

## NIUE AMENDMENT (NO. 2) BILL

### EXPLANATORY NOTE

THIS Bill amends the Niue Act 1966. Its purpose is to prescribe a new system of land tenure in Niue.

An outline of the history of the present land tenure system and proposals to establish a more practicable system for the administration of land matters, such as registration of title, the granting of leases and occupation licences, and alienation of land, are referred to in the McEwen Report on Land Tenure in Niue (Parliamentary Paper No. A. 4) laid before Parliament this Session. This report, recommendations of the Niue Island Assembly, and discussions held with the Niuean people in New Zealand and in Niue during the past few years have formulated the basic material for the drafting of this Bill.

The Bill is not a comprehensive code of law relating to land in Niue, as other matters are either contained in the principal Act or will be dealt with in Rules of Court providing for procedural matters relating to the Land Court and the Land Appellate Court and also in a Land Ordinance to be enacted by the Niue Island Assembly. The most important changes are explained in this explanatory note.

*Clause 1* relates to the Short Title and commencement. The Act will come into force on a date to be fixed by Order in Council.

*Clause 2* is an interpretation clause defining certain terms used in the Bill. These definitions will also have effect for the purposes of the principal Act.

Among the expressions defined is "*Leveki Mangafaoa*", which is defined as the trustee or guardian of a family having any right, title, estate, or interest in Niuean land. Under the proposed new system of land tenure, *Leveki Mangafaoa* will own the land as trustee for the family.

### PART I

#### LAND TENURE

*Clause 3* provides that all land in Niue is either Crown land or Niuean land. "Niuean land" is defined in *clause 2* as land that is subject to the customs and usages of Niue, and includes any land granted by the Crown in fee simple before the commencement of the Cook Islands Act 1915 and any customary land declared to be Niuean freehold land by an order of the Land Court before the commencement of this Amendment Act.

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*Clause 4* declares that all land in Niue is vested in the Crown, subject to existing rights whether arising from Niuean custom or otherwise.

*Clause 5* declares that the foreshore and the seabed to a distance of 3 nautical miles from low-water mark are vested in the Crown, subject only to the public rights of fishing and navigation.

*Clause 6* provides that the administration and tenure of land and other matters relating to land may be dealt with under Rules of Court or by Ordinances. *Subclause (2)* requires the Registrar of the Land Court to register the title to all land as soon as convenient.

*Clause 7* is a savings provision which protects the vested interests of any person or body corporate in any land held before the commencement of the Act.

## PART II

### CROWN LAND

This Part re-enacts, with consequential changes, the existing provisions of Part X of the principal Act relating to Crown land in Niue. Powers which at present the Governor-General may exercise by Order in Council will under this Part be exercised by the Minister by Warrant.

*Clause 10* is a new provision authorising the Minister to declare any Crown land to be Niuean land, and to indicate the *Leveki Mangafaoa*, the person, or the family or group of Niueans by whom or on whose behalf it is to be held. This clause will, for example, enable the Crown, if it acquires any Niuean land, to grant Crown land in exchange.

*Clause 11 (3)* is a new provision declaring that the procedure for taking land by the Crown is to be prescribed by Ordinance.

## PART III

### NIUEAN LAND

This Part re-enacts, with some consequential changes, existing provisions in Parts XIII, XIV, and XV of the principal Act relating to Niuean land. Provisions that are not re-enacted may in future be provided for by Rules of Court or by Ordinance.

*Clause 21* is a new provision, declaring that all land in Niue which at the commencement of the Act is held by Niueans in accordance with Niuean custom is vested in the Crown as trustee for the owners to be held subject to Niuean custom, and is declared to be Niuean land. Existing rights are preserved.

*Clause 22* is a new provision declaring that the Land Court shall have exclusive jurisdiction to investigate the title to Niuean land and to determine the relative interests of the owners or occupiers.

## PART IV

### LAND FOR CHURCH PURPOSES

This Part is new. It provides for the vesting of Niuean land in perpetuity for church purposes by gift or otherwise. "Church purposes" are defined in *clause 2*.

*Clause 28* prescribes the procedure for the vesting of Niuean land for church purposes.

*Clause 29* provides that land vested for church purposes and no longer required for such purposes may be acquired by the Crown. No compensation will be payable in respect of its acquisition.

*Clause 30* provides that existing records and documents relating to the gifting or setting aside of land for church purposes may be accepted by the Land Court as evidence supporting an application under *clause 28*.

## PART V

### THE LAND COURT OF NIUE

This Part re-enacts, with only minor consequential amendments, the existing provisions of Part XI of the principal Act relating to the Land Court of Niue. Some of the existing provisions are omitted, and may be provided for by Rules of Court or by Ordinance.

*Clause 53* re-enacts in an amended form section 367 of the principal Act, relating to final orders of the Land Court. The new clause includes additional procedural provisions based on section 34 of the Maori Affairs Act 1953.

*Clause 65* is new. It provides for the registration against the title to any land of any order of the Land Court affecting or relating to the title to the land.

## PART VI

### THE LAND APPELLATE COURT OF NIUE

This Part re-enacts, with only consequential changes, the existing provisions of Part XII of the principal Act relating to the Land Appellate Court of Niue. Some of the existing provisions are omitted, and may be provided for by Rules of Court or by Ordinance.

## PART VII

### ROADS

This Part re-enacts with some changes the existing provisions of Part XXIX of the principal Act relating to roads.

*Clause 88* is new. It provides that as soon as practicable after the commencement of the Act the Registrar of the Land Court shall prepare and deposit in the Land Registry Office a plan showing all land which in his opinion has been used as road or ought to be constituted as road, and the Resident Commissioner, acting on the advice of the Executive Committee, shall then by warrant declare the land shown on the plan as roads.

*Clause 89* re-enacts the existing provisions of section 382 of the principal Act relating to access to land. Though it has been substantially redrafted it does not make any material changes.

*Clause 92* is new. It provides that no area of road may be closed if the area comprising the closed road will be left without road access, and no road may be closed if as a result any Crown land or Niuean land will be left without any immediate access to a road. It also provides that the whole or any portion of closed road may be vested in the *Leveki Mangafaoa* or owners of any adjoining land and shall become subject to the same reservations, trusts, interests, or encumbrances as the land with which it is incorporated.

## PART VIII

## ADOPTION

At present, the provisions as to adoption in Niue appear in Parts XXIV and XXV of the principal Act. Part XXIV relates to the adoption of children by Niueans, the jurisdiction being exercised by the Land Court, and Part XXV relates to the adoption of children by Europeans and Niuean spouses of Europeans, the jurisdiction being exercised by the High Court.

This Part provides the same law for adoptions in all cases. It generally follows the provisions of Part XXV of the principal Act, which is based on the New Zealand law of adoption contained in the Adoption Act 1955. Jurisdiction will in all cases be exercised by the Land Court.

*Clause 98* is a new provision prohibiting the giving or receipt of payments for making arrangements for adoption, except with the consent of the Land Court. A similar provision appears in section 25 of the Adoption Act 1955.

