



# BIOSECURITY ACT 2016

No. 337

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**An Act to state the law relating to the importing, exporting, and internal control of animals, plants, and other things for the purposes of preventing and managing biosecurity risks to Niue.**

The Assembly enacts as follows—

#### 1 Title

This Act is the Biosecurity Act 2016.

#### 2 Commencement

This Act comes into force on the day after the date on which it becomes law in accordance with Article 34 of the Constitution.

## Part 1

### Preliminary matters

#### 3 Interpretation

In this Act, unless the context otherwise requires,—

**animal—**

- (a) means any member of the animal kingdom (other than a human being), whether alive or dead; and
- (b) includes—
  - (i) the egg, embryo, ova, semen, or other organic animal tissue from which another animal could be produced; and
  - (ii) the hide, skin, hair, feathers, shell, horns, hoof, viscera, or any other part or portion of the body of an animal

**animal product—**

- (a) means any thing derived from an animal whether or not treated or sterilised to the stage where it is rendered free from any viable form of any organism capable of causing disease; and
- (b) includes—
  - (i) meat, fat, milk, whey, cream, butter, cheese, eggs, and any other foodstuffs derived from an animal; and
  - (ii) the dung, urine, faeces, saliva, bone, or blood of an animal, or any article or substance derived from the dung, urine, faeces, saliva, bone, or blood of an animal; and
  - (iii) the secretions of an animal; and

- (iv) any product or biological preparation derived from tissue or secretions of an animal

**area of Niue** means any area of

- (a) Crown or Niuean land in Niue, including any buildings, premises, or private homes on that land; and
- (b) the territorial sea or contiguous zone of Niue (as defined in the Maritime Zones Act 2013)

**baggage**

- (a) means any item that accompanies an individual on a vessel or an aircraft; and
- (b) includes the clothing and any thing attached or otherwise connected to the body or clothing of the individual

**Biosecurity Authority, or Authority,** means the Niue Biosecurity Authority established by section 35

**biosecurity clearance agent** means a resident of Niue appointed in accordance with section 80 to carry out, on behalf of a person, 1 or more of the person's duties under this Act

**biosecurity holding area** means any territorial waters or land designated under section 53 as a biosecurity holding area

**biosecurity officer** means the Director, the chief biosecurity officer, the senior biosecurity officer, and those individuals appointed or designated as biosecurity officers under section 40

**biosecurity risk** means the risk of harm or adverse effects to animals, plants, human beings, the environment, or economic activities

**biosecurity risk assessment**

- (a) means an evaluation by a suitably qualified scientific expert of the biosecurity risk posed by the thing to which the assessment relates; and
- (b) includes an assessment of whether the thing should be regulated under this Act (for example, by prohibiting or restricting its importation into Niue)

**captain,**

- (a) in relation to a vessel, means the person for the time being having command or charge, or apparent command or charge, of the vessel, other than a pilot for the vessel;
- (b) in relation to an aircraft, means the person for the time being having command or charge, or apparent command or charge, of the aircraft

**chief biosecurity officer** means the individual appointed under section 38 as the chief biosecurity officer

**clearance, in respect of an individual, a vessel, an aircraft, an item, or any other thing,** means the permit or permits that must be obtained, and the requirements and processes that must be complied with, under

this Act before the individual, vessel, aircraft, item, or other thing may enter, remain in, or depart from Niue, as the case may be

**contaminated**, in relation to a thing or place, means a living pest or disease is or has been present in, on, or at the thing or place

**country of origin** includes a country where an item is opened and repacked or repackaged before it arrives in Niue

**Department** means

- (a) the Department of Agriculture, Forestry and Fisheries; or
- (b) if another government department is responsible for the administration of this Act, that department

**Director** means

- (a) the Director of the Department of Agriculture, Forestry and Fisheries; or
- (b) if another government department is responsible for the administration of this Act, the Director of that government department

**disease**, in relation to an animal or plant,

- (a) means any unhealthy condition in the animal or plant that is known or suspected to be caused by an organism; and
- (b) includes
  - (i) a disease transmissible from an animal or plant to a human being; and
  - (ii) a disease capable of harming the environment; and
  - (iii) exposure to a causal agent of a disease

**diseased**,

- (a) in relation to an animal or plant, means that the animal or plant is or has been affected by a disease;
- (b) in relation to an animal product or plant product, means that the product is derived from an animal or plant that is or has been affected by a disease

**environment** means

- (a) all natural and physical elements; and
- (b) includes
  - (i) land, marine areas, freshwater supplies, and air; and
  - (ii) ecosystems and their constituent parts, including people and communities; and
  - (iii) the natural and physical qualities and characteristics of an area that contributes to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes (commonly known as amenity values).

**export specification**, in relation to a restricted item, means the requirements under section 18 that must be satisfied before the item may be exported

**exporter**, in relation to an item, means the person who sends or causes the item to be sent from Niue, and includes a person who sends an item from Niue as baggage; and **export** has a corresponding meaning

**genetic material** means any material containing functional units of heredity, whether of plant, animal, microbial, or other origin

**host material** means packing material, containers, fittings, litter, manure, fodder, or any other thing that may, in the normal course of events, have contact with animals, plants, animal products, or plant products

**import specification**, in relation to a restricted item, means the requirements specified in regulations made under section 8 that must be satisfied before the item may be imported

**importer**, in relation to an item, means the person who brings or causes the item to be brought into Niue, and includes a person who brings an item into Niue as baggage; and **import** has a corresponding meaning

**infected**, in relation to a thing or place, means that the thing or place has been in direct or indirect contact with a diseased animal, animal product, plant, or plant product

**infested**, in relation to a thing or place, means that a living pest or disease is present in, on, or at the thing or place

**item**

- (a) means human remains and any kind of moveable property; and
- (b) without limiting the ordinary meaning of moveable property, includes—
  - (i) animals, plants, animal products, and plant products; and
  - (ii) soil, sand, gravel, aggregate, and other industrial rocks and building stones; and
  - (iii) genetic material; and
  - (iv) host material; and
  - (v) rubbish; and
- (c) includes a container of any description or kind in which human remains are encased or stored; and
- (d) includes a container of any description or kind in which moveable property is encased or stored; and
- (e) in relation to items arriving in Niue other than as baggage, includes a quantity or consignment of items, whether the same as each other or different, that arrive in or depart from Niue in the same vessel or aircraft and share 1 or more common characteristics (for example, the items are imported or exported)

by the same person, are to be received at their destination by the same person, or are packaged together)

**living modified organism or LMO**

- (a) means a living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology techniques (being techniques, not used in traditional breeding and selection, that overcome natural physiological reproductive barriers or recombination barriers); and
- (b) includes agricultural crops (such as taro) that have been genetically modified for greater productivity or for resistance to pests or disease

**Minister means,**

- (a) the Minister for Agriculture, Forestry and Fisheries; or
- (b) if another government department is responsible for the administration of this Act, the Minister responsible for that department

**non-complying,**

- (a) in relation to an LMO, means an LMO
  - (i) for which permission to import is subject to regulations made under section 6; and
  - (ii) that does not comply or fully comply with the requirements of those regulations; and
- (b) in relation to a restricted item, means a restricted item
  - (i) for which permission to import is subject to regulations made under section 8 or for which permission to export is subject to clearance under section 18; and
  - (ii) that does not comply or fully comply with the requirements of those regulations or the clearance

**organism**

- (a) means any organism capable of transferring or replicating genetic material; and
- (b) includes—
  - (i) sterile organisms; and
  - (ii) viruses, viroids, plasmids, and bacteriophages; and
  - (iii) micro-organisms; and
  - (iv) subject to paragraph (c), a genetic structure that is capable of replicating itself (whether that structure comprises all or only part of an entity, and whether it comprises all or only part of the total genetic structure of the entity); and
  - (v) a reproductive cell or developmental stage of an organism; and



- (vi) any particle that is a prion; but
- (c) does not include a human or a genetic structure derived from a human

**owner**, in relation to a vessel or aircraft, means the owner or charterer of the vessel or aircraft

**permit** means a permit, consent, certificate, or other authorisation that may be obtained or granted under this Act

**pest** means any organism that causes disease or is detrimental to, or capable of harming or adversely affecting, 1 or more animals, plants, animal products, plant products, or human beings, or the environment

**phytosanitary certificate** means a certificate relating to a plant or plant product that

- (a) is issued by the appropriate government authority of the country of origin; and
- (b) certifies that the plant or plant product is substantially free from plant pests and diseases and meets the plant health import requirements of the receiving country; and
- (c) is patterned after the model certificates issued by the Food and Agriculture Organization, the body responsible for the International Plant Protection Convention (commonly known as IPPC)

**plant**

- (a) means all species, varieties, or types of vegetation, or parts of them; and
- (b) includes—
  - (i) stems, branches, tubers, bulbs, cultures, corms, stocks, budwood, cuttings, layers, slips, suckers, roots, leaves, flowers, fruit, seeds, and spores; and
  - (ii) any other plant growth; and
- (c) includes any dead thing referred to in paragraph (a) or (b)

**plant product**

- (a) means any product manufactured wholly or partly from 1 or more plants; and
- (b) includes timber (including round wood, sawn wood, wood chips, and dunnage, with or without bark)

**private home** means a building or part of a building that is occupied exclusively as the home or residence of a household

**prohibited item** means, as the case may be,

- (a) an item the importation of which is prohibited by regulations made under section 7;
- (b) an item the exportation of which is prohibited by regulations made under section 9

**prohibited pest or disease** means a pest or disease the importation of which is prohibited by regulations made under section 5

**quarantine area** means territorial waters or land designated under section 54 as a quarantine area

**quarantine station** means land designated under section 55 as a quarantine station

**receiving country** means the country that is the intended destination of an individual, item, or other thing

**register** means the register kept by the Biosecurity Authority in accordance with section 58

**restricted item** means, as the case may be,

- (a) an item the importation of which is subject to regulations made under section 8; or
- (b) an item the exportation of which is subject to clearance under section 18

**rubbish** means organic and inorganic waste of any kind

**sanitary certificate** means an international health certificate relating to an animal or animal product that

- (a) is issued by the country of origin of the animal or animal product; and
- (b) certifies that the animal or animal product is substantially free from pests and diseases and in other respects meets the animal health import requirements of the receiving country; and
- (c) complies with the relevant requirements of, as the case may be,
  - (i) the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (commonly known as the **SPS Agreement**); or
  - (ii) any other relevant international standard; or
  - (iii) the country of origin

**senior biosecurity officer** means the individual appointed under section 39 as the senior biosecurity officer

**treatment**

- (a) means any procedure for the killing, removal, modification, or rendering infertile or non-viable of a pest or disease by way of cleansing, fumigation, inoculation, disinfection, disinfestation, decontamination, or otherwise; and
- (b) includes sampling for 1 or more pests or diseases

**vehicle** includes a bicycle (whether motorised or not) and any other wheeled conveyance

vessel includes a ship, hovercraft, boat, ferry, raft, yacht, canoe, or pontoon that is used as a conveyance in or on water, whether or not it is self-propelled

warrant means a warrant issued in accordance with section 72.

- 4 Act binds the Government**  
This Act binds the Government.

