

**NIUE LAWS
LEGISLATION AS AT DECEMBER 2006**

NIUE ACT 1966

1966/38 (NZ) ó 1 January 1967

1 Short title
2-3 [Repealed]

**PART 1
THE EXECUTIVE GOVERNMENT OF NIUE**

4614D [Repealed]
15-20 [Repealed]
21 Persons authorised to practise medicine or surgery
22 Offences
23 Director of Health
23A Medical services
24-25 [Repealed]
26 Establishment of prisons
27 Detention of persons in custody
28 Labour instead of imprisonment
29 [Repealed]
29A Prisons and criminal justice
30 [Repealed]

**PART 2
THE LEGISLATIVE GOVERNMENT OF NIUE**

31-48 [Repealed]
49 Regulations
50-52 [Repealed]

**PART 3
THE HIGH COURT OF NIUE**

Constitution of the High Court

53-59 [Repealed]
60 Commissioners of High Court
61 [Repealed]
62 Registrar and Deputy Registrar of the High Court
63 [Repealed]
64 Seal of the High Court
65 Records of the High Court

Jurisdiction of the High Court

66-67 [Repealed]

- 68 Habeas corpus
- 69 Custody of minors

Procedure of the High Court

- 70 Rules of Court
- 71 Procedure so far as not governed by rules of Court
- 72 Forms
- 73 Summons to witnesses
- 74 Default of witness
- 75 Commissioners to take evidence
- 76 Evidence by affidavit sworn out of Niue
- 77 Witnesses may be ordered out of Court
- 78 Affidavits in Niue
- 79 Evidence by affidavit
- 80 Right of audience in the High Court
- 81 Costs
- 82 Security for costs
- 83 Court fees
- 84 Minutes of judgments
- 85 Amendments
- 86 Rehearing of civil proceedings
- 87 Rehearing of criminal proceedings

Execution of Judgments

- 88 Writs of sale and possession
- 89 Effect of writ of possession
- 90 Effect of writ of sale
- 91 Issue of writs of sale or possession
- 92 Charging orders
- 93 Stay of execution
- 94 Judgment summons
- 95 Enforcement of foreign judgments

Absconding Debtors

- 96 Order of arrest of absconding debtor
- 96A Commissioner and Justices' authority
- 97 Security to be given
- 98 Enforcement of security
- 99 Arrest in actions for penalties
- 100 Enforcement of security in actions for penalties

Contempt of the High Court

- 101 Contempt of Court defined
- 102 Penalty for contempt
- 103 Jurisdiction in contempt
- 104 Contempt in the face of the Court

105 Discharge of persons in contempt

**PART 4
THE HIGH COURT**

106 [Repealed]
107 Declarations
108 [Repealed]
109 Cases stated
110 [Repealed]

Appeals from the High Court

111-112 [Repealed]
113 Transmission of record
114 Dismissal of appeal for nonprosecution
115 Procedure on appeal
116 [Repealed]
117 Powers of Court of Appeal
118 Evidence on appeal
119 Stay of execution
120 Release of appellant from custody
121 Appeal not to be allowed for irregularities
122 Right of audience on appeal
123 Transmission of order of Court of Appeal
124-125 [Repealed]

Enforcement in Niue of Judgments of New Zealand Courts

126 Judgments of High Court or a District Court in New Zealand may be enforced by the High Court
127 Enforcement of judgments of the High Court of New Zealand by High Court by way of proceedings for contempt
128 [Repealed]

**PART 5
CRIMINAL OFFENCES**

129 Seditious offences
130 Punishment of seditious offences
131 Homicide
132 Killing of a child
133 Culpable homicide
134 Murder
135 Further definition of murder
136 Provocation
137 Illegal arrest may be evidence of provocation
138 Punishment of murder
139 Manslaughter
140 Punishment of manslaughter

141 Omissions dangerous to life
142 Duty to provide the necessaries of life
143 Duty of parent or guardian to provide necessaries
144 Liability for dangerous things
145 Hastening death
146 Indirect cause of death
147 Attempted murder
148 Conspiracy and inciting to murder
149 Counselling suicide
150 Concealment of birth
151 Grievous bodily harm
152 Actual bodily harm
153 Omissions resulting in bodily harm
154 Intentionally endangering persons on aerodromes
155 Wantonly endangering persons on aerodromes
156 Indecent assault
157 Assault
157A Cruelty to a child
158 Resisting constable in execution of his duty
159 Abduction of girl under 15
160 Abduction of children
161 Sexual intercourse
162 Rape
163 Sexual intercourse or indecency with girl under 12
164 Sexual intercourse or indecency with girl between 12 and 15
165 Sexual intercourse with woman or girl who is an idiot or imbecile or of unsound mind
166 Procuring miscarriage of woman or girl
167 Act of woman or girl procuring her own miscarriage
168 Supplying means of miscarriage
169 Bigamy
170 Buggery
171 Attempted buggery and indecent assaults on males
172 Incest
173 Indecent acts
174 Indecent documents
175 Brothels
176 Gaming houses
176A Powers to permit gambling
177 Riot
178 Forcible entry
179 Affrays

CRIMES AFFECTING THE ADMINISTRATION OF LAW AND JUSTICE

Bribery and Corruption

180 Interpretation
180A Judicial corruption
180B Bribery of judicial officer
180C Corruption and bribery of Minister

180D Corruption and bribery of member of Assembly
180E Corruption and bribery of law enforcement officer
180F Corruption and bribery of official
180G Corrupt use of official information
180H Restrictions on prosecutions
181 Perjury
182 Fabricating evidence
183 Conspiracy to pervert justice
184 Breaking prison
185 Escape
186 Rescue
187 Criminal libel or slander
188 Definition of theft
189 Ineffectual defences to charge of theft
190 Extended definition of theft
191 Obtaining money or goods by false pretences
192 Punishment of theft
193 Stealing documents
194 Receiving stolen goods
195 Robbery
196 Conversion or attempted conversion
197 Breach of trust
198 Menaces
199 Witchcraft
200 Obtaining credit by fraud
201 Accusation of criminal offences
202 Conspiracy to defraud
203 Obtaining execution of valuable securities by fraud
204 Burglary
205 Unlawful entry of dwelling house
205A Entering premises for a criminal purpose
206 Threats to kill or do bodily harm
207 Forgery
208 Extended definition of forgery
209 Making counterfeit coin
210 Lightening coin
211 Uttering counterfeit coin
212 Arson
213 Wilful mischief to property
214 Provoking breach of the peace
215 Profane, indecent, or obscene language
216 Disorderly conduct in public places
217 Obstructing public place
218 Drunkenness
219 Animal trespass
220 Prostitution
221 Laying poison
222 Polluting water
223 Sale of unwholesome provisions
224 Insanitary premises

225 Wilful trespass
226 Cruelty to animals
227 Falsely trading as a company
228 Conspiracy
228A Wrongful communication, retention or copying of official information

Attempts

229 Attempts to commit offences
230 Attempt proved when offence is charged
231 Offence proved when attempt is charged

Parties to Offences

232 Inciting
233 Parties to offences
234 Common criminal purpose
235 Counselling or procuring
236 Accessory after the fact
237 Punishment of accessories

Infancy

237A Children under 10
237B Children between 10 and 14

Defences

238 Common law defences
239 Common law offences

Sentences

240 Power to fine instead of or in addition to imprisonment
241 Enforcement of fines
242 Imprisonment in Niue
243 Transfer of convicted persons to New Zealand
244 Release of prisoners transferred to New Zealand
244A Recall of offender subject to supervision
245 Person conditionally released from imprisonment
246 Cumulative sentences

**PART 6
CRIMINAL PROCEDURE**

247 [Repealed]
248 Jurisdiction of High Court
249 [Repealed]

Preliminary Proceedings

250 Arrest without warrant
251 Arrest on warrant of Commissioner
251A Duty of persons arresting
252 Committal for trial

Trial by the High Court

253 Information
254 Warrant or summons
255 Warrant after issue of summons
255A Arrested person may be released on bail
256 Prisoners brought before Court before commencement of prosecution
257 Remand
258 Trial of accused in his absence

Assessors

259 Constitution of Court in criminal trials
260 Judge with assessors
261 Judge without assessors
262 Judge with or without assessors as he thinks fit
263 Order appointing assessors
264 Number and qualifications of assessors
265 Default of assessors
266 Remuneration of assessors
267 Oath of assessors
268 Change of assessors
269 Discharge of assessors and new trial
270 Concurrence of assessors
271 Concurrence of Judge
272 Sentence
273 Concurrence of assessors necessary for conviction

Miscellaneous Provisions

274 Alternative and cumulative charges
275 Relation between information and conviction
276 Withdrawal of information
277 Drawing up of conviction
278 Defects of information, summons, or warrant
279 Payment of witnesses
280 Court may order convicted person to come up for sentence
281 Conviction without sentence or discharge without conviction
282 Bail
283 [Repealed]
284 Search warrants
284A Power to enter premises to arrest offender or prevent offence
285-286 [Repealed]
286A Parole Board

287 Compensation for loss of property

**PART 7
LAW OF EVIDENCE**

288 Definitions

289 Discretionary power to admit or reject evidence

290 All witnesses competent

291 Evidence of parties and their spouses

292 Evidence of accused persons and their spouses

293 Cross-examination as to credit

294 Criminating questions

295 Evidence of prisoners

296 Judicial notice of enactments

297 Judicial notice of seals

298 Power to administer oaths

299 Form of oath

300 Absence of religious belief

301 Affirmation may be made instead of oath

302 Form of affirmation

303 Evidence of children without oath

304 Necessity of oath

**PART 8
EXTRADITION**

Extradition from Niue to New Zealand or to the Cook Islands

305 Arrest in Niue of fugitive offenders from New Zealand or the Cook Islands

306 Order of return to New Zealand or to the Cook Islands

307 Refusal of order in case of hardship

308 Imprisonment or release pending return

309 Release on security instead of return

310 [Repealed]

311 Cancellation of order of return

Extradition from New Zealand to Niue

312 Arrest in New Zealand of fugitive offenders from Niue

313 Order of return to Niue

314 Judicial notice of signature to warrant

315 Refusal of order in case of hardship

316 Imprisonment or release pending return

317 Release on security instead of return

318 Return to Niue in custody

319 Cancellation of order of return

Application of Extradition Act to Niue

320 Extradition Act in force in Niue

PART 9

321-322 [Repealed]

PART 10

323-334 [Repealed]

PART 11

335-385 [Repealed]

PART 12

386-404 [Repealed]

PART 13

405-414 [Repealed]

PART 14

415-430 [Repealed]

PART 15

431-460 [Repealed]

**PART 16
LAND DEVELOPMENT**

461 Application of this Part

462 Cabinet may cultivate land on behalf of owners

463 Disposal of revenues received by Cabinet

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

465 [Repealed]

466 Interference and obstruction prohibited

467 [Repealed]

PART 17

468-483 [Repealed]

PART 18

484-488 [Repealed]

**PART 19
NIUEAN SUCCESSION**

489 Wills of Niueans
490 Succession to deceased Niueans
491 Niuean land not to vest in administrator
492-496 [Repealed]
497 Niuean land not assets for payment of debts
498-499 [Repealed]

PART 20 TRUSTEES FOR NIUEANS

500 Definition of "person under disability"
501 Trustee orders
502 Matters to be set forth in trustee orders
503 Appointment of new trustees
504 Orders restricting powers of trustees
505 Cancellation of trustee orders
506 Determination of trustee orders
507 Trust property not to vest in trustee
508 Administration of property by trustee
509 Alienation of property by trustee
510 Powers of trustee
511 Expenditure of revenues of trust property
512 Enforcement of trusts
513 Co-trustees must act jointly
514 Remuneration of trustees

PART 21 MARRIAGE

515 Prohibited degrees of consanguinity or affinity
516 Marriages to take place before Marriage Officer
517-518 [Repealed]
519 Offence
520 Notice of marriage
521 Mode of solemnisation
522 Record of marriage
523 Signature of record
524 Transmission of record
525 Minimum age of marriage
526 Marriage of minors
527 Offence by Marriage Officer
528 Signature of false record by party or witness
529 Misrepresentation as to facts to procure marriage

PART 22 DIVORCE

530 [Repealed]
531 Nullity of marriage

532 [Repealed]
533 Domicile of a married woman
534 Grounds of divorce and jurisdiction of High Court
535 Grounds of refusal of divorce
536 Discretion to refuse decree in certain cases
537 Co-respondent as a party
538 [Repealed]
539 Agreement no bar to divorce
540 No appeal to Court of Appeal
541-542 [Repealed]
543 Order for maintenance of divorced wife
544 Order as to custody of children
545 Molestation of divorced wife by her husband
546 [Repealed]

PART 23 MAINTENANCE AND AFFILIATION

547 Interpretation
548 [Repealed]
549 Applications
550 [Repealed]
551 Affiliation orders
552 Evidence
553 Maintenance order in favour of illegitimate child
554 Maintenance order against father in favour of child
555 Maintenance order against mother in favour of child
556 Maintenance order against husband
557 Maintenance order against wife
558 Maintenance order against any person in favour of father or mother
559 Disobedience to maintenance order
560 Maintenance money a debt
561 Order in favour of non-residents
562 Order against non-residents
563 Orders *in absentia*
564 Repeated applications
565 Payments not to be made in advance
566 Cancellation, variation, and suspension of orders
567 Payment of maintenance money
568 Security for obedience to maintenance orders
569 Operation of agreements
570 Purport and duration of maintenance orders
571 Order for past maintenance

Offences

572 Leaving Niue while maintenance money in arrear
573 Leaving Niue after affiliation order and before birth of child
574 Leaving Niue with intent to disobey maintenance order
575 Leaving Niue while failing to maintain wife

576 Leaving Niue while failing to maintain child
577 Leaving Niue with intent to desert wife or child
578 [Repealed]
579 Evidence of intent

PART 24

580-592 [Repealed]

PART 25

593-599 [Repealed]

PART 26 PERSONS OF UNSOUND MIND

Orders of Medical Custody

600 Application by Medical Officer to Court
601 Medical certificates as to persons of unsound mind
602 Order of medical custody
603 Renewal of order
604 Cancellation of order
605 [Repealed]
606 Arrest and detention of persons committed to medical custody
607 [Repealed]
608 Removal from Niue to New Zealand
609 Conditions of removal
610 Method of removal
611 Admission to hospital of persons removed to New Zealand
612 [Repealed]
613 No committee of estate of person of unsound mind
614 Warrant for arrest of persons of unsound mind
615 Arrest without warrant of persons of unsound mind
615A Commissioner and Justices may act for Judge

Persons of Unsound Mind Charged with Offences

616 Insane persons not to be tried for offences
617 Accused persons acquitted on ground of insanity
618 Discharge
619 Orders of medical custody
620 The defence of insanity in criminal prosecutions

PART 27

621-633 [Repealed]

PART 28

634-644 [Repealed]

**PART 29
NIUEAN ANTIQUITIES**

645 Interpretation

646 [Repealed]

647 Niuean antiquities to be offered for sale before exportation

648 Power to detain Niuean antiquities attempted to be exported

649 Exporting Niuean antiquities without permission

650 Power to remove antiquities in certain cases

651 Right to copy of antiquities intended to be exported

652 Cabinet to decide what articles come under this Part

653 [Repealed]

**PART 30
CUSTOMS**

654-655A [Repealed]

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

657-658 [Repealed]

PART 31

659-671 [Repealed]

**PART 32
THE LAWS OF NIUE: GENERAL PROVISIONS**

Application of the Laws of New Zealand

672-677 [Repealed]

678 Criminal procedure in Niue

679-689 [Repealed]

689A Misuse of Drugs Act in force in Niue

690-705 [Repealed]

706 Limitation of actions

Miscellaneous Rules of Law

707 Legal status of married women

708 Legitimacy

709 Joint liability

710 Contracts of guarantee

711-713 [Repealed]

714 Liability of owners of dogs

715 Distress for rent abolished

716 Libel and slander

717-719 [Repealed]

720 Statutory declarations

721 [Repealed]
722 Taxes on Niuean land
723 [Repealed]
724 Warrants of arrest
725 Trespass *ab initio*
726 [Repealed]
727 [Repealed]
727A Births and deaths
728-735 [Repealed]
736 Contributory negligence
737 Protection of intellectual property
738 Aerodromes

SCHEDULES

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

1 Short title

This is the Niue Act 1966.

2 [Repealed by 2004/269]

3 [Repealed by 2004/270]

PART 1 THE EXECUTIVE GOVERNMENT OF NIUE

4–14D [Repealed by 1974/64]

15 [Repealed by 1974/64]

16–19 [Repealed by 2004/270]

20 [Repealed by 1974/64]

21 Persons authorised to practise medicine or surgery

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

(a) He is registered as a medical practitioner in New Zealand;

(b) He holds a certificate issued under the hand of the Secretary to the Medical Council of New Zealand that, in the opinion of that Council, he has attained a standard of practice in medicine and surgery equivalent to that required for registration as a medical practitioner in New Zealand;

(c) He ó

(i) is a graduate of the Fiji School of Medicine; or

(ii) holds a certificate issued under the hand of the Director of Health that, in the opinion of the Director, he is a graduate of a school of medicine equivalent in standard to the Fiji School of Medicine, and has attained a competent standard of practice in medicine and surgery.

(2) Notwithstanding subsection (1) (c) ó

(a) If no conditions are prescribed by Act and the position of Director of Health is vacant and no acting Director of Health has been appointed; or

(b) If no conditions are so prescribed and the Director of Health is absent from Niue or is otherwise incapable of performing his duties, exercising his powers, and carrying out his functions,

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

22 Offences

(1) Every person commits an offence who, not being a medical officer ó

(a) Directly or by implication represents or holds himself out to be a medical officer; or

(b) Engages, for or without any fee, salary, or other remuneration or reward, in the practice of medicine or surgery, or any branch of medicine or surgery, under the style or title of physician, surgeon, doctor, licentiate in medicine or surgery, bachelor of medicine, or medical practitioner, or under any name, title, addition, or description implying that he holds any degree or diploma in medicine or surgery or in any branch of medicine or surgery, or is otherwise specially qualified to practise medicine or surgery or any branch of medicine or surgery.

(2) Every person who commits an offence against this section is liable ó

(a) On a first conviction, to a fine not exceeding 1 penalty unit, and, where the offence is a continuing one, to a further fine not exceeding 1 penalty unit for each day on which the offence has continued;

(b) On a second or subsequent conviction, to imprisonment for a term not exceeding 2 months or to the penalties specified in paragraph (a).

23 Director of Health

(1) There shall be appointed by the Niue Public Service Commission a Director of Health of Niue.

(2) No person shall be qualified to be appointed or to hold office as Director of Health of Niue, unless ó

(a) He is qualified to practise medicine and surgery under section 21 (1)(a) or (b);

(b) Being a graduate of the Fiji School of Medicine he holds such other qualification, or has had such work experience in medicine, or has a combination of such other qualification and such world experience in medicine, as the Commission thinks fit.

(3) [Spent]

(4) Whenever the position of Director of Health is vacant, or the Director of Health is absent from Niue or is in the opinion of the Niue Public Service Commission unable, by reason of physical or mental disability, to perform the functions of his office, the Niue Public Service Commission, may, by an instrument in writing appoint any medical officer to be the acting Director of Health:

Provided that no medical officer, other than a person qualified to be appointed as Director of Health, shall be appointed acting Director of Health unless, in the opinion of the Niue Public Service Commission there is in Niue no medical officer who is qualified and willing to occupy the position of Director of Health, and is capable of performing the duties, exercising the powers, and carrying out the functions of the Director of Health.