*Clause 102* replaces the existing provisions relating to the annulment of adoption orders. The clause follows, with appropriate modifications, the provisions applying in New Zealand under section 20 of the Adoption Act 1955 for the discharge or variation of adoption orders.

## PART IX

## MISCELLANEOUS PROVISIONS

*Clause 104* provides for consequential amendments.

*Clause 105* provides for consequential repeals.

*Clause 106* declares that the Act will be a reserved enactment in Niue. The effect of this will be that the Niue Island Assembly will not be competent to make any provision by Ordinance that is repugnant to any provision of the Act.

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*Hon. Mr Hanan*

## NIUE AMENDMENT (No. 2)

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A BILL INTITULED

An Act to amend the Niue Act 1966

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Niue Amendment Act (No. 2) 1966, and shall be read together with and deemed part of the Niue Act 1966\* (hereinafter referred to as the principal Act).

10 (2) This Act shall come into force on a date to be fixed for its commencement by the Governor-General, by Order in Council.

2. **Interpretation**—For the purposes of the principal Act (including this Act), unless the context otherwise requires,—

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

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

“Crown land” means land in Niue vested in the Crown in right of the Government of New Zealand, being land that is free from Niuean custom:

35 “Customary title” means title in accordance with the customs and usages of Niue:

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

40 “Niuean land” means land in Niue vested in the Crown but held by Niueans according to the customs and

usages of Niue; and includes any land granted by the Crown in fee simple before the commencement of the Cook Islands Act 1915, and any customary land declared to be Niuean freehold land or native freehold land by an order of any Court before the commencement of this Act: 5

“Public purpose” includes naval, military, and air defence, education, public health, fisheries, public buildings, wharves, jetties, harbours, prisons, water supply, sites for villages, housing purposes, public recreation, land development, the burial of the dead, all purposes for which money is appropriated by Parliament or by the Island Assembly, and all lawful purposes and functions of the Government of Niue. 10

Cf. 1966, No. 38, ss. 2, 333 15

## PART I

### LAND TENURE

**3. Classification of land in Niue**—All land in Niue is Crown land or Niuean land.

**4. All land in Niue vested in the Crown**—All land in Niue is hereby declared to be vested in the Crown, subject to all rights lawfully held therein by any person at the commencement of this Act, whether by virtue of Niuean custom or otherwise howsoever. 20

Cf. 1966, No. 38, s. 323 25

**5. Foreshore and seabed vested in the Crown**—The foreshore of Niue—that is to say, all land lying between high-water mark at mean high-water spring tides and low-water mark at mean low-water spring tides—and the seabed and subsoil of submarine areas bounded on the landward side by that low-water mark along the coast of Niue and on the seaward side by a line every point of which is distant three international nautical miles from the nearest point of that low-water mark shall be deemed to be and always to have been vested in the Crown, subject only to the public rights of fishing and navigation. 30 35

Cf. 1966, No. 38, s. 407



6. **Administration and tenure of land**—(1) Subject to this Act and to Rules of Court, the Niue Island Assembly may, by Ordinance, make provision for the administration and tenure of land in Niue and any other purposes relating to land in  
5 Niue.

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

7. **Saving of existing interests in Niuean land**—Where at  
10 the commencement of this Act any Niuean land is subject to any valid and subsisting leasehold or other interest vested in any person or body corporate otherwise than by way of customary title, that leasehold or other interest shall be deemed to be held by grant from the Crown.

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## PART II

### CROWN LAND

8. **Grants of Crown land**—(1) Subject to any regulations which may be made in that behalf, the Minister, or the Resident Commissioner with the consent of the Minister, may,  
20 by Warrant, grant in respect of Crown land any lease, licence, easement, or other limited estate, right, or interest, or may accept a surrender of any estate, right, or interest in such land.

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

Cf. 1966, No. 38, s. 324

9. **Crown land may be declared Niuean land**—(1) The Minister may, by Warrant, declare that any Crown land which is not subject to any lease or to any other right, title,  
30 estate, or interest vested in any person shall be Niuean land, and may in the Warrant indicate with what particularly he thinks fit the *Leveki Mangafaoa*, the person, or the family or group of Niueans by whom or on whose behalf it shall be held.

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

**10. Reserves of Crown land for public purposes**—Any Crown land may, by Warrant of the Minister, be set aside as a reserve for any public purpose, and shall be reserved and used for that purpose accordingly, but any such Warrant may be at any time revoked. 5

Cf. 1966, No. 38, s. 325

**11. Taking of land for public purposes**—(1) The Minister may from time to time, by Warrant, take any land in Niue for any public purpose specified in the Warrant, and it shall thereupon become absolutely vested in the Crown as from the date of the Warrant, or from any later date specified therein in that behalf, free from all estates, rights, and interests of any other person therein, save so far as any such estates, rights, or interests are expressly saved by the Warrant. 10

(2) Nothing in this section shall authorise the taking of any land occupied by any building, yard, cemetery, burial ground, or in bona fide occupation as an ornamental park or pleasure ground, except with the prior consent in writing of the *Leveki Mangafaoa* or of the owner or of the Island Assembly. 15

(3) The procedure for taking land for public purposes under this section may be prescribed by Ordinance. 20

Cf. 1966, No. 38, s. 326

**12. Revocation of Warrant taking land**—(1) If any Warrant under section 11 of this Act is made in error, or if the land so taken or any part thereof is found not to be required for the purpose for which it was taken, the Minister may, by Warrant, at any time before compensation has been paid in respect thereof, revoke the Warrant, either wholly or as to any part of the land so taken. 25

(2) A Warrant so revoked shall, so far as revoked, be deemed never to have been made, and the land shall accordingly be deemed to have remained vested in the persons formerly entitled thereto or their successors in title. 30

(3) Any person interested in the land and suffering loss or damage by the making and revocation of any such Warrant taking it shall be entitled to compensation in the same manner, with all necessary modifications, as in the case of compensation for land taken. 35

Cf. 1966, No. 38, s. 327

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

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

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

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

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

Cf. 1966, No. 38, s. 328

**14. Resumption of Crown land for public purposes—**

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

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

Cf. 1966, No. 38 s. 329

**15. Reservation of land so taken or resumed—**Any land so  
40 taken or resumed for any public purpose shall be deemed to be set apart and reserved for that purpose, but the Minister may at any time, by Warrant, cancel any such reservation.

Cf. 1966, No. 38, s. 330

**16. Purchase of land for public purposes**—The Minister may, for any public purpose, for and in the name of Her Majesty, purchase any Niuean land or any undivided interest therein, or acquire by grant or assignment any lease, easement, or other limited right, title, estate, or interest in any such land. 5

Cf. 1966, No. 38, s. 331

**17. Public purpose for which land held may be altered**—Where any land has under this Part of this Act or the corresponding provisions of any former Act been set aside as a reserve or taken or resumed or purchased for any public 10 purpose, the public purpose for which the land is held may from time to time be altered by the Minister, by Warrant.

**18. Control of Crown land by Resident Commissioner**—The Resident Commissioner may exercise on behalf of the Crown all rights of suit, entry, re-entry, receipt of rents and 15 profits, use, management, control, and possession vested in the Crown in respect of any Crown land.