## **Part 2**

### **Cabinet powers of prohibition and regulation**

- 5 Cabinet may prohibit importation of pest or disease**
- (1) Cabinet may make regulations prohibiting the importation of a pest or disease, whether or not the pest or disease is already present in Niue.
  - (2) Before acting under subsection (1), Cabinet must consult the Biosecurity Authority, which must, as part of the consultation, provide Cabinet with a biosecurity risk assessment for the pest or disease.
  - (3) A person who imports or attempts to import a pest or disease prohibited by regulations made under subsection (1) commits an offence and is liable on conviction to,
    - (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
    - (b) in any other case, a fine not exceeding 2 500 penalty units.
- 6 Cabinet may prohibit or regulate importation of LMO**
- (1) Cabinet may make regulations
    - (a) prohibiting the importation of an LMO; or
    - (b) permitting the importation of an LMO subject to the conditions specified in the regulations.
  - (2) Subsection (1) applies whether or not the LMO is already present in Niue.
  - (3) Before acting under subsection (1), Cabinet shall consult the Biosecurity Authority, which shall, as part of the consultation, provide Cabinet with a biosecurity risk assessment for the LMO.
  - (4) A person who imports or attempts to import an LMO prohibited by regulations made under subsection (1)(a), or imports or attempts to import an LMO in breach of any conditions specified in regulations made under subsection (1)(b), commits an offence and is liable on conviction to,—
    - (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
    - (b) in any other case, a fine not exceeding 2 500 penalty units.

**7 Cabinet may prohibit importation of items**

- (1) Cabinet may make regulations prohibiting the importation of 1 or more items if Cabinet considers that their presence in Niue would pose an unacceptable biosecurity risk.
- (2) The regulations may apply to items irrespective of country of origin or to items from 1 or more countries of origin specified in the regulations.
- (3) Cabinet must review regulations made under this section at not more than 12-monthly intervals, the first interval beginning on the date on which the regulations come into force.
- (4) Before acting under subsection (1), Cabinet must consult the Biosecurity Authority, which must, as part of the consultation, provide Cabinet with a biosecurity risk assessment for the item or items.
- (5) A person who imports or attempts to import an item prohibited from being imported by regulations made under subsection (1) commits an offence and is liable on conviction to,—
  - (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
  - (b) in any other case, a fine not exceeding 2 500 penalty points.
- (6) A person who owns or possesses an item imported in breach of regulations made under subsection (1) commits an offence and is liable on conviction to,
  - (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
  - (b) in any other case, a fine not exceeding 2 500 penalty units.
- (7) However, subsections (5) and (6) do not apply if the item was imported or was in the process of being imported (for example the item was on board a vessel or an aircraft destined for Niue) before the regulations prohibiting its importation came into force.
- (8) Despite subsection (7), the Biosecurity Authority may require the item to be inspected and, if necessary, treated or destroyed, at the owner's expense. If the item is destroyed, the owner is not entitled to compensation for its destruction.

**8 Cabinet may regulate importation of items**

- (1) Cabinet may make regulations requiring that 1 or more of the following be satisfied before an item may be imported:
  - (a) the granting of an import permit for the item under section 76;
  - (b) treatment of the item on its arrival (which must be no more than is reasonably necessary to reduce or eliminate any biosecurity risk that may arise from allowing the item to be imported);
  - (c) if the item is an animal or animal product, a sanitary certificate;
  - (d) if the item is a plant or plant product, a phytosanitary certificate.

- (2) Before acting under subsection (1), Cabinet must consult the Biosecurity Authority, which must, as part of the consultation, provide Cabinet with a biosecurity risk assessment for the item or items and, in doing so, must have regard to—
  - (a) the requirements of any relevant international instrument (such as the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (commonly known as the SPS Agreement) and
  - (b) any generally accepted principle of international law relating to biosecurity.
- (3) A person who imports or attempts to import an item in breach of regulations made under subsection (1) commits an offence and is liable on conviction to,
  - (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
  - (b) in any other case, a fine not exceeding 2 500 penalty units.
- (4) A person who owns or possesses an item imported in breach of regulations made under subsection (1) commits an offence and is liable on conviction to,
  - (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
  - (b) in any other case, a fine not exceeding 2 500 penalty units.
- (5) However, subsection (4) does not apply if the item was imported or was in the process of being imported (for example, the item was on board a vessel or an aircraft destined for Niue) before the regulations prohibiting its importation came into force.
- (6) Despite subsection (5), the Biosecurity Authority may require the item to be inspected and, if necessary, treated or destroyed, at the owner's expense. If the item is destroyed, the owner is not entitled to compensation for its destruction.

**9 Cabinet may prohibit exportation of items**

- (1) Cabinet may make regulations prohibiting the exportation of 1 or more items if the Minister has consulted the Biosecurity Authority and it has confirmed that—
  - (a) dealings with the item or items are prohibited under generally accepted international law; or
  - (b) the receiving country for the item or items prohibits their importation and the country has notified the Biosecurity Authority of that fact.
- (2) The Biosecurity Authority must review regulations made under this section at not more than 12-monthly intervals, the first interval beginning on the date on which the regulations come into force, and make any recommendations for change to Cabinet.

- (3) A person who exports or attempts to export an item prohibited under subsection (1) commits an offence and is liable on conviction to, –
- (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
  - (b) in any other case, a fine not exceeding 2 500 penalty units.

**10 Cabinet may regulate pests, diseases, and LMOs already present in Niue**

- (1) Cabinet may make regulations setting rules in respect of a pest, disease, or LMO already present in Niue.
- (2) Before acting under subsection (1), Cabinet must consult the Biosecurity Authority, which must, as part of the consultation, provide Cabinet with a biosecurity risk assessment for the pest, disease, or LMO.
- (3) A person who acts in breach of any rule made under subsection (1) commits an offence and is liable on conviction to,
  - (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
  - (b) in any other case, a fine not exceeding 2 500 penalty units.

**Part 3**

**Biosecurity controls relating to arrivals, departures, and transits**

*Arrivals*

**11 Incoming passengers and crew**

- (1) Every person who arrives in Niue on board a vessel or an aircraft, including the crew, must complete a passenger arrival declaration in a form prescribed by the Director and provide it to a biosecurity officer.
- (2) A biosecurity officer may, before granting entry to the person, detain the person for questioning or search or detain any baggage in the possession of the person for inspection.
- (3) A person who fails to make a declaration as required by subsection (1), or provides false or misleading information in a declaration, commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both.
- (4) Nothing in this section limits or affects section 16.

**12 Incoming vessels and aircraft**

- (1) The captain of a vessel or an aircraft arriving in Niue must
  - (a) make an arrival declaration in the prescribed form; and
  - (b) obtain clearance for the vessel or aircraft in accordance with subsection (3).

- (2) An arrival declaration
  - (a) must be made
    - (i) not less than 72 hours before the estimated time of arrival for a scheduled visit; or
    - (ii) not less than 12 hours before the estimated time of arrival for an unscheduled visit; and
  - (b) may be made by electronic means, in accordance with any directions of the chief biosecurity officer; and
  - (c) may be made through a biosecurity clearance agent; and
  - (d) may be made in conjunction with or as part of a declaration made for the purposes of customs or other border matters.
- (3) For the purposes of subsection (1)(b), the captain must, immediately on arrival,
  - (a) take the vessel or aircraft to the seaport or airport biosecurity holding area and permit a biosecurity officer to board and search it; and
  - (b) provide to the biosecurity officer any of the following documents that he or she requests:
    - (i) the log, cargo manifest, bill of lading, stores list, passenger list, or crew list for the vessel or aircraft;
    - (ii) any other document relating to the vessel or aircraft that the officer believes on reasonable grounds is necessary for him or her to inspect for the purposes of deciding whether to grant clearance for the vessel or aircraft; and
  - (c) complete a clearance application in the prescribed form and pay the prescribed fee.
- (4) A biosecurity officer may grant clearance for a vessel or an aircraft if he or she is satisfied that
  - (a) there is no prohibited pest or disease, prohibited or non-complying LMO, or prohibited or non-complying restricted item in or on the vessel or aircraft; and
  - (b) there is no other thing in or on the vessel or aircraft that may pose a biosecurity threat to Niue; and
  - (c) the prescribed fee has been paid (or will be paid in accordance with any payment schedule previously agreed between the Biosecurity Authority and the owner of the vessel or aircraft).
- (5) A clearance may be granted unconditionally or subject to specified conditions. If the clearance is granted subject to specified conditions, the owner of the vessel or aircraft must pay a bond in the prescribed amount.
- (6) Without limiting subsection (5),
  - (a) the captain of a vessel may be required to clean the outside of the vessel before being permitted to bring the vessel into port and, for

that purpose, the chief biosecurity officer may direct the captain to take the vessel a minimum specified distance offshore before the cleaning begins:

- (b) the captain of an aircraft may be required to clean the outside of the aircraft and, for that purpose, the chief biosecurity officer may direct the captain to park the aircraft in a particular location before the cleaning begins.
- (7) No person or thing may leave a vessel or an aircraft without the permission of a biosecurity officer until clearance has been granted for it.
  - (8) The captain of a vessel or an aircraft commits an offence who
    - (a) fails to make an arrival declaration or knowingly provides false or misleading information for the purposes of the declaration; or
    - (b) fails to obtain clearance or fails to comply with any conditions of clearance imposed under subsection (5); or
    - (c) knowingly allows any person or thing to leave a vessel or an aircraft in breach of subsection (7).
  - (9) A biosecurity agent who fails to make an arrival declaration or knowingly provides false or misleading information for the purposes of a declaration commits an offence.
  - (10) A person who leaves a vessel or an aircraft without the permission of a biosecurity officer before clearance has been granted for the vessel or aircraft commits an offence.
  - (11) A person convicted of an offence against any of subsections (8) to (10) is liable to,
    - (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
    - (b) in any other case, a fine not exceeding 2 500 penalty units.

### **13 Quarantine of vessels and aircraft**

- (1) The chief biosecurity officer may, by written notice, order the captain of a vessel or an aircraft to move it to a quarantine area, on its arrival or during or after inspecting it for clearance purposes, if the chief biosecurity officer believes on reasonable grounds that the vessel or aircraft
  - (a) is infected, contaminated, or infested with or by a prohibited pest or disease; or
  - (b) is carrying 1 or more prohibited or non-complying LMOs; or
  - (c) is carrying 1 or more prohibited or non-complying restricted items; or
  - (d) is carrying 1 or more things permitted under section 79 in breach of any conditions of that permission; or



- (e) is carrying any other thing that the chief biosecurity officer believes on reasonable grounds may pose a biosecurity threat to Niue.
- (2) The notice must give the reasons why the order has been made.
- (3) However, if the chief biosecurity officer believes on reasonable grounds that a vessel or an aircraft poses a serious biosecurity threat to Niue that cannot adequately be mitigated at a quarantine area,
  - (a) the Director must immediately inform the Minister; and
  - (b) the Minister may order the vessel or aircraft to leave Niue having first consulted the director of the government department responsible for the movement of vessels or aircraft, as the case may be.
- (4) The owner of a quarantined vessel or aircraft is responsible for any costs incurred as a result of its quarantining, including any treatment of the aircraft or vessel or, as the case may be, the costs associated with the vessel or aircraft being required to leave Niue.

#### **14 Management of quarantined vessel or aircraft**

- (1) The chief biosecurity officer must give written directions to the captain of a quarantined vessel or aircraft on the following matters:
  - (a) the movement of the vessel or aircraft while quarantined and, if applicable, the movement of passengers and crew who arrived on the vessel or aircraft; and
  - (b) any treatment to be taken in relation to the vessel or aircraft.
- (2) A vessel or an aircraft may be released from a quarantine area only if the chief biosecurity officer is satisfied that
  - (a) it is substantially free from the biosecurity risk for which it was quarantined (including the suitable containment on the vessel or aircraft of any thing that is to be reconsigned); and
  - (b) any quarantine costs incurred have been paid.
- (3) The release may be unconditional or subject to specified conditions, in which case the owner of the vessel or aircraft must pay a bond in the prescribed amount.
- (4) The captain of a vessel or an aircraft who fails to take all reasonable steps to comply with any directions given under subsection (1) commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both.

