



# Immigration Act 2011

Act No. 309

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##### **1. Short Title**

This is the Immigration Act 2011.

##### **2. Purpose**

The purpose of this Act is to confirm the Government of Niue's right to control its borders. This includes managing and efficiently addressing the risks associated with those persons who attempt to enter or remain in Niue unlawfully, or who use the immigration system for personal gain contrary to the aims of Government immigration policy. This Act achieves its purpose through-

- (a) confirming the inalienable right of New Zealand citizens born in Niue to travel to and remain in Niue;
- (b) confirming the right of all other New Zealand citizens, except those who are prohibited persons, to travel to and remain in Niue;
- (c) requiring all other persons to hold valid visas or permits, or exemptions from the requirement to hold a visa or permit, in order to travel to or remain in Niue;
- (d) providing an administrative structure to facilitate the management of the immigration system;
- (e) providing that Cabinet makes individual decisions in respect of those people who pose a particular risk to Niue, and those who apply for residence permits;
- (f) providing for an efficient response to the deportation of persons unlawfully in Niue, criminal offenders, or those that pose a national security or reputational risk to Niue;
- (g) confirming the minimum requirements that those engaging in and benefiting from the immigration system in Niue must observe;
- (h) requiring the licensing of immigration advisors;
- (i) providing for immigration offences and penalties to enable Niue to address offending and to deter against immigration offending.

### **3. Interpretation**

In this Act -

“carrier” means the owner or charterer of a craft and includes the agent of the owner or charterer in Niue or if there is no agent the person in charge;

“certificate of identity” means a document other than a passport issued by the Government of any country to any person for the purposes of international travel which purports to establish the identity but not the nationality of the person and which confers on the person the right to enter the country of the issuing Government;

“craft” means any form of aircraft, ship or other vehicle or vessel capable of being used to transport any person to or from Niue from or to any country outside Niue;

“Chief Immigration Officer” means the person appointed by the Niue Public Service Commission under section 10;

“employment” means any activity undertaken for gain or reward regardless of whether the gain or reward is monetary

“Immigration Officer” means an employee of the Public Service designated under section 11;

“immigration place” means any place approved by the Chief Immigration Officer for the purposes of-

- (a) processing persons arriving in or departing from Niue; or
  - (b) enabling transit passengers to wait pending the departure of their craft;
- “imprisonment” means any form of detention or custody whereby a person is deprived of liberty for a continuous period;

“last known address” means the address given in the most recently completed application or arrival card or as later notified to an Immigration Officer by the person;

“Minister” means the Minister to whom responsibility for immigration is assigned;

“New Zealand Citizen” means any person holding a valid New Zealand passport or who has the right to hold a valid New Zealand passport;

“Passport” means a document that is issued to a person by the Government of any country which purports to establish the identity and nationality of the person and which confers on the person the right to enter the country of the issuing Government;

“permanent resident” means any person who has been granted permanent residence status under section 20;

“permit” means a temporary permit granted under this Act;

“person in charge” means the master, captain, pilot in command, driver or other person for the time being responsible for a craft;

“revocation notice” means a document stating that a visa or temporary permit, or exemption from the requirement to hold a visa or temporary permit has been revoked;

“temporary permit” means a permit granted under section 14;

“transit passenger” means a person who arrives in Niue from another country while in transit to another overseas destination and who throughout the whole period of his or her stay in Niue remains on board the craft or in an immigration place;

“valid permit” means a temporary permit or a residence permit which has not been revoked or in the case of a temporary permit expired;

“valid visa” means a visa that is current for travelling to Niue, which has not been revoked or has expired;

“visa” means a visa granted under section 12.

“visitor” means any person not being a prohibited immigrant who enters Niue for a period not exceeding 30 days and who is in possession of a valid passport or other relevant travel document, and includes any one or more dependant members of the family of such person.

### **3A Application**

- (1) With the exception of Part 7, this Act shall not apply to -
  - (a) The sea, land and air forces of any Commonwealth country; or
  - (b) Any person entitled to diplomatic privileges and immunities under the Diplomatic Privileges and Immunities Act 1968; or
  - (c) Any person entitled to consular privileges and immunities under the Consular Privileges and Immunities Act 1971; or
  - (d) Any person or class of persons in respect of whom the Cabinet in its discretion grants an exemption from all of the requirements of this Act.
- (2) With the exception of Part 7, this Act shall not apply to -
  - (a) A permanent resident of Niue; or
  - (b) A Niuean who was born in Niue; or

- (c) A person other than a Niuean who was born in Niue; or
- (d) A New Zealand citizen permanently residing in Niue prior to 1 January 1996.

## PART 1 - GENERAL IMMIGRATION MATTERS

### **4. Rights of New Zealand citizens born in Niue**

- (1) For the purposes of this Act, every New Zealand citizen born in Niue has the right to travel to or remain in Niue at any time.
- (2) Nothing in this Act shall abrogate the right declared in subsection (1) and no provision of this Act that is inconsistent with that right shall apply to New Zealand citizens born in Niue.
- (3) No New Zealand citizen born in Niue shall require a visa to travel to, or require a permit in order to remain, or undertake any activity, in Niue.
- (4) To avoid doubt a person to whom this section applies cannot be considered a prohibited person under this Act.
- (5) If section 9 applies to a New Zealand citizen, to whom section 4 does not apply, he or she must hold a valid visa in order to travel to, and a valid permit in order to remain in, Niue.
- (6) To avoid doubt a person to whom subsection (1) applies cannot have his or her right to travel to, or remain in, Niue revoked under Part 4.

### **5. Rights of persons who are not born in Niue**

- (1) Subject to subsections (2) and (3), a person who is not born in Niue shall, upon application to the Chief Immigration Officer remain lawfully in Niue if that person has a parent that is either:
  - a) A New Zealand citizen and born in Niue, or
  - b) A permanent resident, and
  - c) who is ordinarily resident in Niue.
- (2) For the purposes of this section a person shall be deemed to be ordinarily resident in Niue if, and only if -
  - a) He is actually residing in Niue;
  - b) Having been actually resident in Niue with the intention of residing there indefinitely, he is outside Niue but has, and has ever since he left Niue an intention to return and reside there indefinitely.
- (3) Any person who has been outside Niue continuously for any period of more than 3 years, otherwise than for the purpose of:
  - a) undergoing medical treatment, or
  - b) a course of education or of technical training or instruction, or

c) any other purpose that Cabinet may prescribe by regulations from time to time.

during the whole or substantially the whole of that period, shall be deemed not to have been actually resident in Niue during that period with the intention of residing there indefinitely.

