stock is acquired during the income year the value of the trading stock as at the beginning of the income year shall be deemed to be an amount equal to its cost price.

(4) The value of the trading stock of any taxpayer to be taken into account, at the end of any income year shall be, at the option of the taxpayer, its cost price, its market selling value, or the price at which it can be replaced.

(5) Where the value of the trading stock of any taxpayer at the beginning of any income year exceeds the value of his trading stock at the end of that year the amount of the excess shall be allowed as a deduction in computing the assessable income of the taxpayer for that year.

(6) Where the value of the trading stock of any taxpayer at the beginning of any income year exceeds the value of his trading stock at the end of that year the amount of the excess shall be allowed as a deduction in computing the assessable income of the taxpayer for that year.

(7) Where in any income year the whole or any part of the assets of a business owned or carried on by any taxpayer is sold or otherwise disposed of (whether by way of exchange, or gift, or distribution in terms of a will, or on an intestacy, or otherwise howsoever, and whether or not in the ordinary course of the business of the taxpayer or for the purpose of putting an end to that business or any part of it), and the assets sold or otherwise disposed of consist of or include any trading stock the consideration received or receivable for the trading stock or (if any case where section 62 or 64 applies) the price which under that section the trading stock is deemed to have realised shall be taken into account in computing the taxpayer’s assessable income for that year or for any subsequent income year, be deemed to have purchased it at the amount of that consideration or price.

(8) Subject to sections 62 and 64, the price specified in any contract of sale or arrangement as the price at which any trading stock is sold or otherwise disposed of as aforesaid shall be deemed for the purposes of this section to be the consideration received or receivable for the trading stock.

(9) Notwithstanding subsections (1) to (8) the value of trading stock on hand at the beginning of the first income year to which the provisions of this Act are applicable shall be deemed to be an amount equal to its cost price.

65 Sale of trading stock for inadequate consideration

(1) Where any trading stock is sold or otherwise disposed of without consideration in money or money's worth or for a consideration that is less than each of –

- (i) the cost price of the trading stock; and
- (ii) the market price on the day of the sale or other disposition or where there is no market price, such price as the Treasurer determines (referred to below as "the market price"),

the following provisions shall apply, namely –

- (a) The trading stock shall be deemed for the purposes of this Act to have been sold at and to have realised the cost price or the market price, whichever is the lower;
- (b) The price which under this section the trading stock is deemed to have realised shall be taken into account in calculating the assessable income of the person selling or otherwise disposing of the trading stock;
- (c) The person acquiring the trading stock shall, for the purpose of calculating his assessable income, be deemed to have purchased the trading stock at the price which under this section the trading stock is deemed to have realised.

(2) It shall be grounds for objection to an assessment of income tax that any determination of the Treasurer made for the purposes of this section is erroneous in fact.

(3) For the purposes of this section "trading stock" includes anything produced or manufactured, and anything acquired or purchased for purposes of manufacture, sale or exchange, and also includes livestock and also includes any other real or personal property where the business of the person by whom it is sold or disposed or comprises dealing in such property or the property was acquired by him for the purpose of sale or other disposal.

66 Assessment and deduction of patent rights and expenses, and trade mark renewals

(1) For the purposes of this section "patent rights" means the right to do or authorise the doing of anything which would, but for that right, be an infringement of a patent.

(2) Where any taxpayer sells any patent rights, any sum received by him or owing to him in respect of the sale or such part thereof as the Treasurer considers just and reasonable shall be deemed to be assessable income and shall be assessed for income tax in such manner as the Treasurer determines.

(3) The Treasurer, in calculating the assessable income derived by any taxpayer during any income year, may allow such deduction as he thinks fit in respect of any sum expended by the taxpayer on the purchase of any patent rights or any expenditure incurred by him in the grant, maintenance or extension of a patent or in the renewal of any registration of any trade mark or trade name used by him in the production of his assessable income for that year.

67 Deduction for scientific research

In calculating the assessable income derived by any taxpayer during any income year, the Treasurer may allow such deduction as he thinks fit in respect of any expenditure incurred by the taxpayer during that year in connection with scientific research directly relating to the trade or business carried on by the taxpayer, except so far as the expenditure relates to an asset in respect of which a deduction for depreciation is allowable under section 54(1).

68 Deduction of testamentary annuities charged on property

- (1) (a) Notwithstanding anything to the contrary contained elsewhere in this Act, where property has been devised or bequeathed by will subject to the payment of an annuity or has been made subject to the payment of an annuity by a deed of family arrangement, and that property or any property substituted therefor has been transferred to a beneficiary and is charged with payment of the annuity or any part thereof, the amount paid in any income year on account of that annuity by the owner of that property or substituted property shall be allowed as a deduction in calculating the income derived by the owner from that property or substituted property in that income year so far as that income extends.
- (b) No deduction shall be allowed under this section where the owner for the time being of the property or substituted property (not being a beneficiary) is a person who has acquired the same by purchase subject to the condition that he assumes the liability for the whole or any part of the annuity charged thereon.
- (c) To the extent that an annuity payable by the owner of the property or substituted property under a deed of family arrangement represents, in the opinion of the Treasurer, consideration for the purchase of the property or substituted property by the owner, the annuity shall not be allowed as a deduction under this section.
- (2) In this section "beneficiary", in relation to any property, means a person to whom that property has been devised or bequeathed by will, or a person who is entitled, pursuant to a provision in a will, to purchase, subject to payment of an annuity, that property, being property that forms part of the estate of the testator; and includes a person who is entitled to the property pursuant to a deed of family arrangement.

69 Contributions to employees' superannuation fund

- (1) (a) In calculating the taxable income of any employer the Treasurer may allow a deduction of any amount set aside or paid by the employer as or to a fund to provide individual personal benefits, pensions, or retiring allowances to employees of that employer.
- (b) A deduction shall not be allowed under this section unless the Treasurer is satisfied that the fund has been established or the payment made in such a manner that the rights of the employees to receive the benefits, pensions or retiring allowances have been fully secured.
- (2) The Treasurer shall have a discretion as to whether or not a deduction should be allowed under subsection (1) of the whole or any part of any amount set aside or paid as mentioned in that subsection.

70 Treasurer may make arrangements, for first three income years

It is hereby declared that subject to this Act the Treasurer may in respect of the first income years of any person to whom this Act becomes applicable, make such arrangements, compromises, or calculations as he sees fit, in the assessment of income derived by that person during those years, and may make such assessments of income tax as he sees fit to give effect to such arrangements, compromises or calculations.

*Provisions relating to Companies and Associations***71 Profits of mutual associations in respect of transactions with members**

(1) Where an association enters into transactions with its members, or with its members and others, any profit or surplus arising from those transactions which would be included in the profits or gains of the association if the transactions were not of a mutual character shall be deemed to be profits or gains arising from those transactions and to be assessable income of the association except that, in computing the assessable income of the association the Treasurer shall allow as expenses any sums which –

- (a) Represent a discount, rebate, dividend, or bonus granted or paid by the association to members or other persons in respect of amounts paid or payable by or to them on account of their transactions with the association, being transactions which are taken into account in computing the assessable income; and
- (b) Are calculated by reference to the said amounts or to the magnitude of the said transactions and not by reference to any share or interest in the capital of the association.

(2) Where any discount, rebate, dividend, or bonus is granted or paid to any person by an association, it shall form part of the assessable income of that person if the transaction from which it arises is of such a nature that any payment in respect of it by that person to the association would be allowed as a deduction in computing the assessable income of that person.

(3) For the purpose of this section, a discount, rebate, dividend or bonus shall be deemed to have been granted to or paid to a person when it has been credited in account or otherwise dealt with in his interest or on his behalf.

(4) In this section “association” includes any body or association of persons, whether incorporated or not, other than those mentioned in section 49(1)(q).

72 Overseas insurance companies other than life insurance companies

(1) For the purpose of this Act the assessable income of an overseas insurance company shall include the amount of gross premiums derived by the company in respect of business (other than life assurance business) transacted in Niue.

(2) Income tax on the assessable income of an overseas insurance company determined in accordance with subsection (1), shall be assessed at the rate as set out in Schedule 1.

(3) “Overseas insurance company” for the purposes of this section means a company mainly carrying on the business of insurance or guarantee against loss, damage or risk of any kind whatever whose main place of business is situated outside Niue.

73 Companies with substantially the same shareholders or under the same control

(1) If the Treasurer is satisfied with respect to 2 or more companies consisting substantially of the same shareholders or under control of the same persons, that the separate constitution or the separate continuance of those companies is not exclusively for the purpose of more effectively carrying out their objects but is wholly or partly for the purpose of reducing their taxation, the Treasurer may, for the purposes of income tax, treat those companies as if they were a single company, and in any such case those companies shall be jointly assessed and jointly and severally liable with such right of contribution or indemnity between themselves as is just.

(2) Section 75(2) and (3) shall be deemed to be also applicable to this section.

74 Liability of new companies for tax payable by former companies with substantially the same shareholders or under the same control

- (1) In this section –
“company” means a Niue company or an overseas company within the meaning of this Act;
“new company” means a company carrying on business in Niue and consisting substantially of the same shareholders as an original company or being under the control of the same persons as an original company;
“original company” means a company which having at any time carried on business in Niue has, ceased to carry on business in Niue, and includes any such company that has been wound up.
- (2) For the purposes of this section, a new company shall be deemed to consist substantially of the same shareholders as an original company if not less than one half of the paid up capital of the new company is held by or on behalf of shareholders in the original company. Shares in one company held by or on behalf of another company shall for the purposes of this subsection be deemed to be held by the shareholders in the last mentioned company.
- (3) Where an original company within the meaning of this section has been wound up its shareholders and directors, as on the commencement of its winding up, shall respectively be deemed to be the shareholders and the persons having the control of the company for the purposes of this section.
- (4) Where an original company as hereinbefore defined was, when it ceased to carry on business in Niue liable under this Act for any income tax or was liable to be assessed for any such tax, and such tax has not been paid, the new company shall, for the purposes of this Act, be deemed to be the agent of the original company and shall be liable for all tax payable by the original company. It shall also be liable for all tax for which the original company would have been liable if it had continued to carry on business in Niue.

75 Defining when a company is under the control of any persons

- (1) For the purposes of this Act except where otherwise expressly provided a company shall be deemed to be under the control of the person –
- (a) By whom more than one half of the shares, or more than one half of the nominal capital, or more than one half of the paid up capital, or more than one half of the voting power is held, or;
 - (b) Who have by any other means whatsoever control of the company;
or
 - (c) Who by reason of the shareholding at the end of any income year would be entitled to more than one half of the profits for that year if those profits were distributed by way of dividend at the end of that year.
- (2) For the purposes of this Act, 2 companies shall be deemed to consist substantially of the same shareholders if not less than one half of the paid up capital of each of them is held by shareholders in the other or if not less than one half in nominal value of the allotted shares in each of them is held by shareholders in the other. Shares in one company held by another company shall for this purpose be deemed to be held by the shareholders in the last mentioned company.
- (3) Where a nominee of any person holds any shares, nominal capital, paid up capital, or voting power in a company, or has by any other means whatsoever any power of control in a company, or is entitled to a share of profits distributed by a company, then for the purposes of this section those shares or that capital or

that voting power or that power of control or that title to profits, as the case may be, shall be deemed to be held by that person, and in every such case that person and his nominee or that person and all his nominees shall be deemed to be one person.

(4) In this section –

“nominee”, in relation to any person, means any other person who may be required to exercise his voting power in relation to any company in accordance with the direction of that person, or who holds shares or debentures directly or indirectly on behalf of that person; and includes the husband or wife of that person and any relatives of that person by blood, marriage, or adoption;

“person” includes a company and a local or public authority.

76 Floating rate of interest on debentures

(1) Where in any debenture issued by a company the rate of interest payable is not specifically determined, but is determinable from time to time by reference to the dividend payable by the company or otherwise howsoever, the interest paid on the debenture shall be considered part of the assessable income of the company and not of the debenture holder.

(2) Section 100 shall not apply with respect to any such debenture or to the interest paid or payable thereunder.

77 Interest on debentures issued in substitution for shares

(1) For the purposes of this section –

(a) “The amount of the debenture” means, in respect of any debenture, the principal sum expressed to be secured by or owing under that debenture;

(b) “Shareholder” includes, in respect of any company, a person by whom or on whose behalf shares in the company have at any time been held.

(2) Where a company has issued debentures to its shareholders or to any class of its shareholders, and the amount of the debenture or debentures issued to each shareholder of the company or of that class has been determined by reference to the number or to the nominal value or to the paid up value of, or by reference otherwise howsoever to the shares in that company or in any other company (whether or not that other company is being or has been wound up) that were held by or on behalf of the shareholder at the time the debentures were issued or at any earlier time, the interest paid by the company on the debentures so issued shall be computed as part of the assessable income of the company and not of the debenture holder.

(3) The provisions of section 76 and of any other enactment shall apply with respect to all debentures to which subsection (2) applies and to the interest payable thereunder, in the same manner as if those debentures and that interest were debentures and interest of the kinds referred to in section 76.

78 Payment of excessive remuneration or share of profits to relatives in certain cases

(1) Where –

(a) Any taxpayer carries on any business or undertaking and employs or engages any relatives of a director or shareholder of the company to perform services in connection with that business or undertaking;
or

- (b) Any taxpayer carries on business in partnership with any person, whether or not any other person is a member of the partnership, and –
 - (i) any relative of the taxpayer is employed or engaged by the partnership to perform services in connection with the business; or
 - (ii) where one of the partners is a company, any relative of a director or shareholder of the company is employed or engaged by the partnership to perform services in connection with the business; or
- (c) Any taxpayer carries on business in partnership with any relative or with any company a director or shareholder of which is a relative of the taxpayer or, being a company, carries on business in partnership with any relative of a director or shareholder of the company whether or not any other person is a member of the partnership –

and the Treasurer is of the opinion that the remuneration, salary, share of profits or other income payable to or for the benefit of that relative or company under the contract of employment or engagement or the terms of the partnership exceeds such an amount as is reasonable having regard to the nature and extent of the services rendered, the value of the contributions made by the respective partners by way of services or capital or otherwise, and any other relevant matters, the Treasurer may for the purposes of this Act allocate the total profits or income of the business or undertaking before deduction of any amount payable to that relative or company between the parties to the contract or the partners or any of them in such shares and proportions as he considers reasonable and the amounts so allocated shall be deemed to be income derived by the person to whom those amounts are so allocated and by no other person.

(2) Where any sum paid or credited by a company, being or purporting to be remuneration for services rendered by any person who is a relative of a director or shareholder of the company, is allocated to that company under subsection (1), the amount so allocated to the company shall be deemed to be a dividend paid by the company to that person and received by him as a shareholder of the company.

(3) For the purposes of this section “relative” means a husband or wife, or a relative by blood within the fourth degree of relationship (whether legitimate or illegitimate), or a relative by marriage or adoption, and includes a trustee for a relative.

(4) Notwithstanding section 35(1) it shall be grounds for objection under Part 4 to an assessment of income tax that any determination of the Treasurer made for the purposes of this section is erroneous and the Collector or the Court, as the case may be hearing the objection, shall have power to review the determination of the Treasurer, and shall for that purpose have all the powers and functions of the Treasurer in making that determination, and the decision of the Court shall except for the purposes of objection thereto take effect as if it were the determination of the Treasurer; but nothing in this subsection shall restrict the right of the Treasurer or the objector to appeal against the decision of the Court under Part 4.

(5) [Spent]

(6) This section shall not apply to a bona fide contract of employment or to a bona fide contract of partnership. For the purposes of this section a contract of employment or a contract of partnership shall be deemed to be bona fide if it complies with the following conditions –

- (a) The contract is in writing or by deed signed by all the parties hereto;
- (b) No partner and no person employed or engaged under the contract was under the age of 21 years at the date on which the contract was signed;
- (c) The contract is binding on the parties to it for a term of not less than 3 years and is not capable of being terminated by any party thereto before the expiry of that term;
- (d) Each party to the contract has a real and effective control of the remuneration, salary, share of profits, or other income to which he is entitled under the contract;
- (e) The remuneration, salary, share of profits, or other income payable to a relative, or to a company, a director or shareholder of which is a relative, is not of such an amount that the transaction would constitute in whole or in part a gift for gift duties purposes if the Estate and Gift Duties Act 1968 (NZ) were in force in Niue.

79 Excessive remuneration by company to shareholder or director

Where any sum paid or credited by a company, being or purporting to be remuneration for services rendered by any person who is a shareholder or director of the company, exceeds such amount as in the opinion of the Treasurer is reasonable, the amount of the excess shall not be an allowable deduction in computing the assessable income of the company, and shall for the purposes of this Act be deemed to be a dividend paid by the company to that person and received by him as a shareholder of the company.

Country of Derivation of Income

80 Liability for assessment of income derived from Niue and abroad

(1) Subject to this Act all income derived by any person who is resident in Niue at the time when he derives that income shall be assessable for income tax whether it is derived from Niue or from elsewhere.

(2) Subject to this Act, all income derived from Niue shall be assessable for income tax, whether the person deriving that income is resident in Niue or elsewhere.

(3) Subject to this Act, income which is neither derived from Niue nor derived by a person then resident in Niue shall not be assessable for income tax.

81 Place of residence, how determined

(1) A person other than a company shall be deemed to be resident in Niue within the meaning of this Part if his home is in Niue.

(2) A company shall be deemed to be resident in Niue within the meaning of this Part if it –

- (a) Is incorporated in Niue; or
- (b) Has its Head Office in Niue.

(3) The Head Office of a company means the centre of its administrative management.

82 Classes of income deemed to be derived from Niue

Subject to section 83, the following classes of income shall be deemed to be derived from Niue –

- (a) Income derived from any business carried on in Niue;
- (b) All salaries, wages, allowances and emoluments of any kind earned in Niue in the service of any employer or principal, whether resident in Niue or elsewhere;

- (c) Income derived by any person as the owner of land in Niue;
- (d) Income derived by any person from money lent or used in Niue (whether on security or otherwise)
- (e) Income derived from shares in or membership of a Niue company, or from debentures issued by a Niue company or by a local or public authority;
- (f) Income derived from debentures or other securities issued by the Administration, or from any contract made with that Administration;
- (g) Any pension or annuity payable by the Administration, or out of any superannuation fund established in Niue;
- (h) Income derived from the sale or other disposition of any property, corporeal or incorporeal, situated in Niue;
- (i) Income derived by a beneficiary under any trust, so far as the income of the trust fund is derived from Niue;
- (j) Income derived from contracts made or wholly or partly performed in Niue;
- (k) Income derived from the carriage by sea or by air of merchandise, mails, or passengers shipped or embarked in Niue;
- (l) Income derived directly or indirectly from any other source in Niue.

83 Apportionment where income derived partly in Niue and partly elsewhere

Whenever by reason of the manufacture, production or purchase of goods in one country and their sale in another, or by reason of successive steps of production or manufacture in different countries, or by reason of the making of contracts in one country and their performance in another, or for any other reason whatever the source of any income is not exclusively in Niue, that income shall be apportioned between its source in Niue and its source elsewhere, or attributed to one of such sources to the exclusion of the other in such manner as the Treasurer thinks just and reasonable, having regard to the nature and relative importance of the sources of that income; and the income so far as so apportioned or attributed to a source in Niue shall be deemed to be derived from Niue and shall be assessable for income tax accordingly.

84 Relief from double taxation

(1) Income derived by a person resident in Niue but not derived from Niue shall be exempt from income tax if and so far as the Treasurer is satisfied that it is derived from some other country or territory and that it is chargeable with income tax in that country or territory.

(2) In determining the country or territory from which income is derived the Treasurer shall apply the same rules, with the necessary modifications, as are applicable in determining whether income is derived from Niue.

(3) In this section "income tax" means in respect of any country or territory other than Niue, any tax which in the opinion of the Treasurer is substantially of the same nature as income tax under this Act.

85 Arrangements for relief from double taxation

(1) Cabinet may enter into arrangements with the Government of any country or territory outside Niue with a view to affording relief from double taxation in relation to income tax or any taxes of a similar character imposed by the laws of the country or territory and such arrangements shall notwithstanding

this Act have effect in relation to income tax and every such arrangement shall, subject to the provisions of this section, have effect under its tenor.

(2) Without limiting the generality of the foregoing provisions it is hereby declared that any arrangements which effect is given under this section may contain provision in relation to any of those taxes –

- (a) For relief from tax;
- (b) For charging the income derived from any sources in Niue to persons not resident in Niue;
- (c) For determining the income to be attributed to persons not resident in Niue and their agencies, branches or establishment in Niue;
- (d) For determining the income to be attributed to persons resident in Niue who have special relationships with persons not so resident.

(3) Any such arrangements may include provisions as to income which is not in itself subject to double taxation.

(4) Any arrangements entered into under this section may at any time be amended or revoked.

(5) Where any arrangements are made under this section the obligation as to secrecy imposed by this Act shall not prevent the Treasurer from disclosing to any authorised officer of the Government with which the arrangements are made such information as is required to be disclosed under the arrangements.

Income derived by a Trustee

86 Special provisions with respect to trustees

With respect to income derived by a trustee the following provisions shall apply –

- (a) If and so far as the income of the trustee is also income derived by a beneficiary entitled in possession to the receipt of it under the trust, the trustee shall in respect of it be deemed to be the agent of that beneficiary, and shall be assessable and liable for income tax thereon accordingly, and all the provisions of this Act as to agents shall, so far as applicable, apply accordingly. Where any income is derived by a beneficiary as aforesaid subject to a condition, obligation, or trust requiring him to maintain or support any other person (whether out of the income so derived or otherwise) and that beneficiary would, apart from that condition, obligation or trust, be entitled to a special exemption in respect of the maintenance and support provided by him for that other person, that beneficiary shall be assessed for income tax and shall be entitled to the same special exemptions as if he were beneficially entitled to the income free from any such condition, obligation, or trust;
- (b) If and so far as the income of the trustee is not also income derived by any beneficiary as aforesaid, the trustee shall be assessable and liable for income tax on that income in the same manner as if he was beneficially entitled to it, save that the rate of tax shall be computed by reference to that income alone, and that the trustee shall not be entitled to any deduction by way of special exemption, and that no tax shall be payable if the assessable income does not exceed \$100, and that the amount of tax payable in any case shall, where necessary, be reduced so as not to exceed the amount by which the assessable income exceeds \$100:

Provided that in any case where a trustee is required or is empowered at his discretion to pay or apply income derived by him to or for the benefit of specified

beneficiaries or to or for the benefit of some one or more of a number of specified beneficiaries, or of a specified class of beneficiaries, a beneficiary in whose favour the trustee so pays or applies income shall be deemed to be entitled in possession to the receipt of the amount paid to him or applied for his benefit by the trustee under the trust:

Provided also that where the income of the trustee is also income derived by any beneficiary who is an infant but whose interest in that income is vested, the beneficiary shall for the purposes of this section be deemed to be entitled in possession to the receipt of that income under the trust;

- (c) The trustee shall in every case make a return of the whole income so derived by him as trustee, and each such return shall be separate and distinct from any return of income derived by him under any other trust or in his own right;
- (d) Nothing in this section shall be so construed as to exempt a beneficiary from any income tax which would be payable by him had he derived the income to which he is entitled under the trust directly instead of through a trustee;
- (e) Where any company or corporation is a trustee any income assessable to the trustee under paragraph (b) shall be assessable at the rate applicable to a trustee other than a company or a corporation.

87 Income received by trustee after death of deceased person

It is hereby declared that any amount received in any income year by the trustee of the estate of a deceased person shall be deemed to be assessable or (as the case may require) non-assessable income derived by the trustee in that year if it does not represent assessable or non-assessable income derived by the deceased person during his lifetime but would have been included in his assessable or non-assessable income if he had been alive when it was received.

88 Deduction from estate income of irrecoverable book debts of deceased taxpayer

Where the amount of any debt owing to a deceased taxpayer at the date of his death has been included in the assessable income of the taxpayer or of the trustee of his estate for any income year, and the debt or any part of it is proved to the satisfaction of the Treasurer to be irrevocable and to have been actually written off by the trustee as a bad debt, the amount so written off shall be deemed to be a loss incurred by the trustee in the income year in which the amount was written off, and shall be allowable as a deduction first against any income derived by the trustee in that income year which is assessable to the trustee as income not derived by a beneficiary entitled in possession to the receipt of it under the trust during that year, and then, as to any balance, against any income derived in that year by or in trust for a beneficiary who has a vested interest in the capital of the estate to the extent that the loss is chargeable against the capital of that beneficiary; and any balance not allowed as a deduction in that year shall, so far as it extends, be allowable as a deduction in the same manner successively during the six succeeding years.

PART 6
AGENTS AND NON-RESIDENTS
Introduction

89 “Absentee” defined

In this Part “absentee” means –

- (a) Any person (other than a company) who is for the time being out of Niue;
- (b) Any overseas company unless it has a fixed and permanent place of business in Niue at which it carries on business in its own name;
- (c) Any overseas company which is declared by the Treasurer to be an absentee for the purposes of this Act by notice given to that company or to its agent or attorney in Niue, so long as that declaration remains unrevoked.

90 Rate and amount of tax payable by agent

Except where otherwise expressly provided by this Act, the rate of tax for which an agent shall be so assessed and liable shall be determined by reference to the total taxable income of the principal, but it shall be charged and payable only on the income in respect of which the agency exists, and in the same proportion which that income bears to the total taxable income of the principal.

91 Liability of principal not affected

(1) Nothing in this Act relating to an agent shall be so construed as to release the principal from liability to make returns and to be assessed and chargeable with tax.

(2) No assessment of the agent shall preclude an assessment of the principal for the same tax, nor shall an assessment of the principal preclude an assessment of the agent for the same tax, and the principal and agent shall be jointly and severally liable for all tax for which the agent is liable.

(3) When 2 or more persons are liable to be assessed as agents in respect of the same tax, they shall be jointly and severally liable for it.

92 Agents may recover tax from principal

When an agent pays any tax he may recover the amount so paid from his principal, or may deduct the amount from any moneys in his hands belonging or payable to his principal.

93 Agent may retain from moneys of principal amount required for tax

An agent may during the year preceding the year of assessment, or at any later time, retain out of any moneys belonging or payable to his principal such sums as may reasonably be deemed sufficient to pay the tax for which the agent is or may become liable.

94 Assessment deemed authority for payment of tax by agent

An assessment made by the Treasurer shall, as between an agent and his principal, be a sufficient authority for the payment by the agent of the tax so assessed and the agent shall be entitled as against his principal to reimbursement accordingly.

95 Agents to be personally liable for payment of tax

(1) Every agent shall be personally liable for the tax on income in respect of which he is an agent.

(2) When the Treasurer is satisfied that an agent has no moneys of his principal with which he can pay the tax, and that he has not paid away any such moneys after notice of assessment of the tax, or that immediate enforcement of payment by the agent would be a cause of hardship, the Treasurer may allow the agent such further period for the payment, not exceeding 6 months after the date of the notice of assessment, as he thinks necessary and the additional tax imposed by section 115 on taxpayers in default shall not accrue until the expiry of the periods so allowed.

96 Agents to make returns and be assessed as principal

(1) Every agent shall make returns of the income in respect of which he is an agent, and shall be assessed thereon in the same manner as if he was the principal, save that he shall be entitled to no special exemption other than such exemption (if any) as his principal may be entitled to.

(2) Every person liable to furnish a return as agent for any person shall furnish a separate return for each person for whom he is agent, in addition to his own individual return.

97 Relation of principal and agent arising in effect

When the Treasurer is satisfied that any person carrying on business in Niue (herein called the agent) is so far under the control of any other person carrying on business in Niue or elsewhere (herein called the principal) that the relation between them is in effect that of agent and principal, he may treat the first mentioned business as that of the principal, and as being carried on by the agent on his behalf, and may require returns to be made, and may make assessments accordingly, and the principal and agent shall be liable for income tax accordingly.

*Special Cases of Agency***98 Liability of mortgagee in possession**

For the purposes of this Act, a mortgagee in possession of any land or other property shall be deemed to be the agent of the mortgagor in respect of any income derived by that mortgagee from that land or other property on behalf of or for the benefit of the mortgagor, and the mortgagee shall make returns and be assessable and liable for tax on that income accordingly, and all the provisions of this Act as to agents shall, as far as they are applicable, apply accordingly.

99 Guardian of person under disability to be his agent

Every person who, as guardian, committee, or otherwise has the receipt, control or disposition of any income derived by a person under any legal disability shall for the purposes of this Act be the agent of that person in respect of that income, and shall make returns and be assessable and liable for income tax accordingly.

100 Local and public authorities and companies deemed agent of debenture holders

(1) Save as otherwise provided in section 75 and section 101, every company and local and public authority which has issued debentures, whether charged on the property of the company where appropriate or not, shall for the purposes of this Act be the agent of all debenture-holders, whether absentees or not, in respect of all income derived by them from those debentures, and shall make returns and be assessable and liable for income tax on that income accordingly.

(2) No deduction by way of special exemption or otherwise shall be allowed to the company or local or public authority as such agent, or to any debenture-holders, in respect of the income so derived from debentures.

(3) Income so derived by holders of debentures issued by a company or a local or public authority shall be assessable and chargeable with income tax in conjunction with income derived by the debenture-holders from other sources, if any, and at the rate appropriate to the total income so derived.

(4) Nothing in this section shall be so construed as to render liable to income tax any income that is exempt from taxation by virtue of section 49.

101 Modification in respect of income from company debentures, or local or public authority debentures

(1) The duty to act as the agents of debenture holders imposed on companies or local or public authorities by section 100 shall not apply with respect to debentures issued to any person resident in Niue if the company or local or public authority that has issued such debentures has supplied to the Treasurer, before it has been assessed in any year for income tax in respect of the income derived from those debentures, a certified list specifying the numbers of the debentures or other particulars sufficient to identify them, the names, addresses, and descriptions of the persons to whom the debentures have been issued, the interest derived or derivable therefrom, and such other particulars as may be prescribed.

(2) Where any such list is supplied the person named in it as the holder of any debentures shall be personally responsible for the making of returns, and shall be assessable and liable for income tax (though not to the exclusion of any other person) in respect of the income derived from those debentures at the rate fixed in respect thereof, unless and until he satisfies the Treasurer, before he has been assessed for income tax in any year, that he has transferred or assigned the debentures, and has given notice to the Treasurer in the prescribed form of the name, address, and description of the transferee or assignee.

(3) Every person being the transferee or assignee of any debenture shall in like manner remain personally liable in respect of it (though not to the exclusion of any other person) unless and until he has given notice to the Treasurer in the prescribed form of the transfer or assignment of the same.

(4) Any tax paid by the former holder of any debentures in respect of the income derived from it by a subsequent holder shall be deemed to be paid on behalf of that subsequent holder so far as it does not exceed the tax to which the subsequent holder might himself have been liable in respect of such debentures, and may be recovered by the former holder from such subsequent holder accordingly.

102 Recovery of income tax payable in respect of alimony or maintenance

(1) This section applies with respect to any income tax that may hereafter become payable in respect of income received by or on behalf of any person as alimony or maintenance, pursuant to the order of any Court or pursuant to any deed or agreement.

(2) In any case to which this section applies, the person bound by any such order, deed, or agreement to pay any moneys as alimony or as maintenance as aforesaid, shall for the purpose of the payment of the income tax thereon, be deemed to be the agent of the person to whom or on whose behalf such moneys have been paid or are payable, and all the provisions of this Act as to the liability of agents shall apply with respect to him accordingly.

(3) It shall be no defence in any proceedings against an agent for the recovery of any income tax to which this section relates that any amount in respect of income tax has been paid by him to the person entitled to receive any moneys as alimony or maintenance.

Agents of Absentees and Non-residents

103 Liability of agent of absentee principal for returns and tax

Every person who in Niue carries on any business for and on behalf of a principal who is an absentee shall for the purposes of this Act be the agent of that principal in respect of all income derived by the principal through the business so carried on in Niue by means of that agent, and the agent shall make returns and be assessable and liable for income tax on that income accordingly, whether the incomes to the hands of the agent or not.

104 Partner of absentee deemed agent

Every person who in Niue carries on business in partnership with an absentee shall for the purposes of this Act be the agent of that absentee in respect of his share of the income of the business, and shall make returns and be assessable and liable for income tax accordingly.

105 Master of ship or captain of aircraft deemed agent of absentee owner

(1) When an absentee, by means of any ship or aircraft owned by him or under charter to him, carries on the business of the carriage of merchandise, mails or passengers the master of that ship, or the captain of that aircraft, as the case may be, shall (though not to the exclusion of any other agent) be the agent of that absentee for the purposes of this Act in respect of all assessable income so derived by that absentee, and shall be assessable and liable for income tax accordingly.

(2) Pending the payment of any tax assessed against such an absentee or against any person who is his agent for the purposes of this Act, the Financial Secretary shall, on the requisition of the Treasurer, withhold the clearance of the ship or aircraft in respect of which the tax is payable.

106 Tenant, mortgagor or other debtor, to be agent of absentee landlord, mortgagee or other creditor

(1) Any tenant, mortgagor or other person who transmits from Niue to any landlord, mortgagee or other creditor, being an absentee, any rent, interest, or other moneys being income derived by that absentee from Niue, shall for the purposes of this Act be the agent of that absentee in respect of all moneys so transmitted by him at any time, and he shall in respect of all such moneys make returns and be assessable and liable for income tax accordingly.

(2) For the purposes of this section any moneys paid by or on account of a person resident in Niue from a fund situated out of Niue shall be deemed to be moneys transmitted by that person from Niue.

107 Person having disposal of income deemed agent

Every person who in Niue has the receipt, control or disposal of any income derived by a principal who is an absentee shall for the purposes of this Act be the agent of the principal in respect of that income, and shall make returns and be assessable and liable for income tax on that income accordingly.

108 Company to be agent of absentee shareholders

A Niue company which is exempt from income tax shall be the agent of all shareholders or members who are absentees, and the company shall make returns and be assessable accordingly on all dividends and other profits paid or credited by the company to such shareholders or members at any time while they are absentees.

109 Banking company to be agent of absentee depositors

Every banking company, and every other company, local or public authority, or other person, who in the course of business receives or holds money by way of deposit and allows interest thereon shall for the purposes of this Act be the agent of all depositors who are absentees, and shall make returns and be assessable and liable for income tax accordingly on any interest which is paid or credited to a depositor while he is an absentee if that interest exceeds \$400 in any year.

110 Premiums on insurance effected with persons not carrying on business in Niue

(1) Where any person in Niue enters into a contract of insurance or guarantee against loss, damage, or risk of any kind whatever (not being a contract of life insurance) with any person or overseas company not carrying on business in Niue, such last mentioned person or such company shall be liable to income tax at the rate as set out in Schedule 1 as being applicable to insurance companies on the amount of premium paid or payable by the first mentioned person in respect of such contract.

(2) Where the amount of premium paid or payable in respect of any such contract is not disclosed, the amount shall be deemed to be the same amount as would be chargeable in respect of a similar contract of insurance or guarantee effected with a company carrying on business in Niue.

(3) Every person who enters into a contract of insurance or guarantee as aforesaid shall for the purposes of this Act be deemed to be the agent of the person or overseas company with whom such contract is made, and shall make returns and be assessable and liable for income tax accordingly.

(4) Every person who exports any goods from Niue shall notify the Treasurer if such goods are insured, and, if so, the name and description of the person or company with whom such goods are insured, and the amount of the premium payable in respect of it.

111 Liability as agent of employer of non-resident taxpayer and employer's agent

(1) The employer or the agent of the employer of every non-resident taxpayer shall, for the purposes of this Act, be the agent of such non-resident taxpayer in respect of the salary, wages, or other emoluments received by him, and shall make returns and be assessable and liable for income tax thereon accordingly.

(2) Where any such non-resident taxpayer has made default in the payment of any income tax payable by him in respect of his salary, wages, or other emoluments as aforesaid, the amount of such tax shall, on application by the Treasurer, be deducted by the employer or his agent from any salary, wages, or other emoluments thereafter to be paid, and shall be paid to the Treasurer on behalf of the taxpayer.

(3) Where any non-resident taxpayer is in receipt of any pension or annuity payable out of any superannuation fund established in Niue, any income tax that

may hereafter become payable by such non-resident taxpayer in respect of such pension or annuity shall, on application by the Treasurer, be deducted from any instalment or instalments of such pension or annuity thereafter to be paid, and shall be paid to the Treasurer on behalf of the taxpayer.

(4) For the purposes of this section “non-resident taxpayer” means any person who, being liable for income tax in respect of salary, wages, or other employment derived from Niue, or in respect of any annuity or pension derived from Niue has no fixed and permanent residence or place of abode in Niue.

112 Non-resident trader to be agent of employees in Niue

(1) Every non-resident trader shall for the purposes of this Act be the agent of all persons in his employment in Niue in respect of the salary, wages or other emoluments received by them, and shall make returns and be assessable and liable for income tax thereon accordingly.

(2) The agent in Niue of a non-resident trader shall, for the purposes of this section, be under the same obligations as his principal.

113 Agents in Niue of principals resident or carrying on business abroad

When any person in Niue, on behalf of a principal resident or carrying on business out of Niue, is instrumental in procuring the purchase from that principal of goods or merchandise which are in Niue or are to be imported into Niue in pursuance or in consequence of such purchase, whether the contract or purchase is made in Niue or elsewhere, the principal shall in respect of the sale by him of such goods or merchandise be deemed to be carrying on business in Niue through the agency of that person; and the income derived from such business shall be deemed to be derived from Niue, in the same manner and to the same extent as if the contract had been made in Niue, and shall be assessable for income tax accordingly and the agent shall make returns and pay tax accordingly.

PART 6A

TAX DEDUCTIONS BY EMPLOYERS

113A Application of this Part

(1) This Part shall apply notwithstanding anything in any other Part.

(2) This Part shall apply to salary or wages for any period on or after 1 April 1984 and to other source deduction payments which are paid or would normally be paid on or after that date, notwithstanding that any such other source deduction payment may as to the whole or any part thereof be for a period before that date.

(3) If any question is raised as to whether or not a source deduction payment is as to the whole or any part of it subject to this Part, it shall be determined by the Treasurer whose decision shall be final.

(4) The amount of income tax for which an employee is liable in respect of the income earned by him in any income year shall be assessed under Part 5.

113B Tax deductions to be made by employers

For the purpose of enabling the collection of income tax from employees by instalments, where an employee receives a source deduction payment from an employer, the employer or other person by whom the payment is made shall, at the time of making the payment, make a tax deduction therefrom under this Part.

113C Amount of tax deductions

- (1) (a) The Treasurer shall issue tables based on the tax rates specified in this Act detailing the tax deductions that shall be made from every payment of salary and wages according to the amount of the payment the length of the pay period and the tax code of the employee; and every employer shall make tax deductions from every payment of salary or wages accordingly.
 - (b) No tax deduction need be made from any source deduction payment made to any employee in respect of his employment as a private domestic worker.
 - (c) If a tax deduction is not made by the employer in any such case section 113J shall apply to the employee.
- (2) Where the source deduction payment is being made in respect of an employee who has not made a declaration for the purposes of the tax code the basic tax deduction shall be the appropriate amount that would be deducted if the tax code of the employee were 'S'.

113D Tax codes

For the purpose of this Part the tax code of any employee in relation to any source deduction payment shall be such one of the following codes as applies to the employee namely –

- “no declaration”, signifying an employee who has not delivered to the employer a tax code declaration;
- “s”, signifying an employee who has no dependants;
- “s+()”, signifies an employee who has a dependant relative or dependant relatives where the number in brackets signifies the number of dependant relatives;
- “SEC”, signifies an employee who undertakes secondary employment in addition to primary employment.

113E Dependants

- (1) This section shall apply for the purpose of determining the tax code applicable to an employee.
- (2) The spouse of the employee shall be deemed to be a dependant of the employee for the purposes of the tax code based on a tax code declaration which includes the spouse as a dependant if –
 - (a) The marriage has subsisted at any time during the year in which the employee delivers the tax code declaration to the employer or to the Treasurer, and the spouse has been supported by the employee at any time during that year; and
 - (b) The spouse has not in the year in which the tax code declaration is delivered derived income in excess of \$624; and
 - (c) When the tax code declaration is delivered the employee anticipates that the income as aforesaid already derived and to be derived by the spouse in that year will not exceed in the aggregate \$624.
- (3) A spouse who under subsection (2) is a dependant of an employee for the purposes of any tax code shall cease to be such a dependant if and when, before the tax code ceases to apply to the employee, the employee knows or anticipates, or should have known or anticipated, that the income as aforesaid derived and to be derived by the spouse in the year aforesaid has exceeded or will exceed \$724.

(4) A housekeeper shall be deemed to be a dependant of the employee for the purposes of the tax code based on a tax code declaration which includes the housekeeper as a dependant if, when the employee delivers the declaration to the employer or to the Treasurer, the employee anticipates that the aggregate amount of the payments to be made, during the year in which the tax code declaration is delivered, in respect of the services of a housekeeper or housekeepers will be not more than \$300.

(5) A housekeeper who under subsection (4) is a dependant of an employee for the purposes of any tax code shall cease to be a dependant if and when, before the tax code ceases to apply to the employee, the employee knows or anticipates or should have anticipated that the aggregate amount of the payments as aforesaid to be made during the year aforesaid will be more than \$300.

(6) A dependant relative as defined by section 45 shall be deemed to be a dependant of the employee for the purposes of the tax code based on a tax code declaration which includes the dependant relative as a dependant if, when the employee delivers the declaration to the employer or to the Treasurer, the employee anticipates that the dependant relative will qualify within the terms of section 45 as a dependant relative.

(7) A dependant relative who under subsection (6) is a dependant of an employee for the purposes of any tax code shall cease to be a dependant if and when before the tax code ceases to apply to the employee, the employee knows or anticipates or should have anticipated that the dependant relative does not qualify as a dependant relative within the terms of section 45.

(8) Except as provided in this section, no person shall be deemed to be a dependant of an employee.

113F Tax code declaration

(1) Every employee shall at the commencement of his employment complete a tax code declaration on the form prescribed by the Treasurer and deliver the completed tax code declaration to his employer. The tax code as determined by the particulars on that declaration shall be applied by the employer to that employee for the purposes of this Part.

(2) Where the circumstances of the employee change such that the employee ceases to be entitled to use the tax code based on his tax code declaration or the employee is entitled to use another tax code he shall within 7 days of such change in circumstances deliver to his employer another tax code declaration in a form authorised by the Treasurer. The tax code as determined by the particulars on the new declaration shall apply thereafter to the employee unless the tax declaration is again changed by the employee under this section.

(3) Notwithstanding subsections (1) and (2) the Treasurer may in such circumstances and to the extent that he thinks fit reduce or increase the amount of any tax deduction required to be made from the source deduction payment of any employee or class or classes of employees and the employer or the employers of such an employee or employees shall make deductions accordingly.

113G Tax deductions to be credited to individual

(1) Every employee who is required to furnish or who furnishes to the Treasurer a return of any assessable income derived by him in any income year shall except where the Treasurer otherwise directs, forward to the Treasurer with the return all tax deduction certificates delivered to the employee in respect of tax deductions made in the income year from source deduction payments made to the employee.

(2) The Treasurer shall apply the total amount of the tax deductions shown on the certificates forwarded under subsection (1) in payment successively of –

- (a) The income tax (if any) payable by the employee in respect of his income for the income year;
- (b) The income tax (if any) due by the employee and unpaid in respect of previous income years;

and shall refund to the employee an amount equal to the amount of the tax deductions not so credited.

(3) If the Treasurer has reason to believe that any tax deduction certificate received by him under this section is incorrect no action under subsection (2) shall be taken by the Treasurer until he is satisfied that the certificate is correct.

(4) The employer and the employee shall be liable jointly for any error in the amount shown in the tax deduction certificate which results in the crediting of, or refund of income tax in excess of the amount that the employer had actually deducted from a source deduction payment to which the certificate relates, and the amount of the excess shall be payable by 31 January in the succeeding income year.

113H Contribution to superannuation funds

(1) Where an employee is a contributor to a superannuation fund, the amount of the salary or wages paid to the employee for a pay period shall, for the purpose of calculating the amount of the tax deduction be deemed to be the residue of the payment of salary and wages after subtracting therefrom the amount of the regular current contributions made by the employee to the superannuation fund for that period.

(2) The maximum amount subtracted as provided for in this section shall not exceed \$30.76 in any fortnightly pay period with a corresponding limitation for other periods.

113I Tax deduction from amounts credited to or applied for employees

Where a source deduction payment, though not actually paid, is credited to or applied on account of any employee entitled to it, the amount so credited or applied shall, for the purposes of this Part be deemed to be paid when it is so credited or applied and a tax deduction in respect of it shall be made accordingly.

113J Employee to pay deductions to Treasurer

Where for any reason a tax deduction is not made or is not made in full at the time of the making of any source deduction payment or payments, the employee shall –

- (a) Not later than the 20th day of the month next after the month in which payment of the source deduction payment or payments were made, furnish to the Treasurer a return in the prescribed form of the source deduction payment or payments; and
- (b) Unless the employee is exempted from liability to pay the same or is not liable to pay the same, pay to the Treasurer an amount equal to the total of the tax deductions that should have been made and were not made, and that amount shall be due and payable to the Treasurer on the 20th day of the month next after the month in which payment of the source deduction payment or payments was made.

113K Records to be kept by employer

(1) Every employer who makes a source deduction payment to any employee shall keep a proper record in respect of the employee showing the amount of the source deduction payment before making any tax deduction, and the amount of the source deduction (if any) made from it, and shall enter these amounts in the record at the time of making the source deduction payment.

(2) Every employer shall take all reasonable precautions for the safe custody of all records that he is required to keep under this section, and of all pay sheets, receipts for source deduction payments, tax deduction certificates, tax code declarations, and tax code certificates, and shall retain all such records, pay sheets, receipts, tax code declarations, and tax code certificates for not less than 7 years after the making of the payments to which they relate except and to the extent that he is required by this Act to deliver to the Treasurer the signed tax deduction certificates tax code declarations, and tax code certificates.

(3) This section shall not require retention of any records, pay sheets, receipts, tax code declarations, or tax code certificates in respect of which the Treasurer has notified the employer that retention is not required.

113L Payment of tax deductions to Treasurer

Every employer who makes tax deductions from source deduction payments made to employees shall –

- (a) Not later than the 20th day of the month next after the month in which he has made any such deductions, pay to the Treasurer the amount of the tax deductions and deliver to the Treasurer a monthly remittance certificate in a form authorised by the Treasurer and showing the total amount of all source deduction payments made by the employer to employees in the month before making any tax deductions, and the total amount of all tax deductions made from those payments;
- (b) Not later than 31 May in each year, deliver to each employee a tax deduction certificate signed by the employer, being a certificate in a form authorised by the Treasurer and showing the total amount of all source deduction payments made by the employer to the employee in the preceding year (not including payments included in a tax deduction certificate previously delivered to the employee), and the total amount of the tax deductions made from this payments together with such other information as the Treasurer may from time to time prescribe;
- (c) Not later than 31 May in each year deliver to the Treasurer a reconciliation statement signed by the employer, being a certificate in a form authorised by the Treasurer and showing the total amount of all tax deductions paid to the Treasurer by the employer in respect of source deduction payments made in the preceding year, and the total amount of all tax deductions shown in tax deduction certificates delivered to employees in respect of those source deduction payments, together with an explanation if the two totals do not agree, and, accompanied by signed copies of all those tax deduction certificates delivered to him in the preceding year, and by all notices cancelling relevant deductions given to him in that year under section 113F.