#### **15 Obligations of captains while vessel or aircraft in Niue**

- (1) The captain of a vessel must, while the vessel is berthed in, or moored off, Niue, ensure that
  - (a) all necessary steps are taken to prevent any animal on board the vessel from making contact with any animal on shore, unless

- permitted by a biosecurity officer, and then only as directed by the officer; and
- (b) rodent guards are secured on the vessel's mooring lines when berthing or mooring and during the vessel's stay; and
  - (c) the vessel complies with any prescribed rat extermination requirements; and
  - (d) all hatches, holds, and enclosed cargo areas are sealed during the hours of darkness, other than when necessary for the working of the vessel, including when necessary for the care of the vessel's cargo; and
  - (e) all rubbish generated on the vessel is stored in securely fastened and leak-proof containers; and
  - (f) no sewage, bilge, ballast, or other wastewater is discharged into the sea; and
  - (g) no stores are removed from the vessel, except in accordance with the directions of a biosecurity officer.
- (2) The captain of an aircraft must, while the aircraft is landed in Niue, ensure that
- (a) all necessary steps are taken to prevent any animal on board the aircraft from making contact with any animal outside the aircraft, unless permitted by a biosecurity officer, and then only as directed by the officer; and
  - (b) all rubbish generated on the aircraft is stored in securely fastened and leak-proof containers; and
  - (c) no sewage or other wastewater is discharged from the aircraft; and
  - (d) no stores are removed from the aircraft, except in accordance with the directions of a biosecurity officer.
- (3) Rubbish on a vessel that is berthed in or moored off Niue, or on an aircraft landed in Niue, may be removed and disposed of only in accordance with the directions of a biosecurity officer, and all the costs of disposal, including those relating to the biosecurity officer performing his or her functions, are the responsibility of the owner of the vessel or aircraft and must be paid before it leaves (unless payment has been otherwise agreed between the Biosecurity Authority and the owner).
- (4) A captain of a vessel or an aircraft who breaches subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both.
- (5) A person who breaches subsection (3) commits an offence and is liable on conviction to,
- (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both:

(b) in any other case, a fine not exceeding 2 500 penalty units.

#### 16 Incoming items

- (1) Every item arriving in Niue other than as baggage must be accompanied by
  - (a) an import clearance application in a form prescribed by the Director and  
be accompanied by the prescribed fee; and
  - (b) if the item is a restricted item, evidence of compliance with the import specifications for the item.
- (2) On arrival, any item may be inspected by a biosecurity officer and, for that purpose, the importer of the item must be present and, at the request of the officer, must
  - (a) open the container holding the item or enable the officer to do so; and
  - (b) permit the officer to inspect the item; and
  - (c) permit the officer to take samples, conduct tests, or take any other action reasonable in the circumstances for the purpose of the officer deciding whether the item may be imported.
- (3) A biosecurity officer may do one of the following in relation to an incoming item:
  - (a) grant clearance for the item, if he or she is satisfied that
    - (i) the item is not a prohibited item; and
    - (ii) if the item is a restricted item, the import specifications have been complied with; and
    - (iii) if the item is one to which subsection (1) applies, the application is correctly made and the prescribed fee has been paid; or
  - (b) grant clearance for the item subject to conditions, including a condition that the item be quarantined, if he or she is satisfied that
    - (i) the item satisfies the requirements of paragraph (a) but, despite that, a biosecurity risk still exists (for example, because the item, during its transportation, has been or is suspected of being infected, contaminated, or infested with or by a prohibited pest or disease); or
    - (ii) the item satisfies the requirements of paragraph (a)(i) and (iii) but only partly satisfies the requirements of paragraph (a)(ii); or
  - (c) refuse to grant clearance, in which case the item must be
    - (i) reconsigned on the vessel or aircraft on which it arrived or, in the case of an item that has arrived by post, placed on the next available vessel or aircraft that carries postal items from Niue; or

- (ii) destroyed if the chief biosecurity officer considers that the biosecurity risk posed by the item is such that reconsigning it is insufficient to adequately deal with the risk.
- (4) The costs associated with the granting of an import clearance are the responsibility of the importer of the item.
- (5) The owner of an item who fails to comply with a requirement of subsection (1) commits an offence.
- (6) A person who fails to comply with a request of a biosecurity officer under subsection (2) commits an offence.
- (7) A person convicted of an offence against subsection (5) or (6) is liable to,
  - (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
  - (b) in any other case, a fine not exceeding 2 500 penalty units.
- (8) To avoid doubt, subsections (2), (3), (4), (6), and (7) apply to all items that enter Niue, whether as baggage or otherwise.

#### *Departures*

#### 17 Export of items

- (1) Any item to be exported from Niue may be inspected by a biosecurity officer before its departure, including for the purpose of determining whether
  - (a) the item is a prohibited item; or
  - (b) the item is subject to section 18 and, if so, whether clearance has been granted for the item under that section.
- (2) For the purpose of subsection (1), the exporter of the item must, on the request of a biosecurity officer,
  - (a) open the container holding the item or enable the officer to do so; and
  - (b) permit the officer to inspect the item; and
  - (c) permit the officer to take samples, conduct tests, or take any other action reasonable in the circumstances for the purpose of the officer deciding whether the item may be exported.
- (3) A person commits an offence who
  - (a) exports, or attempts to export, a prohibited item; or
  - (b) exports, or attempts to export, an item subject to section 18 without clearance being granted under that section; or
  - (c) fails to comply with a request of a biosecurity officer under subsection (2).
- (4) A person convicted on an offence against subsection (3) is liable to,
  - (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 12 months, or both;

- (b) in any other case, a fine not exceeding 2 500 penalty units.
- (5) To avoid doubt, this section applies to all items that leave Niue, whether as baggage or otherwise.

#### **18 Clearance required for certain items**

- (1) An item must not leave Niue if either or both of the following apply unless it is granted export clearance under this section:
  - (a) the receiving country requires a sanitary certificate or phytosanitary certificate before the item may be exported to that country;
  - (b) the receiving country requires the item to be treated before it may be exported to that country.
- (2) An application for export clearance must
  - (a) be in a form prescribed by the Director and be accompanied by the prescribed fee; and
  - (b) be made before the item reaches its departure point from Niue; and
  - (c) be made, in accordance with subsection (3), no later than
    - (i) 7 days before departure (unless otherwise agreed with the chief biosecurity officer) if the item will be outgoing by aircraft;
    - (ii) 14 days before departure (unless otherwise agreed with the chief biosecurity officer) if the item will be outgoing by sea.
- (3) The person must
  - (a) present the item, the application, and the fee to a biosecurity officer at a location specified by the Biosecurity Authority; and
  - (b) permit the officer to take samples, conduct tests, or take any other action reasonable in the circumstances for the purpose of deciding whether the requirements of the receiving country have been satisfied.
- (4) The costs associated with the granting of an export clearance are the responsibility of the exporter of the item, and a biosecurity officer may withhold granting export clearance and any relevant certificate until those costs have been paid.
- (5) To avoid doubt, this section applies to all items that leave Niue, whether as baggage or otherwise.

#### **19 Departing passengers and crew**

- (1) Every person who leaves Niue on board a vessel or an aircraft, including the crew, must, before leaving,
  - (a) submit for inspection, on the request of a biosecurity officer, any item on the person or in the person's baggage; and

- (b) permit the officer to search the person's baggage.
- (2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both.
- (3) Nothing in this section limits or affects sections 17 and 18.

**20 Search of departing vessels and aircraft**

- (1) Subsection (2) applies if the chief biosecurity officer believes on reasonable grounds that there are 1 or more things on board a vessel or an aircraft leaving Niue that are prohibited items or non-complying restricted items.
- (2) A biosecurity officer may stop the vessel or aircraft and do 1 or more of the following:
  - (a) board and search the vessel or aircraft;
  - (b) require the captain to produce for inspection the log, cargo manifest, bill of lading, stores list, passenger list, crew list, or any other document;
  - (c) direct the captain not to move the vessel or aircraft unless permitted by the officer, and then only as directed by the officer;
  - (d) give the captain any other instruction that is reasonably necessary to protect the receiving country from any biosecurity risk posed by the vessel or aircraft, including requiring the captain to allow the vessel or aircraft to be subjected to any treatment necessary to eliminate that risk.
- (3) A person commits an offence who refuses to permit a search pursuant to subsection (2)(a) or fails to comply with a requirement, direction, or instruction given under any of subsection (2)(b) to (d) and is liable on conviction to a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 12 months, or both.

*Transits*

**21 Individuals and items in transit**

- (1) A biosecurity officer may require an individual who is in transit through Niue to complete the arrival, departure, or both arrival and departure requirements imposed on a person under this Act if the officer believes on reasonable grounds that the individual or his or her baggage may pose a biosecurity risk to Niue or the receiving country.
- (2) Any item other than baggage that is in transit through Niue may be subject to the import, export, or import and export requirements imposed on items under this Act if a biosecurity officer believes on reasonable grounds that the item may pose a biosecurity risk to Niue or the receiving country.
- (3) An individual who refuses to comply with a requirement under subsection (1) commits an offence and is liable on conviction to a fine

not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both.

- (4) The owner of an item to which subsection (2) applies who refuses to comply with that subsection commits an offence and is liable on conviction to,—
- (a) in the case of an individual, a fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both;
  - (b) in any other case, a fine not exceeding 250 penalty units.

#### Part 4

#### Internal biosecurity controls

##### 22 Pest and disease surveys

- (1) The Biosecurity Authority may conduct a survey of any area of Niue
- (a) to determine the presence, absence, prevalence, incidence, distribution, or occurrence of any pest or disease in the area;
  - (b) to determine the biosecurity risk of moving humans, animals, plants, animal products, plant products, or organisms into, out of, or through the area;
  - (c) for any other purpose necessary to ensure the effective implementation of this Act.
- (2) For the purposes of conducting a survey, the Authority may, in the survey area,
- (a) inspect and test any inanimate thing, including machinery and equipment;
  - (b) inspect, test, or take specimens of any animals, plants, animal products, plant products, air, land, or water;
  - (c) seek information from any person.
- (3) However, a biosecurity officer may undertake an activity referred to in subsection (2)(a) or (b) in relation to a private home only if he or she has a warrant.
- (4) A person commits an offence who refuses to
- (a) permit a biosecurity officer to enter any land, building, or premises, or any private home with a warrant, for the purposes of this section; or
  - (b) answer, to the best of his or her knowledge and ability, oral or written questions reasonably put to the person by a biosecurity officer; or
  - (c) make available animals, plants, animal products, plant products, or any other thing in the ownership, custody, or control of the person as required.
- (5) A person who commits an offence against subsection (4) is liable on conviction to,—

- (a) in the case of an individual, a fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both;
- (b) in any other case, a fine not exceeding 250 penalty units.