(4) A person under this section who is born overseas is deemed for the purposes of section 4 to be born in Niue.

#### **6. Requirement to hold a visa to travel to Niue**

(1) Every person must hold a valid visa granted under this Act in order to travel to Niue lawfully unless-

(a) he or she is exempt from the requirement to hold a visa under this Act;

or

(b) he or she holds a valid residence permit.

(2) Cabinet may make regulations under this Act to exempt any person or class of persons from the requirement to hold a visa, or types of visa, in order to travel to Niue, but no regulations may exempt a person to whom section 9 applies from the requirement to hold a visa in order to travel to Niue.

(3) For the purposes of this section persons intending to arrive in Niue as transit passengers are deemed to be travelling to Niue.

#### **7. Requirement to hold a permit to remain in Niue**

(1) Every person must hold a valid permit granted under this Act in order to remain in Niue lawfully unless he or she is exempt from the requirement to hold a permit under this Act.

(2) Cabinet may make regulations under this Act to exempt any person or class of persons from the requirement to hold a permit, or types of permit, in order to remain in Niue, but no regulations may exempt a person to whom section 9 applies from the requirement to hold a permit in order to remain in Niue.

(3) Every person who is required to hold a valid permit in order to remain in Niue but who does not hold a valid permit is deemed to be unlawfully in Niue.

#### **8. Persons unlawfully in Niue**

(1) A person unlawfully in Niue is obliged to leave Niue immediately and is liable to be deported.

(2) Every person is required to report to an Immigration Officer at an Immigration Place on becoming unlawful in Niue.

(3) An Immigration Officer may require any person to provide his or her passport or certificate of identity for inspection if the Immigration Officer reasonably

suspects the person of being unlawfully in Niue or breaching the conditions of his or her permit.

**9. Prohibited persons**

- (1) The following are prohibited persons and are unable to travel to, or remain in Niue, unless granted a visa or permit in accordance with subsection (2) or (3)-
  - (a) A person who at any time has been convicted of any offence for which that person has been sentenced to a period of imprisonment, whether served or not, that was-
    - (i) for an indeterminate period; or
    - (ii) for a period of 12 months or more:
  - (b) A person who has been removed or deported from any country including Niue:
  - (c) A person who in the opinion of Cabinet, Minister or the Chief Immigration Officer threatens national security:
  - (d) A person who in the opinion of Cabinet, Minister or the Chief Immigration Officer threatens the public order or public interest:
  - (e) A person who has failed to comply with the requirements under sections 33 and 34.
- (2) Cabinet may grant a prohibited person a visa or permit.
- (3) Nothing in subsection (2) gives any person to whom this section applies the right to apply for any visa or permit, and where any person purports to apply for any visa or permit under this section-
  - (a) Neither Cabinet nor the Minister is under any obligation to consider the application; and
  - (b) whether the application is considered or not, neither Cabinet nor the Minister is obliged to give any reasons for any decision relating to the application.
- (4) No person is a prohibited person under this section where:
  - (a) the event that would otherwise make him or her a prohibited person under this section occurred prior to the commencement of this Act; and
  - (b) he or she resided lawfully in Niue for the three years prior to the commencement of this Act; and
  - (c) in each of those three years he or she spent at least 200 days in each year in Niue.

**10. Chief Immigration Officer**

- (1) The Niue Public Service Commission must appoint a member of the Public Service as the Chief Immigration Officer who is responsible for the administration of this Act.
- (2) The Chief Immigration Officer may hold other positions in the Public Service while designated as the Chief Immigration Officer.

- (3) Unless otherwise stated in this Act the Chief Immigration Officer may not exercise the powers vested in Immigration Officers.
- (4) Where the Chief Immigration Officer is a Constable he or she may exercise the powers of an Immigration Officer under section 11(4).

#### **11. Immigration Officers**

- (1) The Chief Immigration Officer, after consultation with the Niue Public Service Commission, must designate employees of the Public Service as Immigration Officers for the purposes of this Act.
- (2) A person who is designated as an Immigration Officer must be issued with a warrant of designation signed by the Chief Immigration Officer which must be produced upon request when exercising any powers under this Act.
- (3) A person's designation as an Immigration Officer expires when-
  - (a) the person is no longer undertaking immigration duties as part of their employment; or
  - (b) it is revoked by the Chief Immigration Officer.
- (4) Constables are deemed to be designated as Immigration Officers but only for the purposes of sections 8(3), 27(1), 26(3), 26(4), 28(2), 31(1)(f), 31(1)(g), 31(1)(h) and 32(4).
- (5) A person may be designated as an Immigration Officer while holding other positions in the Public Service which do not involve immigration duties.

### **PART 2 - TEMPORARY ENTRY - VISAS AND TEMPORARY PERMITS**

#### **12. Visas**

- (1) A visa entitles the holder to lawfully travel to Niue in accordance with the conditions stated on his or her visa and to apply for a temporary permit on arrival.
- (2) The grant of a visa is a matter of discretion for the Chief Immigration Officer.
- (3) A visa may be subject to any conditions imposed by the Chief Immigration Officer.
- (4) Every visa granted under this Act must-
  - (a) be in a form approved by the Chief Immigration Officer which may include electronic form; and
  - (b) be endorsed in the applicant's valid passport or valid certificate of identity unless the visa is granted in an electronic form; and
  - (c) state the date on which it expires; and
  - (d) state whether it is valid for single or multiple entry to Niue; and

- (e) state any conditions to which it is subject.
- (5) Cabinet may certify and publish temporary entry guidelines to assist with the determination of applications for visas.
- (6) Except for visitor visas, every applicant for a visa must be of
  - (a) genuine intent in their stated reason for travel to Niue; and
  - (b) good character; and
  - (c) good health.
- (7) There are the following types of visas:
  - (a) visitor visas for tourists to Niue;
  - (b) work visas for persons intending to undertake employment or provide any services in Niue;
  - (c) student visas for persons intending to undertake a course of study in Niue;
  - (d) transit visas for transit passengers.
- (8) Regulations may be promulgated under this Act to:
  - (a) amend the purposes of any of the visas described in subsection (7);
  - (b) create other types of visas and the purposes for them.
- (9) A visa remains valid for the period up to and including the date of expiry so stated in the visa.
- (10) To avoid doubt a visa does not entitle the holder to remain in Niue.