113M Tax deductions protected from creditors

The amount of every tax deduction made under this Part shall be held in trust for the Crown; and any amount so held in trust shall not be the property of the employer, and, in the event of the bankruptcy or liquidation of the employer or of an assignment for the benefit of the employer's creditors, shall remain apart, and form no part of the estate in bankruptcy, liquidation or assignment.

113N Employers who fail to make tax deductions

(1) Where an employer fails to make any tax deduction in accordance with his obligations under this Part, the amount in respect of which default has been made shall constitute a debt payable by the employer to the Treasurer on the 20th day of the month next after the month in which payment of the source deduction payment should have been made.

(2) The right of the Treasurer to recover from the employer the amount in respect of which default has been made shall be in addition to any right of the Treasurer to recover that amount from the employee under this Part and nothing in this Part shall be construed as preventing the Treasurer from taking such steps as he thinks fit to recover that amount from the employer and from the employee concurrently, or from recovering that amount wholly from the employer or from the employee or partly from the employer and partly from the employee.

(3) Where any amount, including a penalty, recoverable under this Part from the employee is in fact paid by the employer, the amount so paid may be recovered by the employer from the employee.

113O Additional tax for default in making tax

(1) Where –

- (a) Any employer or other person by whom any source deduction payment is made fails wholly or in part to make tax deduction therefrom his obligations under this Part; or
- (b) Any person who has made a tax deduction fails wholly or in part within the prescribed time and in the prescribed manner to pay the amount of the tax deduction to the Treasurer; or
- (c) Any person who is liable to pay any amount to the Treasurer under this Part fails to pay the amount on the due date for payment of it –

that employer or other person shall, unless the Treasurer is satisfied that he has not been guilty of wilful neglect or default, be liable, without conviction, in addition to any other penalty to which he may be liable, to a penalty equal to 10 percent of the amount in respect of which default has been made.

(2) For the purposes of subsection (1) (b) a tax deduction shall be deemed to have been made if and when payment is made of the net amount of any source deduction payment.

(3) A penalty imposed under this section shall for all purposes be deemed to be of the same nature as the amount or part of it in respect of which it is imposed, and shall be recoverable accordingly.

(4) Subject to this Part, the other Parts shall apply with respect to the amount of every penalty imposed under this section as if it were additional tax under section 116 and as if the person liable to the penalty were the taxpayer.

113P Offences

- (1) Every person commits an offence against this Act who –
 - (a) Being an employer or other person by whom a source deduction payment is made to an employee, fails wholly or in part to make a tax deduction therefrom under his obligations under this Part; or
 - (b) Knowingly applies or permits to be applied the amount of any tax deduction or any part of it for any purpose other than the payment of the tax deduction to the Treasurer;
 - (c) Makes a false or misleading tax code declaration, or gives any false information, or misleads or attempts to mislead the Treasurer or any other officer, or any employer or other person, in relation to any matter or thing affecting a tax deduction or a reduced deduction; or
 - (d) Delivers or maintains or attempts to deliver or maintain, in contravention of this Part, a tax code declaration or a tax code certificate in respect of more than one employment, or otherwise obtains or attempts to obtain, in contravention of this Part, the benefit of a reduced deduction in respect of more than one employment; or
 - (e) Alters any tax code certificate or special tax code certificate issued by the Treasurer, or falsely pretends to be the employee named in any such certificate, or has in his possession, without lawful justification or excuse, a colourable imitation of any such certificate or, in contravention of this Act, causes or attempts to cause any employer or other person to refrain from making a tax deduction, or to make a reduced deduction, by the production of any document other than a tax code certificate or a special tax code certificate issued to him by the Treasurer and for the time being in force; or
 - (f) Alters any tax deduction certificate, or falsely pretends to be the employee named in any such certificate, or, in contravention of this Act, obtains or attempts to obtain for his own advantage or benefit credit with respect to, or a payment of, the whole or any part of the amount of a tax deduction made from a source deduction payment received by another person.
- (2) Every person who commits an offence against this section shall be liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding 5 penalty units or to both.
- (3) For the purposes of this section a tax deduction shall be deemed to have been made if and when payment is made of the net amount of any source deduction payment, and the amount of the tax deduction shall be deemed to have been applied for a purpose other than the payment thereof if the amount of the tax deduction is not duly paid to the Treasurer.
- (4) No person shall be convicted of an offence under this section if he satisfies the Court that the failure to comply with the requirements of the section was due to illness, accident or other cause beyond his control.

113Q Application of other provisions to this Part

Subject to this Part, the other Parts shall apply with respect to every amount that any employer, employee or other person is liable to account for or pay to the Treasurer under this Part as if the amount were income tax.

113R Withholding payments

Every taxpayer who receives payment for services rendered as a self employed contractor to the Government shall have 10 percent of the total account to be paid to the contractor withheld and paid to the Treasurer as a withholding payment contributed towards the total tax payable by the contractor in respect of his income in that income year.

PART 7**PAYMENT AND RECOVERY OF TAX****114 Due date for payment of tax**

(1) Income tax shall, except where expressly made payable in any other manner by this Act, be due and payable immediately a notice of assessment purporting to be signed by the Treasurer has been given to the taxpayer or on such later date as may be fixed by the Treasurer in the said notice.

(2) In any case where a notice of assessment in respect of any year has not been issued, and the delay is, in the opinion of the Treasurer, due to any neglect, default or omission of the taxpayer, then the Treasurer when issuing such notice of assessment, may fix a date which may be before the date of issue of such assessment, which shall be considered to be the date on which the tax payable under that assessment became due and payable.

115 Payment of tax

Payment of taxes and other moneys payable under this Act shall be effected at the Treasury.

115A Payments of tax

(1) There shall be payable by taxpayers who are in receipt of a sufficient level of remuneration by way of salary or wages to render them liable for income tax, such sum as the Treasurer by notice in writing in form numbered 1 set out in Schedule 3 may direct, a regular sum by way of deduction from salary or wage, at such time or at such intervals as the notice specifies, not exceeding twenty per cent of the gross salary or wage, for the purpose of providing for payment of tax assessed in each tax year.

(2) The Treasurer may by notice in writing, in the form numbered 2 in Schedule 3 require any person to deduct from any amount payable to a taxpayer by way of salary or wage such sum as may be specified in the notice, and to pay every sum so deducted to the Treasurer for the credit of the taxpayer at such time or at such intervals as may be specified in the notice.

(3) This section shall bind the Crown.

(4) (a) Such sums as are paid to Treasury by employers under subsections (1) to (4) shall be credited to an account in the name of each individual taxpayer, and shall be used only for the purpose of meeting the whole or part of the tax assessed in any year in respect of that taxpayer.

(b) The individual record of a taxpayer will be available for perusal by that taxpayer on request in person during normal working hours, but may not be removed from Treasury.

(5) (a) The sums so deducted shall be deemed to be deposits within the meaning of section 12(a) Public Revenues Act 1959, but may not be withdrawn until the tax for the year has been assessed and become due and payable in terms of section 114 of this Act and will not earn interest.

- (b) In the event of the amount to the credit of a taxpayer's account exceeding the amount of tax assessed and payable in terms of section 114 of this Act, a refund may be due to the taxpayer provided a surplus remains after taking into account deposits which have been lodged since 1 April in any tax year, as these deposits would be in respect of a new tax year and therefore not refundable.
 - (c) If a balance remains to the credit of a taxpayer's account after a final tax assessment has been paid prior to the taxpayer leaving the country, then such balance would be immediately refundable.
- (6) Every person commits an offence and shall be liable on conviction to a fine not exceeding 2 penalty units who –
- (a) Fails to make any deduction required by a notice under this section to be made from any amount payable by him to a taxpayer;
 - (b) Fails after making any such deduction to pay the sum deducted to the Treasurer within the time specified in that behalf in the notice.

116 If default, additional tax to be charged

(1) Subject to this section, if any tax remains unpaid at the expiration of one month after the due date of it (whether already assessed or not), or after the date of demand, as the case may be, five per cent on the amount of the tax unpaid shall be and be deemed to be added to it by way of additional tax, and shall be payable accordingly.

(2) In any case in which an assessment is increased after the due date of tax, and the Treasurer is satisfied that the taxpayer has not been guilty of wilful neglect or default in making due and complete returns for the purposes of that tax the Treasurer shall in his notice to the taxpayer of the assessment or amended assessment, or in any subsequent notice, fix a new date for the payment of the tax, or of the increase, as the case may be, and the date so fixed shall be deemed to be the due date of that tax or increase for the purposes of subsection (1).

(3) Where the taxpayer is resident beyond Niue and has no agent in Niue the Treasurer shall, before charging the additional tax as aforesaid, grant such further time, not exceeding 6 months after the due date of the tax, as he may deem necessary.

(4) An application for relief made in writing by or on behalf of any taxpayer who has become liable for the payment of any additional tax under subsections (1)-(3), the Treasurer, if having regard to the circumstances of the case thinks it equitable so to do, may, subject to this section, grant relief to the taxpayer –

- (a) By the remission of the whole or part of such additional tax; or
- (b) Where such additional tax has been paid in whole or in part, by the refund to the taxpayer of the whole or any part of such tax that has been paid, with or without the remission of any part of such additional tax that has not been paid.

(5) No amount of tax in excess of \$200 shall be remitted or refunded in any year under this section except with the approval of Cabinet.

117 Mode of recovery of unpaid tax

All unpaid tax shall be recoverable by the Treasurer on behalf of the Government by suit in the name of the Treasurer as a debt in the High Court.

118 Deduction of income tax from payment due to defaulters

(1) Where any taxpayer has made default in the payment of any income tax payable by him for any year of assessment, the Treasurer may by notice in writing require any person to deduct from any amount payable or to become payable by that person to the taxpayer such sum as may be specified in the notice, and to pay every sum so deducted to the Treasurer to the credit of the taxpayer within such time as may be specified in the notice.

(2) This section shall bind the Crown.

(3) Where any notice under this section relates to any wages or salary, the sums required to be deducted therefrom shall be computed so as not to exceed a deduction at the rate of one-twentieth per week of the tax due and payable by the taxpayer at the date of the notice, or at the rate of 20 per cent of the wages or salary, whichever rate is the less.

(4) Any notice under this section may be at any time revoked by the Treasurer by a subsequent notice to the person to whom the original notice was given (herein referred to as the debtor), and shall be so revoked at the request of the taxpayer at any time when the Treasurer is satisfied that all income tax then due and payable by the taxpayer has been paid, and that the Treasurer holds to the credit of the taxpayer an amount not less than the amount of the income tax (if any) to become due and payable by him during the then current year of assessment.

(5) A copy of every notice given under this section in respect of any taxpayer and of the revocation of any such notice shall be given to the taxpayer by the Treasurer.

(6) Whenever pursuant to a notice under this section any deduction is made from any amount payable to any taxpayer the taxpayer shall be entitled to receive from the debtor a statement in writing of the fact of the deduction and of the purpose for which it was made.

(7) The sum deducted from any amount under a notice under this section shall be deemed to be held in trust for the Crown, and, without prejudice to any other remedies against the debtor or any other person, shall be recoverable in the same manner in all respects as if it were income tax payable by the debtor.

(8) Every person commits an offence and shall be liable on conviction to a fine not exceeding 2 penalty units who –

- (a) Fails to make any deduction required by a notice under this section to be made from any amount payable by him to a taxpayer;
- (b) Fails after making any such deduction to pay the sum deducted to the Treasurer within the time specified in that behalf in the notice.

119 Procedure where defendant absent

In any action in the Court for the recovery of tax, if the defendant is absent from Niue or cannot after reasonable inquiry be found, service of the summons may with the leave of a Judge be affected by posting a duplicate or sealed copy thereof in a letter addressed to the defendant at his present or last known place of abode or business, whether in Niue or elsewhere.

120 Particulars of claim or demand

In an action in any court for the recovery of tax it shall be sufficient if the particulars of claim or demand state the amount sought to be recovered and the date on which same became payable, and such further particulars (if any) as the Treasurer thinks necessary in order fully to inform the defendant of the nature of the claim.

121 Collector may appear in legal proceedings by officer of the public service

In all proceedings in the Court on objection to an assessment of tax, and in any action in the Court for the recovery of tax, the Treasurer and Collector of Inland Revenue may, if either thinks fit, appear by some officer in the public service, and the authority in writing of the Treasurer or the Collector stating that any person so appearing is such an officer and that he appears for them shall be sufficient evidence of the facts so stated and on his authority in that behalf.

122 Costs against Treasurer

In all proceedings in any court for the recovery of tax, costs may be awarded to or against the Treasurer in the same manner as in other cases.

123 Proceedings not affected by vacancy or change in office of Treasurer

No action instituted by the Treasurer for the recovery of tax, and no proceedings on objection to an assessment of tax, shall abate by reason of any vacancy in the office of the Treasurer, or shall be deemed defectively constituted by reason of any change in the holder of that office, and every such action or proceeding shall be continued in the ordinary course as if the Treasurer and his successors in office were a corporation sole.

124 Crown Proceedings Act not affected

Nothing in this Act shall be so construed as to limit or affect the operation of the Crown Proceedings Act 1950 and all rights and remedies conferred upon the Crown in respect of the Government by that Act and by this Act shall co-exist, and may be exercised independently of one another, and tax may be recovered accordingly.

125 Recovery of tax paid by one person on behalf of another

Every person who under this Act pays any tax for or on behalf of any other person shall be entitled to recover the same from that other person as a debt, or to retain or deduct the same out of or from any money which is or becomes payable by him to that other person; and if he has paid the same as mortgagee, then, until repaid, it shall be deemed to form part of the moneys secured by the mortgagee and shall bear interest at the same rate accordingly.

126 Payment of income tax by persons leaving Niue

(1) Upon the application of any person about to leave Niue, if the Treasurer is satisfied –

- (a) That the person is not liable to pay any income tax; or
- (b) That all income tax payable by that person has been paid; or
- (c) That satisfactory arrangements have been or will be made for the payment of all income tax that is or may become payable by that person –

the Treasurer shall issue a certificate to the effect that that person is not under any liability for income tax requiring to be discharged before he leaves Niue.

(2) Every certificate under this section shall remain in force for such period or until such date as may be specified in that behalf in the certificate.

(3) No ticket or other authority to travel from Niue by any ship or aircraft shall be issued to or in respect of any person by the owner or charterer, or by any representative or employee of the owner or charterer, of the ship or aircraft nor shall any person be permitted to sign on or be engaged as a member of the crew of any ship or aircraft leaving Niue unless and until a certificate issued under this section in respect of that person and not expiring before the date of the departure

of the ship or aircraft from Niue is presented to the owner or charterer, or to his representative or employee.

(4) On the first working day after the departure of any ship or aircraft from any port or place at which it takes on board passengers or crew for any destination beyond Niue, the owner or charterer of the ship or aircraft or the representative or employee of the owner or charterer at that port or place shall deliver or forward by post to the Treasurer all certificates so presented by persons travelling by the ship or aircraft, together with a list showing the names and last known address in Niue of every person who so travelled (not including, unless the Treasurer in any case otherwise requires, any member of the crew of or staff of the ship or aircraft not signing on or being engaged as a member of the crew at that port or place).

(5) If any person travels from Niue by any ship or aircraft under a ticket or other authority issued at any port or place or signs on or is engaged as a member of the crew in contravention of this section, the owner or charterer and the representative or employee (if any) of the owner or charterer at that port or place shall be personally liable jointly and severally to pay the amount of income tax (if any) that is or may become due and payable by that person in respect of income derived in the income year in which he leaves Niue or in any earlier year.

(6) Every person who acts in contravention of or fails to comply with this section or who makes a false declaration or furnishes false information for the purpose of obtaining a certificate or who having obtained a certificate transfers it to any other person, commits an offence against this Act.

PART 8 PENALTIES

127 **Penalty for failure to furnish returns**

(1) Every person who –

- (a) Refuses or fails to furnish any return or information as and when required by this Act or by the Treasurer; or
- (b) Wilfully or negligently makes any false return, or gives any false information, or misleads or attempts to mislead the Treasurer, in relation to any matter or thing affecting his own or any other person's liability to taxation; or
- (c) Refuses or fails without lawful justification to duly attend and give evidence when required by the Treasurer, or to truly and fully answer any question put to him or to produce any book or paper required of him; or
- (d) Obstructs any officer acting in the discharge of his duties or in the exercise of his powers under this Act; or
- (e) Commits any other breach of this Act for which no other penalty is expressly provided; or
- (f) Aids, abets, or incites any other person to commit any offence against this Act –

commits an offence against this Act and is liable to a fine not exceeding 2 penalty units.

(2) In any proceedings against a person for refusing or failing to furnish any return or information as and when required by the Act, or by the Treasurer, a certificate in writing signed by the Treasurer certifying that the return or information so required has not been received from that person at the place where or by the person to whom the return or information should have been furnished, shall, in the absence or proof to the contrary, be sufficient evidence that the defendant has refused or failed to furnish the return or information.

128 Fines recoverable

All fines under this Act shall be recoverable by way of prosecution in the Court and only upon the information of the Treasurer, or of some person authorised in writing by the Treasurer in that behalf; and the signature of the Treasurer to any warrant of authority under this section shall be judicially noted.

129 Information may be laid within ten years

Notwithstanding anything in any other Act to the contrary any information in respect of any time within 10 years after the termination of the year in which the offence was committed.

130 Penal tax in case of evasion

If any taxpayer evades, or attempts to evade, or does any act with intent to evade, or makes default in the performance of any duty imposed upon him by this Act with intent to evade, the assessment or payment of any sum which is or may become chargeable against him by way of tax (which sum is hereinafter referred to as the deficient tax) he shall be chargeable, by way of penalty for that offence, with additional tax (penal tax) not exceeding an amount equal to the amount of the deficient tax.

131 Nature of penal tax

Subject to this Part penal tax shall for all purposes be deemed to be tax of the same nature as the deficient tax, and shall be deemed to be payable in and for the same year of assessment as the deficient tax.

132 Assessment of penal tax

The penal tax shall be assessed by the Treasurer in the same manner, so far as may be, as the deficient tax, but separately from it.

133 Objections to penal tax

(1) Any such assessment of penal tax shall be subject in the same manner as any other assessment of tax, to objection on the ground that the person so assessed is not chargeable with penal tax, or on the ground that the amount so assessed is excessive.

(2) All the provisions of this Act as to objections shall apply to an objection to an assessment of penal tax, save that the burden of proving the offence in respect of which penal tax is chargeable shall lie upon the Treasurer.

134 Recovery of penal tax

An assessment of penal tax may be made and the tax so assessed shall be recoverable at any time whether before or after the deficient tax has been assessed or become assessable or payable, or has been paid.

135 Recovery of penal tax from executors or administrators

(1) Penal tax shall be assessable against and recoverable from the executors or administrators of a deceased taxpayer, but, if so assessed, the amount of it shall be recoverable only as a debt incurred by the deceased in his lifetime.

(2) No penal tax shall be recoverable from any person other than the taxpayer himself, or his executors or administrators.

136 Amendment of assessment of penal tax

An assessment of penal tax may be amended in the same manner as any other assessment.

137 Limitation of time for assessment of penal tax

No assessment of penal tax shall be made or increased at any time after the expiration of 10 years after the year of assessment of the deficient tax.

138 Recovery of penal tax not affected by conviction of taxpayer

The assessment of recovery of penal tax in respect of any offence shall not be in any manner barred or affected by the fact that the taxpayer has been convicted under this Act of the same or any other offence; but no person who has paid the penal tax assessed against him for any offence shall be thereafter convicted of the same offence.

PART 9

GENERAL

139 Treasurer to have power to inspect books and documents

(1) Notwithstanding anything to the contrary in any other Act, the Treasurer or any officer of the Government authorised by him in that behalf shall at all times have full and free access to all books and documents, whether in the custody or under the control of a public officer or a body corporate or any other person whatsoever, for the purpose of inspecting any books and documents which the Treasurer or officer considers necessary or relevant for the purpose of collecting any tax or duty which the Treasurer is authorised to collect, or considers likely to provide any information otherwise required for any such purpose, and may, without fee or reward, make extracts from or copies of any such books or documents.

(2) The Treasurer or any officer of the Government authorised by him in that behalf, may for the purposes of any investigation under this section require the owner or manager of any property or business, to give him all reasonable assistance in the investigation and to answer all proper questions relating to any such investigation either orally, or, if the Treasurer or officer so requires, in writing, or by statutory declaration, and for that purpose may require the owner or manager or, in the case of a company, any officer of the company to attend at the premises with him.

140 Information to be furnished on request of Treasurer

(1) Every person (including any officer employed in or in connection with any department of the Government or by any public authority, and any other public officer) shall, if required by the Treasurer or by any officer of the Government authorised by him in that behalf furnish in writing any information and produce any books and documents which the Treasurer or officer considers necessary or relevant for any purpose relating to the administration or enforcement of this Act or any other Act administered by the Treasurer, and which may be in the knowledge, possession, or control of that person.

(2) Without limiting subsection (1) it is hereby declared that the information in writing which may be required under this section shall include lists of shareholders of companies, with the amount of capital contributed by and dividends paid to each shareholder, copies of balance sheets and of profit and loss accounts and other accounts and statements of assets and liabilities of any person.

(3) The Treasurer or any officer of the Government authorised by him in that behalf may require that any written information or particulars furnished under this section shall be verified by statutory declaration or otherwise.

141 Inquiry before a Judge or Commissioner of the High Court

(1) In any case in which the Treasurer deems it necessary to hold an inquiry for the purpose of obtaining any information with respect to the liability of any person for any tax or duty which the Treasurer is authorised to collect or any other information required for the purposes of the administration or enforcement of this Act or any other Act administered by the Treasurer, he may apply in writing to a Judge or Commissioner of the High Court to hold an inquiry under this section.

(2) For the purposes of any such inquiry the Judge or Commissioner of the High Court may summon before him and examine on oath touching any matter which is relevant to the subject matter of the inquiry, all persons whom the Treasurer or any other person interested requires to be so called and examined.

(3) The Judge or Commissioner of the High Court shall have all such jurisdiction and authority touching the summoning and examination of any such person as he would have in respect of a witness in a civil action within his ordinary jurisdiction and the person so summoned and examined shall, subject to this Act, have all such rights and be subject to all such liabilities as he would have and be subject to if he were such a witness as aforesaid.

(4) (a) The Treasurer and every person who is interested in the subject matter of the inquiry may be represented by a barrister or solicitor, or, with the leave of the Court, by any other person, who may examine, cross-examine and re-examine under the ordinary practice, any person so summoned.

(b) Every person so summoned may be cross-examined by the Treasurer or by the Treasurer's barrister or solicitor.

(5) Every examination under this section shall take place in chambers.

(6) The statement of every person so examined shall be taken down in writing and signed by him in the presence of the Judge or Commissioner of the High Court and delivered to the Treasurer and shall not form part of the records of the Court.

(7) No person summoned or examined under this section shall be excused from answering any question on the ground that the answer may incriminate him or render him liable to any penalty or forfeiture.

(8) No statement made by any such person in answer to any question put to him shall in criminal proceedings be admissible in evidence against him, except upon a charge of perjury against him in respect of his testimony upon that examination.

(9) A person summoned under this section may receive such sum on account of travelling expenses and loss of time as the Judge or Commissioner of the High Court thinks reasonable and orders accordingly.

142 Inquiry by Treasurer

(1) The Treasurer may, for the purpose of obtaining any information with respect to the liability of any person for any tax or duty which the Treasurer is authorised to collect or any other information required for the purposes of the administration or enforcement of any Act administered by the Treasurer, by notice in writing, require any person to attend and give evidence before him or before any officer of the department authorised by him in that behalf and to produce all books and documents in the custody or under the control of that person which contain or which the Treasurer or the authorised officer considers likely to contain any such information.

(2) The Treasurer may require any such evidence to be given on oath and either orally or in writing.

(3) If any person required to give evidence under this section refuses or wilfully neglects to appear before the Treasurer or authorised officer or to take an oath as witness or if any person being sworn as a witness at any such inquiry refuses or wilfully neglects to answer any question put to him touching the subject matter of the inquiry or to produce to the Treasurer or authorised officer any such documents as aforesaid, that person shall be liable on conviction to a fine not exceeding 2 penalty units.

(4) If any person wilfully gives false evidence at any inquiry under this section he shall be guilty of perjury within the meaning of the Niue Act 1966.

(5) A person required to attend before the Treasurer or an authorised officer may receive such sum on account of travelling expenses and loss of time as the Treasurer thinks reasonable and orders accordingly.

143 Offences

(1) Every person commits an offence against sections 139 to 142 who –

- (a) Acts in contravention of, or, without lawful justification or excuse, fails to comply in any respect with any provision of those sections or any requirement imposed thereunder;
- (b) Wilfully deceives or attempts to deceive the Treasurer or any officer of the department in the exercise of any powers or function under those sections;
- (c) With intent to deceive makes any false or misleading statement or any material omission, in any information given to the Treasurer or any officer of the department for the purposes of those sections.

(2) Every person who commits an offence against any one of sections 139 to 142 for which no other penalty is prescribed shall be liable on conviction to a fine not exceeding 1 penalty unit.

144 Keeping of business records

(1) Subject to subsection (2) every person carrying on business or deriving income other than salary or wages shall keep sufficient records in the English or Niuean language to enable his assessable income and allowable deductions to be readily ascertained by the Treasurer or any officer authorised by him in that behalf and shall retain all such records so kept.

(2) This section shall not require the retention of any records –

- (a) In respect of which the Treasurer has notified the taxpayer in writing that retention is not required;
- (b) Of a company which has been wound up and finally dissolved.

(3) For the purposes of this section “records” includes books of account recording receipts or payments or income or expenditure or purchases or sales, and also includes vouchers, invoices, receipts, and such other documents as are necessary to verify the entries in any such books of account and in the case of an agent, records of all transactions carried out on behalf of his principal.

(4) Every person who fails to comply with this section commits an offence.

145 Employers to make returns as to employees

Every person shall from time to time, as required by the Treasurer, make a return of all persons employed by him during any year, and of all salaries, wages, allowances and other emoluments received during that year by each person so employed.

146 Return of interest paid on deposits

Every bank, local or public authority or other company or person who in the course of business holds money by way of deposit and allows interest thereon shall from time to time, as required by the Treasurer, make a return of all interest so allowed during the year or other period to which the requisition of the Treasurer relates, together with the names, addresses, and occupations of the person to whom such interest has been allowed.

147 Returns as to debentures and interest thereon

Every company or local or public authority shall as required by the Treasurer make a return giving such particulars as the Treasurer requires relative to debentures issued by that company or local or public authority the holders thereof, and the interest paid or payable on it.

148 Excess tax may be repaid within four years

(1) In any case where the Treasurer is satisfied that tax has been paid in excess of the amount properly payable he shall advise the person concerned of the excess payment and shall refund the amount paid in excess if written application for the refund is made by or on behalf of the taxpayer –

- (a) In any case where the assessment of the tax has not been altered, within 4 years after the end of the year in which the assessment was made;
- (b) In any case where the original assessment has been altered (whether once or more than once), within 4 years after the end of the year in which the original assessment was made.

(2) In any case where an assessment has been altered so as to increase the amount of tax payable and the Treasurer is satisfied that by reason of that alteration tax has been paid in excess of the amount properly payable, he shall advise the person concerned of the excess payment and shall refund the amount so paid in excess by reason of that alteration if written application for the refund is made by or on behalf of the taxpayer within 4 years after the end of the year in which the alteration was made, notwithstanding that the application may be made after the time allowed by subsection (1).

149 In cases of serious hardship Treasurer may grant relief to taxpayer

(1) In any case where it is shown to the satisfaction of the Treasurer –

- (a) That any taxpayer has suffered such loss or is in such circumstances that the exaction of the full amount of the tax has entailed or would entail serious hardship; or
- (b) That, owing to the death of any person who if he had not died would have been liable to pay tax, the dependants of that person are in such circumstances that the exaction of the full amount of the tax has entailed or would entail serious hardship –

he may, subject to this section, release the taxpayer or the executor or administrator of the deceased taxpayer (as the case may be) wholly or in part from his liability, and may make such alterations in the assessment as are necessary for that purpose, and may if the tax as previously assessed or any part of it has been already paid, refund any tax paid in excess of the amount of the assessment as altered under this section.

(2) No amount of tax in excess of under \$200 shall be remitted or refunded in any one year under this section except with the approval of Cabinet.

150 Agreements purporting to alter incidence of taxation to be void

Every contract, agreement, or arrangement shall be absolutely void in so far as directly or indirectly it has or purports to have the purpose or effect of in any way altering the incidence of income tax, or relieving any person from his liability to pay such tax.

151 Debentures issued free of income tax

(1) Nothing in section 150 shall be so construed as to render void any contract, agreement, or arrangement made or entered into by any company to the effect that the interest on any debentures issued by that company shall be free of income tax; and all such contracts, agreements and arrangements are hereby declared to be valid and effective in accordance with this section unless the company is expressly or impliedly prohibited, by its memorandum or articles of association from making or entering into any such contract, agreement or arrangement.

(2) Where any debentures issued by a company purport to be issued free of income tax the company shall be liable for the payment of the income tax payable in respect of it, and the debenture-holders shall be entitled to receive the full amount of interest payable under the debentures.

152 Extension of time

Notwithstanding this Act where any person within Niue is residing temporarily or permanently on some island other than Niue, and by reason of a lack of or a delay in air and sea communication between that island and Niue, is unable to assert his rights or to fulfil his obligations under this Act within the proper time, then the Treasurer shall have power to grant the said taxpayer such further extension or extensions of time as the Treasurer may deem necessary.

153 Airlines liable for taxation

Provision is hereby made for the introduction of a tax at the discretion of and at a rate to be determined by Cabinet, to be applied to the gross revenue generated by all airlines on such sectors into and out of Niue as may be determined by Cabinet.

SCHEDULES**SCHEDULE 1****Rates of Income Tax****Part A****1 Interpretation**

In this Schedule "taxable income" means income on which income tax is payable.

2 Companies

The rate of income tax payable in respect of taxable income derived by a company in Niue shall be 30 cents for every dollar of taxable income.

3 Other taxpayers

SCHEDULE 3
Low income rebate
(Section 41A)

| Amount of assessable income of Taxpayer | Rebate |
|--|--|
| \$10,000 or less whichever is the lesser amount | An amount equal to the income tax that would otherwise be payable on the assessable income of the taxpayer or \$1000 being |
| More than \$10,000 but less than \$20,000 | \$1000 less 10 cents for each dollar of assessable income of the taxpayer in excess of \$10,000 |

SCHEDULE 4
Section 115A
Form No. 1

FORM OF NOTICE BY TREASURER TO TAXPAYER OF COMPULSORY REGULAR DEPOSITS TOWARDS INCOME TAX

To

of.....

Dear Sir/Madam,

In terms of section 115a (1) of the Income Tax Act 1961 you are hereby notified that commencing on.....day.....month.....year you will be required to make deductions from your fortnightly /weekly pay a sum calculated at the rate of % of your gross pay for the period, and this sum will be deposited by your employer with the Treasury to the credit of your account.

NOTE: Monies deposited to your account in Treasury by your employer in accordance with this notice may not be withdrawn until the income tax for the year or part of the year has been assessed and become payable in terms of section 114 of the Income Tax Act 1961. No interest will be paid on your deposit. Should the amount standing to the credit of your account be insufficient to meet the amount of tax assessed, you will be required to make a lump sum payment of the balance owing. Should the credit in your account exceed the amount of tax assessed, a refund may be due to you provided a surplus remains after taking into account deposits which have been lodged since 1 April in any year, as these deposits are in respect of a new tax year and would not be refundable.

Yours faithfully
Treasurer

Section 115A

Form No. 2

FORM OF A NOTICE BY TREASURER TO EMPLOYERS TO MAKE DEDUCTIONS ON A REGULAR BASIS FROM AN EMPLOYERS PAY FOR INCOME TAX PURPOSES AND TO PAY SUMS SO DEDUCTED TO TREASURY

To

of.....

Dear Sir/Madam

You are hereby given notice under section 115A(2) of the Income Tax Act 1961 to deduct from the fortnightly / weekly pay of Mr/Mrs/Miss.....of who is presently employed by you, until further notice, a sum calculated at the rate.....% of his/ her gross salary/wages and to pay this sum to the Treasurer, Alofi within.....days of each pay day.

Yours faithfully

NOTE: Under section 115A(6) of the Income Tax Act every person commits an offence and shall be liable on conviction to a fine not exceeding 2 penalty units who –

- (a) Fails to make any deduction required by notice under this section to be made from any amount payable by him to a taxpayer.
- (b) Fails after making any such deduction to pay the sum deducted to the Treasurer within the time specified in that behalf in the notice.

INCORPORATED SOCIETIES ACT 1908

1908/212 (NZ) – 1 January 1909

| | |
|--|--|
| <p>1 Short title</p> <p>2 [Repealed]</p> <p>3 Interpretation</p> <p>4 Incorporated societies</p> <p>5 Pecuniary gain</p> <p>6 Rules of incorporated societies</p> <p>7 Application for incorporation</p> <p>8 Registrar to register society if in order</p> <p>9 Certificate of incorporation</p> <p>10 Members to be a body corporate</p> <p>11 Name of society</p> <p>11A Change of name</p> <p>12 Appeal from Registrar to High Court</p> <p>13 No liability on members for obligation of society</p> <p>14 Members to have no right to property of society</p> <p>15 Contracts by society</p> <p>16 Service of summons on society</p> <p>17 Security for costs where society is plaintiff</p> <p>18 Registered office</p> <p>19 Restriction of operations of society</p> <p>20 Society not to engage in operations involving pecuniary gain</p> <p>21 Alteration of rules</p> <p>22 Register of members</p> <p>23 Annual financial statement</p> | <p>24 Voluntary winding up of society</p> <p>25 Winding up of society by High Court</p> <p>26 Petition to Court for winding up</p> <p>27 Division of surplus assets on winding up</p> <p>28 Dissolution by Registrar</p> <p>29 Corporate body may become of society</p> <p>30 Pecuniary gain received by member</p> <p>31 Corporate body to be equivalent to 3 members</p> <p>32 [Repealed]</p> <p>33 Register of incorporated societies</p> <p>34 Inspection of documents</p> <p>35 [Repealed]</p> <p>36 Regulations</p> <p>37 Incorporation of branches</p> <p>38 Application for incorporation of branch</p> <p>39 Registration of rules of branch</p> <p>40 Application of Act</p> <p>41 Members of branches not to be relieved of obligations as members of societies</p> <p>42 Evidence of membership of branch</p> <p>43 Assistant Registrars</p> <p>44 Rules of society may provide for penalties</p> <p>45 Improper use of word “Incorporated”</p> <p>46 Society may make regulations or bylaws</p> |
|--|--|

SCHEDULE

To make provision for the incorporation of societies which are not established for the purpose of pecuniary gain

- 1 Short title**
This is the Incorporated Societies Act 1908.
- 2** [Repealed by 2004/270]
- 3 Interpretation**
In this Act –
“prescribed” means prescribed by this Act or by regulations;
“Registrar” means the Registrar of Incorporated Societies;
“society” means a society incorporated under this Act.

4 Incorporated societies

(1) Any society consisting of not less than 15 persons associated for any lawful purpose but not for pecuniary gain may, on application being made to the Registrar under this Act, become incorporated as a society under this Act.

(2) No such application shall be made except with the consent of a majority of the members of the society.

5 Pecuniary gain

Persons shall not be deemed to be associated for pecuniary gain merely by reason of any of the following circumstances, namely –

- (a) That the society itself makes a pecuniary gain, unless that gain or some part of it is divided among or received by the members or some of them;
- (b) That the members of the society are entitled to divide between them the property of the society on its dissolution;
- (c) That the society is established for the protection or regulation of some trade, business, industry, or calling in which the members are engaged or interested, if the society itself does not engage or take part in any such trade, business, industry, or calling, or any part of branch thereof;
- (d) That any member of the society derives pecuniary gain from the society by way of salary as the servant or officer of the society;
- (e) That any member of the society derives from the society any pecuniary gain to which he would be equally entitled if he were not a member of the society;
- (f) That the members of the society compete with each other for trophies or prizes other than money prizes.

6 Rules of incorporated societies

- (1) The rules of a society shall state or provide for the following matters –
 - (a) The name of the society, with the addition of the word “Incorporated” as the last word in that name;
 - (b) The objects for which the society is established;
 - (c) The modes in which persons become members of the society;
 - (d) The modes in which persons cease to be members of the society;
 - (e) The mode in which the rules of the society may be altered, added to, or rescinded;
 - (f) The mode of summoning and holding general meetings of the society, and of voting thereat;
 - (g) The appointment of officers of the society;
 - (h) The control and use of the common seal of the society;
 - (i) The control and investment of the funds of the society;
 - (j) The powers (if any) of the society to borrow money;
 - (k) The disposition of the property of the society in the event of the winding up of the society;
 - (l) Such other matters as the Registrar may require to be provided for in any particular instance.
- (2) The rules of the society may contain any other provisions which are not inconsistent with this Act or with law.
- (3) The rules of the society and any amendment of those rules shall be printed or typewritten.

7 Application for incorporation

Every application for the incorporation of a society shall be made to the Registrar in manner following –

- (a) Two copies of the rules of the society having written an application for incorporation in the form in Schedule 1 or to the like effect shall be signed by not less than 15 persons being members of the society, and each subscriber to the application shall add to his signature his description and address, and his signature shall be attested by a witness who is not a subscriber. When any body corporate is a subscriber its seal shall be affixed to the said application;
- (b) The 2 copies of the said rules so signed shall be delivered to the Registrar, together with the prescribed fee and together with a statutory declaration made by an officer of the society or by a solicitor to the effect that a majority of the members of the society have consented to the application, and that the rules so signed or sealed are the rules of the society.

8 Registrar to register society if in order

The Registrar, on being satisfied that the requirements of this Act have been observed, shall thereupon do the following things –

- (a) Enter the name of the said society in the register kept by him under this Act, together with such other particulars with respect to the society as he thinks fit;
- (b) Issue under his seal a certificate that the society is incorporated under this Act;
- (c) Register the rules of the society by sealing with his seal the said copies of it;
- (d) Return one of those copies to the subscribers and retain the other copy.

9 Certificate of incorporation

Every certificate of incorporation issued under the seal of the Registrar shall be conclusive evidence that all statutory requirements in respect of registration and of matters precedent and incidental to it have been complied with, and that the society is authorised to be registered and has been duly registered and incorporated under this Act.

10 Members to be a body corporate

Upon the issue of the certificate of incorporation the subscribers to the rules of the society, together with all other persons who are then members of the society or who afterwards become members of the society under the rules thereof, shall, as from the date of incorporation mentioned in the certificate, be a body corporate by the name contained in the said rules, having perpetual succession and a common seal, and capable forthwith, subject to this Act and to the said rules, of exercising all the functions of a body corporate and of holding land.

11 Name of society

No society shall be registered under a name which is identical with that of any other society registered under this Act, or of a company carrying on business in Niue (whether registered in Niue or not), or of any other body corporate established or registered in Niue under any Act, or so nearly resembles that name as to be calculated to deceive, except where that other society or company or body

corporate, as the case may be, signifies its consent in such manner as the Registrar requires, and the Registrar is satisfied that registration of the society by the proposed name will not be contrary to the public interest.

11A Change of name

(1) If, through inadvertence or otherwise, a society at its first registration, or on its registration by a new name, is registered by a name which is in contravention of section 11, or of any enactment other than this Act, relating to restrictions on the use of any name, the society shall, within a period of 6 weeks from the date of its being required by the Registrar to do so, or such longer period as he may allow change its name under section 21 to a name that is not in contravention as aforesaid.

(2) If a society makes default in complying subsection (1) it commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units for every day on which the offence has continued.

(3) No fee shall be payable to the Registrar in respect of an alteration of the rules of a society if the alteration only changes the society's name under the requirements of subsection (1).

12 Appeal from Registrar to High Court

An appeal shall lie to the High Court from any refusal of the Registrar to register a society or any enactment of the rules of a society, and the decision of the Court on any such appeal shall be final.

13 No liability on members for obligation of society

Except when otherwise expressly provided in this Act, membership of a society shall not of itself impose on the members any liability in respect of any contract, debt, or other obligation made or incurred by the society.

14 Members to have no right to property of society

Except when otherwise expressly provided by this Act or by the rules of a society, membership of a society shall not be deemed to confer upon the members any right, title, or interest, either legal or equitable, in the property of the society.

15 Contracts by society

(1) Any contract which, if made between private persons, must be by deed shall, when made by a society, be in writing under the common seal of the society.

(2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged with it may, when made by a society, be in writing signed by any person acting on behalf of and under the express or implied authority of the society.

(3) Any contract which, if made between private persons, might be made without writing may, when made by a society, be made without writing by any person acting on behalf of and under the express or implied authority of the society.

16 Service on society

Any summons, notice, order, or other document required to be served upon a society may be served by leaving the same at the society's registered office, or by sending it through the post in a registered letter addressed to the society at that office.

17 Security for costs where society is plaintiff

Where a society is the plaintiff in any action or other legal proceeding, and there appears by any credible testimony to be reason to believe that if the defendant is successful in his defence the assets of the society will be insufficient to pay his costs, any Court or Judge having jurisdiction in the matter may require sufficient security to be given for those costs, and may stay all proceedings until that security is given.

18 Registered office

(1) Every society shall have a registered office to which all communications may be addressed.

(2) Notice of the situation of that office, and of any change shall be given to the Registrar and recorded by him.

(3) Until that notice is given, the society shall be deemed not to have complied with this section as to having a registered office.

(4) If any society carries on its operations without having a registered office, every officer of the society and every member of the committee or other governing body of the society shall be liable to a fine not exceeding 0.5 penalty units for every day during which those operations are carried on.

19 Restriction of operations of society

(1) If any society carries on or proposes to carry on any operation which is beyond the scope of the objects of the society as defined in its rules, the Registrar may give notice in writing to the society not to carry on that operation.

(2) If after the receipt of that notice the society fails or refuses to conform, every officer of the society and every member of the committee or other governing body of the society shall be liable to a fine not exceeding 0.5 penalty units for every day during which that failure or refusal continues, unless he proves that the failure or refusal has taken place without his authority or consent.

20 Society not to engage in operations involving pecuniary gain

(1) No society shall do any act of such a nature that if the doing thereof were one of the objects for which the society was established the members of the society would be deemed to be associated for pecuniary gain within the meaning of sections 4 and 5.

(2) Every society which does any such act shall be liable to a fine not exceeding 2 penalty units.

(3) Every member who aids, abets, procures, assists, or takes part in the doing of any such act by a society shall be liable to a fine not exceeding 0.5 penalty units, and all such members shall be jointly and severally liable to any creditor of the society for all debts and obligations incurred by the society in or in consequence of the doing of that act.

(4) Every member who derives any pecuniary gain from any act done by the society in breach of this section shall be deemed to have received the same to the use of the society, and the same may be recovered by the society accordingly.

21 Alteration of rules

(1) A society may alter its rules in manner provided by the said rules, but subject to this Act.

(2) Every such alteration shall be in writing, signed or sealed in duplicate by at least 3 members of the society, and take documents so signed or sealed shall be delivered to the Registrar, accompanied by a statutory declaration made by a

solicitor or at least one member to the effect that the said alteration has been made in accordance with the rules of the society.

(3) The Registrar, if satisfied that the alteration has been duly made, and that the rules as so altered conform in all respects to this Act, shall register the alteration in like manner as in the case of the original rules, and the said alteration shall take effect according to its tenor. Such registration shall be conclusive evidence that all conditions precedent to the making of the alteration, or to the registration, have been duly fulfilled.

(3A) Notwithstanding subsection (3) the Court, on an application made to it by any member of the society, if it is satisfied that any such condition as aforesaid has not been duly fulfilled, declare the alteration to be void in whole or in part, and order that the registration be cancelled in whole or in part, and may by the order give such directions and make such provisions as seem just in the circumstances of the case. On the delivery to the Registrar of a sealed copy of the Court's order he shall forthwith amend the register accordingly.

(4) No alteration in the objects of a society shall be registered unless the Registrar is satisfied either that the alteration is not of such a nature as to prejudicially affect any existing creditor of the society, or that all creditors who may be so affected consent to the alteration.

(5) In the case of any alteration of the name of a society the Registrar may refuse to register the alteration until the making of it has been publicly advertised in such manner as the Registrar thinks fit.

22 Register of members

(1) Every society shall keep a register of its members.

(2) The register shall contain the names, addresses, and occupations of those members and the dates at which they became members.

(3) Every society shall when required by the Registrar so to do, send to him a list of the names, addresses, and occupations of its members, accompanied by a statutory declaration verifying that list and made by some officer of the society.

23 Annual financial statement

(1) Every society shall deliver annually to the Registrar, in such form and at such time as he requires, a statement containing the following particulars –

(a) The income and expenditure of the society during the society's last financial year;

(b) The assets and liabilities of the society at the close of the said year;

(c) All mortgages, charges, and securities of any description affecting any of the property of the society at the close of the said year.

(2) The said statement shall be accompanied by a certificate signed up by some officer of the society to the effect that the statement has been submitted to and approved by the members of the society at a general meeting.

(3) If any default is made by a society in the observance of this section, every officer of the society shall be liable to a fine not exceeding 0.5 penalty units for every day during which the default continues.

24 Voluntary winding up of society

(1) A society may be wound up voluntarily if the society, at a general meeting of its members, passes a resolution requiring the society so to be wound up, and the resolution is confirmed at a subsequent general meeting called together for that purpose and held not earlier than 30 days after the date on which the resolution so to be confirmed was passed.

(2) In subsection (1) “resolution” means a resolution carried by a majority of the valid votes cast by members voting at a general meeting in person or, if so allowed by the society’s rules, by proxy; and for the purposes of that subsection the resolution shall be taken to be confirmed at the subsequent general meeting if the confirmation is carried by such a majority.

25 Winding up of society by High Court

A society may be wound up by the High Court under the following circumstances –

- (a) If the society suspends its operations for the space of a whole year;
or
- (b) If the members of the society are reduced in number to less than 15;
or
- (c) If the society is unable to pay its debts; or
- (d) If the society carries on any operation whereby any member makes any pecuniary gain contrary to this Act; or
- (e) If the Court or a Judge is of the opinion that it is just and equitable that the society should be wound up.

