

Interpretation Act 2004

NIUE LAWS LEGISLATION AS AT DECEMBER 2006

INTERPRETATION ACT 2004

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Relating to the interpretation, application, and effect of legislation and public documents

PART 1 GENERAL

1 Name

This is the Interpretation Act 2004.

2 Purposes

The purposes of this Act are—

- (a) To state principles and rules for the interpretation of legislation and public documents;
- (b) To shorten legislation and public documents; and
- (c) To promote consistency in the language and form of legislation and public documents.

3 Application

(1) This Act applies to an enactment that is part of the law of Niue and to a public document of Niue, whether passed, or written, before or after the commencement of this Act unless—

- (a) The enactment provides otherwise; or
 - (b) The context of the enactment or public document requires a different interpretation.
- (2) The provisions of this Act also apply to the interpretation of this Act.
- (3) This Act binds the Government.

4 Sources of law

The sources of Niuean law are, in order of priority—

- (a) The Constitution;
- (b) Acts of the Assembly;
- (c) Regulations;
- (d) Niuean custom;
- (e) The common law of Niue.

5 Definitions

In any enactment and public document—

"Assembly" has the same meaning as in article 82(1) of the Constitution;

"Commission" means the Niue Public Service Commission;

"Commonwealth country" or "part of the Commonwealth" means a country that is a member of the Commonwealth, and includes a territory for the international relations of which the member is responsible;

"constable" means an officer of police of the Niue Public Service;

"Constitution" means the Constitution of Niue, and includes the Act of the Parliament of New Zealand intitled the Niue Constitution Act 1974, and also includes any constitutional amendment, as that term is used in article 35 of the Constitution, when that constitutional amendment has come into force;

"Court" means the High Court;

"day" means a calendar day;

"document" includes any publication and any matter written, expressed or described on any substance by means of letters, figures or marks;

"enactment" has the same meaning as in article 82(1) of the Constitution;

"financial year" means a period of twelve months ending on 30 June;

"Government" means the Government of Niue;

"holiday" means Sunday, Christmas Day, Boxing Day, New Year's Day, 2 January, Good Friday, Easter Monday, 25 April, the Sovereign's Birthday, the third Monday and Tuesday of October, the fourth Monday of October, and any day declared by the Cabinet as a public holiday;

"Judge" has the same meaning as in article 82(1) of the Constitution; "judgment" includes any judicial decree, order, or determination, whether in an action or in any other judicial proceeding, whether civil or criminal;

"mangafaoa" has the same meaning as in the Land Act 1969; "Minister" means the Minister to whom responsibility for the department or subject to which the context refers has been assigned;

"month" means a calendar month;

"New Zealand" when used as a territorial description, means the islands and territories within the Realm of New Zealand but does not include Niue, Tokelau, the Cook Islands, or

the Ross Dependency;

"Niue" when used as territorial description, means the island of Niue and the territorial sea;

"Niuean" means a person belonging to the aboriginal race of Niue, and includes a person descended from a Niuean;

"owner", in relation to Niuean land other than land held under lease or licence as defined in the Land Act 1969, means the mangafaoa or a member of the mangafaoa;

"penalty unit" means one hundred dollars (\$100.00);

"person" or any term descriptive of a person includes a corporation sole, a body corporate, and an unincorporated body;

"prescribed" means prescribed by or under an enactment;

"public place" means any road, any place open to or used by the public as of right, any wharf or jetty, any vessel at a wharf or jetty or within one mile of the shore, and any church or other building where divine service is being publicly held, any hall or room in which any public entertainment is being held, and any market place;

"public notice" means making an act, matter or thing generally known in Niue by any customary and practicable means, or by publication in the Niue Gazette;

"regulation" means any enactment other than an Act, but does not include regulations made by an authority which has jurisdiction limited to a district or village;

"repeal", in relation to an enactment, includes expiry, revocation, and replacement;

"rules of court", in relation to a court, means rules or regulations governing the practice or procedure of the court in question and made by the proper authority in that behalf;

"territorial sea" has the same meaning as in section 4 of the Territorial Sea and Exclusive Economic Zone Act 1977;

"working day" means a day of the week other than a Saturday or a holiday;

"writing" includes representing or reproducing words, figures, or symbols—

(i) In a visible and tangible form by any means and in any medium;

(ii) In a visible form in any medium by electronic means that enables them to be stored in permanent form and to be retrieved and read.