**23 Internal control of prohibited pests and diseases, LMOs, etc**

- (1) This section applies if a biosecurity officer believes on reasonable grounds that
  - (a) a prohibited pest or disease, an LMO prohibited under section 6, or a prohibited item is present in Niue; or
  - (b) an LMO regulated under section 6 and lawfully present in Niue poses a biosecurity risk; or
  - (c) an item or other thing lawfully present in Niue poses a biosecurity risk.
- (2) The biosecurity officer may
  - (a) stop, board, and search any vessel, aircraft, or vehicle;
  - (b) enter and search any land, including land adjacent to a private home;
  - (c) with the consent of the owner, enter and search a private home;
  - (d) with a warrant, enter and search a private home.
- (3) A biosecurity officer may seize any of the following while conducting a search for the purposes of this section:
  - (a) any thing that is evidence of the commission of an offence under this Act;
  - (b) any thing that poses a biosecurity risk.
- (4) A biosecurity officer who seizes any thing from a person under subsection (3) must
  - (a) inform the person of the reason for seizing the thing; and
  - (b) give the person a receipt for the thing seized; and
  - (c) remove the thing to a quarantine station or other place of safekeeping and deal with it in accordance with this Act.

**24 Detention, testing, and treatment of animals, plants, animal products, and plant products**

- (1) The Biosecurity Authority may require an animal, plant, animal product, or plant product to be held at a place specified by the chief biosecurity officer for testing if a biosecurity officer suspects it of being infected, contaminated, or infested with or by a prohibited pest or disease.
- (2) If, after testing, the chief biosecurity officer considers that the animal, plant, animal product, or plant product poses a biosecurity risk, the Authority may –
  - (a) continue to hold it for as long as is necessary to eliminate that risk and, during that time, treat it as necessary; or



- (b) destroy it, if treatment will not eliminate the risk or an appropriate treatment to eliminate the risk is not available in Niue.
- (3) For the purposes of this section, a biosecurity officer
  - (a) may direct the owner or person in possession of the animal, plant, animal product, or plant product to remove it to the place specified under subsection (1) or arrange for it to be removed to the specified place; and
  - (b) must give the owner or person in possession written notice in the prescribed form stating the reasons why the animal, plant, animal product, or plant product has been detained; and
  - (c) if applicable, must give the owner or person in possession written notice in the prescribed form stating where the animal, plant, animal product, or plant product is to be destroyed and the reasons for its destruction.
- (4) The Authority is not responsible for the costs incurred by any person in complying with this section and, if any animal, plant, animal product, or plant product is damaged during its removal, holding, or treatment, or required to be destroyed, the owner is not entitled to compensation for the damage or destruction.

## **25 Declaration of controlled infested area**

- (1) Cabinet may, by public notice declare any area of Niue to be a controlled infested area if an animal or a plant in that area is found to be infected, contaminated, or infested with or by a prohibited pest or disease or an LMO prohibited under section 6.
- (2) A notice made under subsection (1)
  - (a) must be made as soon as practicable after the finding; and
  - (b) must specify the people and things that may not be moved into, out of, and within the area except in accordance with any conditions specified in the declaration; and
  - (c) may include an area adjacent to the controlled area if necessary to effectively contain the infestation.
- (3) A person who breaches a declaration made under subsection (1) commits an offence and is liable on conviction to,
  - (a) in the case of an individual, a fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both;
  - (b) in any other case, a fine not exceeding 250 penalty units.

## **26 Management of controlled infested area**

- (1) In a controlled infested area, the Biosecurity Authority
  - (a) must ensure the terms of the declaration as a controlled infested area are complied with; and

- (b) may carry out 1 or more of the following activities to deal with the infestation:
  - (i) enter any land, building, or premises within the area and, if necessary, destock, clean, disinfect, or otherwise treat it;
  - (ii) with the consent of the owner, enter a private home and, if necessary, clean, disinfect, or otherwise treat it;
  - (iii) with a warrant, enter a private home and, if necessary, clean, disinfect, or otherwise treat it;
  - (iv) treat or destroy diseased animals and plants or any other thing, whether inside or outside the area;
  - (v) inspect and treat any restricted item going into, out of, or within the area;
  - (vi) subject to the terms of the declaration, take any other measures that the chief biosecurity officer considers necessary to control the infestation, including measures necessary to control or prevent the movement of any host material of the prohibited pest, disease, or LMO to which the declaration relates in, within, or outside of the area.
- (2) The Authority must consult the Environment Department before carrying out any activity described in any of subparagraphs (i) to (iv) of subsection (1)(b).
- (3) The Authority is not responsible for the costs incurred by any person in complying with this section and, if any thing is damaged by any action, or is required to be destroyed, the owner is not entitled to compensation for the damage or destruction.

**27 Revocation of declaration of controlled infected area**

Cabinet must, by public notice revoke a declaration made under section 25 as soon as practicable after the Biosecurity Authority has advised Cabinet that the declaration is no longer necessary.

**28 Declaration of pest-free area**

- (1) For the purposes of preventing the spread of a pest or a disease, Cabinet may, by public notice declare any area of Niue to be a pest-free area in respect of that pest or disease.
- (2) Cabinet may make a declaration under subsection (1) only if the area to which the declaration will apply is an area
  - (a) in which, in the opinion of the Biosecurity Authority (having consulted the Health Department and the Environment Department), the pest or disease does not occur; and
  - (b) in relation to which incursions of the pest or disease should be prevented.

**29 Management of pest-free area**

In an area declared to be a pest-free area under section 28, the Biosecurity Authority may, for the purposes of preventing incursions of the relevant pest or disease into the area,

- (a) control the movement of people and things into, out of, and within the area; and
- (b) inspect and treat or require the treatment of any restricted item entering, within, or leaving the area; and
- (c) monitor the area for any signs of incursion of the pest or disease into the area.

**30 Destruction of wild animals**

- (1) This section applies if the chief biosecurity officer believes on reasonable grounds that a wild or feral animal is infected, contaminated, or infested with or by a prohibited pest or disease.
- (2) The chief biosecurity officer may cause the animal to be destroyed and dispose of its carcass in a way that avoids, or avoids any risk of, the spread of the pest or disease.
- (3) In this section, **wild or feral animal** includes any domestic animal that is untethered or unconfined and located more than 100 metres from the animal owner's private home or premises.

**31 Notifiable pests and diseases**

- (1) Cabinet may declare, by public notice
  - (a) a pest or disease to be a notifiable pest or disease; and
  - (b) the manner in which a person must notify the Biosecurity Authority of the occurrence of any notifiable pest or disease.
- (2) A person who knows of or suspects the occurrence in Niue of a notifiable pest or disease must, as soon as is reasonably practicable, notify the Authority in the manner specified in the notice.
- (3) Subsection (2) applies unless the person reasonably believes that the Authority has already been notified of the occurrence.
- (4) The captain of a vessel or an aircraft arriving or departing from Niue who knows of or suspects the occurrence of a notifiable pest or disease on board the vessel or aircraft must,
  - (a) as soon as is reasonably practicable, notify the Authority in the manner specified in the notice; and
  - (b) take any action in relation to the vessel or aircraft that the chief biosecurity officer requires.
- (5) A person who fails to comply with subsection (2) or (4) without reasonable excuse commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both.

- (6) The Authority must record in the register all occurrences of notifiable pests or diseases notified under this section or that are otherwise brought to the notice of the Authority.

**32 Release of beneficial organisms and biocontrol agents**

- (1) Cabinet may authorise in writing the release of beneficial organisms or biocontrol agents that are necessary or suitable for the control or eradication of a pest or disease in Niue.
- (2) Before acting under subsection (1), Cabinet must consult the Biosecurity Authority as to the biosecurity risks of the release.
- (3) An authorisation under subsection (1) must
  - (a) identify the beneficial organism or biological agent; and
  - (b) identify the pest or disease that it is intended to control; and
  - (c) identify the area in Niue where it may be released; and
  - (d) specify when it may be released; and
  - (e) identify the person or persons who may release it and the reporting requirements in relation to the release; and
  - (f) state any other conditions to which a release is subject.
- (4) The Authority must record in the register
  - (a) the names of any beneficial organisms or biological agents released under this section; and
  - (b) the place and extent of any release.

**33 Cabinet may declare biosecurity emergency**

- (1) Cabinet may declare a biosecurity emergency in relation to the whole or any area of Niue by public notice but only if the Biosecurity Authority has advised Cabinet that
  - (a) an outbreak of a pest or disease has occurred or is likely to occur; and
  - (b) the pest or disease poses a serious biosecurity threat to Niue.
- (2) A declaration takes effect on the day after public notice is given and notice of the emergency must be displayed on notice boards or signs, or both, throughout the island and within the area concerned.
- (3) Cabinet must, by public notice, revoke a declaration made under subsection (1) as soon as practicable after the Authority has advised Cabinet that the biosecurity threat to which the emergency relates is resolved or the threat is now of such a magnitude that emergency measures are no longer required.
- (4) Despite subsection (3), a declaration that is in force 6 months after the date on which it came into force is revoked without further authority than this section unless the declaration is extended on or before that date by a further declaration of Cabinet made in accordance with subsection (1).

- (5) Subsections (2) and (3) apply to any further declaration of Cabinet made under subsection (4).

**34 Management of biosecurity emergency**

- (1) During a biosecurity emergency, the following persons may take the following actions in the area to which a biosecurity emergency declaration relates (the emergency area):
- (a) the Minister may require the Chief of Police and any government department to use their resources and lawful powers to assist the Biosecurity Authority in the control or eradication of the pest or disease to which the emergency relates:
  - (b) the Director may, in writing, requisition for use by any authorised person any vessel, aircraft, vehicle, machinery, equipment, or other thing that the Director considers necessary to eradicate, prevent, or limit the spread of the pest or disease to which the emergency relates:
  - (c) the Director may authorise any person, whether resident in Niue or not, to assist the Biosecurity Authority to effectively respond to the biosecurity emergency.
- (2) During a biosecurity emergency, the Biosecurity Authority may take or cause to be taken 1 or more of the following actions in the emergency area:
- (a) mark the boundaries of the area:
  - (b) set up roadblocks at 1 or more of the entries to and exits from the area:
  - (c) set up facilities for the cleaning and disinfection of people, vessels, aircraft, vehicles, machinery, equipment, or any other thing likely to spread the pest or disease to which the emergency relates at 1 or more of the entries to and exits from the area:
  - (d) inspect and, if necessary, disinfect or otherwise treat any person or thing entering or leaving the area who or that is likely to carry the pest or disease or its host material:
  - (e) for the purposes of paragraph (d), detain a person or thing for as long as is necessary to minimise or eliminate any biosecurity risk presented by the person or thing.
- (3) For the purposes of acting under subsection (2), the Biosecurity Authority may require assistance from any government department that is reasonable in the circumstances, and the directors of those departments must ensure that any personnel, machinery, equipment, or other things requested by the Biosecurity Authority are supplied.
- (4) A person commits an offence who
- (a) resists, knowingly obstructs, or knowingly and without reasonable excuse fails to comply with a direction of a biosecurity

- officer, police officer, or other authorised person performing functions in respect of a biosecurity emergency; or
- (b) knowingly enters or leaves a biosecurity emergency area other than in accordance with the directions of a biosecurity officer, police officer, or other authorised person; or
  - (c) knowingly moves any thing out of or into a biosecurity emergency area, or from one place within the area to another place within the area, except with the permission of a biosecurity officer, police officer, or other authorised person.
- (5) A person who commits an offence against subsection (4) is liable on conviction to,
- (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
  - (b) in any other case, a fine not exceeding 2 500 penalty units.
- (6) Any thing moved in breach of any direction or requirement given under this section may be seized by a biosecurity officer or police officer and
- (a) held pending criminal proceedings for the breach; or
  - (b) if necessary to remove any biosecurity risk, destroyed as the chief biosecurity officer directs.
- (7) In respect of any action taken under this section,
- (a) the Government is responsible for the cost of treatment or destruction of any thing; and
  - (b) the owner of any land, premises, or thing that is or are used, lost, damaged, or destroyed is entitled to compensation for that use, loss (other than consequential loss), damage, or destruction.