26 Petition to Court for winding up

(1) Any application to the Court for the winding up of a society shall be by petition presented either by the society, or by a member or by a creditor or by the Registrar.

(2) All costs incurred by the Registrar in making application for the winding up of a society shall, unless the Court or a Judge otherwise orders, be a first charge on the assets of the society.

27 Division of surplus assets on winding up

(1) On the winding up of a society or on its dissolution by the Registrar, all surplus assets after the payment of all costs, debts, and liabilities shall, subject to any trust affecting the same, be disposed of in manner provided by the rules of the society or if such assets cannot be disposed of under the rules, then as the Registrar directs.

(2) If the said surplus assets are subject to any trust, they shall be disposed of as the Court or a Judge directs in the case of a winding up by the Court, or as the Registrar directs in the case of a voluntary winding up or in the case of a dissolution by the Registrar, but an appeal shall lie from any such decision of the Registrar to the Court at the suit of any person interested.

(3) The decision of the Registrar under this section shall be final, unless notice of appeal is delivered to the Registrar within one month after the decision has been given.

28 Dissolution by Registrar

(1) If at any time the Registrar is satisfied that a society is no longer carrying on its operations or has been registered by reason of a mistake of fact or law he may make under his seal a declaration that the society is dissolved as from the date of the declaration, and shall thereupon publish the declaration in the *Gazette*, and make in the register an entry of the dissolution of the society.

(2) On the making of that entry the society shall be dissolved as from the date of the declaration.

(3) At any time after it the Registrar, on being satisfied that the declaration was made in error and ought to be revoked, may revoke the same by a declaration

published in the *Gazette*, and shall thereupon make an entry of that revocation in the register and the society shall be revived from the date of the dissolution as if no such dissolution had taken place.

29 Corporate body may become member of society

Any corporate body, whether incorporated under this Act or in any other manner, may be a member of a society incorporated under this Act, unless the purposes for which the society is established are *ultra vires* of the said corporate body.

30 Pecuniary gain received by member

When any corporate body is a member of a society incorporated under this Act, any pecuniary gain received by any member of that corporate body shall be deemed for the purposes of this Act to be pecuniary gain received by a member of the society, and in respect of any such pecuniary gain every member of that corporate body shall be deemed to be a member of the society.

31 Corporate body to be equivalent to 3 members

In estimating –

(a) The number of subscribers to the rules of a society for the purposes of section 4 or section 7, or to the rules of a branch or group of branches for the purposes of section 37; or

(b) The number of members of a society for the purposes of section 4 or section 25 or of a branch for the purposes of section 37 and 38 –

every corporate body that is a subscriber or member shall be taken as the equivalent of 3 subscribers or 3 members as the case may require.

32 [Repealed by 2004/270]

33 Register of incorporated societies

(1) The Registrar shall keep a register in which there shall be recorded all matters required by this Act or by any regulations to be recorded by the Registrar.

(2) The Registrar shall keep a seal for the authentication of any documents required for the purposes of this Act.

(3) There shall be paid to the Registrar such fees as may be prescribed by regulations in respect of such matters as may be so prescribed.

34 Inspection of documents

(1) Every person may, inspect the register or any documents lodged with the Registrar.

(2) Any person may, on payment of the prescribed fee, require a copy of the certificate of the incorporation of any society, or a copy of or extract from the register or any document lodged with the Registrar, to be certified by the Registrar under his seal.

(3) Any such copy or extract purporting to be under the seal of the Registrar shall be received in evidence in all proceedings, civil or criminal.

(4) No process for compelling the production of any document kept by the Registrar shall issue from any Court except with the leave of that Court, and every such process if issued shall bear on it a statement that it is issued with the leave of the Court.

35 [Repealed]

36 Regulations

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

37 Incorporation of branches

(1) Any society registered under this Act may apply to the Registrar in accordance with this Act for the incorporation of any local branch having not less than 15 members, or for the incorporation of a group or of groups of such branches of that society.

(2) No application for the incorporation of a local branch shall be made except with the consent of a majority of the members proposed to be incorporated as a local branch, and no application for the incorporation of a group of branches shall be made except with the consent of a majority of the members of each of those branches.

(3) Any group of local branches may be incorporated notwithstanding that the whole or any number of such branches may be already incorporated.

38 Application for incorporation of branch

Every application for the incorporation of a branch or group of branches of a society registered under this Act shall be made to the Registrar in manner following –

- (a) Two copies of the rules of the branch or group, having written thereon an application for incorporation, shall be signed by not less than 2 of the executive officers of the registered society, and also, in the case of a local branch, by not less than 15 persons being members of that branch, and, in the case of a group of branches, by not less than 2 members of each of the branches proposed to be incorporated.
- (b) Each subscriber to the application shall add to his signature his description and address, and his signature shall be attested by a witness who is not a subscriber;
- (c) When any body corporate is a subscriber its seal shall be affixed to the said application;
- (d) Two copies of the rules so signed or sealed shall be delivered to the Registrar, together with the prescribed fee, and with a statutory declaration made by an officer of the registered society, or by a solicitor, to the effect that a majority of the members of the branch or branches have consented to the application, and that the rules so signed or sealed are the rules of the branch or group.

39 Registration of rules of branch

The Registrar, on being satisfied that the requirements of sections 37 and 38 have been observed, and that the rules of the branch or group of branches are not inconsistent with this Act or with the rules of the registered society, shall thereupon do the following things –

- (a) Enter the name of the branch or group of branches in a special register to be kept by him for the purposes of this Act, together with such other particulars with respect to the branch or branches as he thinks fit;
- (b) Issue under his seal a certificate that the branch or group of branches is incorporated under this Act;
- (c) Register the rules of the branch or group of branches by sealing with his seal the said copies of it; and
- (d) Return one of those copies to the secretary of the registered society and retain the other copy.

40 Application of Act

All the provisions of this Act (including the powers conferred on societies to hold land) shall, so far as applicable, and with the necessary modifications, apply to branches of societies or to groups of such branches incorporated under sections 37 and 38.

41 Members of branches not to be relieved of obligations as members of societies

The incorporation of a branch of a society under sections 37 and 38 shall not relieve the members of that branch from any liabilities or obligations incident to their membership of the registered society, whether under this Act, or the rules of the society, or otherwise howsoever.

42 Evidence of membership of branch

For the purposes of this Act membership of a branch of a society shall be determined in accordance with the general rules of the society and the special rules (if any) of the branch in that behalf, and not otherwise, and every member of a local branch shall be deemed to be a member of the society and liable to all the obligations of membership.

43 Assistant Registrars

(1) There may be appointed such Assistant Registrars of incorporated societies as may be required.

(2) (a) Subject to the direction of the Registrar, or to regulations under the principal Act prescribing the duties of Assistant Registrars, every Assistant Registrar shall have and may exercise all the powers, duties, and functions of the Registrar.

(b) The fact of any Assistant registrar exercising any power, duty, or function as aforesaid shall be conclusive evidence of his authority so to do.

44 Rules of society may provide for penalties

In addition to the matters specified in section 6, the rules of any society may make provision for the imposition on any member of reasonable fines and forfeitures, and for the consequences of non-payment of any subscription or fine.

45 Improper use of word "Incorporated"

If any society, not being a society incorporated under this Act, operates under any name or title of which the word "Incorporated" or any name or title of which the word "Incorporated" or any contraction or imitation of that word is the last word, every member of the society shall be liable on summary conviction to a fine not exceeding 0.5 penalty units for every day upon which that name or title has been used.

46 Society may make regulations or bylaws

(1) In addition to the matters specified in section 6 the rules of any society may make provision for the making, amendment, or rescission of regulations or bylaws, not inconsistent with this Act or with the rules of the society, for such purposes as may be specified in that behalf in the rules.

(2) The making, amendment, or rescission of any regulations or bylaws under any rules in accordance with this section shall not be deemed to be an alteration of the rules under section 21.

INQUEST ACT 1964

1964/23 – 1 December 1964

| | | | |
|----|---|--|---|
| | PART I | | PART 6 |
| | PRELIMINARY | | RULES OF PROCEDURE FOR INQUEST IN RESPECT OF DEATH AND INQUEST IN RESPECT OF FIRES AND EXPLOSIONS |
| 1 | Short title | | 22 |
| 2 | – | | 23 |
| 3 | Interpretation | | 24 |
| | PART 2 | | 25 |
| | THE CORONER | | 26 |
| 4 | Office of Coroner established | | 27 |
| 5 | Functions of Coroner | | 28 |
| 6 | Powers of Coroner and duties of Registrar | | 29 |
| | PART 3 | | 30 |
| | REPORTS AND INQUIRIES INTO DEATH | | 31 |
| 7 | Duty to report death to Coroner | | 32 |
| 8 | Inquires by Police and Coroner | | 33 |
| 9 | Medical report | | 34 |
| 10 | Postmortem examination during inquires | | 35 |
| 11 | Burial and exhumation | | 36 |
| 12 | Duty to report death on board ship | | |
| | PART 4 | | PART 7 |
| | INQUEST IN RESPECT OF DEATH | | GENERAL |
| 13 | Holding of inquest compulsory | | 37 |
| 14 | Holding of inquest permissive | | 38 |
| 15 | Purpose of inquest in respect of death | | 39 |
| 16 | View of body | | 40 |
| 17 | Postmortem examination during inquest | | 41 |
| | PART 5 | | 42 |
| | INQUIRIES AND INQUESTS IN RESPECT OF FIRE AND EXPLOSIONS | | 43 |
| 18 | Duty to report fires and explosions | | 44 |
| 19 | Inquiries by Police and Coroner | | |
| 20 | When to hold inquest in respect of fires or explosions | | SCHEDULE |
| 21 | Purpose of inquest in respect of fires and explosions | | |

**To provide for inquiries into the manner of death of any person into the
cause and origin of fires and explosions**

PART 1
PRELIMINARY

- 1 Short title**
This is the Inquest Act 1964.
- 2** –
- 3 Interpretation**
In this Act –
“isolation station” means an isolation station appointed under the Public Health Act;
“master” means and includes the owner of a ship and any person (except a pilot) having command or charge of any ship;
“Medical Officer” means a person appointed by a Medical Officer to have in his custody a person of unsound mind under Part 26 of the Niue Act 1966;
“Registrar” means the Registrar of the High Court and includes the Deputy Registrar;
“ship” includes every description of vessel used in navigation, however propelled, but does not include ships of the naval forces of any country.

PART 2
THE CORONER

- 4 Office of Coroner established**
(1) Every person holding office as Judge, or Commissioner of the High Court, or any 2 Justices of the Peace acting together shall, without any authority other than this section by virtue of holding any such office, be a Coroner for the purposes of this Act.
(2) The Judge, when present, may execute the functions of Coroner or may at any time request a Commissioner of the High Court to execute any of the functions of a Coroner.
(3) Unless so requested –
(a) [Spent]
(b) A Commissioner of the High Court shall not execute the functions of Coroner when the Judge is present.
(4) Every person being a Coroner and executing functions of a Coroner under this section shall be deemed to be the Coroner within the meaning of this Act.
- 5 Functions of Coroner**
The principal functions of the Coroner shall be to make inquiries and hold inquests in respect of the death of any person and of fires or explosions as required by this Act.
- 6 Powers of Coroner and duties of Registrar**
(1) For the purpose of discharging his functions the Coroner shall, in addition to any particular power conferred on him by this Act, have and may exercise and invoke all the powers, privileges, authorities, and immunities which are possessed by a Judge in his ordinary jurisdiction including the power to punish for contempt of the High Court as provided in section 41.

(2) Every order, direction, determination or decision given or made by the Coroner under this Act shall be final.

(3) The Registrar shall keep the records of the Coroner's office and shall issue summonses and warrants and perform all such other administrative duties in respect of that office as the Coroner may direct.

PART 3

REPORTS AND INQUIRIES INTO DEATH

7 Duty to report death to Coroner

(1) Every Medical Officer, constable, and the officer in charge of any prison or isolation station shall forthwith report to the Coroner the death of any person who, while being held in the custody of any such officer respectively, has died on Niue from any cause or has died from any cause or has disappeared in the circumstances specified in section 12.

(2) Where a person (not being a person held in custody under subsection (1)) has died on Niue a sudden death of which the cause is unknown or has died on Niue and there is reasonable cause to suspect that that person has died either a violent or unnatural death, every Medical Officer and every constable who is present when that person dies or who finds that person lying dead or being drowned shall forthwith report the death to the Coroner, and any other person so being present or so finding the body shall forthwith notify any constable who thereupon shall report the death to the Coroner.

8 Inquiries by Police and Coroner

(1) In each case where section 7 applies, the Chief Officer of Police shall make such inquiries as he thinks necessary for the purposes of this Act or as may be directed by the Coroner.

(2) On receipt of any report under section 7, the Coroner may direct any such inquiries to be made as he thinks necessary.

9 Medical report

Whether or not an inquest is being held, the Coroner may at any time request the Director of Health or any member of the Director of Health's staff who has recently attended the person into whose death the Coroner is inquiring, to supply him with a report relating to the death of the deceased person.

10 Postmortem examination during inquiries

(1) In each case, where the Coroner is informed that a person (not being a person held in the custody of any officer referred to in section 7(1)) has died a sudden death of which the cause is unknown, he may authorise and request the Director of Health to carry out a postmortem examination of the body and to report the result to him in writing.

(2) If the Coroner, on receipt of any such report or of a report under section 9, or as a result of inquiries made under section 8 is satisfied that the death was due to natural causes, he may decide not to hold an inquest.

11 Burial and exhumation

(1) Notwithstanding anything to the contrary in an enactment for the time being in force it shall not be unlawful to exhume the body of any person if the Coroner orders, by writing under his hand, that body is to be exhumed for the purpose of an inquiry or inquest being held or to be held under this Act.

(2) Whether or not an inquest is being held, the Coroner may at any time, by writing under his hand, order the burial of the body of any person whose death has been reported to him under this Act or the burial of any body exhumed under an order under this section.

(3) As a condition of any order under this section the Coroner may prescribe such safety precautions as he thinks fit and every person who fails to comply with any such condition or does any act to hinder or prevent any such condition being complied with commits an offence and shall be liable on conviction to imprisonment for a term not exceeding one month or to a fine not exceeding 1 penalty unit.

12 Duty to report death on board ship

(1) Where any loss of life occurs from any cause on or from any ship the master shall report the occurrence –

- (a) Forthwith when loss of life occurs on or near the coast or in the roadstead of Niue;
- (b) On arrival in the roadstead of Niue when loss of life has occurred at sea since the ship last departed from the port of any country or island other than Niue.

(2) Subsection (1) shall apply where a person disappears on or from any ship and this Act shall be read subject to this subsection, where applicable, and with the necessary modifications.

(3) Every report required under this section shall be made by the master whether or not any other person is required by section 7(1) to report the same occurrence.

(4) Every report required under this section shall be made by the master to any constable who shall report the death to the Coroner and thereupon this Part shall, so far as applicable, apply with all necessary modifications.

PART 4

INQUEST IN RESPECT OF DEATH

13 Holding of inquest compulsory

The Coroner shall hold an inquest in each case where he is informed that a person –

- (a) Has died on Niue from any cause while in the custody of a constable or of an officer of prisons; or
- (b) Is found dead on Niue and there is reasonable cause to suspect that the person has died either a violent or unnatural death; or
- (c) Has died on Niue a sudden death of which the cause is unknown and the Coroner has not proceeded as provided in section 8 (2), section 9, or section 10 or has so proceeded and, in the circumstances specified in section 10 is not satisfied that the death was due to natural causes; or
- (d) Has died from any cause or disappeared in the circumstances specified in section 12(1)(a) and either the ship is still on or near the coast or in the roadstead of Niue, or any witness is in Niue.

14 Holding of inquest permissive

(1) In each case where the Coroner has received a report under Part 3, and where the holding of an inquest is not required by section 13, the Coroner shall hold an inquest if he considers an inquest to be necessary or desirable.

(2) If in the circumstances specified in section 12(1)(b), the Coroner decides not to hold an inquest he shall direct, as far as practicable, such inquiries to be made and such evidence to be taken as may assist in the holding of an inquest (if any) in any country other than Niue.

15 Purpose of inquest in respect of death

An inquest shall be held for the purpose of establishing –

- (a) The fact that a person has died;
- (b) The identity of the deceased person;
- (c) When, where, and how the death occurred.

16 View of body

(1) Where in respect of the death of any person an inquiry or an inquest under this Act is held it shall not be necessary for the Coroner to view the body of the deceased person.

(2) No inquest shall be concluded unless the Coroner is satisfied that the body in respect of which the inquest is being held has been viewed by some person giving evidence at the inquest.

(3) Where a person has disappeared from any ship or the Coroner is satisfied that the body is destroyed or irrecoverable in any other circumstances he shall hold and conclude any inquest required under this Act and the provisions of this Act shall, so far as applicable, apply to any such inquest subject to all necessary modifications.

17 Postmortem examination during inquest

(1) At any time before the conclusion of an inquest, the Coroner may authorise and direct the Director of Health to carry out a postmortem examination of the body of the deceased person and, where necessary, to request an analyst or pathologist to make an analysis as part of the postmortem examination.

(2) The Coroner may direct the payment of such fees as he may think fit for an analysis so made by any person other than a Medical Officer and any such fee shall be paid out of the public revenue of Niue.

(3) For the purposes of this section and section 10(1), the Coroner may give such directions as he thinks fit to the disposal or removal of the body or any part of it and every person who fails to comply with any such direction or who does any act to hinder or prevent any such direction being complied with commits an offence and shall be liable on conviction to imprisonment for a term not exceeding one month or to a fine not exceeding 1 penalty unit.

PART 5

INQUIRIES AND INQUESTS IN RESPECT OF FIRES AND EXPLOSIONS

18 Duty to report fires and explosions

(1) The Chief Officer of Police shall forthwith report to the Coroner every case in which –

- (a) Any building, store of goods, stack of copra, or growing crop is destroyed or damaged by fire; or
- (b) Any explosion occurs, whether or not bodily harm to any person or damage to any property is caused by or as a result of such explosion;
- (c) By any fireworks bodily harm to any person or damage to any property is caused, whether or not such fireworks are discharged under a permit issued under the Fireworks Act 1958; or
- (d) Any report required by subsection (2) is received by the Police.

- (2) The master shall report to any constable –
 - (a) Forthwith, every case in which any fire or explosion occurs on board ship on or near the coast or in the roadstead of Niue;
 - (b) On arrival in the roadstead of Niue, every case in which any fire or explosion has occurred at sea since the ship last departed from the port of any country other than Niue and bodily harm has been caused to any person by or as a result of any such fire or explosion.

19 Inquiries by Police and Coroner

(1) In each case where section 18 applies, the Chief Officer of Police shall make such inquiries as he thinks necessary for the purposes of this Act or as may be directed by the Coroner.

(2) On receipt of any report in section 18, the Coroner may direct any such inquiries to be made as he thinks necessary.

20 When to hold inquest in respect of fires and explosions

(1) In each case where the Coroner has received a report under section 18 he shall hold an inquest if he considers an inquest to be necessary or desirable.

(2) If in the circumstances specified in section 18(2) (a) or (b) the Coroner decides not to hold an inquest he shall direct, as far as practicable, such inquiries to be made and such evidence to be taken as may assist in the holding of an inquest (if any) in any country other than Niue.

21 Purpose of inquest in respect of fires and explosions

(1) An inquest shall be held for the purpose of establishing –

- (a) The cause and origin of any fire; or
- (b) The cause and origin of any explosion including the mode of storage of any explosives involved in the explosion; and
- (c) Any other matter in connection with the fire or explosion in respect of which the inquest is being held and which the Coroner may consider appropriate to that inquest.

(2) For the purposes of this section “explosives” includes any article of which an explosive forms part and which is capable of destructive effect by way of explosion.

PART 6

RULES OF PROCEDURE FOR INQUEST IN RESPECT OF DEATH AND INQUEST IN RESPECT OF FIRES AND EXPLOSIONS

22 Inquest before Coroner alone

All inquests shall be held before the Coroner alone.

23 Date, place, and notification of hearing

(1) The Coroner shall fix the date, time, and place of the inquest and shall give notice of it to the Chief Office of Police and such other persons as he may determine.

(2) The Coroner may adjourn any proceedings before him from time to time and from place to place as the circumstances of the case may necessitate.

(3) It shall be lawful to hold an inquest on a Sunday whenever in the opinion of the Coroner it is expedient so to do.

24 Procedure where criminal proceedings are pending

(1) If, before an inquest has been concluded, the Coroner is informed that some person has been charged with causing the death or, as the case may be, the fire or explosion in respect of which the inquest being held, and in the opinion of the Coroner the result of the charge may have a material bearing on the inquest, he shall adjourn the inquest until the criminal proceedings are terminated.

(2) For the purposes of this section "criminal proceedings" means any proceedings within the criminal jurisdiction of the High Court and criminal proceedings before the High Court shall not be deemed to be terminated until leave to appeal can no longer be granted.

(3) On the termination of the criminal proceedings –

(a) If it appears to the Coroner that not all the facts and circumstances specified in section 15 or section 21 have been established he shall resume the inquest;

(b) If it appears to the Coroner that all those facts and circumstances have been established, he may decide not to resume the inquest.

(4) If the adjourned inquest is an inquest in respect of the death of any person and the Coroner decides not to resume the inquest as aforesaid, he shall notify the Registrar of Births and Deaths of his decision and the date of it and give him all available particulars required to be registered by regulation 20 of the Births and Deaths Registration Regulations 1984.

25 Hearing in public and publication of proceedings

(1) The court or other place in which the inquest is held shall be open to the public.

(2) If the Coroner considers it desirable in the interest of decency or public order or in order to expedite the accuracy and justice of his finding, he may exclude any person from the whole or any part of the proceedings, or he may prohibit the publication of any part of the evidence given at the inquest.

26 Publication where death was self inflicted

At any inquest in respect of the death of any person –

(a) Where it appears to the Coroner that death may have been self inflicted, he may, at any stage of the inquest direct that no report, or no further report of the proceedings shall be published until he has made his finding;

(b) Where the Coroner finds that death was self inflicted, no report of the proceedings of this inquest shall, without the authority of the Coroner, be published other than the name, address, and occupation of the deceased person, and the fact that the Coroner has held an inquest and found that death was self inflicted.

27 Right of audience

The Coroner may admit any person who, in the opinion of the Coroner, has a sufficient interest in the subject or result of the inquest to attend in person or to be represented by an attorney or agent and to examine and cross-examine any witness who gives evidence at the inquest.

28 Every kind of evidence admissible

In all proceedings under this Act the Coroner may admit any kind of evidence that he considers necessary for the purpose of establishing any of the matters referred to in section 15 or section 21.

29 Examination of witnesses

(1) The Coroner shall at the inquest examine on oath every person who tenders his evidence respecting the facts in issue and all other persons whom he thinks it expedient to examine and any person may be so examined whether or not he has been summoned to attend as a witness.

(2) The oath administered to any person so examined shall be in the form numbered 1 in the Schedule.

(3) (a) If no person admitted to examine and cross-examine witnesses under section 27 objects, the Coroner may permit any witness to give the whole or any part of his evidence by tendering a previously prepared statement in writing and confirming the same on oath.

(b) A witness may be cross-examined on his evidence in any such statement as if he had given that evidence orally at the inquest.

(4) The Coroner may direct that all or any witnesses other than the witness under examination shall leave the place of hearing and remain outside until called upon to give evidence at the inquest.

(5) The Coroner shall cause the evidence admitted by him at the inquest to be put into writing and every evidence so put into writing or given in a previously prepared statement in writing shall be read over to and signed by the witness and by the Coroner.

30 Protection of witnesses

Every witness attending and giving evidence at any inquest shall have the same privileges and immunities as witnesses in the Court.

31 Fees for witnesses

Such reasonable amount in respect of expenses and loss of time as the Coroner deems fit to award shall be paid to any witness giving evidence at any inquiry or inquest.

32 Default of witness and unauthorised publication

(1) Every witness on whom a summons is duly served requesting him to attend at the inquest, who fails without sufficient excuse to appear or to produce any document which he is so required to produce, and any person, whether summoned to attend or not, who, being at the hearing and being required to give evidence or to produce any document then in his possession refuses, without sufficient excuse, to be sworn or to give evidence or to produce that document, commits an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units.

(2) Every person who publishes –

(a) A report of any proceeding in contravention of this Act; or

(b) Any question at any inquest which the Coroner –

(i) has forbidden or disallowed; or

(ii) has warned the witness he is not obliged to answer, and has ordered shall not be published;

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

33 Inquest may be completed by another Coroner

Where a Coroner has commenced an inquest and dies or is incapacitated by illness, absence, or other sufficient cause from completing the inquest, the inquest may be completed by another Coroner who may act upon any evidence already given at the inquest in all respects as if it were given before him.

34 Finding

(1) After considering all the evidence before him at the inquest the Coroner shall give his finding and shall sign a certificate in the form numbered 2A or 2B (as the case may be) in the Schedule.

(2) Certified copies of every certificate shall be forwarded to Cabinet and if the finding is given at the conclusion of an inquest in respect of the death of any person, also to the Registrar of Births and Deaths.

35 Inquest may be reopened

(1) Where an inquest has been concluded and it is shown to the satisfaction of the Coroner that material evidence has been discovered which was not known or tendered at the inquest, or that the finding was based on any false or misleading evidence, or that the finding was defective or erroneous for any other reason, he may reopen the inquest and accept any part of the evidence given at the original inquest which appears to him correct, and conduct such further inquiries as may appear to him necessary.

(2) At the conclusion of the reopened inquest the Coroner shall give his finding as provided in section 34 and any such finding shall for all purposes replace the finding previously given.

36 Procedure so far as not prescribed

Subject to this Act the practice and procedure of the Coroner in the exercise of his functions and powers shall be such as he thinks in each case to be most consistent with natural justice and convenience.

PART 7
GENERAL

37 Mortuaries

Cabinet shall establish and maintain such places as may be necessary for the reception of dead bodies pending removal for burial or postmortem examination and shall provide facilities for carrying out in such places post mortem examinations under this Act.

38 Power of Medical Officer to enter

Every Medical Officer shall have power to enter any dwelling, building, premises, land, ship or any other place and execute in it any duties imposed on him by or under this Act.

39 Duty of Police to assist

It shall be the duty –

- (a) Of the Chief of Police to assist at all inquests, inquiries, and investigations held or made by the Coroner;
- (b) Of every constable to give every Medical Officer any assistance he may require in the execution of his duties under this Act and, when requested, to accompany him to any such places the Medical Officer may wish to enter as provided in section 38.

40 Forms

Save as provided in this Act all documents required or authorised in the exercise of any power, function, or duty under this Act may be in such form as the Coroner deems sufficient.

41 Contempt

(1) Section 101 of the Niue Act 1966 shall, with all necessary modifications, apply to any proceedings of or before the Coroner under this Act as if such proceedings were proceedings of or before the Court.

(2) Every person who commits an offence under subsection (1) shall be liable to imprisonment for a term not exceeding 6 months or a fine not exceeding 1 penalty unit as provided in this section.

(3) The offence of contempt shall be punishable either –

(a) By the Court in the ordinary course of the criminal jurisdiction of that Court; or

(b) Under subsections (4) and (5).

(4) If the contempt is committed in the presence or hearing of the Coroner, the Coroner then and there holding an inquest may, without order or warrant, direct any constable or other person to arrest the person so guilty of contempt and bring him before the Coroner.

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

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

42 Offences

(1) Every person commits an offence who –

(a) Fails to comply with any direction given to him by the Coroner or any Medical Officer under this Act; or

(b) Fails to comply with any duty or obligation imposed on him by this Act; or

(c) Wilfully obstructs, hinders, or resists any person in the exercise or execution of any power, duty, or function conferred or imposed on such person by this Act; or

(d) Deceives or attempts to deceive any such person as aforesaid; or

(e) Does or omits, or causes or knowingly permits or suffers to be done or omitted, any act, matter, or thing contrary to this Act; or

(f) Wilfully makes any false or misleading statement or any material omission in any information or report to the Police or any Medical Officer.

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

(3) Where the provisions of this Act impose on 2 or more persons the duty to report one and the same occurrence to the Police, each of such persons shall be responsible for making the report as required.

(4) If any of the persons being so responsible furnishes the required report the other person or persons shall not be guilty of the offence of failing to comply with any duty or obligation imposed on him by this Act.

43 [Spent]

44 Application of fines

All fines paid under this Act shall form part of the public revenues of Niue and shall be paid into the appropriate account.

SCHEDULE

Form No. 1

Oath of Witness

Do you swear by Almighty God that the evidence which you shall give at this inquest in respect of the death of
the disappearance at sea of
the fire at
the explosion at
shall be the truth, the whole truth and nothing but the truth.

Form No 2A (Death)

I Coroner hereby certify that at an inquest concluded on the day of 20 at having inquired when, where and how came to his death came to disappear at sea

I found

Dated at this day of 20

.....
Coroner

Form No 2B (Fire or Explosion)
Finding of Coroner

I Coroner hereby certify that an inquest concluded on the day of 20 at..., having inquired into the cause and origin of the fire at the explosion at

I found

Dated at this day of 20

.....
Coroner

INTERNATIONAL FINANCE AGREEMENTS ACT 1961

Act 3 of 1961 (NZ) – 16 August 1961

[This Act as a whole was not made Niue law, but section 8 of the Act made specific provisions of the Act Niue law. Those provisions are set out here.]

SCHEDULE 1

Article VIII, section 2

....

- (b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, cooperate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

Article IX, sections 2-9 Status, Immunities and Privileges of the IMF

SECTION 2 – STATUS OF THE FUND

The Fund shall possess full juridical personality, and, in particular, the capacity –

- (i) To contract;
- (ii) To acquire and dispose of immovable and movable property;
- (iii) To institute legal proceedings.

SECTION 3 - IMMUNITY FROM JUDICIAL PROCESS

The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.

SECTION 4 - IMMUNITY FROM OTHER ACTION

Property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

SECTION 5 - IMMUNITY OF ARCHIVES

The archives of the Fund shall be inviolable.

SECTION 6 - FREEDOM OF ASSETS FROM RESTRICTIONS

To the extent necessary to carry out the operations provided for in this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature.

SECTION 7 - PRIVILEGE FOR COMMUNICATIONS

The official communications of the Fund shall be accorded by members the same treatment as the official communications of other members.

SECTION 8 - IMMUNITIES AND PRIVILEGES OF OFFICERS AND EMPLOYEES

All Governors, Executive Directors, Alternates, officers and employees of the Fund –

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Fund waives this immunity;
- (ii) not being local nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members;
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

SECTION 9 - IMMUNITIES FROM TAXATION

- (a) The Fund, its assets, property, income and its operations and transactions authorised by this Agreement shall be immune from all taxation and from all customs duties. The Fund shall also be immune from liability for the collection or payment of any tax or duty.
- (b) No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to Executive Directors, Alternates, officers or employees of the Fund who are not local citizens, local subjects, or other local nationals.
- (c) No taxation of any kind shall be levied on any obligation or security issued by the Fund, including any dividend or interest thereon, by whomsoever held –
 - (i) which discriminates against such obligation or security solely because of its origin; or
 - (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Fund.

 SCHEDULE 2

Article VII, sections 2-9

Statutes, Immunities and Privileges of the IBRD

SECTION 2 - STATUS OF THE BANK

The Bank shall possess full juridical personality, and, in particular, the capacity –

- (i) to contract;
- (ii) to acquire and dispose of immovable and moveable property;
- (iii) to institute legal proceedings.

SECTION 3 - POSITION OF THE BANK WITH REGARD TO JUDICIAL PROCESS

Actions may be brought against the Bank only in a Court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

SECTION 4 - IMMUNITY OF ASSETS FROM SEIZURE

Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

SECTION 5 - IMMUNITY OF ARCHIVES

The archives of the Bank shall be inviolable.

SECTION 6 - FREEDOM OF ASSETS FROM RESTRICTIONS

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

SECTION 7 - PRIVILEGE FOR COMMUNICATIONS

The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

SECTION 8 - IMMUNITIES AND PRIVILEGES OF OFFICERS AND EMPLOYEES

All Governors, Executive Directors, Alternates, officers and employees of the Bank

- (i) Shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity;
- (ii) Not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members;
- (iii) Shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

SECTION 9 - IMMUNITIES FROM TAXATION

- (a) The Bank, its assets, property, income and its operations and transactions authorised by this Agreement, shall be immune from all taxation and from all customs duties. The Bank shall also be immune from liability for the collection or payment of any tax or duty.
 - (b) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Executive Directors, Alternates, officials or employees of the Bank who are not local citizens, local subjects, or other local nationals.
 - (c) No taxation of any kind shall be levied on any obligation or security issued by the Bank (including any dividend or interest thereon) by whomsoever held –
 - (i) Which discriminates against such obligation or security solely because it is issued by the Bank; or
 - (ii) If the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.
 - (d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Bank (including any dividend or interest thereon) by whomsoever held –
 - (i) Which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
 - (ii) If the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.
-

SCHEDULE 3
Article VI, sections 2-9 and 11
Status, Immunities and Privileges of the IFC

SECTION 2 - STATUS OF THE CORPORATION

The Corporation shall possess full juridical personality and, in particular, the capacity –

- (i) to contract;
- (ii) to acquire and dispose of immovable and movable property;
- (iii) to institute legal proceedings.

SECTION 3 - POSITION OF THE CORPORATION WITH REGARD TO JUDICIAL PROCESS

Actions may be brought against the Corporation only in a Court of competent jurisdiction in the territories of a member in which the Corporation has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Corporation shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Corporation.

SECTION 4 - IMMUNITY OF ASSETS FROM SEIZURE

Property and assets of the Corporation, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

SECTION 5 - IMMUNITY OF ARCHIVES

The archives of the Corporation shall be inviolable.

SECTION 6 - FREEDOM OF ASSETS FROM RESTRICTIONS

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of Article III, section 5, and the other provisions of this Agreement, all property and assets of the Corporation shall be free from restrictions, regulations, controls and moratoria of any nature.

SECTION 7 – PRIVILEGE FOR COMMUNICATIONS

The official communications of the Corporation shall be accorded by each member the same treatment that it accords to the official communications of other members.

SECTION 8 - IMMUNITIES AND PRIVILEGES OF OFFICERS AND EMPLOYEES

All Governors, Directors, Alternates, officers and employees of the Corporation –

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity;
- (ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members;
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

SECTION 9 - IMMUNITIES FROM TAXATION

- (a) The Corporation, its assets, property, income, and its operations and transactions authorised by this Agreement, shall be immune from all taxation and from all customs duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty.

- (b) No tax shall be levied on or in respect of salaries and emoluments paid by the Corporation to Directors, Alternates, officials or employees of the Corporation who are not local citizens, local subjects, or other local nationals.
- (c) No taxation of any kind shall be levied on any obligation or security issued by the Corporation (including any dividend or interest thereon) by whomsoever held –
 - (i) which discriminates against such obligation or security solely because it is issued by the Corporation; or
 - (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Corporation.
- (d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Corporation (including any dividend or interest thereon) by whomsoever held –
 - (i) which discriminates against such obligation or security solely because it is guaranteed by the Corporation; or
 - (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Corporation.

SECTION 11 – WAIVER

The Corporation in its discretion may waive any of the privileges and immunities conferred under this Article to such extent and upon such conditions as it may determine.

INTERNATIONAL FINANCE AGREEMENTS AMENDMENT ACT 1966

Act 26 of 1966 (NZ) – 16 September 1966

[This Act as a whole was not made Niue law, but sections 3, 4 and 5 of the Act made specific provisions of the Act Niue law. Those provisions are set out here.]

SCHEDULE 1

Chapter VIII, articles 49-56 and 58 Status, Immunities, Exemptions and Privileges of the ADB

ARTICLE 49 – LEGAL STATUS

The Bank shall possess full juridical personality and, in particular, full capacity –

- (i) to contract;
- (ii) to acquire, and dispose of, immovable and movable property;
and
- (iii) to institute legal proceedings.

ARTICLE 50 – IMMUNITY FROM JUDICIAL PROCEEDINGS

1 The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank in a court of competent jurisdiction in the territory of a country in which the Bank has its principal or a branch office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

2 Notwithstanding the provisions of paragraph 1 of this Article, no action shall be brought against the Bank by any member, or by any agency or instrumentality of a member, or by any entity or person directly or indirectly acting for or deriving claims from a member or from any agency or instrumentality of a member. Members shall have recourse to such special procedures for the settlement of controversies between the Bank and its members as may be prescribed in this Agreement, in the bylaws and regulations of the Bank, or in contracts entered into with the Bank.

3 Property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgments against the Bank.

ARTICLE 51 – IMMUNITY OF ASSETS

Property and assets of the Bank, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

ARTICLE 52 – IMMUNITY OF ARCHIVES

The archives of the Bank and, in general, all documents belonging to it, or held by it, shall be inviolable, wherever located.

ARTICLE 53 – FREEDOM OF ASSETS FROM RESTRICTIONS

To the extent necessary to carry out the purpose and functions of the Bank effectively, and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

ARTICLE 54 – PRIVILEGE FOR COMMUNICATIONS

Official communications of the Bank shall be accorded by each member treatment not less favourable than that it accords to the official communications of any other member.

ARTICLE 55 – IMMUNITIES AND PRIVILEGES OF BANK PERSONNEL

All Governors, Directors, Alternates, officers and employees of the Bank, including experts performing missions for the Bank:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives the immunity;
- (ii) where they are not local citizens or nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations, as are accorded by members to the representatives, officials and employees of comparable rank of other members; and
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

ARTICLE 56 – EXEMPTION FROM TAXATION

1 The Bank, its assets, property, income and its operations and transactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.

2 No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, Alternates, officers or employees of the Bank, including experts performing missions for the Bank, except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member.

3 No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held –

- (i) which discriminates against such obligation or security solely because it is issued by the Bank; or
- (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

4 No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held –

- (i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
- (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

ARTICLE 58 – WAIVER OF IMMUNITIES, EXEMPTIONS AND PRIVILEGES

The Bank at its discretion may waive any of the privileges, immunities and exemptions conferred under this Chapter in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interests of the Bank.

SCHEDULE 2

Article VIII, sections 2-9

Status, Immunities and Privileges of the IDA

SECTION 2 – STATUS OF THE ASSOCIATION

The Association shall possess full juridical personality and, in particular, the capacity –

- (i) to contract;
- (ii) to acquire and dispose of immovable and movable property;
- (iii) to institute legal proceedings.

SECTION 3 – POSITION OF THE ASSOCIATION WITH REGARD TO JUDICIAL PROCESS

Actions may be brought against the Association only in a court of competent jurisdiction in the territories of a member in which the Association has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Association shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Association.

SECTION 4 – IMMUNITY OF ASSETS FROM SEIZURE

Property and assets of the Association, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

SECTION 5 – IMMUNITY OF ARCHIVES

The archives of the Association shall be inviolable.

SECTION 6 – FREEDOM OF ASSETS FROM RESTRICTIONS

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Association shall be free from restrictions, regulations, controls and moratoria of any nature.

SECTION 7 – PRIVILEGE FOR COMMUNICATIONS

The official communications of the Association shall be accorded by each member of the same treatment that it accords to the official communications of other members.

SECTION 8 – IMMUNITIES AND PRIVILEGES OF OFFICERS AND EMPLOYEES

All Governors, Executive Directors, Alternates, officers and employees of the Association –

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Association waives this immunity;
- (ii) not being local nationals shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members;
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

SECTION 9 – IMMUNITIES FROM TAXATION

- (a) The Association, its assets, property, income and its operations and transactions authorised by this Agreement, shall be immune from all taxation and from all customs duties. The Association shall also be immune from liability for the collection or payment of any tax or duty.
- (b) No tax shall be levied on or in respect of salaries and emoluments paid by the Association to Executive Directors, Alternates, officials or employees of the Association who are not local citizens, local subjects, or other local nationals.
- (c) No taxation of any kind shall be levied on any obligation or security issued by the Association (including any dividend or interest thereon) by whomsoever held –
 - (i) which discriminates against such obligation or security solely because it is issued by the Association; or
 - (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Association.
- (d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Association (including any dividend or interest thereon) by whomsoever held –
 - (i) which discriminates against such obligation or security solely because it is guaranteed by the Association; or
 - (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Association.

INTERPRETATION ACT 2004

2004/269

| | |
|---|--|
| | PART 1 |
| | GENERAL |
| 1 Name | 18 Enactments made under repealed legislation to have continuing effect |
| 2 Purposes | 19 Powers exercised under the repealed legislation to have continuing effect |
| 3 Application | 20 References to repealed enactment |
| 4 Sources of law | 21 Amending enactment part of enactment amended |
| 5 Definitions | 22 Regulations |
| | 23 Power to make regulations |
| | 24 Enactments not binding on the Government |
| | PART 2 |
| | PRINCIPLES OF INTERPRETATION |
| 6 Ascertaining meaning of legislation | |
| 7 Enactments do not have retrospective effect | |
| | PART 3 |
| | LEGISLATION |
| 8 Date of commencement | 25 Use of forms |
| 9 Time of commencement | 26 Bodies corporate |
| 10 Exercise of powers between passing and commencement of legislation | 27 Parts of speech and grammatical forms |
| 11 Power to appoint to an office | 28 Number |
| 12 Power to correct errors | 29 Calendar and standard time |
| 13 Exercise of powers by deputies | 30 Calculation of time |
| 14 Exercise of powers and duties | 31 Distances |
| 15 Effect of repeal generally | 32 Thumbprint or mark in lieu of signature |
| 16 Effect of repeal on enforcement of existing rights | 33 Electronically recorded documents |
| 17 Effect of repeal on prior offences and breaches of enactments | 34 Currency |
| | 35 Publication |
| | 36-37 [Spent] |
| | PART 4 |
| | MISCELLANEOUS |

Relating to the interpretation, application, and effect of legislation and public documents

| | |
|-------------------|---|
| | PART 1 |
| | GENERAL |
| 1 Name | This is the Interpretation Act 2004. |
| 2 Purposes | The purposes of this Act are— |
| | (a) To state principles and rules for the interpretation of legislation and public documents; |

- (b) To shorten legislation and public documents; and
- (c) To promote consistency in the language and form of legislation and public documents.

3 Application

(1) This Act applies to an enactment that is part of the law of Niue and to a public document of Niue, whether passed, or written, before or after the commencement of this Act unless—

- (a) The enactment provides otherwise; or
- (b) The context of the enactment or public document requires a different interpretation.

(2) The provisions of this Act also apply to the interpretation of this Act.

(3) This Act binds the Government.

4 Sources of law

The sources of Niuean law are, in order of priority—

- (a) The Constitution;
- (b) Acts of the Assembly;
- (c) Regulations;
- (d) Niuean custom;
- (e) The common law of Niue.

5 Definitions

In any enactment and public document—

“Assembly” has the same meaning as in article 82(1) of the Constitution;

“Commission” means the Niue Public Service Commission;

“Commonwealth country” or “part of the Commonwealth” means a country that is a member of the Commonwealth, and includes a territory for the international relations of which the member is responsible;

“constable” means an officer of police of the Niue Public Service;

“Constitution” means the Constitution of Niue, and includes the Act of the Parliament of New Zealand intituled the Niue Constitution Act 1974, and also includes any constitutional amendment, as that term is used in article 35 of the Constitution, when that constitutional amendment has come into force;

“Court” means the High Court;

“day” means a calendar day;

“document” includes any publication and any matter written, expressed or described on any substance by means of letters, figures or marks;

“enactment” has the same meaning as in article 82(1) of the Constitution;

“financial year” means a period of twelve months ending on 30 June;

“Government” means the Government of Niue;

“holiday” means Sunday, Christmas Day, Boxing Day, New Year’s Day, 2 January, Good Friday, Easter Monday, 25 April, the Sovereign’s Birthday, the third Monday and Tuesday of October, the fourth Monday of October, and any day declared by the Cabinet as a public holiday;

“Judge” has the same meaning as in article 82(1) of the Constitution;

“judgment” includes any judicial decree, order, or determination, whether in an action or in any other judicial proceeding, whether civil or criminal;

“mangafaoa” has the same meaning as in the Land Act 1969;

“Minister” means the Minister to whom responsibility for the department or subject to which the context refers has been assigned;

- “month” means a calendar month;
- “New Zealand” when used as a territorial description, means the islands and territories within the Realm of New Zealand but does not include Niue, Tokelau, the Cook Islands, or the Ross Dependency;
- “Niue” when used as territorial description, means the island of Niue and the territorial sea;
- “Niuean” means a person belonging to the aboriginal race of Niue, and includes a person descended from a Niuean;
- “owner”, in relation to Niuean land other than land held under lease or licence as defined in the Land Act 1969, means the mangafaoa or a member of the mangafaoa;
- “penalty unit” means one hundred dollars (\$100.00);
- “person” or any term descriptive of a person includes a corporation sole, a body corporate, and an unincorporated body;
- “prescribed” means prescribed by or under an enactment;
- “public place” means any road, any place open to or used by the public as of right, any wharf or jetty, any vessel at a wharf or jetty or within one mile of the shore, and any church or other building where divine service is being publicly held, any hall or room in which any public entertainment is being held, and any market place;
- “public notice” means making an act, matter or thing generally known in Niue by any customary and practicable means, or by publication in the *Niue Gazette*;
- “regulation” means any enactment other than an Act, but does not include regulations made by an authority which has jurisdiction limited to a district or village;
- “repeal”, in relation to an enactment, includes expiry, revocation, and replacement;
- “rules of court”, in relation to a court, means rules or regulations governing the practice or procedure of the court in question and made by the proper authority in that behalf;
- “territorial sea” has the same meaning as in section 4 of the Territorial Sea and Exclusive Economic Zone Act 1977;
- “working day” means a day of the week other than a Saturday or a holiday;
- “writing” includes representing or reproducing words, figures, or symbols—
- (i) In a visible and tangible form by any means and in any medium;
 - (ii) In a visible form in any medium by electronic means that enables them to be stored in permanent form and to be retrieved and read.

PART 2

PRINCIPLES OF INTERPRETATION

6 **Ascertaining meaning of legislation**

(1) The meaning of an enactment must be ascertained from its text, in light of its purpose and in its context.

(2) The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment.

(3) Examples of those indicators are preambles, the analyses, tables of contents, headings to Parts and sections, marginal notes, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment.

- 7 Enactments do not have retrospective effect**
An enactment does not have retrospective effect.

PART 3
LEGISLATION

8 Date of commencement

(1) An enactment comes into force on the date stated or provided in the enactment.

(2) If an enactment does not state or provide for a commencement date, the enactment comes into force on the date of its certification and sealing, or in the case of a regulation, on the day on which it is made.

9 Time of commencement

(1) An enactment comes into force at the beginning of the day on which the enactment comes into force.

(2) If an enactment is expressed to come into force from a particular day, the enactment comes into force at the beginning of the next day.

10 Exercise of powers between passing and commencement of legislation

(1) A power conferred by an enactment may be exercised before the enactment comes into force to—

- (a) Make a regulation or rule or other instrument;
- (b) Serve a notice or document;
- (c) Appoint a person to an office or position;
- (d) Establish a body of persons; or
- (e) Do any other act or thing for the purposes of the enactment.