Cf. 1966, No. 38, s. 332

**19. Saving of reserves under the Cook Islands Government Act 1908**—(1) All reserves in Niue established before the 20 commencement of the Cook Islands Act 1915 under section 21 of the Cook Islands Government Act 1908, or the corresponding provisions of any former Act, shall be deemed to have been established under this Part of this Act.

(2) Paragraph (b) of section 21 of the Cook Islands Government Act 1908 shall, notwithstanding the repeal of that Act by the Cook Islands Act 1915, continue to apply to all reserves for the purpose of defence which before the commencement of the last-mentioned Act had been vested by Proclamation in any person or authority for the purpose afore- 30 said.

Cf. 1966, No. 38, s. 334

**20. Power to revoke or amend existing Orders in Council**—The provisions of this Part of this Act shall apply with respect to every Order in Council in force at the commencement of 35 this Part made under Part X of the principal Act, or the corresponding provisions of any former Act, as if the order were a Warrant of the Minister under this Part, and the order may be revoked or amended by the Minister under this Part accordingly. 40

PART III

NIUEAN LAND

21. **Ownership in Niuean land**—All land in Niue which at the commencement of this Act is held by Niueans in accordance with Niuean custom is hereby vested in the Crown as the trustee of owners thereof, and shall be held by the Crown subject to Niuean custom, and all such land is hereby declared to be Niuean land accordingly, but shall remain subject to any right which may have been lawfully acquired in respect thereof before the commencement of this Act otherwise than in accordance with Niuean custom.

22. **Investigation of title to Niuean land**—(1) The Land Court shall have exclusive jurisdiction to investigate the title to Niuean land and to determine the relative interests of the owners or occupiers of any such land in accordance with this Act or any other enactment.

(2) Nothing in this section shall preclude the Land Appellate Court from determining in any appropriate proceeding otherwise within the jurisdiction of the Court any question of title to Niuean land.

Cf. 1966, No. 38, s. 409

23. **Niuean customs to be recognised**—Every title to and estate or interest in Niuean land shall be determined according to Niuean custom and any Ordinance or other enactment affecting Niuean custom.

Cf. 1966, No. 38, s. 410

24. **No alienation of Niuean land**—No person shall be capable of making any alienation of Niuean land or of any interest therein, except as provided by Part II of this Act or in accordance with the provisions of any other enactment.

Cf. 1966, No. 38, s. 432

25. **Minister may declare land to be free from customary title**—The Minister may, by Warrant, declare any land vested in the Crown to be free from customary title, and the Warrant shall in all Courts and in all proceedings be conclusive proof of the fact so declared.

Cf. 1966, No. 38, s. 405

**26. Validity of dispositions of land by the Crown**—No Crown lease or other alienation or disposition of land by the Crown, whether before or after the commencement of this Act, shall in any Court or in any proceedings be questioned or invalidated or in any manner affected by reason of the fact that the customary title to that land has not been duly extinguished. 5

Cf. 1966, No. 38, s. 406

**27. For certain purposes Niuean land to be deemed Crown land**—(1) For the purposes of recovering possession of Niuean land from any person in wrongful occupation thereof, and for the purpose of preventing any trespass or other injury thereto, all such land shall be deemed to be Crown land. 10

(2) No action or other proceeding other than a proceeding by or on behalf of the Crown under subsection (1) of this section shall be brought in any Court by any person for recovery of the possession of Niuean land, or for damages or an injunction in respect of any trespass or injury to any such land. 15

(3) Nothing in this section shall be so construed as to take away or affect any jurisdiction conferred upon the Land Court by this Act. 20

Cf. 1966, No. 38, s. 408

#### PART IV

##### LAND FOR CHURCH PURPOSES

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**28. Vesting of land for Church purposes**—(1) The Land Court, if it is satisfied that any Niuean land has been at any time gifted or set aside by the *Leveki Mangafaoa*, or, where there is no *Leveki Mangafaoa*, the owners, exclusively for Church purposes for the benefit of the adherents of some Christian denomination, and that the *Leveki Mangafaoa* or the owners, as the case may be, are willing that the land shall be exclusively so used in perpetuity, and that no sufficient alienation or disposition of the land by way of lease or otherwise has been made in pursuance and furtherance of the said gift or setting aside, may make an order under this section vesting that land in any body corporate to hold and administer it for such Church purposes as are specified in the order. 30 35

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

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

10 Cf. 1966, No. 38, s. 435

**29. Land vested for Church purposes may be acquired by the Crown**—Where any land vested in any body corporate or persons under section 28 of this Act is no longer required for the Church purposes specified in the vesting order, the said land may be acquired by the Crown pursuant to Part II of this Act, and no compensation shall be payable to any person in respect thereof.

**30. Existing records and instruments**—All records, instruments, reservations, and generally all acts of authority relating to the gifting or setting aside of land for Church purposes subsisting and in force at the commencement of this Act may be accepted by the Land Court as evidence in support of any application under section 28 of this Act.

## PART V

### 25 THE LAND COURT OF NIUE

#### *Constitution of the Land Court*

**31. Land Court constituted**—(1) There shall continue to be a Court of record called as heretofore the Land Court of Niue, which shall be the same Court as that existing under the same name immediately before the commencement of this Act.

(2) In addition to the jurisdiction and powers expressly conferred on it by this Act, the Court shall have all the powers that are inherent in a Court of record.

35 Cf. 1966, No. 38, s. 335

**32. Judges and Commissioners of the Land Court**—(1) The Land Court shall consist of such Judges and Commissioners of that Court as are from time to time appointed under section 33 or section 34 of this Act.

(2) If only one Judge is so appointed, he shall be deemed to be the Chief Judge of the Land Court, but, if more than one Judge is so appointed, one shall be appointed Chief Judge of that Court.

Cf. 1966, No. 38, s. 336

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**33. Appointment and tenure of Judges and Commissioners—**(1) The Judges and Commissioners of the Land Court shall be appointed by the Governor-General.

(2) Subject to section 34 of this Act, no person who has attained the age of sixty-eight years shall be appointed to or 10  
continue to hold the office of Judge or Commissioner of the Land Court.

(3) Notwithstanding anything to the contrary in this Act, every Judge or Commissioner of the Land Court, unless he sooner vacates his office, shall continue to hold his office until 15  
his successor comes into office.

(4) The Governor-General may, if he thinks fit, remove a Judge or Commissioner of the Land Court for inability or misbehaviour.

(5) A Judge or Commissioner of the Land Court may resign 20  
his office by writing under his hand addressed to the Governor-General.

Cf. 1966, No. 38, s. 337

**34. Temporary Judges—**(1) The Governor-General may at any time for any temporary purpose appoint any person whom 25  
he thinks fit to be a Judge of the Land Court, to hold office for such time, not exceeding one year, as is specified in the warrant of appointment.