### **13. Applications for visas for travel to Niue**

- (1) Every person requiring a visa in order to travel to Niue must apply on the relevant form to the appropriate office with any applicable fee.
- (2) The Chief Immigration Officer will determine where applications for visas may be made.
- (3) Without limiting the places at which the Chief Immigration Officer may determine where applications for visas can be made, those places may be:
  - (a) a Niue High Commission;
  - (b) an office of a New Zealand Government agency responsible for the determination of immigration applications for New Zealand.
- (4) Nothing in this section prevents the Chief Immigration Officer from granting an applicant a visa of a different type to that applied for if he or she considers it appropriate in the circumstances.

- (5) Nothing in this section prevents a person who is exempt from the requirement to hold a visa in order to travel to Niue to apply for and be granted a visa prior to commencing that travel.

#### **14. Temporary permits**

- (1) A temporary permit entitles the holder to remain lawfully in Niue for the period stated on the temporary permit.
- (2) The grant of a temporary permit is a matter of discretion for the Chief Immigration Officer.
- (3) A temporary permit may be subject to any conditions imposed by the Chief Immigration Officer.
- (4) Every temporary permit granted under this Act must-
  - (a) be in a form approved by the Chief Immigration Officer which may include electronic form; and
  - (b) be endorsed in the applicant's valid passport or valid certificate of identity unless the permit is granted in an electronic form; and
  - (c) state the date on which it expires; and
  - (d) state any conditions to which it is subject.
- (5) Cabinet may publish temporary entry guidelines to assist the Chief Immigration Officer to establish the form of temporary permit applications.
- (6) Every applicant for a temporary permit must be of-
  - (a) genuine intent in their stated reason for being in Niue; and
  - (b) good character; and
  - (c) good health.
- (7) There are the following types of temporary permits:
  - (a) work permits for persons intending to undertake employment or provide any services in Niue;
  - (b) student permits for persons intending to undertake a course of study in Niue.
- (8) Regulations may be promulgated under this Act to-
  - (a) amend the purposes of any of the permits under subsection (7);
  - (b) create other types of temporary permits and the purpose for them.
- (9) A temporary permit remains valid for the period up to and until the earlier of-
  - (a) the date the holder departs Niue; or
  - (b) the date of expiry so stated in the temporary permit.
- (10) To avoid doubt a temporary permit does not entitle the holder to travel to Niue.

**15. Applications for temporary permits on arrival in Niue**

- (1) Every person must immediately apply for a temporary permit on arrival in Niue to the Immigration Officer at an Immigration Place together with any applicable fee, unless-
  - (a) he or she is exempt from the requirement to hold a permit under this Act; or
  - (b) he or she holds a residence permit.
- (2) Where a person is refused a temporary permit on application on arrival in Niue that person is deemed to be unlawfully in Niue.
- (3) Nothing prevents the Chief Immigration Officer from granting an applicant a temporary permit of a different type to that applied for if he or she considers it appropriate in the circumstances.

**16. Applications for further temporary permits**

- (1) A person holding a valid temporary permit may apply in Niue, to the Chief Immigration Officer with any applicable fee, for the grant of a further temporary permit to remain in Niue.
- (2) Where an application for a further temporary permit is granted under this section, the new permit becomes valid on the earlier of-
  - (a) the date of the grant of the new permit; or
  - (b) the date the permit held at the date of application expires.
- (3) Where a person is granted a further temporary permit any valid temporary permit held at the time of the grant of the further temporary permit expires.
- (4) The fact that a person has applied for a further temporary permit does not affect the person's unlawful status if the person's existing permit expires before their application is determined.
- (5) Nothing in this section gives any person the right to remain in Niue while an application for a further temporary permit is being considered if the person does not hold a valid temporary permit.
- (6) Nothing in this section prevents the Chief Immigration Officer from granting an applicant a further temporary permit of a different type to that applied for if he or she considers it appropriate in the circumstances.

**16A Clearance requirements**

- (1) In addition to the requirements under sections 14, 15 and 16 every application shall be accompanied by -
  - (a) At least 2 character references of the applicant; and
  - (b) A police report and health clearances from the relevant officials of the applicant's home country; and

- (c) Any other information that the Chief Immigration Officer may specify or require.
- (2) For the purposes of sections 14, 15 and 16 and of this section, "applicant" shall be construed to include the applicant's spouse and any member of the applicant's family included in the application.

**17. Sponsors for applicants for temporary permits**

- (1) Applicants for temporary permits must have a sponsor acceptable to the Chief Immigration Officer if required under the temporary entry guidelines.
- (2) A sponsor must be either:
  - (a) residing in Niue at the time of sponsorship and be:
    - (i) a person born in Niue who has resided on Niue for at least 10 years
    - (ii) a permanent residence permit holder for at least 10 years
    - (iii) not subject to subsection (7), section 9, or section 20(7)(b);
    - (iv) at least 40 years of age or have the ability to demonstrate that they are of sound mind and good health; or
  - (b) a company based in Niue which is not subject to subsection (7), or section 20(7).
- (3) A sponsor must submit with an application for a temporary permit any documentation required by the temporary entry guidelines, to the Chief Immigration Officer or Cabinet.
- (4) A sponsor may be required to undertake to provide any or all of the following in respect of the applicant including the applicant's immediate family-
  - (a) accommodation:
  - (b) maintenance:
  - (c) costs of deportation if the applicant or the applicant's immediate family becomes unlawful:
  - (d) the costs of any health or social services required by the applicant or the applicant's immediate family:
  - (e) any other costs incurred by the Government resulting from a breach of the conditions of a visa or temporary permit.
- (5) A sponsor must demonstrate that the sponsor has the financial ability to meet any undertaking given.
- (6) If the sponsor fails to comply with any undertaking given the sponsor is liable to pay to the Government all costs incurred by the Government in respect of that failure.
- (7) Where a sponsor becomes liable under subsection (6) the sponsor is prohibited from:

- (a) leaving the country permanently, and
- (b) sponsoring any further applicants for a temporary permit under this Act until all liability to the Government has been met.