The power may be exercised only if the exercise of the power is necessary or desirable to bring, or in connection with bringing, an enactment into operation.

(3) The power may not be exercised if anything that results from exercising the power comes into force before the enactment itself comes into force unless the exercise of the power is necessary or desirable to bring, or in connection with bringing, the enactment into operation.

(4) Subsection (1) applies as if the enactment under which the power is exercised and any other enactment that is not in force when the power is exercised were in force when the power is exercised.

11 Power to appoint to an office

The power to appoint a person to an office includes the power to –

- (a) Remove or suspend a person from the office;
- (b) Reappoint or reinstate a person to the office;
- (c) Appoint another person in the place of a person who –
 - (i) Has vacated the office;
 - (ii) Has died;
 - (iii) Is absent; or
 - (iv) Is incapacitated in a way that affects the performance of the office.

12 Power to correct errors

The power to make an appointment or do any other act or thing may be exercised to correct an error or omission in a previous exercise of the power even though the power is not generally capable of being exercised more than once.

13 Exercise of powers by deputies

A power conferred on the holder of an office, other than a Minister, may be exercised by the holder's deputy lawfully acting in the office.

14 Exercise of powers and duties

Where an enactment confers a power or imposes a duty –

- (a) The power may be exercised and the duty shall be performed as occasion requires;
- (b) An act done in the exercise of the power may be cancelled or varied in the same manner as the power was exercised.

15 Effect of repeal generally

(1) The repeal of an enactment does not affect –

- (a) The validity, invalidity, effect, or consequences of anything done or suffered;
- (b) An existing right, interest, title, immunity, or duty;
- (c) An existing status or capacity;
- (d) An amendment made by the enactment to another enactment;
- (e) The previous operation of the enactment or anything done or suffered under it.

(2) The repeal of an enactment does not revive –

- (a) An enactment that has been repealed or a rule of the law that has been abolished;
- (b) Any other thing that is not in force or existing at the time the repeal takes effect.

16 Effect of repeal on enforcement of existing rights

- (a) The repeal of an enactment does not affect the completion of a matter or thing or the bringing or completion of proceedings that relate to an existing right, interest, title, immunity or duty.
- (b) A repealed enactment continues to have effect as if it had not been repealed for the purpose of completing the matter or thing or bring or completing the proceedings that relate to the existing right, interest, title, immunity, or duty.

17 Effect of repeal on prior offences and breaches of enactments

(1) The repeal of an enactment does not affect a liability to a penalty for an offence or for a breach of an enactment committed before the repeal.

(2) A repealed enactment continues to have effect as if it had not been repealed for the purpose of –

- (a) Investigating the offence or breach;
- (b) Commencing or completing proceedings for the offence or breach;
- (c) Imposing a penalty for the offence or breach.

18 Enactments made under repealed legislation to have continuing effect

(1) An enactment made under a repealed enactment, and which is in force immediately before that repeal, continues in force as if it had been made under any other enactment –

- (a) Which, with or without modification, replaces, or corresponds to, the enactment repealed, and
- (b) Under which it could be made.

(2) An enactment that continues in force may be amended or revoked as if it had been made under the enactment that replaces, or that corresponds to, the repealed enactment.

19 Powers exercised under the repealed legislation to have continuing effect

Anything done in the exercise of a power under a repealed enactment, and which is in effect immediately before that repeal, continues to have effect as if it had been exercised under any other enactment –

- (a) Which, with or without modification, replaces, or that corresponds to, the enactment repealed; and
- (b) Under which the power could be exercised.

20 References to repealed enactment

(1) The repeal of an enactment does not affect an enactment in which the repealed enactment is applied, incorporated, or referred to.

(2) A reference in an enactment to a repealed enactment is a reference to an enactment which, with or without modification, replaces, or corresponds to, the enactment repealed.

(3) Subsection (1) is subject to subsection (2).

21 Amending enactment part of enactment amended

An amending enactment is part of the enactment it amends.

22 Regulations

(1) All regulations shall state the enactment under which they were made and the date on which they were made.

(2) All regulations shall be laid before the Assembly at the first session of the Assembly following their making.

23 Power to make regulations

Where an enactment confers powers to make regulations –

- (a) If the regulations purport to be made in exercise of a particular power, they shall also be construed to be made in exercise of every other enabling power;
- (b) The regulations may be amended in the same manner in which they were made by the same person or by any other person on whom the enactment confers the power to make the regulations;
- (c) For general purposes and also for a special purpose, the special purpose shall not derogate from the power conferred by the general purpose provision.

24 Enactments not binding on the Government

No enactment binds the Government.

PART 4

MISCELLANEOUS

25 Use of forms

A form is not invalid because it contains minor differences from a prescribed form as long as the form has the same effect and is not misleading.

26 Bodies corporate

- (1) Every body corporate shall –
 - (a) Have perpetual succession and a common seal;
 - (b) Have an office at such place as it may designate;
 - (c) Have the rights of a natural person of full age and capacity; and
 - (d) Carry on all such activities as may appear to it to be requisite, advantageous, convenient or conducive to the attainment of its objects.
- (2) No member of a body corporate or of its controlling body who receives any emoluments from the State shall be deemed to hold a public office by reason of their appointment.
- (3) (a) A member of a body corporate may resign office on giving one month's written notice in that behalf to the person who has the power of appointment.
 - (b) A member of a body corporate or of its controlling body who –
 - (i) has unreasonably absented themselves from a meeting of the body corporate;
 - (ii) has become insolvent, has assigned their estate for the benefit of the creditors or has made an arrangement with the creditors;
 - (iii) has been guilty of any misconduct or default in the discharge of their duties as a member which, in the opinion of the person who has the power of appointment, renders them unfit to be a member;
 - (iv) has been convicted of an offence of such a nature as, in the opinion of the person who has the power of appointment, renders it desirable that the member should be removed from office; or
 - (v) is suffering from such mental or physical infirmity as, in the opinion of the person who has the power of appointment, renders that member unfit to discharge their duties as a member – may be removed from office or suspended by the person who has the power of appointment.
- (4) (a) Every body corporate shall sue and be sued in its corporate name.
 - (b) Service of any process by or on a body corporate shall be sufficient if made on behalf of the chairperson.
- (5) (a) Subject to paragraph (b), no document shall be executed by or on behalf of a body corporate unless it is signed by the chairperson.
 - (b) Every cheque of a body corporate shall be signed by the chairperson and treasurer.
 - (c) Notwithstanding paragraphs (a) and (b), every document to which a body corporate is a party may be signed by any person nominated for the purpose by the body corporate and shall, when so signed, be deemed to be duly executed by or on behalf of the body corporate.
- (6) Everything authorised or required to be done by a body corporate or by its controlling body shall be decided by a simple majority of members present and voting, or in accordance with subsections (9) and (10).
- (7) At any meeting of a body corporate or of its controlling body, each member shall have one vote on the matter in question and, in the event of an equality of votes, the chairperson shall have a casting vote.
- (8) A body corporate may delegate any of its powers to its controlling body.
- (9) The linking by telephone or other means of telecommunication of a number of the members of the body corporate not less than the quorum (whether

or not any of the members are outside of Niue) shall be deemed to constitute a meeting of the body corporate, and all the rules of the body corporate shall apply to that meeting if –

- (a) Each member has received at least two working days notice that there will be a meeting by telephone or other means of communication, and
 - (b) At the commencement of the meeting each member has acknowledged the presence of all other members taking part in the meeting, and
 - (c) Each member who takes part in the meeting is able throughout the meeting to hear each member who is taking part in the meeting.
- (10) (a) A proposal in writing signed or assented to by letter, telegram, cable, telex, facsimile or other written manner, by all members of the body corporate or of its controlling body duly called and constituted shall be a decision of the body corporate.
- (b) A decision made under this paragraph may consist of several documents in like form signed by any one or more of the members of the body corporate.

(11) Subject to subsections (6), (7), (9), and (10), a body corporate shall regulate its proceedings and those of its controlling body, committees and sub-committees in such a manner as it thinks fit.

27 Parts of speech and grammatical forms

Parts of speech and grammatical forms of a word that is defined in an enactment have corresponding meanings in the same enactment.

28 Number

Words in the singular include the plural and words in the plural include the singular.

29 Calendar and standard time

(1) The calendar in Niue shall be one day behind the calendar in New Zealand, so that the first day of January in Niue shall be the day which is coincident for the most part with the second day of January in New Zealand, and so on from day to day throughout the year.

(2) The standard time of Niue is the solar time of longitude 165 degrees west of Greenwich.

30 Calculation of time

(1) A period of time described as beginning at, on, or with a specified day, act, or event includes that day or the day of the act or event.

(2) A period of time described as beginning from or after a specified day, act or event does not include that day or the day of the act or event.

(3) A period of time described as ending by, on, at, or with, or as continuing to or until, a specified day, act, or event includes that day or the day or the act or event.

(4) A period of time described as ending before a specified day, act or event does not include that day or the day of the act or event.

(5) A reference to a number of days between two events does not include the days on which the events happened.

(6) A thing that, under an enactment, must, or may be done on a particular day or within a limited period of time may, if that day or the last day of that period is not a working day, be done on the next working day.

31 Distances

A reference to a distance means a distance measured in a straight line on a horizontal or vertical plane.

32 Thumbprint or mark in lieu of signature

Where a party to a document is unable to sign, the thumbprint or mark of that party, attested by the signature of two other persons who are not parties to the document and who certify the identity of the party affixing the thumbprint or mark shall have the same legal effect as if that party has signed their name.

33 Electronically recorded documents

(1) Where an electronically recorded document bears, as evidence that the document emanates from a particular individual, a personal identification mark, the mark shall have the same legal effect as if the individual had signed their name on the document.

(2) Where any matter is electronically recorded, a reference in any enactment –

(a) To an original shall be construed as a reference to that record;

(b) To a true or certified copy, shall be construed as a reference to a reprint of that record.

34 Currency

(1) The unit of currency of Niue is the New Zealand dollar.

(2) A tender of payment of money in New Zealand dollars is legal tender.

35 Publication

Public notice shall be given of all enactments and government appointments, warrants, and instruments.

36-37 [Spent]

LAND ACT 1969

1969/57 – 1 November 1969

| | |
|---|---|
| <p>1 Short title</p> <p>2 Interpretation</p> <p style="text-align: center;">PART 1 REGISTRATION</p> <p>3 The Land Register</p> <p>4 Compulsory registration of instruments</p> <p>5 Effect of registration</p> <p>6 Language of instruments</p> <p>7 Instruments to be signed and attested</p> <p>8 Registrar may be required to give his reasons in writing</p> <p>9 Court may make order to restore effect of lost instruments</p> <p style="text-align: center;">PART 2 INVESTIGATION OF TITLE</p> <p>10 Determination of title</p> <p>11 Court may require written statement</p> <p style="text-align: center;"><i>Ownership</i></p> <p>12 Ownership determined by ascertaining and declaring Mangafaoa</p> <p>13 Relative interests</p> <p style="text-align: center;"><i>Leveki Mangafaoa</i></p> <p>14 Appontment of Leveki Mangafaoa</p> <p>15 Powers and functions of Leveki Mangafaoa</p> <p>16 Removal and replacement of Leveki Mangafaoa</p> <p style="text-align: center;">PART 3 ALIENATION OF NIUEAN LAND <i>General Provisions</i></p> <p>17 Alienation of Niuean land</p> <p>18 Interest in Niuean land not to be taken in execution</p> <p>19 Restrictions on disposition of proceeds of Niuean land</p> <p>20 Purchase money, rent or other proceeds of alienation</p> <p>21 Registrar may charge commission</p> <p style="text-align: center;"><i>Confirmation</i></p> <p>22 Alienations to be confirmed</p> | <p>23 Application for confirmation</p> <p>24 Orders of confirmation</p> <p>25 Effect of confirmation</p> <p>26 Conditions of confirmation</p> <p>27 Confirmation of instruments in pursuance of precedent contract</p> <p>28 Alteration of instruments on confirmation</p> <p style="text-align: center;"><i>Leases</i></p> <p>29 Leases of Niuean land not to exceed 60 years</p> <p>30 Registrar may execute renewals</p> <p style="text-align: center;"><i>Occupation Orders</i></p> <p>31 Court may make occupation orders</p> <p style="text-align: center;"><i>Security charges</i></p> <p>32 Security charge over Niuean land</p> <p>33 Appointment of Receiver</p> <p style="text-align: center;"><i>Partitions</i></p> <p>34 Jurisdiction to partition Niuean land</p> <p>35 Court may apportion rights and obligations</p> <p>36 Discretionary powers of Court</p> <p>37 Combination of several areas of land</p> <p>38 Saving of interests charged on partitioned land</p> <p>39 Entries in Land Register</p> <p style="text-align: center;"><i>Exchanges</i></p> <p>40 Court may make exchange orders</p> <p>41 Conditions of exchange</p> <p>42 Effect of order of exchange</p> <p style="text-align: center;"><i>Sales</i></p> <p>43 Sale of Niuean land to the Crown</p> <p style="text-align: center;"><i>Reservations</i></p> <p>44 Reservations for communal purposes</p> <p>45 Revocation or variation of reservation</p> <p>46 Management and control of reservations</p> <p style="text-align: center;">PART 4 SURVEYS</p> <p>47 Control and supervision of surveys</p> <p>48 Authority for survey</p> |
|---|---|

49 Authority to enter on land
50 Obstruction

52 Registrar's powers
53 Officers not personally liable
54 [Spent]

PART 5

MISCELLANEOUS PROVISIONS

41 Procedure for taking land for public purposes

To provide for the control and tenure of land, the survey of land, the registration of title to land and other like purposes

1 Short title

This is the Land Act 1969.

2 Interpretation

In this Act –

“approved form” means a form approved by Cabinet;

“boundary mark” means any concrete peg or post, iron pipe, or spike in rock or other survey mark or other fixture used to denote a boundary;

“Court” means the Land Court;

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

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

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

“Land Court” means the land division of the High Court;

“lease”, in relation to any Niuean land, includes, in addition to its ordinary meaning, any licence, grant, or other alienation conferring upon any person a right at law or in equity to the use or occupation of the land for any purpose, or a right to enter on it for the purpose of removing from it timber or any other valuable thing attached to or forming part of it, whether that alienation confers a right of exclusive possession or not;

“Mangafaoa” in relation to any Niuean land means the family or group of persons descended from a common ancestor, including any person who has been legally adopted into the family, who at any given time are recognised as entitled by Niuean custom to any share or interest in the land, and excludes a former member of the family legally adopted into some other family. Where Niuean land is owned by a single person exclusively, that person is the Mangafaoa of the land;

“owner” in relation to Niuean land other than land held under lease or licence may be construed as reference to the Mangafaoa or a member of the Mangafaoa;

“register” means to enter on the Land Register under this Act;

“Registrar” means the Registrar of the Court and includes a Deputy Registrar;

“surveyor” means any surveyor or other person for the time being authorised by Cabinet to act as such for the purposes of this Act.

PART 1
REGISTRATION

3 The Land Register

(1) There shall be kept in the Land Registry a book of record called "the Land Register and the Registrar shall, under this Part, enter in respect of each separate section of land in Niue (whether Crown land or Niuean land) the name, area and a plan certified by the Register under section 47 (3).

(2) The Registrar shall enter in that part of the Land Register relating to any section of land, the substance of every Court order or other instrument relating to the land of which registration is by this or any other enactment required or permitted, and which is duly presented to the Registrar for registration.

(3) [Repealed by 2004/269]

4 Compulsory registration of instruments

(1) Every instrument affecting or relating to the title to any land shall be registered:

Provided that it shall not be necessary to register –

- (a) Any lease or occupation order for a period not exceeding 2 years;
- (b) Any transfer, security charge or other instrument disposing of any lease, being a lease for a period not exceeding 2 years;
- (c) Any will;
- (d) Any appointment of a special representative.

(2) Notwithstanding subsection (1) no instrument of alienation affecting Niuean land shall be registered until the alienation referred to in such instrument has been confirmed by the Court.

5 Effect of registration

(1) No instrument, dealing or other matter which is by this Act or any other enactment required to be registered or entered in the Land Register shall until it has been registered or entered be effectual to create or extinguish or transfer or charge any interest in land.

(2) The Land Register shall in no way constitute conclusive evidence of ownership or of title.

6 Language of instruments

Every instrument affecting Niue land shall be in the English language and shall be accompanied by a translation into the Niuean language to the satisfaction of the Registrar.

7 Instruments to be signed and attested

(1) (a) The execution by every person of an instrument required to be registered under this Act shall be attested by a person authorised to take statutory declarations under section 720 of the Niue Act 1966.

(b) No person shall attest the signature of any part to any instrument in or by virtue of which such person acquires or disposes of any interest.

(2) The attesting witness shall add to his signature his place of abode and calling, office, or description and shall certify in such attestation that the instrument has been explained by him to the party whose signature is attested and that such party appeared to understand its contents.

- (3) (a) The date of the execution shall be stated in the instrument and no person shall sign the instrument as an attesting witness unless the date of execution has been so stated in the instrument.
- (b) Where the instrument is executed on different dates by several parties, the date of execution by each party shall be stated in the instrument.

8 Registrar may be required to give his reasons in writing

Should the Registrar refuse to register any instrument, then the person seeking the registration of it may, in writing, require the Registrar to give, in writing his reasons for refusing to register such instrument and the Registrar shall give his reasons accordingly.

9 Court may make order to restore effect of lost instruments

(1) On proof to the satisfaction of the Court that any instrument has been lost or destroyed before the same has been registered under this Act, it may make an order under this section if it is satisfied –

- (a) That the said instrument was duly executed by or on behalf of the parties to it; and
- (b) In the case of an instrument requiring confirmation, that it was duly confirmed, or if it was not so confirmed, that the Court had made a pronouncement in favour of confirmation; and
- (c) That the instrument was not wilfully destroyed by or with the connivance of the applicant for an order under this section.

(2) By an order under this section the Court may declare the nature and effect of the instrument to which the order relates, and the instrument shall be deemed to have been of the nature and to have had effect under its tenor, as declared in this order.

(3) Instead of or in addition to making an order declaring the nature and effect of the instrument, the Court may, on application under this section make an order vesting any land or interest in land to which the instrument related in any person or persons claiming under the instrument or in any other person or persons claiming under or through the first-mentioned person or persons.

(4) On any application under this section the Court shall be guided in all matters by what it deems to be the real justice of the case.

PART 2

INVESTIGATION OF TITLE

10 Determination of title

(1) The Court shall determine every title to and every interest in Niuean land according to the customs and usages of the Niuean people, as far as the same can be ascertained.

(2) The Court may refuse to proceed with any application for investigation of title for the determination of the Mangafaoa or relative interests in that land, until it has before it a plan of the survey of the land affected by it.

(3) The Court may at any stage of the proceedings require that all claims relating to such land, whether by the applicant or by any other person, shall be made in writing to the Court within a time to be fixed by the Court, after which time no further claims for inclusion will be admitted, except by the leave of the Court and upon such terms as the Court determines.

11 Court may require written statement

The Court may require any person having an interest in any application under this Part to lodge with the Court a statement in writing setting out any one or more particulars of the following matters –

- (a) The boundaries of the portion of the land which he claims;
- (b) The grounds of the claim;
- (c) The genealogical tables showing descent from the ancestor or ancestors through whom title is claimed down to and including all persons admitted by the claimant as entitled with him under his claim;
- (d) The names and the approximate location of cultivations, villages, burial places, with the names of relatives of the claimant and persons included in his claim who have been buried there, and any other places or marks of historical interest;
- (e) Any other proof or signs of occupation of or connection with the land by the claimant and other persons included in his claim.

*Ownership***12 Ownership determined by ascertaining and declaring Mangafaoa**

The Court shall determine the ownership of any land by ascertaining and declaring the Mangafaoa of that land by reference to the common ancestor of it or by any other means which clearly identifies the Mangafaoa.

13 Relative interests

- (1) (a) At any time after the ownership of land has been determined the Court upon application, may ascertain or declare the several members of the Mangafaoa and their relative interests in the land.
- (b) The jurisdiction of the Court under this section shall not be exercised except for the purposes of allocating moneys derived from land or any other purposes relating to this Act.
- (2) Relative interests shall, in all cases where it can be conveniently done, be expressed in shares or decimal points of a share.

*Leveki Mangafaoa***14 Appointment of Leveki Mangafaoa**

(1) When the ownership of any land has been determined any member of that Mangafaoa who was reached the age of 21 years may apply in writing to the Court for an order appointing a Leveki Mangafaoa of that land.

(2) If the application is signed by members who in the Court's opinion constitute a majority of the members of the Mangafaoa whether resident in Niue or elsewhere the Court shall issue an order appointing the person named in the application as the Leveki Mangafaoa of that land.

(3) If no such application is received within a reasonable time, or applications are each signed by members who, though having attained the age of 21 years, constitute less than a majority of the Mangafaoa who have attained such age the Court may appoint a suitable person to be Leveki Mangafaoa of that land.

(4) The appointment of a Leveki Mangafaoa shall not be questioned on the grounds that any member of the Mangafaoa was absent from Niue, but the Court may consider any representation made in writing by any member so absent.

(5) Any person who is domiciled in Niue, and whom the Court is satisfied is reasonably familiar with the genealogy of the family and the history and locations of Mangafaoa land, may be appointed as a Leveki Mangafaoa of any land, but if

he is not a member of the Mangafaoa he shall not by virtue of such appointment acquire any beneficial rights in the land.

(6) In appointing any Leveki Mangafaoa the Court may expressly limit his powers in such manner as it sees fit.

15 Powers and functions of Leveki Mangafaoa

(1) The Leveki Mangafaoa of any land, subject to this section and to the terms of his appointment and to any order or direction of the Court, shall have power to control the occupation and use of the land under Niuean custom and shall have power to alienate the land in accordance with the subject to Part 3.

(2) In the exercise of his powers under this section the Leveki Mangafaoa shall under Niuean custom consult with the members of the Mangafaoa whether resident in Niue or elsewhere and shall in particular meet the requirements as to consultation laid down by section 17(3) in relation to the sale and lease of land and the giving of security charges over land.

16 Removal and replacement of Leveki Mangafaoa

(1) The Court may remove from office any Leveki Mangafaoa if in its opinion he cannot by reason of mental or physical disability or for any reason carry out his duties satisfactorily or if he is shown to the satisfaction of the Court to have exercised his powers otherwise than in accordance with Niuean custom or in accordance with equity and good conscience or if he tenders his resignation in writing to the Registrar.

(2) Upon the death or removal from office of any Leveki Mangafaoa a new Leveki Mangafaoa may be appointed in the manner provided by section 14 and all the provisions of that section so far as they are applicable shall apply accordingly.

PART 3

ALIENATION OF NIUEAN LAND

General Provisions

17 Alienation of Niuean land

(1) No Niuean land or any interest of the Mangafaoa in it may be alienated except in accordance with and subject to this section.

(2) (a) For the purposes of this section and of this Part a contract of sale of timber, minerals, crops, or other valuable things attached to or forming part of any Niuean land, or being the produce of it, shall be deemed to be an alienation of that land, unless the thing so sold or agreed to be sold has been severed from the land before the making of the contract.

(b) The term "crops" as used in this subsection shall not extend to any crop which attains maturity and may be harvested within the period of 2 years from sowing or planting.

(3) Subject to section 22 as to the confirmation by the Court, Niuean land may be alienated by the Leveki Mangafaoa in any of the following ways –

(a) He may transfer the land to the Crown under and subject to section 43;

(b) He may lease the land under and subject to sections 26 and 29;

(c) He may give a security charge over the land under and subject to sections 26 and 32.

- (4) Nothing in this section shall be construed to affect the operation of any of the following provisions –
- (a) Section 30 relating to the execution by the Registrar, in certain cases, of renewals of leases;
 - (b) Section 31 relating to the making by the Court of occupation orders;
 - (c) Section 33 relating to the making of an order for the appointment of a receiver;
 - (d) Sections 34 to 39 relating to the making of partition orders;
 - (e) Sections 40 to 42 relating to the making by the Court of exchange orders;
 - (f) Sections 44 to 46 relating to the making by the Court of an order setting apart any Niuean land as a reservation for communal purposes;
 - (g) Section 51 relating to the taking of land by the Crown for public purposes;
 - (h) Section 14 and 15 of the Electric Power Supply Act 1960 relating to the taking of land by the Crown for public purposes;
 - (i) Sections 47 and 89 of the Niue Amendment Act (No 2) 1968 relating to the making by the Court of orders creating easements or rights of way over Niuean land;
 - (j) Part 4 of the Niue Amendment Act (No 2) 1968 relating to the making by the Court of orders vesting Niuean land in bodies corporate for church purposes;
 - (k) Part 7 of the Niue Amendment Act (No 2) 1968 relating to the declaration of any Niuean land as a road;
 - (l) Part 16 of the Niue Act 1966 relating to the declaration by the Court of Niuean land to be subject to such land development provisions and the constitution of charges in respect of it;
 - (m) The Mining Act 1977 in so far as it relates to the issue, grant, suspension, revocation or surrender of any licence affecting or relating to Niuean land.

18 Interest in Niuean land not to be taken in execution

(1) No interest of any person in Niuean land shall be capable of being taken in execution or otherwise rendered available by any form of judicial process for the payment of his debts or liabilities, whether in favour of the Crown or in favour of any other person.

(2) Nothing in this section shall affect the operation of any security charge or other charge to which the land is or may be subject.

19 Restrictions on disposition of proceeds of Niuean land

(1) An assignment of any rent, purchase money, cropping proceeds or other money which is or may become receivable in respect of Niuean land or any interest of the Mangafaoa in it may be given in the approved form by the Leveki Mangafaoa, or (in respect of his personal interest) by a member of the Mangafaoa or by any lessee or licensee, to any of the following –

- (a) The Crown;
- (b) [Repealed 5/94/1984]
- (c) Any lending institution approved by Cabinet.

(2) Except as provided in by subsection (1) no assignment, charge or other disposition shall be given over the proceeds of any rent, purchase money, or other money which is or may become receivable in respect of Niuean land or any interest in it.

20 Purchase money, rents or other proceeds of alienation

(1) All proceeds from any alienation, whether by way of purchase money, rent, or otherwise shall be paid to the Registrar for distribution to the Leveki Mangafaoa or the persons entitled to it.

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

(3) All money so paid into the Court shall after any necessary deduction be paid out of Court to the Leveki Mangafaoa or the persons entitled to it as determined by any order of the Court.

21 Registrar may charge commission

(1) The Registrar shall be entitled to charge a commission at the rate of 5 per cent on the money paid into the Court under section 20.

(2) The Court, having regard to the amount of money paid, to the number of persons entitled to it, and any other relevant matters, may direct that a lower rate of commission be charged in any specified case.

*Confirmation***22 Alienation to be confirmed**

(1) No alienation of Niuean land by the Leveki Mangafaoa shall have any force or effect unless and until it has been confirmed by the Court.

(2) An appeal shall lie to the Court of Appeal from any decision of the Court to grant or refuse confirmation of an alienation or from any variation by the Court of the terms of any alienation.

(3) Nothing in this section shall apply to any arrangement or decision of the Leveki Mangafaoa by which any person is given the right to use any land for a period not exceeding 2 years.

23 Application for confirmation

No confirmation of an alienation of Niuean land by the Leveki Mangafaoa shall be granted, unless an application for it is made by or on behalf of a party to the instrument of alienation within 6 months after the date of the execution of the instrument by the Leveki Mangafaoa.

24 Orders of a confirmation

Confirmation shall be granted by an order of the Court and a certificate of such confirmation shall be endorsed or otherwise written on the instrument of alienation signed by a Judge of the Court, or by the Registrar acting under the authority of a Judge and sealed with the seal of the Court.

25 Effect of confirmation

Subject to Part 1 as to registration on confirmation being granted, the instrument of alienation shall (if otherwise valid) take effect under its tenor as from and including the date at which it would have taken effect if no such confirmation had been required.

26 Conditions of confirmation

(1) Subject to this section, no alienation shall be confirmed unless the Court is satisfied as to the following matters –

- (a) That the instrument of alienation has been executed in the manner required by this Act;

- (b) That the alienation is not contrary to equity or good faith, or to the interests of the persons alienating or to the public interest;
- (c) That having regard to the relationship (if any) of the parties and to any other special circumstances of the case the rental or consideration (if any) for the alienation is adequate;
- (d) That any lease which exceeds 5 years duration and any security charge has been agreed to by the majority of the members of the Mangafaoa whether resident in Niue or elsewhere;
- (e) That the alienation is not otherwise prohibited by law.

(2) The Court may confirm an alienation notwithstanding any informality or irregularity in the mode of execution of the instrument of alienation if, having regard to the interest of all the parties, it is satisfied that the informality or irregularity is immaterial.

(3) No confirmation of an alienation shall be questioned or invalidated on the ground of any error or irregularity in the procedure by which it was applied for or granted.

27 Confirmation of instruments in pursuance of precedent contract

When any valid contract to grant or renew a lease, or any other valid contract of alienation, has been duly confirmed, the confirmation of any lease or other instrument of alienation under that contract shall, if the instrument is duly executed under this Act, be granted by the Court as a matter of right.

28 Alteration of instruments on confirmation

(1) On an application for confirmation, the Court may, with the consent of all parties to the instrument of alienation, make, under the seal of the Court, such alterations as may be thought necessary in order to justify confirmation, and may thereupon confirm the alienation.

(2) The instrument of alienation as so altered shall, if otherwise valid, take effect as if the alterations had been made before its execution.

Leases

29 Leases of Niuean land not to exceed 60 years

(1) Except as provided in this section no lease of Niuean land shall be for a longer period than 60 years (including any term or terms of renewal to which the lessee may be entitled).

(2) Every such lease shall be granted so as to take effect in possession within one year from and including the date of the first execution of it by any party to it.

(3) With the prior written approval of Cabinet, leases may be granted for afforestation purposes or for the purpose of erecting commercial or industrial buildings providing for a renewal period taking the total term beyond 60 years if the right to such period or periods is expressed to be conditional upon the performance during the earlier term or terms of certain specified covenants as to the planting and care of trees, or to the erection in permanent materials of substantial improvements.

(4) A lease may be granted for public purposes or church purposes for a period not exceeding 60 years with perpetual rights of renewal or with other rights of renewal taking the total period beyond 60 years. Every such lease shall be expressed to be for public purposes or church purposes and shall provide for the termination of the lease if the land ceases to be used exclusively for those purposes.

(5) No lease of Niuean land shall make provision for the payment to the lessee of compensation for improvements effected by him on or to the land.

- (6) Every lease made under this section shall be in an approved form.
- (7) Nothing in this section shall be construed to apply to any lease of Niuean land to the Crown.

30 Registrar may execute renewals

(1) The lessee under any lease of Niuean land (whether granted before or after the commencement of this Act) who claims that he is entitled to a renewal of his lease and that it is difficult or impossible to obtain execution by the Leveki Mangafaoa of an instrument of renewal may apply to the Court for an order directing the Registrar to execute, as an agent of the Mangafaoa, an instrument of renewal in accordance with the terms of the lease, and the Court may make such order accordingly.

(2) On the making of an order under this section, the Registrar shall have full authority in accordance with the terms of the order to execute the renewal of the lease as if he were the duly appointed agent of the Mangafaoa.

Occupation Orders

31 Court may make occupation orders

(1) The Court may under this section make in respect of any Niuean land to a member of the Mangafaoa or the spouse or surviving spouse of a Member or a Member and spouse jointly an occupation order on such terms and conditions not inconsistent with this section as may be specified in the order.

(2) Application for an occupation order shall be made by the Leveki Mangafaoa or by the member of the Mangafaoa desiring the order, or by both, and shall be accompanied by a description and plan of the area to be occupied.

(3) Every occupation order shall upon registration take effect under its tenor.

(4) Unless the area concerned has already been defined by survey and used or occupied as a separate section an occupation order shall not be made over an area of less than 20 perches in the case of a village site and less than 2 acres for a plantation area.

(5) An occupation order may be made for the personal use of the person for whose favour it is made for his lifetime or for some specified term of years or may be granted upon terms that it passes to that person's successors under Niuean custom.

(6) Every occupation order of village site land shall, if possible, be made in favour of a husband and wife jointly.

(7) No rental or premium shall be payable in respect of an occupation order.

(8) Such occupation order may provide for the termination of it and the reversion to the Mangafaoa of the land affected if the person in whose favour it is made or the person otherwise entitled to the benefit of it;

- (a) Ceases to make full use of the land for any period of not less than 2 years which may be specified in such occupation order;
- (b) Is absent from Niue for any period of not less than 2 years which may be specified in such occupation order otherwise than with the prior written approval of Cabinet for the purpose of any training, education or instruction;
- (c) Fails to perform any of the special covenants which may be specified in the order;
- (d) Surrenders rights conferred by the order by executing an instrument in the approved form.

- (9) (a) The Leveki Mangafaoa or the Registrar may apply to the Court for a certificate that the order has for any reason specified in subsection (8) terminated and the Court may, if it is satisfied that the order was terminated under subsection (8), give a certificate accordingly.
- (b) Any such certificate may be registered.

Security Charges

32 Security charge over Niuean land

(1) Security over Niuean land or any interest of the Mangafaoa in any land and security over the interest of any nature of any person in Niuean land may be given by means of a security charge created under this section or any other charge created by or under any enactment.

(2) No security over Niuean land or any interests in it as aforesaid shall be given to any person or body except to –

- (a) The Crown;
- (b) [Repealed 5/94/1984]
- (c) Any lending institution approved for the purposes of this section by Cabinet.

(3) Security over Niuean land or any interest in it of the Mangafaoa, or over the interest of any nature of any person in Niuean land shall be created by an instrument in an approved form executed by the Leveki Mangafaoa or by the other person giving the security and registered under Part 1:

Provided however that any security charge executed by a Leveki Mangafaoa shall be subject to confirmation by the Court as provided by sections 22 to 28.

(4) Except as provided in this section no security shall be given or constituted over Niuean land or any interest in it.

(5) No charge or security charge over Niuean land or any interest shall be enforceable by sale of the land or interest charged.

33 Appointment of Receiver

The Court, on application and proof of default, may enforce a charge or security charge as aforesaid by appointing in respect of the land or interest charged a receiver and section 56 of the Niue Amendment Act (No 2) 1968 shall apply as if the receiver had been appointed under that section.

Partitions

34 Jurisdiction to partition Niuean land

- (1) The Court shall have exclusive jurisdiction to partition Niuean land.
- (2) The jurisdiction to partition shall be discretionary and the Court may refuse to exercise it in any case in which it is of the opinion that partition would be inexpedient in the public interest or in the interests of the Mangafaoa or other persons interested in the land.

35 Court may apportion rights and obligations

(1) When a partition order is made, the Court may, in that order or in any subsequent order made on the application of any person interested, or of the Registrar, or of its own motion, apportion or adjust as between the several pieces into which the land has been partitioned all rights, obligations, or liabilities arising from any lease, occupation order, or charge to which the land is subject at the date of the partition of it and every such order of apportionment or adjustment shall have effect according to its tenor in the same manner in all respects as if all necessary transfers, releases, covenants, and other dispositions or agreements had been duly made in that behalf by all persons concerned.

(2) In the exercise of its powers under this section the Court shall not make any apportionment or adjustment without the consent of each and every –

- (a) Lessee of the land; and
- (b) Person having an interest in the land, by virtue of an order made under section 31, where the order has been made upon the terms mentioned in that section; and
- (c) Person or body in whose favour a security charge created under section 32, subsists over the land or over any interest in the land.

(3) Subject to subsection (2) the Court may exercise the powers of apportionment or adjustment, conferred upon it by subsection (1).

36 Discretionary powers of Court

In partitioning any land the Court may exercise the following discretionary powers –

- (a) It may where the Leveki Mangafaoa wishes to allocate a portion of the land to a member of the Mangafaoa or the Mangafaoa has become unduly large or in cases of irreconcilable family disputes, partition the land among groups of members of the Mangafaoa on what appears to the Court to be the general desire of the persons concerned to be just and equitable;
- (b) It shall avoid, as far as practicable, the subdivision of any land into areas which because of their smallness or their configuration or for any other reason, are unsuitable for separate ownership or occupation;
- (c) It may appoint new Leveki Mangafaoa in respect of the pieces of land affected by any partition orders.

37 Combination of several areas of land

When the Mangafaoa of one area of land is also the Mangafaoa of any other areas of land, the Court may, for the purposes of partition between groups of members of the Mangafaoa, treat those several areas as a single area owned by them and make an order or orders of partition accordingly.

38 Saving of interests charged on partitioned land

If, on the partition of any land, the share or interest of any person is subject to any right, charge, or interest vested in any other person, that right, charge, or interest shall, subject to any apportionment or adjustment made under section 35 attach to and affect the land or interest that is allocated by the partition order to the owners of the first-mentioned share or interest.

39 Entries in Land Register

When any land is partitioned by the Court, the Registrar shall give effect to the partition by entries in the land Register, recording particulars of any new section thereby created and to the extent necessary for cancelling or amending any former entry.

Exchanges

40 Court may make exchange orders

- (1) The Court may make an order of exchange of Niuean land.
- (2) Any interest in Niuean land may be exchanged for an interest in any other Niuean land or in Crown land.

41 Conditions of exchange

The Court shall not make an order of exchange unless satisfied –

- (a) That the exchange is not detrimental to the interests of the Mangafaoa affected by it;
- (b) (i) That the interests to be so exchanged are in the opinion of the Court approximately equal in value; or
 - (ii) That where in the opinion of the Court the interests so exchanged are so unequal in value as to require this course, a sufficient sum of money by way of equality of exchange has been actually paid, or sufficient security for the payment of it has been given;
- (c) That the majority (or where there are less than 5 members, the whole of the members of the Mangafaoa) of the members of the Mangafaoa whether resident in Niue or elsewhere consent to the exchange;
- (d) That the Minister consents to the exchange of any Crown land.

42 Effect of order of exchange

(1) An order of exchange shall operate under its tenor to transfer and vest the respective interests expressed to be exchanged in the same manner as if all necessary instruments of assurance had been lawfully executed by and between all persons interested, and as if they had all been fully competent in that behalf.

(2) When any Crown land becomes vested in a Mangafaoa by an order of exchange, the land shall become Niuean land.

*Sales***43 Sale of Niuean land to the Crown**

(1) Niuean land may be alienated to the Crown by way of transfer by an instrument of transfer executed by the Leveki Mangafaoa and confirmed by the Court.

(2) The instrument of transfer shall not be confirmed by the Court until the members of the Mangafaoa and their shares have been ascertained by the Court.

(3) On application of the Crown or the Leveki Mangafaoa the Court shall be satisfied that the majority (or where there are less than 5 members, the whole of the members of the Mangafaoa) of the members of the Mangafaoa whether resident in Niue or elsewhere consent to the terms and conditions of the sale.

(4) If some members of the Mangafaoa of the land object to the sale of land to the Crown, the Court may make a partition order setting apart the shares of the members objecting if it is satisfied that the land can be economically subdivided.

(5) Any members of the Mangafaoa of the land affected by the sale who are absent from Niue may forward their consents or objections in writing to the Registrar or appoint in writing some person to appear and speak on their behalf in the Court.

(6) In the registration of an instrument of alienation of Niuean land to the Crown duly confirmed by the Court, the land shall become Crown land.

*Reservations***44 Reservations for communal purposes**

(1) The Court may on the application of any Leveki Mangafaoa and with the consent of the majority of the members, who in the Court's opinion constitute a majority of the members of the Mangafaoa who are ordinarily resident in Niue, make an order setting apart any Niuean land, which is not subject to any charge,

as a reservation for the common use of the residents of a village, or of a Church or other group or institution for such purpose as a burial ground, fishing ground, village site, landing place, place of historic interest, source of water supply, Church site, building site, recreation ground, bathing place or any other specified purpose whatsoever.

(2) Before making such an order the Court shall be satisfied that the members of the Mangafaoa who are not ordinarily resident in Niue will not as a result of the proposed order suffer undue hardship.

45 Revocation or variation of reservation

(1) A reservation order may be revoked or varied by the Court whether as to boundaries of the land included in the reservation or as to the purposes of it.

(2) Where by reason of the revocation or variation of any reservation order under this section any land ceases to be a reservation or part of a reservation the land shall vest, as of its former estate in the Mangafaoa and in which it was vested immediately before it was constituted or as included in the reservation, or in their successors. In any such case the Court may make an order vesting the land in the Mangafaoa found by it to be entitled to the land, and if necessary ascertaining the members of the Mangafaoa and their relative interests.

46 Management and control of reservations

The Court may by order, vest any reservation in any body corporate or in one or more persons in trust to hold and administer it for the benefit of the persons or class of persons for whose benefit the reservation is constituted, and may appoint a new trustee or new trustees or additional trustees.

PART 4

SURVEYS

47 Control and supervision of surveys

(1) The control and supervision of all surveys of land in Niue, and the preparation of plans in relation thereto shall be the responsibility of the Registrar.

(2) No survey of land shall be conducted except under an order of the Court or by the Registrar or with his prior written authority and all such survey shall be carried out by a surveyor.

(3) Any plan or diagram required to be endorsed on or appended to any instrument or otherwise included in the Land Register shall be prepared by or with the authority of the Registrar and shall be certified by him as representing the true boundaries of the land and such other details as may be relevant as agreed to by the interested parties or as determined by the Court.

(4) No charge shall be made for any survey for the purpose of the initial registration of any section of land or for the preparation of plans in relation thereto.

(5) Fees may be charged for any survey or for the preparation of any plan or diagram otherwise than provided in subsection (4) at such rate as may be fixed by the Registrar.

48 Authority for survey

(1) The Registrar or any person authorised in writing by the Court or by the Registrar may during the hours of daylight enter upon any land for the purpose of carrying out a survey of the land or any part of it and may do all things reasonably necessary for the purposes of such survey.

(2) The Leveki Mangafaoa or the occupier of any land claiming to have suffered damage under subsection (1) by the entry on it for the purposes of survey may lodge a claim for compensation for such damage with the Registrar.

(3) The Registrar may make good any damage caused as aforesaid or may authorise payment in settlement of the claim.

(4) Any applicant not satisfied with the decision of the Registrar on his claim may apply to the Court to determine the amount (if any) of compensation and the Court shall issue an order accordingly.

49 Authority to enter on land

Before entry is made on any land under section 48 for the purposes of survey the Registrar shall give or cause to be given to the Leveki Mangafaoa or to any occupier of the land such notice as is reasonable in the circumstances.

50 Obstruction

(1) Any person wilfully preventing or obstructing any survey, authorised under this Act or any other enactment, or destroying, effacing or removing any survey pegs or boundary mark placed under the authority of this Act shall be liable on conviction to a fine not exceeding 0.5 penalty units and shall also be liable to make good any loss or damage thereby occasioned.

(2) Any person having knowledge of the removal, destruction or possibility of the removal or destruction of any boundary mark or survey monument shall inform the Registrar who shall take such steps as are necessary and expedient to protect, repair or replace the same.

PART 5

MISCELLANEOUS PROVISIONS

51 Procedure for taking land for public purposes

(1) Cabinet may direct the Registrar to give notice under this section of a proposal to take land for public purposes.

(2) (a) The Registrar shall prepare a plan of the area proposed to be taken on which shall be set forth the names of the Mangafaoa involved and as far as possible the names and addresses of the Leveki Mangafaoa and of any lessee or occupier of the particular areas.

(b) The plan shall be held in the office of the Court and shall be available for public inspection.

(3) (a) The Registrar shall give notice in writing of the proposed taking of land to the Leveki Mangafaoa and to any lessee or other person possessing an interest likely to suffer injury by the taking including any person or body in whose favour a security charge over the land exists.

(b) Each such notice shall advise that the plan may be inspected at the office of the Land Court and that any person may give to the Registrar within 30 days of the date of the notice written notification of his objection to the proposal and his reasons for it.

(4) The Registrar shall, where an objection has been lodged fix a time and place at which the objector may appear before Cabinet and support the objection by evidence and argument and shall give to the objector notice in writing of such time and place.

(5) If within the said period of 30 days no written notice of objection is received by the Registrar, or if after due consideration of the objection or objections Cabinet is of the opinion that effect should be given to the proposal to take the land for the public purpose, and that no private injury will be done by it for which due compensation is not provided by any enactment Cabinet may recommend to the Minister that the land be taken for the public purpose under section 11 of the Niue Amendment Act (No 2) 1968.

(6) In any case where the ownership of the land proposed to be taken has not been determined or a Leveki Mangafaoa has not been appointed or it is considered desirable to determine the members of the Mangafaoa and their relative interests, the Registrar may apply to the Court to exercise its jurisdiction accordingly.

(7) In any case where under any enactment or otherwise authority exists for the Crown through its servants, agents or workmen to enter on any Niuean land to carry out works for any public purpose, and no express provision is made as to the giving of notice, Cabinet or some person authorised by it shall before any entry is made on the land give to the Leveki Mangafaoa or to any occupier of the land, such notice of his intention to enter as is reasonable in the circumstances.

52 Registrar's powers

(1) The Registrar may in the exercise of his powers under this Act state any case or reserve any question for consideration by the Court, or apply for directions to the Court, and the Court shall have the power to hear and determine the case or question, or give directions accordingly.

(2) Any person aggrieved by a decision of the Registrar given in pursuance of his powers under this Act may appeal to the Court, which may confirm, quash or vary the decision but no appeal shall lie under this subsection in any case where the decision of the Registrar has been given in conformity with the determination by the Court of a case or question stated or reserved by him in connection with the same matter for its consideration under subsection (1).

(3) The Registrar may, for the purposes of this Act –

- (a) In writing, require any person to produce any or give any information relating to land or to any interest in land;
- (b) In connection with any dealing with any land or interest in it, or with any disposition of it, in writing require any person having the custody or control of any duplicate instrument concerned to bring it into the Land Registry to be endorsed, cancelled, amended, inspected or otherwise dealt with as the case requires;
- (c) Make or delete all such entries upon or from the land register, instrument, duplicate, map, plan or other document as are necessary by reason of the operation of this Act or any other enactment.

53 Officers not personally liable

Neither the Registrar nor any members of his staff shall be personally liable to any action or proceeding for or in respect of any act or matter bona fide done, or omitted to be done by him or them in the exercise or supposed exercise of the powers conferred upon them by this Act or any other enactment.