PART 2 PRINCIPLES OF INTERPRETATION

6 Ascertaining meaning of legislation

(1) The meaning of an enactment must be ascertained from its text, in light of its purpose and in its context.

(2) The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment.

(3) Examples of those indicators are preambles, the analyses, tables of contents, headings to Parts and sections, marginal notes, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment.

7 Enactments do not have retrospective effect

An enactment does not have retrospective effect.

PART 3 LEGISLATION

8 Date of commencement

(1) An enactment comes into force on the date stated or provided in the enactment.

(2) If an enactment does not state or provide for a commencement date, the enactment comes into force on the date of its certification and sealing, or in the case of a regulation, on the day on which it is made.

9 Time of commencement

(1) An enactment comes into force at the beginning of the day on which the enactment comes into force.

(2) If an enactment is expressed to come into force from a particular day, the enactment comes into force at the beginning of the next day.

10 Exercise of powers between passing and commencement of legislation

(1) A power conferred by an enactment may be exercised before the enactment comes into force to—

(a) Make a regulation or rule or other instrument;

(b) Serve a notice or document;

(c) Appoint a person to an office or position;

(d) Establish a body of persons; or

(e) Do any other act or thing for the purposes of the enactment. The power may be exercised only if the exercise of the power is necessary or desirable to bring, or in connection with bringing, an enactment into operation.

(3) The power may not be exercised if anything that results from exercising the power comes into force before the enactment itself comes into force unless the exercise of the power is necessary or desirable to bring, or in connection with bringing, the enactment into operation.

(4) Subsection (1) applies as if the enactment under which the power is exercised and any other enactment that is not in force when the power is exercised were in force when the power is exercised.

11 Power to appoint to an office

The power to appoint a person to an office includes the power to –

- (a) Remove or suspend a person from the office;
- (b) Reappoint or reinstate a person to the office;
- (c) Appoint another person in the place of a person who –
 - (i) Has vacated the office;
 - (ii) Has died;
 - (iii) Is absent; or
 - (iv) Is incapacitated in a way that affects the performance of the office.

12 Power to correct errors

The power to make an appointment or do any other act or thing may be exercised to correct an error or omission in a previous exercise of the power even though the power is not generally capable of being exercised more than once.

13 Exercise of powers by deputies

A power conferred on the holder of an office, other than a Minister, may be exercised by the holder's deputy lawfully acting in the office.

14 Exercise of powers and duties

Where an enactment confers a power or imposes a duty –

- (a) The power may be exercised and the duty shall be performed as occasion requires;

(b) An act done in the exercise of the power may be cancelled or varied in the same manner as the power was exercised.

15 Effect of repeal generally

(1) The repeal of an enactment does not affect –

(a) The validity, invalidity, effect, or consequences of anything done or suffered;

(b) An existing right, interest, title, immunity, or duty;

(c) An existing status or capacity;

(d) An amendment made by the enactment to another enactment;

(e) The previous operation of the enactment or anything done or suffered under it.

(2) The repeal of an enactment does not revive –

(a) An enactment that has been repealed or a rule of the law that has been abolished;

(b) Any other thing that is not in force or existing at the time the repeal takes effect.

16 Effect of repeal on enforcement of existing rights

(a) The repeal of an enactment does not affect the completion of a matter or thing or the bringing or completion of proceedings that relate to an existing right, interest, title, immunity or duty.

(b) A repealed enactment continues to have effect as if it had not been repealed for the purpose of completing the matter or thing or bring or completing the proceedings that relate to the existing right, interest, title, immunity, or duty.