**18. Bonds**

- (1) The Chief Immigration Officer must require an applicant for a temporary permit to pay a monetary bond with the Immigration Department before any temporary permit is granted for the purpose of minimising the financial risk to the Government if the person has to be deported from Niue.
- (2) In determining the level of bond that may be paid the Chief Immigration Officer must have regard to the amount that it is likely to cost of returning the applicant and any accompanying immediate family to a country that he or she has the right to lawfully enter and permanently reside.
- (3) Bonds must be in New Zealand currency and paid to the Chief Immigration Officer before the temporary permit is granted.
- (4) The Chief Immigration Officer must hold the bond in a Government bank account until-
  - (a) it is returned; or
  - (b) it is used to pay for the costs associated with the deportation of the applicant and any accompanying immediate family.
- (5) Where the Government incurs costs in the departure of the applicant and any accompanying immediate family the bond must be used to meet those costs.
- (6) Where subsection (5) applies any of the bond remaining after the Government's costs have been met must be returned to the applicant on his or her departure from Niue.
- (7) No interest or inflationary amount is payable on a bond held by the Chief Immigration Officer and any bond or part bond that is returned to the applicant shall be paid in New Zealand dollars.

**19. Grant of a temporary permit to a person unlawfully in Niue**

- (1) The Chief Immigration Officer may at his discretion grant a temporary permit to a person who is unlawfully in Niue.
- (2) Nothing in subsection (1) gives any person the right to apply for any temporary permit and where any person purports to apply for any temporary permit under subsection (1)-
  - (a) The Chief Immigration Officer is under no obligation to consider the application; and
  - (b) Whether the application is considered or not the Chief Immigration Officer is not obliged to give any reasons for any decision relating to the application.

## PART 3 - PERMANENT RESIDENCE CERTIFICATES

### 20. Permanent Residence Certificates

- (1) A permanent residence certificate entitles the holder to-
  - (a) indefinitely remain in Niue
  - (b) indefinitely travel from and return to Niue without the need to hold a visa; and
  - (c) undertake any lawful activity in Niue without the need for any other permit that would otherwise be required under this Act.
- (2) Cabinet may grant a person permanent residence status at its discretion.
- (3) Nothing in subsection (2) gives any person the right to apply to Cabinet for a permanent residence status and where any person purports to apply for residence under subsection (2)-
  - (a) Cabinet is under no obligation to consider the application; and
  - (b) Whether the application is considered or not, Cabinet is not obliged to give any reasons for any decision relating to the application.
- (4) Cabinet must publish Residence Criteria for the grant of permanent residence certificates.
- (5) The grant of a permanent residence status by Cabinet shall-
  - (a) only be considered where the applicant has resided continuously on Niue on a temporary permit for a period of not less than 10 years;
  - (b) only be in accordance with Residence Criteria applicable at the time the application is made, unless further Residence Criteria is certified by Cabinet in accordance with subsection (7) that affects the application; and
  - (c) only occur after the Chief Immigration Officer has agreed that the application meets the applicable Residence Criteria.
- (6) Residence Criteria may have retrospective effect if certified as having such effect.
- (7) Applicants for permanent residence must have a sponsor acceptable to Cabinet if required under the Residence Criteria.
- (8) Where Cabinet determines, or Residence Criteria requires, that an applicant must have a sponsor and where a sponsor fails to meet any undertakings required, the sponsor is-
  - (a) liable for any costs incurred by the Government in respect of the failure; and
  - (b) prohibited from leaving the country permanently and sponsoring any further applicants for a permit under this Act until all liability to the Government has been met or has been waived by Cabinet.

- (9) Where a person is granted a permanent residence certificate any valid temporary permit held at the time of the grant of the permanent residence status expires.

**21. Applications for permanent residence certificates**

- (1) An application for a permanent residence certificate may only be made by a person in Niue holding a valid temporary permit to the Chief Immigration Officer in accordance with any requirements in Residence Criteria with any applicable fee.
- (2) An applicant for a permanent residence certificate may include in the application the following persons to be granted permanent residence certificates-
- (a) his or her spouse; or
  - (b) his or her biological children under the age of 18 years (including those of a spouse); or
  - (c) his or her legally adopted children under the age of 18 years (including those of a spouse).
- (3) No child may be granted a permanent residence certificate on application unless Cabinet is satisfied that the child may, in the child's lawful country of residence, be legally removed permanently to Niue.
- (4) Every applicant for a grant of permanent residence certificate must be of-
- (a) good character; and
  - (b) good health such standards for good health and good character to be prescribed by regulations from time to time.

**PART 4 - REVOCATIONS**

**22. Revocation of a visa or exemption from the requirement to hold a visa**

- (1) The Chief Immigration Officer may at any time revoke a person's visa, or exemption from the requirement to hold a visa.
- (2) A revocation notice under this section must-
- (a) state the reasons for the revocation; and
  - (b) in the case of a visa be served either directly to the person or by post to the person's last known address; or
  - (c) in the case of an exemption be held by the Chief Immigration Officer.
- (3) A revocation notice under this section takes effect as soon as it is made and the revoked visa, or exemption from requirement to hold a visa, is not valid for travel to Niue.
- (4) An Immigration Officer may advise a carrier, or person in charge of a craft, that a person's visa, or exemption from the requirement to hold a visa has been revoked.

- (5) The effect of a revocation of a person's exemption from the requirement to hold a visa under this section is that the person must obtain a valid visa in order to travel to Niue despite any regulations made under this Act that would otherwise apply to the person.