(5) Any appointment made under subsection (4) of an acting Director of Health may, by an instrument in writing at any time be revoked by the Niue Public Service Commission.

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

(7) The appointment of an acting Director of Health shall not, on the grounds that the occasion for the appointment has not arisen or has ceased, be impugned or called into question in any proceedings in any court or otherwise howsoever.

(8) The Director of Health shall be responsible, in Niue, for the administration of all laws relating to public health, mental health, hospitals, medical and surgical services, and the quarantine of persons.

23A Medical services

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

(2) Medical and surgical treatment, aid, and attendance provided by any medical officer employed in the Niue Public Service may, in the case of Niueans, be gratuitous; and shall, in the case of all other persons, be subject to payment of any reasonable and proper fees which may either generally or in any particular instance, be fixed or prescribed by Cabinet and all

fees for such treatment, aid, and attendance shall be paid into and shall form part of the public revenues of Niue.

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

24–25 [Repealed by 2004/270]

26 Establishment of prisons

The Cabinet may, by warrant under its hand and the Seal of Niue, appoint as prisons such buildings or places in Niue as it thinks suitable for that purpose.

27 Detention of persons in custody

(1) Any person in lawful custody in Niue may be detained in any such prison, and may be removed by order of a Judge of the Court to any other prison in Niue.

(2) Any person in lawful custody in Niue may, if it is inconvenient or impracticable immediately to take him to any prison for confinement, be temporarily detained in any other suitable place of security.

28 Labour instead of imprisonment

(1) Any person sentenced to imprisonment or committed to prison in Niue may, by order of a Judge of the High Court made either at the time of sentence or committal or at any time thereafter, be discharged from custody on condition that he labours on public works in Niue for the term or the residue of the term for which he has been so sentenced or committed.

(2) Every prisoner so discharged shall perform the labour so appointed for him under the control and subject to the direction of some officer nominated for that purpose by the Chief of Police.

(3) If any prisoner so discharged makes default in the due performance of the labour so appointed for him, or is guilty of any insubordination or other misconduct, whether in respect of that labour or otherwise, he may be arrested without warrant by any officer of police or of prisons; and a Judge of the High Court may (without the necessity of any judicial inquiry) revoke the discharge of that prisoner and commit him to prison for a period equal to that for which he would have been imprisoned subsequent to the order of discharge had no such order been made, with such deduction (if any) as the Judge thinks fit, having regard to the seriousness of the default, insubordination, or misconduct, and to any labour duly performed by the prisoner under the conditions of his discharge.

(4) Where under subsection (3) a prisoner is committed to prison for a term expiring before the date on which, if he had not been discharged under this section, the original period of imprisonment would have expired, then, on the expiration of the term for which he is committed under that subsection, the order of discharge made under subsection (1) and subsections (2) and (3) shall again apply to him for the residue of the term for which he was

originally sentenced or committed.

29 [Repealed by 2004/270]

29A Prisons and criminal justice

(1) Cabinet may by regulations provide for ó

(a) The administration of sentences imposed by the Court (whether involving imprisonment or not);

(b) The management and supervision of offenders placed in the custody or under the control of the Controller of Prisons, a Superintendent, or Parole and Probation Officers;

(c) The administration of prisons and other detention centres;

(d) The administration of the parole system and probation service;

(e) All other matters necessary or expedient for ensuring that full effect is given to decisions of the courts in criminal matters.

(2) Regulations made under subsection (1) may provide for prison discipline and for control of breach of discipline by the officer in charge of the prison.

(3) Punishments imposed under regulations made under this section shall not exceed ó

(a) Confinement in a separate cell for a period of 2 weeks;

(b) The forfeiture of privileges for 3 months; or

(c) A combination of the punishments specified in paragraphs (a) to (b).

30 [Repealed by 1974/64]

PART 2 THE LEGISLATIVE GOVERNMENT OF NIUE

31–44 [Repealed by 1974/64]

45–46 [Repealed by 1971/61]

47 [Repealed by 1974/64]

48 [Repealed by 2004/269]

49 Regulations

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

penalties for contravention of regulations.

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

50–52 [Repealed by 2004/270]

PART 3 THE HIGH COURT OF NIUE

Constitution of the High Court

53–59 [Repealed by 1974/64]

60 Commissioners of High Court

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

61 [Repealed by 1974/64]

62 Registrar and Deputy Registrar of the High Court

(1) [Repealed by 2004/270]

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

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

63 [Repealed by 2004/270]

64 Seal of the High Court

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

65 Records of the High Court

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

Jurisdiction of the High Court

66 [Repealed by 1974/64]

67 [Repealed by 2004/270]

68 Habeas corpus

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

69 Custody of minors

(1) The High Court may, on the application of any person, make such order as it thinks fit with respect to the custody of any minor (being unmarried) by any parent or guardian of that minor.

(2) Where the Court is satisfied that the minor has no parent or guardian fit to have such custody, the Court may make such order as it thinks fit for the custody of the minor by any other person.

(3) The jurisdiction conferred by this section shall in all cases be exercised in such manner as the Court deems most conducive to the welfare of the minor.

Procedure of the High Court

70 Rules of Court

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

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

(b) The practice and procedure of the Court of Appeal.

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

71 Procedure so far as not governed by rules of Court

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

72 Forms

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

73 Summons to witnesses

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

74 Default of witness

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

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

75 Commissioners to take evidence

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

76 Evidence by affidavit sworn out of Niue

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

77 Witnesses may be ordered out of Court

The High Court may at any time during any proceedings, whether civil or criminal, order all

witnesses other than the witness under examination to go and remain outside the Court until required to give evidence; and any witness who disobeys any such order shall be guilty of contempt of the High Court.

78 Affidavits in Niue

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

- (a) A Commissioner of the High Court;
- (b) A Solicitor of the High Court of New Zealand;
- (c) The Registrar of the High Court;
- (d) A Postmaster;
- (e) The Financial Secretary;
- (f) [Repealed by 1974/64]
- (g) A medical officer.

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

79 Evidence by affidavit

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

80 Right of audience in the High Court

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

81 Costs

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

82 Security for costs

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

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

83 Court fees

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

84 Minutes of judgments

- (1) Every judgment of the High Court shall be deemed to be complete when a minute of it has been made in the record books of the Court and signed by a Judge of the Court.
- (2) When necessary, the judgment may at any time after that be drawn up under the seal of the Court.

85 Amendments

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

86 Rehearing of civil proceedings

- (1) On application made at any time within 14 days after the date of any judgment given by the High Court in its civil jurisdiction, the Court may rehear the matter, and may on the rehearing either affirm, reverse, or vary the judgment.
- (2) The Court may rehear the matter on an application made more than 14 days after the date of the judgment, if the Court is satisfied that the application could not reasonably be made sooner.

87 Rehearing of criminal proceedings

- (1) Where on the hearing of any information the accused has been convicted, the High Court may grant a rehearing of the information, either as to the whole matter or only as to the sentence, upon such terms as the Court thinks fit.
- (2) When a rehearing has been granted, the conviction or, as the case may be, the sentence only shall immediately cease to have effect.
- (3) If a rehearing is granted in any case where the accused was on conviction sentenced to a term of imprisonment that has not expired, but the hearing is not proceeded with immediately, the Court may remand the accused in custody or admit the accused to bail, with or without sureties until the date appointed for the rehearing.
- (4) On any rehearing the Court shall have the same powers and shall follow the same procedure as if it were the first hearing.
- (5) If the defendant does not appear on the date set down for the rehearing of any information, the Court may, without rehearing the case direct that the original conviction or sentence, as the case may be, shall be restored.

Executions of Judgments

88 Writs of sale and possession

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

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

89 Effect of writ of possession

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

90 Effect of writ of sale

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

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

91 Issue of writs of sale or possession

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

92 Charging orders

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

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

93 Stay of execution

The High Court may in any civil proceedings stay the execution of any judgment for such

term as the Court thinks fit.

94 Judgment summons

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

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

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

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

(a) That the judgment debtor is of sufficient ability to pay the judgment debt under the terms of the order; or

(b) That the liability in respect of which judgment was given against him was incurred by fraud; or

(c) That before or after the date of the judgment the judgment debtor has made away with any property for the purpose of evading payment of the liability.

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

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

95 Enforcement of foreign judgments

(1) In this section ó

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

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

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

- (2) A judgment may be enforceable in Niue if ó
- (i) the foreign court had jurisdiction to decide the matter; and
 - (ii) it is for a definite sum of money; and
 - (iii) enforcement would not be contrary to the public policy of Niue; and
 - (iv) a certified copy of the judgment has been filed for registration in the High Court within 2 years from the date on which it was made or became executory.
- (3) After receiving an application to register a judgment, the High Court shall issue a summons ó
- (i) calling upon the person against whom the judgment was obtained to show within 30 days why execution should not issue on the judgment; and
 - (ii) giving notice that in default of appearance an order for execution of the judgment will be issued.
- (4) In default of appearance within 30 days, or if the person served with such summons fails to show sufficient cause against it, the judgment will be registered.
- (5) No order of registration shall be issued where a judgment creditor has shown that the judgment ó
- (i) has been wholly satisfied; or
 - (ii) could not be enforced in the courts of the country where the judgment was originally made.
- (6) Where a judgment has been partially satisfied, it shall be registered only in respect of a sum remaining unpaid under it.
- (7) After registration the judgment may be enforced in the same manner as if it were a judgment originally given in the High Court on the date of registration.
- (8) No foreign judgment shall be enforced in Niue other than by way of registration under this section.
- (9) A judgment shall be recognised by a court of Niue as conclusive between the parties in a case founded on the same cause of action and as a defence or counter-claim if it satisfies subsection (2) (i) (ii) and (iii).

Absconding Debtors

96 Order of arrest of absconding debtor

Where in any action in the High Court for the recovery of any debt, damages, or other sum of money the plaintiff proves to the satisfaction of the Court, at any time before final judgment,

that he has a good cause of action against the defendant to the amount of 0.5 penalty units or upwards, and that there is probable cause for believing that the defendant is about to leave Niue unless he is apprehended, and that his absence from Niue will materially prejudice the plaintiff in the prosecution of his action, the Court may order the defendant to be arrested and imprisoned for a period not exceeding 3 months unless and until he sooner give security to the satisfaction of the Court that he will not leave Niue without the leave of the Court.

96A Commissioner and Justices' authority

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

97 Security to be given

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

98 Enforcement of security

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

99 Arrest in actions for penalties

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

100 Enforcement of security in actions for penalties

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

Contempt of the High Court

101 Contempt of Court defined

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

- (a) Disobeys any judgment or order of that Court, or of any Judge, otherwise than by making default in the payment of a sum of money (other than a penalty) or compensation payable under the judgment or order; or

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

102 Penalty for contempt

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

103 Jurisdiction in contempt

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

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

104 Contempt in the face of the Court

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

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

105 Discharge of persons in contempt

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

PART 4 THE HIGH COURT

106 [Repealed by 2004/270]

107 Declarations

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

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

108 [Repealed by 2004/270]

109 Cases stated

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

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

110 [Repealed by 2004/270]

Appeals from the High Court

111-112 [Repealed by 1974/64]

113 Transmission of record

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

114 Dismissal of appeal for non-prosecution

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

115 Procedure on appeal

The procedure on the hearing of any such appeal and in all matters incidental to any such appeal, whether in the High Court or in the Court of Appeal shall, subject to this Act, be

determined by the rules of the High Court or the Court of Appeal and in default of such rules, or so far as they do not extend, shall be determined in such manner as the Court thinks fit.

116 [Repealed by 1974/64]

117 Powers of Court of Appeal

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

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

118 Evidence on appeal

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

119 Stay of execution

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

120 Release of appellant from custody

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

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

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

121 Appeal not to be allowed for irregularities

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

122 Right of audience on appeal

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

123 Transmission of order of Court of Appeal

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

124 [Repealed by 1974/64]

125 [Repealed by 2004/270]

Enforcement in Niue of Judgments of New Zealand Courts

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

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

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

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

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

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

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

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

seal of the court to be filed in the High Court of Niue.

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

128 [Repealed by 2004/270]

PART 5 CRIMINAL OFFENCES

129 Seditious offences

(1) A seditious intention is an intention to excite disaffection against Her Majesty, or against the Parliament or Government of New Zealand, or against the Government of Niue, or to excite such hostility or ill will between different classes of the inhabitants of Niue as may be injurious to the public welfare, or to incite, encourage, or procure lawlessness, violence, or disorder in Niue, or to procure otherwise than by lawful means the alteration of any matter affecting the laws, government, or constitution of Niue.

(2) No one shall be deemed to have a seditious intention only because he intends in good faith ó

(a) To show that Her Majesty has been misled or mistaken in her measures; or

(b) To point out errors or defects in the Parliament or Government of New Zealand or in the Government of Niue; or to incite the inhabitants of Niue to attempt to procure by lawful means the alteration of any matter affecting the laws, government, or constitution of Niue; or

(c) To point out, with a view to their removal, matters producing or having a tendency to produce hostility or ill will between different classes of the inhabitants of Niue.

(3) Seditious words are words expressive of a seditious intention.

(4) A seditious libel is a libel expressive of a seditious intention.

(5) A seditious conspiracy is an agreement between 2 or more persons to carry into execution a seditious intention.

130 Punishment of seditious offences

Every person is liable to imprisonment for a term not exceeding 2 years who speaks any seditious words, or publishes a seditious libel, or is a party to a seditious conspiracy.

131 Homicide

Homicide is the killing of a human being by another, directly or indirectly, by any means whatsoever.

132 Killing of a child

(1) A child becomes a human being within the meaning of this Act when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the navel string is severed or not.

(2) The killing of such a child is homicide if it dies in consequence of injuries received before, during, or after birth.

133 Culpable homicide

(1) Homicide may be either culpable or not culpable.

(2) Homicide is culpable when it consists in the killing of any person ó

(a) By an unlawful act; or

(b) By an omission without lawful excuse to perform or observe any legal duty; or

(c) By both combined; or

(d) By causing that person by threats or fear of violence, or by deception, to do an act which causes his death; or

(e) By wilfully frightening that person, if he is a child under the age of 16 years or is sick or infirm.

(3) Culpable homicide is either murder or manslaughter.

(4) Homicide that is not culpable is not an offence.

134 Murder

Culpable homicide is murder in each of the following cases:

(a) If the offender means to cause the death of the person killed;

(b) If the offender means to cause to the person killed any bodily injury that is known to the offender to be likely to cause death, and is reckless whether death ensues or not;

(c) If the offender means to cause death, or, being so reckless as aforesaid, means to cause such bodily injury as aforesaid to one person, and by accident or mistake kills another person, though he does not mean to hurt the person killed;

(d) If the offender for any unlawful object does an act that he knows to be likely to cause death, and thereby kills any person though he may have desired that his object should be effected without hurting anyone.

135 Further definition of murder

(1) Culpable homicide is also murder in each of the following cases, whether the offender means or does not mean death to ensue, or knows or does not know that death is likely to ensue ó

(a) If he means to inflict grievous bodily injury for the purpose of facilitating the commission of any of the offences mentioned in subsection (2) or the flight of the offender upon the commission or attempted commission of it, or for the purpose of resisting lawful apprehension in respect of any other offence whatsoever, and death ensues from such injury;

(b) If he administers any stupefying or overpowering thing for any of the purposes aforesaid, and death ensues from the effects of it;

(c) If he by any means wilfully stops the breath of any person for any of the purposes aforesaid, and death ensues from such stopping of the breath.

(2) The offences referred to in subsection (1) are those within the meaning of the following provisions ó

(a) Section 134 (murder);

(b) Section 158 (resisting a constable in the execution of his duty or any person acting in aid of any constable);

(c) Section 159 (abduction of girl under 15);

(d) Section 162 (rape);

(e) Sections 184 to 186 (escape or rescue from prison or lawful custody);

(f) Section 195 (robbery);

(g) Section 204 (burglary);

(h) Section 212 (arson).

136 Provocation

(1) Culpable homicide that would otherwise be murder may be reduced to manslaughter if the person who caused the death did so under provocation.

(2) Anything done or said may be provocation if ó

(a) In the circumstances of the case it was sufficient to deprive a person having the power of self-control of an ordinary person, but otherwise having the characteristics of the person charged, of the power of self-control; and

(b) It did in fact deprive the person charged of the power of self-control and thereby induced him to commit the act of homicide.

(3) Whether there is any evidence of provocation is a question of law.

(4) Whether, if there is evidence of provocation, the provocation was sufficient as aforesaid, and whether it did in fact deprive the person charged of the power of self-control and thereby induced him to commit the act of homicide, are questions of fact.

(5) No one shall be held to give provocation to another by lawfully exercising any power conferred by law, or by doing anything which the person charged incited him to do in order to provide the person charged with an excuse for killing or doing bodily harm to any person.

(6) This section shall apply in any case where the provocation was given by the person killed, and also in any case where the person charged, under provocation given by one person, by accident or mistake killed another person.

(7) The fact that by virtue of this section one party to a homicide has not been or is not liable to be convicted of murder shall not affect the question whether the homicide amounted to murder in the case of any other party to it.

137 Illegal arrest may be evidence of provocation

An arrest shall not necessarily reduce the offence from murder to manslaughter because the arrest was illegal, but if the illegality was known to the person charged it may be evidence of provocation.

138 Punishment of murder

Every one who commits murder shall upon conviction of it be sentenced to imprisonment for life.

139 Manslaughter

Culpable homicide not amounting to murder is manslaughter.

140 Punishment of manslaughter

Every one who commits manslaughter is liable to imprisonment for a term not exceeding 14 years.

141 Omissions dangerous to life

Every one who undertakes, whether by a legally binding contract or otherwise, to do any act the omission of which is or may be dangerous to life is under a legal duty to do that act, and is criminally responsible for the consequences of omitting without lawful excuse to discharge that duty.

142 Duty to provide the necessaries of life

(1) Everyone who has charge of any other person unable, by reason of detention, age, sickness, insanity, or any other cause, to withdraw himself from such charge, and unable to provide himself with the necessaries of life, is (whether such charge is undertaken by him

under any contract or is imposed upon him by law or by reason of his unlawful act or otherwise howsoever) under a legal duty to supply that person with the necessaries of life, and is criminally responsible for omitting, without lawful excuse to perform such duty if the death of that person is caused, or if his life is endangered or his health permanently injured, by such omission.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who, without lawful excuse, neglects the duty specified in this section so that the life of the person under his charge is endangered or his health permanently injured by such neglect.

143 Duty of parent or guardian to provide necessaries

(1) Every one who as a parent or person in place of a parent is under a legal duty to provide necessaries for any child under the age of 16 years, being a child in his actual custody, is criminally responsible for omitting without lawful excuse to do so, whether the child is helpless or not, if the death of the child is caused, or if his life is endangered or his health permanently injured, by such omission.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who, without lawful excuse, neglects the duty specified in this section so that the life of the child is endangered or his health permanently injured by such neglect.

144 Liability for dangerous things

Every one who has in his charge or under his control anything whatever, whether animate or inanimate, or who erects, makes, or maintains anything whatever, which in the absence of precaution or care may endanger human life is under a legal duty to take reasonable precautions against and to use reasonable care to avoid such danger, and is criminally responsible for the consequences of omitting without lawful excuse to perform that duty.

145 Hastening death

Every one who hastens the death of any person from any disease or disorder from which he is already suffering shall be deemed to have caused the death of that person.

146 Indirect cause of death

Every one whose act or omission results in the death of any person shall be deemed to have caused his death, although the immediate cause of death is the act or omission of some other person or some other independent intervening event.