54 [Spent]

LIQUOR ACT 1975

1975/2 – 13 February 1975

| | |
|---|---|
| <p>1 Short title</p> <p>2 Interpretation</p> <p>3 Liquor Board</p> <p>4 Manufacture and importation of liquor</p> <p>5 Minister may import liquor</p> <p>6 [Spent]</p> <p>7 Sales of liquor by Government</p> <p>8 Licences to resell liquor</p> <p>9 Offences by licensees</p> <p>10 Offence to sell liquor without authority</p> <p>11 Offences by persons under 18 years</p> | <p>12 Offence to drink liquor in public thoroughfares</p> <p>13 Prohibition orders</p> <p>14 Penalties</p> <p>15 Commencement of proceedings</p> <p>16 Powers of constables</p> <p>17 Regulations</p> <p>18 [Spent]</p> |
|---|---|

SCHEDULE

To provide for the control of the manufacture and sale of liquor in Niue

- 1 Short title**
This is the Liquor Act 1975.
- 2 Interpretation**
- (1) In this Act –
 “Board” means the Liquor Board;
 “Secretary” means the Financial Secretary;
 “Commissioner” means a Commissioner of the High Court;
 “Director” means the Director of Health;
 “liquor” means any spirit, wine, ale, beer, stout, cider or any other fermented distilled or spirituous liquor ordinarily used as a beverage which contains more than 2 parts per cent of proof spirit;
 “Minister” means the Minister of Customs, Shipping and Trade;
 “police officer” means any constable of any rank acting with the express authority and under the instructions of the Chief Officer of Police.
- (2) Where by this Act the Minister is enabled to delegate any of his powers to the Secretary, or to authorise the Secretary to take any action, he may in addition to it or in lieu of it delegate to or authorise any other officer of the Customs Department.
- (3) Nothing in this Act shall apply to a minister of religion obtaining and using or giving wine or other liquor in connection with any religious rite or sacrament.
- 3 Liquor Board**
- (1) There is hereby established for the purposes of this Act, a Board to be known as the Liquor Board which shall consist of not less than 3 persons nor more than 6 persons to be appointed by Cabinet.

(2) The persons appointed by the Cabinet from the general public shall hold office for a term of 3 years from the date of their appointment and may in like manner be reappointed.

(3) Three members of the Board present at a meeting shall form a quorum.

(4) The Board shall have power to –

- (a) Grant or refuse any application for a licence under this Act:
Provided that no such application shall be finally considered by the Board until a written report from the Chief of Police has been received and considered by the Board;
- (b) Hold such inquiries and advise the Government on matters relating to the control of manufacture, sale and consumption of liquor in Niue;
- (c) Prescribe fees to be paid for licences under this Act;
- (d) Fix the price payable to licensees for liquor sold by them;
- (e) Prescribe opening and closing hours for the sale of liquor by licensees;
- (f) To do such things as may be prescribed by regulations under this Act.

(5) There shall be a Secretary of the Board who shall be appointed by the Public Service Commission and who may hold any other office in the Public Service which the Public Service Commission shall consider to be not incompatible with it.

(6) Members of the Board not being members of the Public Service may be paid in respect of each day or part of a day of attendance as members of the Board such sum as Cabinet shall determine, together with any expenses reasonably incurred by them in respect of their attendances at meetings of the Board.

4 Manufacture and importation of liquor

(1) It shall not be lawful for any person to brew or manufacture liquor in Niue except with the prior written authority of the Board to be given on such terms and conditions as it may deem fit to impose and to be consistent with any regulations made under this Act.

(2) Except as provided in section 5 it shall not be lawful for any person to import any liquor into Niue:

Provided that it shall be lawful for any person of or over the age of 18 years returning or entering into Niue to bring with him as part of his personal baggage and exempt from customs duty an amount that does not exceed:

- (a) (i) 3.5 litres of spirits; or
- (ii) 3.5 litres of liquor; or
- (iii) 3.5 litres of wine; or
- (iv) any combination of (i)-(iii) above provided that the total volume does not exceed 3.5 litres; or
- (b) 8.5 litres of beer.

(3) Every person who carries, conveys or conceals any liquor brewed, manufactured or imported in breach of this section or, who has in his possession or control any such liquor, or who is the owner, lessee, or occupier of any premises in or about which any such liquor is found, shall be guilty of an offence, unless in the case of an accused charged with being the owner, lessee, or occupier of premises in which any such liquor is found as aforesaid he satisfies the Court that such liquor was not there with his knowledge or consent.

5 Minister may import liquor

(1) The Minister may, for and on behalf of the Government, and at the cost of the Treasury Operating Account purchase and import into Niue such liquor of such nature as he thinks fit for sale or use under this Act.

(2) The Minister may delegate all or any of his powers under subsection (1) to the Secretary.

(3) The Board may grant a licence to a person to import liquor.

(4) A licence granted under subsection (3) is valid for one year but may be terminated by the Board if the licensee is convicted of an offence under this Act.

6 [Spent]

7 Sales of liquor by Government

(1) The Government may sell liquor to any persons of or over the age of 18 years who have not been prohibited under a prohibition order, at such prices as the Minister shall fix.

(2) Such sales shall be made for cash and from such Government store on such days and between such hours as the Minister shall direct.

(3) No such sale shall be of less liquor than is contained in a bottle or can or other sealed container, and no liquor shall be consumed by any person at any such store.

(4) The Secretary shall keep proper records relating to the importation custody and sale or other disposition of liquor.

8 Licences to resell liquor

(1) (a) It shall be lawful for the Board to grant, on application in the manner set out in the Schedule and upon payment of the appropriate fee a licence to the owners or occupiers of suitable premises authorising the holder of it to sell liquor in the licensed premises at such times and during such hours as shall be stipulated in the licence.

(b) No licence shall be granted under this section without due regard being had to the general policy in relation to it of the Village Council of the village wherein such premises are situated.

(2) A licence issued under this section shall be renewed annually on March 31 and shall be subject to all such terms and conditions imposed in each case as the Board thinks fit and the Board may cancel or vary any such licence.

(3) Any such licence may, at the Board's discretion, authorise the sale of liquor for consumption on the premises only or for consumption off the premises only, or for consumption either on the premises or off the premises.

9 Offences by licensees

(1) Every licensee who shall sell or expose for sale any liquor at any place or time or in any quantity or manner not authorised by his licence or by this Act shall be guilty of an offence.

(2) Any licensee who sells or supplies or allows to be sold or supplied any liquor to any person under 18 years of age shall be guilty of an offence.

(3) Every licensee commits an offence, who –

(a) Permits drunkenness, violence, quarrelsome behaviour, or disorderly or riotous conduct to take place on his licensed premises or sells any liquor to any drunken person; or

(b) Knowingly permits any disorderly or drunken persons to assemble or remain on his licensed premises; or

(c) Suffers or permits his licenced premises to be used as a gaming house within the meaning of section 176 of the Niue Act 1966.

(4) Every licensee shall be responsible for the acts or omissions of his servants or agents in contravention of this Act, notwithstanding that it shall appear that the offence charged was not committed by such licensee personally but by his servant or agent.

10 Offence to sell liquor without authority

Every person not being licensed under or by virtue of this Act to sell liquor, who sells or offers or exposes or keeps for sale any liquor commits an offence.

11 Offences by persons under 18 years

- (1) Every person under the age of 18 years commits an offence, who –
- (a) Purchases or consumes or has possession of any liquor on any premises where liquor is sold; or
 - (b) Has possession of any liquor in any place of resort open to or used by the public.
- (2) Every person commits an offence who, not being a licensee or agent or servant of a licensee supplies any liquor to a person under the age of 18 years in any place of resort open to the public.

12 Offence to drink liquor in public thoroughfares

Every person commits an offence who drinks any liquor on any road, street, footpath, alley or any thoroughfare of a public nature, or in any public passenger carrying vehicle or on any village green other than during the course of an official function lawfully held on it.

13 Prohibition orders

(1) Upon the application of any person or any relative of such person or of the Police, and upon proof that such person is of confirmed intemperate habits a Commissioner may make a prohibition order in respect of such person prohibiting him from possessing or consuming any liquor for such period not exceeding 2 years as the Commissioner shall determine.

(2) Every prohibited person who purchases or procures or possesses or consumes liquor during the currency of a prohibition order commits an offence.

(3) Every person commits an offence who knowingly procures any liquor for a prohibited person or assists such person to procure liquor.

(4) A prohibition order may at any time not less than 6 months after the date of the order be rescinded by a Commissioner on being satisfied that the prohibited person has in all respects complied with the prohibition order and appears unlikely to revert to his previous intemperate habits.

(5) Whenever a Commissioner has made a prohibition order under this Act he shall cause notice of it to be given to the Chief Officer of Police, the Secretary, and all licensees holding licences granted under section 8.

14 Penalties

(1) Any person convicted of an offence against this Act or any regulations made under this Act shall, until and unless any other penalty is provided, be liable for a first offence to a fine not exceeding 0.5 penalty units and for a second or any subsequent offence to imprisonment for a term not exceeding 6 months or a fine not exceeding 5 penalty units, or both.

(2) Where any offender against this Act is a licensee, the convicting court may in addition recommend to the Board that his licence be cancelled.

(3) Where a second or subsequent offence involving drunkenness is committed by any person the court in addition to any other penalty may make a prohibition order against him.

(4) On the conviction of any person for an offence against this Act, the court, in addition to any other penalty imposed or order made by it, may declare any liquor which has been seized by the Police under section 16 (c) and in respect of which such person is convicted together with the container of such liquor, to be forfeited to the Government, to be sold, destroyed, or otherwise disposed of as the Minister thinks fit.

15 Commencement of proceedings

All proceedings for offences against this Act shall be commenced within a period of 6 months after the commission of the offence charged, and may be instituted and prosecuted in the name or at the instance of the Chief Officer of Police or the Secretary.

16 Powers of constables

Any constable may at any time –

- (a) Enter on and inspect any licenced premises or any part of it;
- (b) Demand the name address and age of any person in any licensed premises;
- (c) On suspecting on reasonable grounds that an offence against this Act has probably been committed at or in any place to enter on such place under the authority of a search warrant to be duly obtained by him, and to seize any liquor the possession of which is not satisfactorily accounted for by any owner or occupant of such place, such liquor to be held in safe custody pending an order being made under section 14 (4) in relation to it.

17 Regulations

(1) The Minister acting on the advice of Cabinet may make all such regulations as shall be necessary or expedient for giving full effect to this Act and for the due administration of it.

(2) Without limiting the general power conferred by subsection (1), it is hereby declared that regulations may be made under this section for all or any of the following purposes –

- (a) Prescribing procedures and forms in respect of applications for, grant of and renewal of licensees:
Provided that unless and until such regulations shall be made amending the form of application for and grant of a licence the form contained in the Schedule shall be the form for the several matters referred to in the Schedule;
- (b) Providing for the keeping of records and accounts for the purposes of this Act;
- (c) Prescribing minimum standards with respect to the location size and nature of premises to qualify for the issue of a licence under this Act.

18 [Spent]

SCHEDULE
Section 8
Application for Licence to Sell Liquor

To the Secretary, Liquor Board

Application is hereby made for a licence to sell liquor in accordance with the following particulars

- 1 Name of applicant
2 Occupation
3 Address
4 Location of premises where licence is sought
5 Full description of premises (eg club, restaurant, shop, etc)
6 Size and nature of premises
7
8 Proposed hours of operation (eg opening and closing). Whether split (eg 2pm-5pm, 7pm -10pm, etc.
9 Additional facilities offered to members, patrons or customers (eg coffee, light snack, meals, entertainment, games, dancing, music, toilet).

SIGNED by or on behalf of the applicant

Signature

Date

FOR OFFICE USE ONLY

Application No. Date Received
Previous Application Granted/Refused
Date this application presented to Board
This application: Granted/Refused
Terms on which licence granted: (e.g. hours, etc)
Fee payable

MANUFACTURED GOODS TAX ACT 1964

1964/21 – 2 June 1964

| | |
|--|--|
| <p style="text-align: center;">PART 1 PRELIMINARY</p> <p>1 Short title</p> <p>2 Interpretation</p> <p>3 Recovery of tax</p> | <p style="text-align: center;">PART 3 TAX ON GOODS MANUFACTURED IN NIUE</p> <p>8 Tax imposed</p> <p>9 Refunds</p> |
| <p style="text-align: center;">PART 2 TAX ON IMPORTED GOODS</p> <p>4 Rates of tax payable</p> <p>5 Payment</p> <p>6 Personal effects exempted</p> <p>7 Refunds</p> | <p style="text-align: center;">PART 4 MISCELLANEOUS PROVISIONS</p> <p>10 Rules or regulations</p> <p>10A New Zealand Representative Act 1981</p> <p>11 [Spent]</p> |

SCHEDULE

To provide for the imposition and collection of a tax on certain goods imported into, or manufactured in Niue

| | |
|--|--|
| <p style="text-align: center;">PART 1 PRELIMINARY</p> <p>1 Short title This is the Manufactured Goods Tax Act 1964.</p> <p>2 Interpretation In this Act – “current domestic value” has the same meaning as in the Customs Act 1966; “goods” means movable personal property of all kinds; “motor vehicle” means a vehicle which is drawn or propelled by mechanical power, but does not include – (a) A tractor within the meaning of the Transport Act 1965; (b) Any bulldozer, earth-scraper, earth-removing machine, earth-dumper, mobile crane or otherwise, or any other similar machine; or (c) Any agricultural implement; “value” in relation to goods, means – (a) For the purposes of Part 2, their current domestic value; and (b) For the purposes of Part 3 the cost of their production as ascertained by the Treasurer by reference to such accounting records as may be required to be kept by manufacturers by regulations made under this Act.</p> | |
|--|--|

3 Recovery of tax

(1) Tax payable under this Act (including any penalty charged under subsection (2), shall constitute a debt due to the Government and shall be recoverable as such at suit of the Treasurer.

(2) If default is made in the payment of any tax payable under this Act the person making default shall be chargeable by way of penalty with additional tax equivalent to 50 per cent of the amount of tax in respect of which default was made.

PART 2

TAX ON IMPORTED GOODS

4 Rates of tax payable

(1) There shall be payable on all goods imported into Niue of the kind named in the Schedule a tax at the respective rates set out in it.

(2) The tax hereby imposed shall be payable on the sum of the value of such goods and the amount of Customs duty payable on such goods.

5 Payment

Tax payable under this Part shall be paid to the Treasurer by the importer of the goods before the entry of such goods is passed by the Revenue Manager.

6 Personal effects exempted

(1) In this section –

“motor car”, “motor cycle”, “power cycle”, “taxicab”, “tractor”, “trade motor” and “trailer” have the meanings attributed to them respectively by section 3(1) of the Transport Act 1965;

“personal effects” means and includes any personal effects, personal clothing, personal baggage, household goods, domestic chattels or private motor vehicle;

“private motor vehicle” means any motor car, motor cycle, power cycle or trailer, but does not include any taxicab, tractor or trade motor.

(2) Subject to subsection (3), nothing in this Act shall apply to any personal effects owned by any person at the date of that person’s arrival in Niue, and also owned by such person at the date of the import of the personal effects in Niue, and also imported in Niue –

(a) During the period of 3 months immediately prior to that person’s arrival in Niue; or

(b) Upon that person’s arrival in Niue; or

(c) During the period of 3 months immediately after that person’s arrival in Niue; and

neither sold, nor bartered, nor given way, nor otherwise disposed of by such person during the period of one year immediately after the import of such personal effects into Niue.

(3) Where, under subsection (2) any private motor vehicle has not been taxed under this Act and where, during the period of 5 years immediately after the import of such vehicle into Niue, such vehicle is used or converted for use as a taxicab, tractor or trade motor, then tax shall, under this Act, be paid, by the owner of the vehicle at the time when it is first so used or first so converted, on the value of it immediately before it was first so used or first so converted or immediately after it was first so used or first so converted, whichever is the higher, as if the vehicle had then been imported into Niue.

(4) Tax on any private motor vehicle referred to in subsection (3) shall, under this Act, be payable once only.

(5) Where any private motor vehicle is hired out for money, or for any other reward or other valuable consideration, for a period of at least 3 months or for periods which in the aggregate, amount to a period of at least 3 months then, on the completion of such period of 3 months the vehicle shall, for the purposes of subsection (2) be deemed to have been disposed of by the person who imported the vehicle into Niue and shall, for the purposes of subsection (3), be deemed to have been converted for use as a trade motor.

(6) (a) The value at any particular time of any personal chattels or vehicle to which this section relates shall, for all or any of the purposes of this section, be assessed by the Revenue Manager.

(b) Any person interested who considers that any such assessment of value is excessive may, at any time within a period of 3 months after the date of issuing of any demand for payment of tax based on such assessment, appeal to the Court against the assessment and, after hearing any such appeal, the Court may either confirm the assessment or, if it thinks that the assessment is excessive, reduce the amount of it to a sum which it thinks proper and such demand for payment of tax shall be deemed to have been modified accordingly.

(c) The judgment of the Court on any such appeal shall be final.

7 Refunds

The amount of any tax paid under this Part by an importer may be refunded upon application to the Treasurer if the goods on which the tax has been paid have not been used or sold and the Treasurer is satisfied that they have been exported from Niue.

PART 3

TAX ON GOODS MANUFACTURED IN NIUE

8 Tax imposed

The tax imposed on goods by Part 2 shall also be payable on the value (as defined in this Act) of all such goods as are manufactured in Niue and shall be paid to the Treasurer by the manufacturer before such goods are offered for sale.

9 Refunds

The amount of any tax paid under this Part by a manufacturer may be refunded upon application to the Treasurer if the goods on which the tax has been paid have not been used or sold and are surrendered if so required by the Treasurer to the Revenue Manager for destruction.

PART 4

MISCELLANEOUS PROVISIONS

10 Rules or regulations

Cabinet may make such regulations as it may consider necessary for the proper application or enforcement of this Act.

10A New Zealand Representative Act 1981

The provisions of this Act shall not apply to any person entitled to privileges and immunities under the New Zealand Representative Act 1981.

11 [Spent]

SCHEDULE

| Goods | Rates of Tax Payable |
|--|----------------------------------|
| 1 Preserved Fruit | 5 per centum |
| 2 Confectionery | 5 per centum |
| 3 Wines fermented and containing more than 3 per cent proof spirit | 10 per centum |
| 4 Spirits and spiritous mixtures | 10 per centum |
| 5 Beer containing more than 2 per cent proof spirit | 10 per centum |
| 6 Cameras C.D.V. | 10 per centum on items over \$20 |
| 7 Radios and radiograms C.D.V. | 10 per centum on items over \$20 |
| 8 Watches and Clocks C.D.V. | 10 per centum on items over \$40 |
| 9 Jewellery | 10 per centum on all items |
| 10 Tobacco | 5 per centum |
| 11 Cigarettes | 5 per centum |
| 12 Motor vehicles | 10 per centum |

MARINE INSURANCE ACT 1908

1908/112/(NZ) – 4 August 1908

| | |
|---|---|
| <p>1 Short title</p> <p>2 Interpretation</p> <p style="text-align: center;"><i>Marine Insurance</i></p> <p>3 Marine insurance defined mixed sea and land risks</p> <p>4 Marine adventure and maritime perils defined</p> <p style="text-align: center;"><i>Insurable Interest</i></p> <p>5 Avoidance of wagering or gaming contracts</p> <p>6 Insurable interest defined</p> <p>7 When interest must attach</p> <p>8 Defeasible or contingent interest</p> <p>9 Partial interest</p> <p>10 Reinsurance</p> <p>11 Bottomry</p> <p>12 Master's and seamen's wages</p> <p>13 Advance freight</p> <p>14 Charges of insurance</p> <p>15 Quantum of interest</p> <p>16 Assignment of interest</p> <p style="text-align: center;"><i>Insurable Value</i></p> <p>17 Measure of insurable value</p> <p style="text-align: center;"><i>Disclosure and Representations</i></p> <p>18 Disclosure by assured</p> <p>19 Disclosure by agent effecting insurance</p> <p>20 Representations pending negotiation of contract</p> <p>21 When contract is deemed to be concluded</p> <p style="text-align: center;"><i>The Policy</i></p> <p>22 Contract must be embodied in policy</p> <p>23 What policy must specify</p> <p>24 Signature of insurer</p> <p>25 Designation of subject-matter</p> <p>26 Failure to execute and stamp policy</p> <p>27 Voyage and time policies</p> <p>28 Valued policy</p> <p>29 Unvalued policy</p> <p>30 Floating policy by ship or ships</p> <p>31 Premium to be arranged</p> <p>32 Construction of terms in policy</p> | <p style="text-align: center;"><i>Double Insurance</i></p> <p>33 Double insurance</p> <p style="text-align: center;"><i>Warranties</i></p> <p>34 Nature of warranty</p> <p>35 When breach of warranty excused</p> <p>36 Express warranties</p> <p>37 Warranty of neutrality</p> <p>38 No implied warranty of nationality</p> <p>39 Warranty of good safety</p> <p>40 Warranty of seaworthiness of ship</p> <p>41 No implied warranty that goods are seaworthy</p> <p>42 Warranty of legality</p> <p style="text-align: center;"><i>The Voyage</i></p> <p>43 Implied condition as to commencement of risk</p> <p>44 Alteration of port of departure</p> <p>45 Sailing for different destination</p> <p>46 Change of voyage</p> <p>47 Deviation</p> <p>48 Several ports of discharge</p> <p>49 Delay in voyage</p> <p>50 Excuses for deviation or delay</p> <p style="text-align: center;"><i>Assignment of Policy</i></p> <p>51 When and how policy is assignable</p> <p>52 Assured who has no interest cannot assign</p> <p style="text-align: center;"><i>The Premium</i></p> <p>53 Policy effected through broker</p> <p>54 Effect of receipt on policy</p> <p style="text-align: center;"><i>Loss and Abandonment</i></p> <p>55 Included and excluded losses</p> <p>56 Partial and total loss</p> <p>57 Actual total loss</p> <p>58 Missing ship</p> <p>59 Effect of transshipment</p> <p>60 Constructive total loss defined</p> <p>61 Effect of constructive total loss</p> <p>62 Notice of abandonment</p> <p>63 Effect of abandonment</p> |
|---|---|

| | | |
|--|----|--|
| <i>Partial Losses (Including Salvage and General Average and Particular Charges)</i> | 80 | Right of contribution |
| 64 Particular average loss | 81 | Effect of under-insurance |
| 65 Salvage charges | | <i>Return of Premium</i> |
| 66 General average loss | 82 | Enforcement of return |
| | 83 | Return by agreement |
| <i>Measure of Indemnity</i> | 84 | Return for failure of consideration |
| 67 Extent of liability of insurer for loss | | <i>Mutual Insurance</i> |
| 68 Total loss | 85 | Modification of Act in case of mutual insurance |
| 69 Partial loss of ship | | <i>Supplemental</i> |
| 70 Partial loss of freight | 86 | Ratification by assured |
| 71 Partial loss of goods, merchandise | 87 | Implied obligations varied by agreement or usage |
| 72 Apportionment of valuation | 88 | Reasonable time, a question of fact |
| 73 General average contributions and salvage charges | 89 | Application of common law |
| 74 Liabilities to third parties | 90 | [Repealed] |
| 75 General provisions as to measure of indemnity | | SCHEDULES |
| 76 Particular average warranties | | |
| 77 Successive losses | | |
| 78 Suing and labouring clause | | |
| <i>Rights of Insurer on Payment</i> | | |
| 79 Right of subrogation | | |

To consolidate certain enactments relating to marine insurance

1 Short Title

This is the Marine Insurance Act 1908.

2 Interpretation

In this Act –

“action” includes counterclaim and set-off;

“freight” includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or movables, as well as freight payable by a third party, but does not include passage money;

“movables” means any movable tangible property other than the ship, and includes money, valuable securities, and other documents;

“policy” means a marine policy.

Marine Insurance

3 Marine insurance defined, mixed sea and land risks

(1) A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses – that is to say, the losses incident to marine adventure.

(2) A contract of marine insurance may, by its express terms or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

(3) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply to it; but, except as provided by this section, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as defined by this Act.

4 **Marine adventure and maritime perils defined**

(1) Subject to this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

(2) In particular there is a marine adventure where –

- (a) Any ship, goods, or other movables (“insurable property”) are exposed to maritime perils;
- (b) The earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to the marine perils;
- (c) Any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property by reason of maritime perils.

(3) “Maritime perils” means the perils consequent on or incidental to the navigation of the sea – perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detentions of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or designated by the policy.

Insurable Interests

5 **Avoidance of wagering or gaming contracts**

(1) Every contract of marine insurance by way of gaming or wagering is void.

(2) A contract of marine insurance is deemed to be a gaming or wagering contract –

- (a) Where the assured has not an insurable interest, and the contract is entered into with no expectation of acquiring such an interest; or
- (b) Where the policy is made “interest or no interest”, or “without further proof of interest than the policy itself”, or “without benefit of salvage to the insurer”, or subject to any other like term.

(3) Where there is no possibility of salvage a policy may be effected without benefit of salvage to the insurer.

6 **Insurable interest defined**

(1) Subject to this Act, every person has an insurable interest who is interested in a marine adventure.

(2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure, or to any insurable property at risk therein, in consequence of which he may benefit by the safety of or due arrival of insurable property, or may be prejudiced by its loss, or by damage to it, or by the detention of it, or may incur liability in respect of it.

7 **When interest must attach**

(1) (a) The assured must be interested in the subject-matter insured at the time of the loss, though he need not be interested when the insurance is effected.

(b) Where the subject-matter is insured “lost or not lost”, the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss and the insurer was not.

(2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss.

8 Defeasible or contingent interest

- (1) A defeasible interest is insurable, as also is a contingent interest.
- (2) In particular, where the buyer of goods has insured them he has an insurable interest, notwithstanding that he might at his election have rejected the goods, or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise.

9 Partial interest

A partial interest of any nature is insurable.

10 Reinsurance

- (1) The insurer under a contract of marine insurance has an insurable interest in his risk, and may reinsure in respect of it.
- (2) Unless the policy otherwise provides, the original assured has no right or interest in respect of such reinsurance.

11 Bottomry

The lender of money on bottomry or respondentia has an insurable interest in respect of the loan.

12 Master's and seamen's wages

The master or any member of the crew of a ship has an insurable interest in respect of his wages.

13 Advance freight

In the case of advance freight, the person advancing the freight has an insurable interest in so far as such freight is not repayable in case of loss.

14 Charges of insurance

The assured has an insurable interest in the charges of any insurance which he may effect.

15 Quantum of interest

- (1) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value of it, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.
- (2) A mortgagee, consignee, or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.
- (3) The owner of insurable property has an insurable interest in respect of the full value of it, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.

16 Assignment of interest

- (1) Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there is an express or implied agreement with the assignee to that effect.
- (2) The provisions of this section do not affect a transmission of interest by operation of law.

*Insurable Value***17 Measure of insurable value**

Subject to any express provision or valuation in the policy, the insurable value of the subject-matter insured must be ascertained as follows:

- (a) In insurance on ship the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole; and, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured; and in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade;
- (b) In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance;
- (c) In insurance on goods or merchandise the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole;
- (d) In insurance on any other subject-matter the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance.

*Disclosure and Representations***18 Disclosure by assured**

(1) Subject to this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such a disclosure, the insurer may avoid the contract.

(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk.

(3) In the absence of inquiry the following circumstances need not be disclosed, namely:

- (a) Any circumstance which diminishes the risk;
- (b) Any circumstance known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business, as such, ought to know;
- (c) Any circumstance as to which information is waived by the insurer;
- (d) Any circumstance which is superfluous to disclose by reason of any express or implied warranty.

(4) Whether any particular circumstance which is not disclosed is material or not is in each case a question of fact.

(5) The term "circumstance" includes any communication made to or information received by the assured.

19 Disclosure by agent effecting insurance

Subject to section 18 as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer –

- (a) Every material circumstance known to himself; and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by him or to have been communicated to him; and
- (b) Every material circumstance which the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to an agent.

20 Representations pending negotiation of contract

(1) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it is untrue, the insurer may avoid the contract.

(2) A representation is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk.

(3) A representation may be either a representation as to a matter of fact or as to a matter of expectation or belief.

(4) A representation as to a matter of fact is true if it is substantially correct – ie if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.

(5) A representation as to a matter of expectation or belief is true if it is made in good faith.

(6) A representation may be withdrawn or corrected before the contract is concluded.

(7) Whether a particular representation is material or not is in each case a question of fact.

21 When contract is deemed to be concluded

A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy is then issued or not; and for the purpose of showing when the proposal was accepted reference may be made to the slip or covering note, or other customary memorandum of the contract, although it is unstamped.

The Policy

22 Contract must be embodied in policy

(1) No action shall be brought on a contract of marine insurance unless it is embodied in a marine policy under this Act.

(2) The policy may be executed and issued either at the time when the contract is concluded or afterwards.

23 What policy must specify

A marine policy must specify –

- (a) The name of the assured or of some person who effects the insurance on his behalf;
- (b) The subject-matter insured and the risk insured against;
- (c) The voyage or period of time, or both, as the case may be, covered by the insurance;
- (d) The sum or sums insured;
- (e) The name or names of the insurers.

24 Signature of insurer

- (1) (a) A marine policy must be signed by or on behalf of the insurer.
(b) In the case of a corporation the corporate seal may be sufficient, but nothing in this section shall be construed as requiring the subscription of a corporation to be under seal.
- (2) Where a policy is subscribed by or on behalf of 2 or more insurers, each subscription, unless the contrary is expressed, constitutes a distinct contract with the assured.

25 Designation of subject-matter

- (1) The subject-matter insured must be designated in a marine policy with reasonable certainty.
- (2) The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy.
- (3) Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.
- (4) In the application of this section regard shall be had to any usage regulating the designation of the subject-matter insured.

26 Failure to execute and stamp policy

- (1) If any person, whether as an insurer or as the agent of an insurer, directly or indirectly receives or takes credit in account for any premium or consideration for any contract of marine insurance, and does not before or within 30 days after receiving or taking credit for such premium or consideration duly execute or procure to be duly executed, a policy of such insurance, he shall be liable to a fine of 2 penalty units.
- (2) If any person, whether as an insurer or as the agent of an insurer, pays any sum of money upon any loss under a contract of marine insurance which is not expressed in a duly executed policy, or if he in any way settles any claim made in respect of such a contract, he shall be liable to a fine of 2 penalty units.
- (3) This section does not apply to contracts of reinsurance of risks in respect whereof policies have been duly executed.
- (4) This section applies to that agent of an insurer, whether such insurer resides or carries on business in Niue or elsewhere.

27 Voyage and time policies

- (1) (a) Where the contract is to insure the subject-matter at and from or from one place to another or others, the policy is called a "voyage policy" and where the contract is to insure the subject-matter for a definite period of time, the policy is called a "time policy".
(b) A contract for both voyage and time may be included in the same policy.
- (2) A time policy which is made for any time exceeding 12 months is invalid; but a time policy may contain an agreement to the effect that, in the event of the ship being at sea or the voyage otherwise not completed on the expiration of 12 months, the subject-matter of the insurance shall be held covered until the arrival of the ship at her destination, or for a reasonable time after it not exceeding 30 days.

28 Valued policy

- (1) A policy may be either valued or unvalued.
- (2) A valued policy is a policy which specifies the agreed value of the subject-matter insured.

(3) Subject to this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss is total or partial.

(4) Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss.

29 Unvalued policy

An unvalued policy is a policy which does not specify the value of the subject-matter insured, but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained in the manner hereinbefore specified.

30 Floating policy by ship or ships

(1) A floating policy is a policy which describes the insurance in general terms, and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration.

(2) The subsequent declaration or declarations may be made by endorsement on the policy or in other customary manner.

(3) Unless the policy otherwise provides, the declarations must be made in the order of despatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.

(4) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration.

31 Premium to be arranged

(1) Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable.

(2) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium is payable.

32 Construction of terms in policy

Subject to this Act, and unless the context of the policy otherwise requires the terms and expressions mentioned in Schedule 2 have, when contained in a policy, the meaning and operation attributed to them in that Schedule.

Double Insurance

33 Double insurance

(1) Where 2 or more policies are effected by or on behalf of the assured on the same adventure and interest or any part of it, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.

(2) Where the assured is over-insured by double insurance –

(a) The assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he thinks fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act;

- (b) Where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by him under any other policy, without regard to the actual value of the subject-matter insured;
- (c) Where the policy under which the assured claims is an unvalued policy, he must give credit, as against the full insurable value, for any sum received by him under any other policy;
- (d) Where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

Warranties

34 Nature of warranty

(1) A warranty, in the following sections relating to warranties, means a promissory warranty – that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.

(2) A warranty may be express or implied.

(3) A warranty as above defined is a condition which must be exactly complied with, whether material to the risk or not. If it is not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach or warranty, but without prejudice to any liability incurred by him before that date.

35 When breach of warranty excused

(1) Non-compliance with a warranty is excused when, by reason of a change of circumstances the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.

(2) Where a warranty is broken, the assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss.

(3) A breach of warranty may be waived by the insurer.

36 Express warranties

(1) An express warranty may be in any form of words from which the intention to warrant is to be inferred.

(2) An express warranty must be included in or written upon this policy, or must be contained in some document incorporated by reference into the policy.

(3) An express warranty does not exclude an implied warranty, unless it is inconsistent therewith.

37 Warranty of neutrality

(1) Where insurable property, whether ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that so far as the assured can control the matter, its neutral character shall be preserved during the risk.

(2) (a) Where a ship is expressly warranted neutral, there is also an implied condition that, so far as the assured can control the matter, the ship shall be properly documented – that she shall carry the necessary papers to establish her neutrality, and that her papers shall not be falsified or suppressed, and that simulated papers shall not be used.

(b) If any loss occurs through breach of this condition, the insurer may avoid the contract.

38 No implied warranty of nationality

There is no implied warranty as to the nationality of a ship, or that her nationality shall not be changed during the risk.

39 Warranty of good safety

Where the subject-matter insured is warranted "well" or "in good safety" on a particular day, it is sufficient if it is safe at any time during that day.

40 Warranty of seaworthiness of ship

(1) In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.

(2) Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.

(3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage.

(4) A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

(5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure; but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

41 No implied warranty that goods are seaworthy

(1) In a policy on goods or other movables there is no implied warranty that the goods or movables are seaworthy.

(2) In a voyage policy on goods or other movables there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other movables to the destination contemplated by the policy.

42 Warranty of legality

There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner.

*The Voyage***43 Implied condition as to commencement of risk**

(1) Where the subject-matter is insured by a voyage policy "at and from" or "from" a particular place, it is not necessary that the ship should be at that place when the contract is concluded, but there is an implied condition that the adventure shall be commenced within a reasonable time, and that if the adventure is not so commenced the insurer may avoid the contract.

(2) The implied condition may be negated by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or that he waived the condition.

44 Alteration of port of departure

Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk does not attach.

45 Sailing for different destination

Where the destination is specified in the policy, and the ship instead of sailing for that destination sails for any other destination, the risk does not attach.

46 Change of voyage

(1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.

(2) Unless the policy otherwise provides, where there is a change of voyage the insurer is discharged from liability as from the time of change – ie as from the time when the determination to change it is manifested; and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs.

47 Deviation

(1) Where a ship without lawful excuse deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs.

(2) There is a deviation from the voyage contemplated by the policy –

(a) Where the course of the voyage is specifically designated by the policy, and that course is departed from; or

(b) Where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from.

(3) The intention to deviate is immaterial; there must be a deviation in fact to discharge the insurer from his liability under the contract.

48 Several ports of discharge

(1) Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, but in the absence of any usage or sufficient cause to the contrary she must proceed to them, or such of them as she goes to, in the order designated by the policy. If she does not, there is a deviation.

(2) Where the policy is to “ports of discharge” within a given area, which are not named, the ship must, in the absence of any usage or sufficient cause to the contrary, proceed to them, or such of them as she goes to, in their geographical order. If she does not, there is a deviation.

49 Delay in voyage

In the case of a voyage policy the adventure insured must be prosecuted throughout its course with reasonable despatch, and if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable.

50 Excuses for deviation or delay

(1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused –

- (a) Where authorised by any special term in the policy; or
- (b) Where caused by circumstances beyond the control of the master and his employer; or
- (c) Where reasonably necessary in order to comply with an express or implied warranty; or
- (d) Where reasonably necessary for the safety of the ship or subject-matter insured; or
- (e) For the purpose of saving human life, or aiding a ship in distress where human life may be in danger; or
- (f) Where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or
- (g) Where caused by the barratrous conduct of the master or crew, if barratry is one of the perils insured against.

(2) When the cause excusing the deviation or delay ceases to operate, the ship must resume her course and prosecute her voyage with reasonable despatch.

*Assignment of Policy***51 When and how policy is assignable**

(1) A marine policy is assignable unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in the policy, the assignee of the policy is entitled to sue thereon in his own name; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

(3) A marine policy may be assigned by endorsement thereon or in other customary manner.

52 Assured who has no interest cannot assign

Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative: Provided that nothing in this section affects the assignment of a policy after loss.

*The Premium***53 Policy effected through broker**

(1) Unless otherwise agreed, where a marine policy is effected on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium, and the insurer is directly responsible to the assured for the amount which may be payable in respect of losses or in respect of returnable premium.

(2) Unless otherwise agreed, the broker has, as against the assured, a lien upon the policy for the amount of the premium and his charges in respect of effecting the policy; and, where he has dealt with the person who employs him as a principal, he has also a lien on the policy in respect of any balance on any insurance account which may be due to him from such person, unless when the debt was incurred he had reason to believe that such person was only an agent.

54 Effect of receipt on policy

Where a marine policy effected on behalf of the assured by a broker acknowledges the receipt of the premium, such acknowledgement is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and the broker.

*Loss and Abandonment***55 Included and excluded losses**

(1) Subject to this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against; but subject as aforesaid, he is not liable for any loss not proximately caused by a peril insured against.

(2) In particular –

- (a) The insurer is not liable for any loss attributable to the wilful misconduct of the assured; but unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;
- (b) Unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay is caused by a peril insured against;
- (c) Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

56 Partial and total loss

(1) A loss may be either total or partial. Any loss other than a total loss, as hereinafter defined, is a partial loss.

(2) A total loss may be either an actual total loss or a constructive total loss.

(3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive as well as an actual total loss.

(4) Where the assured brings an action for a total loss, and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.

(5) Where goods reach their destination in specie, but by reason of obliteration of marks or otherwise they are incapable of identification, the loss (if any) is partial and not total.

57 Actual total loss

(1) Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived of it, there is an actual total loss.

(2) In the case of an actual total loss no notice of abandonment need be given.

58 Missing ship

Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed.

59 Effect of transshipment

Where, by a peril insured against, the voyage is interrupted at an intermediate port or place under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and reshipping the goods or other movables, or in transshipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transshipment.

60 Constructive total loss defined

(1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

(2) In particular there is a constructive total loss –

- (a) Where the assured is deprived of the possession of his ship or goods by a peril insured against, and
 - (i) it is unlikely that he can recover the ship or goods, as the case may be, or
 - (ii) the cost of recovering the ship or goods would exceed their value when recovered; or
- (b) In the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired; or
- (c) In the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

(3) In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired.

61 Effect of constructive total loss

Where there is a constructive total loss, the assured may either treat the loss as a partial loss or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss.

62 Notice of abandonment

(1) (a) Subject to this section, where the assured elects to abandon the subject-matter insured to the insurer he must give notice of abandonment.

(b) If he fails to do so, the loss can be treated only as a partial loss.

(2) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer.

(3) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of doubtful character the assured is entitled to a reasonable time to make inquiry.

(4) Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.

- (5) (a) The acceptance of an abandonment may be either express or implied from the conduct of the insurer.
- (b) The mere silence of the insurer after notice is not an acceptance.
- (6) (a) Where notice of abandonment is accepted, the abandonment is irrevocable.
- (b) The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.
- (7) Notice of abandonment is unnecessary where, at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.
- (8) Notice of abandonment may be waived by the insurer.
- (9) Where an insurer has reinsured his risk, no notice of abandonment need be given by him.

63 Effect of abandonment

- (1) Where there is a valid abandonment, the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental to it.
- (2) Upon the abandonment of a ship the insurer of it is entitled to any freight which is in the course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss.

Partial Losses (Including Salvage and General Average and Particular Charges)

64 Particular average loss

- (1) A particular average loss is a partial loss of the subject-matter insured, which is caused by a peril insured against, and which is not a general average loss.
- (2) (a) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than the general average and salvage charges are called particular charges.
- (b) Particular charges are not included in particular average.

65 Salvage charges

- (1) Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.
- (2) (a) "Salvage charges" means the charges recoverable under maritime law by a salvor independently of contract, and does not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against.
- (b) Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred.

66 General average loss

- (1) A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.

(2) There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

(3) Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution.

(4) Subject to any express provision in the policy, where the assured has incurred a general average expenditure he may recover from the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute.

(5) Subject to any express provision in the policy, where the assured has paid or is liable to pay a general average contribution in respect of the subject insured he may recover it from the insurer.

(6) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding or in connection with the avoidance of a peril insured against.

(7) Where ship, freight, and cargo, or any 2 of those interests are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those subjects were owned by different persons.

Measure of Indemnity

67 Extent of liability of insurer for loss

(1) The sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full extent of the insurable value, or in the case of a valued policy to the full extent of the value fixed by the policy, is called the measure of indemnity.

(2) Where there is a loss recoverable under the policy, the insurer, or each insurer if there are more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy.

68 Total loss

Subject to this Act and to any express provision in the policy, where there is a total loss of subject-matter insured –

- (a) If the policy is a valued policy, the measure of indemnity is the sum fixed by the policy;
- (b) If the policy is an unvalued policy, the measure of indemnity is the insurable value of the subject-matter insured.

69 Partial loss of ship

Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy is –

- (a) Where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty;
- (b) Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above,

and also to be indemnified for the reasonable depreciation (if any) arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above;

- (c) Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above.

70 Partial loss of freight

Subject to any express provision in the policy, where there is a partial loss of freight the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy.

71 Partial loss of goods, merchandise

Where there is a partial loss of goods, merchandise, or other movables, the measure of indemnity, subject to any express provision in the policy is –

- (a) Where part of the goods, merchandise, or other movables insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy;
- (b) Where part of the goods, merchandise, or other movables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in the case of total loss;
- (c) Where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value;
- (d) "Gross value" means the wholesale price or, if there is no such price, the estimated value, with in either case freight, landing charges, and duty paid beforehand; provided that, in the case of goods or merchandise customarily sold in bond, the bonded price is deemed to be the gross value.

72 Apportionment of valuation

(1) Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy.

(2) The insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act.

(3) Where a valuation has to be apportioned, and particulars of the prime cost of each separate species, quality, or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods.

73 General average contributions and salvage charges

(1) Subject to any express provision in the policy, where the assured has paid or is liable for any general average contribution the measure of indemnity is the full amount of such contribution if the subject-matter liable to contribution is insured for its full contributory value, but if such subject-matter is not insured for its full contributory value, or if only part of it is insured, the indemnity payable by the insurer must be reduced in proportion to the under-insurance, and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

(2) Where the insurer is liable for salvage charges, the extent of his liability must be determined on the like principle.

74 Liabilities to third parties

Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability.

75 General provisions as to measure of indemnity

(1) Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions of this Act, the measure of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.

(2) Nothing in this Act relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy.

76 Particular average warranties

(1) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy is apportionable; but if the contract is apportionable, the assured may recover for a total loss of any apportionable part.

(2) Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred under the provisions of the suing and labouring clause in order to avert a loss insured against.

(3) Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage.

(4) For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject-matter insured. Particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded.

77 Successive losses

(1) Unless the policy otherwise provides, and subject to this Act, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

(2) Where under the same policy a partial loss which has not been repaired or otherwise made good is followed by a total loss, the assured can only recover in respect of the total loss.

(3) Nothing in this section shall affect the liability of the insurer under the suing and labouring clause.

78 Suing and labouring clause

(1) Where the policy contains a suing and labouring clause, the engagement entered into by it is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred under the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage.

(2) General average losses and contributions and salvage charges, as defined by this Act, are not recoverable under the suing and labouring clause.

(3) Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy are not recoverable under the suing and labouring clause.

(4) It is the duty of the assured and his agents in all cases to take such measures as may be reasonable for the purpose of averting or minimising a loss.

*Rights of Insurer on Payment***79 Right of subrogation**

(1) Where the insurer pays for a total loss either of the whole, or, in the case of goods, of any apportionable part of the subject-matter insured, he becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss.

(2) Subject to the foregoing provisions, where the insurer pays for a partial loss he acquires no title to the subject-matter insured, or such part of it as may remain, but he is subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss.

80 Right of contribution

(1) Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute ratably to the loss in proportion to the amount for which he is liable under his contract.

(2) If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt.

81 Effect of under-insurance

Where the assured is insured for an amount less than the insurable value, or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance.

*Return of Premium***82 Enforcement of return**

Where the premium or a proportionate part of it is by this Act declared to be returnable –

- (a) If already paid, it may be recovered by the assured from the insurer; and
- (b) If unpaid, it may be retained by the assured or his agent.

83 Return by agreement

Where the policy contains a stipulation for the return of the premium or a proportionate part of it on the happening of a certain event, and that event happens, the premium or the proportionate parts is returnable to the assured.

84 Return for failure of consideration

(1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is returnable to the assured.

(2) Where the consideration for the payment of the premium is apportionable, and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is under the like conditions returnable to the assured.

(3) In particular –

- (a) Where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided that there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once been attached, the premium is not returnable;
- (b) Where the subject-matter insured or part of it has never been imperilled, the premium or a proportionate part is returnable: Provided that where the subject-matter has been insured “lost or not lost”, and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless at such time the insurer knew of the safe arrival;
- (c) Where the assured has no insurable interest throughout the currency of the risk, the premium is returnable; provided that this rule does not apply to a policy effected by way of gaming or wagering;
- (d) Where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable;
- (e) Where the assured has overinsured under an unvalued policy, a proportionate part of the premium is returnable;
- (f) Subject to the foregoing where the assured has over-insured by double insurance, a proportionate part of several premiums is returnable: Provided that if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured no premium is returnable in respect of that policy; and when the double insurance is effected knowingly by the assured, no premium is returnable.

*Mutual Insurance***85 Modification of Act in case of mutual insurance**

(1) Where 2 or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.

(2) The provisions of this Act relating to the premium do not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium.

(3) The provisions of this Act, in so far as they may be modified by the agreement of the parties, may in the case of mutual insurance be modified by the terms of the policies issued by the association, or by the rules and regulations of the association.

(4) Subject to subsections (2) and (3) this Act applies to a mutual insurance.

*Supplemental***86 Ratifications by assured**

Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of the loss.

87 Implied obligation varied by agreement or usage

(1) Where any right, duty, or liability would arise under a contract of marine insurance by implication of law, it may be negatived or varied by express agreement, or by usage, if the usage be such as to bind both parties to the contract.

(2) The provisions of this section extend to any right, duty, or liability declared by this Act which may be lawfully modified by agreement.

88 Reasonable time, a question of fact

Where by this Act any reference is made to reasonable time, reasonable premium, or reasonable diligence, the question what is reasonable is a question of fact.

89 Application of common law

The rules of the common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts of marine insurance.