**23. Revocation of a temporary permit or exemption from requirement to hold a permit**

- (1) The Chief Immigration Officer may at any time revoke a person's temporary permit, or exemption from the requirement to hold a temporary permit, by serving that person with a revocation notice.
- (2) A revocation notice under this section must-
- (a) state the reasons for the revocation; and
  - (b) advise the person of the ability to have the decision to revoke the temporary permit or exemption reconsidered under subsection (3); and
  - (c) be served either-
    - (i) directly to the person; or
    - (ii) by post to the person's last known address.
- (3) Once a revocation notice becomes effective under this section the person is deemed to be unlawfully in Niue.

**24. Revocation of a permanent residence certificate**

- (1) Cabinet may revoke a person's permanent residence certificate if either directly, or indirectly,-
- (a) it was granted as a result of administrative error; or
  - (b) it was procured by fraud, forgery, false or misleading representation, or the concealment of relevant information; or
  - (c) it was procured with the assistance of an immigration advisor who was at the time of application not the holder of a valid licence issued under Part 8;
  - (d) Cabinet considers the holder poses a risk to national security; or
  - (e) The person is continuously absent from Niue for a period longer than three years.
- (2) Where a permanent residence certificate is revoked under subsection (1) the residence status of any dependents included on the permanent residence holder's application for residence are also deemed to be revoked.
- (3) Cabinet may revoke a permanent residence certificate within 10 years of its initial granting if-
- (a) the holder is convicted of an offence (whether in Niue or not) and is sentenced to a term of imprisonment for 12 months or more; or
  - (b) the holder is convicted of an offence (whether in Niue or not) for which the Court has the power to impose imprisonment for a term of 2 years or more.

- (4) For the purposes of subsection (3) it does not matter whether any period of imprisonment is served.
- (5) If Cabinet intends to revoke a holder's permanent residence certificate under this section it must-
  - (a) notify the holder in writing of the reasons for the intended revocation by either-
    - (i) serving the holder personally with the notification; or
    - (ii) sending the notification of revocation to the holder's last known address; and
  - (b) give the holder no less than 15 working days from the date of the notification to provide any response to the intended revocation; and
  - (c) consider any response that might be received from the holder to Cabinet's notification in making a final decision whether to revoke the permanent residence certificate or not; and
  - (d) notify the holder, in writing, of the final decision as to whether to revoke the permit or not and stating reasons for the decision by either-
    - (i) serving the notice to the holder personally; or
    - (ii) sending the notice to the holder's last known address.
- (6) Where under subsection (5)(c) Cabinet decides to revoke a person's permanent residence certificate the revocation of the certificate takes effect from the date of Cabinet's decision.
- (7) Once revocation becomes effective under this section the person to whom the revocation applies to is deemed to be unlawfully in Niue.

## PART 5 - DEPORTATION

### **25. Persons unlawfully in Niue liable to deportation**

- (1) Every person unlawfully in Niue is liable to be deported from Niue on the first available craft.
- (2) There is no requirement to inform a person that he or she is liable to be deported before he or she is deported and deportation may be carried out at any time.
- (3) The liability to be deported arises regardless of how the person came to be unlawfully in Niue.

### **26. Persons liable to deportation may be arrested and detained**

- (1) Every person liable to be deported may be arrested by an Immigration Officer and detained in a prison, or other place as determined by the Chief Immigration Officer, until he or she is able to be deported.

- (2) Subject to section 28 the Chief Immigration Officer may release a person detained under this section and impose any conditions on his or her release.
- (3) Where a person has been released under subsection (2) he or she may be arrested by an Immigration Officer and detained in a prison, or other place as determined by the Chief Immigration Officer if-
  - (a) the person has breached any conditions that were imposed on his or her release; or
  - (b) the Chief Immigration Officer considers that release on conditions is no longer appropriate.
- (4) Where a person has been released under subsection (2) he or she may be arrested by an Immigration Officer and detained in a prison, or other place as determined by the Chief Immigration Officer, for the purposes of facilitating his or her departure from Niue.

**27. Obligation of persons liable to deportation to surrender and obtain documentation**

- (1) Every person who is liable to be deported must surrender without delay his or her passport or certificate of identity to an Immigration Officer and apply without delay, upon request by an Immigration Officer, for any travel documentation required from any other country as part of his or her departure from Niue.
- (2) Every person who fails to meet his or her obligations under this section must be arrested by an Immigration Officer and detained, in a prison or other place as determined by the Chief Immigration Officer, until the person has met his or her obligations under this section.
- (3) A person who is detained under this section must not be released under section 26(2) until the person has met his or her obligations under this section.

**PART 6 - REQUIREMENTS OF PERSONS ACCESSING THE IMMIGRATION SYSTEM**

**28. Requirements of applicants**

- (1) Every applicant for a visa or permit must-
  - (a) be truthful and must not-
    - (i) provide any fraudulent, false or misleading representation or information in the course of his or her application; or
    - (ii) conceal any relevant information in the course of his or her application; and
  - (b) inform an Immigration Officer of any change in circumstances that may affect the decision on the application; and
  - (c) upon request from an Immigration Officer provide an address where notices can be served and correspondence sent; and

- (d) where the application is successful, provide his or her own valid genuine passport or certificate of identity for the grant of the visa or permit.
- (2) Where any address provided under subsection (1)(c) is for a third party any correspondence or notice sent to that address shall be deemed to be have been served on the applicant.
- (3) Where any passport or certificate of identity provided for the grant of a visa or permit is not the applicant's own valid genuine passport or certificate of identity, any visa or permit granted in the passport or certificate of identity is null and void.
- (4) Every person who fails to meet the requirements under subsection (1) commits an offence against this Act and is liable to a fine of up to 100 penalty units and up to 2 years imprisonment.