17 Effect of repeal on prior offences and breaches of enactments

(1) The repeal of an enactment does not affect a liability to a penalty for an offence or for a breach of an enactment committed before the repeal.

(2) A repealed enactment continues to have effect as if it had not been repealed for the purpose of –

(a) Investigating the offence or breach;

(b) Commencing or completing proceedings for the offence or breach;

(c) Imposing a penalty for the offence or breach.

18 Enactments made under repealed legislation to have continuing effect

(1) An enactment made under a repealed enactment, and which is in force immediately before that repeal, continues in force as if it had been made under any other enactment –

(a) Which, with or without modification, replaces, or corresponds to, the enactment repealed, and

(b) Under which it could be made.

(2) An enactment that continues in force may be amended or revoked as if it had been made under the enactment that replaces, or that corresponds to, the repealed enactment.

19 Powers exercised under the repealed legislation to have continuing effect

Anything done in the exercise of a power under a repealed enactment, and which is in effect immediately before that repeal, continues to have effect as if it had been exercised under any other enactment –

(a) Which, with or without modification, replaces, or that corresponds to, the enactment repealed; and

(b) Under which the power could be exercised.

20 References to repealed enactment

(1) The repeal of an enactment does not affect an enactment in which the repealed enactment is applied, incorporated, or referred to.

(2) A reference in an enactment to a repealed enactment is a reference to an enactment which, with or without modification, replaces, or corresponds to, the enactment repealed.

(3) Subsection (1) is subject to subsection (2).

21 Amending enactment part of enactment amended

An amending enactment is part of the enactment it amends.

22 Regulations

(1) All regulations shall state the enactment under which they were made and the date on which they were made.

(2) All regulations shall be laid before the Assembly at the first session of the Assembly following their making.

23 Power to make regulations

Where an enactment confers powers to make regulations –

(a) If the regulations purport to be made in exercise of a particular power, they shall also be construed to be made in exercise of every other enabling power;

(b) The regulations may be amended in the same manner in which they were made by the same person or by any other person on whom the enactment confers the power to make the regulations;

(c) For general purposes and also for a special purpose, the special purpose shall not derogate from the power conferred by the general purpose provision.

24 Enactments not binding on the Government

No enactment binds the Government.

PART 4 MISCELLANEOUS

25 Use of forms

A form is not invalid because it contains minor differences from a prescribed form as long as the form has the same effect and is not misleading.

26 Bodies corporate

(1) Every body corporate shall –

(a) Have perpetual succession and a common seal;

(b) Have an office at such place as it may designate;

(c) Have the rights of a natural person of full age and capacity; and

(d) Carry on all such activities as may appear to it to be requisite, advantageous, convenient or conducive to the attainment of its objects.

(2) No member of a body corporate or of its controlling body who receives any emoluments from the State shall be deemed to hold a public office by reason of their appointment.

(3) (a) A member of a body corporate may resign office on giving one month's written notice in that behalf to the person who has the power of appointment.

(b) A member of a body corporate or of its controlling body who –

(i) has unreasonably absented themselves from a meeting of the body corporate;

(ii) has become insolvent, has assigned their estate for the benefit of the creditors or has made an arrangement with the creditors;

(iii) has been guilty of any misconduct or default in the discharge of their duties as a member which, in the opinion of the person who has the power of appointment, renders them unfit to be a member;

(iv) has been convicted of an offence of such a nature as, in the opinion of the person who has the power of appointment, renders it desirable that the member should be removed from office; or

(v) is suffering from such mental or physical infirmity as, in the opinion of the person who has the power of appointment, renders that member unfit to discharge their duties as a member

– may be removed from office or suspended by the person who has the power of appointment.

(4) (a) Every body corporate shall sue and be sued in its corporate name.

(b) Service of any process by or on a body corporate shall be sufficient if made on behalf of the chairperson.

(5) (a) Subject to paragraph (b), no document shall be executed by or on behalf of a body corporate unless it is signed by the chairperson.