147 Attempted murder

Every one who attempts to commit murder is liable to imprisonment for a term not exceeding 14 years.

148 Conspiracy and inciting to murder

Every one is liable to imprisonment for a term not exceeding 10 years, who ó

- (a) Conspires with any person to murder any person; or
- (b) Incites any person to commit murder.

149 Counselling suicide

Every one is liable to imprisonment for a term not exceeding 14 years who counsels or procures any person to commit suicide, if that person actually commits suicide in consequence, or who aids or abets any person in the commission of suicide.

150 Concealment of birth

Every one is liable to imprisonment for a term not exceeding 2 years who disposes of the dead body of any child in any manner with intent to conceal the fact that its mother was delivered of it, whether the child died before, or during, or after birth.

151 Grievous bodily harm

Every one is liable to imprisonment for a term not exceeding 7 years who wilfully and without lawful justification causes grievous bodily harm to any person.

152 Actual bodily harm

Every one is liable to imprisonment for a term not exceeding 2 years who wilfully and without lawful justification causes actual bodily harm to any person.

153 Omissions resulting in bodily harm

Every one is liable to imprisonment for a term not exceeding 2 years who by any act or omission causes bodily harm to any person under such circumstances that, if death had been caused, he would have been guilty of manslaughter.

154 Intentionally endangering persons on aerodromes

Every one is liable to imprisonment for a term not exceeding 14 years who, with intent to injure or endanger the safety of any person on any aerodrome or in any aircraft ó

- (a) Places anything upon or across any aerodrome; or
- (b) Does any act likely to interfere with, injure, endanger, or obstructs any aircraft; or
- (c) Shoots or throws anything at any person in any aircraft or at, into, or upon, or causes anything to come in contact with, any aircraft; or
- (d) Does anything whatever to any part of any aerodrome or to any machinery or signal belonging to or near to any aerodrome or to any aircraft on, or about to land on or take off from, any aerodrome; or
- (e) Deals in any way with any signal or light on or near to any aerodrome, or makes or

shows any false signal or light or makes any sign whatever on or near to any aerodrome; or

(f) Wilfully omits to do any act which it is his duty to do.

155 Wantonly endangering persons on aerodromes

Every one is liable to imprisonment for a term not exceeding 2 years who unlawfully and wilfully, in a manner likely to injure or endanger the safety of any person on any aerodrome or in any aircraft, 6

(a) By any act, omission, or neglect endangers or obstructs any aircraft; or

(b) Does any act likely to interfere with or to cause injury to any aircraft; or

(c) Shoots or throws anything at any person in any aircraft or at, into, or upon, or causes anything to come in contact with, any aircraft; or

(d) Does anything whatever to any part of any aerodrome or to any machinery or signal belonging to or near to any aerodrome or to any aircraft on, or about to land on or take off from, any aerodrome; or

(e) Deals in any way with any signal or light on or near to any aerodrome, or makes or shows any false signal or light or makes any sign whatever on or near to any aerodrome; or

(f) By any culpable neglect of duty endangers the safety of any person conveyed in any aircraft.

156 Indecent assault

Every one who indecently assaults any woman or girl is liable to imprisonment for a term not exceeding 5 years.

157 Assault

Every one who commits an assault on any person is liable to imprisonment for a term not exceeding one year.

157A Cruelty to a child

Every one is liable to imprisonment for a term not exceeding 5 years who, having the custody, control, or charge of a child under the age of 16 years, wilfully ill-treats or wilfully neglects the child, or wilfully permits the child to be ill-treated or neglected, in a manner likely to cause the child unnecessary suffering, actual bodily harm, injury to health, or mental disorder, or to incur any other unnecessary physical or mental disability.

158 Resisting constable in execution of his duty

Every one is liable to imprisonment for a term not exceeding 6 months or to a fine not

exceeding 0.5 penalty units who resists or assaults or wilfully obstructs, or incites or encourages any person to resist or assault or obstruct, any constable in the execution of his duty, or any person acting in aid of any constable.

159 Abduction of girl under 15

(1) Every one is liable to imprisonment for a term not exceeding 2 years who, without the consent of the father or mother or other person having lawful charge of an unmarried girl under the age of 15 years, or without other lawful authority (the proof of which shall lie on him), takes that girl or causes her to be taken out of the possession of her father or mother or such other person as aforesaid.

(2) It shall be no defence in a prosecution for an offence against this section that the girl was taken with her own consent, or at her own suggestion, or that the offender believed the girl to be of or over the age of 15 years.

(3) No proceedings for an offence against this section shall be taken in the event of the subsequent intermarriage of the offender and the girl in respect of whom the offence has been committed.

160 Abduction of children

(1) Every one is liable to imprisonment for a term not exceeding 2 years who, with intent to deprive any parent or guardian or other person having the lawful charge of any child under the age of 14 years of the possession of that child, unlawfully ó

(a) Takes or entices away or detains the child; or

(b) Receives the child knowing it to have been so dealt with.

(2) Nothing in this section shall extend to any one who gets possession of any child claiming in good faith a right to the possession of the child.

161 Sexual intercourse

For the purposes of this Part, sexual intercourse is complete upon penetration; and there shall be no presumption of law that any person is by reason of his age incapable of such intercourse.

162 Rape

(1) Rape is the act of a male person having sexual intercourse with a woman or girl ó

(a) Without her consent; or

(b) With consent extorted by threats or fear of bodily harm; or

(c) With consent obtained by personating her husband; or

(d) With consent obtained by false and fraudulent representations as to the nature and

quality of the act.

(2) Every one who commits rape is liable to imprisonment for a term not exceeding 14 years.

(3) Every one is liable to imprisonment for a term not exceeding 10 years who attempts to commit rape or who assaults any person with intent to commit rape.

(4) Notwithstanding anything in subsection (1), no man shall be convicted of rape or attempting to commit rape or assaulting with intent to commit rape in respect of his wife, unless at the time of the intercourse or attempt a separation order granted in Niue or New Zealand was in force in respect of the marriage.

163 Sexual intercourse or indecency with girl under 12

(1) Every one is liable to imprisonment for a term not exceeding 10 years who ó

(a) Has sexual intercourse with any girl under the age of 12 years; or

(b) Attempts to have sexual intercourse with a girl under the age of 12 years; or

(c) Indecently assaults any girl under the age of 12 years; or

(d) Being a male, does any indecent act with or upon any girl under the age of 12 years; or

(e) Being a male, induces or permits any girl under the age of 12 years to do any indecent act with or upon him.

(2) It is no defence to a charge under this section that the girl consented, or that the person charged believed that she was of or over the age of 12 years.

(3) The girl shall not be charged as a party to an offence committed upon or with her against this section.

164 Sexual intercourse or indecency with girl between 12 and 15

(1) Every one is liable to imprisonment for a term not exceeding 3 years who ó

(a) Has or attempts to have sexual intercourse with any girl of or over the age of 12 years and under the age of 15 years, not being his wife; or

(b) Indecently assaults any such girl; or

(c) Being a male, does any indecent act with or upon any such girl;

(d) Being a male, induces or permits any such girl to do any indecent act with or upon him.

(2) It is no defence to a charge under this section that the girl consented, or that the person charged believed that the girl was of or over the age of 15 years.

(3) The girl shall not be charged as a party to an offence committed upon or with her against this section.

165 Sexual intercourse with woman or girl who is an idiot or imbecile or of unsound mind

Every one is liable to imprisonment for a term not exceeding 2 years who has or attempts to have sexual intercourse with any woman or girl who is an idiot or an imbecile or of unsound mind, if he knows or has good reason to believe that she is an idiot or an imbecile or of unsound mind.

166 Procuring miscarriage of woman or girl

Every one is liable to imprisonment for a term not exceeding 2 years who, with intent to procure the miscarriage of any woman or girl, unlawfully administers to or causes to be taken by her any poison or any drug or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent.

167 Act of woman or girl procuring her own miscarriage

Every woman or girl is liable to imprisonment for a term not exceeding one year who, whether with child or not, unlawfully administers to herself or permits to be administered to her any poison or any drug or other noxious thing, or unlawfully uses on herself or permits to be used on her any instrument or other means whatsoever, with intent to procure miscarriage.

168 Supplying means of miscarriage

Every one is liable to imprisonment for a term not exceeding 2 years who unlawfully supplies or procures any poison or any drug or other noxious thing, or any instrument or thing whatsoever, knowing that it is intended to be unlawfully used with intent to procure the miscarriage of any woman or girl.

169 Bigamy

(1) Every one who commits bigamy is liable to imprisonment for a term not exceeding 5 years.

(2) Bigamy is ó

(a) The act of a person who being married goes through a valid form of marriage with any other person; or

(b) The act of a person who goes through a valid form of marriage with any person whom he or she knows to be married.

(3) The fact that the parties would, if unmarried, have been incompetent to contract marriage is not a defence upon a prosecution for bigamy.

(4) Every form of marriage shall for the purposes of this section be deemed valid,

notwithstanding any act or default of the person charged with bigamy, if it is otherwise a valid form.

170 Buggery

(1) Every one is liable to imprisonment for 10 years who commits buggery either with a human being or with any other living creature.

(2) This offence is complete upon penetration.

171 Attempted buggery and indecent assaults on males

(1) Every one is liable to imprisonment for 5 years who ó

(a) Attempts to commit buggery; or

(b) Assaults any person with intent to commit buggery; or

(c) Being a male, indecently assaults any other male person.

(2) It is no defence to a charge of indecent assault on a male person of any age that he consented to the act of indecency.

172 Incest

(1) Incest means sexual intercourse between ó

(a) Parent and child; or

(b) Brother and sister, whether of the whole blood or of the half blood, and whether the relationship is traced through lawful wedlock or not; or

(c) Grandparent and grandchild, whether the relationship is traced through lawful wedlock or not ó

where the person charged knows of the relationship between the parties.

(2) Every one of or over the age of 15 years who commits incest is liable to imprisonment for a term not exceeding 7 years.

173 Indecent acts

(1) Every one is liable to imprisonment for a term not exceeding 6 months who wilfully does any indecent act in any public place or within the view of any person being in any public place.

(2) It is a defence to a charge under subsection (1) if the person charged proves that he had reasonable grounds for believing that he would not be observed.

(3) Every one is liable to imprisonment for a term not exceeding 6 months who with intent to

insult or offend any person does any indecent act in any place.

174 Indecent documents

Every one is liable to imprisonment for a term not exceeding 6 months who, knowingly and without lawful justification or excuse ó

(a) Sells, exposes for sale, or otherwise distributes to the public any obscene or indecent book, picture, photograph, document, film, video-tape, or other object tending to corrupt morals; or

(b) Publicly exhibits any obscene or indecent show tending to corrupt morals.

175 Brothels

(1) Every one who keeps a brothel is liable to imprisonment for a term not exceeding 6 months.

(2) A brothel is a house, room, or place of any kind whatever kept or used for purposes of prostitution.

(3) Any one who acts as a person having the management, care, or control of a brothel shall be deemed to be a keeper thereof, whether he is in fact a keeper of it or not.

(4) The owner or occupier of any house, room, or place who knowingly permits it to be used as a brothel shall be deemed to be a keeper of it, whether he is in fact a keeper of it or not.

176 Gaming houses

(1) Every one who keeps a gaming house is liable to imprisonment for a term not exceeding 6 months.

(2) A gaming house is a house, room, or place of any kind whatever kept or used as a place of resort for gambling.

(3) "Gambling" means playing for money or other valuable thing at any game of chance, or playing for excessive stakes or otherwise to the injury of public morals at any game of mixed chance and skill; and includes any form of unlawful gaming.

(4) Any one who acts as a person having the management, care, or control of a gaming house shall be deemed to be a keeper of it, whether he is in fact a keeper of it or not.

(5) The owner or occupier of any house, room, or place who knowingly permits it to be used as a gaming house shall be deemed to be a keeper of it whether he is in fact a keeper of it or not.

176A Powers to permit gambling

Notwithstanding section 176 Cabinet may make regulations to permit certain gambling activities to be carried out in Niue, within certain guidelines and to prescribe fees and

offences in respect of such activities.

177 Riot

(1) Every one who takes part in a riot is liable to imprisonment for a term not exceeding 2 years.

(2) A riot is an assembly of 3 or more persons who, with intent to carry out any common purpose, disturb the peace tumultuously.

178 Forcible entry

Every one is liable to imprisonment for a term not exceeding 6 months who, by force or threats of force, enters on land then in the actual and peaceable possession of another for the purpose of taking possession of it, whether he who so enters is entitled to the possession of it or not.

179 Affrays

(1) Every one who, without lawful justification or excuse, takes part in an affray is liable to imprisonment for a term not exceeding one year.

(2) An affray is the act of fighting in a public highway or in any other public place.

CRIMES AFFECTING THE ADMINISTRATION OF LAW AND JUSTICE

Bribery and Corruption

180 Interpretation

In this Part -

"bribe" means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect;

"judicial officer" means a Judge or Commissioner of any court, Coroner, or Justice of the Peace, or any other person holding any judicial office, or any person who is a member of any tribunal authorised by law to take evidence on oath;

"law enforcement officer" means any constable, or any person employed in the detection or prosecution or punishment of offenders;

"official" means any person in the service of Her Majesty in Niue (whether that service is honorary or not, and whether it is within or outside of Niue), or any member or employee of any local authority or public body.

180A Judicial corruption

(1) Every judicial officer is liable to imprisonment for a term not exceeding 14 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for

himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his judicial capacity.

(2) Every judicial officer, and every Registrar or Deputy Registrar of any court is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity, not being an act or omission to which subsection (1) applies.

180B Bribery of judicial officer

(1) Every one is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer in respect of any act or omission by him in his judicial capacity.

(2) Every one is liable to imprisonment for a term not exceeding 5 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer or any Registrar or Deputy Registrar of any court in respect of any act or omission by him in his official capacity, not being an act or omission to which subsection (1) applies.

180C Corruption and bribery of Minister

(1) Every Minister or member of the executive authority is liable to imprisonment for a term not exceeding 14 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his capacity as a Minister or member of the executive authority.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any Minister or member of the executive authority in respect of any act or omission by him in his capacity as a Minister or member of the executive authority.

(3) No one shall be prosecuted for an offence against this section without the leave of a Judge or Commissioner of the Court.

180D Corruption and bribery of member of Assembly

(1) Every member of the Assembly is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his capacity as a member of the Assembly.

(2) Every one is liable to imprisonment for a term not exceeding 3 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any member of the Assembly in respect of any act or omission by him in his capacity as a member of the Assembly.

(3) No one shall be prosecuted for an offence against this section without the leave of a Judge or Commissioner of the Court.

180E Corruption and bribery of law enforcement officer

(1) Every law enforcement officer is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity.

(2) Every one is liable to imprisonment for a term not exceeding 3 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any law enforcement officer in respect of any act or omission by him in his official capacity.

180F Corruption and bribery of official

(1) Every official is liable to imprisonment for a term not exceeding 7 years who, whether within Niue or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity.

(2) Every one is liable to imprisonment for a term not exceeding 3 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any official in respect of any act or omission by him in his official capacity.

180G Corrupt use of official information

Every official is liable to imprisonment for a term not exceeding 7 years who, whether within Niue or elsewhere, corruptly uses or discloses any information, acquired by him in his official capacity, to obtain, directly or indirectly, an advantage or pecuniary gain for himself or any other person.

180H Restrictions on prosecutions

No one shall be prosecuted for an offence against sections 180A, 180B, 180E, 180F and 180G without the leave of the Minister of Justice, who before giving leave may make such inquiries as he thinks fit.

181 Perjury

(1) Perjury is an assertion as to a matter of fact, opinion, belief, or knowledge made by a witness in a judicial proceeding as part of his evidence upon oath or affirmation, whether his evidence is given in open court or by affidavit or otherwise, that assertion being known to the witness to be false.

(2) Every proceeding is judicial within the meaning of this section which is held before any court, or before any judicial officer or other person having power to take evidence on oath or affirmation.

(3) Every one is liable to imprisonment for a term not exceeding 5 years who commits perjury.

182 Fabricating evidence

Every one is liable to imprisonment for a term not exceeding 3 years who, with intent to mislead any court or any judicial officer in the exercise of his functions as such, fabricates evidence by any means other than perjury.

183 Conspiracy to pervert justice

Every one is liable to imprisonment for a term not exceeding 3 years who conspires or attempts to obstruct, prevent, pervert, or defeat the course of justice in any cause or matter, civil or criminal.

184 Breaking prison

Every one is liable to imprisonment for a term not exceeding 5 years who by force breaks any prison with intent to set at liberty himself or any other person confined there.

185 Escape

Every one is liable to imprisonment for a term not exceeding 2 years who, being in lawful custody, whether in a prison or elsewhere, escapes.

186 Rescue

Every one is liable to imprisonment for a term not exceeding 2 years who rescues any person from lawful custody, whether in a prison or elsewhere, or who assists any person to escape from such custody.

187 Criminal libel or slander

(1) A criminal libel is matter published, without lawful justification or excuse, either designed to insult any person or likely to injure his reputation by exposing him to hatred, contempt, or ridicule or likely to injure him in his profession, office, business, trade, or occupation, whether such matter is expressed by words, written or printed, or legibly marked on any substance, or by any object signifying such matter otherwise than by words, and whether expressed directly or by insinuation or irony.

(2) Publishing a criminal libel is ó

(a) Exhibiting it in public; or

(b) Causing it to be read or seen, or showing or delivering it, or causing it to be shown or delivered, with a view to its being read or seen, by any person other than the person defamed.

(3) Every one is guilty of criminal slander who, without lawful justification or excuse, uses any words that are likely to injure the reputation of any other person by exposing him to hatred, contempt, or ridicule, or likely to injure him in his profession, office, business, trade, or occupation, if the words are ó

(a) Spoken, or reproduced from a recording, within the hearing of more than 12 persons at a meeting to which the public are invited or have access, or within the hearing of more than 12 persons in any place to which the public have or are permitted to have access; or

(b) Broadcast by means of radio.

(4) Every one who publishes a criminal libel or is guilty of criminal slander is liable to imprisonment for a term not exceeding 6 months.

(5) In a prosecution under this section the burden of proof shall be determined by the same rules as in an action for damages for defamation.

(6) In a prosecution under this section it shall be no defence that the libel or slander is true unless the publication of it was for the public benefit.

188 Definition of theft

(1) Theft or stealing is the act of fraudulently or dishonestly taking, or converting to the use of any person, or misappropriating or disposing of, or dealing in any other manner with, anything capable of being stolen, with intent to defraud or injure any person having any property or interest in that thing.

(2) Every animate or inanimate thing whatever which is the property of any person, and is movable, is capable of being stolen.

(3) Every thing whatever which is the property of any person and is capable of being made movable is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

189 Ineffectual defences to charge of theft

Without in any way limiting the generality of the foregoing definition of theft, a person shall be deemed guilty of theft notwithstanding the fact ó

(a) That at the time of the theft he was in lawful possession of the property stolen; or

(b) That he had himself a lawful interest in the property stolen, whether as a partner, co-owner, bailee, bailor, mortgagee, mortgagor, or otherwise howsoever; or

(c) That he was a trustee of the property stolen; or

(d) That the property stolen was vested in him as an executor or administrator.

190 Extended definition of theft

Without in any way limiting the generality of the foregoing definition of theft, every person shall be deemed guilty of theft who holds, receives, or obtains any money, valuable security, or other thing whatsoever capable of being stolen, subject to any obligation (whether arising

from an express or implied trust, or from an express or implied contract, or from any other source whatsoever) to deal with the money, valuable security, or thing in any manner, and who fraudulently or dishonestly deals with it in any other manner or fails to deal with it under that obligation.