### **29. Requirements of visa and temporary permit holders**

- (1) Every visa or temporary permit holder must-
  - (a) hold his or her genuine passport or certificate of identity which is valid for at least six months after the date of the expiry of his or her current visa or temporary permit; and
  - (b) comply with the conditions of his or her visa or temporary permit; and
  - (c) apply for a different visa or temporary permit if any intended activity in Niue is not allowed on the visa or temporary permit held; and
  - (d) apply within a reasonable time before the expiry of the current temporary permit for any further temporary permit required in order to remain lawfully in Niue; and
  - (e) inform an Immigration Officer of any change in circumstances that might affect his or her immigration status.
- (2) Every person who fails to meet the requirements under this section commits an offence against this Act and is liable to a fine of up to 100 penalty units and up to 2 years imprisonment

### **30. Requirements of sponsors**

- (1) Sponsors of applicants for visas and permits must-
  - (a) genuinely intend to sponsor the applicant for the stated purpose of the application; and
  - (b) be genuinely able to meet any undertakings given in respect of the applicant; and
  - (c) actually meet the undertakings given in respect of the applicant.
- (2) Every sponsor who fails to meet the requirements under this section commits an offence against this Act and is liable for a fine of up to 100 penalty units and up to 2 years imprisonment.

### **30A. Requirements of employers**

Sponsors of applicants for permits must -

- (a) genuinely intend to sponsor the applicant for the stated purpose of the application; and
- (b) be genuinely able to meet any undertakings given in respect of the applicant; and
- (c) actually meet the undertakings given in respect of the applicant."

### **30B. Requirements and Offences**

- (1) Any person who fails to meet their obligations under this Part commits an offence under this Act and is liable to a fine of up to 100 penalty units and up to 2 years imprisonment.
- (2) Where a person fails to meet their obligations and holds a permit to remain in Niue under this Part they are liable to have that permit revoked and be deported from Niue.
- (3) A sponsor's liability for any offence under this Part does not affect any liability to meet the costs incurred by the Government or any prohibition on future sponsorship under section 16 and 19.

## **PART 7 - ENTRY AND DEPARTURE**

### **31. Responsibilities of carrier and persons in charge of craft**

- (1) The carrier or person in charge of any craft that intends to arrive or arrives in Niue must-
  - (a) ensure that every person on board the craft either holds a valid visa to travel to Niue or is exempt from the requirement to hold a visa to travel to Niue and holds the necessary documentation for immigration purposes to apply for a permit on arrival, or have his or her immigration status confirmed, in Niue; and
  - (b) ensure that no person is permitted to travel to Niue on that craft where the person does not comply with subparagraph (a); and
  - (c) ensure that every person on board the craft reports immediately on arrival to an Immigration Officer at an Immigration Place; and
  - (d) prevent with reasonable force if necessary the disembarkation of any person on that craft to any place other than an Immigration Place; and
  - (e) on request by the Chief Immigration Officer or an Immigration Officer provide a list of the details of all persons on board the craft since its last port of call; and
  - (f) immediately report to an Immigration Officer if a stowaway has been found on the craft; and
  - (g) inform an Immigration Officer if any person on board the craft is known to pose a risk to public health or be a prohibited person; and
  - (h) allow an Immigration Officer to board and inspect the craft for the purposes of carrying out his or her functions under this Act; and

- (i) remove from Niue at their own cost any person who arrived in Niue on the craft if that person is not permitted to remain in Niue.
- (2) The carrier or person in charge of any commercial craft that intends to depart or departs from Niue must allow on board any person (subject to the payment of any fare) liable to be deported from Niue under this Act.
- (3) The carrier or person in charge of any craft that intends to arrive or arrives in Niue, or intends to depart or departs from Niue, must comply with any further obligations relating to procedures for the control and immigration processing of persons entering and departing from Niue imposed by regulations made under this Act.
- (4) Every carrier or person in charge of a craft who fails to comply with this section without reasonable excuse commits an offence against this Act and is liable to-
  - (a) in the case of the carrier a fine not exceeding 500 penalty units;
  - (b) in the case of the person in charge of the craft a fine not exceeding 100 penalty units and up to 3 months imprisonment.

### **32. Responsibilities of persons arriving in Niue**

- (1) Every person arriving in Niue must report immediately to an Immigration Officer at an Immigration Place and-
  - (a) if required to be granted a temporary permit in order to remain in Niue apply for a temporary permit; or
  - (b) if not required to be granted a temporary permit in order to remain in Niue obtain confirmation of his or her immigration status in Niue.
- (2) For the purposes of subsection (1) a person must produce to an Immigration Officer his or her own valid genuine passport or certificate of identity, a properly completed arrival card and any documentation required by the arrival card or an Immigration Officer.
- (3) Every person who does not comply with this section commits an offence under this Act and is liable to-
  - (a) immediate arrest and detention by an Immigration Officer; and
  - (b) a fine of up to 100 penalty units; and
  - (c) up to 2 years imprisonment.
- (4) Every person who does not comply with the requirements under this section becomes a prohibited person under section 9.
- (5) This section does not apply to transit passengers [who remain on the craft they have arrived in or who remain only in an Immigration Place until departing to another destination.

**33. Responsibilities of persons departing Niue**

- (1) Every person departing Niue must report to an Immigration Officer at an Immigration Place and produce his or her own valid genuine passport or certificate of identity, a properly completed departure card and any documentation required by the departure card or an Immigration Officer.
- (2) Every person who does not comply with this section commits an offence under this Act and is liable to-
  - (a) immediate arrest and detention by an Immigration Officer; and
  - (b) a fine of up to 100 penalty units.
- (3) Every person who does not comply with the requirements under this section becomes a prohibited person under section 9.
- (4) This section does not apply to transit passengers.

**34. Transit passengers**

- (1) If a person is exempt from the requirement to hold a visa in order to travel to Niue they shall not require a temporary permit if arriving in Niue from another country if they remain on the craft or in an Immigration Place whilst in transit to another destination.
- (2) Nothing in this Act requires transit passengers holding transit visas who remain on the craft they have arrived in or who remain in an Immigration Place until departing to another destination to apply for a temporary permit on arrival.
- (3) This section ceases to apply after 24 hours of a transit passenger arriving in Niue at which time a person is deemed to-
  - (a) no longer be a transit passenger; and
  - (b) have arrived in Niue.
- (4) To avoid doubt a person to whom subsection (3) applies must comply with section 33.

**PART 8 - IMMIGRATION ADVISORS**

**35. Immigration advice**

In this Part-

“immigration advice” means the provision of advice, direction, assistance to, or representation of, another person in any immigration matter relating to Niue for any direct, or indirect, gain or reward, whether that occurs in or outside of Niue;

“immigration advisor” is a person providing immigration advice.