(2) A person may be appointed under this section notwithstanding that he has attained the age of sixty-eight years. 30

Cf. 1966, No. 38, s. 338

**35. Judges of Maori Land Court may be appointed to Niue Land Court—**The Chief Judge of the Maori Land Court of New Zealand, or any other Judge of that Court holding office under Part IV of the Maori Affairs Act 1953, may from 35  
time to time be appointed Chief Judge or Judge of the Land Court of Niue, and in any such case the Judge so appointed may hold both offices concurrently.

Cf. 1966, No. 38, s. 339



**36. Deputy of Chief Judge**—(1) The Governor-General may during the incapacity, illness, or absence from Niue of the Chief Judge of the Land Court, or during any vacancy in the office of Chief Judge, appoint any other Judge of that  
5 Court or any other fit person to act as Deputy of the Chief Judge, and may at any time revoke any such appointment.

(2) During the continuance of any such appointment, the person so appointed shall have, exercise, and perform all the powers and duties of the Chief Judge.

10 (3) The fact of any person appointed by the Governor-General in that behalf acting as Chief Judge shall be conclusive of the validity of the appointment and of his authority so to act, and no act done by the Chief Judge shall be questioned or invalidated on the ground that any such appointment of  
15 any other person as a Deputy was at that time in force.

Cf. 1966, No. 38, s. 348

**37. Resident Commissioner may act as Judge of the Land Court**—(1) The Resident Commissioner (or his Deputy lawfully acting as such) may, without further authority or  
20 appointment, act as a Judge of the Land Court.

(2) During the incapacity, illness, or absence from Niue of the Chief Judge of the Land Court, or during any vacancy in the office of Chief Judge, and providing no Deputy of the Chief Judge appointed under section 36 of this Act is present  
25 in Niue and capable of acting, the Resident Commissioner (or his Deputy lawfully acting as such) shall have and may exercise and perform all the powers and duties of the Chief Judge.

(3) The fact that the Resident Commissioner (or his  
30 Deputy lawfully acting as such) exercises or performs any of the powers and duties of the Chief Judge shall be conclusive evidence of his authority to do so.

Cf. 1966, No. 38, s. 341

**38. Commissioners of Land Court**—(1) A Commissioner of  
35 the Land Court shall possess and may exercise such of the powers and functions of a Judge of that Court (other than those vested exclusively in the Chief Judge) as the Governor-General, by Order in Council, from time to time determines, either generally or with respect to any particular Commis-  
40 sioner or Commissioners, and all references in this Act or in any other enactment to a Judge of the Land Court shall be construed as applying to a Commissioner within the limits of the jurisdiction so conferred upon him.

(2) The office of Commissioner of the Land Court may, with the approval of the Commission, be held concurrently with the office of a Registrar of that Court or with any other position in the Niue Public Service, or may be held concurrently with any other position, but a Commissioner of the Land Court in the exercise of his functions as such shall not be under the control of the Commission. 5

(3) Rules of Court may provide for appeals from a Commissioner to a Judge of the Land Court.

Cf. 1966, No. 38, s. 342 10

**39. Salary of Judges and Commissioners—**(1) The Judges and Commissioners of the Land Court shall receive such salaries and allowances as the Minister determines.

(2) The salaries of the Judges and Commissioners of the Land Court shall be charged on the Niue Assembly Account. 15

Cf. 1966, No. 38, s. 340

**40. Registrar and Deputy Registrar of Land Court—**

(1) There shall be a Registrar of the Land Court, who shall be appointed under Part XXXI of the principal Act.

(2) The Registrar shall keep or cause to be kept such records of and in relation to proceedings in the Land Court as may be prescribed. 20

(3) There may also be appointed under Part XXXI of the principal Act a Deputy Registrar of the Land Court, who shall, subject to the control of the Registrar, possess, exercise, and perform the same powers, functions, and duties as the Registrar, and every reference in any enactment to the Registrar of the Land Court shall, so far as applicable, extend and apply to the Deputy Registrar accordingly. 25

Cf. 1966, No. 38, s. 343 30

**41. Administrative officers—**There shall be appointed under Part XXXI of the principal Act in respect of the Land Court such clerks, interpreters, and other administrative officers as may be necessary.

Cf. 1966, No. 38, s. 344 35

**42. Records of Land Court—**The records, plans, and documents relating to the business of the Land Court shall be kept, and the administrative work of the Court shall be carried on, at such places as the Chief Judge from time to time directs.

Cf. 1966, No. 38, s. 345 40

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

5 Cf. 1966, No. 38, s. 346

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

10 (2) The form or forms of seal shall be such as the Minister from time to time determines.

Cf. 1966, No. 38, s. 347

**45. Rules of Court**—(1) The Governor-General in Council may make, vary, or revoke such Rules of Court as are consistent with this Act for the purposes of regulating the practice and procedure of the Land Court in all matters within its jurisdiction.

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

20 Cf. 1966, No. 38, s. 349

**46. Applications to Land Court**—(1) The jurisdiction of the Land Court in any matter may be exercised on the application of any person claiming to be interested therein, or on the application of the Resident Commissioner or of any person authorised by him in that behalf.

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

30 Cf. 1966, No. 38, ss. 350, 351

**47. Rehearings**—(1) On the application of any person interested, the Land Court may, if it thinks fit, grant a rehearing of any matter either wholly or as to any part thereof.

35

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

(3) When a rehearing has been so granted, the period allowed for an appeal to the Land Appellate Court shall not commence to run until the rehearing has been disposed of by a final order of the Court. 5

(4) Any such rehearing may be granted on such terms as to costs and otherwise as the Court thinks fit, and the granting or refusal thereof shall be in the absolute discretion of the Court. 10

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

Cf. 1966, No. 38, s. 362

15

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

(2) The dates of the commencement of the ordinary sittings of the Court for the period of twelve months commencing on the first day of April in each year shall be published in the *Niue Island Gazette* before the commencement of that period or as soon as practicable after the commencement thereof. 20

(3) Special sittings may from time to time be held at such times and places as may be appointed by the Chief Judge. 25

Cf. 1966, No. 38, s. 354

#### *General Jurisdiction of the Land Court*

**49. Jurisdiction of Land Court**—(1) In addition to any jurisdiction specifically conferred upon the Land Court by any enactment other than this section, the Court shall have exclusive jurisdiction— 30

(a) To hear and determine any application to the Court relating to the ownership, possession, occupation, or utilisation of Niuean land, or to any right, title, estate, or interest in Niuean land or in the proceeds of any alienation thereof: 35

(b) To determine the relative interests of the owners or the occupiers in any Niuean land:

(c) To hear and determine any application for the appointment of a *Leveki Mangafaoa* in respect of any Niuean land: 40

- (d) To hear and determine any claim to recover damages for trespass or any other injury to Niuean land:
- (e) To grant an injunction against any person in respect of actual or threatened trespass or other injury to Niuean land:
- 5 (f) To grant an injunction prohibiting any person from dealing with or doing any injury to any property which is the subject-matter of any application to the Court:
- 10 (g) To create easements in gross over Niuean land:
- (h) To make any order recording the determination of any matter relating to land or any interest therein, whether provided for in this Act or other enactment:
- (i) To authorise the survey of any land.
- 15 (2) The grant of an easement pursuant to paragraph (g) of subsection (1) of this section may, if the Court thinks fit, be made subject to the payment of compensation in respect thereof, or to any other conditions that the Court may impose.