90 [Repealed 3/11/1960 (NZ)]

SCHEDULES

SCHEDULE 1
[Spent]SCHEDULE 2
Section 32*Rules for the Construction of Policies*

The following are the rules referred to by this Act for the construction of a policy where the context does not otherwise require:

- 1 Where the subject-matter is insured "lost or not lost", and the loss has occurred before the contract is concluded, the risk attaches unless at such time the assured was aware of the loss and the insurer was not.
- 2 Where the subject-matter is insured "from" a particular place, the risk does not attach until the ship starts on the voyage insured.
- 3 (a) Where a ship is insured "at and from" a particular place, and she is at that place in goods safety when the contract is concluded, the risk attaches immediately.
(b) If she is not at that place when the contract is concluded the risk attaches as soon as she arrives there in good safety; and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival.
(c) Where chartered freight is insured "at and from" a particular place, and the ship is at that place in good safety when the contract is concluded, the risk attaches immediately. If she is not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety.
(d) Where freight other than chartered freight is payable without special conditions, and is insured "at and from" a particular place, the risk attaches *pro rata* as the goods or merchandise are shipped; provided that if there is cargo in readiness which belongs to the shipowner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo.
- 4 Where goods or other movables are insured "from the loading thereof", the risk does not attach until such goods or movables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship.
- 5 Where the risk on goods or other movables continues until they are "safely landed", they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases.
- 6 In the absence of any further licence or usage, the liberty to touch and stay "at any port or place whatsoever" does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination.
- 7 The term "perils of the seas" refers only to fortuitous accidents or causalities of the seas. It does not include the ordinary action of the winds and waves.
- 8 The term "pirates" includes passengers who mutiny and rioters who attack the ship from the shore.
- 9 The term "thieves" does not cover clandestine theft of theft committed by any one of the ship's company, whether crew or passengers.
- 10 The term "arrest, etc. of kings, princes, and people" refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process.
- 11 The term "barratry" includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or as the case may be, the charterer.
- 12 The term "all other perils" includes only perils similar in kind to the perils specifically mentioned in the policy.

13 The term "average unless general" means a partial loss of the subject-matter insured other than a general average loss, and does not include "particular charges".

14 When a policy contains the words "warranted free from particular average unless the ship is stranded, sunk or burnt", or any similar expression, and any such accident has happened to the ship, the insurer is liable for the expected losses, although the loss is not attributable to such accident, provided that when the accident occurs the risk has attached and (if the policy is on goods) the damaged goods are on board.

15 The term "ship" includes the hull, materials and outfit, stores and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade; and also, in the case of a steamship, the machinery, boilers, and coals and engine stores, if owned by the assured.

16 The term "freight" includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or movables, as well as freight payable by a third party, but does not include passage money.

17 The term "goods" means goods in the nature of merchandise, and does not include personal effects or provisions and stores, for the use on board.

18 In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods.

MERCANTILE LAW ACT 1908

1908/117 (NZ) – 4 August 1908

- | | |
|--|--|
| <p>1 Short title</p> <p style="text-align: center;">PART 1 MERCANTILE AGENTS</p> <p>2 Interpretation</p> <p>3 Powers of mercantile agent with respect to disposition of goods</p> <p>4 Effect of pledges of documents</p> <p>5 Pledge of antecedent debt</p> <p>6 Rights acquired by exchange of goods or documents</p> <p>7 Agreements through clerks</p> <p>8 Provisions as to consignors and consignees</p> <p>9 Effect of transfer of document of title to goods on vendor's lien and right of stoppage <i>in transitu</i></p> <p>10 Mode of transferring documents</p> <p>11 Saving of rights of true owner</p> <p>12 Saving for common law powers of mercantile agent</p> <p style="text-align: center;">PART 2 BILLS OF LADING</p> <p>13 Rights of action and liabilities to vest in consignees and endorsees</p> <p>14 Right of stoppage <i>in transitu</i> or claims for freight not affected</p> <p>15 Bill of lading in hands of consignee</p> <p>15A "Received for shipment" bills of lading</p> <p>16 When master may be exonerated from liability</p> <p style="text-align: center;">PART 3 CARRIERS</p> <p>17–20 [Repealed]</p> <p style="text-align: center;">PART 4 DELIVERY OF GOODS AND LIEN FOR FREIGHT</p> <p>21 Interpretation</p> <p>22 Power to shipowner to enter and land goods in default of entry and landing by owner of goods</p> <p>23 Continuation of lien for freight if shipowner gives notice</p> <p>24 Lien to be discharged on deposit with warehouse owner</p> | <p>25 Right of warehouse owner, if no notice is given, to pay deposit to shipowner</p> <p>26 Course to be taken if notice to retain is given</p> <p>26A Arbitration deemed to be legal proceedings</p> <p>27 After 90 days warehouse owner may sell goods by public auction</p> <p>28 Notices of sale to be given</p> <p>29 Moneys arising from sale, how to be applied</p> <p>30 Warehouse owner's rent and expenses</p> <p>31 Warehouse owner's protection</p> <p style="text-align: center;">PART 5 UNPAID VENDORS OF WAREHOUSED GOODS</p> <p>32 Interpretation</p> <p>33 Unpaid vendor's lien determined on delivery of bond warrants to <i>bona fide</i> holder for value</p> <p>34 Possession of warrants <i>prima facie</i> evidence of ownership</p> <p>35 Holder of warrant entitled to delivery</p> <p>36 Registered holder of warrant deemed to be owner</p> <p>37 Lien of registered transferee of warrant determined on delivery of warrant <i>bona fide</i> and for value</p> <p>38 Warrants of free goods put on the same footing as bond warrants</p> <p>39 Provisions same in respect of bonded and free warehouses</p> <p>40 Vendor's lien not prejudiced save as against <i>bona fide</i> subpurchaser or pledgee for value</p> <p>41 Goods not to be transferred in books of warehouseman except on production of warrants</p> <p>42 Special contracts restraining negotiability of warrants</p> <p>43 Warehouseman's lien not prejudiced by sale or transfer of goods</p> <p style="text-align: center;">PART 6 BOOK PURCHASERS PROTECTION</p> <p>44 Validity of agreements for purchase of books</p> |
|--|--|

To consolidate certain enactments relating to trade and commerce**1 Short title**

This is the Mercantile Law Act 1908.

PART I**MERCANTILE AGENTS****2 Interpretation**

(1) In this Part –

“document of title” includes any bill of lading, dock warrant, warehouse keeper’s certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

“goods” includes wares and merchandise;

“mercantile agent” means an agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods;

“pledge” includes any contract pledging or giving a lien or security on goods, whether in consideration of an original advance, or of any further or continuing advance, or of any pecuniary liability.

(2) A person shall be deemed to be in possession of goods, or of the documents of title of goods, where the goods or documents are in his actual custody, or are held by any other person subject to his control or for him on his behalf.

3 Powers of mercantile agent with respect to disposition of goods

(1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods made by him when acting in the ordinary course of business of a mercantile agent shall, subject to this Part be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition which would have been valid if the consent had continued to be valid notwithstanding the determination of the consent, provided that the person taking under the disposition has not at the time thereof notice that the consent has been determined.

(3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented by it, or any other documents of title to the goods, his possession of the first mentioned documents shall, for the purposes of this Part be deemed to be with the consent of the owner.

(4) For the purposes of this Part, the consent of the owner shall be presumed in the absence of evidence to the contrary.

4 Effect of pledges of documents

A pledge of the documents of title to goods shall be deemed to be a pledge of the goods.

5 Pledge for antecedent debt

Where a mercantile agent pledges goods as security for debt or liability due from the pledgor to the pledgee before the time of the pledge, the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge.

6 Rights acquired by exchange of goods or documents

The consideration necessary for the validity of a sale, pledge, or other disposition of goods under this Part may be either a payment in cash, or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, or any other valuable consideration; but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, documents, or security when so delivered or transferred in exchange.

7 Agreements through clerks

For the purpose of this Part an agreement made with a mercantile agent through a clerk or other person authorised in the ordinary course of business to make contracts of sale or pledge on his behalf shall be deemed to be an agreement with the agent.

8 Provisions as to consignors and consignees

(1) Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect of advances made to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person.

(2) Nothing in this section shall limit or affect the validity of any sale, pledge, or disposition by a mercantile agent.

9 Effect of transfer of document of title to goods on vendor's lien and right of stoppage *in transitu*

(1) Where a document of title to goods has been lawfully transferred to a person as a buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, the last mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage *in transitu* as the transfer of a bill of lading has for defeating the right of stoppage *in transitu*.

(2) This section shall be construed subject to section 48 of the Sale of Goods Act 1908.

10 Mode of transferring documents

For the purposes of this Part the transfer of a document may be by endorsement, or where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery.

11 Saving of rights of true owner

Nothing in this Part shall –

- (a) Authorise a mercantile agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability, civil or criminal, for so doing; or
- (b) Prevent the owner of goods from recovering the goods from a mercantile agent or his trustee in bankruptcy at any time before the sale or pledge; or
- (c) Prevent the owner of goods pledged by a mercantile agent from having the right to redeem the goods at any time before the sale of it on satisfying the claim for which the goods were pledged and paying to the mercantile agent, if by him required, any money in respect of which such agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien; or
- (d) Prevent the owner of goods sold by a mercantile agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set-off on the part of the buyer against such agent.

12 Saving for common law powers of mercantile agent

This Part shall be construed in amplification and not in derogation of the powers exercisable by a mercantile agent independently of this Part.

PART 2**BILLS OF LADING****13 Rights of action and liabilities to vest in consignees and endorsees**

Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading, to whom the property in the goods therein mentioned passes on or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of action, and be subject to the same liabilities, in respect of such goods as if the contract contained in the bill of lading had been made with himself.

14 Right of stoppage *in transitu* or claims for freight not affected

Nothing herein shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

15 Bill of lading in hands of consignee

Every bill of lading in the hands of the shipper or of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading has had actual notice at the time of receiving the same that the goods were not in fact laden on board.

15A "Received for shipment" bills of lading

(1) In this section "received for shipment" bill of lading means a shipping document issued under this section, signed by a person purporting to be authorised to sign the same, and acknowledging that the goods to which the document relates have been received for shipment.

(2) No "received for shipment" bill of lading shall be issued –

- (a) Until the goods are in possession of the owner of the ship or of some person duly authorised on his behalf;
- (b) Except for a named ship in which space has been actually reserved;
- (c) Earlier than 21 days before the time when the ship is expected to be in port in readiness to load,

but the issue of a "received for shipment" bill of lading shall be sufficient evidence until the contrary is proved that the requirements of this subsection have been complied with.

(3) Every "received for shipment" bill of lading shall contain a provision that, in the event of the goods being unavoidably shut out from the named ship, the shipowner shall forward the goods by his next available ship, or, at his option, by a ship of some other owner, or by a ship sailing within a specified number of days, but otherwise on the same terms and conditions, *mutatis mutandis*, as if the goods were actually shipped by the named ship.

(4) Every "received for shipment" bill of lading shall for all purposes be deemed to be a valid bill of lading with the same effect and capable of negotiation in all respects and with the same consequences as if it were a bill of lading acknowledging that the goods to which it relates had been actually shipped on board.

16 When master may be exonerated from liability

The master or other person so signing any bill of lading may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder, or some person under whom the holder claims.

PART 3

17–20 [Repealed]

PART 4

DELIVERY OF GOODS, AND LIEN FOR FREIGHT

21 Interpretation

In this Part –

- "entry" means the entry required by the customs laws to be made for the landing or discharge of goods from an importing ship;
- "goods" includes every description of wares and merchandise;

- “owner of goods” includes every person who is for the time being entitled, either as owner or agent for the owner, to the possession of the goods, subject in the case of a lien to such a lien;
- “report” means the report required by the customs laws to be made by the master of any importing ship;
- “shipowner” includes the master of the ship and every other person authorised to act as agent for the owner or entitled to receive the freight, demurrage, or other charges payable in respect of such ship;
- “warehouse” includes all warehouses, buildings and premises in which goods when landed from ships may be lawfully placed;
- “warehouse owner” means the occupier of any warehouse as earlier defined;
- “wharf” includes all wharves, quays, docks, and premises in or upon which any goods when landed from ships may be lawfully placed;
- “wharf owner” means the occupier of any wharf.

22 Power to shipowner to enter and land goods in default of entry and landing by owner of goods

Where the owner of goods imported from foreign parts into Niue fails to make entry of it, or, having made entry of it, to land the same or take delivery of it, and to proceed with all convenient speed by the times severally mentioned in this section, the shipowner may make entry of and land or unship the said goods at the times, in the manner, and subject to the conditions following:

- (a) If a time for the delivery of the goods is expressed in the charterparty, bill of lading, or agreement, then at any time after the time so expressed;
- (b) If no time for the delivery of the goods is expressed in the charterparty, bill of lading, or agreement, then at any time after the expiration of 72 hours exclusive of a holiday, after the report of the ship;
- (c) If any wharf or warehouse is named in the charterparty, bill of lading, or agreement as the wharf or warehouse where the goods are to be placed, and if they can be conveniently there received, the shipowner in landing them by virtue of this enactment shall cause them to be placed on such a wharf or in such a warehouse;
- (d) In other cases the shipowner, in landing goods by virtue of this enactment, shall place them on or in some wharf or warehouse on or in which goods of a like nature are usually placed, such wharf or warehouse being, if the goods are dutiable, a wharf or warehouse duly approved by the Minister of Customs for the landing of dutiable goods;
- (e) If at any time before the goods are landed or unshipped the owner of the goods is ready and offers to land and take delivery of the same, he shall be allowed so to do, and his entry shall in such case be preferred to any entry made by the shipowner;
- (f) If any goods are for the purpose of convenience in assorting the same landed at the wharf where the ship is discharged, and the owner of the goods at the time of such landing has made entry and is ready and offers to take delivery of it and to convey the same to some other wharf or warehouse, such goods shall be assorted at landing; and shall if demanded, be delivered to the owner of it within 24 hours after assortment, and the expense of and consequent

- on such landing and assortment shall be borne by the shipowner;
- (g) If at any time before the goods are landed or unshipped the owner of it has made entry for the landing and warehousing of it at any particular wharf or warehouse other than that at which the ship is discharging and has offered and been ready to take delivery of it, and the shipowner has failed to make such delivery, and has also failed at the time of such offer to give the owner of the goods correct information of the time at which such goods can be delivered, then the shipowner shall, before landing or unshipping such goods under the power hereby given to him, give the owner of the goods or of such wharf or warehouse as last mentioned 24 hours' notice in writing of his readiness to deliver the goods, and shall, if he lands or unships the same without such notice, do so at his own risk and expense.

23 Continuation of lien for freight if shipowner gives notice

(1) If at any time when any goods are landed from any ship and placed in the custody of any person as a wharf or warehouse owner the shipowner gives to the wharf or warehouse owner notice in writing that the goods are to remain subject to a lien for freight or other charges payable to the shipowner to an amount to be mentioned in such notice, the goods so landed shall in the hands of the wharf or warehouse owner continue liable to the same lien, if any, for such charges as they were subject to before the landing.

(2) The wharf or warehouse owner receiving such goods shall retain them until the lien is discharged as mentioned, and if he fails so to do shall make good to the shipowner any loss thereby occasioned to him.

(3) On production to the wharf or warehouse owner of a receipt for the amount claimed as due, and delivery to the wharf or warehouse owner of a copy of it or a release of freight from the shipowner, the said lien shall be discharged.

24 Lien to be discharged on deposit with warehouse owner

The owner of the goods may deposit with the wharf or warehouse owner a sum of money equal in amount to the sum so claimed by the shipowner and thereupon the lien shall be discharged, but without prejudice to any other remedy which the shipowner may have for the recovery of the freight.

25 Right of warehouse owner, if no notice is given, to pay deposit to shipowner

If such deposit is made with the wharf or warehouse owner and the person making the same does not within 15 days after making it give the wharf or warehouse owner notice in writing to retain it, stating in such notice the sum, if any, which he admits to be payable to the shipowner, or that he does not admit any sum to be so payable, the wharf or warehouse owner may at the expiration of such 15 days pay the sum so deposited over to the shipowner, and shall by such payment be discharged from all liability in respect of it.

26 Course to be taken if notice to retain is given

If such deposit is made with the wharf or warehouse owner, and the person making the same does within 15 days after making it give to the wharf or warehouse owner notice as aforesaid;

- (a) The wharf or warehouse owner shall immediately apprise the shipowner of such notice, and shall pay or tender to him out of the sum deposited the sum admitted by such notice to be payable, and shall retain the balance or, if no sum is admitted to be payable, the whole of the sum deposited for 30 days from the date of the said notice;
- (b) At the expiration of such 30 days, unless legal proceedings have in the meantime been instituted by the shipowner against the owner of the goods to recover the said balance or sum, or otherwise for the settlement of any disputes between them concerning such freight or other charges as aforesaid, and notice in writing of such proceedings has been served on him, the wharf or warehouse owner shall pay the said balance or sum over to the owner of the goods, and shall by such payment be discharged from all liability in respect of it.

26A Arbitration deemed to be legal proceedings

(1) In section 26(b) "legal proceedings" shall be deemed to include arbitration.

(2) For the purposes of section 26, as affected by subsection (1), an arbitration shall be deemed to be commenced when one party to the submission serves on the other party or parties a notice requiring him or them to appoint an arbitrator, or, where the submission provides that the reference shall be to a person named or designated in the submission, requiring him or them to submit the dispute to the person so named or designated.

- (3) Any such notice as is mentioned in subsection (2) may be served either –
- (a) By delivering it to the person on whom it is to be served; or
 - (b) By leaving it at the usual or last known place of abode in Niue of that person; or
 - (c) By sending it by post in a registered letter addressed to that person at his usual or last known place of abode in Niue,

as well as in any other manner provided in the submission; and where a notice is sent by post in manner prescribed by paragraph (c) service of it shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

27 After 90 days warehouse owner may sell goods by public auction

If the lien is not discharged and no deposit is made as earlier mentioned, the wharf or warehouse owner may, and if required by the shipowner shall, at the expiry of 90 days from the time when the goods were placed in his custody, or, if the goods are of a perishable nature, at such earlier period as may be fixed by Lloyd's Agent or any surveyor to be appointed by such wharf or warehouse owner, sell by public auction either for home use or exportation, the said goods, or so much of it as may be necessary to satisfy the charges earlier mentioned.

28 Notices of sale to be given

(1) Before making such sale the wharf or warehouse owner shall give notice of it by advertisement in one newspaper circulating in the neighbourhood, a copy of which shall be kept posted up in some conspicuous part of the said wharf or warehouse.

(2) If the address of the owner of the goods has been stated on the manifest of the cargo, or on any of the documents in the possession of the wharf or warehouse owner, or is otherwise known to him, such wharf or warehouse owner shall give notice of the sale to the owner of the goods by letter sent by post.

(3) But the title of a *bona fide* purchaser of such goods shall not be invalidated by reason of the omission to send notice as earlier mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

29 Moneys arising from sale, how to be applied

In every case of any such sale as aforesaid the wharf or warehouse owner shall apply the moneys received from the sale in the following order:

- (a) If the goods are sold for home use, in payment of any Customs or excise duties owing in respect thereof;
- (b) In payment of the expenses of the sale;
- (c) In the absence of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, in payment of the rent, rates, and other charges due to the wharf or warehouse owner in respect of the said goods;
- (d) In payment of the amount claimed by the shipowner as due for freight or other charges in respect of the said goods;
- (e) But in the case of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, then such charges shall have priority according to the terms of such agreement; and
- (f) The surplus, if any shall be paid to the owner of the goods.

30 Warehouse owner's rent and expenses

Where goods are placed in the custody of a wharf or warehouse owner under the authority of this Part, the said owner shall be entitled to rent in respect of the same, and shall also have power at the expense of the owner of the goods to do all such reasonable acts as in the judgment of the said wharf or warehouse owner are necessary for the proper custody and preservation of such goods, and shall have a lien on it for the said rent and expenses.

31 Warehouse owner's protection

Nothing in this Part shall compel any wharf or warehouse owner to take charge of any goods which he would not be liable to take charge of if this Part has not passed, nor shall he be bound to see to the validity of any lien claimed by any shipowner under this Part.

PART 5

UNPAID VENDORS OF WAREHOUSED GOODS

32 Interpretation

In this Part –

“bonded warehouse” means a building approved and appointed by the Minister of Customs for the warehousing of goods without payment of duty on the first entry;

“free warehouse” means a building licensed by the Minister of Customs to be used exclusively for the storage of any goods not liable to the payment of the Customs duties, or whereon such duties have been paid previously to storage;

“goods” includes wares and merchandise or every description;

- “pledge” means any deposit and delivery of warrants or certificates with intent that the holder of it may dispose to the goods to which such warrants or certificates relate in the event of the terms of the deposit not being fulfilled by the persons making the same;
- “pledgee” means the person in whose favour the deposit or the warrants or certificates is made;
- “sale” means—any absolute disposition of goods, whether for payment to be made in cash or upon credit;
- “subpurchaser” means any person purchasing from or under the person to whom the original bonder or storer of goods in a bonded or free warehouse sold the same and delivered the warrants or certificates relating to it;
- “warehouse keeper” means the person having the management of any bonded or free warehouse, whether the warehouseman himself or a person employed by him;
- “warehouse keeper’s book” means the book in which the warehouse keeper enters a list of all goods received in and delivered out of the warehouse managed by him;
- “warehouseman” means the person for whose immediate benefit and under whose control the storage of goods in a bonded or free warehouse is carried on;
- “warrants” or “certificates” means any receipt or undertaking issued by or on behalf of the warehouseman, and signed by him or on his behalf, acknowledging the receipt in a specified warehouse of goods to be held on behalf of a person named and described, giving the particulars of the goods stored, the marks or brands (if any) on it, the terms upon which the goods are stored, and containing an undertaking on the part of the warehouseman to deliver the same to the endorsee, holder, or bearer of the warrant or certificate.

33 Unpaid vendor’s lien determined on delivery of bond warrants to *bona fide* holder for value

In all cases where warrants or certificates for goods liable to the payment of Customs duties are issued, importing a receipt of such goods by or on behalf of any bonded warehouseman and an undertaking to deliver the same to the holder of the warrants or certificates on presentation and demand, and on payment of the duties, rents, and charges lawfully demandable, and such warrants or certificates are delivered over on a sale of the goods by the person to whom the said warrants or certificates are issued by or on behalf of the warehouseman, the rights legal and equitable, of such person, as an unpaid vendor, to stop actual delivery of the goods comprised in and affected by such warrants or certificates shall be deemed at an end when such warrants or certificates are delivered over *bona fide* and for value, on either a sale or pledge of the said goods by any person purchasing from the original bonder of it.

34 Possession of warrants *prima facie* evidence of ownership

On a sale or pledge of goods stored in any bonded warehouse, the possession of warrants or certificates importing a receipt and undertaking to deliver as aforesaid shall be deemed *prima facie* evidence of the ownership of the holder of the said warrants or certificates in the goods and merchandise affected by it.

35 Holder of warrant entitled to delivery

Any holder of a warrant or certificate importing the obligations mentioned shall be entitled on request and on compliance with the terms of the contract implied by such warrants or certificates between the warehouseman and the original bonder of the goods, to have delivery of it, or to have his name entered upon the books of the warehouse keeper as the owner of the said goods.

36 Registered holder of warrant deemed to be owner

Save in the event of fraud being proved in the procurement of the entry of the name of the holder of the certificates or warrants in the warehouse keeper's books, the person whose name is so entered shall be conclusively deemed the then owner in possession of the said goods, subject to the provisions hereinafter contained.

37 Lien of registered transferee of warrant determined on delivery of warrant *bona fide* and for value

In the event of any transfer being entered in the books of the warehouse keeper, and the then owner of bonded goods delivers over the warrants or certificates relating to or affecting the same to any other person on a sale or pledge of the said goods, and such warrants or certificates are afterwards delivered over *bona fide* and for value to any subpurchaser or pledgee by the person receiving the same from the owner whose name is entered as aforesaid, the rights legal and equitable of the said owner as an unpaid vendor to stop the actual delivery of the goods comprised in and affected by such warrants or certificates shall be deemed at an end as from the time of the *bona fide* delivery of the warrants or certificates to the first subpurchaser or pledgee for value.

38 Warrants of free goods put on the same footing as bond warrants

Where goods are stored in any free warehouse, and warrants or certificates, importing on behalf of the warehouseman a receipt of the goods and an undertaking to deliver the same on presentation and demand and on payment of the rents and charges lawfully demandable, are delivered to and accepted by the person originally warehousing such goods, the respective rights and liabilities of the warehouseman and warehouse keeper, and of the persons to whom the said warrants or certificates were originally issued, or are afterwards delivered or redelivered upon a resale or pledge *bona fide* and for value of the goods, or in whose name the ownership may be transferred in the books of the warehouse keeper, or who afterwards acquires possession *bona fide* and for value of the said warrants or certificates, shall be the same in all respects as is provided with regard to goods liable to the payment of customs duties and stored in a bonded warehouse.

39 Provisions same in respect of bonded and free warehouses

The provisions herein relative to the rights of or incident to the ownership of goods stored in a bonded warehouse shall be as applicable to the ownership of goods stored in a free warehouse as if such provisions had been respectively repeated and expressly applied thereto.

40 Vendor's lien not prejudiced save as against *bona fide* subpurchaser or pledgee for value

Nothing herein shall in any way prejudice the rights of an unpaid vendor of goods to stop delivery of it until payment of the price payable to him whenever such rights may be lawfully exercised without detriment or injury to any subpurchaser or pledgee *bona fide* and for value, or to the rights of any trustee in bankruptcy claiming under the purchaser from the unpaid vendor.

41 Goods not to be transferred in books of warehouseman except on production of warrant

(1) No entry shall be made in the books of any warehouseman or keeper of any bonded or free warehouse transferring the ownership or possession of any goods, unless the person applying for such entry to be made produces and delivers up the warrants or certificates originally issued.

(2) Thereupon the warehouseman or the keeper of his warehouse may cancel the said warrants or certificates and issue others in lieu and such new warrants or certificates may in like manner be cancelled and others issued in substitution of it.

42 Special contracts restraining negotiability of warrants

(1) Notwithstanding anything herein the person originally storing goods in any bonded or free warehouse, and the warehouseman thereof, may enter into a special contract restraining the negotiability of the warrants or certificates issued in respect of the said goods, or providing some special method of transfer of the property in and possession of such goods.

(2) In every such case the terms of such special contract shall be incorporated in and made to appear upon the face of the said warrants or certificates, so that the holder of it may have his attention expressly directed to it.

43 Warehouseman's lien not prejudiced by sale or transfer of goods

No transfer of the ownership or possession of the goods stored in any bonded or free warehouse shall in any way prejudicially affect the lien or rights of the warehouseman in respect of any rent or charges previously incurred or become payable on account of the goods the ownership or possession whereof may be so transferred as aforesaid.

PART 6**BOOK PURCHASERS PROTECTION****44 Validity of agreements for purchase of books**

(1) Every agreement for the purchase of any book or part of a book, or of engravings, lithographs, or pictures, or of any other like matter, whether illustrated or not ("printed matter"), shall be absolutely void in every case where such printed matter is not to be delivered to the purchaser at the date of such agreement in a completed form, and so as to embrace the whole of the volumes or numbers of the printed matter, unless the purchaser of such printed matter first signs an agreement on a form in which, in red capital letters not less than great primer, the following words and figures are printed – namely, "The total liability of the purchaser under this agreement is [inserting the amount in similar printed letters and also printed figures of like size]" and unless such form is printed or written in black, wholly or partly, across and subsequent to the printing of such red letters and figures.

(2) The vendor of such printed matter, or his agent, shall at the time of signing of the agreement aforesaid also hand over to the purchaser a duplicate of the agreement, having printed on it in addition the words "Duplicate to be kept by purchaser", and the name and address in full of the vendor; and the vendor shall not be entitled to recover under such agreement unless he produces an acknowledgement by the purchaser that he has received such duplicate of the agreement as aforesaid.

(3) In any action in any court on any contract for the purchase of such printed matter, the court may determine the value of the said printed matter, proof of which shall be on the vendor.

MERCHANDISE MARKS ACT 1954

1954/43 (NZ) – 15 July 1955

| | | | |
|---|--|----------------|---|
| 1 | Short title | 11 | Forging trade mark |
| 2 | Interpretation | 12 | Advertisements and other applications of marks and descriptions |
| <i>Certain Goods to Bear Indication of Origin</i> | | | |
| 3 | Power to require indication of origin | <i>General</i> | |
| 4 | Imported goods bearing name or trade mark of Niue manufacturer or trader not to be sold unless accompanied by indication of origin | 13 | Exemption of employees in certain cases |
| 5 | [Repealed] | 14 | Power of employer to exempt himself from penalty on conviction of actual offender |
| 6 | Penalty on removal of any required mark from goods | 15 | Description of trade mark in pleading |
| 7 | Offences arising from failure to mark | 16 | Punishment of accessories |
| 8 | Special provisions in respect of blends and mixtures | 17 | Limitation of prosecution |
| <i>False Trade Descriptions</i> | | | |
| 9 | Offences as to trade marks and trade descriptions | 18 | General penalty for offences |
| 10 | Application of false trade description | 19 | Forfeiture |
| | | 20 | Implied warranty on sale of marked goods |
| | | 21 | Provisions as to false description not to apply in certain cases |
| | | 22 | Importation of certain goods prohibited |
| | | 23 | [Spent] |
| | | 24 | Savings in respect of liabilities |
| | | 25 | [Spent] |

To consolidate and amend certain enactments relating to merchandise marks

- 1 Short title**
This is the Merchandise Marks Act 1954.
- 2 Interpretation**
(1) In this Act and in any regulation made under this Act—
“advertisement” means any words, whether written or spoken, or any picture, drawing, or figure –
(a) Inserted in any newspaper or other periodical publication printed and published in Niue; or
(b) Brought to the notice of members of public in Niue in other manner whatsoever;
“certification trademark” includes any mark which is used or on in connection with goods for the purpose of indicating that they are the goods of the proprietor of the mark by virtue of certification;
“covering” includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper;
“dealer” includes any servant or employee of a dealer;

“false trade description” means a trade description which is false or misleading in a material respect as regards the goods to which it is applied; and includes every alteration of trade description, whether by way of addition, effacement, or otherwise where that alteration makes the description false or misleading in a material respect; and also includes a trade description (to whichever of the matters mentioned in the definition of that term in this section it relates) if it is likely to be misunderstood as, or mistaken for, an indication of the same or some other such matter which would be false or misleading in a material respect as regards the goods to which the description is applied; and the fact that a trade description is a trade mark or part of a trade mark shall not prevent the trade description being a false trade description within the meaning of this Act; but no trade mark or part of a trade mark shall be treated as a false description in relation to any goods to which the trade mark or part of a trade mark is applied if the following conditions are satisfied.

- (a) On the day this Act is passed the trade mark either is registered under the Trade Marks Act 1953 (NZ) or is in use to indicate a connection in the course of trade between those goods and the proprietor of the trade mark; and
- (b) The trade mark as applied is used to indicate connection in the course of trade between the goods and the person who is the proprietor of the trade mark or between the goods and a person who is registered under section 37 of the Trade Marks Act 1953 (NZ) as a registered user of the trade mark; and
- (c) The person who is the proprietor of the trade mark is the same person as, or a successor in title to, the proprietor of the day this Act is passed;

“goods” means anything which is subject of trade, manufacture, or merchandise;

“imported goods” does not include –

- (a) Goods which since the date of their importation have undergone in Niue any treatment or process resulting in a substantial change in the goods; or
- (b) Goods produced or manufactured in Niue which after exportation are brought back into Niue including any such goods which have undergone abroad any treatment or process not resulting in a substantial change in the goods;

“indication of origin” in relation to any goods, means a definite, clear, conspicuous indication in the English language of the country in which the goods were manufactured or produced;

“label” includes any band or ticket;

“manufacturer” includes any servant or employee of a manufacturer;

“mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof;

“name” includes any abbreviation of a name;

“person” includes any servant or employee of a person;

“proprietor” includes any servant or employee of a proprietor;

“sale” –

- (a) Includes, subject as hereinafter provided, sale wholesale as well as sale by retail:

Provided that references to exposure for sale in sections 4 and 7 of

this Act or (unless the order expressly provides to the contrary) in any regulations made under this Act shall not include exposure for sale wholesale by a person being a wholesale dealer;

- (b) Does not include –
- (i) a sale of goods for consignment by the vendor to a person outside Niue; or
 - (ii) a sale of second hand goods; or
 - (iii) the sale of any foodstuffs at any hotel or restaurant or other premises for consumption thereon or the sale of any foodstuffs which have undergone a process of cooking, curing, or preserving in Niue;

“trade description” –

- (a) Means any description, statement, or other indication, direct or indirect, –
- (i) as to the number, quantity, measure, gauge, or weight of any goods; or
 - (ii) as to the standard of quality of any goods according to a classification commonly used or recognised in the trade; or
 - (iii) as to the place or country in which any goods and the material or substance of it were made or produced; or
 - (iv) as to the mode of manufacturing or producing any goods; or
 - (v) as to the material or substance of which any goods are composed; or
 - (vi) as to any goods being the subject of an existing patent, privilege, or copyright; and
- (b) Includes –
- (i) the use of any figure, word, or mark which according to the custom of the trade is commonly taken to be an indication of any of those matters; and
 - (ii) anything likely to be misunderstood as or mistaken for an indication of any of those matters;

“trade mark” means any trade mark within the meaning of the Trade Marks Act 1953 (NZ); and includes a certification trade mark, and any mark which is used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of the mark by virtue of manufacture, selection, certification, dealing with, or offering for sale;

“trader” includes any servant or employee of a trader.

(2) For the purposes of this Act goods shall be deemed to be manufactured or made in any place if they have undergone in that place any treatment or process resulting in substantial change in the goods.

Certain Goods to Bear Indication of Origin

3 **Power to require indication of origin**

- (1) Cabinet may by regulation –
- (a) Direct that goods of any class or description specified in the order shall, in the case of goods intended for importation into Niue at the time of their importation or exposure for sale in Niue, or in the case of goods manufactured in Niue at the time of their manufacture or exposure for sale in Niue, bear an indication of origin;
 - (b) Prohibit the sale or the exposure for sale in Niue of goods of any class or description specified in the regulation unless they bear an indication of origin;

- (c) Exclude specified items from any class or description of goods.
- (2) A regulation under this section shall specify in every case –
 - (a) The manner in which the indication of origin is to be applied to the goods; and
 - (b) The date on which the regulation is to come into force (not being a date earlier than 3 months from the date of the making of the regulation, except in the case of a regulation revoking a previous regulation either entirely or as respects some of the goods to which that regulation relates, or a regulation made for amending a previous regulation in consequence of a direction having been given with respect to that regulation under this section relating to provisional exemptions); and
 - (c) Whether the goods are to bear the indication of origin at the time of importation or of manufacture or of exposure for sale wholesale.
- (3) If, where regulations have been made under this Act with respect to any goods, it is shown to the satisfaction of the Minister by persons appearing to him to have a substantial interest in the matter that the application of the provisions of the regulation or of some of those provisions, to any particular class or description of those goods has caused, or is likely to cause, injury or hardship to the said persons, or any of them, the Minister may, by notice in the *Gazette*, direct that the regulation, or any particular provisions of the regulation shall cease to apply to goods of that class or description or shall apply to those goods subject only to such modifications and conditions as the Minister thinks fit, and the regulation shall, while the direction is in force, have effect subject to it.

4 Imported goods bearing name or trade mark of Niue manufacturer or trader not to be sold unless accompanied by indication of origin

(1) It shall not be lawful to sell, expose for sale, or (by way of advertising goods of some kind) distribute, in Niue any imported goods to which there is applied any name or trade mark or words, being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in Niue or the name of any place or district in Niue or words which would be likely to associate the goods with Niue unless the name, mark, or words are accompanied by and indication of origin.

(2) If the Minister is satisfied, after considering such representations (if any) as may be made to him by any persons appearing to have a substantial interest in the matter, that having regard to the special circumstances of the trade, difficulties would arise if this section applied to goods of any class or description, or goods sold under any particular designation, and that public interests in Niue would not be materially prejudiced by exempting the goods from the operation of this section, he may, by notice in the *Gazette*, direct that this section shall not apply to those goods, or that goods shall not be treated as falling under this section by reason only that they are so designated.

(3) This section shall not have effect in respect of the application of a name or trade mark to articles used or to be used for any of the following purposes as coverings, labels, reels, or otherwise as articles in or with which goods manufactured or produced in Niue or are to be sold or exposed for sale, if –

- (a) The name or trade mark so applied is the name or trade mark of a manufacturer of or a dealer or a trader in those goods in Niue and the name or trade mark was applied with his consent;

- (b) The trade mark is a certification trade mark and it relates or is to relate to those goods, and was so applied by or with the consent of the proprietor of the certification trade mark or by another in accordance with his authorisation under the regulations relating to the certification trade mark.

5 [Repealed by 2004/270]

6 Penalty on removal of any required mark from goods

If any person removes, alters, or obliterates an indication of origin which, in compliance with the requirements of section 4 or a regulation made under section 3, was borne by the goods at the time of their importation or exposure for sale wholesale, he shall be deemed to have acted in contravention of that provision or regulation unless he proves to the satisfaction of the court dealing with the case that the removal, alteration, or obliteration was not for the purpose of concealing the origin of the goods at the time of their sale or exposure for sale.

7 Offences arising from failure to mark

(1) Subject to this section, every person who sells, exposes for sale, or distributes by way of advertisement, any goods in contravention of the foregoing provisions of this Act, or acts in contravention of or fails to comply with any such provision or any regulation made under section 3, commits an offence and shall be liable on conviction to a fine not exceeding 1 penalty unit; and the Court may in the case of a second or subsequent offence also order the goods in relation to which the offence has been committed to be forfeited.

(2) (a) If any person advertises or offers for sale as being goods of a particular brand or make or otherwise under a specific designation, by means of an illustration or by means of any written matter, any goods of a class or description which are required by any regulation under section 3 to bear an indication of origin, he shall, if he does not include in the advertisement or offer an indication of the origin of the goods, and subject to this section, be deemed to have acted in contravention of a regulation made under that section.

(b) This subsection shall not apply in the case of any advertisement made, issued or published before the date on which the regulation was made.

(3) Where any person sells, or exposes for sale, any goods, of which some (being goods to which a regulation under section 3 applies) form a distinguishable part, and that part is reasonably capable of having applied to it an indication of origin in manner required by the regulation he shall, for the purposes of this section, be deemed to have sold, or exposed for sale, that part, and the provisions of this section shall apply accordingly.

(4) It shall not within Niue be lawful to sell or offer for sale by sample goods of a class or description to which a regulation under section 3 applies unless the required indication of origin is applied to the samples or unless particulars corresponding to the particulars which would be contained in such an indication are communicated in writing to the person whom the samples are submitted, and if any person acts in contravention of this subsection he shall, subject to this section, be deemed to have acted in contravention of a regulation made under section 3.

- (5) A person shall not be guilty of an offence if he proves –
- (a) That having taken all reasonable precautions against committing such an offence he had at the time of the commission of the alleged offence no reason to suspect that the goods were goods to which the foregoing provisions of this Act or regulation made under section 3 applied, and that on a demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained the goods; or
 - (b) That otherwise he had acted innocently.

8 Special provisions in respect of blends and mixtures

(1) Section 4 shall not extend to blends or mixtures, and regulations made under section 3 with respect to goods of any class or description shall not extend to blends or mixtures consisting of or containing those goods unless the regulation expressly so provides, and, where any regulation so provides, the indication of origin to be given in respect of the blends or mixtures shall, notwithstanding anything in this Act, be an indication in such form as the regulation prescribes.

(2) The provisions of this section shall not apply to any blend or mixture produced by a process of manufacture from materials of different kinds.

False Trade Descriptions

9 Offences as to trade marks and trade descriptions

(1) Subject to this Act, and unless he proves that he acted without intent to defraud, every person commits an offence who –

- (a) Forges any trade mark; or
- (b) Falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be likely to deceive; or
- (c) Makes any dye, block, machine, or other instrument for the purpose of forging or of being used for forging a trade mark; or
- (d) Applies any false trade description to goods; or
- (e) Disposes of or has in his possession any dye, block, machine, or other instrument for the purpose of forging a trade mark; or
- (f) Falsely represents that goods offered for sale were manufactured or made in Niue; or
- (g) Uses any word, mark, or sign likely to mislead any person as to the real or actual manufacturer or maker of goods, or the place where the goods were made or manufactured; or
- (h) Causes any of the things specified in this subsection to be done.

(2) Every person commits an offence who sells, or exposes, or has in his possession for any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be likely to deceive is falsely applied unless he proves –

- (a) That, having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description; and that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained the goods or things; or
- (b) That otherwise he acted innocently.

10 Application of false trade description

(1) The provisions of this Act relating to the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination of it, whether including a trade mark or not as are likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(2) The provisions of this Act relating to the application of false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application of goods of any false name or initials of a person and to goods with the false name or initials of a person applied, in like manner as if the name or initials were a trade description; and for the purpose of this enactment the expression "false name or initials" means, as applied to any goods, any name or initials of a person which –

- (a) Are not a trade mark or part of a trade mark; and
- (b) Are identical with or a colourable imitation of the name or initials of a person who carries on business in connection with goods of the same description, and who has not authorised the use of the name or initials; and
- (c) Are either those of a fictitious person or of some person not carrying on business in connection with the goods.

11 Forging trade mark

(1) A person shall be deemed to forge a trade mark who –

- (a) Without the assent of the proprietor of the trade mark, makes that trade mark or a mark so nearly resembling that trade mark as to be likely to deceive; or
- (b) Falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise.

(2) Any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark.

(3) In any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

12 Advertisements and other applications of marks and descriptions

(1) A person shall be deemed to apply a trade mark, mark, or trade description to goods who –

- (a) Applies it to the goods themselves; or
- (b) Applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or
- (c) Places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture in, with, or to any covering, label, reel, or other thing to which that trade mark, mark or trade description has been applied; or
- (d) Uses a trade mark, or mark, or trade description in any manner likely to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark, mark, or trade description.

(2) A trade mark, mark or trade description shall be deemed to be applied to goods whether it is woven or impressed or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing in or with the goods.

(3) A person shall be deemed falsely to apply to goods a trade mark or mark who, without the assent of the proprietor, applies that trade mark or mark, or one so nearly resembling it as to be likely to deceive; and in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

(4) For the purposes of subsection (1)(d) goods delivered under a request made by reference to a trade mark or mark or trade description appearing in any sign, advertisement, invoice, wine list, business letter, business paper, or other commercial communication shall be deemed to be goods in connection with which the trade mark, mark or trade description is used.

General

13 Exemption of employees in certain cases

(1) Where a defendant is charged with making any dye, block, machine, or other instrument for the purpose of forging or being used for forging a trade mark or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be likely to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves –

- (a) That in the ordinary course of his business he is employed on behalf of other persons to make dyes, blocks, machines, or other instruments for making or being used in making trade marks, or for applying marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in Niue, and was not interested in the goods by way of profit or commission dependent on the sale of goods; and
- (b) That he took reasonable precautions against committing the offence charged; and
- (c) That he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark or trade description; and
- (d) That he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark or trade description was applied –

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

(2) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in Niue who acts in good faith in obedience to the instructions of that master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

14 Power of employer to exempt himself from penalty on conviction of actual offender

(1) Where an employer or principal is charged with the offence of having acted in contravention of, or of having failed to comply with any provision of this Act or any regulation made under this Act he shall be entitled on information duly laid by him and on giving not less than 3 days' notice of his intention to the prosecution to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer or principal proves to the satisfaction of the court that he has used due diligence to enforce compliance

with this Act or of the regulation, and that the said other person had committed the offence in question without his consent, connivance, or wilful default, the said other person shall, subject to section 7 (5), be convicted of the offence, and the employer or principal shall be exempt from any penalty.

(2) The person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to proceedings.

(3) The prosecution shall in any such case have the right to cross-examine the employer or principal if he gives evidence, and any witnesses called by him in support of his charge, and to call rebutting evidence.

15 Description of trade mark in pleading

In any indictment, pleading, proceeding, or document in which any trade mark or forged trade mark is intended to be mentioned it shall be sufficient, without further description and without any copy or facsimile, to state that mark or forged mark to be a trade mark or forged trade mark.

16 Punishment of accessories

Every person who being in Niue procures, counsels, aids, abets, or is accessory to the commission out of Niue of any act which if committed in Niue would under this Act be an offence punishable on indictment shall be guilty of that offence as a principal, and be liable to be indicted, proceeded against, tried, and convicted in Niue as if the offence had been committed there.

17 Limitation of prosecution

No prosecution for an offence against this Act shall be commenced after the expiration of 3 years from the date of the commission of the offence, or after the expiration of one year from the first discovery of it by the prosecutor, whichever first happens.

18 General penalty for offences

Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section shall be liable on conviction –

- (a) To imprisonment for a term not exceeding 2 years, or to a fine not exceeding 10 penalty units, or to both such imprisonment and such fine; and
- (b) If the court so directs, to forfeit to the Government every chattel, article, instrument, or thing, by means of or in relation to which the offence was committed.

19 Forfeiture

(1) Where any articles (including goods, chattels, instruments, and things) would be liable to forfeiture under section 7 if the owner was convicted of a second offence against this Act, or under section 18 if the owner was convicted of an offence against this Act, and the owner is unknown or cannot be found, an application to the Court may be made for the purpose only of enforcing the forfeiture, and any Judge may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place specified in the notice, the articles will be forfeited; and at that time and place any Judge, unless the owner or any person on his behalf or other person interested in the articles shows cause to the contrary, may order the articles or any of them to be forfeited.

(2) Subject to this section and to any directions of the Court which orders the forfeiture, any such articles which are forfeited under this Act may be sold, destroyed, or otherwise disposed of as the Minister may direct.

(3) Subject to subsection (4)(6), where any such articles which are forfeited under this Act are sold, the proceeds of sale shall be applied in the like manner as if the proceeds were a fine incurred under this Act.

(4) Where any such articles are forfeited under this Act, or under the Customs Act 1966 in consequence of the operation of section 22 of this Act –

(a) If the articles are not destroyed, all trade marks or trade descriptions which are on the articles in contravention of this Act or of any regulation made under section 3 shall be obliterated before the articles are sold or otherwise disposed of;

(b) If the Court which orders the forfeiture or any Judge so directs, any innocent party may be reimbursed out of the proceeds of any such sale or disposition any loss he may have innocently sustained in dealing with the articles.

(5) Any such direction may be given by the court which order the forfeiture at the time when it is ordering the forfeiture, or by any Judge on an application made to the High Court in that behalf by any interested person.

20 Implied warranty on sale of marked goods

On the sale or in the contract for the sale of any goods to which a trade mark, mark or trade description has been applied, the vendor shall be deemed to warrant that the trade mark or mark is a genuine one and not forged or falsely applied, and that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the purchaser.