## Part 5

### Administrative provisions

#### *Niue Biosecurity Authority*

#### 35 Niue Biosecurity Authority established

- (1) This section establishes the Niue Biosecurity Authority.
- (2) The Biosecurity Authority comprises
  - (a) the Director of the Department; and
  - (b) the chief biosecurity officer appointed under section 38; and
  - (c) the senior biosecurity officer appointed under section 39; and
  - (d) 1 or more biosecurity officers appointed under section 40(1); and
  - (e) 1 or more other biosecurity officers (being the individuals referred to in section 40(2)); and

- (f) any administrative, support, or other ancillary staff as is necessary.

### **36 Functions of Biosecurity Authority**

- (1) The functions of the Biosecurity Authority are
  - (a) to protect Niue against pests and diseases, including by
    - (i) preventing their introduction, establishment, and spread to or within Niue:
    - (ii) monitoring, eradicating, containing, or controlling their movement, if already present in Niue:
    - (iii) assessing whether a pest or disease should be prohibited or regulated under this Act:
  - (b) to prevent the release, establishment, and spread of other organisms that may adversely affect animals, plants, human beings, and the Niuean environment:
  - (c) to facilitate the safe importation of animals, plants, animal products, and plant products, and any related equipment and technology:
  - (d) to facilitate the exportation of animals, plants, animal products, and plant products in accordance with the biosecurity requirements of receiving countries:
  - (e) to facilitate the safe import and export of other things to and from Niue:
  - (f) to facilitate Niue's contribution to international efforts to prevent the spread of pests and diseases affecting animals, plants, human beings, and the environment:
  - (g) to provide advice to Cabinet, the Minister, and the Director on biosecurity matters:
  - (h) to prepare and maintain, in consultation with relevant government departments, a biosecurity emergency response plan:
    - (i) if necessary, to implement the biosecurity emergency response plan:
    - (j) to prepare and maintain an operations manual for biosecurity officers:
  - (k) to publicise this Act and its requirements and increase public awareness generally of the importance of biosecurity issues.
- (2) The Authority must carry out its functions in accordance with this Act. However, to avoid doubt, it is required to fulfil this responsibility only to the extent that available funding and resources allow.

### **37 Director**

- (1) The Director is responsible to the Minister and the Secretary for Government for the efficient and effective management of the Biosecurity Authority.

- (2) The functions of the Director are to
  - (a) administer this Act; and
  - (b) ensure that the Authority appropriately carries out its functions; and
  - (c) advise the Minister on any matter relating to biosecurity (after consulting the chief biosecurity officer); and
  - (d) report to the Minister on any matter relating to biosecurity that the Minister directs (after consulting the chief biosecurity officer); and
  - (e) liaise with other government departments on matters relating to biosecurity; and
  - (f) perform any functions and exercise any powers conferred on him or her under this Act.
- (3) The Public Service Commission may appoint a suitably qualified person (whether from the Department or otherwise) to perform the Director's functions or exercise his or her powers under this Act for any period during which the Director is absent from Niue or is temporarily unable to do so, and this Act applies, with any necessary modifications, as if that person were the Director.

**38 Chief biosecurity officer**

- (1) The Public Service Commission must, by written notice, appoint a suitably qualified person (whether from the Department or otherwise) as the chief biosecurity officer.
- (2) The chief biosecurity officer is responsible to the Director for the efficient and effective operation of the Biosecurity Authority and, for that purpose, must
  - (a) supervise and administer the Authority; and
  - (b) perform the functions and exercise the powers delegated to him or her by the Director; and
  - (c) perform the functions and exercise the powers conferred directly on him or her by this Act.
- (3) However, before performing any technical function under this Act in respect of which a government department has a legitimate interest, the chief biosecurity officer must consult the director of that department (for example, in a biosecurity emergency, the Director for the Environment must be consulted).

**39 Senior biosecurity officer**

- (1) The Public Service Commission must, by written notice, appoint a suitably qualified person (whether from the Department or otherwise) as the senior biosecurity officer.
- (2) For any period during which the chief biosecurity officer is absent from Niue or is temporarily unable to perform or exercise his or her functions and powers under this Act, the senior biosecurity officer is



the acting chief biosecurity officer and this Act applies, with any necessary modifications, as if the senior biosecurity officer were the chief biosecurity officer.

#### **40 Biosecurity officers**

- (1) The Public Service Commission may, by written notice, appoint 1 or more biosecurity officers as may be necessary for the purposes of this Act.
- (2) In addition, the Director, on the chief biosecurity officer's advice, may, by written notice, designate 1 or more public servants (whether by name, class, or as the holder of a particular position) as biosecurity officers for the purposes of 1 or more of the following:
  - (a) to assist with a biosecurity emergency;
  - (b) to assist with the inspection of a vessel or an aircraft;
  - (c) to assist in the monitoring, eradication, containment, or control of a pest or disease;
  - (d) to assist with any other matter that the chief biosecurity officer reasonably considers necessary.
- (3) A designation as a biosecurity officer made under subsection (2) continues until expressly revoked by the Director. However, a designated person may perform the functions and exercise the powers of a biosecurity officer only
  - (a) as directed by the chief biosecurity officer; and
  - (b) for the specified purpose for which the person was designated a biosecurity officer.

#### **41 Duty to co-ordinate functions and report certain matters**

- (1) The Biosecurity Authority must, as far as is reasonably practicable, carry out its responsibilities under this Act in co-ordination with other government departments with responsibilities in areas that relate to the same or similar subject matter as the Authority (for example, those departments dealing with immigration, customs, natural resources, health, and the environment).
- (2) Without limiting subsection (1), a biosecurity officer must notify an officer of the Customs Department or an immigration officer of any breach of the Customs Act 1966 or the Immigration Act 2011 that comes to his or her attention.
- (3) Other government departments must, so far as is reasonably practicable, carry out their responsibilities in co-ordination with the Authority.
- (4) Without limiting subsection (3), immigration officers, officers of the Customs Department, and employees of the Niue Post Office must
  - (a) notify a biosecurity officer of the importation or proposed exportation of any prohibited or restricted item that comes to their attention; and

- (b) hand to a biosecurity officer any prohibited or restricted item that comes into their possession.

*Powers of biosecurity officers*

**42 Power to inspect**

- (1) A biosecurity officer may inspect any place (other than a private home) if he or she believes on reasonable grounds that
  - (a) anything has been, is being, or is about to be done in or on that place in breach of this Act; or
  - (b) there is in or on that place any thing whose presence is a breach of this Act, whether absolutely or by virtue of the lack of some necessary clearance.
- (2) A biosecurity officer may inspect any thing if he or she believes on reasonable grounds that the thing breaches this Act, or any action has been, is being, or is about to be done to the thing in breach of this Act.
- (3) Without limiting subsections (1) and (2), a biosecurity officer may
  - (a) open and inspect any biosecurity documentation required under this Act;
  - (b) open and inspect incoming and outgoing mail;
  - (c) take photographs and electronic or other copies of any document or thing;
  - (d) unpack, break open, or otherwise facilitate the inspection of any thing, at the owner of the thing's risk and expense.
- (4) The owner or occupier of any place at which a biosecurity officer exercises or attempts to exercise a power of inspection under this Act—
  - (a) must give the officer—
    - (i) all reasonable assistance to enable the officer to exercise the power; and
    - (ii) all information in relation to the exercise of the power that the officer reasonably requires; but
  - (b) is not required to give information, or give a response to a question, that may incriminate himself or herself.
- (5) Before requiring a person to answer questions or give information, an inspecting officer must inform a person of his or her rights under subsection (4)(b).

**43 Permits authorise certain inspections**

- (1) Every permit issued under this Act authorises a biosecurity officer to inspect any place to which the permit relates (other than a private home) as if the officer believed on reasonable grounds that something is being done in or on that place in contravention of this Act.
- (2) The power to inspect conferred by subsection (1) is in addition to the powers of inspection conferred by section 42, and does not limit or affect them.

#### **44 Power to seize**

- (1) A biosecurity officer may, without a Court order or warrant, seize any thing (the seized thing) if
  - (a) the seized thing is produced to the officer or is in plain view during an inspection authorised by this Act or any other Act; and
  - (b) the officer believes on reasonable grounds that—
    - (i) an offence against this Act has been committed; and
    - (ii) the seized thing is evidence of the commission of the offence.
- (2) An officer of the Customs Department or an employee of the Niue Post Office may, without a Court order or warrant, hold any thing ( the seized thing) if
  - (a) it comes into the possession of the officer or employee in the course of his or her employment; and
  - (b) the officer or employee believes on reasonable grounds that
    - (i) an offence against this Act has been committed; and
    - (ii) the seized thing is evidence of the commission of the offence.
- (3) A person who seizes or holds a thing under this section must
  - (a) take reasonable steps to—
    - (i) tell the owner (or person in possession) of the seized thing the reason for seizing or holding it; and
    - (ii) give the owner or person a receipt for the seized thing; and
  - (b) remove the seized thing to a place of safekeeping; and
  - (c) if the thing poses a biosecurity risk, deal with it as necessary to remove or limit that risk.

#### **45 Power to lock and seal stores**

A biosecurity officer may lock or seal the stores of any vessel or aircraft while it is in Niue.

#### **46 Taking of samples**

- (1) A biosecurity officer may take samples or cause samples to be taken from
  - (a) an arriving or departing vessel or aircraft that has restricted items on board;
  - (b) any place containing restricted items intended for import or export whether located in Niue or elsewhere;
  - (c) any thing subject to a prohibition, restriction, or process under this Act that relates to biosecurity.
- (2) A biosecurity officer acting under this section must give the owner or person in possession written notice in a form prescribed by the Director, identifying the sample, the quantity, and the place where the sample is to be analysed.

#### **47 Testing and treatment of restricted items**

- (1) A biosecurity officer may test, or cause tests to be conducted on, a restricted item in order to decide whether the item meets the import specifications or export specifications for the item (for example, to test whether an item has been fumigated).
- (2) If an incoming item is found to be infected, contaminated, or infested with or by a prohibited pest or disease, the Biosecurity Authority may require the item to be treated whether or not treatment was a requirement for importation.
- (3) A biosecurity officer may reassign or destroy an incoming item if
  - (a) the item is required to be treated before arrival or on arrival and the importer fails to have the item treated or treated within a reasonable time; or
  - (b) for an item to which subsection (2) applies,
    - (i) the appropriate treatment is not available in Niue; or
    - (ii) the importer chooses not to treat the item or refuses to consent to its treatment by the Authority.
- (4) Treatment of an item by the Authority
  - (a) must be the minimum required to meet the import or export specifications or remove or adequately reduce the biosecurity risk posed by the item, as the case may be; and
  - (b) may be administered by an appropriately qualified biosecurity officer or by any other suitably qualified person at the request of a biosecurity officer or the importer or exporter.