Cf. 1966, No. 38, s. 381

20 **50. Order in Council may confer jurisdiction on Land Court**—(1) In addition to the jurisdiction elsewhere in this Act conferred upon the Land Court, the Governor-General may confer upon that Court, as effectually as if it were conferred by this Act, jurisdiction in any matter or question  
25 affecting exclusively the rights of Niueans in any property, and thereupon the Court shall have full jurisdiction to determine that matter or question according to law.

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

Cf. 1966, No. 38, s. 383

**51. Powers of Judges**—A Judge sitting alone or any two or  
35 more Judges sitting together may exercise all the powers of the Land Court.

Cf. 1966, No. 38, s. 352

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

Cf. 1966, No. 38, s. 353

5

*Orders of Land Court*

**53. Procedure with respect to the making of orders—**

(1) The substance of every final order of the Land Court shall be pronounced orally in open Court. Subject to subsection (5) of this section, every such order shall take effect according to its tenor as from the commencement of the day on which it is so pronounced. A minute of the order shall forthwith be entered in the records of the Court. 10

(2) As soon as practicable after the entry in the records of a minute thereof, the order shall be drawn up in writing under the seal of the Court and shall be signed as hereinafter provided. 15

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

(4) The order drawn up, sealed, and signed as hereinbefore provided shall be dated as of the date of the minute thereof and shall relate back to that date. The validity and operation of all intermediate orders, instruments, proceedings, and transactions shall be determined accordingly. 20

(5) No order shall be questioned or invalidated on the ground of any variance between the order as so drawn up, sealed, and signed and the minute thereof; and in the case of any variance the order shall prevail over and supersede the minute thereof. 25

(6) Any order may be made subject to the performance of conditions within such time as may be limited in that behalf in the order and, in any such case, the Court, without further application but subject to the giving of such notices (if any) as the Court may direct, may amend or cancel the order on the failure to comply with the conditions within the time limited as aforesaid. 30 35

(7) No order made under Part IV of this Act shall be sealed and signed until and unless there has been drawn or endorsed thereon a plan of the land affected thereby sufficient to identify the land and the boundaries thereof. 40

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

(9) The Land Court may at any time cause duplicates of any order to be sealed and signed. Every such duplicate shall have the word "Duplicate" written or stamped thereon, and shall have the same evidentiary value as the order of which  
10 it is a duplicate.

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

Cf. 1966, No. 38, s. 367

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

Cf. 1966, No. 38, s. 370

**55. Validity of orders**—(1) No order of the Land Court shall be invalid because of any error, irregularity, or defect in the form thereof or in the practice or procedure of the Court, even though by reason of that error, irregularity, or defect the order was made without or in excess of jurisdiction.

30 (2) Nothing in the foregoing provisions of this section shall apply to any order which in its nature or substance and independently of its form or of the practice or procedure of the Court was made without or in excess of jurisdiction.

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

Cf. 1966, No. 38, s. 371

**56. Annulment of orders obtained by fraud**—The Land Court may at any time annul any order obtained by fraud.

Cf. 1966, No. 38, s. 364

**57. Enforcement of orders of Land Court by High Court**—

(1) For the purpose of enforcing any order of the Land Court for the payment of any debt, damages, fine, costs, or other sum of money, a Judge of that Court may transmit a copy of the order under the seal of the Court to the Registrar of the High Court, who shall file it as of record in the High Court. 5

(2) On the filing of that copy, the order shall, so long as it remains in force, be deemed for the purpose of the enforcement thereof to be a judgment of the High Court in an action for the recovery of a debt, and may be enforced in accordance with the practice of that Court by execution or otherwise. 10

Cf. 1966, No. 38, s. 365

**58. Enforcement of charges**—(1) When any charge is imposed either by this Act or by the Land Court upon any Niuean land or upon any interest therein, that Court may at any time for the purpose of enforcing that charge appoint a receiver in respect of the property so charged. 20

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

(3) Any person who obstructs any such receiver in the execution of his office shall be guilty of contempt of the Land Court. 25

Cf. 1966, No. 38, s. 366

**59. Registration of orders affecting title to land**—(1) Any order of the Land Court affecting or relating to the title to land may be registered against the title to that land. 30

(2) For the purposes of registration the order shall be filed in the Land Registry Office, and the Registrar shall thereupon, subject to the provisions of any enactment, register the order accordingly. 35

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



*Contempt of the Land Court*

**60. Contempt of Court defined**—(1) Every person is guilty of contempt of the Land Court who—

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

(2) Every person shall be guilty of contempt of the Land Court who—

- 25 (a) Having been served with a summons requiring him to appear before the Court at a time and place mentioned in the summons, neglects or fails without sufficient cause shown by him to appear or to produce any document which he is so required to produce; or
- 30 (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
- 35 (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.
- 40

Cf. 1966, No. 38, ss. 355 (2), 372

**61. Penalty for contempt**—Every person who commits contempt of the Land Court is liable to imprisonment for a term not exceeding six months or a fine not exceeding one hundred dollars.

Cf. 1966, No. 38, s. 373

5

**62. Jurisdiction in contempt**—The offence of contempt of the Land Court shall be punishable either—

(a) By the High Court in the ordinary course of its criminal jurisdiction; or

(b) By the Land Court in accordance with sections 63 to 66 of this Act. 10

Cf. 1966, No. 38, s. 374

**63. Contempt in face of the Court**—(1) If the contempt is committed in the presence or hearing of the Land Court, any Judge there and then sitting in that Court may there and then or at any time within thirty days 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. 15

(2) The Court may thereupon, after giving the person so arrested a reasonable opportunity of being heard in his defence, by warrant under the seal of the Court, either commit him to prison for a term not exceeding six months or order him to pay a fine not exceeding one hundred dollars. 20

Cf. 1966, No. 38, s. 375

25

**64. Arrest on warrant**—If contempt of the Land Court is committed otherwise than in the sight or hearing of the Court, any Judge of that Court may issue his warrant for the arrest of the offender or may summon him to appear before the Court. 30

Cf. 1966, No. 38, s. 376

**65. Conviction by Land Court**—On the appearance of the offender before the Land Court, the Court may, after giving him a reasonable opportunity to be heard in his defence, by warrant under the seal of the Court, either commit him to 35

prison for a term not exceeding six months or order him to pay a fine not exceeding one hundred dollars.

Cf. 1966, No. 38, s. 377

5 **66. Enforcement of fine**—If a fine imposed by the Land Court for contempt under the foregoing provisions is not paid, the Court may, by warrant under its seal, commit the offender to prison for a term not exceeding six months.

Cf. 1966, No. 38, s. 378

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

15 Cf. 1966, No. 38, s. 379

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

20 Cf. 1966, No. 38, s. 380

## PART VI

### THE LAND APPELLATE COURT OF NIUE

25 **69. Land Appellate Court constituted**—There shall continue to be a Court of record called as heretofore the Land Appellate Court of Niue, which shall be the same Court as that existing under the same name immediately before the commencement of this Act.