(b) Every cheque of a body corporate shall be signed by the chairperson and treasurer.

(c) Notwithstanding paragraphs (a) and (b), every document to which a body corporate is a party may be signed by any person nominated for the purpose by the body corporate and shall, when so signed, be deemed to be duly executed by or on behalf of the body corporate.

(6) Everything authorised or required to be done by a body corporate or by its controlling body shall be decided by a simple majority of members present and voting, or in accordance with subsections (9) and (10).

(7) At any meeting of a body corporate or of its controlling body, each member shall have one vote on the matter in question and, in the event of an equality of votes, the chairperson shall

have a casting vote.

(8) A body corporate may delegate any of its powers to its controlling body.

(9) The linking by telephone or other means of telecommunication of a number of the members of the body corporate not less than the quorum (whether or not any of the members are outside of Niue) shall be deemed to constitute a meeting of the body corporate, and all the rules of the body corporate shall apply to that meeting if –

(a) Each member has received at least two working days notice that there will be a meeting by telephone or other means of communication, and

(b) At the commencement of the meeting each member has acknowledged the presence of all other members taking part in the meeting, and

(c) Each member who takes part in the meeting is able throughout the meeting to hear each member who is taking part in the meeting.

(10) (a) A proposal in writing signed or assented to by letter, telegram, cable, telex, facsimile or other written manner, by all members of the body corporate or of its controlling body duly called and constituted shall be a decision of the body corporate.

(b) A decision made under this paragraph may consist of several documents in like form signed by any one or more of the members of the body corporate.

(11) Subject to subsections (6), (7), (9), and (10), a body corporate shall regulate its proceedings and those of its controlling body, committees and sub-committees in such a manner as it thinks fit.

27 Parts of speech and grammatical forms

Parts of speech and grammatical forms of a word that is defined in an enactment have corresponding meanings in the same enactment.

28 Number

Words in the singular include the plural and words in the plural include the singular.

29 Calendar and standard time

(1) The calendar in Niue shall be one day behind the calendar in New Zealand, so that the first day of January in Niue shall be the day which is coincident for the most part with the second day of January in New Zealand, and so on from day to day throughout the year.

(2) The standard time of Niue is the solar time of longitude 165 degrees west of Greenwich.

30 Calculation of time

- (1) A period of time described as beginning at, on, or with a specified day, act, or event includes that day or the day of the act or event.
- (2) A period of time described as beginning from or after a specified day, act or event does not include that day or the day of the act or event.
- (3) A period of time described as ending by, on, at, or with, or as continuing to or until, a specified day, act, or event includes that day or the day or the act or event.
- (4) A period of time described as ending before a specified day, act or event does not include that day or the day of the act or event.
- (5) A reference to a number of days between two events does not include the days on which the events happened.
- (6) A thing that, under an enactment, must, or may be done on a particular day or within a limited period of time may, if that day or the last day of that period is not a working day, be done on the next working day.

31 Distances

A reference to a distance means a distance measured in a straight line on a horizontal or vertical plane.

32 Thumbprint or mark in lieu of signature

Where a party to a document is unable to sign, the thumbprint or mark of that party, attested by the signature of two other persons who are not parties to the document and who certify the identity of the party affixing the thumbprint or mark shall have the same legal effect as if that party has signed their name.

33 Electronically recorded documents

- (1) Where an electronically recorded document bears, as evidence that the document emanates from a particular individual, a personal identification mark, the mark shall have the same legal effect as if the individual had signed their name on the document.
- (2) Where any matter is electronically recorded, a reference in any enactment –
 - (a) To an original shall be construed as a reference to that record;
 - (b) To a true or certified copy, shall be construed as a reference to a reprint of that record.

34 Currency

- (1) The unit of currency of Niue is the New Zealand dollar.

(2) A tender of payment of money in New Zealand dollars is legal tender.

35 Publication

Public notice shall be given of all enactments and government appointments, warrants, and instruments.

36-37. [Spent]