191 Obtaining money or goods by false pretences

Every one who by means of any fraud or false pretence dishonestly obtains for himself or for any other person (whether directly or through the medium of any contract procured by the fraud or false pretence) anything capable of being stolen is guilty of stealing the thing so obtained, and shall be liable accordingly.

192 Punishment of theft

(1) Every one who commits theft is liable ó

(a) To imprisonment for a term not exceeding 3 months if the value of the property stolen does not exceed 4 dollars;

(b) To imprisonment for a term not exceeding one year if the value of the property stolen exceeds 4 dollars but does not exceed 100 dollars;

(c) To imprisonment for a term not exceeding 5 years if the value of the property stolen exceeds 100 dollars.

(2) In computing for the purposes of this section the value of the property stolen, where several thefts are charged in the same information against the same person, the aggregate value of all such property shall be computed, and the sentence shall be determined accordingly, and cumulative sentences in respect of the several thefts so charged shall not be imposed.

(3) For the purposes of this section a valuable security shall be deemed to be of the same value as the property to which it relates.

193 Stealing documents

(1) Every one who destroys, cancels, conceals, or obliterates in whole or in part any document for any fraudulent or dishonest purpose is guilty of having stolen that document, and is liable to imprisonment for a term not exceeding 3 years.

(2) Every one who in this or any other manner steals a testamentary instrument is liable to imprisonment for a term not exceeding 10 years.

194 Receiving stolen goods

Every one who receives any stolen property knowing it to have been stolen is guilty of having stolen the property, and is liable accordingly.

195 Robbery

(1) Robbery is theft accompanied by violence or threats of violence to any person or property, used to extort the property stolen or to prevent or overcome resistance to its being stolen.

(2) Every one who commits robbery is liable to imprisonment for a term not exceeding 10 years.

(3) Every one who assaults any person with intent to rob him is liable to imprisonment for a term not exceeding 5 years.

196 Conversion or attempted conversion

(1) Every one is liable to imprisonment for a term not exceeding 5 years who, unlawfully and without colour of right, but not so as to be guilty of theft, takes or converts to his use or to the use of any other person any of the following things ó

(a) Any motorcar, or any vehicle of any description;

(b) Any ship;

(c) Any aircraft;

(d) Any part of any motorcar, vehicle, ship or aircraft;

(e) Any horse, mare, or gelding.

(2) Every one is liable to imprisonment for a term not exceeding one year who ó

(a) Has in his possession by night any instrument, being an instrument capable of being used for taking or converting any of the things mentioned in subsection (1)(a) to (d), in circumstances that, prima facie, show an intention to use it for the taking or converting of any such thing as aforesaid;

(b) Has in his possession by day any such instrument as aforesaid with intent to take or convert any such thing as aforesaid.

(3) It is a defence to a charge under subsection (2) (a) if the person charged proves that he had lawful excuse for having the instrument in his possession.

197 Breach of trust

(1) Every trustee who with intent to defraud, and in violation of his trust, converts anything of which he is a trustee to any use not authorised by the trust is guilty of criminal breach of trust, and is liable to imprisonment for a term not exceeding 5 years.

(2) For the purposes of this section an executor or administrator shall be deemed to be a trustee of the property subject to his administration.

(3) Nothing in this section shall be so construed as in any manner to limit the foregoing definition of the offence of theft, and if any act of a trustee is both theft and a criminal breach of trust he may be convicted of either of those offences.

198 Menaces

Every one is liable to imprisonment for a term not exceeding 2 years who with menaces demands from any person, either for himself or for any other person, anything capable of being stolen, with intent to steal it.

199 Witchcraft

Every one is liable to imprisonment for a term not exceeding 6 months who pretends to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration, or undertakes to tell fortunes.

200 Obtaining credit by fraud

Every one is liable to imprisonment for a term not exceeding 6 months who in incurring any debt or liability obtains credit by means of any fraud.

201 Accusation of criminal offences

Every one is liable to imprisonment for a term not exceeding 5 years who ó

- (a) With intent to extort or gain anything from any person, accuses or threatens to accuse either that person or any other person of any criminal offence, whether the person accused or threatened with accusation is guilty of that offence or not; or
- (b) With such intent as aforesaid, threatens that any person shall be so accused by any person; or
- (c) Causes any person to receive a document containing any such accusation or threat, knowing the contents thereof.

202 Conspiracy to defraud

Every one is liable to imprisonment for a term not exceeding 3 years who conspires with any other person by deceit or falsehood or other fraudulent means to defraud the public or any person ascertained or unascertained.

203 Obtaining execution of valuable securities by fraud

Every one is liable to imprisonment for a term not exceeding 3 years who by any false pretence causes or induces any person to execute, make, accept, endorse, or destroy the whole or any part of any valuable security.

204 Burglary

(1) Every one is guilty of burglary and is liable to imprisonment for a term not exceeding 5 years who by day or night ó

- (a) Breaks and enters any building or ship with intent to commit a crime there; or

(b) Breaks out of any building or ship either after committing a crime there or after having entered with intent to commit a crime there.

(2) In this section ó

"break", in relation to any building or ship, means to break any part, internal or external, of the building or ship, or to open by any means whatsoever any door, window, or other thing intended to cover openings to the building or ship or to give passage from one part of it to another;

"building" means any building, erection, or structure of any description, whether permanent or temporary, and includes a tent or a caravan, and also includes any enclosed yard or any closed cave or tunnel.

205 Unlawful entry of dwelling house

(1) Every one is liable to imprisonment for a term not exceeding 5 years who unlawfully enters or is in any dwelling house by night with intent to commit a criminal offence there or who is found by night in any dwelling house without lawful justification for his presence there.

(2) Every one is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding 0.5 penalty units who without lawful excuse (the proof of which excuse shall be on him), but in circumstances that do not disclose the commission of or an intention to commit any other offence, is found at any time in any dwelling house, or in any enclosed yard, garden, or area or in or on board any vessel of any kind or any aircraft.

(3) In this section ó

"dwelling house" means ó

(a) Any building, hut, tent, caravan, or other structure or erection, whether permanent or temporary, which is used or intended to be used in whole or in part for human habitation or occupation; or

(b) Any building, public or private, which is used or intended to be used in whole or in part for the purpose of education or the reception or lodging of any person for medical treatment or recuperation or entertainment or any other purpose;

"night" means the time commencing on the expiration of the first half hour after sunset and concluding at the beginning of the last hour before sunrise.

205A Entering premises for a criminal purpose

Every one is liable to imprisonment for a term not exceeding 4 years who unlawfully enters or is in any building, ship, or aircraft with intent to commit there any criminal offence mentioned in this Part.

206 Threats to kill or do bodily harm

Every one is liable to imprisonment for a term not exceeding 5 years who sends or causes to be received, knowing the contents of it, any letter or writing containing threats to kill or do bodily harm to any person, or who orally makes a threat to kill or do bodily harm to any person.

207 Forgery

(1) Forgery is the making of a false document with intent to defraud or deceive any person, whether ascertained or unascertained.

(2) Every one who commits forgery is liable to imprisonment for a term not exceeding 5 years.

(3) In this section "false document" means a document ó

(a) Of which the whole or any material part purports to be made by any person who did not make it or authorise its making; or

(b) Of which the whole or any material part purports to be made on behalf of any person who did not authorise its making; or

(c) In which, though it purports to be made by the person who did in fact make it or authorise its making, or purports to be made on behalf of the person who did in fact authorise its making, the time or place of its making, where either is material, or any number or distinguishing mark identifying the document, where either is material, is falsely stated; or

(d) Of which the whole or some material part purports to be made by a fictitious or deceased person, or purports to be made on behalf of any such person; or

(e) Which is made in the name of an existing person either by him or by his authority, with the intention that it should pass as being made by some person, real or fictitious, other than the person who makes or authorises it.

(4) In this section, "making a false document" includes making any material alteration in a genuine document, whether by addition, insertion, obliteration, erasure, removal, or otherwise.

(5) Forgery is complete as soon as the document is made with such knowledge and intent as aforesaid, although the offender may not have intended that any particular person should use or act upon it as genuine, or should be induced by the belief that it is genuine to do or refrain from doing anything.

(6) Forgery is complete although the false document may be incomplete, or may not purport to be such a document as would be valid in law, if it be so made and is such as to indicate that it was intended to be acted on as genuine.

208 Extended definition of forgery

Every one who procures the execution of any document by any person by falsely pretending that its contents are different from what they really are is guilty of forging that document, and is liable accordingly.

209 Making counterfeit coin

Every one is liable to imprisonment for a term not exceeding 7 years who makes or begins to make counterfeit coin of New Zealand or of any other country, or who has in his possession any dies or other instruments or materials intended to be used in the making of such counterfeit coin.

210 Lightening coin

Every one is liable to imprisonment for a term not exceeding 2 years who diminishes or lightens any coin, whether of New Zealand or of any other country, with intent that when so dealt with it shall pass as current coin either in Niue or New Zealand or elsewhere.

211 Uttering counterfeit coin

Every one who fraudulently utters any counterfeit coin is liable to imprisonment for a term not exceeding 6 months.

212 Arson

(1) Arson is the offence of wilfully, and without lawful justification and without bona fide claim of right, setting fire to any building, ship, crop, chattel, or other thing whatsoever, whether attached to the soil or not.

(2) Where the act done results in the destruction of or any damage to anything in which the person accused has an interest, whether total or partial, the existence of that interest shall not prevent his act being an offence if it is done with intent to defraud or to cause loss to any other person. For the purposes of this subsection, where any property is subject to any mortgage or charge, each of the parties to the mortgage or charge shall be deemed to have a partial interest in that property.

(3) Every one who commits the offence of arson is liable to imprisonment for a term not exceeding 5 years.

213 Wilful mischief to property

(1) Every one is guilty of an offence who wilfully and without lawful justification and without bona fide claim of right destroys or damages any property, whether movable or immovable.

(2) Where the act done results in the destruction of or any damage to anything in which the person accused has an interest, whether total or partial, the existence of that interest shall not prevent his act being an offence if it is done with intent to defraud or to cause loss to any other person. For the purposes of this subsection, where any property is subject to any mortgage or charge, each of the parties to the mortgage or charge shall be deemed to have a

partial interest in that property.

(3) Every person who commits an offence against this section is liable to imprisonment for a term not exceeding 3 years if the damage done or intended to be done by him amounts to \$20 or more, and to imprisonment for a term not exceeding 6 months in any other case.

214 Provoking breach of the peace

Every one is liable to a fine not exceeding 0.5 penalty units who uses any threatening, abusive, or insulting words or behaviour in any public place with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned.

215 Profane, indecent, or obscene language

Every one is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding 0.5 penalty units who uses any profane, indecent, or obscene language in any public place or within the hearing of any person in a public place.

216 Disorderly conduct in public places

Every one is liable to a fine not exceeding 0.5 penalty units who is guilty of any disorderly conduct in any public place to the annoyance of persons there present.

217 Obstructing public place

Every one is liable to a fine not exceeding 0.5 penalty units who without lawful justification obstructs any public place, or creates any source of danger in it, or otherwise commits any public nuisance in it.

218 Drunkenness

Every one is liable to imprisonment for a term not exceeding one month or to a fine not exceeding 0.5 penalty units who is found drunk in any public place.

219 Animal trespass

(1) A person must not permit a horse, sheep, pig, goat, or cattle to wander or be at large in a public place or to trespass on land.

(2) A person who fails to comply with subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding 2 penalty units or for a second or subsequent offence to a fine not exceeding 5 penalty units.

220 Prostitution

Any prostitute is liable to imprisonment for a term not exceeding one month or to a fine not exceeding 0.5 penalty units who loiters and importunes any person in any public place for the purpose of prostitution.

221 Laying poison

Every one is liable to a fine not exceeding 0.5 penalty units who without lawful justification places any poison in any place so as to be a source of danger to human beings or to animals.

222 Polluting water

Every one is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding 1 penalty unit who throws any offensive matter into or otherwise pollutes any watercourse, well, cistern, or other place from which the supply of water for the use of the inhabitants is obtained.

223 Sale of unwholesome provisions

Every one is liable to imprisonment for a term not exceeding one month or to a fine not exceeding 0.5 penalty units who sells, or exposes for sale, or has in his possession with intent to sell, any food or drink which he knows, or might by the exercise of reasonable care have known, to be unwholesome.

224 Insanitary premises

Every one is liable to a fine not exceeding 0.5 penalty units who permits any premises in his occupation or belonging to him to be in an insanitary or offensive condition to the danger or annoyance of the public or of his neighbours.

225 Wilful trespass

Every one is liable to a fine not exceeding 0.5 penalty units who wilfully trespasses on land in the occupation of any other person.

226 Cruelty to animals

(1) A person must not ó

(a) cruelly beat, overdrive, overload, abuse, torture, or otherwise ill treat an animal, or

(b) being the owner or having the charge of an animal ó

(i) omit to supply it with proper and sufficient food, water, or shelter; or

(ii) abandon the animal with the intention of relinquishing ownership or charge of it.

(2) A person who fails to comply with subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding 2 penalty units or for a second or subsequent offence to a fine not exceeding 5 penalty units.

(3) It is not a defence for a person charged with an offence under subsection (1)(b)(ii) to prove that the animal to which the charge relates was abandoned on land in which that person had an interest.

(4) In this section "animal" means any beast or bird of any species whatever.

227 Falsely trading as a company

(1) Every one is liable to a fine not exceeding 2 penalty units who uses in connection with his trade or business any name, sign, device, or other representation indicating or calculated to lead other persons to believe contrary to the fact that the trade or business is that of an incorporated company.

(2) In any prosecution for an offence against this section the burden of proving that the incorporated company exists and that the trade or business so carried on is the trade or business of that company shall be upon the accused.

228 Conspiracy

Every one who conspires with any other person to commit any offence punishable by imprisonment is liable to imprisonment for a term not exceeding half the longest term to which a person committing the said offence may be sentenced.

228A Wrongful communication, retention or copying of official information

(1) Everyone is liable to imprisonment for a term not exceeding 3 years who ó

(a) Knowingly or recklessly, and with knowledge that he is acting without proper authority, communicates any official information to any other person, or uses directly or indirectly any official information for any purpose whatsoever where such disclosure or use is contrary to the interests of Niue;

(b) Knowingly or recklessly, and with knowledge that he is acting without proper authority, retains or copies official information, or permits any other person to retain or copy such official information;

(c) Knowingly fails to comply with any directions issued by a lawful authority for the return of any official information, including copies, which is in his possession or under his control.

(2) In this section "official information" means any information held by ó

(a) A department or agency of government; or

(b) A Minister of the Crown in his official capacity; or

(c) An officer or employee of any department or agency of government in his capacity as such an officer or employee or in his capacity as a statutory officer; or

(d) An independent contractor engaged by any department or Minister of the Crown or agency of government in his capacity as such contractor;

(e) Any committee or advisory body established for the purpose of assisting or advising or performing functions connected with any department or Minister of the

Crown or agency of government.

Attempts

229 Attempts to commit offences

(1) Every one who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object, is guilty of an attempt to commit the offence intended, whether in the circumstances it was possible to commit the offence or not.

(2) The question whether an act done or omitted with intent to commit an offence is or is not only preparation for the commission of that offence, and too remote to constitute an attempt to commit it, is a question of law.

(3) An act done or omitted with intent to commit an offence may constitute an attempt if it is immediately or proximately connected with the intended offence, whether or not there was any act unequivocally showing the intent to commit that offence.

(4) Everyone who attempts to commit an offence in respect of which no punishment is expressly prescribed by this or any other enactment is liable to not more than half the maximum punishment to which he would be liable if he had committed that offence.

230 Attempt proved when offence is charged

Where the commission of the offence charged is not proved, but the evidence establishes an attempt to commit the offence, the accused may be convicted of the attempt.

231 Offence proved when attempt is charged

(1) Where an attempt to commit an offence is charged, but the evidence establishes the commission of the full offence, the accused may be convicted of the attempt.

(2) After a conviction for that attempt, the accused shall not be liable to be tried again for the offence which he was charged with attempting to commit.

Parties to Offences

232 Inciting

(1) Every person who incites any person, whether ascertained or unascertained, to commit any offence punishable by imprisonment shall be liable to imprisonment for a term not exceeding half the longest term to which a person committing the said offence may be sentenced or, where that offence is punishable by imprisonment for life, to imprisonment for a term not exceeding 14 years.

(2) If the offence to which any person is so incited is actually committed by him, the person so inciting him shall be liable, on a charge of inciting, to the same punishment as if he had himself committed the offence, or he may be charged and convicted as a party to the offence so procured by him.

233 Parties to offences

Every one is a party to and guilty of an offence who ó

- (a) Actually commits the offence; or
- (b) Does or omits any act for the purpose of aiding any person to commit the offence; or
- (c) Abets any person in the commission of the offence; or

234 Common criminal purpose

If several persons form a common intention to prosecute any unlawful purpose and to assist each other in it, each of them is a party to every offence committed by any one of them in the prosecution of that common purpose, the commission of which offence was known to be a probable consequence of the prosecution of that common purpose.

235 Counselling or procuring

- (1) Every one who counsels or procures another to be a party to an offence of which that other is afterwards guilty is a party to that offence, although it may be committed in a way different from that which was counselled.
- (2) Every one who counsels or procures another to be a party to an offence is a party to every offence which that other commits in consequence of that counselling or procuring, and which the person counselling or procuring knew to be likely to be committed in consequence of the counselling or procuring.

236 Accessory after the fact

- (1) An accessory after the fact to an offence is one who, knowing any person to have been a party to the offence, receives, comforts, or assists that person or tampers with or actively suppresses any evidence against him, in order to enable him to escape after arrest or to avoid arrest or conviction.
- (2) No married person whose spouse has been a party to an offence shall become an accessory after the fact to that offence by doing any act to which this section applies in order to enable the spouse, or the spouse and any other person who has been a party to the offence, to escape after arrest or to avoid arrest or conviction.

237 Punishment of accessories

Every one who is accessory after the fact to any offence punishable by imprisonment, being an offence in respect of which no express provision is made by this Act or by some other enactment for the punishment of an accessory after the fact, is liable to imprisonment for a term not exceeding 7 years if the punishment for that offence is imprisonment for life, and not exceeding 5 years if that punishment is imprisonment for 10 or more years; and in any other case is liable to not more than half the maximum punishment to which he would have been liable if he had committed the offence.

Infancy

237A Children under 10

(1) No person shall be convicted of an offence by reason of any act done or omitted by him when under the age of 10 years.

(2) The fact that by virtue of this section any person has not been or is not liable to be convicted of an offence shall not affect the question whether any other person who is alleged to be a party to that offence is guilty of that offence.

237B Children between 10 and 14

(1) No person shall be convicted of an offence by reason of any act done or omitted by him when of the age of 10 but under the age of 14 years, unless he knew either that the act or omission was wrong or that it was contrary to law.

(2) The fact that by virtue of this section any person has not been or is not liable to be convicted of an offence shall not affect the question whether any other person who is alleged to be a party to that offence is guilty of that offence.

Defences

238 Common law defences

All rules and principles of the common law which render any circumstance a justification or excuse for any act or omission, or a defence to any charge, shall remain in force with respect to all offences constituted by this or any other enactment, except so far as inconsistent with this or any other enactment.

239 Common law offences

No person shall be proceeded against for any criminal offence at common law.

Sentences

240 Power to fine instead of or in addition to imprisonment

Except where otherwise expressly provided, every one liable to imprisonment for any term for any offence may be sentenced to pay a fine not exceeding 2 penalty units in addition to or instead of imprisonment.