**36. Immigration advisors to be licensed**

- (1) Any immigration advisor must be licensed by the Chief Immigration Officer.
- (2) The Chief Immigration Officer must consider a request by a person to be licensed as an immigration advisor and in determining whether to issue a licence must consider-
  - (a) the character of the person (including but not limited to any criminal convictions); and
  - (b) the qualifications and practical experience of the person; and
  - (c) whether the issue of the licence would pose a risk to the integrity of Niue's immigration system.
- (3) After considering a request made under subsection (2) the Chief Immigration Officer must either-
  - (a) issue a licence to the person; or
  - (b) advise the person in writing why request was not granted.
- (4) A licence issued under this section cannot be issued for more than two years duration.
- (5) The Chief Immigration Officer may revoke any licence issued if there is good cause to do so.
- (6) Where an application for a visa or permit is submitted which has been the subject of immigration advice by an immigration advisor who does not hold a valid licence-
  - (a) a visa or permit may not be granted in respect of that application; and
  - (b) where any visa or permit is so granted it is liable to be revoked.
- (7) A person who gives immigration advice without a valid licence issued under this section commits an offence against this Act and is liable to a fine not exceeding 500 penalty units and up to 3 years imprisonment.
- (8) Any licensed immigration advisor who wilfully misleads any person or acts negligently or unprofessionally (including charging excessively) in the course of providing immigration advice commits an offence against this Act and is liable to a fine not exceeding 100 penalty units and up to 2 years imprisonment.

**PART 9 - OFFENCES**

**37. General offences**

- (1) Every person commits an offence against this Act who—
  - (a) makes any statement, or provides any information, evidence, or submission, knowing that it is false or misleading in any material respect, in support of—

- (i) any application or request (whether by that person or by another person) for a visa or permit; or
- (ii) any claim to an exemption; or
- (iii) any request to Cabinet regarding an immigration matter; or
- (iv) any request for an immigration advisor licence or
- (b) without reasonable excuse, refuses or fails to produce or surrender any document or to supply any information when required to do so by the Chief Immigration Officer or an Immigration Officer in accordance with any of the provisions of this Act; or
- (c) without reasonable excuse, produces or surrenders any document or supplies any information to an Immigration Officer, the Chief Immigration Officer, the Minister or Cabinet knowing that it is false or misleading in any material respect; or
- (d) whether within or outside Niue, procures, produces or surrenders or passes off a passport, certificate of identity, permit, or certificate of citizenship, or anything purporting to be a passport, certificate of identity, visa, permit, or certificate of citizenship,—
  - (i) as relating to that person when in fact, to that person's knowledge, it relates to some other person; or
  - (ii) knowing it to be forged or to have been obtained fraudulently; or
- (e) whether within or outside Niue, sells, hires, lends, gives, or otherwise disposes of a passport, certificate of identity, visa, permit, or certificate of citizenship relating to that person (or anything purporting to be a passport, certificate of identity, visa, permit, or certificate of citizenship relating to that person) to any other person (the "receiver")—
  - (i) without necessarily knowing which, knowing that the receiver will—
    - (A) produce it or pass it off as relating to the receiver or some other person; or
    - (B) sell, hire, lend, give, or otherwise dispose of it; or
  - (ii) without necessarily intending either in particular, intending the receiver to—
    - (A) produce it or pass it off as relating to the receiver or some other person; or
    - (B) sell, hire, lend, give, or otherwise dispose of it; or
- (f) for a material benefit, aids, abets, incites, counsels, or procures any other person to be or to remain in Niue unlawfully or to breach any condition of a permit granted to the other person; or
- (g) whether within or outside Niue, and whether or not the other person in fact enters Niue, aids, abets, incites, counsels, or procures any other person to enter Niue unlawfully (whether by arriving in Niue in a manner that does not comply with section 32, by arriving in Niue without holding a visa where the other person requires a visa to travel to Niue, or otherwise howsoever)—

- (i) knowing that the person's entry into Niue is or would be unlawful; or
    - (ii) reckless as to whether the person's entry into Niue is or would be unlawful; or
  - (h) whether within or outside Niue, aids, abets, incites, counsels, or procures any other person to complete an arrival card in a manner that the person aiding or assisting knows to be false or misleading in any particular; or
  - (i) aids, abets, incites, counsels, or procures any other person to be or to remain in Niue unlawfully or to breach any condition of a permit granted to the other person under this Act; or
  - (j) resists or intentionally obstructs any Immigration Officer or the Chief Immigration Officer in the exercise of his or her powers under this Act; or
  - (k) not being an Immigration Officer personates or pretends to be an Immigration Officer; or
  - (l) for the purpose of encouraging, inducing, deterring, or preventing immigration to Niue of any person or class of persons, publishes, disseminates, or causes or procures the publication of any information or representations knowing that the information is, or the representations are, false or misleading; or
  - (m) not being the Chief Immigration Officer, an Immigration Officer, a Constable, or a Customs Officer, enters or remains in an Immigration Place without the consent of the Chief Immigration Officer or an Immigration Officer.
- (2) Every person commits an offence against this Act who, not being an Immigration Officer –
- (a) after the person to whom a form required to be completed for the purposes of this Act relates has signed it and declared its contents to be true, –
    - (i) alters information entered on it; or
    - (ii) enters further information on it; or
    - (iii) alters any material attached to it; or
    - (iv) attaches any material or further material to it; and
  - (b) allows the form to leave his or her possession without writing on it and signing a statement of –
    - (i) the information or material that has been altered, entered, or attached; and
    - (ii) why and by whom the information or material has been altered, entered, or attached.
- (3) Regulations may be made under this Act prescribing further offences for immigration matters.

- (4) Any offences prescribed by regulation made under this Act shall only be subject to the general penalties for offences under this Act.

**38. Offences by employers**

- (1) Every employer commits an offence against this Act who allows a person to undertake employment in the employer's service when the person is not entitled to undertake that specific employment under this Act.
- (2) Unless the employer has made and received formal confirmation from the Chief Immigration Officer of the employees right to undertake employment, it shall be no defence to any liability under this Act that the employer was unaware of a person's immigration status.
- (3) Every employer who commits an offence against this section is liable for a fine of up to 100 penalty units and up to 2 years imprisonment.