Cf. 1966, No. 38, s. 386

30 **70. Judges of the Land Appellate Court**—(1) The Judges of the Land Court of Niue and the Judges of the Maori Land Court of New Zealand shall be the Judges of the Land Appellate Court.

35 (2) Any two or more of the Judges (other than any Judge who determined the matter in dispute in the Land Court) shall have power to act as the Land Appellate Court:

Provided that two Judges at least shall concur in every decision of that Court.

(3) The Land Appellate Court may sit in two or more divisions at the same time, and each division shall have all the powers and jurisdiction of the Land Appellate Court. 5

(4) The Chief Judge of the Land Court of Niue shall preside at any sitting of the Land Appellate Court at which he is present. In his absence the Chief Judge of the Maori Land Court of New Zealand, if present, shall preside, and in the absence of both of those Judges the senior Judge present shall preside. 10

Cf. 1966, No. 38, s. 387

**71. Proceedings may be continued before different Judges**—Proceedings in the Land Appellate Court may be continued before Judges other than those before whom the proceedings were commenced. 15

Cf. 1966, No. 38, s. 388

**72. Decision of majority to be decision of Court**—(1) The decision of the Land Appellate Court shall be in accordance with the opinion of the majority of the Judges present. 20

(2) If the Judges present are equally divided in opinion, the order appealed from or under review shall be deemed to be confirmed.

Cf. 1966, No. 38, s. 389

**73. Officers of Land Court to be officers of Land Appellate Court**—The Registrar, Deputy Registrar, and other officers of the Land Court shall, without further appointment, act in the like capacity in the Land Appellate Court. 25

Cf. 1966, No. 38, s. 390

**74. Seal**—(1) The Land Appellate Court shall have in the custody of the Registrar a seal of that Court for sealing documents which require to be sealed. 30

(2) The seal of the Land Appellate Court shall be in such form or forms as the Minister from time to time directs.

Cf. 1966, No. 38, s. 391

**75. Rules of Court**—(1) The Governor-General may from time to time, by Order in Council, make such Rules of Court as are consistent with this Act for the purpose of regulating the practice and procedure of the Land Appellate Court, and the terms and conditions on which appeals to that Court may be brought, prosecuted, or withdrawn.

(2) Any such rules may require an appellant to give security for the costs of the appeal, and may provide for the dismissal of an appeal by the Land Court or by a Judge thereof by reason of the failure of the appellant to conform to any such requirement or to prosecute his appeal in accordance with the said rules; and no appeal to the Land Appellate Court shall lie from any such dismissal of an appeal.

Cf. 1966, No. 38, s. 392

**76. Sittings of Land Appellate Court**—The times and places of the sittings of the Land Appellate Court shall be determined in accordance with Rules of Court.

Cf. 1966, No. 38, s. 393

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

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

(3) Every such appeal shall be commenced by notice of appeal given in the prescribed manner within two months after the date of the minute of the order appealed from (whether before or after the commencement of this Act).

Cf. 1966, No. 38, s. 394

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

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

(3) When leave to appeal is so given, the Land Court may either stay further proceedings in the matter or continue the proceedings, but no final order shall be made until the appeal has been finally disposed of or dismissed. 5

(4) When any such appeal has been determined by the Land Appellate Court, no further appeal shall lie as of right at the suit of any person from any final order thereafter made in those proceedings by the Land Court, so far as that order conforms to the determination of the Land Appellate Court. 10

Cf. 1966, No. 38, s. 395

**79. Successive appeals in respect of same matter**—Successive appeals to the Land Appellate Court may be brought in respect of the same order at the suit of different persons, but no matter determined on appeal shall be again brought in question in any other appeal. 15

Cf. 1966, No. 38, s. 396

20

**80. Powers of Land Appellate Court on appeal**—On any appeal, the Land Appellate Court may, in its discretion, do any one or more of the following things :

(a) Affirm the order appealed from:

(b) Annul that order, with or without the substitution of any other order therefor: 25

(c) Vary that order:

(d) Direct the Land Court to make such other or additional order as the Land Appellate Court thinks fit:

(e) Direct a new trial or rehearing by the Land Court: 30

(f) Make any order which the Land Court might have made in the proceedings:

(g) Dismiss any appeal.

Cf. 1966, No. 38, s. 397

**81. Dismissal of appeal for non-prosecution**—If the appellant in any case does not prosecute his appeal with due diligence, the respondent or any other person bound by or interested in the order appealed from may apply either to the 35

Land Court or to the Land Appellate Court for an order dismissing the appeal for non-prosecution; and, if such an order is made by either Court, the costs of the appeal and the security entered into (if any) by the appellant shall be dealt  
5 with in such manner as that Court may direct.

Cf. 1966, No. 38, s. 398

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

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

Cf. 1966, No. 38, s. 399

**83. Orders of Land Appellate Court—**(1) If on appeal the  
25 Land Appellate Court makes (otherwise than by way of variation as aforesaid) any order which the Land Court might have made in the proceedings, a minute of the order shall be entered in the records of the Land Appellate Court, and the order shall take effect as an order of the Land Appellate Court  
30 as from the commencement of the day of the making thereof.

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

(3) Subject to this section, all the provisions of section 53 of this Act with respect to orders drawn up, sealed, and signed in the Land Court shall extend and apply to orders so drawn up, sealed, and signed in the Land Appellate Court.

(4) Sections 54 and 55 of this Act (relating to the persons bound by orders and the validity of orders) shall extend and apply to orders of the Land Appellate Court in the same manner as to orders of the Land Court.

Cf. 1966, No. 38, s. 400

5

**84. Contempt**—Sections 60 to 68 of this Act (relating to contempt of Court) shall extend and apply to the Land Appellate Court in the same manner as to the Land Court.

Cf. 1966, No. 38, s. 402 (2)

**85. Land Appellate Court may order surveys**—The Land Appellate Court shall have the same powers with respect to the authorisation of surveys as are conferred upon the Land Court by paragraph (i) of subsection (1) of section 49 of this Act.

Cf. 1966, No. 38, s. 404

15

## PART VII

### ROADS

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

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

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

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

Cf. 1966, No. 38, s. 639

**88. Warrant declaring existing roads**—As soon as practicable after the commencement of this Act, the Registrar of



the Land Court shall prepare and deposit in the Land Registry Office a plan showing all land which in his opinion has been used as of right by the public and ought to be constituted as road, and the Resident Commissioner, acting by 5 and with the advice of the Executive Committee, shall, by warrant, declare to be roads all land shown on that plan as roads.

**89. Warrants declaring new roads—**(1) The Resident Commissioner, acting by and with the advice of the Executive 10 Committee, may, by Warrant, declare any Crown land or Niuean land as a road.

(2) For the purpose of this Part of this Act, it shall not be necessary to define the boundary of any unsurveyed Crown land or Niuean land affected by any such road. 15 Cf. 1966, No. 38, s. 637

**90. Warrants as to roads to be gazetted—**Every Warrant of the Resident Commissioner under this Part of this Act shall be under his hand and the seal of Niue, and shall be published in the *Niue Island Gazette*, and shall take effect according to 20 its tenor upon that publication or upon any later date specified in that behalf in the Warrant.