241 Enforcement of fines

(1) Every fine imposed upon any person by the High Court shall constitute a judgment debt due by that person to the Crown, and payment of it shall be enforceable and recoverable accordingly by writ of sale or any other civil process of execution in the same manner in all respects as if the debt had been recovered in civil proceedings at the suit of the Crown.

(2) Any person upon whom any such fine has been imposed may, by warrant under the seal of the High Court, be committed to prison by a Judge of that Court for a period not exceeding 6 months, but shall be entitled to be discharged from imprisonment on payment of the fine.

(3) When any person has been so committed to prison, no proceedings or further proceedings shall thereafter be taken for the enforcement of the fine by way of civil process under this section.

242 Imprisonment in Niue

Save so far as herein otherwise provided, every sentence of imprisonment shall be carried into effect in some prison in Niue and subject to any Act.

243 Transfer of convicted persons to New Zealand

(1) Every person sentenced to imprisonment, or committed to prison for 6 months or more including an offender who has been recalled under section 244A may, by warrant of the Cabinet and the Seal of Niue, be transferred to some prison in New Zealand named or described in the warrant.

(2) On the issue of any such warrant, the person named therein shall thereupon be taken in custody from Niue to New Zealand, and there forthwith delivered to the Superintendent of the prison named or described in the warrant.

(3) The warrant shall be delivered to the said Superintendent together with a certificate under the hand of a Judge of the High Court and the seal of that Court setting forth the fact of the conviction or commitment of the person named in the warrant, the offence of which he was convicted or the reason of the commitment, and the term for which he has been so sentenced or committed.

(4) Where any person brought to New Zealand under this section is imprisoned in New Zealand under any of the foregoing provisions of this section ó

(a) The period during which he has been in custody since the sentence was imposed in Niue until his delivery to the Superintendent in New Zealand shall for all purposes be computed as part of the term of his imprisonment;

(b) Subject to section 244, he shall be imprisoned in New Zealand in the same manner in all respects and shall be subject in all respects to the same laws, as far as applicable, as if he had been sentenced by the Supreme Court of New Zealand to imprisonment for the life offence, or committed to prison by that Court on the like grounds.

244 Release of prisoners transferred to New Zealand

[This section is not Niue law. The Criminal Justice Act 1954 of New Zealand has been replaced by the Criminal Justice Act 1985.]

(1) Where any person (in this section referred to as the offender) brought to New Zealand under section 243 is imprisoned in New Zealand under that section ó

(a) The Minister of Justice, with the concurrence of the Minister of Foreign Affairs ó

(i) may, by warrant signed by him, grant to the offender, not being an offender serving a sentence of life imprisonment, remission of any part of his sentence, not exceeding one-fourth of the term, on the ground of his good conduct and industry; and

(ii) may, where he considers that the conduct of the offender has been exemplary during his sentence, or that the offender has during his sentence performed some outstanding act of service, grant to the offender, not being an offender serving a sentence of life imprisonment, in addition to any remission which may be granted to him under subparagraph (i), a special remission of part of his sentence, not exceeding one-twelfth of the term; and may revoke any such remission at any time before the offender is released; and

(iii) may, in the case of any offender who is a Niuean, direct by warrant signed by him that on the release of the offender he be allowed to remain in New Zealand;

(b) Where any offender is granted a remission of any part of his sentence under paragraph (a) then ó

(i) if under this section he is to be released in New Zealand, the Minister of Justice, with the concurrence of the Minister of Foreign Affairs may, by warrant at any time before the offender is released, impose such special conditions of probation in addition to those that apply by virtue of section 38 of the Criminal Justice Act 1954;

(ii) if under this section he is to be returned to Niue, the Minister of Justice, with the like concurrence, may, by warrant at any time before the offender is released for the purpose of being returned to Niue, direct that, until a date specified in the warrant (being a date not later than the date of expiry of the term of the original sentence), the offender shall be subject to supervision by a person to be nominated by the Premier, and shall comply with the directions of that person with respect to such matters as are specified in the warrant;

(c) The provisions of section 33A of the Criminal Justice Act 1954 as far as they are applicable but subject to the provisions of this section, shall apply with respect to the offender as if he had been sentenced to imprisonment by the High Court of New Zealand.

(2) The Prisons Parole Board, on considering the case of any offender under section 33A of the Criminal Justice Act 1954 (as so enacted), shall have regard, in addition to the matters specified in subsection (6) of that section, to such other matters of any kind whatsoever as it considers relevant in the circumstances of the case, and may recommend that the offender ó

(a) Be returned to Niue and released on his arrival there; or

(b) Be returned in custody to Niue and continue to serve the sentence of imprisonment in some prison in Niue until a date specified by the Board (being, in the case of a prisoner undergoing a sentence of life imprisonment, such date as the Board thinks fit, and, in the case of any other prisoner, a date not later than 3 months after his return to Niue) and be released on the date so specified; or

(c) Be released in New Zealand.

(3) Any recommendation of the Prisons Parole Board under subsection (2) may be subject to such conditions as the Board thinks fit, including, if the Board thinks fit, a condition, in the case of a prisoner to whom paragraph (a) or paragraph (b) of that subsection applies, that, until a date specified by the Board (being, in the case of an offender undergoing a sentence of life imprisonment, such date as the Board thinks fit, and in any other case a date not later than the date of the expiry of the term of the original sentence), he shall be subject to supervision by a person to be nominated by the Premier and shall comply with the directions of that person with respect to such matters as the Board specifies.

(4) The provisions of the Criminal Justice Act 1954 relating to the release of an offender on probation shall not apply with respect to any offender who is returned to Niue under this section.

(5) Where under this section any offender is released in New Zealand, sections 35 to 39 of the Criminal Justice Act 1954, as far as they are applicable, shall apply as if he had been so released at or before the expiry of a term of imprisonment imposed by the High Court of New Zealand.

(6) Where any offender who under this section is released in New Zealand desires to return to Niue before the expiration of the term of his probation, the Minister of Justice, on the application of the offender and with the concurrence of the Minister of Foreign Affairs, may cancel the probationary licence as from the date on which the offender leaves New Zealand, and by warrant direct that as from the date of the arrival of the offender in Niue until a date specified in the warrant (being not later than the date on which the term of probation would have expired if the probationary licence had not been cancelled) the offender shall be subject to supervision by a person to be nominated by the Premier and shall comply with the directions of that person with respect to such matters as are specified in the warrant.

(7) Every offender, if he is a Niuean, shall, as soon as he is entitled to be released or as soon thereafter as may be, unless he is to be released in New Zealand under this section, be returned to Niue under a warrant signed by the Minister of Justice, and in the meantime shall be detained in custody in some prison in New Zealand appointed by that warrant.

(8) A recommendation of the Prisons Parole Board under this section may be given effect under a warrant signed by the Minister of Justice with the concurrence of the Minister of Foreign Affairs.

(9) For the purposes of this section, cumulative terms of imprisonment shall be treated as one term.

(10) Where any offender is for the time being subject to supervision in Niue under this section, the term of his sentence shall continue to run while he is subject to supervision as if

he were still serving the sentence; and the date of expiry of the sentence shall be determined accordingly.

244A Recall of offender subject to supervision

(1) Where any offender undergoing a sentence of imprisonment for life is for the time being subject to supervision in Niue under section 244, the Court on application of the Chief of Police may at any time before the expiration of the period of supervision, by warrant direct that the offender be recalled.

(2) On the giving of that direction, the supervision shall be deemed to be cancelled, and the offender may be arrested without warrant by any constable, and, subject to section 244, shall continue to serve his original sentence.

(3) The powers conferred by subsection (1) may be exercised on such grounds as the Court thinks fit and whether or not the offender has committed a breach of any condition of his supervision.

245 Person conditionally released from imprisonment

(1) Any person who is released from imprisonment ó

(a) Pursuant to a remission of part of his sentence under section 244(1)(a) or to a recommendation of the Prisons Parole Board under paragraph (c) of that subsection subject to any conditions imposed under that section, and is returned to Niue under that section (including a person who returns to Niue under subsection (6) of that section); or

(b) Under a remission of part of his sentence under section 286 subject to any conditions imposed under that section ó and who commits a breach of any such condition may be arrested by any constable without warrant and brought before a Judge of the High Court, and may be sentenced to imprisonment, in the case of a person who was undergoing a sentence of life imprisonment, for such period as the Court thinks fit, and in any other case for any period not exceeding the unexpired portion of the term of his original sentence.

(2) For the purposes of this section, cumulative terms of imprisonment shall be treated as one term.

246 Cumulative sentences

(1) When an offender is sentenced for more offences than one at the same time, or if, when sentenced for one offence, he has already been sentenced for any other offence and has not yet completed the sentence so imposed upon him, the Court may direct that the sentences passed on him for his several offences shall take effect one after the other or concurrently.

(2) Save as provided by this section, every sentence of imprisonment shall commence to take effect on the day on which the sentence is pronounced.

PART 6

CRIMINAL PROCEDURE

247 [Repealed by 2004/270]

248 Jurisdiction of High Court

Except where otherwise expressly provided, all offences against the laws of Niue may be tried in the High Court under this Part.

249 [Repealed by 2004/270]

Preliminary Proceedings

250 Arrest without warrant

(1) No person shall be arrested without warrant except under this Act or under some other enactment giving power to arrest without warrant.

(2) Any constable and any person whom he calls to his assistance may, without warrant, arrest and take into custody ó

(a) Any person whom he finds disturbing the public peace or whom he has good cause to suspect is committing any offence punishable by imprisonment;

(b) Any person whom he has good cause to suspect of having committed a breach of the peace or any offence punishable by imprisonment;

(c) Any person whom he has good cause to suspect to be attempting or about to commit a breach of the peace or any offence punishable by imprisonment;

(d) Any person whom he has good cause to suspect is committing an offence against section 214 or section 216.

(3) Any person may, without warrant, arrest and take into custody ó

(a) Any person whom, in any public place, he finds disturbing the public peace;

(b) Any person whom he has good cause to suspect to be about to commit, in a public place, a breach of the peace.

(4) Subsections (1) and (2) shall be read subject to the express provisions of any enactment imposing any limitation, restriction, or condition on the exercise of any power to arrest without warrant conferred upon any constable or any other person in respect of any specified offence or any specified class of offences.

(5) Where under any enactment, other than this Act, any officer or other person, not being a constable, has power without warrant, to arrest any other person, any constable may exercise that power in the same cases and in the same manner as that officer or other person.

(6) Where any person, other than a constable, arrests without warrant, any other person, he

shall as soon as reasonably possible thereafter deliver that other person into the custody of a constable.

251 Arrest on warrant of Commissioner

A Commissioner, on receiving such information on oath as seems sufficient to him, whether made in writing or not, may issue his warrant for the arrest of any person for any offence against the laws of Niue, and thereupon any constable or other person specified in the warrant in that behalf may arrest the accused, who shall be forthwith brought before a Judge of the High Court or the Registrar there to be dealt with under this Part.

251A Duty of persons arresting

(1) It is the duty of every one arresting any other person to inform the person he is arresting, at the time of the arrest, of the act or omission for which the person is being arrested, unless it is impracticable to do so, or unless the reason for the arrest is obvious in the circumstances. The act or omission need not be stated in technical or precise language, and may be stated in any words reasonably sufficient to give that person notice of the true reason for his arrest.

(2) It is the duty of every one who arrests any other person under any process or warrant ó

(a) If he has the process or warrant in his possession at the time of the arrest, to produce it if required by that person to do so;

(b) If he does not have the process or warrant in his possession at the time of the arrest, to show it to the arrested person as soon as practicable after the arrest, if that person so requires.

(3) Where under any enactment any person other than a constable has, by virtue of his office, a power of arrest without warrant, he shall, whenever he arrests any other person under that power ó

(a) If he has evidence of his appointment to that office in his possession at the time of the arrest, produce it if required by that person to do so;

(b) If he does not have evidence of his appointment in his possession at the time of the arrest, show it to the arrested person as soon as practicable after the arrest, if that person so requires.

(4) A failure to fulfil any of the duties mentioned in subsections (1)-(3) shall not of itself deprive the person arresting, or his assistants, of protection from criminal responsibility, but shall be relevant to the inquiry whether the arrest might not have been effected, or the process or warrant executed, by reasonable means in a less violent manner.

(5) Every person who is arrested on a charge of any offence shall be brought before the High Court, as soon as possible, to be dealt with according to law.

(6) Nothing in this section shall limit or affect the express provisions of any enactment whereby ó

(a) The burden of proving the absence of reasonable or probable cause, or the absence of justification, for any arrest is on any person;

(b) Any person having, by virtue of his office, a power of arrest without warrant is entitled, in any specified circumstances, to exercise that power without the production of evidence of his appointment to that office, or is required in exercising the power, to comply with any specified conditions or restrictions in addition to or instead of producing evidence of his appointment.

252 Committal for trial

(1) When any person arrested with or without warrant under the foregoing provisions is brought before a Judge or the Registrar, the Judge or Registrar may, after such preliminary inquiry (if any), and after giving the prisoner an opportunity of being heard, by warrant either discharge the prisoner, or commit him to prison to await trial by the High Court for the offence for which he was arrested, or admit him to bail, with or without sureties, conditioned to appear before the High Court in due course for trial for the offence.

(2) No such discharge shall amount to an acquittal so as to preclude the prosecution and trial of the accused in the High Court for the offence for which he was so arrested.

253 Information

Every prosecution in the High Court for any offence shall be commenced by an information in writing laid by a constable or any other prosecutor before a Judge or the Registrar of that Court.

254 Warrant or summons

On the commencement of any such prosecution, any Judge or Commissioner of the High Court or any two Justices of the Peace acting together may unless the accused is already in custody, at any time issue either a warrant for the arrest of the accused or a summons requiring him to appear before the High Court at the time and place specified in the summons, there to answer the charge so made against him in the information and set out in the summons.

255 Warrant after issue of summons

Any such warrant may be at any time issued by a Judge or Commissioner of the High Court or any two Justices of the Peace acting together, notwithstanding the fact that a summons has been already issued to the accused as aforesaid.

255A Arrested person may be released on bail

(1) Where, under section 250 (1), any person is arrested without warrant by a constable or some other person on the grounds that the constable or other person suspects on reasonable grounds that the person arrested has committed any one or more of the following offences ó

(a) Wilful mischief to property; or

- (b) Resisting a constable in the execution of his office; or
- (c) Using profane, indecent, or obscene language; or
- (d) Indecent behaviour; or
- (e) Assault; or
- (f) Fighting or drunkenness in a public place; or
- (g) Any offence against section 205 (2) 6

then, notwithstanding section 250 (2), on the arrested person being brought before a constable in charge of any police station, the constable in charge of the police station may release the arrested person on bail, with or without sureties, conditioned for the appearance of the arrested person before the High Court at such place and at such time (being not more than 3 clear days after the date of the arrest of the arrested person) as the constable in charge of the police station specifies.

(2) Should the constable in charge of a police station not release any arrested person on bail under subsection (1) the provisions of section 250 (2) shall apply to that person.

(3) Where any person who has been released on bail under subsection (1) appears before the High Court, then, on his appearance before the High Court, he shall be deemed to be in custody.

(4) Nothing in subsection (1) shall derogate from section 257.

256 Prisoners brought before Court before commencement of prosecution

(1) When any person charged with an offence is brought before a Judge of the High Court or any two Justices of the Peace acting together in custody, having been arrested without warrant or on a warrant issued under section 251, the Judge may, unless a prosecution has already commenced against the prisoner by information as aforesaid, either discharge the prisoner, or remand him in custody pending the commencement of a prosecution, or release him on bail, with or without sureties, conditioned for his appearance before the High Court at such time and place as the Judge thinks fit.

(2) No discharge under this section shall amount to an acquittal so as to preclude the prosecution or trial of the prisoner for the offence for which he has been so arrested.

257 Remand

When any prosecution has been commenced in the High Court, the Court may either remand the accused in custody or admit him to bail, with or without sureties, conditioned to appear before the High Court at any other time or place.

258 Trial of accused in his absence

When any person who is prosecuted for an offence punishable by fine only has been duly

summoned to appear before the High Court and fails to appear under the summons, the Court may try and sentence him for that offence in his absence.

Assessors

259 Constitution of Court in criminal trials

Every criminal trial in the High Court shall take place before one Judge of that Court sitting with or without assessors under the provisions of this Part.

260 Judge with assessors

On the trial of any person for any offence punishable by imprisonment for more than 5 years, the Judge shall sit with assessors.

261 Judge without assessors

On the trial of any person on an information charging him exclusively with an offence or offences punishable only by fine, the Judge shall sit without assessors.

262 Judge with or without assessors as he thinks fit

In all other criminal trials, the Judge shall sit without assessors, unless the Court in its discretion orders otherwise, either on its own motion or on the application *ex parte* or otherwise of either the prosecutor or the accused.

263 Order appointing assessors

Any such order may be made at any time after the commencement of the prosecution, and whether before or during the trial; but, if made after any evidence has been heard at the trial, all such evidence shall, except so far as repeated before the Judge and assessors, be of no force or effect.

264 Number and qualifications of assessors

(1) The assessors shall in all cases be 6 in number, and shall be such fit and proper persons (whether men or women) as a Judge of the Court thinks fit, subject to any rules of Court which may be made in that behalf, to appoint by warrant under his hand and the seal of the Court, and the consent of an assessor shall not be requisite for his appointment.

(2) No person shall be appointed as an assessor unless he has first been nominated by the Cabinet by warrant published in the *Gazette* as a person qualified for appointment as an assessor under this Act, either generally or in respect of any particular case or class of cases; and the Cabinet may accordingly nominate in this behalf such and so many persons as the Cabinet thinks qualified by reason of their character, education, ability, or reputation to hold that office, and may at any time in like manner revoke any such nomination.

265 Default of assessors

If any person so appointed as an assessor, and having had reasonable notice of the time and

place of the trial, fails without reasonable excuse duly to attend at the trial or at any adjournment of it, or duly to make oath as such, or duly to act as assessor throughout the trial, he shall be guilty of contempt of the High Court.

266 Remuneration of assessors

Every assessor shall be entitled to receive from the Niue Government Account such remuneration or allowances in respect of his services as may be authorised by the Judge at the trial in conformity with any rules of Court which may be made in that behalf.

267 Oath of assessors

Before an assessor commences to act as such, he shall in open court and in the presence of the accused make oath to act well and truly as assessor and to decide in accordance with the evidence and with law.

268 Change of assessors

At any time after the appointment of an assessor and before he has been sworn as aforesaid, a Judge of the Court may, either of his own motion or on the application *ex parte* or otherwise of the prosecutor or the accused, if he is satisfied there is any reasonable and sufficient objection to that assessor, remove him and appoint another assessor in his place.

269 Discharge of assessors and new trial

(1) If at any time after the commencement of the trial and before judgement the Judge is of the opinion that, owing to the misbehaviour of any assessor, or to the death, illness, or absence of any assessor, or to any accident or misadventure, or to any other sufficient cause, a new trial is necessary in the interests of justice, he may discharge the assessors and order a new trial accordingly.

(2) Every such new trial shall take place before the same or another Judge with assessors in the same manner as if no previous trial had taken place.

270 Concurrence of assessors

On a trial with assessors, no person shall be convicted by the Judge of any offence, unless the conviction is concurred in by not less than 4 of the assessors.

271 Concurrence of Judge

If the Judge is of opinion that the accused should not be convicted, or if fewer than 4 of the assessors concur in his conviction, the accused shall be acquitted.