#### **48 Quarantine of items and other things**

- (1) A biosecurity officer may quarantine at a quarantine station any of the following:
  - (a) a prohibited item before it is reassigned or destroyed:
  - (b) a restricted item required to be quarantined:
  - (c) an incoming item that is, or is suspected of being, infected, contaminated, or infested with or by a prohibited pest or disease:
  - (d) any other thing that the biosecurity officer considers on reasonable grounds poses a biosecurity risk.
- (2) For the purposes of quarantining any item or thing under this section, a biosecurity officer may
  - (a) direct the captain of the vessel or aircraft or the importer to remove the item or thing to the quarantine station; or
  - (b) arrange for the item or thing to be removed to the quarantine station, in which case the owner or importer is responsible for the costs of removal.
- (3) The owner or person in possession of an item or thing removed to a quarantine station must be given written notice of the reasons for the quarantine and the location of the thing.

- (4) A person who refuses to remove an item or thing to quarantine as directed under this section commits an offence and is liable on conviction to,
  - (a) in the case of an individual, a fine not exceeding 100 penalty units;
  - (b) in any other case, a fine not exceeding 500 penalty units.

#### **49 Reconsignment**

- (1) Except as expressly provided by another provision of this Act, this section applies to any item or other thing that a biosecurity officer may order to be reconsigned under this Act.
- (2) The power to order reconsignment of any thing includes the power to reassign any container, crate, baggage, mail, or other package that carries the thing.
- (3) Reconsignment is at the option and cost of the importer but must be carried out within the time specified by a biosecurity officer, which must be reasonable in the circumstances.
- (4) If reconsignment is not carried out within 24 hours, a biosecurity officer may destroy the thing and, if relevant, the thing in which it was carried.
- (5) Before reconsigning a thing, the Biosecurity Authority must notify the importer in writing of the intention to do so, and the owner may instead consent to the thing being destroyed.
- (6) If the importer makes no response within 3 working days to a notice, the importer must be treated as having consented to the destruction of the thing, and the biosecurity officer may destroy the thing in accordance with section 50.

#### **50 Destruction of things**

- (1) This section applies to any thing that a biosecurity officer may order to be destroyed under this Act.
- (2) The power to order destruction includes the power to destroy any container, crate, baggage, mail, or other package that carries or carried the thing, irrespective of whether the thing itself is destroyed.
- (3) A thing or its packaging must be destroyed in the manner specified by the chief biosecurity officer and the owner of the thing, if known, must
  - (a) be given written notice in the prescribed form before its destruction; and
  - (b) if reasonable in the circumstances, be invited to witness its destruction.

#### **51 Post-mortem examination of animal**

- (1) If a biosecurity officer examining an animal pursuant to this Act suspects that the animal is diseased and considers a post-mortem examination to be the only way in the circumstances to establish a

diagnosis, the officer may, on the written authority of the chief biosecurity officer, and without the consent of the owner,

- (a) take or cause to be taken the life of the animal; and
  - (b) cause a post-mortem examination to be conducted to decide whether the animal is diseased; and
  - (c) obtain specimens from the animal for laboratory examination and diagnosis.
- (2) The results of the examination and of any laboratory reports resulting from the examination must be provided in writing to the chief biosecurity officer and to the owner of the animal.

#### 52 Powers in relation to individuals

- (1) Subsections (2) to (5) apply for the purposes of preventing the outbreak or spread of a notifiable disease within the meaning of section 11 of the Public Health Act 1965.
- (2) A biosecurity officer may detain a person on his or her arrival in Niue, at any place that the officer thinks fit, if the officer believes on reasonable grounds that the person is infected with a notifiable disease.
- (3) The biosecurity officer must immediately notify the Director of Health of his or her actions and the Director must, as soon as practicable, go to the place where the person is detained.
- (4) However, if the Director of Health is not available or is unlikely to be available within 2 hours from the time at which the person is detained, the biosecurity officer must take the person to the hospital for assessment by a medical officer.
- (5) To avoid doubt, the biosecurity officer and the Biosecurity Authority have no further responsibility for the person once he or she is delivered to a medical officer or other staff member at the hospital.
- (6) A biosecurity officer may detain and question a person if the officer believes on reasonable grounds that the person is in possession or in control of any thing that poses a biosecurity risk to Niue.
- (7) Without limiting subsection (6), a biosecurity officer may detain and question a person seeking to enter or leave Niue, or a person importing or exporting an item from Niue.
- (8) A biosecurity officer may search a person seeking to enter or leave Niue and, if applicable, his or her baggage, if
  - (a) the officer suspects that the person has on or with him or her an item; and
  - (b) arriving in or departing from Niue with that item would constitute an offence under this Act.
- (9) A search of a person under this section must be carried out
  - (a) by a person of the same sex as the person searched; or

- (b) if a person of the same sex is not available to carry out the search, in the presence of another person of the same sex as the person searched.

*Holding areas, quarantine areas, and quarantine stations*

- 53 Minister may designate certain areas as biosecurity holding areas**
- (1) The Minister may, by public notice designate
    - (a) any part of the territorial sea or continuous zone (as defined in the Maritime Zones Act 2013), or any part of the seaport, as an area where vessels are to be held for biosecurity inspections;
    - (b) any part of the airport as an area where aircraft are to be held for biosecurity inspections;
    - (c) any area of land at or adjacent to the seaport or airport as an area where items and other things are to be held for biosecurity inspections.
  - (2) Before acting under this section, the Minister must
    - (a) consult the Biosecurity Authority on the suitability of the proposed area; and
    - (b) consult the director of the government department responsible for the movement of vessels or aircraft, as the case may be.
  - (3) Only the following persons may enter a holding area:
    - (a) the person in charge of the area;
    - (b) a biosecurity officer acting in the course of his or her duty;
    - (c) any other person who has the written permission of the chief biosecurity officer or the person in charge of the area.
  - (4) A person commits an offence who
    - (a) enters a holding area in breach of subsection (3); or
    - (b) damages, interferes with, or otherwise compromises a holding area; or
    - (c) damages, interferes with, or otherwise harms any thing in a holding area; or
    - (d) releases, removes, or attempts to release or remove any thing from a holding area without the permission of a biosecurity officer.
  - (5) A person convicted of an offence against subsection (4) is liable to,
    - (a) in the case of an individual, a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 3 months, or both;
    - (b) in any other case, a fine not exceeding 500 penalty units.

**54 Minister may designate quarantine area**

- (1) The Minister may, by public notice designate
  - (a) any part of the territorial sea or continuous zone (as defined in the Maritime Zones Act 2013), or any part of the seaport, as a quarantine area for the purposes of isolating vessels or any item, or other thing on a vessel;
  - (b) any part of the airport as a quarantine area for the purposes of isolating aircraft or any person, item, or other thing on an aircraft.
- (2) Before acting under this section, the Minister must consult
  - (a) the Biosecurity Authority on the suitability of the area; and
  - (b) the director of the government department responsible for the movement of vessels or aircraft, as the case may be.
- (3) The chief biosecurity officer may, subject to any requirements in the relevant designation notice, issue written instructions to the person in charge of a quarantine area as to the management of the area generally or in relation to a particular vessel or aircraft held or to be held in the area.
- (4) Without limiting subsection (3), the chief biosecurity officer may issue instructions in relation to
  - (a) the examination, treatment, disposal, or destruction of any thing at the area or during its transit to or from the area; and
  - (b) the period of time for which the thing must remain at the area.

**55 Minister may designate land as quarantine station**

- (1) The Minister may, by public notice designate any Crown or Niuean land as a quarantine station for the purposes of isolating any item or other thing (including, without limitation, a prohibited pest or disease, animal, plant, animal product, plant product, LMO, prohibited item, restricted item, vehicle, or container).
- (2) The notice
  - (a) must specify the thing or things or class or classes of things that may be held at the station; and
  - (b) may provide for any other matter in relation to the station or the thing or things to be held at the station.
- (3) Before acting under this section, the Minister must consult—
  - (a) the Biosecurity Authority on the suitability of the land; and
  - (b) the director of any relevant government department; and
  - (c) if the designation relates to Niuean land, the owner of the land.
- (4) The chief biosecurity officer may, subject to any requirements in the relevant designation notice, issue written instructions to the person in charge of a quarantine station as to the management of the station generally or in relation to a particular thing or things held or to be held at the station.



- (5) Without limiting subsection (4), the chief biosecurity officer may issue instructions in relation to
  - (a) the examination, treatment, disposal, or destruction of any thing at the station or during its transit to or from the station; and
  - (b) the period of time for which any thing must remain at the station.
- (6) An owner of Niuean land designated as a quarantine station in accordance with this section is entitled to compensation for use of the land as a quarantine station.

**56 Management of quarantine areas and quarantine stations**

- (1) Only the following persons may enter a quarantine area or quarantine station:
  - (a) the person in charge of the area or station;
  - (b) a biosecurity officer acting in the course of his or her duty;
  - (c) any other person who has the written permission of the chief biosecurity officer or the person in charge of the area or station.
- (2) The Biosecurity Authority may affix a notice at an area or a station, or on any thing held at the area or station, stating
  - (a) the conditions of entry and exit to the area or station; and
  - (b) the conditions and expected duration of quarantine of the thing held at the area or station; and
  - (c) any other information relating to the area, station, or thing.
- (3) Any thing (other than a vessel or aircraft) may be released from an area or station only if
  - (a) the chief biosecurity officer issues a quarantine release certificate for it in the prescribed form; and
  - (b) the quarantine fees, if any, for the thing have been paid.
- (4) A quarantine release certificate may be granted
  - (a) unconditionally; or
  - (b) subject to specified conditions, in which case the owner of the thing must pay a bond in the prescribed amount.
- (5) A person commits an offence who
  - (a) enters an area or a station in breach of subsection (1); or
  - (b) without lawful authority, removes, damages, or interferes with a notice affixed under subsection (2); or
  - (c) damages, interferes with, or otherwise compromises an area or a station; or
  - (d) damages, interferes with, or otherwise harms any thing in an area or a station without the permission of a biosecurity officer; or
  - (e) releases, removes, or attempts to release or remove any thing from an area or a station.

- (6) A person convicted of an offence against any of paragraphs (a) and (c) to (e) of subsection (5) is liable to,
  - (a) in the case of an individual, a fine not exceeding 400 penalty units or a term of imprisonment not exceeding 12 months, or both;
  - (b) in any other case, a fine not exceeding 2 000 penalty units.
- (7) A person convicted of an offence against subsection (5)(b) is liable to,
  - (a) in the case of an individual, a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 3 months, or both;
  - (b) in any other case, a fine not exceeding 500 penalty units.

*Miscellaneous administrative provisions*

**57 Seal**

The Biosecurity Authority must have a seal, which must be judicially noticed in all courts and for all purposes.

**58 Biosecurity register**

- (1) The Biosecurity Authority must keep a register containing
  - (a) the information required under any provisions of this Act; and
  - (b) any other prescribed information.
- (2) The register may be kept in any format that the Director thinks fit, so long as its contents are readily retrievable and are protected against unintended loss and unauthorised alteration.
- (3) The register must be made available at the office of the Authority for inspection by the public, free of charge, and for copying, on payment of an administration fee, if any, during normal office hours.
- (4) A copy of an entry in the register that is certified by the Director or the chief biosecurity officer to be an accurate copy is prima facie evidence of the facts contained in the entry and may be used in Court as evidence of those facts.