**39. General penalties for offences**

Unless specifically provided for in this Act any offence committed under this Act shall carry a maximum penalty of-

- (a) a fine of up to 200 penalty units; and  
(b) up to five years imprisonment.

**PART 10 - MISCELLANEOUS PROVISIONS**

**40. Regulations**

Cabinet may make such regulations as it thinks fit for the purposes of this Act and for all or any of the following purposes:

- (a) prescribing fees for any matter arising from this Act;  
(b) exempting any person or class of persons from the requirement to hold a visa, or type of visa, in order to travel to Niue;  
(c) exempting any person or class of persons from the requirement to hold a permit, or type of permit, in order to remain in Niue;  
(d) amending the purposes of any of the types of visa or temporary permit under this Act;  
(e) creating other types of visa and temporary permits and the purposes and conditions of those permits;  
(f) prescribing additional obligations of any carrier or person in charge of a craft that intends to arrive or arrives in Niue, or intends to depart or departs from Niue, relating to procedures for the control and immigration processing of people entering and departing from Niue;  
(g) prescribing additional offences in relation to immigration matters.

**41. Special provision relating to judicial review of Cabinet decisions under this Act**

- (1) No review shall lie against any decision of Cabinet, not to grant a permanent residence certificate.

**42. Evidence in proceedings**

In any proceedings relating to any matter under this Act, a certificate signed by an Immigration Officer and containing a statement in relation to any person shall, in the absence of proof to the contrary established on the balance of probabilities, be deemed to be proof of the truth of the statement to the effect that—

- (a) the person is not a New Zealand citizen; or
- (b) the person was not born in Niue; or
- (c) the person holds or at any material time held, or does not hold or did not at any material time hold, a visa or permit; or
- (d) any visa or permit granted to the person was granted for a specified period or on or until a specified date, or was granted for an express purpose, or is or was subject to specified conditions; or
- (e) the person is or was at any material time, or is not or was not at any material time, exempt under this Act from the requirement to hold a visa or permit; or
- (f) a decision whether or not to issue or grant any visa or permit has been made; or
- (g) Cabinet, the Minister or an Immigration Officer was or was not satisfied as to any relevant specified matter; or
- (h) whether or not a particular stage of processing an application had been reached; or
- (i) the person was deported from Niue on a specified date, or that the person is liable to be deported; or
- (j) for the purpose of obtaining any visa or permit, the person made any statement or supplied any information to Cabinet, the Minister or an Immigration Officer that was false or misleading in any material respect or produced or surrendered to Cabinet, the Minister or an Immigration Officer any passport or certificate of identity or other document that was forged or obtained fraudulently; or
- (k) the person is, or is not, in Niue or has, or has not, left Niue, or was or was not in Niue or had or had not left Niue at any particular time or for or during any particular period; or
- (l) the person is, or is not, a person to whom section 9 of this Act applies; or
- (m) the person has any criminal convictions; or
- (n) the person's identification is other than claimed; or
- (o) the person travelled to Niue on a certain commercial craft at a certain time.

**PART 11 - REPEAL AND TRANSITIONAL PROVISIONS**

**43. Repeal**

- (1) The Entry, Residence and Departure Act 1985 is repealed.

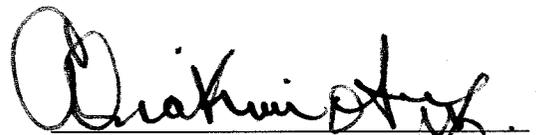
- (2) Any regulations made pursuant to the Entry, Residence and Departure Act 1985 are repealed.

#### **44. Transitional provisions**

- (1) Any permit granted under the Entry, Residence and Departure Act 1985 remains valid for its duration, and in the case of-
  - (a) a temporary permit is subject to the visa and temporary permit revocation provisions under this Act; and
  - (b) a residence permit is subject to the residence permit revocation provisions under this Act.
- (2) When any permit granted under the Entry, Residence and Departure Act 1985 expires the holder will be unlawfully in Niue unless granted a further permit under this Act.
- (3) The holder of a temporary permit granted under the Entry, Residence and Departure Act 1985 that remains valid under subsection (1) is deemed to be the holder of a valid temporary permit under this Act for the purposes of making an application for a permit under this Act.
- (4) Any application or request for a permit or exemption made under the Entry, Residence and Departure Act 1985 before its repeal that is undecided on the commencement of this Act must be determined in accordance with the Entry, Residence and Departure Act 1985.
- (5) Any exemption from the requirement to hold a permit under the Entry, Residence and Departure Act 1985 will remain in force for six months from the commencement of this Act and when any exemption from the requirement to hold a permit under the Entry, Residence and Departure Act 1985 expires the person is unlawfully in Niue, unless-
  - (a) section 5(1) applies; or
  - (b) the person is exempt from the requirement to hold a permit under this Act; or
  - (c) the person holds a valid permit granted under this Act.
- (6) Every person holding an exemption from the requirement to hold a permit under the Entry, Residence and Departure Act 1985 that remains valid under subsection (5) is deemed to be the holder of a valid temporary permit under this Act for the purposes of making an application for a permit under this Act.
- (7) Nothing in this Part gives any person the right to remain in Niue while an application for a further permit is being considered if he or she does not hold a valid permit or a valid exemption from the requirement to hold a permit.
- (8) It is no defence to any offence committed under this Act that it was an offence committed in respect of an application or matter under the Entry, Residence and Departure Act 1985.

I, ATAPANA SIAKIMOTU, Speaker of the Niue Assembly, hereby certify that the requirements of Article 34 of the Niue Constitution have been duly complied with.

SIGNED AND SEALED at the Assembly Chambers this 07th day of April 2011

  
Speaker of the Niue Assembly

COUNTERSIGNED in the presence of the Speaker



  
Clerk of the Niue Assembly

This Act was passed by the Niue Assembly on the 16<sup>th</sup> day of February 2011.

This Act is administered by the Immigration Office.