272 Sentence

The concurrence of assessors in the sentence to be passed by the Judge shall not be necessary.

273 Concurrence of assessors necessary for conviction

The concurrence of the assessors shall not be necessary for any other act of the Court or the Judge other than conviction, and in all other respects the jurisdiction of the Court shall be exercised by the Judge in the same manner as if he was sitting without assessors.

Miscellaneous Provisions

274 Alternative and cumulative charges

- (1) Subject to this section, in any prosecution in the High Court the information of the prosecutor may relate to 2 or more distinct offences, whether alternative or cumulative.
- (2) No information for the offence of murder shall charge any other offence except manslaughter.
- (3) No information for the offence of rape shall charge any other offence except indecent assault and an attempt to commit rape.

275 Relation between information and conviction

On an information for any offence the accused may be convicted either of the offence charged in the information or of any offence which is included within the offence so charged and which might lawfully have been charged in the same information.

276 Withdrawal of information

- (1) An information in the High Court for any offence may at any time, whether before or during the trial, be withdrawn by the prosecutor with the leave of a Judge of the Court, but not otherwise.
- (2) An information so laid and withdrawn shall not operate as a bar to any further proceedings against the accused in respect of the same offence.

277 Drawing up of conviction

- (1) On the conviction of any person of any offence before the High Court, a minute or memorandum of the conviction shall thereupon be drawn up and preserved as a record of the Court, and a formal conviction under the seal of the Court may be drawn up at any time afterwards when it becomes necessary.
- (2) In the meantime the conviction and sentence may be carried into execution, and shall have the same force and effect in every respect as if the conviction had been formally drawn up under the seal of the Court.

278 Defects of information, summons, or warrant

- (1) No objection shall be taken or allowed to any information, summons, or warrant in any criminal proceedings before the High Court for any alleged defect in it in substance or in form, or for any variance between the information, summons, or warrant and the evidence adduced at the trial.

(2) The High Court may at any stage of the trial amend the information in such manner as it thinks fit in respect of any such defect or variance.

(3) Where under subsection (2) any information is amended by substituting one offence for another, the following provisions shall apply:

(a) Subject to paragraphs (b) and (c), the trial shall be continued as if the accused had originally been charged with the substituted offence;

(b) Before the trial is continued, the substance of the information as amended shall be stated to the accused and he shall be asked how he pleads; and, if he pleads guilty, the High Court may convict him or deal with him in any other manner authorised by law;

(c) Any evidence already given shall be deemed to have been given in and for the purposes of the trial of the information as amended, but either party shall have the right to examine or cross-examine or re-examine any witness whose evidence has already been given in respect of the offence originally charged.

(4) The High Court may, at the request of the accused, if it is of opinion that he would be embarrassed in his defence by reason of any amendment made or proposed to be made under this section, adjourn the trial.

279 Payment of witnesses

Any witness at a criminal trial may, if the Judge thinks fit and certifies accordingly, be paid out of the Niue Government Account such allowance for his expenses and loss of time as is so certified, subject to such rules of Court as may be made in that behalf.

280 Court may order convicted person to come up for sentence

(1) The Court, on convicting an accused person of an offence under any enactment, may, having regard to the circumstances, including the nature of the offence and the character of the offender, instead of passing sentence, order the offender to appear for sentence if called upon to do so, on such conditions as it thinks fit, including, if the Court thinks fit, a condition that the offender shall be subject to supervision for such period as the Court specifies, not exceeding the period specified in or under subsection (3), by a person to be nominated by the Chief of Police.

(2) The making of an order under this section shall not limit or affect the power of the Court, under any enactment applicable to the offence, to make any order for the payment of costs, damages, or compensation, or for the restitution of any property, notwithstanding that the offender is not sentenced on conviction, and the provisions of every such enactment shall apply accordingly.

(3) Any person in respect of whom an order is made under this section may be called upon to appear for sentence within any period specified by the Court in the order, being a period not exceeding 3 years from the date of the conviction, or if no period is so specified, within one year from the date of the conviction.

(4) Where any person is brought up for sentence under this section, the Court may, after

inquiry into the circumstances of the case and the conduct of the offender since the order was made, sentence or otherwise deal with the offender for the offence in respect of which the order was made.

281 Conviction without sentence or discharge without conviction

(1) If on any criminal trial the Court thinks that the charge, though proved, is in the particular case of so trifling a nature or was committed under such circumstances that no punishment should be imposed, the Court may convict the accused and discharge him without sentence, either unconditionally or on such conditions as the Court thinks fit to impose.

(2) If any person who is so convicted and discharged on conditions commits any breach of those conditions, he shall be guilty of an offence punishable in the same manner as the offence of which he was so previously convicted.

(3) Without limiting the powers conferred on the High Court by subsection (1), where any person is accused of any offence, the High Court, after inquiry into the circumstances of the case, may discharge him without convicting him, unless by any enactment applicable to the offence a minimum penalty is expressly provided for. A discharge under this subsection shall be deemed to be an acquittal.

(4) The High Court, when discharging any person under subsection (3), may, if it is satisfied that the charge is proved against him, make any order for the payment of costs, damages, or compensation, or for the restitution of any property, that it could have made under any enactment applicable to the offence with which he is charged if it had convicted him and sentenced him, and the provisions of every such enactment shall apply accordingly.

282 Bail

(1) When any person is admitted to or released on bail under this Act or under any other enactment, he shall, with or without sureties, enter into a bail bond in favour of the Government in such sum as may be required, conditioned in such manner as may be appropriate to the particular case and as may be required.

(2) [Repealed by 2004/270]

(3) Every such bond shall be taken by and before a Judge of the High Court, or the Registrar of the High Court, or, where a person is released on bail under section 255A, by a constable in charge of the police station.

(4) Every such bond shall be signed by the person admitted to or released on bail and by his sureties (if any) and the signature of that person and of each of his sureties (if any) shall be attested by a Judge of the High Court, the Registrar of the High Court, or a constable.

(5) When any person is admitted to or released on bail, the Judge of the High Court, or constable admitting or releasing him may require him to deposit with that Judge, or constable or with the Registrar of the High Court a sum of money (being not greater than the amount of the recognisance entered into in the bond). Any such sum so deposited with a Judge, or constable shall, as soon as reasonably possible after the deposit, be paid by the person with whom it was deposited to the Registrar of the High Court.

(6) Where any person admitted to or released on bail has fully performed the conditions of his bond, the bond shall be void and any sum deposited by him under subsection (5) shall be forthwith repaid to him but without any interest.

(7) Where any person admitted to or released on bail fails to perform any condition of his bond, the Registrar of the High Court shall fix a place and time at and on which the High Court may consider the estreat of the bond, and shall, not less than 7 clear days before the time fixed, cause to be served on the person admitted or released on bail (if he can be found) and upon the sureties (if any) notice that, unless at the place and time fixed some person bound by the bond proves to the satisfaction of the High Court that it ought not to be estreated, the bond may be estreated.

(8)

(a) If at the time and place fixed by the Registrar under subsection (7) no sufficient cause to the contrary is shown, the High Court, on proof of non-performance of the bond, may make an order to estreat the bond to such amount as it thinks fit as to any person bound thereby upon whom notice is proved to have been served in accordance with subsection (7) and the whole or any part of any sum deposited under subsection (5) may (but otherwise without prejudice to the rights of the Government under the estreated bond) be forfeited accordingly to the Government.

(b) If the Court is satisfied that the person admitted to or released on bail cannot be found, it may estreat the bond as against him, notwithstanding that the notice has not been served on him.

(c) No bail bond shall be estreated save by a Judge of the Court.

(9) Any sum payable in connection with any estreated bond shall be recoverable as if it were a fine.

(10) Where any person has been admitted to or released on bail, any surety under the bail bond entered into by that person may, at any time and at any place, without warrant arrest and seize that person while he is not in the custody of the law and deliver him into the custody of a constable and, on any such delivery, the surety shall cease to be liable under the bond.

283 [Repealed by 2004/270]

284 Search warrants

(1) Any Judge or the Registrar of the High Court who is satisfied on the oath of any person that there is reasonable ground for believing that there is in any building, ship, aircraft, receptacle, or place ó

(a) Anything which there is reasonable ground to believe will afford evidence as to the commission of any offence; or

(b) Anything in respect of which any offence has been or is suspected of having been committed; or

(c) Anything which there is reasonable grounds for believing to be intended to be used for the purpose of committing any offence ó may, by warrant under his hand, authorise some constable or other officer of the Niue Public Service to search the building, ship, aircraft, receptacle, or place for any such thing, and to seize and bring it before the person by whom the warrant has been issued.

(2) Every such warrant shall be executed by day (that is to say, after sunrise and before sunset), unless the warrant expressly authorises the execution of it by night.

(3) Every such warrant may be executed by reasonable force if necessary.

(4) When any such thing is seized and brought before the person by whom the warrant was issued, he may either order it to be detained for the purpose of evidence on the trial of any person for any such offence as aforesaid or may direct it to be delivered to any person believed by the person so issuing the warrant to be entitled to it.

(5) No such order of delivery shall in any manner affect the right of any person to the ownership or possession of the thing.

(6) Any thing so ordered to be detained as evidence of an offence may be detained under the order for such time as is reasonably necessary for the purpose of any proceedings instituted or to be instituted in respect of the offence.

284A Power to enter premises to arrest offender or prevent offence

(1) Where any constable is authorised by this Act or by any other enactment to arrest any person without warrant, that constable, and all persons whom he calls to his assistance, may enter on any premises, by reasonable force if necessary, to arrest that person if the constable ó

(a) Has found that person committing any offence punishable by imprisonment and is freshly pursuing that person; or

(b) Has good cause to suspect that that person has committed any such offence on those premises.

(2) Any constable, and all persons whom he calls to his assistance, may enter on any premises, by reasonable force if necessary, to prevent the commission of any offence that would be likely to cause immediate and serious injury to any person or property, if he believes, on reasonable and probable grounds, that any such offence is about to be committed.

(3) If, in any case to which this section applies, the constable is not in uniform and any person in actual occupation of the premises requires him to produce evidence of his authority, he shall before entering on the premises produce his badge or other evidence that he is a constable.

(4) Nothing in this section shall affect in any way the power of any constable to enter any premises under a warrant.

285–286 [Repealed by 2004/270]

286A Parole Board

- (1) There is established a Parole Board consisting of 3 members who are to be appointed by Cabinet.
- (2) Cabinet may appoint a Parole Board member under subsection (1) for a term not exceeding 3 years.
- (3) Cabinet may appoint the Chairperson of the Board.
- (4) A Parole Board member appointed under subsection (1) may be reappointed.
- (5) A Parole Board member appointed under subsection (1) may resign by written notice given to Cabinet.
- (6) The appointment of a Parole Board member appointed under subsection (1) may be terminated by Cabinet for misconduct, inefficiency or inability.

287 Compensation for loss of property

- (1) On the conviction of any person for any offence, the High Court may order the offender to pay to any person such sum as it thinks fit by way of compensation for any loss of or damage to property suffered by that person through or by means of the offence.
- (2) Where on the arrest of the offender any money was taken from him, the High Court may order the whole or any part of the money to be applied to any such payment.
- (3) Any order for payment under this section may be enforced in the same manner as a fine.
- (4) An order under this section shall not affect the right of any person to recover by civil proceedings any sum in excess of the amount recovered under the order.

**PART 7
LAW OF EVIDENCE**

288 Definitions

In this Part ó

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

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

289 Discretionary power to admit or reject evidence

- (1) Subject to this Act, a Court may in any proceedings admit and receive such evidence as it

thinks fit, and accept and act on such evidence as it thinks sufficient, whether that evidence is or is not admissible or sufficient at common law.

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

290 All witnesses competent

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

291 Evidence of parties and their spouses

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

292 Evidence of accused persons and their spouses

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

(2) The wife or husband of any person charged with an offence shall be a competent witness on the trial of that person, but shall not be a compellable witness, except in the following cases 6

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

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

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

293 Cross-examination as to credit

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

294 Criminating questions

Nothing in this Part shall take away or affect the privilege of any witness to refuse to answer

any question which may tend to criminate him.

295 Evidence of prisoners

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

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

296 Judicial notice of enactments

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

297 Judicial notice of seals

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

298 Power to administer oaths

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

299 Form of oath

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

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

300 Absence of religious belief

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

301 Affirmation may be made instead of oath

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

302 Form of affirmation

The officer administering an affirmation shall address to the person making the affirmation the following words: "Do you solemnly, sincerely, and truly declare and affirm that the evidence you are about to give touching the matter before the Court shall be the truth, the whole truth, and nothing but the truth?" or words to the like effect, and the person making the affirmation shall thereupon indicate his assent to the affirmation so administered by uttering the words "I do" or other words to the like effect.

303 Evidence of children without oath

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

304 Necessity of oath

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

PART 8 EXTRADITION

Extradition from Niue to New Zealand or to the Cook Islands

305 Arrest in Niue of fugitive offenders from New Zealand or the Cook Islands

When a warrant has been lawfully issued by any competent authority in New Zealand or in the Cook Islands for the arrest of any person and that person is suspected of being in Niue or of being about to come into Niue, a Judge of the High Court may, if he is satisfied in any manner that the warrant has been issued, and whether it has been produced to him or not, issue his warrant for the arrest of that person in Niue, and that warrant shall be addressed to such person or persons as the Judge thinks fit.

306 Order of return to New Zealand or to the Cook Islands

On the arrest of any person under warrant so issued by a Judge of the High Court, the person so arrested shall be forthwith brought before the High Court, which may, on production of the original warrant issued in New Zealand or in the Cook Islands, order the return of that person to New Zealand or to the Cook Islands.

307 Refusal of order in case of hardship

The High Court may refuse to make any such order if, having regard to the nature of the charge or to the circumstances of the case, the Court is of the opinion that the return of that person to New Zealand or to the Cook Islands would be the cause of undue hardship or would otherwise be unjustifiable or inexpedient.

308 Imprisonment or release pending return

Pending the making of any such order of return, or pending the return of any such person to New Zealand or to the Cook Islands, the High Court may either commit him to prison or admit him to bail in such manner and on such conditions as the Court thinks fit.

309 Release on security instead of return

(1) Instead of making such an order of return, the High Court may release that person on bail conditioned for the payment of such sum or sums of money or the performance of such conditions with relation to the matters in respect of which the original warrant was issued in New Zealand or the Cook Islands as the High Court thinks fit.

(2) On any breach of the conditions on which that person has been so released, he may be again arrested in Niue under a warrant issued by a Judge of the High Court, and an order for his return to New Zealand or to the Cook Islands may be made in the same manner as if he had not been so released.

310 [Repealed by 2004/270]

311 Cancellation of order of return

If any person so ordered to be returned to New Zealand or to the Cook Islands is not returned under the order within a reasonable time after its making, the High Court may cancel the order.

Extradition from New Zealand to Niue

[Sections 312-317 and 319 are not Niue law]

312 Arrest in New Zealand of fugitive offenders from Niue

When a warrant has been lawfully issued by any competent authority in Niue for the arrest of any person, and that person is suspected of being in New Zealand or of being about to come into New Zealand, a District Court Judge in New Zealand may, if he is satisfied in any manner that the warrant has been issued, and whether it has been produced to him or not, issue his warrant for the arrest of that person in New Zealand, and that warrant shall be addressed to such person or persons as the Judge thinks fit.

313 Order of return to Niue

On the arrest of any person under any warrant so issued by a District Court Judge, the person so arrested shall be forthwith brought before a District Court Judge in New Zealand, who may, on the production of the original warrant issued in Niue, order the return of that person to Niue.

314 Judicial notice of signature to warrant

On making any such order, the District Court Judge may take judicial notice of the signature to the warrant issued in Niue, and may receive such evidence as he thinks fit, whether legally admissible in other proceedings or not.

315 Refusal of order in case of hardship

A District Court Judge may refuse to make any such order if, having regard to the nature of the charge or to the circumstances of the case, the District Court Judge is of opinion that the return of that person to Niue would be the cause of undue hardship or would otherwise be unjustifiable or inexpedient.

316 Imprisonment or release pending return

Pending the making of any such order of return, or pending the return of any such person to Niue, a District Court Judge may either commit him to prison or admit him to bail in such manner and on such conditions as the District Court Judge thinks fit.

317 Release on security instead of return

(1) Instead of making such an order of return, the District Court Judge may release that person on bail conditioned for the payment of such sum or sums of money or the performance of such conditions with relation to the matter in respect of which the original warrant was issued in Niue as the District Court Judge thinks fit.

(2) On any breach of the conditions on which that person has been so released, he may be again arrested in New Zealand under a warrant issued by a District Court Judge, and an order for his return to Niue may be made in the same manner as if he had not been so released.

318 Return to Niue in custody

Any person against whom an order to return to Niue has been so made shall, so soon as practicable thereafter, be taken from New Zealand to Niue in the custody of such person as a District Court Judge may approve, and shall on arrival in Niue be there delivered into lawful custody, to be dealt with in the same manner as if he had been arrested in Niue under the original warrant issued there for his arrest.

319 Cancellation of order of return

If any person so ordered to be returned to Niue is not returned under the order within a reasonable time after the making of it, a District Court Judge or a Judge of the High Court of New Zealand may cancel the order for his return.

Application of Extradition Act to Niue

320 Extradition Act in force in Niue

Subject to this Act, the Extradition Act 1965, so far as it is applicable, shall extend to and be

in force in Niue.

PART 9

321 [Repealed by 2004/270]

322 [Repealed by 1974/64]

PART 10

323–334 [Repealed by 1968/68]

PART 11

335–385 [Repealed by 1968/68]

PART 12

386–404 [Repealed by 1968/68]

PART 13

405–414 [Repealed by 1968/68]

PART 14

415–430 [Repealed by 1968/68]

PART 15

431–460 [Repealed by 1968/68]

PART 16 LAND DEVELOPMENT

461 Application of this Part

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

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

462 Cabinet may cultivate land on behalf of owners

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

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

(a) Purchase or otherwise acquire implements or other personal property as the Cabinet thinks expedient, and may also sell or otherwise dispose of all crops or other personal property acquired, held, grown, or produced by the Cabinet in the course of the business;

(b) Provide, erect, maintain, and equip stores, factories, sheds, offices, or buildings of any kind;

(c) Do all other things reasonably necessary for the development and operation of the business, and for the improvement of the land.

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

(4)

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

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

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

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

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

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

(9)

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

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

(10)

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

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

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

463 Disposal of revenues received by Cabinet

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

(a) In defraying the cost of the administration of the land or business;

(b) In paying all rates, taxes, and other assessments and outgoings payable by the Cabinet in respect of the land or business;

(c) In the discharge, to such extent as may be required or as the Cabinet thinks fit, of any mortgage, charge, encumbrance, or liability to which the land or business is subject;

(d) In payment of sums (if any) set apart to meet any charge for improvements made upon the land;

(e) For any other purposes in connection with the administration, improvement, and settlement of the land from which the revenues are derived, or for any other purposes of general utility to the *Leveki Mangafaoa* or the Niuean owners of that land;

(f) In paying at the times and in the manner prescribed the residue of the revenues to

the *Leveki Mangafaoa* or the Niuean owners or other persons having any estate or interest in the land or business in accordance with their respective interests.

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

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

(2) All money received by the Cabinet under this Part shall be paid into the Niue Government Account.

465 [Repealed by 1974/74]

466 Interference and obstruction prohibited

(1) Except with the consent of Cabinet, no person shall be entitled to exercise any rights of ownership in respect of any land that is subject to this Part.