21 Provisions as to false description not to apply in certain cases

(1) Where on the coming into operation of this Act a trade description was lawfully and generally applied to goods of a particular class or manufactured by a particular method, to indicate the particular class or method of manufacture of the goods, the provisions of this Act with respect to false trade descriptions shall not apply to that trade description when so applied.

(2) Where the trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods were not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods and the material or substance of it were actually made or produced, with a statement that they were made or produced there.

22 Importation of certain goods prohibited

All goods which if exposed for sale in Niue would be liable to forfeiture under section 18(1)(b) are hereby prohibited to be imported into Niue, and shall be deemed to be included among goods prohibited to be imported under section 48 of the Customs Act 1966, subject to the following provisions, that is to say:

(a) Before detaining any such goods, or taking any further proceeding with a view to their forfeiture under the Customs Act 1966, the Minister of Customs may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy himself, in accordance with those regulations, that the goods are such as are prohibited by this section to be imported;

- (b) Section 19(4) shall apply in connection with any such goods which are forfeited under the Customs Act 1966;
- (c) Cabinet may make regulations, either general or special, respecting the detention and forfeiture of goods that importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by any such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verifying any such evidence;
- (d) Regulations so made may apply to all goods the importation of which is prohibited by this section, or to any class or classes of those goods or of offences in relation to those goods;
- (e) Regulations so made may provide that the informant shall reimburse the Minister of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

23 [Spent]

24 Savings in respect of liabilities

(1) This Act shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Act, be brought against him.

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence, against that person in any prosecution of an offence against this Act.

25 [Spent]

MINING ACT 1977

1977/30 – 5 August 1977

| | |
|---|---|
| <p style="text-align: center;">PART 1 PRELIMINARY</p> <p>1 Short title</p> <p>2 Interpretation</p> <p>3 Minerals property of Crown</p> <p>4 Atomic Energy Act 1945</p> <p style="text-align: center;">PART 2 ADMINISTRATION</p> <p>5 Mining Inspectors</p> <p>6 Duties of Mining Inspectors</p> <p>7 Failure to comply with directions</p> <p>8 Special powers of Mining Inspectors</p> <p>9 Obstruction prohibited</p> <p>10 Mining Office</p> <p>11 Office of miner</p> <p style="text-align: center;">PART 3 ACQUISITION OF LAND</p> <p>12 Acquisition of Niuean Land</p> <p>13 Crown land open for mining</p> <p>14 Niuean land open for mining</p> <p>15 Niuean land may be declared open for mining without consent of owner</p> <p>16 Agreement with owner for mining</p> <p>17 Area of mining lease</p> <p style="text-align: center;">PART 4 GRANT OF LICENCES</p> <p>18 Prospecting licences</p> <p>19 Mining licences</p> <p>20 Access licence</p> <p>21 Form of licence</p> <p>22 Validity of licence</p> <p>23 Licence deemed to have been confirmed</p> <p>24 Registration of licence</p> | <p>25 Destruction of licence</p> <p>26 Licence to constitute contract</p> <p>27 Surrender, cancellation and suspension of licence</p> <p style="text-align: center;">PART 5 COMPENSATION</p> <p>28 Compensation</p> <p>29 Claims for compensation against Crown</p> <p>30 Payment of compensation</p> <p>31 Compensation not payable in respect of minerals</p> <p>32 Compensation not payable unless expressly provided for</p> <p>33 Owner and occupier of land entitled to compensation</p> <p>34 Amount of compensation</p> <p style="text-align: center;">PART 6 REGULATIONS</p> <p>35 Regulations relating to mines</p> <p>36 General regulations</p> <p style="text-align: center;">PART 7 MISCELLANEOUS PROVISIONS</p> <p>37 Levies may be imposed</p> <p>38 Moneys payable to the Treasurer</p> <p>39 Money paid for Niuean land</p> <p>40 Disputes</p> <p>41 Appeals</p> <p>42 Records to be kept</p> <p>43 Disused mines</p> <p>44 Cabinet may delegate</p> <p>45 Personal liability of officers</p> <p>46 [Spent]</p> |
|---|---|

**To make provision for mining for minerals in Niue, and for
incidental or connected matters**

PART 1

PRELIMINARY

1 Short title

This is the Mining Act 1977.

2 Interpretation

In this Act –

“access licence” means any licence granted under section 20;

“alienation” means alienation as defined in section 2 of the Niue Amendment (No 2) Act 1968;

“Chief Mining Inspector” means the Chief Mining Inspector appointed under section 5;

“Crown land” means Crown land as defined in section 2 of the Niue Amendment (No 2) Act 1968;

“licence” means any access licence, mining licence or prospecting licence;

“mine” means any mine, quarry, tunnel, excavation, working or any other place where any mining is being carried on or has been carried out;

“miner” means any person, including a body corporate holding a valid and subsisting mining licence;

“minerals” means all minerals, mineral substances, gold, silver, precious metals, ferrous metals, non-ferrous metals, bauxite, phosphate, phosphate rock, diatomaceous earth, marble, coal, bitumen, lignite, precious stones, and petroleum existing in their natural state on or under the surface of any land, and includes any prescribed substance within the meaning of the Atomic Energy Act 1945, but does not include any coral, common clay, common sand, common gravel, common stone or common earth;

“mining” means mining operations;

“Mining Inspector” means:

(a) The Chief Mining Inspector; or

(b) A Mining Inspector duly appointed and holding office, under this Act, as a Mining Inspector;

“mining licence” means a mining licence issued under this Act;

“mining operations” and “mining purposes” means operations in connection with mining for any mineral, and includes –

(a) The removal of overburden by mechanical or other means, and the stacking, deposit, storage, and treatment of any substance considered to contain any mineral;

(b) The deposit or discharge of any mineral, material, debris, tailings, refuse, or waste-water produced from, or consequent on, any such operations or purposes;

(c) The erection, maintenance, and use of plant and machinery, and the construction or use of roads, races, dams, railways, channels, batteries, buildings, dwellings, and other works connected with such operations or purposes; and

(d) The lawful use of land, water, pools and natural depositories of water (whether containing water or not) and the doing of all lawful acts incidental or conducive to any such operations or purposes;

“Niuean land” has the same meaning as in section 2 of the Niue Amendment (No 2) Act 1968;

“prescribed substances” means uranium, thorium, plutonium, neptunium, or any of their respective compounds, or any such other substance as Cabinet may prescribe by notice in the *Gazette*, being a substance which in its opinion is or may be used for the production of atomic energy or research into matters connected with it;

“prospecting” means searching for minerals in the soil or substrata of any land to assess whether the soil or substrata is suitable for the mining of any mineral, or to test the mineral bearing qualities of any soil or substrata, but does not include mining;

“prospecting licence” means a prospecting licence issued under section 18;

“prospector” means any person holding a valid and subsisting prospecting licence;

“Registrar” means the Registrar of the Court.

3 Minerals property of Crown

(1) All minerals on or under the surface of any land (including the seabed) within the territorial limits of Niue, are declared to be the property of the Crown.

(2) All grants of Crown land and all alienations of Niuean land shall be deemed to be made subject to the reservation to the Crown of all minerals on or under the surface of the land.

4 Atomic Energy Act 1945

Nothing in this Act shall affect or derogate from the Atomic Energy Act 1945 or be deemed to affect or derogate from its provisions, and should there be any conflict between that Act and this Act, that Act shall prevail.

PART 2

ADMINISTRATION

5 Mining Inspectors

(1) There may be appointed, under Part 6 of the Constitution a Chief Mining Inspector and such number of other Mining Inspectors as may be required for the purpose of this Act.

(2) The Chief Mining Inspector shall have all the powers of and be deemed to be a Mining Inspector.

6 Duties of Mining Inspectors

It shall be the duty and function of a Mining Inspector –

(a) To inspect mines;

(b) When he has reason to believe that any mining or other operation or activity being carried on at any mine, or that the state or condition of any mine, constitutes a hazard or danger to any person, livestock or building, to give to any miner or to the duly authorised agent or servant of the miner, or to any person engaged in mining at the mine, reasonable directions for, or with a view to, removing, preventing or alleviating the hazard or danger; and

(c) To ensure that the provisions of this Act are duly observed.

7 Failure to comply with directions

Where any miner, or the duly authorised agent or servant of any miner, or any person engaged in mining to whom any directions are given under section 6(b) knowingly and wilfully fails to comply with the directions, he commits an offence and, on conviction, shall be liable to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 2 months or, where the offender is a body corporate, to a fine not exceeding 10 penalty units.

8 Special powers of Mining Inspectors

(1) A Mining Inspector may in the exercise of duties, functions or powers under this Act enter any mine or any place where minerals obtained by mining are stored or kept, or any place where he has reason to believe that any such minerals, are or may be stored or kept.

(2) Save with the prior written consent of a Judge or of a Commissioner, a Mining Inspector shall not exercise any of the powers conferred by this subsection –

(a) At any time between the hours of sunset and sunrise; or

(b) In or upon any private dwelling or private garden, except with the permission of the occupier.

(3) A Mining Inspector may take and retain on behalf of the Crown from any mine or any place where minerals that are obtained, or apparently obtained, by mining are stored or kept, reasonable samples of any minerals, soil or earth.

9 Obstruction prohibited

(1) Any person who obstructs, hinders, disobeys, assaults, threatens, or abuses any Mining Inspector while the Inspector is performing any duty, exercising any power or carrying out any function imposed or conferred upon the Inspector by this Act, commits an offence, and, on conviction, shall be liable to a fine not exceeding 1 penalty unit or to imprisonment for a term not exceeding 1 month, or, where the person is a body corporate, to a fine not exceeding 5 penalty units.

(2) Nothing in this section shall derogate from section 7.

10 Mining Office

(1) There shall be a Mining Office which shall be situated in Alofi at such place as Cabinet shall specify.

(2) The Mining Office shall be under the control of the Chief Mining Inspector.

(3) At the Mining Office there shall be kept copies of all licences, documents, notices and other writings and instruments issued under this Act, which shall comprise the public records or the Mining Office.

(4) The public records of the Mining Office shall be open to inspection, without fee, by members of the public on any day except a Saturday, or a holiday at all reasonable hours fixed by the Chief Mining Inspector.

(5) (a) None of the public records of the Mining Office shall, without the prior consent of the Cabinet, or a Judge or Commissioner of the Court, or the Chief Mining Inspector be removed from the Mining Office.

(b) Any such Judge or Commissioner may order the Chief Mining Inspector to cause any of such public records to be produced in any court.

(6) Any person who knowingly and wilfully removes any of such public records, contrary to subsection (5) from the Mining Office, commits an offence and, on conviction, shall be liable to a fine not exceeding 1 penalty unit, or to

imprisonment for a term not exceeding one month or, if the removal was made with any fraudulent or other dishonest intent, to a fine not exceeding 3 penalty units or to imprisonment for a term not exceeding 9 months.

11 Office of miner

(1) Every miner shall have, in Niue, an office and shall, in writing, inform the Chief Mining Inspector at the Mining Office of the location of that office or any change in the location of that office.

(2) Any miner who, for more than 7 clear days, is in breach of subsection (1) commits an offence and, on conviction, shall be liable to a fine not exceeding 0.5 penalty units.

(3) Any notice or other document which any person may wish to serve upon or deliver to any miner shall be deemed to have been validly served upon or delivered to the miner if it be delivered at the office referred to in subsection (1) of the miner as the same is recorded in the records of the Mining Office.

(4) Nothing in subsection (3) shall preclude the service or delivery of any notice or other document in any manner sanctioned by law.

PART 3

ACQUISITION OF LAND

12 Acquisition of Niuean land

Cabinet shall have the authority to investigate and acquire Niuean land by way of lease or purchase for the following purposes –

- (a) For mining and for all purposes necessary effectually to carry on mining operations in or on the land for any mineral;
- (b) For cutting and constructing on the land water races, drains, dams, and roads, to be used in connection with such mining;
- (c) For the erection on it of any buildings and machinery to be used in connection with any such mining;
- (d) For boring, sinking for, pumping or raising water;
- (e) For residence on it in connection with any or all such purposes.

13 Crown land open for mining

All Crown land shall be open for mining, subject to and in accordance with this Act or regulations made under this Act.

14 Niuean land open for mining

Without limiting this Act, if minerals are discovered on or under Niuean land, the land shall, with the written consent of the owner or occupier, be open for mining, subject to and under this Act.

15 Niuean land may be declared open for mining without consent of owner

(1) If the owner or occupier of any Niuean land fails or refuses to consent to the acquisition of land for mining, the Assembly may by resolution direct Cabinet to declare the land to be open for mining as if it were Crown land.

(2) Where the Assembly resolution is passed under subsection (1) Cabinet shall cause to be served on the owner or occupier of the land a notice in writing stating that unless, within a period of 6 months after the date on which the notice was served, the owner or occupier consents to the land being open for mining, the land may be declared to be open for mining as if it were Crown land.

(3) No owner or occupier of land who has had served on him a notice under subsection (2) shall, within the period of one year after the date of receipt of

the notice, enter into any arrangement with any other person for the mining of any mineral on or under the land to which the notice relates.

(4) If satisfactory arrangements (including, if necessary, an agreement to grant a right of way) have not been made by the owner or the occupier within the period of 6 months referred to in subsection (2), Cabinet within 3 months after the expiry of the said period of 6 months, shall declare the land in respect of which the notice was served or any part of it to be open for mining if Cabinet considers it to be in the national interest to do so.

(5) Where any land is required under this section is proven by the owner or occupier to be their only land that owner or that occupier shall be provided with alternative land of an equal value at some other place in Niue.

16 Agreement with owner for mining

Instead of recommending that any land be declared to be open for mining under section 15, Cabinet may agree in writing with the owner or occupier of the land that it shall be open for mining in the same manner as Crown land.

17 Area of mining lease

(1) The area of any land comprised in a mining lease shall not exceed 40 acres and the length of the area, as far as practicable, shall not exceed twice its width.

(2) Nothing in subsection (1) shall restrict the area of land required for the purpose of mining for a prescribed substance within the meaning of the Atomic Energy Act 1945.

PART 4 GRANT OF LICENCES

18 Prospecting licences

(1) Cabinet shall have the authority to grant prospecting licences.

(2) Cabinet shall make regulations under this section to regulate the granting of prospecting licences.

19 Mining licences

(1) Cabinet shall have the authority to grant mining licences under this Act or under any regulations made under this Act.

(2) No person shall engage in mining in, upon or under any land unless, in relation to that land, the person holds a mining licence issued to the person under subsection (1).

(3) Any person who engages in mining contrary to subsection (2) commits an offence and, on conviction, shall be liable to a fine of 5 penalty units or to imprisonment for a term not exceeding 2 months or, where the person is a body corporate, to a fine not exceeding 20 penalty units.

(4) Where any person is convicted of an offence contrary to subsection (2) the Court may, on convicting or sentencing the person, make an order vesting in the Crown all or any vehicles, machinery, equipment, tools or other things used by the person in the commission or in furtherance of the offence and upon the making of any such order, the vehicles, machinery, equipment, tools or other things so vested shall be forfeited to and become the absolute property of the Crown and shall be dealt with or disposed of in such manner as the Cabinet may direct.

(5) No person shall, as of right, be entitled to the grant of a mining licence.

(6) Subject to section 27, where, in respect of any piece or area of land, there is in existence a subsisting mining licence, no mining licence shall be granted

in respect of the piece or area of land without first consulting the miner holding the subsisting licence.

(7) No mining licence shall be granted for a period in excess of 50 years commencing on the date of issue.

20 Access licence

(1) Where a miner is unable to obtain reasonable access to any area or piece of land mentioned in the mining licence held by the miner, the miner may apply in writing to Cabinet for a grant to the miner of an access licence to that area or piece of land over any other area or piece of land to be specified in the licence.

(2) On the receipt of any such application and if Cabinet considers the application to be reasonable in the circumstances, Cabinet shall grant the access licence sought subject to any reasonable conditions that it may specify.

(3) Every access licence shall be effectual only during the subsistence of the mining licence to which it relates.

21 Form of licence

- (1) Every licence shall be in writing and in triplicate and shall –
- (a) Contain the full names, occupation and address in Niue of the person in whose favour it is granted;
 - (b) Specify each and every area or piece of land in relation to which it is granted;
 - (c) Specify the term of the licence;
 - (d) Specify each and every species of minerals in respect of which the licence is granted;
 - (e) Set forth the consideration, whether the payment of a lump sum or otherwise, that the miner is to pay to the Crown for the grant of the licence;
 - (f) Contain such other conditions, not inconsistent with this Act, as are agreed upon between the miner concerned and Cabinet, being conditions to which the licence is to be subject; and
 - (g) Be dated with the date of issue.
- (2) Every licence shall be executed by the Premier in the presence of a witness who shall, on the licence, duly attest the signature of the Premier.
- (3) Every licence shall be signed by the miner concerned, or by the duly authorised agent of such miner, in the presence of a Cabinet Minister or of a Mining Inspector who shall, on the licence, duly attest the signature of the miner or agent.
- (4) There shall be payable to the Crown on the issue of a licence the sum of one hundred dollars.
- (5) Every such sum shall be paid by the person in whose favour the licence is granted.
- (6) On the payment of any such fee, a receipt for the same shall be endorsed upon each copy of the licence by the person duly authorised to receive the fee.

22 Validity of licence

No licence shall be valid or effectual for any purpose whatsoever until, in relation to it there has been compliance with this Act.

23 Licence deemed to have been confirmed

Every licence issued or granted under this Act affecting or relating to Niuean land, and every suspension, revocation or surrender of any such licence shall be deemed to have been duly confirmed by the Court under the Land Act 1969.

24 Registration of licence

(1) Every licence and every assignment, transmission, surrender or revocation of any licence shall, for the purpose of Part 1 of the Land Act 1969, be deemed to be an instrument within the meaning of section 2 of that Act and shall be subject to Part 1 of that Act.

(2) Nothing in section 7 of the Land Act 1969 shall apply to a licence or to the assignment, transmission, surrender or revocation of the licence.

25 Destruction of licence

(1) No person shall destroy or mutilate any licence or make any unauthorised entry upon any licence.

(2) Any person who knowingly and wilfully acts contrary to subsection (1) commits an offence and, on conviction, shall be liable to a fine not exceeding 1 penalty unit or, if the act was done with any fraudulent or other dishonest intent, to a fine not exceeding 2.5 penalty units or to imprisonment for a term not exceeding 6 months.

26 Licence to constitute contract

Every licence issued under this Act shall, subject to this Act, constitute a contract between the Crown and the miner.

27 Surrender, cancellation and suspension of licence

Cabinet may suspend, cancel or cause the surrender of a licence if it is in the national interest to do so.

PART 5
COMPENSATION

28 Compensation

Where land is acquired for the purposes of this Act, there shall be paid to the owner or occupier entitled to the land acquired compensation.

29 Claims for compensation against the Crown

Subject to this Act, every claim against the Crown for compensation in respect of any matter for which compensation is expressly provided for by this Act, whether for injurious affection of land, the value of improvements, or otherwise, shall be made in the Court.

30 Payment of compensation

All compensation payable by the Crown under this Act shall be paid from the Government Account out of money appropriated by the Assembly for that purpose.

31 Compensation not payable in respect of minerals

Compensation shall in no case be payable in respect of the value of any mineral on, in, under, or forming the surface of any land.

32 Compensation not payable unless expressly provided for

No person shall have any right or claim to compensation against the Crown in respect of any matter arising under this Act except where provision for compensation is expressly made by this Act.

33 Owner and occupier of land entitled to compensation

The owner or occupier of any land in respect of which a mining licence has been granted shall be entitled to compensation (according to their respective interests) for all loss and damage suffered or likely to be suffered by that owner or occupier as a result of the grant of the mining licence or the exercise of the rights conferred by that licence.

34 Amount of compensation

(1) The amount of compensation claimed under this Act against the holder of a mining licence or against any person exercising any of the rights conferred by this Act shall, in default of agreement, be determined by the Court.

(2) In fixing the amount of compensation to be paid to the owner or occupier of land in respect of damage to the land, the Court shall take into consideration the extent to which the whole of the land comprised in the holding of which the land damaged forms part will be detrimentally affected by reason of any reduction in the area usable for other than mining purposes.

PART 6

REGULATIONS

35 Regulations relating to mines

The Cabinet may make regulations for –

- (a) Regulating the working of mines and machinery and providing for the health and safety of persons working, and the safety of property used, in connection with mining operations;
- (b) Providing for the fencing off and filling up of shafts, pits, holes, and excavations;
- (c) Requiring owners of mines to provide such appliances, works, and structures, for safety purposes, as may be specified in the regulations, and requiring the owners to keep them in good repair and condition;
- (d) Regulating the use of cyanide and concentrating plants in or about mines;
- (e) Regulating the storage and use of explosives in or about mines;
- (f) Regulating the use of electricity, and the installation and use of electrical wiring and equipment, in or about mines;
- (g) Providing for the safety of persons employed in drives and excavations;
- (h) Providing for the examination and inspection of mines and machinery in or about mines;
- (i) Requiring the use by persons employed in or about mines of protective clothing, covering, or equipment of a prescribed kind to be used in such work as may be specified;
- (j) Requiring the provision of bathhouses, changehouses, toilets, and other sanitary appliances at mines, and regulating their construction, equipment, control and use;
- (k) Requiring the provision in or about mines of supplies of drinking water and facilities for the consumption of meals, and regulating the construction, equipment and control, and use of such facilities;
- (l) Providing for the supply and maintenance of fire extinguishing appliances, ambulance appliances, and other appliances for use in rescue work, and for the formation and training of rescue and first aid teams;

- (m) Requiring the installation of telephone communications between mines and the nearest places where medical assistance is obtainable;
- (n) Prescribing forms of returns, and the nature of any information and particulars, to be supplied in respect of mines under this Act;
- (o) Defining the duties of Mining Inspectors and conferring on those Inspectors all such powers as may be necessary for the efficient performance of their duties;
- (p) Requiring copies of regulations made under this section to be displayed at mines.

36 **General regulations**

- (1) Cabinet may make regulations for giving full or fuller effect to this Act.
- (2) Without restricting subsection (1), Cabinet may under this section, make regulations –
 - (a) Prescribing powers, functions, and duties of any officer or other person appointed under this Act or employed or acting in the administration of this Act;
 - (b) Prescribing forms to be used in conjunction with this Act;
 - (c) Prescribing the persons or class or classes of persons on whom copies of applications for mining licences are to be served;
 - (d) Prescribing the fees payable in respect of applications for mining licences and prospecting licences;
 - (e) Prescribing the rent payable in respect of mining operations;
 - (f) Prescribing the times at which rents shall be paid and the manner in which they are to be paid;
 - (g) Prescribing the manner in which money payable under this Act is to be collected, accounted for, and distributed;
 - (h) Providing for the compilation of mining statistics.

PART 7

MISCELLANEOUS PROVISIONS

37 **Levies may be imposed**

- (1) (a) The Niue Assembly may, by resolution published in the *Gazette*, impose on all or any minerals mined in, upon or under any land, a levy or levies on the value of the minerals.
- (b) The rate of any such levy shall not exceed 5 percent of the market value of the minerals of the mine at which the same were mined on the date of the mining.
- (2) Every such levy shall be paid, by the miner who mined the minerals, prior to the expiration of a period of 9 months from the date of mining of the minerals.
- (3) No minerals shall be exported from Niue, without the prior written consent of Cabinet, until the levy payable in respect thereof has been paid under subsections (1) and (2).
- (4) Any such consent may be given either unconditionally or subject to such conditions as Cabinet may impose.
- (5) Any person who exports, or attempts to export, from Niue any minerals contrary to subsection (3) commits an offence and, on conviction, shall be liable to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 6 months, or to both such a fine and such imprisonment, or, where the person is a body corporate, to a fine not exceeding 40 penalty units.

(6) Nothing contained earlier in this section shall apply to any minerals obtained by a prospector consequent upon any prospecting of land made, under this Act or regulations made under this Act, by the prospector.

38 Moneys payable to the Treasurer

(1) Subject to subsection (4), all moneys payable by any miner under this Act or any licence held by the miner shall constitute a debt due to the Crown, and shall be paid to the Treasurer by the miner, or by any person receiving the same under this Act from the miner or any agent of the miner.

(2) Should any such moneys not be duly and punctually paid, the same may be recovered, on behalf of the Crown, by proceedings commenced and prosecuted by the Treasurer or the Cabinet.

(3) All moneys received under subsection (1) by the Treasurer become part of the general revenue of Niue.

(4) Nothing contained in this section shall apply to any fine payable or paid by any person, as a penalty or punishment for any offence committed against this Act by the person.

39 Money paid for Niuean land

Money paid for Niuean land acquired under this Act shall be paid to the Registrar whereupon the Registrar shall dispose of the same to the owner or occupier entitled.

40 Disputes

(1) (a) Any dispute arising under this Act shall be referred to a single arbitrator chosen by the parties, or, if they are unable to agree, to an arbitrator chosen by the Chief Justice.

(b) Each party shall have power to appoint an assessor to sit with the arbitrator, but the arbitrator alone shall have the power to decide and the award shall be his alone.

(2) Every arbitration shall take place within Niue as a single arbitrator shall decide, and the procedure shall be governed by the Arbitration Act 1908.

41 Appeals

(1) Subject to subsection (5), any person claiming to be adversely affected by any ruling, decision, instruction or direction made, given or issued under this Act by Cabinet may appeal to the Court against the ruling, decision, instruction or direction.

(2) No such appeal shall be made after the expiration of a period of 42 clear days from and after the date of the making, giving or issuing of the ruling, decision, instruction or direction concerned.

(3) On the hearing of any such appeal the Court may –

(a) Dismiss the appeal;

(b) Allow the appeal;

(c) Allow the appeal in part and dismiss it in part;

(d) Modify the ruling, decision, instruction or direction, in such manner and to such extent as it considers just; or

(e) Grant such further or other relief to the appellant as, in the circumstances, it considers reasonable.

(4) –

(5) Nothing contained in this section shall empower any person to appeal against –

- (a) Any refusal by Cabinet to grant a mining licence;
- (b) Any refusal by Cabinet to consent to any assignment of a mining licence;
- (c) Any suspension by Cabinet of a mining licence.

42 Records to be kept

(1) Every miner shall keep in Niue complete, comprehensive, full, proper and accurate records and books of account relating to all mining carried on by the miner; and shall, on demand being made of the miner at any reasonable hour by Cabinet or the Chief Mining Inspector, produce the same to the person making the demand for inspection by that person; and that person shall be entitled, on behalf of the Crown, to make and retain copies of the whole or any parts of the records and books.

(2) Any miner who fails to comply with all or any of the provisions of subsection (1) commits an offence and, on conviction, shall be liable to a fine not exceeding 2 penalty units.

43 Disused mines

(1) Where any mine has, in the opinion of the Chief Mining Inspector, become disused, the Chief Mining Inspector may give to any person who is lawfully entitled to engage in mining at the mine such reasonable directions as the Chief Mining Inspector considers necessary in order to render the mine safe and harmless to any person, livestock or property.

(2) Any person to whom any directions are lawfully given under subsection (1), and who fails within a reasonable time after the giving of them, fully to comply with the same, commits an offence, and, on conviction, shall be liable to a fine not exceeding 1 penalty unit.

(3) Notwithstanding subsection (1), the Chief Mining Inspector may take such steps and measures to render any disused mine safe and harmless to any person, livestock or property.

(4) The reasonable costs of taking any such steps and measures shall constitute a debt due to the Crown by the person who would have been responsible for rendering the disused mine safe and harmless, if the person had been lawfully given directions in that behalf under subsection (1), and such costs may be recovered by action brought, on behalf of the Crown, by the Chief Mining Inspector or by the Treasurer.

44 Cabinet may delegate

Cabinet may, by notice in the *Gazette*, delegate to the Chief Mining Inspector all or any of Cabinet's functions, duties and powers under this Act and may in like manner revoke, vary or amend any such delegation.

45 Personal liability of officers

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

46 [Spent]

MINORS' CONTRACTS ACT 1969

1969/41 (NZ) – 1 January 1970

| | | | |
|---|---|-------|---|
| 1 | Short title | | <i>Miscellaneous Provisions</i> |
| 2 | Interpretation | 10 | Guarantees and indemnities |
| 3 | Act to bind the Crown | 11 | Contracts to marry |
| | <i>Contractual Capacity of Minors</i> | 12 | Settlement of claims by minors |
| 4 | Married minors | 13 | Variation of certain orders made under section 12 |
| 5 | Contracts of minors of or over the age of 18 years, certain contracts concerning life insurance, and contracts of service | 14 | Jurisdiction of Court |
| 6 | Contracts of minors below the age of 18 years | 15 | Act to be a code |
| 7 | Compensation or restitution | 16 | Trusts not affected |
| 8 | Applications under section 5 or section 6 | 17-19 | [Spent] |
| 9 | Minor may enter into contract with approval of the Court | | SCHEDULES |

To restate and reform the law relating to minors' contracts

- 1 Short title**
This is the Minors' Contracts Act 1969.
 - 2 Interpretation**
 - (1) In this Act –
“property” means land, money, goods, things in action, goodwill, and every valuable thing, whether real or personal, and whether situated in Niue or elsewhere; and includes obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property.
 - (2) In sections 5, 6, 9, 10 and 12, “minor” does not include a minor who is or has been married.
 - 3 Act to bind the Crown**
This Act shall bind the Crown.
- Contractual Capacity of Minors*
- 4 Married minors**
 - (1) Subject to section 16, a minor who is or has been married shall have the same contractual capacity as if he were of full age.

(2) Subject to section 16, any compromise or settlement of a claim agreed to, and any discharge or receipt given for any purpose, by any such minor shall have effect as if the minor were of full age.

5 Contracts of minors of or over the age of 18 years, certain contracts concerning life insurance, and contracts of service

- (1) Subject to this section, every contract which is –
- (a) Entered into by a minor who has attained the age of 18 years; or
 - (b) [Repealed by 2004/270]
 - (c) A contract of service entered into by a minor;
- shall have effect as if the minor were of full age.
- (2) If the Court is satisfied in respect of any contract to which subsection (1) applies that, at the time the contract was entered into –
- (a) The consideration for a minor's promise or act was so inadequate as to be unconscionable; or
 - (b) Any provision of any such contract imposing an obligation on any party thereto who was a minor was harsh or oppressive,
- it may, in the course of any proceedings or on application made for the purpose, cancel the contract, or decline to enforce the contract against the minor, or declare that the contract is unenforceable against the minor, whether in whole or in part, and in any case may make such order as to compensation or restitution of property under section 7 as it thinks just.
- (3) For the purposes of subsection (2), the Court may receive evidence of commercial practice in contracts of the same kind.
- (4) [Repealed by 2004/270]
- (5) Nothing in this section shall apply to –
- (a) Any contract approved under section 9, or
 - (b) The compromise or settlement of any claim for money or damages made by or on behalf of any minor (whether alone or in conjunction with any other person).

6 Contracts of minors below the age of 18 years

- (1) Subject to this section, every contract other than a contract to which section 5(1)(b) or (c) applies entered into by a minor who has not attained the age of 18 years shall be unenforceable against the minor but otherwise shall have effect as if the minor were of full age.
- (2) The Court may, in the course of any proceedings or on application made for the purpose, inquire into the fairness and reasonableness of any contract to which subsection (1) applies at the time the contract was entered into and –
- (a) If it finds that any such contract was fair and reasonable at that time it shall not be obliged to make any order but it may –
 - (i) enforce the contract against the minor;
 - (ii) declare that the contract is binding on the minor, whether in whole or in part;
 - (iii) Make such order entitling the other parties to the contract, on such conditions as the Court thinks just, to cancel the contract;
 - (iv) Make such order as to compensation or restitution of property under section 7 as it thinks just, and

- (b) If it finds that any such contract was not fair and reasonable at that time it shall not be obliged to make any order but it may –
 - (i) cancel the contract;
 - (ii) make such order entitling the minor, on such conditions as the Court thinks just, to cancel the contract;
 - (iii) make such order as to compensation or restitution of property under section 7 as it thinks just.
- (3) In exercising its discretion under subsection (2) the Court shall have regard to –
 - (a) The circumstances surrounding the making of the contract;
 - (b) The subject-matter and nature of the contract;
 - (c) In the case of a contract relating to property, the nature and the value of the property;
 - (d) The age and the means (if any) of the minor;
 - (e) All other relevant circumstances.
- (4) Nothing in this section shall apply to –
 - (a) Any contract approved by the Court under section 9; or
 - (b) The compromise or settlement of any claim for money or damages made by or on behalf of any minor (whether alone or in conjunction with any other person).
- (5) Nothing in this section shall limit or affect section 20 of the Trustee Act 1956.

7 Compensation or restitution

- (1) Where the Court exercises any of the powers conferred on it by section 5(2) or where it may exercise any of the powers conferred on it by section 6(2) (whether or not it exercises any of those powers), the Court may grant to –
 - (a) Any party to the contract; or
 - (b) A guarantor or indemnifier under a contract of guarantee or indemnity relating to a contract to which section 5(1) or section 6(1) applies; or
 - (c) Any person claiming through or under or on behalf of any such party, guarantor, or indemnifier,
 such relief by way of compensation or restitution of property as the Court thinks just.
- (2) The Court may by any order made under section (1) vest the whole or any part of any property that was the subject of, or the whole or any part of the consideration for, the contract in any party to the proceedings or may direct any such party to transfer or assign any such property to any other party to the proceedings.

8 Applications under section 5 or section 6

- (1) An application under section 5(2) or section 6(2) may be made by –
 - (a) Any person to whom the Court may grant relief under section 7; or
 - (b) Any other person where it is material for that person to know whether the Court will exercise the powers granted to it by the subsection.
- (2) Any order made under section 5(2) or section 6(2) or under section 7 or any provision of any such order, may be made upon and subject to such terms and conditions as the Court thinks fit.

9 Minor may enter into contract with approval of the Court

(1) Every contract entered into by a minor shall have effect as if the minor were of full age if, before the contract is entered into by the minor, it is approved under this section by the Court.

(2) An application to the Court under this section may be made –

(a) By the minor or any other person who will be a party to the proposed contract; or

(b) By a guardian of the minor.

(3) The Court may refer any such application to a guardian of the minor, or, where the Court deems it necessary for the purposes of the application, to a solicitor nominated by the Court, or to any other person, and may make such order for the payment of the reasonable costs and expenses of any person to whom the application is so referred.

(4) Any person to whom any such application is referred under subsection (3) may file a report in the Court setting out the results of his consideration and examination of the application and making in respect of it such recommendations as he thinks proper, and may appear and be heard at the hearing of the application; but no such person shall be under any obligation to consider or examine any such application until his reasonable costs and expenses have been paid or secured to his satisfaction.

(5) The Court shall not approve a contract under this section where the contract relates to property held on trust and the Court is of the opinion that it is a case in which it would be more appropriate for an application to be made under section 64 or section 64A of the Trustee Act 1956.

Miscellaneous Provisions

10 Guarantees and indemnities

Every contract of guarantee or indemnity where any person (other than a minor) undertakes to accept liability in the event of the failure of a minor to carry out his obligations under a contract shall be enforceable against that person (in this section referred to as “the surety”) to the extent that it would be if the minor had been at all material times a person of full age, and that liability shall not be affected by any other provision of this Act or by any order made under any other provision of this Act; but the liability of the minor to the surety and the surety’s right of subrogation against the minor may be affected by the other provisions of this Act or by any order made under section 5(2) or section 6(2) or section 7.

11 Contracts to marry

No contract to marry any person entered into by a minor (other than a minor who has been married) shall be binding on either party, and nothing in section 5 or section 6 shall apply to any such contract.

12 Settlement of claims by minors

(1) Where any money or damages are claimed by or on behalf of a minor (whether alone or in conjunction with any other person) then –

(a) If the claim is not the subject of proceedings before any Court in Niue, any agreement for the compromise or settlement of the claim entered into by the minor, or on his behalf by a person who in the opinion of a Court of competent jurisdiction is a fit and proper person to do so, shall be binding on the minor if it or a release of the claim is in writing and is approved by a Court of competent jurisdiction; and

(b) If the claim has not been compromised or settled in accordance with paragraph (a) and has become the subject of proceedings before any court in Niue, no settlement, compromise, or payment and no acceptance of money paid into Court, whenever entered into or made, shall so far as it relates to that minor's claim be valid without the approval of the Court.

(2) An application for the approval of the Court under subsection (1) may be made by or on behalf of the minor or any other party to the agreement or proceedings.

(3) The Court may refuse any application for its approval under subsection (1) or may grant its approval either unconditionally or upon or subject to such conditions and directions as it thinks fit, whether as to the terms of the agreement or of the compromise or settlement, or as to the amount, payment, securing, application, or protection of the money paid, or to be paid or otherwise.

(4) Without limiting subsection (3), where the Court directs that the whole or any part of any money or damages awarded to a minor in any cause or matter or of any money to which a minor is entitled under an agreement, compromise, or settlement approved under subsection (1) shall be held on trust for the minor under this subsection by a person then, except so far as the Court directs any immediate payment therefrom or otherwise orders, and subject to any directions or conditions given or imposed by the Court –

(a) The amount shall be invested and held by the trustee upon trust –

(i) to make such payment (if any) to the minor out of the income and capital of the amount as the Court may specify; and

(ii) to apply the income and capital of the amount or so much thereof as the trustee thinks fit for or towards the maintenance or education (including past maintenance or education) or the advancement or benefit of the minor;

(b) The minor shall have no power, either by himself or in conjunction with any other person or persons, to terminate the trusts upon which the amount is held or to modify or extinguish those trusts;

(c) The interest of the minor in the income and capital of the amount shall not, while it remains in the hands of the trustee, be alienated, or pass by bankruptcy, or be liable to be seized, sold, attached, or taken in execution by process of law.

(5) (a) Upon any minor attaining the age of 20 years or marrying under that age while any amount is held on trust for his benefit under subsection (4), the balance of that amount and of the income therefrom remaining in the hands of the trustee shall be paid to the minor except in so far as the Court may have ordered before the payment is made that the whole or any part of that amount shall continue to be held on trust under that subsection.

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

(6) [Repealed by 2004/270]

(7) For the purposes of this section "court of competent jurisdiction" means a court in which proceedings could be taken to enforce the claim or, in the case of a claim that could not be the subject of proceedings in Niue, a court in which proceedings could be taken to enforce a similar claim in Niue.

(8) Nothing in this section shall limit or affect the Deaths by Accidents Compensation Act 1952.

13 Variation of certain orders made under section 12

(1) The Court may vary any order made under section 12 insofar as the order relates to the payment, investment, or application of money held on trust or the income from such trust.

(2) Any order under this section may be made by the Court of its own motion or on an application made by –

- (a) The minor; or
- (b) The trustee; or
- (c) Any other person who adduces proof of circumstances which in the opinion of the Court make it proper that he should make the application.

14 Jurisdiction of Court

The Court may exercise any of the powers conferred by sections 5 to 7 where –

- (a) The occasion for the exercise of the power arises in civil proceedings (other than an application for the purposes of section 5(2) or section 6(2)) before the Court; or
- (b) The value of the consideration for the promise or act of any minor under the contract is no more than 2,000 dollars.

15 Act to be a code

(1) The provisions of this Act shall have effect in place of the rules of the common law and of equity relating to the contractual capacity of minors and to the effect, validity, avoidance, repudiation and ratification of contracts entered into by minors and to any contract of guarantee or indemnity in respect of any such contract.

(2) –

(3) Nothing in this Act shall limit or affect any provision of any other enactment whereby a contract is made binding on a minor and nothing in section 5 or section 6 shall apply to any such contract.

(4) Nothing in this Act shall limit or affect the rule of law whereby a minor is not liable in tort for procuring a contract by means of fraudulent representations as to his own age or any other matter, but the Court shall take any such representations into account in deciding whether to exercise any of its powers under section 5(2) or section 6(2) or section 7.

16 Trusts not affected

Nothing in this Act shall entitle –

- (a) A trustee to pay money or deliver property to a minor otherwise than under the terms of the trust;
- (b) A minor to enter into an agreement whereby a trust is extinguished or the terms of a trust are varied but nothing in this section shall prevent any contract approved under section 9 from having effect according to its tenor.

17-19 [Spent]

MISUSE OF DRUGS ACT 1975
and
MISUSE OF DRUGS ACT 1998

[EDITORIAL NOTE: These are not reproduced. The Misuse of Drugs law is the subject of a current reform Bill. The two current Acts are therefore not reproduced. They can be accessed in New Zealand Acts 1975/116 as extended to Niue by section 689A of the Niue Act 1966 and in *Niue Legislation Supplement 1997-1998* p87 respectively.]

MOSQUITO CONTROL ACT 1980

1980/63 – 10 November 1980

| | |
|--|---|
| 1 Short title | 7 Continuing non-compliance |
| 2 Interpretation | 8 Absent persons with mosquito control responsibilities |
| 3 Duty to keep land and premises clear of mosquitoes | 9 Offences |
| 4 Littering and dumping prohibited | 10 [Spent] |
| 5 Duties and powers of Health Inspectors | |
| 6 Non-compliance with a Mosquito Control Order | |

To provide for the enforcement of mosquito control measures for the protection of the public health from diseases transmitted by mosquitoes

- 1 Short title**
This is the Mosquito Control Act 1980.
- 2 Interpretation**
In this Act –
“building” means any construction whatsoever and includes any shop, school, hospital, hall, church, house, outside kitchen or out-house, but does not include a shed constructed in the bush for storage purposes;
“dwelling” means any building used for the purpose of human habitation;
“Health Inspector” means any Inspector of Health appointed under section 7 of the Public Health Act 1965;
“mosquito control order” means an order made by a Health Inspector under section 5.
- 3 Duty to keep land and premises clear of mosquitoes**
Every person who uses the land belonging to any dwelling or building or who is responsible for the care and management of such dwelling or building, is under a duty to ensure that –
- (a) All land around any building or dwelling shall be kept clear of mosquito breeding and nesting places as hereinafter provided;
 - (b) No water shall be stored (except in appropriate quantities for domestic use) in any receptacle capable of holding water, unless adequately protected against mosquitoes;
 - (c) Any such land shall be kept clear of bush, scrub and any mass of rotting vegetation likely to harbour mosquitoes within a radius of 60 metres from any dwelling or building;
 - (d) Any such land shall be kept clear of any bottle (whole or broken), tin, coconut shell, or any other article whatsoever likely to retain water and so become a breeding place for mosquitoes.

4 Littering and dumping prohibited

Every person who litters or dumps on any land whatsoever (not being land designated for that purpose by Cabinet), any bottle (whole or broken), tin, coconut shell, shell or any other article whatsoever likely to retain water commits an offence.

5 Duties and powers of Health Inspectors

(1) Any duly appointed Health Inspector may enter on and inspect any land or premises at any reasonable time for the purpose of ensuring compliance with section 3.

(2) Whenever a Health Inspector ascertains –

(a) The presence of mosquitoes or mosquito larvae;

(b) The location of breeding or resting places of mosquitoes;

he shall make an order prescribing necessary and practical measures for the eradication of those mosquitoes and mosquito larvae.

(3) Whenever a Health Inspector makes an order under subsection (2) and that order is not complied with within 7 days he shall begin prosecution under this Act.

6 Non-compliance with a Mosquito Control Order

Every person who fails to perform his or her mosquito control duty as defined under section 3 and who fails to abide by an order of a Health Inspector within 7 days of such order commits an offence.

7 Continuing non-compliance

Every person who has been convicted of an offence against section 6 and who fails to comply with the Health Inspector's order within 7 days after such conviction commits a further offence.

8 Absent persons with mosquito control responsibilities

In any case where –

(a) Any person having responsibilities under section 3 has departed from Niue without appointing an agent to act in his stead in performing those responsibilities; and

(b) A Health Inspector has made an order in respect of land for which that person is responsible;

the court, on application by the Director of Health may make an order for the Director of Works to enter on the land and at the expense of the responsible person carry out the work as specified in the Court order, and all such expenses shall be recoverable from that person as a debt to the Crown.

9 Offences

Every person who commits an offence against this Act shall on conviction be liable to a fine not exceeding 2 penalty units and save in exceptional circumstances not less than 0.5 penalty units.