**59 Biosecurity officer identity card**

- (1) The Director must
  - (a) issue each biosecurity officer appointed under section 40(1) with an identity card; and
  - (b) endorse the primary position identity card of each officer designated under section 40(2) with a reference to the officer's designation as a biosecurity officer under this Act.
- (2) If it is practicable in the circumstances, a biosecurity officer must produce his or her identity card
  - (a) on each occasion before the officer acts under this Act; and
  - (b) when requested to do so by any person who is affected while the officer acts under this Act.

**60 Facilities for biosecurity officers to be provided at airport, seaport, and post office**

- (1) For the purposes of this Act, the operators of the airport, seaport, and post office must provide at their respective premises, to the satisfaction of the Director (which must not be unreasonably withheld),
  - (a) an area suitable for use as offices by biosecurity officers stationed or working at the premises;
  - (b) adequate space for the display of notices regarding the biosecurity requirements of this Act;
  - (c) 1 or more areas for biosecurity rubbish disposal units (as provided by the Biosecurity Authority);
  - (d) an area for interviewing and, if necessary, physically examining an individual;
  - (e) any other facilities that the Director requests in writing and that are reasonably necessary to enable a biosecurity officer to perform his or her functions under this Act at the premises.
- (2) The Biosecurity Authority must provide all the necessary equipment for the collection and disposal of rubbish from a biosecurity rubbish disposal unit.
- (3) A person who intentionally interferes with, damages, or otherwise alters a biosecurity rubbish disposal unit commits an offence and is liable on conviction to a fine not exceeding 20 penalty units.

**61 Owners or persons in charge of vessel, aircraft, land, buildings, or premises must provide biosecurity officers with certain protections**

- (1) Subsection (2) applies if a biosecurity officer is required to visit or inspect a vessel, an aircraft, land, a building, or premises (the place).
- (2) The owner, or person in charge, of the place must,
  - (a) if requested to do so, safely transport the officer to the place; and
  - (b) provide a safe working environment at the place for the officer to perform the function concerned.

**62 Consultants and outsourcing**

- (1) The Director may, to enable the effective implementation of this Act, —
  - (a) hire the services of consultants with specialist biosecurity or other relevant knowledge (for example, to test samples, perform biosecurity risk assessments, or carry out surveys);
  - (b) enter into memoranda of understanding or other agreements with other government departments, statutory authorities, official agencies, or private organisations, whether in Niue or elsewhere.
- (2) The Director must —
  - (a) consult the chief biosecurity officer before acting under subsection (1); and

- (b) comply with any relevant requirements in respect of public service rules relating to procurement, tenders, and similar matters.

### **63 Compliance agreements**

- (1) The chief biosecurity officer, on behalf of the Biosecurity Authority, may enter into a written agreement (a **compliance agreement**) with an importer, an exporter, or any other person in respect of
  - (a) how the person may satisfy any requirement under this Act, including in relation to any item or class of items; and
  - (b) the supervision, monitoring, or testing of the person's compliance with satisfying those requirements.
- (2) A compliance agreement must set out the circumstances in which the Biosecurity Authority may, by written notice, cancel or vary the agreement or suspend the operation of the agreement for any period.
- (3) A biosecurity officer must comply with a compliance agreement in his or her dealings with any item to which the agreement relates, but only to the extent that the officer is satisfied that the terms of the agreement are being observed.

### **64 Biosecurity approved premises**

- (1) The owner or occupier of any premises may apply to the Biosecurity Authority for approval
  - (a) of the premises as a place for the inspection, testing, and treatment of restricted items or particular types or classes of restricted items; and
  - (b) for specified activities to be carried out in relation to those restricted items at the premises.
- (2) An application must be in the prescribed form and be accompanied by the prescribed fee.
- (3) In deciding whether to approve premises, the chief biosecurity officer
  - (a) must inspect the premises; and
  - (b) must determine whether the premises are adequate to enable the proposed activities to be undertaken efficiently and safely having regard to the nature of the activities to be carried out, the level of biosecurity risk that the activities present, and the ease of accessibility of the premises to biosecurity officers; and
  - (c) may take into account any other matter that he or she considers relevant.
- (4) An approval—
  - (a) may be granted with or without conditions; and
  - (b) has effect for a period not exceeding 12 months, but may be renewed and, for that purpose, this section applies as if the

renewal application were an application to which subsection (1) applied.

**Part 6**  
**Offences, penalties, and proceedings**

*Offences*

**65 Offences against biosecurity officers**

- (1) A person commits an offence who
- (a) wilfully fails to comply with a request or direction of a biosecurity officer lawfully made by the officer under this Act; or
  - (b) knowingly obstructs a biosecurity officer who is performing or exercising his or her functions or powers under this Act; or
  - (c) assaults or threatens to assault a biosecurity officer who is performing or exercising his or her functions or powers under this Act; or
  - (d) bribes or attempts to bribe a biosecurity officer in relation to the performance or exercise of his or her functions or powers under this Act; or
  - (e) in relation to any matter under this Act, knowingly or recklessly
    - (i) makes a false or misleading declaration or statement; or
    - (ii) issues a false or misleading certificate; or
    - (iii) gives false or misleading information to a biosecurity officer while the officer is performing or exercising his or her functions or powers under this Act.
- (2) A person convicted of an offence against subsection (1) is liable to, —
- (a) in the case of an individual, a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 12 months, or both;
  - (b) in any other case, a fine not exceeding 500 penalty units.

**66 Fraudulent use of official documents**

- (1) A person to whom a permit or other document is issued under this Act commits an offence if the person
- (a) forges or unlawfully alters the document; or
  - (b) allows any other person to use or attempt to use the document, if the document is not transferable.
- (2) A person commits an offence who produces a false or misleading document for the purposes of this Act knowing that document to be false or misleading and intending a biosecurity officer or any other person to rely on it.

- (3) A person commits an offence who uses or affixes an official stamp or seal required under this Act without lawful authority and with intent to defraud or deceive any person.
- (4) A person convicted of an offence against any of subsections (1) to (3) is liable to,
  - (a) in the case of an individual, a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 12 months, or both;
  - (b) in any other case, a fine not exceeding 500 penalty units.

**67 Biosecurity officer offences**

- (1) A biosecurity officer commits an offence if the officer
  - (a) fails without reasonable excuse to perform any of his or her functions in accordance with this Act; or
  - (b) without lawful authority, discloses information of a confidential or commercial nature that has come into the officer's possession while performing or exercising his or her functions or powers under this Act; or
  - (c) in the course of performing or exercising his or her functions or powers under this Act, harasses, intimidates, or assaults any person; or
  - (d) in connection with his or her functions or powers under this Act, solicits or accepts a bribe; or
  - (e) knowingly or recklessly makes a false or misleading statement, or issues a false or misleading permit or other document, while purporting to perform or exercise his or her functions or powers under this Act.
- (2) A person convicted of an offence against subsection (1) is liable to a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 12 months, or both.

*Proceedings*

**68 Evidence**

In any proceedings under this Act,

- (a) a document purporting to have been issued by Cabinet, the Minister, the Director, a biosecurity officer, or any other person for the purposes of this Act is presumed, until the contrary is proved, to have been duly executed or signed by that person;
- (b) a copy of or extract from a document issued by Cabinet, the Minister, the Director, a biosecurity officer, or any other person, and certified by the Director or chief biosecurity officer to be true and correct, is prima facie evidence of the matters contained in it and may be used in Court as evidence of those matters;
- (c) a certificate, in the prescribed form, of the results of any test conducted on any thing by the person who conducted the test is

prima facie evidence of the matters contained in the certificate and may be used in Court as evidence of those facts:

- (d) a certificate, in the prescribed form, of the analysis of a sample is prima facie evidence of the results contained in the certificate and may be used in Court as evidence of those facts, so long as the prescribed procedure in relation to the sample has been substantially followed.

**69 Forfeiture of things used to commit offence**

- (1) The Court may, on convicting a person of an offence under this Act, order the forfeiture to the Crown of any thing used to commit the offence or, if the thing has been sold, that the proceeds of sale be forfeited to the Crown.
- (2) The Crown may sell or otherwise dispose of a thing forfeited under subsection (1) and any proceeds from its disposal must be paid into the general funds.
- (3) However, if the thing poses a biosecurity risk it must be destroyed as directed by the chief biosecurity officer.
- (4) For the purposes of this section, **thing**
  - (a) means any thing directly used in the commission of an offence; and
  - (b) includes machinery, equipment, or any vessel, aircraft, or vehicle; but
  - (c) does not include land or buildings or other fixtures.

**70 Offences committed by body corporate**

- (1) If a body corporate commits an offence against this Act, every individual who is a board member or director or otherwise concerned in the management of the body is also liable for the offence unless he or she proves—
  - (a) that the offence was committed without his or her consent or connivance; and
  - (b) that he or she exercised reasonable diligence to prevent the commission of the offence, having regard to the nature of his or her functions in the body corporate and to all the circumstances.
- (2) If a body corporate commits an offence against this Act, every individual who is a board member or director or otherwise concerned in the management of the body may be proceeded against and convicted whether or not the body corporate is proceeded against and whether or not it is convicted.
- (3) A body corporate remains liable for any offence committed by it, whether or not proceedings are commenced against any individual who is a board member or director or otherwise concerned in the management of the body.

- (4) If a body corporate commits an offence against this Act, any penalty against the body takes precedence over any secured or preferred claim lodged in any action for bankruptcy against the body.

### *Infringement offences*

#### **71 Infringement offences**

- (1) If a person is alleged to have committed an infringement offence, the person may
  - (a) be proceeded against in the normal manner by the laying of an information against the person; or
  - (b) be served with an infringement notice, by the Biosecurity Authority delivering it, or a copy of it, personally to the person.
- (2) An infringement notice must be in the prescribed form and must state
  - (a) details of the alleged infringement offence that are sufficient to fairly inform the person of the time, place, and nature of the alleged offence; and
  - (b) the amount of the infringement fee; and
  - (c) an address at which the infringement fee may be paid; and
  - (d) the time within which the infringement fee must be paid; and
  - (e) that the person has a right to request a hearing; and
  - (f) what will happen if the person does not pay the infringement fee and does not request a hearing; and
  - (g) any other prescribed matters.
- (3) If the person pays the infringement fee within the period stated in the infringement notice,
  - (a) no further action may be taken against the person; and
  - (b) no conviction may be entered against the person for the offence.
- (4) If the person does not pay the infringement fee or request a hearing within the period stated in the infringement notice, the Department must serve the person with a reminder notice in the prescribed form that contains the same or substantially the same particulars as the infringement notice.
- (5) If the person does not pay the infringement fee or request a hearing within the period stated in the reminder notice, proceedings may be commenced against the person by filing the reminder notice with the Court and, for that purpose,
  - (a) the reminder notice must be treated as the information for the infringement offence; and
  - (b) the Court is deemed to make an order, on the date when the reminder notice is filed, that the defendant pay a fine equal to the amount of the infringement fee together with costs in the



prescribed amount, but no conviction is entered against the person.

- (6) A person requests a hearing by providing to the Department, within the period specified in the infringement notice or reminder notice, as the case may be,
  - (a) a notice, signed by the person, requesting a hearing and accepting or rejecting liability; and
  - (b) if accepting liability, the reasons, if any, as to why the Court should impose a lesser fine than the infringement fee for the offence.
- (7) A person found guilty at a hearing held for the purposes of subsection (7) is liable to a fine equal to the amount of the infringement fee (unless the Court imposes a lesser amount) together with costs in the prescribed amount, but no conviction is entered against the person.
- (8) To avoid doubt, if a person commits an infringement offence and proceedings against the person are taken in the normal manner under subsection (1)(a), the person is liable to pay not the infringement fee but the amount that the Court determines within the penalty range for the offence. However, no conviction may be entered against the person.