(2) Every person is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding 0.5 penalty units who ó

(a) Wilfully trespasses on any such land, and neglects or refuses to leave the land after being warned to do so by any person authorised in that behalf by the Cabinet;

(b) Wilfully obstructs, hinders, or delays any officer, servant, or workman in the performance or intended performance of his duties under this Part, or otherwise obstructs or interferes with the carrying out of any works under this Part.

(3) In any proceedings for an offence against this section in respect of any land, the fact that the defendant has an interest in the land shall not be a defence.

(4) No proceedings shall be commenced under this section except with the consent of the Cabinet.

467 [Repealed by 1974/74]

PART 17

468–483 [Repealed by 1971/71]

PART 18

484–488 [Repealed by 1968/68]

PART 19 NIUEAN SUCCESSION

489 Wills of Niueans

No will made by a Niuean shall have any force or effect with respect to his interest in Niuean

land.

490 Succession to deceased Niueans

Subject to Part 8 of the Niue Amendment Act (No 2) 1968 and to every other enactment, the persons entitled on the death of a Niuean to succeed to his estate (other than an interest in Niuean land) so far as not disposed of by his will, and the shares in which they are so entitled, shall be determined under Niuean custom, so far as such custom extends, and shall be determined, so far as there is no Niuean custom applicable to the case under the Administration Act 1969.

491 Niuean land not to vest in administrator

The interest of a Niuean in Niuean land shall in no case vest in his administrator by virtue of letters of administration.

492–496 [Repealed by 1968/68]

497 Niuean land not assets for payment of debts

The interest of any person in Niuean land shall not upon his death be assets available for the payment of his debts and liabilities, whether to the Crown or otherwise, but this section shall not affect the operation of any charge to which that land is subject at the death of the deceased.

498 [Repealed by 2004/270]

499 [Repealed]

PART 20 TRUSTEES FOR NIUEANS

500 Definition of "person under disability"

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

501 Trustee orders

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

502 Matters to be set forth in trustee orders

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

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

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

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

503 Appointment of new trustees

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

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

504 Orders restricting powers of trustees

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

505 Cancellation of trustee orders

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

506 Determination of trustee orders

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

507 Trust property not to vest in trustee

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

508 Administration of property by trustee

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

509 Alienation of property by trustee

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

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

510 Powers of trustee

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

511 Expenditure of revenues of trust property

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

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

512 Enforcement of trusts

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

513 Co-trustees must act jointly

When 2 or more trustees hold office under any trustee order in respect of the same property, those trustees must act jointly in the exercise of the trust, and no such powers shall be exercisable by less than the full number of trustees so appointed, notwithstanding the existence of any vacancy in that number.

514 Remuneration of trustees

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

PART 21 MARRIAGE

515 Prohibited degrees of consanguinity or affinity

(1) A marriage forbidden by the following Schedule is void

SCHEDULE

Forbidden Marriages

1 A man may not marry his

- (1) Grandmother
- (2) Grandfather's wife
- (3) Wife's grandmother
- (4) Father's sister
- (6) Mother's sister
- (6) Mother
- (7) Stepmother
- (8) Wife's mother
- (9) Daughter
- (10) Wife's daughter
- (11) Son's wife
- (12) Sister
- (13) Son's daughter
- (14) Daughter's daughter
- (15) Son's son's wife
- (16) Daughter's son's wife
- (17) Wife's son's daughter
- (18) Wife's daughter's daughter
- (19) Brother's daughter
- (20) Sister's daughter

2 A woman may not marry her

- (1) Grandfather
- (2) Grandmother's husband
- (3) Husband's grandfather
- (4) Father's brother
- (5) Mother's brother
- (6) Father
- (7) Stepfather

- (8) Husband's father
- (9) Son
- (10) Husband's son
- (11) Daughter's husband
- (12) Brother
- (13) Son's son
- (14) Daughter's son
- (15) Son's daughter's husband
- (16) Daughter's daughter's husband
- (17) Husband's son's son
- (18) Husband's daughter's son
- (19) Brother's son
- (20) Sister's son

3 This Schedule shall apply whether the relationship is by whole blood or by the half blood.

4 In this Schedule, "wife" includes a former wife, whether she is alive or deceased, and whether her marriage was terminated by death or divorce or otherwise; and "husband" has a corresponding meaning.

(2) Notwithstanding subsection (1), any persons who are not within the degrees of consanguinity but are within the degrees of affinity so prohibited may apply to the Court for its consent to their marriage, and the Court may make an order dispensing with that prohibition so far as it relates to the parties to the application, and, if such an order is made, that prohibition shall cease to apply to the parties.

516 Marriages to take place before Marriage Officer

(1) Every marriage shall take place in the presence of a Marriage Officer and of at least 2 other witnesses.

(2) In this section, "Marriage Officer" means any Judge or Commissioner of the High Court, the Registrar of the High Court, or any person appointed as a Marriage Officer under subsection (3).

(3) The Cabinet may appoint any minister of religion, or person whom it believes to be a fit and proper person, as a Marriage Officer.

(4) A marriage celebrated other than in accordance with this section is void.

517–518 [Repealed by 2004/270]

519 Offence

If any person acts as a Marriage Officer in Niue without being qualified by office or appointment so to act, he is liable to imprisonment for a term not exceeding 3 years.

520 Notice of marriage

(1) A Marriage Officer shall not solemnise or record any marriage, unless notice in writing of

the intention of the parties to enter into the marriage has been given to the Marriage Officer by one of the parties at least 2 clear days before the day of the marriage.

(2) On receipt of that notice, the Marriage Officer shall publish it in such manner as he thinks sufficient to give due publicity to the intended marriage.

(3) On every such notice, there shall be payable by the person giving it such fee (if any) as may be prescribed by regulations, and all such fees shall be payable into the Niue Government Account.

(4) No marriage shall be invalidated by any breach of the requirements of this section.

521 Mode of solemnisation

Every marriage shall, subject to this Part, be solemnised in such manner as the Marriage Officer thinks fit.

522 Record of marriage

Every marriage shall, at the time of the solemnisation, be recorded in writing by the Marriage Officer in the form and with the several particulars prescribed by regulations under this Act, but no marriage shall be invalidated by any error or defect in that form or in the particulars so required to be recorded.

523 Signature of record

The aforesaid record of every marriage shall be signed by the parties, and by 2 witnesses, and by the Marriage Officer, all being present at the same time, and when the record has been so signed the marriage shall be deemed to be fully solemnised and shall take effect.

524 Transmission of record

The record of every marriage shall be forthwith delivered by the Marriage Officer to the Registrar of the Court, and shall be preserved by the Registrar in the same manner as if it was a record of the High Court.

525 Minimum age of marriage

A Marriage Officer shall not solemnise or record any marriage, unless the husband is at least 18 years of age and the wife is at least 15 years of age, but no marriage shall be invalidated by a breach of this section.

526 Marriage of minors

(1) A Marriage Officer shall not solemnise or record the marriage of any man under the age of 21 years or of any woman under the age of 19 years without the consent of one of the parents of the man or woman, if either of those parents is alive and resident in Niue.

(2) A Judge of the Court may in any case, if he thinks fit so to do, grant exemption from the requirements of this section.

(3) No marriage shall be invalidated by any breach of this section.

527 Offence by Marriage Officer

If any Marriage Officer commits any breach of the provisions of this Part, or signs any record of a marriage containing any statement known by him to be false, he is liable to a fine not exceeding 1 penalty unit.

528 Signature of false record by party or witness

Every party or witness to a marriage who signs a record of it containing any statement known by him or her to be false is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding 0.5 penalty units.

529 Misrepresentation as to facts to procure marriage

Every person who, by any wilful misrepresentation made to a Marriage Officer, procures or attempts to procure the solemnisation by that officer of any marriage is liable to imprisonment for a term not exceeding one year.

PART 22 DIVORCE

530 [Repealed by 2004/270]

531 Nullity of marriage

The Court shall in proceedings for nullity of marriage have and exercise in Niue the same jurisdiction as is possessed for the time being by the courts in New Zealand.

532 [Repealed by 2004/270]

533 Domicile of a married woman

The domicile of a married woman shall be determined as if she were an adult and single.

534 Grounds of divorce and jurisdiction of High Court

(1) Subject to subsection (2), any married person (the petitioner) may take proceedings in the High Court for the dissolution of his or her marriage with the other party to the marriage (hereinafter called the respondent) on any ground specified in subsection (3).

(2) No proceedings for divorce may be taken in the High Court unless

(a) The petitioner or the respondent is at the commencement of the proceedings domiciled in Niue; and

(b) Where the ground alleged in the petition is one of those specified in subsection (3)(l)(m) and (n), has been domiciled or resident in Niue for 2 years at least immediately

preceding the filing of the petition.

(3) A petition for divorce may be presented to the High Court on one or more of the following grounds, and on no other ground ó

(a) That the respondent has since the solemnisation of the marriage been guilty of adultery;

(b) That the respondent, being the wife of the petitioner, has since the solemnisation of the marriage and without the consent of the petitioner been artificially inseminated with the semen of some man other than the petitioner;

(c) That the respondent without just cause has wilfully deserted the petitioner and without just cause has left the petitioner continuously so deserted for 3 years or more;

(d) That the respondentô

(i) Being the petitionerô's husband, has for 3 years or more been an habitual drunkard or drug addict, and has either habitually left his wife without means of support or habitually been guilty of cruelty towards her; or

(ii) Being the petitionerô's wife, has for a like period been an habitual drunkard or drug addict, and has either habitually neglected her domestic duties and rendered herself unfit to discharge them or habitually been guilty of cruelty towards him;

(e) That the respondent has since the solemnisation of the marriage been convicted of attempting to commit the murder of the petitioner or any child (of any age) of the petitioner or respondent, or has been convicted of any offence under section 151 against the petitioner or any such child;

(f) That the respondent has since the solemnisation of the marriage been convicted of incest, attempted rape or assault with intent to commit rape against any child (of any age) of the petitioner or respondent, or of sexual intercourse or attempted sexual intercourse with any such child under 15 years of age;

(g) That the respondent, being the husband of the petitioner, has committed rape or buggery since the solemnisation of the marriage;

(h) That the respondent has since the solemnisation of the marriage been convicted of murder;

(i) That the respondent is a person of unsound mind and is unlikely to recover, and has been a patient for a period or periods of not less in the aggregate than 7 years within the period of 10 years immediately preceding the filing of the petition;

(j) That the respondent is a person of unsound mind and is unlikely to recover, and has been continuously a person of unsound mind for a period of 7 years immediately preceding the filing of the petition, and has been a patient during the final 3 years of the said period of 7 years;

(k) That the respondent is a person of unsound mind and is unlikely to recover, and has been a patient for a period of 5 years immediately preceding the filing of the petition;

(l) That the petitioner and respondent are parties to an agreement for separation, whether made by deed or other writing or orally, and that the agreement is in full force and has been in full force for not less than 3 years;

(m) That

(i) the petitioner and respondent are parties to a decree, order, or judgment made in Niue or in any country if that decree, order, or judgment has in that country the effect that the parties are not bound to live together; and

(ii) that decree of separation, separation order, or other decree, order, or judgment is in full force and has been in full force for not less than 3 years;

(n) That the petitioner and respondent are living apart and are unlikely to be reconciled, and have been living apart for not less than 7 years.

535 Grounds of refusal of divorce

If the Court is of opinion

(a) That, in the case of a petition based on a matrimonial wrong, the petitioner's own habits or conduct induced or contributed to the wrong complained of so as to disentitle the petitioner to a divorce or the petitioner has condoned the wrong complained of; or

(b) That, in the case of the adultery of the respondent, the petitioner has been in any manner accessory to or has connived at the adultery

the Court shall dismiss the suit; but, subject to section 536, in all other cases, if the Court is satisfied that the case of the petitioner has been established, the Court shall pronounce a decree of divorce.

536 Discretion to refuse decree in certain cases

(1)

(a) Where a petition for divorce is presented on any of the grounds specified in section 534 (3) (l) (m) and (n), and the petitioner has proved his or her case, the Court shall have a discretion whether or not to grant a decree of divorce.

(b) The Court shall not, in the exercise of that discretion, refuse to grant a decree by reason only of the adultery of either party after their separation.

(2) The Court may dismiss any petition for divorce if there has been collusion between the petitioner and the respondent with intent to cause a perversion of justice.

537 Co-respondent as a party

In any proceedings in the Court for divorce on the ground of adultery, the Court may make the person with whom the respondent is alleged to have committed adultery a co-respondent in the proceedings.

538 [Repealed by 2004/270]

539 Agreement no bar to divorce

No covenant or agreement between the parties to proceedings for divorce shall operate as a bar to the institution or prosecution of the proceedings.

540 No appeal to Court of Appeal

No appeal shall lie to the Court of Appeal from any decree of the Court for divorce.

541–542 [Repealed by 2004/270]

543 Order for maintenance of divorced wife

(1) When a decree of divorce is made by the Court, the Court may, in and by the decree, order the husband to pay towards the future maintenance of his wife (whether petitioner or respondent), so long as she remains unmarried, a reasonable sum at such times and in such manner as the Court thinks fit.

(2) Every such order shall be deemed to be a maintenance order under Part 23, and all the provisions of that Part shall, so far as applicable, apply to it accordingly.

(3) In addition to or instead of making an order under subsection (1), the Court may, when making any such decree, order the husband to pay to the wife such capital sum as the Court thinks fit.

544 Order as to custody of children

The Court may in and by any decree of divorce or of nullity, or at any time and from time to time thereafter, make such order as it thinks fit as to the custody of the children of the marriage.

545 Molestation of divorced wife by her husband

If, at any time after a decree of divorce or of dissolution of a voidable marriage has been pronounced at the suit of the wife, her former husband

(a) Commits any trespass by entering or remaining upon or in any land, house, or building which is in her occupation or in which she dwells or is present; or

(b) Attempts or threatens to commit any such trespass; or

(c) Molests her by watching or besetting her dwelling house or place or business, employment, or residence, or by following or waylaying her in any road or other public place he is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding 0.5 penalty units.

546 [Repealed by 2004/270]

PART 23 MAINTENANCE AND AFFILIATION

547 Interpretation

In this Part ó

"adequate maintenance" means maintenance reasonably sufficient for the necessities of the person to be maintained, irrespective of the means or ability of the person who is bound to afford such maintenance;

"child" means a person under the age of 16 years;

"defendant" means any person against whom a maintenance order or affiliation order is or has been made under this Part or is applied for under this Part;

"destitute person" means any person unable, whether permanently or temporarily, to support himself by his own means or labour;

"maintenance" includes lodging, feeding, clothing, teaching, training, attendance, and medical and surgical relief;

"maintenance order" means an order under this Part for the payment of money for or in respect of the past or future maintenance of any person.

548 [Repealed by 2004/270]

549 Applications

Any application to the Court for or in relation to a maintenance order or an affiliation order may, except where otherwise expressly provided, be made either by the person in whose favour the order is to be or has been made or by any other person.

550 [Repealed by 2004/270]

551 Affiliation orders

(1) On application made to the Court by or by the authority of a woman who is the mother of a child or who is with child, the Court may, if it is satisfied that the defendant (not being her husband) is the father of that child, make an order (herein called an affiliation order) adjudging the defendant to be the father of that child accordingly.

(2) No affiliation order shall be so made unless the application is made before or within 6

years after the birth of the child, unless the defendant has contributed to or made provision for the maintenance of the child, or has since the birth of the child cohabited with the mother as man and wife, in which case the application may be made at any time after the expiration of the said period of 6 years, if within 2 years immediately preceding the application the defendant has contributed to or provided for the maintenance of the child or has so cohabited with its mother.

(3) If at any time the defendant has been absent from Niue, the period of his absence shall not be counted in computing the respective periods of 6 years or 2 years.

(4) No such application shall be made unless the child is under 16 years of age at the time of the application.

552 Evidence

(1) The evidence of the mother of the child or of any woman who is with child as aforesaid shall not be necessary for the making of an affiliation order.

(2) No person shall be adjudged to be the father of a child upon the evidence of the mother or of a woman who is with child as aforesaid, unless her evidence is corroborated in some material particular to the satisfaction of the Court.

553 Maintenance order in favour of illegitimate child

When an affiliation order has been made by the Court against any person as the father of a child, whether already born or not, the Court may, at the same time or at any time thereafter, make a maintenance order in favour of the child against the person so adjudged to be the father of the child.

554 Maintenance order against father in favour of child

(1) The Court may make a maintenance order against the father of any child (not being an illegitimate child) in favour of that child if the Court is satisfied that the father has failed or intends to fail to provide that child with adequate maintenance.

(2) When the father and child are living apart from each other, and the Court is satisfied that there is reasonable cause for the child continuing so to live apart from the father, the father shall not be deemed to have made provision for the adequate maintenance of the child merely by reason of the fact that he is ready and willing to support the child if and so long as the child lives with him.

555 Maintenance order against mother in favour of child

(1) The High Court may make a maintenance order in favour of a child against the mother of that child, if it is satisfied that the mother is of sufficient ability in that behalf and has failed or intends to fail to make provision for the adequate maintenance of the child.

(2) When the mother and child are living apart from each other, and the Court is satisfied that there is reasonable cause for the child continuing so to live apart from the mother, the mother shall not be deemed to have made provision for the adequate maintenance of the child merely

by reason of the fact that she is ready and willing to support the child if and so long as the child lives with her.

556 Maintenance order against husband

(1) The Court may make a maintenance order against a husband in favour of his wife, if it is satisfied that the husband has failed or intends to fail to provide his wife with adequate maintenance.

(2) Unless the Court is satisfied that the wife is a destitute person, no maintenance order shall be made against the husband if it is proved that he is not of sufficient ability to contribute to her maintenance.

(3) When the husband and wife are living apart from one another and the wife has, in the opinion of the Court, reasonable cause for refusing or failing to live with her husband, the husband shall not be deemed to have provided her with adequate maintenance merely by reason of the fact that he is ready and willing to support her if and so long as she lives with him.

557 Maintenance order against wife

(1) The Court may make a maintenance order against a married woman in favour of her husband, if it is satisfied that the husband is a destitute person and that his wife is of sufficient ability to contribute to his maintenance.

(2) No such order shall be made if the Court is satisfied that there is reasonable cause for the failure of the wife to contribute to the maintenance of her husband.

558 Maintenance order against any person in favour of father or mother

The Court may make a maintenance order against any person in favour of the father or mother of that person, if it is satisfied that the father or mother, is a destitute person and that the defendant is of sufficient ability to contribute to the maintenance of that destitute person.

559 Disobedience to maintenance order

Every person who disobeys a maintenance order commits an offence and is liable on conviction to a fine not exceeding 1 penalty unit and imprisonment for a term not exceeding 6 months.

560 Maintenance money a debt

All money due under a maintenance order shall constitute a debt due by the defendant to the person to whom the money is payable under the terms of the order.

561 Order in favour of non-residents

A maintenance order may be made in favour of any person otherwise entitled to it although not present or resident in Niue.

562 Order against non-residents

A maintenance or affiliation order may be made against any defendant otherwise liable although not present or resident in

563 Orders *in absentia*

If the Court is satisfied that a defendant is absent from Niue, or that his residence is unknown, or that he cannot be found, the Court may hear and determine the application *ex parte* and make a maintenance order or affiliation order accordingly.

564 Repeated applications

The dismissal of an application for a maintenance order or affiliation order shall not, unless the Court so orders, be a bar to the making of a further application in the same matter against the same defendant.

565 Payments not to be made in advance

(1) No money payable under a maintenance order shall, without the precedent consent of a Judge of the High Court, be paid more than one year in advance of the due date of it.