10 [Spent]

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 1998

1998/244 – 16 December 1998

| | | | |
|----|--|-----|--|
| | PART 1 | | |
| | PRELIMINARY | | |
| 1 | Short title | 20 | Conditions of imprisonment |
| 2 | [Spent] | 21 | Release of certain persons upon request by foreign country |
| 3 | Interpretation | 22 | Arrest of person who has escaped from custody |
| 4 | Object of Act | 23 | Aiding person to escape |
| 5 | Act not to limit other provision of assistance | | <i>Requests by Foreign Countries</i> |
| 6 | Application | 24 | Requests for giving evidence at hearings in foreign countries |
| 7 | Refusal of assistance | 25 | Requests for assistance in relation to investigations in foreign countries |
| 8 | Assistance may be provided subject to conditions | 26 | Effect of removal to foreign country on prisoner's terms of imprisonment |
| 9 | Requests by Niue | | |
| 10 | Request by foreign country | | |
| | PART 1A | | |
| | ASSISTANCE IN IDENTIFYING AND LOCATING PERSONS | | |
| | 10A Requests by Niue | | PART 5 |
| | 10B Requests by foreign countries | | CUSTODY OF PERSONS IN TRANSIT |
| | | 27 | Transit |
| | PART 2 | 28 | Arrest of person in transit |
| | ASSISTANCE IN RELATION TO TAKING OF EVIDENCE AND PRODUCTION OF DOCUMENTS OR OTHER ARTICLES | 29 | Aiding person to escape |
| 11 | Requests by Niue | | |
| 12 | Requests by foreign countries | | PART 6 |
| | | | PROCEEDS OF CRIME |
| | PART 3 | | <i>Requests by Niue</i> |
| | ASSISTANCE IN RELATION TO SEARCH AND SEIZURE | 30 | Requests for enforcement of orders |
| 13 | Requests by Niue for search and seizure | 31 | Requests for issue of orders in foreign countries |
| 14 | Requests by foreign countries for search and seizure | | <i>Requests by Foreign Countries</i> |
| | | 32 | Requests for enforcement of orders |
| | PART 4 | 33 | Requests for search and seizure warrants in respect of tainted property |
| | ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS | 34 | Requests for restraining orders |
| | <i>Requests by Niue</i> | 35 | Requests for information gathering orders |
| 15 | Requests for removal of certain persons to Niue | 35A | Cabinet may approve proposals for sharing certain property |
| 16 | Custody of certain persons | | |
| 17 | Immunities | | PART 7 |
| 18 | Status of person prosecuted for offence committed after departure from foreign country | | REQUESTS BY OR ON BEHALF OF A DEFENDANT |
| 19 | Limitation on use of evidence given by certain persons | 36 | Requests by Attorney-General on behalf of a defendant |
| | | 37 | Certificate by Attorney-General if foreign country refuses request made under section 36 |

| | | | |
|-----------------------------------|---|----------------------|---|
| PART 8 | | <i>Miscellaneous</i> | |
| ADMISSIBILITY OF FOREIGN EVIDENCE | | 45 | Certificates relating to foreign material |
| <i>Preliminary</i> | | 46 | Effect of part on right to examine witnesses |
| 38 | Interpretation | 47 | Operation of other laws |
| 39 | Proceedings to which this Part applies | PART 9 | |
| <i>Obtaining Foreign Material</i> | | MISCELLANEOUS | |
| 40 | Requests for foreign material | 48 | Delegation |
| 41 | Requirements for testimony | 49 | Authentication of documents |
| 42 | Form of testimony | 50 | Restriction on use of information |
| <i>Using Foreign Material</i> | | 51 | Requests for international assistance not to be disclosed |
| 43 | Foreign material may be adduced as evidence | 52 | Regulations |
| 44 | Direction to prevent foreign material being adduced | | |

For the provision and obtaining of international assistance in criminal matters

PART 1
PRELIMINARY

- 1 Short title**
This is the Mutual Assistance in Criminal Matters Act 1998.
- 2 [Spent]**
- 3 Interpretation**
In this Act –
 “Attorney-General” has the same meaning as in the Proceeds of Crime Act 1998;
 “Commissioner” means a Commissioner of the Court;
 “confiscation order” means a confiscation order within the meaning of the Proceeds of Crime Act 1998;
 “criminal matter” means an offence against a provision of –
 (a) Any law of Niue that is a serious offence; or
 (b) A law of a foreign country, in relation to acts or omissions, which had they occurred in Niue, would have constituted a serious offence;
 “criminal proceeding”, in relation to an offence, means a trial of a person for the offence or a proceeding in respect of the offence to determine whether a person should be tried for the offence (whether or not a particular person is specified at the commencement of that proceeding as the person in relation to whom the determination is to be made);
 “facsimile copy” means a copy obtained or sent by facsimile transmission;
 “foreign confiscation order” means an order made under the law of a foreign country for a person to pay to the foreign country an amount representing the value (or part thereof) of the person’s benefits from an offence against the law of that country;
 “foreign forfeiture order” means an order, made under the law of a foreign country, for the forfeiture of property in respect of an offence against the law of that country;

- “foreign law immunity certificate” means a certificate given, or a declaration made, by a foreign country or under a law of a foreign country, certifying or declaring that, under the law of the foreign country, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required –
- (a) To answer a specified question; or
 - (b) To produce a specified document;
- “foreign prisoner” means a person who is being held in custody pending trial for, or sentence for, or is under a sentence of imprisonment for an offence against a law of a foreign country, but does not include a person who is at large after having escaped from lawful custody;
- “foreign restraining order” means an order, made under the law of a foreign country, restraining a particular person, or all persons, from dealing with property, being an order made in respect of an offence against the law of that country;
- “forfeiture order” means a forfeiture order within the meaning of the Proceeds of Crime Act 1998;
- “money laundering offence” means an offence within the terms of sections 64 and 65 of the Proceeds of Crime Act 1998;
- “offence” includes an offence against a law relating to taxation, customs duties or other revenue matters or relating to foreign exchange control;
- “prisoner” means a person who is being held in custody pending trial for, or sentence for, or is under a sentence of imprisonment for, an offence against a law of Niue, but does not include a person who is at large after having escaped from lawful custody;
- “prison” includes a jail, lock-up or other place of detention;
- “proceeds” has the same meaning as in the Proceeds of Crime Act 1998;
- “proceeding” in relation to a criminal matter, includes a proceeding before a judicial officer or a jury of the purpose of –
- (a) Gathering evidential material that may lead to the laying of a criminal charge; or
 - (b) Assessing evidential material in support of the laying of a criminal charge;
- “property” has the same meaning as in the Proceeds of Crime Act 1998;
- “property-tracking document” has the same meaning as in the Proceeds of Crime Act 1998;
- “restraining order” means a restraining order within the meaning of the Proceeds of Crime Act 1998;
- “serious offence” means an offence the maximum penalty for which is death, or imprisonment for not less than 12 months;
- “tainted property” has the same meaning as in the Proceeds of Crime Act 1998;
- “trial”, in relation to an offence in a foreign country, includes any proceeding to determine whether a person should be convicted of the offence;
- “video link” means a video and sound system that enables persons assembled in a place in a country to see, hear and talk to persons assembled in a place in another country.

4 Object of Act

The objects of this Act are –

- (a) To regulate the provision by Niue of international assistance in criminal matters when a request is made by a foreign country for any of the following –
 - (i) the taking of the evidence, or the production of any document or other article, for the purposes of a proceeding in the foreign country;
 - (ii) the issue of a search warrant and the seizure of any thing relevant to a proceeding or investigation in the foreign country;
 - (iii) the forfeiture and confiscation of property in respect of a serious offence against the law of the foreign country;
 - (iv) the restraining of dealings in property that may be forfeited or confiscated because of the commission of a serious offence against the law of the foreign country;
 - (v) the giving of assistance in locating, or in identifying and locating, a person believed to be in Niue and believed to be a person who is or might be concerned in, or who could give or provide evidence or assistance relevant to, a criminal matter in the foreign country; and
- (b) To facilitate the provision and obtaining by Niue of international assistance in criminal matters when a request is made by a foreign country for the making of arrangements for a person who is in Niue to travel to the foreign country to give evidence in a proceeding or to give assistance in relation to an investigation; and
- (c) To facilitate the obtaining by Niue of international assistance in criminal matters.

5 Act not to limit other provision of assistance

This Act does not prevent the provision or obtaining of international assistance in criminal matters other than assistance of a kind that may be provided or obtained under this Act.

6 Application

This Act applies to all foreign countries.

7 Refusal of assistance

A request by a foreign country for assistance under this Act may be refused if, in the opinion of the Attorney-General, the provision of the assistance would –

- (a) Prejudice the national, essential or public interests of Niue; or
- (b) Result in manifest unfairness or a denial of human rights; or
- (c) It is otherwise appropriate, in all the circumstances of the case, that the assistance requested should not be granted.

8 Assistance may be provided subject to conditions

Assistance under this Act may be provided to a foreign country subject to such conditions as the Attorney-General determines.

9 Requests by Niue

(1) A request for international assistance in a criminal matter that Niue is authorised to make under this Act may be made only by the Attorney-General.

(2) Subsection (1) does not prevent the Attorney-General on behalf of Niue from requesting international assistance in a criminal matter of a kind that may not be requested under this Act.

10 Request by foreign country

(1) A request by a foreign country for international assistance in a criminal matter may be made to the Attorney-General or a person authorised by the Attorney-General to receive requests by foreign countries under this Act.

(2) A request must be in writing and must include or be accompanied by the following information –

(a) The name of the authority concerned with the criminal matter to which the request relates;

(b) A description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;

(c) A description of the purpose of the request and of the nature of the assistance being sought;

(d) Any information that may assist in giving effect to the request, but failure to comply with this subsection is not a ground for refusing the request.

(3) Where a request by a foreign country is made to a person authorised under subsection (1), the request shall be taken, for the purposes of this Act, to have been made to the Attorney-General.

(4) If a foreign country makes a request to a court in Niue for international assistance in a criminal matter –

(a) The court must refer the request to the Attorney-General; and

(b) The request is then to be taken, for the purposes of the Act, to have been made to the Attorney-General.

PART 1A**ASSISTANCE IN IDENTIFYING AND LOCATING PERSONS****10A Requests by Niue**

(1) This subsection applies if the Attorney-General is satisfied that there are reasonable grounds for believing that there is, in a foreign country, a person who –

(a) Is or might be concerned in, or affected by, any criminal matter in Niue; or

(b) Could give or provide evidence or assistance relevant to any criminal matter in Niue.

(2) If subsection (1) applies, the Attorney-General may request the foreign country –

(a) To assist in locating the person; or

(b) If the person's identity is unknown, to assist in identifying and locating the person.

10B Requests by foreign countries

(1) A foreign country may request the Attorney-General to assist in locating, or identifying and locating, a person who is believed to be in Niue.

(2) The Attorney-General may authorise assistance in accordance with this section if satisfied that –

(a) The request relates to a criminal matter in the foreign country; and

(b) There are reasonable grounds for believing that the person to whom the request relates is in Niue and –

(i) is or might be concerned in the criminal matter; or

(ii) could give or provide evidence or assistance relevant to the criminal matter.

(3) If the Attorney-General authorises assistance in accordance with this section, the Attorney-General must forward the request to the appropriate authority in Niue, and that authority must –

- (a) Use its best endeavours to locate or, as the case may be, identify and locate the person to whom the request relates; and
- (b) Advise the Attorney-General of the outcome of those endeavours.

(4) On receiving advice from the appropriate authority under subsection (3)(b), the Attorney-General must inform the requesting country of the result of the inquiries made pursuant to the request concerned.

PART 2

ASSISTANCE IN RELATION TO TAKING OF EVIDENCE AND PRODUCTION OF DOCUMENTS OR OTHER ARTICLES

11 Requests by Niue

(1) The Attorney-General may request the appropriate authority of a foreign country to arrange for –

- (a) Evidence to be taken in the foreign country under the law of that country; or
- (b) A document or other article in the foreign country to be produced in accordance with the law of that country;

for the purposes of a proceeding or investigation in relation to a criminal matter in Niue.

(2) When making a request under subsection (1) the Attorney-General may also request that an opportunity be given for the person giving the evidence, or producing the document or other article, to be examined or cross-examined, through a video link, from Niue by –

- (a) Any party to the proceeding or that person's legal representative; or
- (b) Any person being investigated or that person's legal representative.

12 Requests by foreign countries

- (1) Where a request is made by a foreign country (requesting country) that –
 - (a) Evidence be taken in Niue ; or
 - (b) Documents or other articles in Niue be produced;

for the purposes of a proceeding or investigation in the requesting country or another foreign country, the Attorney-General may authorise the taking of the evidence or the production of the documents or other articles, and the transmission of the evidence, documents or other articles to the requesting country.

(2) Where the Attorney-General authorises the taking of evidence or the production of documents or other articles under subsection (1) –

- (a) In the case of the taking of evidence, a Commissioner may take the evidence on oath of each witness appearing before the Commissioner to give evidence in relation to the matter, and a Commissioner who takes any such evidence shall –
 - (i) cause the evidence to be put in writing and certify that the evidence was taken by the Commissioner; and
 - (ii) cause the writing so certified to be sent to the Attorney-General;

- (b) In the case of the production of documents or other articles, a Commissioner may, subject to subsection (6), require the production of the documents or other articles and, where the documents or other articles are produced, the Commissioner shall send the

documents, or copies of the documents certified by the Commissioner to be true copies, or the other articles, to the Attorney-General.

(3) The evidence of such a witness may be taken in the presence or absence of the person to whom the proceeding in the requesting country relates or of his or her legal representative (if any).

(4) The Commissioner conducting a proceeding under subsection (2) may permit –

(a) The person to whom the proceeding in the requesting country relates;

(b) Any other person giving evidence or producing documents or other articles at the proceeding before the Commissioner; and

(c) The relevant authority of the requesting country;

to have legal representation at the proceeding before the Commissioner.

(5) If the requesting country has so requested, the Commissioner conducting a proceeding under subsection (2) may permit –

(a) Any person to whom the proceeding in the requesting country relates or that person's legal representative; or

(b) The legal representative of the relevant authority of the requesting country;

to examine or cross-examine, through a video link, from the requesting country any person giving evidence or producing a document or other article, at the proceeding.

(6) The certificate by the Commissioner under subsection (2) shall state whether, when the evidence was taken or the documents or other articles were produced, any of the following persons were present –

(a) The person to whom the proceeding in the requesting country relates or his or her legal representative (if any);

(b) Any other person giving evidence or producing documents or other articles or his or her legal representative (if any).

(7) Subject to subsections (8) and (9), laws with respect to the compelling of persons to attend before a Commissioner, and to give evidence, answer questions and produce documents or other articles, upon the hearing of a charge against a person for an offence against the law of Niue apply, so far as they are capable of application, with respect to the compelling of persons to attend before a Commissioner, and to give evidence, answer questions and produce documents or other articles, for the purposes of this section.

(8) For the purposes of this section, the person to whom the proceeding in the requesting country relates is competent but not compellable to give evidence.

(9) For the purposes of this section, a person who is required to give evidence, or produce documents or other articles, for the purposes of a proceeding in relation to a criminal matter in the requesting or another foreign country, is not compellable to answer a question, or produce a document or article, that the person is not compellable to answer or produce, as the case may be, in the proceeding in that country.

(10) A duly authenticated foreign law immunity certificate is admissible in proceedings under this section as prima facie evidence of the matters stated in the certificate.

PART 3

ASSISTANCE IN RELATION TO SEARCH AND SEIZURE

13 Requests by Niue for search and seizure

(1) This section applies to a proceeding or investigation relating to a criminal matter involving a serious offence against the law of Niue if there are reasonable grounds to believe that a thing relevant to the proceeding or investigation may be located in a foreign country.

(2) If this section applies to a proceeding or investigation, the Attorney-General may request the appropriate authority of the foreign country to obtain a warrant or other instrument that, in accordance with the law of the foreign country, authorises –

- (a) A search for a thing relevant to the proceeding or investigation; and,
- (b) If such a thing, or any other thing that is or may be relevant to the proceeding or investigation is found as a result of the search, the seizure of that thing.

(3) If the appropriate authority of the foreign country has obtained any thing relevant to the proceeding or investigation by means of a process authorised by the law of that country other than the issue (as requested by Niue) of a warrant or other instrument authorising the seizure of the thing, the thing –

- (a) Is not inadmissible in evidence in the proceeding; or
- (b) Is not precluded from being used for the purposes of the investigation;

on the ground alone that it was obtained otherwise than under the request.

14 Requests by foreign countries for search and seizure

(1) Where –

- (a) A proceeding or investigation relating to a criminal matter involving a serious offence has commenced in a foreign country;
- (b) There are reasonable grounds to believe that a thing relevant to the investigation or proceeding is located in Niue; and
- (c) The foreign country requests the Attorney-General to arrange for the issue of a search warrant under this section in relation to that thing;

the Attorney-General may authorise a constable to apply to a Commissioner for the search warrant requested by the foreign country.

(2) A constable authorised under subsection (1) may apply to a Commissioner for the issue of a warrant to search land or premises for the thing to which the request relates.

(3) Where an application is made under subsection (2) for a warrant to search land or premises in Niue for a thing relevant to an investigation or proceeding in a foreign country the Commissioner may issue a warrant of that kind.

(4) If, in the course of searching, under a warrant issued under this section, for a thing of a kind specified in the warrant, the constable finds another thing that the constable believes on reasonable grounds-

- (a) To be relevant to the proceeding or investigation in the foreign country or to afford evidence as to the commission of a Niue criminal offence; and
- (b) Is likely to be concealed, lost or destroyed if it is not seized;

the warrant shall be deemed to authorise the constable to seize the other thing.

(5) Where a constable finds, as a result of a search under a warrant issued under this section, a thing which the constable seizes wholly or partly because he or she believes the thing on reasonable grounds to be relevant to the proceeding or investigation in the foreign country, the constable shall deliver the thing into the custody and control of the Chief of Police.

(6) Where a thing is delivered into the custody and control of the Chief of Police under subsection (5), the Chief of Police shall inform the Attorney-General that the thing has been so delivered and arrange for the thing to be kept pending a direction in writing from the Attorney-General as to the manner in which the thing is to be dealt with (which may include a direction that the thing be sent to an authority of a foreign country).

PART 4

ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

Requests by Niue

15 Requests for removal of certain persons to Niue

(1) Where –

- (a) A proceeding relating to a criminal matter has commenced in Niue; and
- (b) The Attorney-General is of the opinion that a person who is in a foreign country –
 - (i) is a foreign prisoner;
 - (ii) is capable of giving evidence relevant to the proceeding; and
 - (iii) has given his or her consent to being removed to Niue for the purpose of giving evidence in the proceeding;

the Attorney-General may request the foreign country to authorise the attendance of the person at a hearing in connection with the proceeding.

(2) Where –

- (a) An investigation relating to a criminal matter has commenced in Niue; and
- (b) The Attorney-General is of the opinion that a person who is in a foreign country –
 - (i) is a foreign prisoner;
 - (ii) is capable of giving assistance in relation to the investigation; and
 - (iii) has given his or her consent to being removed to Niue for the purposes of giving assistance in relation to the investigation,

the Attorney-General may request the foreign country to authorise the removal of the person to Niue for the purpose of giving assistance in relation to the investigation.

(3) Where the Attorney-General makes a request under subsection (1) or (2), the Attorney-General may make arrangements with an appropriate authority of the foreign country for the purposes of –

- (a) The removal of the person to Niue;
- (b) The custody of the person while in Niue;
- (c) The return of the person to the foreign country; and
- (d) Other relevant matters.

16 Custody of certain persons

Where –

- (a) A person is to be brought to Niue from a foreign country pursuant to a request under section 15; and
- (b) The foreign country requests that the person be kept in custody while he or she is in Niue,

the person shall, while the person is in Niue or travelling to or from Niue pursuant to the request, be kept in such custody as the Attorney-General directs in writing.

17 Immunities

(1) Where a person is in Niue –

- (a) Pursuant to a request under section 15; or
- (b) To give evidence in a proceeding, or to give assistance in relation to an investigation, pursuant to a request made by or on behalf of the Attorney-General (not being a request under section 15) for international assistance in a criminal matter;

the person, subject to subsection (2), shall not –

- (c) Be detained, prosecuted or punished in Niue for any offence that is alleged to have been committed, or that was committed, before the person's departure from the foreign country pursuant to the request;
- (d) Be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred or that occurred, before the person's departure from the foreign country under the request, being a civil suit to which the person could not be subjected if the person were not in Niue;
- (e) Be required to give evidence in any proceeding in Niue other than the proceeding to which the request relates (if any);
- (f) Be required, in the proceeding to which the request relates (if any), to answer any question that the person would not be required to answer in a proceeding in the foreign country relating to a criminal matter; or
- (g) Be required, in the proceeding to which the request relates (if any), to produce any document or article that the person would not be required to produce in a proceeding in the foreign country relating to a criminal matter.

(2) A duly authorised foreign law immunity certificate is admissible in proceedings as prima facie evidence of the matters stated in the certificate.

(3) Subsection (1) ceases to apply to a person if –

- (a) The person has left Niue; or
- (b) The person has had the opportunity of leaving Niue and has remained in Niue otherwise than for –
 - (i) the purpose to which the request relates;
 - (ii) the purpose of giving evidence in a proceeding in Niue certified by the Attorney-General, in writing, to be a proceeding in which it is desirable that the person give evidence; or
 - (iii) the purpose of giving assistance in relation to an investigation in Niue certified by the Attorney-General, in writing, to be an investigation in relation to which it is desirable that the person give assistance.

(4) A certificate given by the Attorney-General for the purposes of subsection (2)(b)(ii) or (iii) has effect from the day specified in the certificate (which may be a day before the day on which the certificate is given).

18 Status of person prosecuted for offence committed after departure from foreign country

(1) Where a person has come to Niue pursuant to a request under section 15, the person shall be taken, for the purposes of this Act, to be in Niue pursuant to the request during any period during which the person remains in Niue for the purpose of being tried for a criminal offence against the law of Niue that the person is alleged to have committed after the person's departure from the foreign country.

(2) Without limiting the generality of subsection (1), the person shall be kept in such custody as the Attorney-General directs under section 16.

19 Limitation on use of evidence given by certain persons

(1) Where –

- (a) A person is in Niue to give evidence in a proceeding –
 - (i) because of a request under section 15(1); or
 - (ii) because of a request (other than a request under section 15(1)) made by the Attorney-General for international assistance in a criminal matter; and
- (b) The person has given evidence in the proceeding to which the request related or in a proceeding certified by the Attorney-General under section 17(3)(b)(ii) in relation to the person;

that evidence shall not be admitted or otherwise used in any prosecution of the person for an offence against Niue law, other than the offence of perjury in relation to the giving of that evidence.

(2) If –

- (a) A person is in Niue to give assistance in relation to an investigation –
 - (i) because of a request under section 15(2); or
 - (ii) because of a request (other than a request under section 15(2)) made by the Attorney-General for international assistance in a criminal matter; and
- (b) The person has given assistance in relation to the investigation to which the request related or in relation to an investigation certified by the Attorney-General under section 17(3)(b)(ii) in relation to the person;

anything said or done by the person when giving the assistance is not to be admitted or otherwise used in any prosecution of the person for an offence against Niue law.

20 Conditions of imprisonment

The laws of Niue with respect to –

- (a) The conditions of imprisonment of persons imprisoned for offences against the law of Niue; and
- (b) The treatment of any such persons during imprisonment; and
- (c) The transfer of any such persons from prison to prison;

apply, so far as they are capable of application, in relation to a person who is in Niue in pursuance of a request under section 15 and who has been committed to prison in Niue under a direction of the Attorney-General under this Act.

21 Release of certain persons upon request by foreign country

Where –

- (a) A person is being held in custody under a direction of the Attorney-General under section 16; and
- (b) The foreign country from which the person has been brought requests the release of the person from custody;

the Attorney-General shall direct that the person be released from custody.

22 Arrest of person who has escaped from custody

(1) Any constable, without warrant, may arrest a person, if the constable has reasonable grounds to believe that the person –

- (a) Has been brought to Niue pursuant to a request under section 15; and
- (b) Has escaped from lawful custody while in Niue pursuant to the request.

(2) The constable must, as soon as practicable, take the person before a Commissioner.

(3) If the Commissioner is satisfied that the person has escaped from lawful custody, the Commissioner may issue a warrant authorising any constable to return the person to lawful custody.

23 Aiding person to escape

The laws of Niue in relation to –

- (a) Aiding a prisoner to escape from custody;
- (b) Rescuing a prisoner from custody;
- (c) Permitting escape; and
- (d) Harboursing an escapee,

apply in respect of a person who is in custody in Niue under a request to a foreign country by Niue under this Act.

*Requests by Foreign Countries***24 Requests for giving of evidence at hearings in foreign countries**

(1) Where –

- (a) A proceeding relating to a criminal matter has commenced in a foreign country;
- (b) The foreign country requests the attendance at a hearing in connection with the proceeding of a prisoner who is in Niue (whether or not in custody);
- (c) There are reasonable grounds to believe that the prisoner is capable of giving evidence relevant to the proceeding; and
- (d) The Attorney-General is satisfied that –
 - (i) the prisoner has consented to giving evidence in the foreign country; and
 - (ii) the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may –

- (e) In a case where the prisoner is being held in custody, direct that the prisoner be released from prison for the purpose of travelling to the foreign country to give evidence at the proceeding and, subject to the making or giving of any necessary directions or approvals in relation to the release of the prisoner, make arrangements for the

travel of the prisoner to the foreign country in the custody of a constable or prison officer appointed by the Attorney-General for the purpose; or

- (f) In a case where the prisoner, having been released from custody on a parole or other order or licence to be at large, is not being held in custody, approve the travel of the prisoner to the foreign country to give evidence at the proceeding and obtain such approvals, authorities, permissions or variations to the parole or other order or licence to be at large as may be required and, subject to the obtaining of any necessary approvals, authorities, permissions or variations of the parole or other order or licence to be at large, make arrangements for the travel of the prisoner to the foreign country.

(2) Where –

- (a) A proceeding relating to a criminal matter has commenced in a foreign country;
- (b) The foreign country requests the attendance at a hearing in connection with the proceeding of a person (not being a prisoner) who is in Niue;
- (c) There are reasonable grounds to believe that the person is capable of giving evidence relevant to the proceeding; and
- (d) The Attorney-General is satisfied that the person has consented to giving evidence in the foreign country, and the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may make arrangements for the travel of the person to the foreign country.

(3) The matters in relation to which undertakings are to be given by a foreign country for the purpose of a request that a person give evidence in the foreign country are –

- (a) That the person shall not –
 - (i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from Niue;
 - (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from Niue, being a civil suit to which the person could not be subjected if the person were not in the foreign country; or
 - (iii) be required to give evidence in any proceeding in the foreign country other than the proceeding to which the request relates; unless the person has left the foreign country or the person has had the opportunity of leaving the foreign country and has remained in that country otherwise than for the purpose of giving evidence in the proceeding to which the request relates;
- (b) That any evidence given by the person in the proceeding to which the request relates will be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign country other than the offence of perjury in relation to the giving of that evidence;
- (c) That the person will be returned to Niue under arrangements agreed by the Attorney-General;

- (d) In a case where the person is being held in custody in Niue and the Attorney-General requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country –
 - (i) the making of appropriate arrangements for that purpose;
 - (ii) that the person will not be released from custody in the foreign country unless the Attorney General notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under Niue law; and
 - (iii) if the person is released in the foreign country as mentioned in subparagraph (ii), that the person's accommodation and expenses pending the completion of the proceeding to which the request relates will be paid for by the foreign country; and
 - (iv) such other matters (if any) as the Attorney-General thinks appropriate.

25 Requests for assistance in relation to investigations in foreign countries

(1) Where –

- (a) An investigation relating to a criminal matter has commenced in a foreign country;
- (b) The foreign country requests the removal of a prisoner who is in Niue (whether or not in custody) to the foreign country for the purpose of giving assistance in relation to the investigation;
- (c) There are reasonable grounds to believe that the prisoner is capable of giving assistance in relation to the investigation; and
- (d) The Attorney-General is satisfied that –
 - (i) the prisoner has consented to being removed to the foreign country for the purpose of giving assistance in relation to the investigation; and
 - (ii) the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may,

- (e) In a case where the prisoner is being held in custody, direct that the prisoner be released from prison for the purpose of traveling to the foreign country to give assistance in relation to the investigation and, subject to the making or giving of any necessary directions or approvals in relation to the release of the prisoner, make arrangements for the travel of the prisoner to the foreign country in the custody of a constable or prison officer appointed by the Attorney-General for the purpose; or
- (f) In a case where the prisoner, having been released from custody on a parole or other order or licence to be at large, is not being held in custody, approve the travel of the prisoner to the foreign country for the purpose of giving assistance in relation to the investigation and obtain such approvals, authorities, permissions or variations to the parole or other order or licence to be at large as may be required and, make arrangements for the travel of the prisoner to the foreign country.

- (2) Where –
- (a) An investigation relating to a criminal matter has commenced in a foreign country;
 - (b) The foreign country requests that a person (not being a prisoner) who is in Niue travel to the foreign country to give assistance in relation to the investigation;
 - (c) There are reasonable grounds to believe that the person is capable of giving assistance in relation to the investigation; and
 - (d) the Attorney-General is satisfied that –
 - (i) the person has consented to travel to the foreign country for the purpose of giving assistance in relation to the investigation; and
 - (ii) the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may make arrangements for the travel of the person to the foreign country.

(3) The matters in relation to which undertakings are to be given by a foreign country for the purpose of a request that a person be removed to, or travel to, the foreign country for the purpose of giving assistance in relation to an investigation are –

- (a) That the person shall not –
 - (i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from Niue;
 - (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from Niue, being a civil suit to which the person could not be subjected if the person were not in the foreign country; or
 - (iii) be required to give evidence in any proceeding in the foreign country;

unless –

- (iv) the person has left the foreign country; or
- (v) the person has had the opportunity of leaving the foreign country and has remained in that country otherwise than for the purpose of giving assistance in relation to the investigation to which the request relates;
- (b) That the person will be returned to Niue under arrangements agreed by the Attorney-General;
- (c) In a case where the person is being held in custody in Niue and the Attorney-General requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country –
 - (i) the making of appropriate arrangements for that purpose;
 - (ii) that the person will not be released from custody in the foreign country unless the Attorney-General notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under Niue law; and

- (iii) if the person is released in the foreign country as mentioned in subparagraph (ii) that the person's accommodation and expenses pending the completion of the investigation to which the request relates will be paid for by the foreign country; and
- (d) Such other matters (if any) as the Attorney-General thinks appropriate.

26 Effect of removal to foreign country on prisoner's term of imprisonment

Where a prisoner who is serving a term of imprisonment for an offence against a law of Niue is released from a prison pursuant to a request by a foreign country under section 24 or 25, the prisoner shall, while in custody in connection with the request (including custody outside Niue), be deemed to be continuing to serve that term of imprisonment.

PART 5

CUSTODY OF PERSONS IN TRANSIT

27 Transit

(1) If a person is to be transported in custody from a foreign country through Niue to another foreign country for the purposes of –

- (a) Giving evidence in a proceeding; or
- (b) Giving assistance in relation to an investigation;

relating to a criminal matter in the other foreign country, the person –

- (c) May be transported through Niue in the custody of another person; and

- (d) If an aircraft or ship by which the person is being transported lands or calls at a place in Niue, shall be kept in such custody as the Attorney-General directs in writing until his or her transportation is continued.

(2) Where a person who is being held in custody under a direction under subsection (1)(d) and the person's transportation is not, in the opinion of the Attorney-General, continued within a reasonable time, the Attorney-General may direct that the person be transported in custody to the foreign country from which the person was first transported.

28 Arrest of person in transit

(1) Any constable may, without warrant, arrest a person if the constable has reasonable grounds to believe that the person was being kept in custody under direction under section 29(1)(d) and has escaped from that custody.

(2) The constable must, as soon as practicable, take the person before a Commissioner.

(3) If the Commissioner is satisfied that the person has escaped from lawful custody, the Commissioner may issue a warrant authorising any constable to return the person to lawful custody.

29 Aiding person to escape

The laws of Niue in relation to –

- (a) Aiding a prisoner to escape from custody;
- (b) Rescuing a prisoner from custody;
- (c) Permitting escape; and
- (d) Harboursing an escapee,

apply in respect of a person who is in custody in Niue pursuant to a request to a foreign country by Niue under this Act.

PART 6
PROCEEDS OF CRIME
Requests by Niue

30 Requests for enforcement of orders

Niue may request an appropriate authority of a foreign country to make arrangements for the enforcement of –

- (a) A forfeiture order made in Niue against property that is believed to be located in that foreign country;
- (b) A confiscation order made in Niue where some or all of the property available to satisfy the order is believed to be located in that foreign country; or
- (c) A restraining order made in Niue against property that is believed to be located in that foreign country;

if the order was made in respect of a serious offence.

31 Requests for issue of orders in foreign countries

Where a criminal proceeding or investigation has commenced in Niue in relation to a serious offence, Niue may request an appropriate authority of a foreign country to obtain the issue, in respect of the offence, of a warrant, order or other instrument similar in nature to any of the following warrants and orders under the Proceeds of Crime Act 1998 –

- (a) A search warrant for tainted property;
- (b) A restraining order;
- (c) A production order in respect of a property-tracking document;
- (d) A search warrant in respect of a property-tracking document.

Requests by Foreign Countries

32 Requests for enforcement of orders

(1) Where –

- (a) A foreign country requests the Attorney-General to make arrangements for the enforcement of –
 - (i) A foreign forfeiture order, made in respect of a serious offence, against property that is believed to be located in Niue; or
 - (ii) a foreign confiscation order, made in respect of a serious offence, where some or all of the property available to satisfy the order is believed to be located in Niue; and
- (b) The Attorney-General is satisfied that –
 - (i) a person has been convicted of the offence; and
 - (ii) the conviction and the order are not subject to further appeal in the foreign country;

the Attorney-General may apply for the registration of the order in the Court.

(2) Where a foreign country requests the Attorney-General to make arrangements for the enforcement of a foreign restraining order, made in respect of a serious offence, against property that is believed to be located in Niue, the Attorney-General may apply for the registration of the order in the Court.

(3) Where the Attorney-General applies to the Court for registration of a foreign order under this section, the Court shall register the order accordingly.

(4) A foreign forfeiture order registered in the Court under this section has effect, and may be enforced, as if it were a forfeiture order made by the Court under the Proceeds of Crime Act 1998 at the time of registration.

(5) A foreign confiscation order registered in the Court under this section has effect, and may be enforced, as if it were a confiscation order made by the Court under the Proceeds of Crime Act 1998 at the time of registration and requiring the payment to the Crown of the amount payable under the order.

(6) A foreign restraining order registered in the Court under this section has effect, and may be enforced, as if it were a restraining order made by the Court under the Proceeds of Crime Act 1998 at the time of registration.

(7) Where a foreign confiscation order or a foreign restraining order is registered in the Court under this section, a copy of any amendments made to the order (whether before or after registration) may be registered in the same way as the order and the amendments do not, for the purposes of this Act and the Proceeds of Crime Act 1998, have effect until they are registered.

(8) An order or an amendment of an order shall be registered in the Court by registration under the rules of the Court, of –

- (a) A copy of the appropriate order or amendment sealed by the court or other authority making that order or amendment; or
- (b) A copy of that order or amendment duly authenticated under section 49(2).

(9) A facsimile copy of a sealed or authenticated copy of an order or an amendment of an order shall be regarded for the purposes of this Act as the same as the sealed or authenticated copy but registration effected by means of the facsimile copy ceases to have effect at the end of 42 days unless the sealed or authenticated copy has been registered by then.

(10) The Attorney-General may apply to the Court for cancellation of the registration of a foreign confiscation order or a foreign restraining order that has been registered in the Court.

(11) Where the Attorney-General applies to the Court for cancellation of a registration under subsection (10), the Court shall cancel the registration accordingly.

(12) Section 68 of the Proceeds of Crime Act 1998 does not apply to an order registered under this section.

33 Requests for search and seizure warrants in respect of tainted property

Where –

- (a) A criminal proceeding or investigation has commenced in a foreign country in respect of a serious offence;
- (b) There are reasonable grounds to believe that tainted property in relation to the offence is located in Niue; and
- (c) The foreign country requests the Attorney-General to obtain the issue of a search warrant in relation to the tainted property;

the Attorney-General may authorise a constable to apply to a Commissioner under the Proceeds of Crime Act 1998 for a search warrant in relation to that tainted property.

34 Requests for restraining orders

Where –

- (a) A criminal proceeding has commenced, or there are reasonable grounds to believe that a criminal proceeding is about to commence, in a foreign country in respect of a serious offence;
- (b) There are reasonable grounds to believe that property that may be made or is about to be made the subject of a foreign restraining order is located in Niue; and

(c) The foreign country requests the Attorney-General to obtain the issue of a restraining order against the property;
the Attorney-General may apply to the Court for a restraining order under the Proceeds of Crime Act 1998 against that property in respect of the offence.

35 Requests for information gathering orders

Where –

- (a) A criminal proceeding or investigation has commenced in a foreign country in respect of a serious offence;
- (b) A property-tracking document in relation to the offence is reasonably believed to be located in Niue; and
- (c) The foreign country requests the Attorney-General to obtain the issue of –
 - (i) an order requiring the documents to be produced or made available for inspection under the law of Niue; or
 - (ii) a search warrant in respect of the offence,

the Attorney-General may apply to a Commissioner for a production order under the Proceeds of Crime Act 1998 in respect of the offence for the purpose of obtaining possession of the property-tracking document or a search warrant under that Act in relation to the property-tracking document as the case requires.

35A Cabinet may approve proposals for sharing certain property

(1) In this section –

“qualifying property” means property –

- (a) That is vested in the Government by virtue of a forfeiture order and that can no longer be made the subject of an application under section 13 or section 14 of the Proceeds of Crime Act 1998 or section 23 of the Terrorism Suppression and Transnational Crimes Act 2006 by a person who claims to have, or to have had, an interest in the property; or
- (b) That has been paid to the Government under section 15 of the Proceeds of Crime Act 1998 (payment instead of forfeiture order); or
- (c) That has been paid to the Government under a confiscation order.

(2) The Cabinet may approve proposals for sharing specified qualifying property with a foreign country that has provided assistance to Niue under this Act or the Proceeds of Crime Act 1998.

(3) For the purposes of subsection (2) –

- (a) The specified qualifying property need not have become property of the Government as a result of the assistance provided by the foreign country; and
- (b) The proposals may, but need not, involve that country reciprocally sharing with Niue property realised under laws of the foreign country that correspond to the Proceeds of Crime Act 1998.

(4) The Attorney-General may enter into arrangements with the competent authorities of the foreign country in order to give effect to any sharing proposal approved by the Cabinet under subsection (2).

PART 7

REQUESTS BY OR ON BEHALF OF A DEFENDANT

36 Requests by Attorney-General on behalf of a defendant

- (1) If a defendant in a proceeding (original proceeding) relating to a criminal matter thinks that it is necessary for the purposes of the proceeding that –
- (a) Evidence should be taken in a foreign country; or
 - (b) A document or other article in a foreign country should be produced; or
 - (c) A thing located in a foreign country should be seized; or
 - (d) Arrangements should be made for a person who is in a foreign country to come to Niue (under a request to a foreign country by Niue under this Act) to give evidence relevant to the proceeding,
- the defendant may apply to the Court for a certificate that it would be in the interests of justice for the Attorney-General to make any appropriate request to the foreign country under Part 2, 3 or 4 so that –
- (i) The evidence may be taken; or
 - (ii) The document or article may be produced; or
 - (iii) The thing may be seized; or
 - (iv) The arrangements may be made.
- (2) Before making a decision on the application, the Court must give an opportunity to –
- (a) All parties to the original proceeding; and
 - (b) The Attorney-General,
- to appear before the Court and be heard on the merits of the application.
- (3) In deciding whether to issue a certificate, the Court must have regard to the following matters –
- (a) Whether the foreign country is likely to grant such a request made by the Attorney-General on behalf of the defendant;
 - (b) The extent to which the material (whether it is evidence, a document, an article or a thing) that the defendant seeks to obtain from the foreign country would not otherwise be available;
 - (c) Whether the court hearing the original proceeding would be likely to admit the material into evidence in the proceeding;
 - (d) The likely probative value of the material, if it were admitted into evidence in the proceeding, with respect to any issue likely to be determined in the proceeding;
 - (e) Whether the defendant would be unfairly prejudiced if the material were not available to the Court.
- (4) Subsection (3) does not prevent the Court from having regard to any other matter that it considers relevant.
- (5) If the Court issues a certificate –
- (a) The Court must, send a copy of the certificate to the Attorney-General; and
 - (b) The Attorney-General must in accordance with the certificate, make a request on behalf of the defendant to the foreign country, for international assistance unless he or she is of the opinion, having regard to the special circumstances of the case, that the request should not be made.

37 Certificate by Attorney-General if foreign country refuses request made under section 36

(1) If a foreign country refuses a request made under section 36(5), the Attorney-General must give a certificate in writing to that effect.

(2) A certificate under subsection (1) is prima facie evidence of the facts stated in it.

PART 8

ADMISSIBILITY OF FOREIGN EVIDENCE

Preliminary

38 Interpretation

In this Part –

“civil proceeding” means a proceeding other than a criminal proceeding;

“criminal proceeding” includes –

(a) A prosecution for an offence;

(b) A proceeding for the committal of a person for trial for an offence;

and

(c) A proceeding for the sentencing of a person convicted of an offence;

“foreign law” means a law (whether written or unwritten) of, or in force in, a country other than Niue;

“foreign material” means –

(a) The testimony of a person that –

(i) was obtained as a result of a request of a kind referred to in section 40; and

(ii) complies with the requirements of section 42; and

(b) Any exhibit annexed to any such testimony; and

(c) Any part of any such testimony or exhibit;

“Niue court” means –

(a) The Court; or

(b) A Commissioner; or arbitrator acting under Niue law; or

(c) A person or body authorised by a Niue law, or by consent of parties, to hear, receive and examine evidence;

“related civil proceedings”, in relation to a criminal proceeding, means any civil proceedings arising from the same subject-matter from which the criminal proceeding arose.

39 Proceedings to which this Part applies

This Part applies to a proceeding, before a Niue court, that is –

(a) A criminal proceeding for an offence against the law of Niue; or

(b) A related civil proceeding.

Obtaining Foreign Material

40 Requests for foreign material

This Part applies to –

(a) Testimony, obtained as a result of a request made by or on behalf of the Attorney-General to a foreign country for the testimony of a person; and

(b) Any exhibit annexed to any such testimony.

41 Requirements for testimony

- (1) The testimony must be taken before a court –
 - (a) On oath or affirmation; or
 - (b) Under such caution or admonition as would be accepted, by courts in the foreign country concerned, for the purposes of giving testimony in proceedings before those courts.
- (2) The testimony may be taken in camera.

42 Form of testimony

- (1) The testimony may be recorded in any of the following manners –
 - (a) In writing;
 - (b) On audio tape;
 - (c) On video tape.
- (2) The testimony need not –
 - (a) Be in the form of an affidavit; or
 - (b) Constitute a transcript of a proceeding in a foreign court.
- (3) The testimony must be endorsed with, or be accompanied by, a certificate to the effect that –
 - (a) It is an accurate record of the evidence given; and
 - (b) It was taken in the manner specified by section 41.
- (4) The certificate must –
 - (a) Purport to be signed or certified by a judge, magistrate or court officer of the foreign country to which the request was made; and
 - (b) Purport to bear an official or public seal of –
 - (i) the country; or
 - (ii) an authority of the country responsible for matters relating to justice, being a Minister of State, a Ministry or Department of Government, or an officer of the Government.

*Using Foreign Material***43 Foreign material may be adduced as evidence**

- (1) Subject to subsection (2) and to section 44, foreign material may be adduced as evidence in a proceeding to which this Part applies.
- (2) The foreign material is not to be adduced as evidence if –
 - (a) At the hearing of the proceeding, it appears to the Court's satisfaction that the person who gave the testimony concerned is present in Niue and is able to testify at the hearing; or
 - (b) The evidence would not have been admissible had it been adduced from the person at the hearing.

44 Direction to prevent foreign material being adduced

- (1) The Court may direct that foreign material not be adduced as evidence if it appears to the Court's satisfaction that the interests of justice would be better served if the foreign material were not adduced as evidence.
- (2) Without limiting the matters that the Court may take into account in deciding whether to give such a direction, it must take into account –
 - (a) The extent to which the foreign material provides evidence which would not otherwise be available; and
 - (b) The probative value of the foreign material with respect to any issue that is likely to be determined in the proceedings; and
 - (c) The extent to which statements contained in the foreign material could, at the time they were made, be challenged by questioning the persons who made them; and

- (d) Whether exclusion of the foreign material would cause undue expense or delay; and
- (e) Whether exclusion of the foreign material would prejudice –
 - (i) the defence in criminal proceedings; or
 - (ii) any party to related civil proceedings.

Miscellaneous

45 Certificates relating to foreign material

(1) The Attorney-General may certify that specified foreign material was obtained as a result of a request made to a foreign country by or on behalf of the Attorney-General.

(2) It is presumed (unless evidence sufficient to raise reasonable doubt is adduced to the contrary) that the foreign material specified in the certificate was obtained as a result of that request.

46 Effect of Part on right to examine witnesses

(1) Subject to this section, nothing in this Part shall be taken to limit the right of the defendant in any criminal proceedings to which this Part applies (in this section referred to as “the defendant”) to examine in person or by his legal representative any witness whose testimony is admitted in evidence in those proceedings.

(2) If the defendant requests that the person who gave the testimony concerned be present at the hearing in Niue for the purposes of cross-examination, the court shall warn the defendant that he may be ordered to pay any expenses incurred by the Crown in making the person available before the Court.

(a) As a result of the request, the person appears before the Court as a witness; and

(b) It appears to the court that the cross-examination of the person was unnecessary, of a trivial nature or irrelevant to the matters in issue in the proceedings,

the Court may order that the defendant pay any expenses incurred by the Crown in obtaining the attendance of the person as a witness.

(4) A certificate signed by the Attorney-General shall be evidence of the expenses incurred by the Crown for the purposes of subsection (3).

(5) An amount payable by a person to the Crown under an order under subsection (3) is a civil debt due by the person to the Crown.

(6) An order against a person under subsection (3) may be enforced as if it were an order made in civil proceedings instituted by the Crown against the person to recover a debt due by the person to the Crown and the debt arising from the order shall be taken to be a judgment debt.

47 Operation of other laws

This Part does not limit the ways in which a matter may be proved, or evidence may be adduced, under any other Niue law.

PART 9

MISCELLANEOUS

48 Delegation

The Attorney-General may, delegate to an officer of the Attorney-General’s Department all or any of his or her powers under this Act.

49 Authentication of documents

(1) In a proceeding under this Act or a proceeding under or pursuant to the Proceeds of Crime Act 1998 arising directly or indirectly from a request made under this Act, any document that is duly authenticated is admissible in evidence.

(2) A document is duly authenticated for the purposes of subsection (1) if –

(a) It purports to be signed or certified by a judge, magistrate or officer in or of a foreign country; and

(b) It purports to be sealed with an official or public seal of the foreign country or of a Minister of State, or of a Department or officer of the Government, of the foreign country.

(3) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, in accordance with any other law of Niue.

50 Restriction on use of information

(1) If, as a result of a request made by the Attorney-General under this Act, any material (whether it is evidence, a document, an article or a thing) has been sent to Niue by a foreign country for the purposes of a proceeding or investigation in relation to a criminal matter, the material is not to be used intentionally for any other purpose without the approval of the Attorney-General.

(2) The material is inadmissible in evidence in any proceeding other than the proceeding in respect of which it was obtained unless the Attorney-General has approved its use for the purposes of that other proceeding.

(3) Any information, document, article or thing obtained directly or indirectly from a person by making use of the material –

(a) Otherwise than for the purpose of the proceeding or investigation in respect of which it was obtained; and

(b) Without the approval of the Attorney-General;

is inadmissible in evidence in any other proceeding and may not be used for the purposes of any other investigation.

(4) A person who contravenes subsection (1) is guilty of an offence punishable, on conviction, by –

(a) If the person is a natural person, a fine not exceeding 120 penalty units or imprisonment for a period not exceeding 2 years, or both; or

(b) If the person is a body corporate, a fine not exceeding 600 penalty units.

(5) For the purposes of this section, disclosure of any material is taken to be a use of that material.

51 Requests for international assistance not to be disclosed

(1) A person who, because of his or her office or employment, has knowledge of –

(a) The contents of a request for international assistance made by a foreign country to Niue under this Act; or

(b) The fact that such a request has been made; or

(c) That fact that such a request has been granted or refused,

must not intentionally disclose those contents or that fact except if –

(d) It is necessary to do so in the performance of his or her duties; or

(e) The Attorney-General has given his or her approval to the disclosure of those contents or that fact.

(2) A person who contravenes subsection (1) is guilty of an offence punishable, on conviction, by –

- (a) If the person is a natural person, a fine not exceeding 120 penalty units or imprisonment for a period not exceeding 2 years, or both; or
- (b) If the person is a body corporate, a fine not exceeding 600 penalty units.

52 Regulations

The Cabinet may make regulations, not inconsistent with this Act, prescribing matters –

- (a) Required or permitted by this Act to be prescribed; or
- (b) Necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and, in particular, prescribing the practice and procedure in relation to the performance by Commissioners of functions under this Act, including the summoning of witnesses, the production of documents, the taking of evidence on oath, the administering of oaths, the payment of expenses and allowances of witnesses and the protection and immunity of Commissioners, of barristers and solicitors appearing before Commissioners and of witnesses.