Cf. 1966, No. 38, s. 644

**91. Access to land—**(1) The Land Court may, by order, at any time declare any land to be subject to a right of the public 25 or of any person or class of persons to traverse that land for the purpose of gaining access or improved access to any other land, subject to any conditions which may be prescribed by the Court.

(2) The rights of any person under such an order shall be 30 subject to an obligation not to cause any damage to the land affected by the order or any crops or improvements thereon.

(3) The Court may, at the time of making the order, or at any time thereafter, define by reference to a plan or map the route to be followed over the land; and, in any case where the 35 route is defined subsequent to the making of the order, the Court may impose additional conditions or vary any conditions already made.

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

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

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

Cf. 1966, No. 38, s. 382

**92. Closing of roads—**(1) The Resident Commissioner, acting by and with the advice of the Executive Committee, 10 may, by Warrant, close in whole or in part any road:

Provided that no road or part of any road shall be closed pursuant to this section, if—

(a) The area comprising the closed road or part will be left without access to a road, either directly or by 15 being added to adjoining land which has direct access to some other road; or

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

(2) Where any road or part of any road has been closed 20 pursuant to this section, the Land Court may, on application by the Resident Commissioner, make an order vesting the whole or any portion of the land comprised in the road or part that has been closed in the *Leveki Mangafaoa* or, where there is no *Leveki Mangafaoa*, the owners of any adjoining 25 land which, when the road was constituted, was Niuean land.

(3) Any land vested pursuant to this section shall become subject to any reservation, trust, right, title, interest, or encumbrance to which the land with which it is incorporated is then subject. 30

(4) By the same or a subsequent order, the Court may amend any existing title to include therein the land comprised in the road or part thereof that has been closed as aforesaid; and the Registrar of the Land Court is hereby authorised to make all necessary entries or amendments in the Land 35 Register.

Cf. 1966, No. 38, s. 643

PART VIII

ADOPTION

93. **Interpretation**—In this Part of this Act, unless the context otherwise requires,—

- 5 “Adopted child” means any person in respect of whom an adoption order is in force:
- “Adoption order” means an adoption order made by the Land Court under this Part of this Act; and includes an adoption order made before the commencement of this Act by the Land Court under Part XXIV of the principal Act or by the High Court under Part XXV of that Act or by any Court under the corresponding provisions of any former Act:
- 10 “Adoptive parent” means any person who adopts a child in accordance with an adoption order; and, in the case of an order made in favour of a husband and wife on their joint application, means both the husband and wife; but does not include a spouse who merely consents to an adoption:
- 15 “Child” means a person who is under the age of twenty-one years:
- 20 “Father”, in relation to any child born out of wedlock, means the natural father.

94. **Adoption by Niuean custom invalid**—No adoption by Niuean custom, whether made before or after the commencement of this Act, shall be of any force or effect, whether in respect of intestate succession or otherwise.

Cf. 1966, No. 38, s. 580

95. **Adoption by Niuean custom before 1 April 1916 by parent dying before 5 December 1921**—Notwithstanding anything in section 94 of this Act, in any case where, before the first day of April, nineteen hundred and sixteen, any child was adopted by Niuean custom and since that date and before the fifth day of December, nineteen hundred and twenty-one, the adopting parent has died, the adoption shall for all purposes have the same operation and effect as that which is attributed by Niuean custom to adoption by Niuean custom.

Cf. 1966, No. 38, s. 581

**96. Validity of adoption registered before 1 April 1916**—Any adoption lawfully made and registered in the Cook Islands Land Titles Court in the exercise of its jurisdiction in Niue before and subsisting on the first day of April, nineteen hundred and sixteen, and continuing to subsist at the commencement of this Act, shall continue to have the same force and effect as if lawfully made by an order of adoption under this Part of this Act. 5

Cf. 1966, No. 38, s. 582

**97. Court may make adoption orders**—(1) Subject to this Part of this Act, the Land Court may, upon an application made by any person, whether domiciled in Niue or not, make an adoption order in respect of any child, whether Niuean or European, and whether domiciled in Niue or not. 10

(2) An adoption order may be made on the application of two spouses jointly in respect of a child. 15

(3) An adoption order may be made in respect of the adoption of a child by the mother or father of the child, either alone or jointly with his or her spouse.

Cf. 1966, No. 38, ss. 583, 584, 593 20

**98. Prohibition of payments in consideration of adoption**—Except with the consent of the Court, it shall not be lawful for any person to give or receive or agree to give or receive any payment or reward in consideration of the making of arrangements for an adoption or proposed adoption. 25

**99. Restrictions on making adoption orders**—(1) No adoption order shall be made under this Part of this Act, unless the Land Court is satisfied that—

(a) The child to be adopted is under the age of twenty-one years at the date of the filing of the application; and 30

(b) The applicant or, in the case of a joint application, one of the applicants, has attained the age of twenty-five years and is at least twenty-one years older than the child, or is the mother or father of the child; and

(c) The applicant (if unmarried) is at least thirty years older than the child; and 35

(d) Where the child is female and the sole applicant is male, the applicant is the father of the child, or there are special circumstances which justify the making of an order; and 40

(e) The child, if in the opinion of the Court is above the age of twelve years, consents to the adoption; and

(f) The applicant is a fit and proper person to have the care and custody of the child and of sufficient ability to maintain the child, and the adoption will not be contrary to the welfare and interests of the child.

5 (2) In order to satisfy itself as to the matters mentioned in paragraph (f) of subsection (1) of this section, the Court shall call for a report thereon by the Resident Commissioner, or by  
10 an officer of the Niue Public Service nominated for the purpose by the Resident Commissioner.

(3) No adopted child shall, in the lifetime of an adoptive parent and while the adoption order remains in force, be adopted by any other person save the husband or wife of that  
15 parent.

Cf. 1966, No. 38, ss. 586, 596

**100. Consents to adoptions**—(1) No adoption order shall be made without the consent of the parents or of the surviving parent (if any) of the child, whether that child is born in law-  
20 ful wedlock or not, but no such consent shall be required from any parent if the Court is satisfied that the child has been deserted by that parent, or that that parent is for any reason unfit to have the care and custody of the child, or if the Court for any other reason whatsoever considers that the consent of  
25 that parent should be dispensed with.

(2) Every consent given under subsection (1) of this section shall be given in writing and witnessed by one of the persons specified in subsection (1) of section 78 of the principal Act, and every such witness shall certify that the parent signing the  
30 consent fully understands the effect of an adoption order.

(3) Where the application for an adoption order is made by either a husband or a wife alone, no order shall be made without the consent of the spouse of the applicant, save that no such consent shall be required if the Court is satisfied that the  
35 spouses are living apart and that their separation is likely to be permanent.

Cf. 1966, No. 38, ss. 587, 597

**101. Effect of adoption order**—Every adoption order shall have the same operation and effect as an adoption order made under the Adoption Act 1955 has in New Zealand by virtue of subsections (1) and (2) of section 16 of that Act.