(2) If any money is paid in breach of this section, it shall not be taken into account in any proceedings for the enforcement of the maintenance order or for the punishment of any disobedience to it; but no money so paid in breach of this section shall be recoverable by the person by whom it was paid.

566 Cancellation, variation, and suspension of orders

(1) The High Court may at any time make an order cancelling an affiliation order, or cancelling, varying, or suspending any maintenance order or substituting a new maintenance order, on the grounds

(a) That the order was obtained by fraud or perjury; or

(b) That since the making of the order new and material evidence has been discovered; or

(c) That since the making of the order the circumstances have so changed that the order ought to be so cancelled, varied, or suspended, or that a new order ought to be substituted for it.

(2) The power hereby conferred to cancel or vary an order shall include the power to remit wholly or in part any arrears due under the order, and any such arrears may be remitted either on the grounds hereinbefore in this section mentioned or, if the Court thinks fit, on the ground that the defendant is not of sufficient ability to pay them.

567 Payment of maintenance money

Any maintenance order may direct the money payable under it to be paid either to the person

in whose favour the order is made or to any other person on behalf of that person.

568 Security for obedience to maintenance orders

(1) Whenever a maintenance order is made, the High Court may, by the same order or by order made at any later time, direct the defendant to give security for his obedience to the maintenance order.

(2) Every such security shall, as the Court determines, be either the payment into Court of such sum of money, not exceeding 4 penalty units, as the Court directs, or the giving of a bond to Her Majesty with one or 2 sureties to be approved by the Court in a sum not exceeding 4 penalty units, conditioned for due obedience to the maintenance order.

(3) When such security has been required, the Court may commit the defendant to prison until the order requiring security has been complied with, but no person shall be so detained in custody for a longer period than 6 months.

(4) All money so paid into Court or recovered by suit or otherwise under any such bond shall be available, under the direction of the Court, for the satisfaction of all claims under the maintenance order.

(5) The Court may, on being satisfied that the security is no longer required, order any amount so paid into Court to be repaid to the defendant, or cancel any bond so given.

569 Operation of agreements

No agreement shall be effective so as to take away or restrict any liability imposed on any person by this Act to contribute to the maintenance of any other person, or affect the operation of any maintenance order or the right of the High Court to make any such order.

570 Purport and duration of maintenance orders

(1) Every maintenance order shall be an order for the periodical payment, at such times and in such manner as the Court thinks fit, of such sum of money as the Court thinks reasonable.

(2) The intervals between the successive payments shall not exceed 28 days.

(3) When any such order is made in respect of the maintenance of a child, the order shall cease to be in force so soon as that child attains the age of 16 years.

571 Order for past maintenance

Any maintenance order may require the defendant, in addition to making such periodical payments as aforesaid, to pay such sum as the Court thinks reasonable, not exceeding 1 penalty unit, on account of the past maintenance, previous to the making of the order, of the person in respect of whose maintenance the order is made.

Offences

572 Leaving Niue while maintenance money in arrear

(1) Every person against whom a maintenance order has been made is liable to imprisonment for a term not exceeding 2 years, if, while any money payable under the order is in arrear and unpaid, he leaves or attempts to leave Niue without the permission in writing of a Judge of the High Court.

(2) In any prosecution under this section the burden of proving that the permission of a Judge was so given shall be upon the accused.

573 Leaving Niue after affiliation order and before birth of child

(1) Every person against whom an affiliation order is made before the birth of the child is liable to imprisonment for a term not exceeding 2 years, if he leaves or attempts to leave Niue without the permission in writing of a Judge of the Court at any time within 12 months after the making of the order.

(2) In any prosecution under this section the burden of proving that the permission of a Judge was so given shall be upon the accused.

574 Leaving Niue with intent to disobey maintenance order

Every person against whom a maintenance order has been made is liable to imprisonment for a term not exceeding 2 years, if he at any time after it leaves or attempts to leave Niue with intent to make default in obeying that order.

575 Leaving Niue while failing to maintain wife

(1) Every person is liable to imprisonment for a term not exceeding 2 years, if he without reasonable cause fails to provide his wife with adequate maintenance and at any time while failing so to do leaves or attempts to leave Niue without the permission in writing of a Judge of the High Court.

(2) In any prosecution under this section the burden of proving that the permission of a Judge was so obtained shall be upon the accused.

576 Leaving Niue while failing to maintain child

(1) Every person who is the father of a child is liable to imprisonment for a term not exceeding 2 years, if he without reasonable cause fails to provide that child with adequate maintenance and at any time while failing so to do leaves or attempts to leave Niue without the permission in writing of a Judge of the High Court.

(2) In any prosecution under this section the burden of proving that the permission of a Judge was so given shall be upon the accused.

577 Leaving Niue with intent to desert wife or child

Every person who is the husband of any woman or the father of any child is liable to imprisonment for a term not exceeding 2 years, if he leaves or attempts to leave Niue with the intention of failing without reasonable cause to make adequate provision for the maintenance

of that wife or child during his absence.

578 [Repealed by 2004/270]

579 Evidence of intent

In any prosecution for an offence against this Part, the fact that the defendant has at any time within 3 years after leaving Niue habitually made default in obeying an order of maintenance or in providing his wife or child with adequate maintenance shall be sufficient evidence, unless the contrary is proved, that the defendant left Niue with intent so to make default.

PART 24

580-592 [Repealed by 1968/68]

PART 25

593-599 [Repealed by 1968/68]

PART 26 PERSONS OF UNSOUND MIND

Orders of Medical Custody

600 Application by Medical Officer to Court

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

601 Medical certificates as to persons of unsound mind

No such order shall be made except on examination of the person alleged to be of unsound mind, and upon production to the Court of a certificate by the Director of Health or by 2 Medical Officers that the person in respect of whom the order is to be made is of unsound mind and that his detention in medical custody is necessary in his own interests or for the safety of other persons.

602 Order of medical custody

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

603 Renewal of order

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

aforesaid thinks fit.

604 Cancellation of order

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

605 [Repealed by 2004/270]

606 Arrest and detention of persons committed to medical custody

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

607 [Repealed by 2004/270]

608 Removal from Niue to New Zealand

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

609 Conditions of removal

No such warrant shall be issued unless the Court is satisfied, on the certificate by the Director of Health or by 2 Medical Officers, and on the examination of the person alleged to be of unsound mind, that his removal from Niue to New Zealand is necessary in his own interests or for the safety of other persons.

610 Method of removal

On the issue of any such warrant for the removal of any person to New Zealand, he may be taken to New Zealand in the custody of any person appointed in that behalf by a Medical Officer in any ship belonging to Her Majesty or in any Commonwealth ship or in any aircraft which is approved by the Director of Health or 2 Medical officers as suitable for the purpose.

611 Admission to hospital of persons removed to New Zealand

(1) Where any person in respect of whom a warrant for removal to New Zealand is made under section 608 arrives in New Zealand under the warrant, then, on the delivery to the Superintendent of a hospital within the meaning of the Mental Health Act 1969 of copies, under the seal of the High Court, of that warrant, the order of medical custody made in respect of that person under section 602, the application to the Court for the last-mentioned order, and the certificate produced to the Court under section 601 in respect of that application, the Superintendent shall receive that person and may detain him in the hospital under this section.

(2) Where any person is received into a hospital under this section, the order and warrant

made or issued in respect of him under sections 602 and 608 shall be sufficient authority for his detention in the hospital for a period of 7 days.

(3) At any time before the expiration of that period, the Superintendent of the hospital may apply for a reception order under the Mental Health Act 1969 in respect of the person so received into the hospital; and the fact that such an application has been made shall be sufficient authority for the Superintendent to detain that person until the application is finally determined.

[This section is not Niue law.]

612 [Repealed by 2004/270]

613 No committee of estate of person of unsound mind

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

614 Warrant for arrest of persons of unsound mind

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

615 Arrest without warrant of persons of unsound mind

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

615A Commissioner and Justices may act for Judge

(1) Any power conferred by this Act on the Court to make an order under sections 602, 603, 604 or 608 may be exercised by a Commissioner of the High Court or any 2 Justices of the Peace if at the time when the power is exercised there is not present in Niue a Judge who is able to exercise it.

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

(3) Any proceedings commenced before a Commissioner or 2 Justices of the Peace under this section may be continued and completed before a Judge.

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

Persons of Unsound Mind Charged with Offences

616 Insane persons not to be tried for offences

If any person on being charged with an offence before the Court is found to be of unsound mind so that he cannot understand the nature of the proceedings, he shall not be tried, but the Court shall order him to be detained in prison or in some other place of security.

617 Accused persons acquitted on ground of insanity

(1) If any person on his trial for an offence before the Court is found to have been insane at the time of the commission of the offence, he shall be found not guilty on the ground of insanity, and the Court shall order him to be detained in prison or in some other place of security.

(2) A person so detained may apply to the High Court for discharge at any time but an application may not be made at more frequent intervals than 6 months.

618 Discharge

(1) A person who is detained under section 616 shall not be so detained for a period of more than one month, and may at any time be discharged by order of the Court.

(2) Such a person may further be brought before the Court and either tried for the offence in respect of which he or she is detained or be again detained under section 616.

619 Orders of medical custody

When any person is so detained, whether in the case of a charge of murder or manslaughter or otherwise, the Court shall have the same jurisdiction to make an order of medical custody or to issue a warrant for removal to New Zealand as in the case of any other person of unsound mind.

620 The defence of insanity in criminal prosecutions

(1) No person charged with any offence shall be acquitted on the ground of insanity, unless the offence was committed by him while labouring under natural imbecility or disease of the mind to such an extent as to render him incapable of understanding the nature or quality of the act done by him or of knowing that the act was wrong.

(2) A person labouring under specific delusions but in other respects sane shall not be acquitted on the ground of insanity, unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act.

(3) Every one shall be presumed to be and to have been sane unless the contrary is proved.

PART 27

621–633 [Repealed 18/2/1975]

PART 28

634–644 [Repealed by 1968/68]

PART 29 NIUEAN ANTIQUITIES

645 Interpretation

In this Part, "Niuean antiquities" includes Niuean relics, articles manufactured with ancient Niuean tools and according to Niuean methods and all other articles or things of historical or scientific value or interest and relating to Niue; but does not include any botanical or mineral collections or specimens.

646 [Repealed by 2004/270]

647 Niuean antiquities to be offered for sale before exportation

It shall not be lawful to remove from Niue any Niuean antiquities without first offering them for sale to the Cabinet on behalf of Her Majesty for the benefit of the people of Niue.

648 Power to detain Niuean antiquities attempted to be exported

It shall be the duty of all constables and officers of Customs to seize and detain any Niuean antiquities attempted to be removed from Niue contrary to this Part.

649 Exporting Niuean antiquities without permission

(1) Every person who, without the express permission in writing of the Cabinet, exports from Niue any Niuean antiquities is liable to a fine not exceeding 2 penalty units.

(2) Notice of the intention to export any Niuean antiquities shall be given by the exporter to the Revenue Manager or other proper officer of Customs at least 24 hours before shipment.

(3)

(a) Any Niuean antiquities entered for export contrary to this Part shall be deemed to be forfeited, and shall vest in Her Majesty for the benefit of the people of Niue.

(b) The Cabinet may, after inquiry, cancel the forfeiture if the Cabinet thinks fit.

650 Power to remove antiquities in certain cases

Nothing in this Part shall be deemed to prevent any person who has offered any Niuean antiquities for sale as provided by section 647 from removing those Niuean antiquities from Niue, if he has previously obtained the permission in writing of Cabinet.

651 Right to copy of antiquities intended to be exported

(1) On any application for permission to export any Niuean antiquities, Cabinet may, make it a condition of the granting of the application that the owner allows them to be copied, by photography, cast, or otherwise, in such manner and by such person as Cabinet directs.

(2) Every such copy shall be the property of Her Majesty for the benefit of the people of Niue.

652 Cabinet to decide what articles come under this Part

In case any dispute arises as to whether any article or thing comes within the scope of this Part, that dispute shall be determined by the Cabinet, whose decision shall be final.

653 [Repealed by 1971/71]

PART 30 CUSTOMS

654–655A [Repealed by 2004/270]

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

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

(2) Nothing in this section shall apply to

(a) Goods in respect of which on their exportation from New Zealand or the Cook Islands any claim for drawback of duty has been made and allowed;

(b) Goods which by reason of warehousing or for any other reason have been exported from New Zealand or the Cook Islands without payment of duty on their importation into New Zealand or the Cook Islands;

(c) Goods produced in a manufacturing warehouse in New Zealand or the Cook Islands, unless they have been entered in New Zealand or the Cook Islands for home consumption and the duty (if any) paid on it;

(d) Goods subject to any excise duty in New Zealand under the Customs Acts (as defined in section 3 of the Customs Act 1966) or in the Cook Islands under the law in force in the Cook Islands, unless such duty has been paid on it as if they had not been exported;

(e) Goods on which a rate of duty has been paid in New Zealand or the Cook Islands lower than that to which the goods are subject in Niue at the time of their importation into Niue.

657 [Repealed by 4/76/1982]

658 [Repealed by 2004/270]

PART 31

659–670 [Repealed by 2004/270]

671 [Repealed by 1967/67]

PART 32

THE LAWS OF NIUE: GENERAL PROVISIONS

Application of the Laws of New Zealand

672–677 [Repealed by 2004/269]

678 Criminal procedure in Niue

In every enactment in force in Niue, every reference to the trial of offences by way of indictment or by way of summary proceedings shall, in the application of that enactment to Niue, be construed as a reference to the trial of such offences by the High Court in the ordinary course of its criminal jurisdiction and procedure.

679–684A [Repealed by 2004/270]

685 [Repealed by 1975/5]

686–689 [Repealed by 2004/270]

689A Misuse of Drugs Act in force in Niue

(1) Subject to subsection (2) and to the provisions of this Act, the Misuse of Drugs Act 1975 (so far as it is applicable) shall extend to and be in force in Niue.

(2) In the application of the Misuse of Drugs Act 1975 to Niue, unless the context otherwise requires

(a) Every reference in that Act to New Zealand shall be read as a reference to Niue;

(b) Every reference in section 35 of that Act to an extradition treaty for the time being in force between New Zealand and any foreign country which is a party to the Single Convention on Narcotic Drugs 1961, as amended by the Protocol amending that Convention done at Geneva on 25 March 1972, or to the Convention on Psychotropic Substances 1971, shall be read as a reference to an extradition treaty for the time being in force between New Zealand and any such foreign country which extends to Niue;

(c) Every reference to that Act to the Court, or to a Judge, or to a Magistrate or Justice, shall be read as a reference to the High Court of Niue or a Judge of that Court or a Commissioner of that Court;

(d) Every reference in that Act to the Minister of Health shall be read as a reference to

the Minister in charge of Health in Niue acting with the concurrence of the Chief Medical Officer of Niue;

(e) Every reference in that Act to the Medical Officer of Health shall be read as a reference to the Chief Medical Officer of Niue;

(f) Every reference in that Act to a constable or a member of the Police shall be read as a reference to an officer of police of the Niue Public Service;

(g) The references in section 6 of that Act to section 44 (2) of the Criminal Justice Act 1954 shall be read as references to section 240 of the Niue Act 1966;

(h) The references in section 18 of that Act to section 198 of the Summary Proceedings Act 1957 shall be read as references to section 284 of the Niue Act 1966:

690–705 [Repealed by 2004/270]

706 Limitation of actions

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

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

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

Miscellaneous Rules of Law

707 Legal status of married women

(1) Save where otherwise provided by this Act, the legal capacity of a married woman, whether contractual, proprietary, testamentary, or of any other kind whatsoever, shall be the same as that of an unmarried woman.

(2) Save in respect of intestate succession, marriage shall not confer on either party any rights to or in respect of the property of the other.

(3) The rule of the common law that for certain purposes a husband and wife are deemed to be one person only is hereby abolished for all purposes, including the law of domicile.

(4) A husband shall not be responsible, as such, for torts committed by his wife.

(5) Nothing in this section shall affect the validity or operation of a restraint on anticipation.

708 Legitimacy

(1) Every person, whether born before or after 1 January 1967, and whether born in Niue or

not, and whether or not his parents or either of them were domiciled in Niue at the time of his birth, shall for all the purposes of the law of Niue be deemed to be the legitimate child of each of his parents, and all other relationships in respect of that person shall be deemed to be traced through lawful wedlock accordingly.

(2) The provisions of this section

(a) In so far as it affects wills, shall have effect only in relation to the wills of testators who die after 1 January 1967; and

(b) In so far as it affects instruments other than wills, shall have effect only in relation to instruments executed after 1 January 1967.

(3) All wills of testators who have died before 1 January 1967, and all other instruments executed before 1 January 1967, shall be governed by the enactments and rules of law which would have applied to them if this Act had not been passed.

(4) The estates of all persons who have died intestate as to the whole or any part of it before 1 January 1967 shall be distributed under the enactments which would have applied to them if this Act had not been passed.

(5) No action shall lie against any executor or administrator or trustee of the estate of any person who dies after 1 January 1967 or the trustee under any instrument executed after 1 January 1967 by any person whose relationship to the deceased or to any other person or, as the case may be, to the settlor or to any other person is in any degree traced otherwise than through lawful wedlock, by reason of the executor or administrator or trustee having made any distribution of the estate or trust disregarding the claims of the person so related where at the time of making the distribution the executor, administrator, or trustee had no notice of the relationship of that person to the deceased or the settlor or any other person.

709 Joint liability

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

710 Contracts of guarantee

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

711–713 [Repealed by 2004/270]

714 Liability of owners of dogs

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

715 Distress for rent abolished

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

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

716 Libel and slander

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

717-719 [Repealed by 2004/269]

720 Statutory declarations

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

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

721 [Repealed by 2004/270]

722 Taxes on Niuean land

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

723 [Repealed by 2004/270]

724 Warrants of arrest

(1) Except where other provision is made by law in that behalf, any warrant for the arrest of any person in Niue may be directed either to any constable or other person by name, or generally to the constables of Niue.

(2) When such a warrant is directed to constables generally, any such constable may execute the warrant in like manner as if it was directed specially to him by name.

(3) Any such warrant may be granted and executed on a Sunday, and either by day or night.

(4) Every such warrant shall name or otherwise describe the person against whom it is issued.

(5) It shall not be necessary to make any such warrant returnable at any particular time, but it may remain in full force until executed.

725 Trespass *ab initio*

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

726 [Repealed]

727 [Repealed by 2004/270]

727A Births and deaths

The Cabinet may make regulations to provide for the registration of births and deaths and the due administration of it.

728–735 [Repealed by 2004/270]

736 Contributory negligence

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

737 Protection of intellectual property

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

738 Aerodromes

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

(a) Prohibit, either absolutely or beyond a height specified in the notice, the erection or placing or extension of any building, pole, mast, or other structure of any kind on the land described in the notice;

(b) Limit the height to which trees, shrubs, vegetation, or foliage may be permitted to grow on the land described in the notice;

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

(2) Where any land, building, pole, mast, or other structure interferes in any way with the use

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

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

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

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

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

oooooooooooooooooooo

SCHEDULES

SCHEDULE 1

[Repealed by 1974/43 (NZ)]

oooooooooooooooooooo

SCHEDULE 2

FORM OF DECLARATION

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

A.B.

Declared at in _____ in Niue this _____ day of ____ 20 ____ before me ó

C.D.

Judge of the High Court of Niue, or Commissioner of the High Court, Registrar of the High

Court, member of Cabinet, Finance Secretary of Customs, justice of the Peace, Medical Officer of Niue, Solicitor of the Supreme Court of New Zealand, as the case may be.