Cf. 1966, No. 38, ss. 590, 598

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**102. Adoption order may be varied or discharged**—

(1) The Land Court may, in its discretion, vary or discharge any adoption order subject to such terms and conditions as it thinks fit, on the application of any adoptive parent or of the adopted child.

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(2) The Land Court may, in its discretion and subject to such terms and conditions as it thinks fit, discharge any adoption made in any place outside Niue either before or after the commencement of this Act, if—

(a) The person adopted is living and is domiciled in Niue; 15  
and

(b) Every living adoptive parent is domiciled in Niue.

(3) No application for discharge of any adoption shall be made without the prior approval of the Attorney-General; and no adoption order or adoption shall be discharged unless the 20  
adoption order was made by mistake as to a material fact in consequence of a material misrepresentation to the Court or to any person concerned.

(4) Where the Court discharges an adoption order or adoption as aforesaid, it may confer on the person to whom 25  
the order or adoption related such surname with such first or Christian name as the Court thinks fit; but, if it does not do so, the names of the person shall not be affected by the discharge of the order.

(5) The discharge of an adoption order shall have in Niue 30  
the same effect as the discharge of an adoption order under the Adoption Act 1955 has in New Zealand by virtue of subsection (6) of section 20 of that Act.

(6) The annulment of an adoption order shall have the 35  
same operation and effect as the discharge of an adoption order under the Adoption Act 1955 has in New Zealand by virtue of section 20 of that Act.

Cf. 1966, No. 38, ss. 589, 599

**103. Adoption orders under Cook Islands Amendment Act 1921**—(1) Every adoption order duly made under section 9 of the Cook Islands Amendment Act 1921 and in force at the commencement of this Act shall for all purposes have the same force and effect as an order of adoption lawfully made under this Part of this Act, and the person named therein as the adopted child shall be deemed to have been lawfully adopted as from the date of his adoption by Niuean custom, or, where that date has not been proved to the satisfaction of the Court, from such date as may be specified in the order made under the said section 9.

(2) Section 102 of this Act shall apply to every adoption under the said section 9.

Cf. 1966, No. 38, s. 592

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**PART IX**

**MISCELLANEOUS PROVISIONS**

**104. Consequential amendments**—(1) The principal Act is hereby amended in the manner indicated in the Schedule to this Act.

(2) Every reference to Niuean freehold land or freehold land or customary land in any Act, regulation, Ordinance, order, bylaw, or other enactment, or in any agreement, deed, instrument, application, licence, notice, or other document whatsoever, shall after the commencement of this Act be read as a reference to Niuean land.

**105. Repeals**—The following provisions of the principal Act are hereby repealed, namely:

Parts X to XV, Part XVIII, sections 492 to 496, section 499, and Parts XXIV, XXV, and XXVIII.

**106. Reserved enactment**—The First Schedule to the principal Act is hereby amended by adding the following words:

<p>“1968, No. — The Niue Amendment Act (No. 2) 1968</p>	<p>The whole Act.”</p>
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## SCHEDULE

## Section 104 (1)

## CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT

Section Amended	Amendment
Section 2 .....	<p>By repealing the definitions of the terms "alienation", "Crown land", "customary land", "European land", "Niuean freehold land", and "Niuean land".</p> <p>By omitting from the definition of the term "enactment" the words "or Order in Council", and substituting the words "Order in Council, Proclamation, or Warrant of the Minister".</p>
Section 461 .....	<p>By inserting in subsection (1), after the word "with the consent of", the words "the <i>Leveki Mangafaoa</i> or".</p> <p>By omitting from subsection (1) the words "land owned by Niueans", and substituting the words "Niuean land".</p>
Section 462 .....	<p>By inserting in subsection (1), after the words "the benefit of", the words "the <i>Leveki Mangafaoa</i> or".</p> <p>By omitting from subsection (4) the words "any beneficial or other owner", and substituting the words "the <i>Leveki Mangafaoa</i> or, where there is no <i>Leveki Mangafaoa</i>, the owners".</p> <p>By inserting in subsection (8), after the words "advances to", the words "the <i>Leveki Mangafaoa</i> or".</p> <p>By omitting from subsection (9) the words "a beneficial or other owner", and substituting the words "the <i>Leveki Mangafaoa</i> or any owner".</p> <p>By repealing subsection (10), and substituting the following subsection:</p> <p>"(10) The provisions of any Ordinance or other enactment prohibiting the assignment of rents or profits shall apply to all advances or other money which are or may become payable to the <i>Leveki Mangafaoa</i> or any owner in respect of his share or interest in the profits of the business. No person other than the <i>Leveki Mangafaoa</i> or a Niuean beneficiary shall be capable of acquiring any beneficial interest except by will or by order of the Land Court in any crops or chattels held by the Resident Commissioner or in any revenue derived or to</p>



SCHEDULE—*continued*

CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT—*continued*

Section Amended	Amendment
Section 462— <i>continued</i>	<p>arise therefrom, nor shall the interest of the <i>Leveki Mangafaoa</i> 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.”</p>
Section 463 .....	<p>By omitting from subsection (11), the words “section 437 of this Act (prohibiting alienation by way of security)”, and substituting the words “any Ordinance prohibiting alienation by way of security”.</p> <p>By inserting in paragraph (e), after the words “general utility to”, the words “the <i>Leveki Mangafaoa</i> or”.</p> <p>By inserting in paragraph (f), after the words “revenues to”, the words “the <i>Leveki Mangafaoa</i> or”.</p>
Section 468 .....	<p>By repealing the definitions of the terms “occupation order” and “vesting order”.</p>
Section 472 .....	<p>By repealing paragraph (a) of subsection (1), and substituting the following paragraph:</p> <p>“(a) A first charge on any interest in Niuean land:”.</p> <p>By repealing paragraphs (b) to (d) of subsection (1).</p> <p>By repealing paragraph (e) of subsection (1), and substituting the following paragraph:</p> <p>“(e) An assignment of the proceeds of the alienation of Niuean land:”.</p>
Section 477 .....	<p>By omitting from subsection (1) the words “Notwithstanding anything in section 437 or section 438 or section 440 of this Act, it shall be competent for any Niuean to alienate any Niuean freehold land”, and substituting the words “Notwithstanding anything in any Ordinance or other enactment, it shall be competent for any Niuean to alienate any Niuean land”.</p>
Section 480 .....	<p>By omitting from subsection (1) the words “section 437 of this Act”, and substituting the words “any Ordinance or other enactment”.</p>

SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT—*continued*

Section Amended	Amendment
Section 490 .....	By omitting all words down to and including the words "personal estate", and substituting the words "Subject to Part VIII 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)".
Section 491 .....	By repealing this section, and substituting the following section: "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."
Section 501 .....	By omitting the words "real or personal property (other than customary land)", and substituting the words "property (other than an interest in Niuean land)".
Section 509 .....	By omitting from subsection (1) the words "Niuean land or other". By omitting from subsection (1) the words "such land or property", and substituting the words "such property".