### *Warrants*

#### **72 Warrants**

- (1) This section applies if a warrant is required before taking any action under this Act.
- (2) A Judge or Commissioner of the Court, or any 2 Justices of the Peace acting together, may, on application, issue a warrant in the prescribed form if satisfied that there are reasonable grounds for believing that it is necessary for the purpose for which the application has been made.
- (3) The application-
  - (a) must be made in writing by a constable or the chief biosecurity officer; and
  - (b) must be accompanied by a copy of the relevant provisions of this Act.

### **Part 7**

#### **Miscellaneous matters**

#### **73 Delegation of functions**

- (1) The Minister may, in writing, delegate any of his or her functions and powers under this Act to the Director except the following powers:
  - (a) the power to designate land or an area as a biosecurity holding area, quarantine area, or quarantine station;
  - (b) the power to order a vessel or an aircraft to leave Niue;

- (c) the power to grant an exemption under section 79.
- (2) The Director may, in writing, delegate to the chief biosecurity officer
  - (a) any of the Director's functions and powers under this Act; and
  - (b) any functions and powers delegated to the Director by the Minister.
- (3) The chief biosecurity officer may, in writing, delegate any of his or her functions and powers under this Act to 1 or more other biosecurity officers, except any functions and powers delegated to him or her under subsection (2).
- (4) A delegation under this section may be made subject to the restrictions and conditions that the delegator thinks fit, and may be made either generally or in relation to any particular case or class of cases.
- (5) A delegation under this section continues in force until revoked by the delegator.
- (6) A person to whom a function or power has been delegated (**person B**) may without confirmation by the person who delegated the function or power (**person A**) perform or exercise the function or power in the same manner and with the same effect as person A could have performed or exercised it.
- (7) No delegation under this section relieves any person of the liability or legal responsibility to perform or ensure the performance of any function or power.

#### **74 Exchange of information**

- (1) The Biosecurity Authority may communicate to a government department any information that the Authority
  - (a) holds in relation to the performance or exercise of the Authority's functions and powers under this Act; and
  - (b) considers may assist that government department in the performance or exercise of that department's functions and powers.
- (2) The Authority may, in the performance or exercise of its functions and powers under this Act, use any information communicated to it by a government department.
- (3) This section applies irrespective of any other enactment or contract, deed, or other document.
- (4) The Authority may impose any conditions in relation to communicating information to a government department under this section, including conditions relating to
  - (a) maintaining the confidentiality of the information (in particular, information that is personal information or commercially sensitive);
  - (b) the storing of, use of, or access to the information;
  - (c) the copying, returning, or disposing of the information:

- (d) payment of the costs incurred by the Authority in communicating the information.

**75 International co-operation**

- (1) The Minister, with the approval of Cabinet, on behalf of the Government of Niue, may enter into agreements with countries or international organisations in relation to international solutions to biosecurity matters.
- (2) The Biosecurity Authority may, pursuant to such agreements, and on behalf of the Government of Niue,
  - (a) exchange information with other countries and international organisations:
  - (b) contribute to the development of international sanitary and phytosanitary standards.
- (3) The Biosecurity Authority, on behalf of the Government of Niue, must use its best endeavours to implement in Niue international standards and requirements relating to biosecurity.
- (4) For the purposes of subsection (3), the chief biosecurity officer
  - (a) is designated as the Niuean contact in respect of
    - (i) the Food and Agriculture Organization of the United Nations (being the organisation that oversees the International Plant Protection Convention); and
    - (ii) the World Organisation for Animal Health; and
    - (iii) the Pacific Plant Protection Organisation; and
    - (iv) any other organisation or body as appointed by Cabinet from time to time.
  - (b) must ensure that any notification and reporting requirements of an organisation referred to in paragraph (a) that apply to Niue are met in a timely manner; and
  - (c) must ensure, if possible, that any other international obligations lawfully imposed upon Niue or to which Niue has agreed to be bound are met in a timely manner.

**76 Import permits**

- (1) An import permit must be in the prescribed form and may relate to
  - (a) a single item or a class or category of items;
  - (b) items from 1 or more countries of origin;
  - (c) items incoming at regular periods throughout a year;
  - (d) items incoming at a particular time of day or year.
- (2) An application for an import permit must be made to the Biosecurity Authority in the form prescribed by the director and be accompanied by the prescribed fee.

**77 Revocation or variation of import permit**

- (1) The chief biosecurity officer may, at any time, revoke an import permit or vary its conditions, by written notice to the permit holder, if
  - (a) a change in the biosecurity risk to Niue presented by the items to which the permit relates so requires; or
  - (b) the permit holder persistently breaches the requirements of the permit; or
  - (c) the chief biosecurity officer is satisfied on reasonable grounds that the permit should be revoked or its conditions varied for any other reason and the reason is specified in the notice.
- (2) Import clearance may be refused for an item for which an import permit is required at any time on and from the date on which the permit holder is notified of the revocation of the related permit.
- (3) A permit holder whose import permit is revoked must surrender the permit to a biosecurity officer as soon as practicable after the holder is notified of the revocation of the permit.
- (4) A permit holder who breaches subsection (3) commits an offence and is liable on conviction to,
  - (a) in the case of an individual, a fine not exceeding 50 penalty units;
  - (b) in any other case, a fine not exceeding 250 penalty units.

**78 Status certificates**

- (1) The chief biosecurity officer may issue, in the prescribed form, —
  - (a) a certificate stating that a pest or disease specified in the certificate is known to exist in Niue;
  - (b) a certificate stating that a pest or disease specified in the certificate does not exist in Niue;
  - (c) a certificate stating the classification, name, or identity by which an animal, plant, animal product, plant product, pest, or disease is known, or is to be known, in Niue.
- (2) A certificate issued under subsection (1) is prima facie evidence of the facts contained in it and may be used in Court as evidence of those facts.

**79 Exemption from biosecurity requirements**

- (1) The Minister may, if requested to do so,
  - (a) allow the importation of any thing prohibited by or under this Act;
  - (b) allow the exportation of any thing prohibited by or under this Act;
  - (c) exempt any thing from any restriction or regulation to which it is subject by or under this Act.

- (2) A request under subsection (1) must be made in the first instance in writing to the Biosecurity Authority.
- (3) The Minister may grant a request, with or without conditions, including a condition that a fee is payable for costs associated with the investigation of the request.
- (4) However, the Minister must not grant a request unless he or she has received written advice from the Biosecurity Authority to the effect that the biosecurity risk to Niue as a result of granting the request will not be increased in a material way or can be satisfactorily managed in accordance with any conditions set out in the advice.

#### **80 Biosecurity clearance agents**

- (1) A person may appoint, in writing, a resident of Niue as the person's agent to carry out 1 or more of the person's duties under this Act (for example, the duty of a person to be present during a biosecurity inspection of an item imported by the person).
- (2) A person who has appointed an agent for the purposes of this provision must notify the Biosecurity Authority, in writing, of the appointment and its terms.
- (3) An agent appointed under subsection (1) ceases to be an agent for the purposes of this Act if the Director gives written notice to the person who appointed the agent that the agent's conduct is such that the person's duties under the Act are not being fulfilled in a satisfactory manner by the agent.
- (4) A notice under subsection (3) comes into force on the date specified in the notice, which must be no earlier than 28 days after the date the notice is given.
- (5) For the purposes of this Act, a biosecurity officer and any other person performing or exercising a function or power may treat an agent as if he or she were the person for whom the agent acts. However, this does not relieve the person who appointed the agent of the legal responsibility to perform or ensure the performance of any duty under this Act that applies to the person.

#### **81 Consequence of non-payment of fee or charge**

- (1) If a fee or charge payable under this Act in relation to a service is not paid,
  - (a) the service may be withheld until the amount is paid; or
  - (b) if the service has already been provided, the amount is a debt due to the Crown and recoverable in Court.
- (2) If a fee or charge payable under this Act in relation to a thing in quarantine is not paid, the thing may be treated as abandoned under section 82 once it is cleared for release from quarantine.

#### **82 Abandoned things**

- (1) For the purposes of this Act, any thing may be treated as abandoned if

- (a) the thing is in the possession of the Biosecurity Authority or a biosecurity officer and any fee or charge payable by a person under this Act in respect of the thing is not paid within 30 days after the date on which the fee or charge was required to be paid:
  - (b) the thing is held in a biosecurity holding area and is not removed from the area within 5 days after clearance has been granted or a biosecurity officer has granted permission for the thing to be removed:
  - (c) the thing is held in a quarantine area or station and, once cleared for release, is not removed from the quarantine area or station within 5 days of its clearance.
- (2) A thing that is treated as abandoned in accordance with this section may be destroyed, sold, or otherwise disposed of in any manner that the chief biosecurity officer thinks fit, having regard to any biosecurity risk posed by the thing, and proceeds from its disposal must be paid into the Niue Government Account.
  - (3) The cost of disposal of an abandoned thing is a debt due to the Crown owed by the owner of the thing.

**83 Compensation for loss or damage**

- (1) Except as expressly provided by another provision of this Act, no compensation is payable for loss or damage as a result of any action lawfully taken under this Act by a biosecurity officer or any other person, unless negligence or malice is proved.
- (2) Any compensation payable under this Act must be
  - (a) claimed in accordance with the prescribed procedure; and
  - (b) paid in the amount agreed between the Director (on behalf of the Cabinet) and the person concerned or, if no agreement is made, as determined by the Court.

**84 Limitation of liability**

- (1) No person authorised to act under this Act is personally liable for any action taken under it in good faith and without negligence.
- (2) A breach of a duty imposed on any person by or under this Act does not give rise to any civil liability, except as expressly provided by or under this Act.

**85 Public notification of regulations and notices and service of documents**

- (1) Subsection (2) is in addition to any other requirement of this Act.
- (2) Regulations and notices made under this Act must be available to the public
  - (a) for inspection at the offices of the Department and on its Internet site or the Internet site of the Niue Government; and
  - (b) for purchase at the offices of the Department.

- (3) Unless otherwise provided by another provision of this Act, and subject to subsection (4), any notice or other document required by or under this Act may be given electronically
  - (a) by a person to the Biosecurity Authority, Minister, Director, or other biosecurity officer;
  - (b) by the Biosecurity Authority, Minister, Director, or other biosecurity officer to a person, if the person has given that person an electronic address for receipt of such notices.
- (4) If service of a notice or other document on a person is to be proved in Court, it must be effected by
  - (a) personal service on the person; or
  - (b) registered post to the address of the person given to the Biosecurity Authority, Minister, Director, or other biosecurity officer, in which case service is presumed to have been effected 2 days after posting.
- (5) A printed copy of an electronic record of a notice, instruction, or direction given or received by electronic means is prima facie evidence of the notice if the record purports to have been made at the time of sending or receipt.

**86 Fines to be paid into Niue Government Account**

Fines collected under this Act must be paid into the Niue Government Account.

*Regulations*

**87 Regulations**

- (1) Cabinet may make regulations for the effective implementation of this Act, including for the performance of the biosecurity functions of the Biosecurity Authority.
- (2) Without limiting subsection (1), regulations may –
  - (a) prescribe forms, or the information to be included in, or required by, forms prescribed by the Director; and
  - (b) prescribe treatments for vessels and aircraft to be taken before or on their arrival; and
  - (c) prescribe treatments for items to be taken before or on their arrival; and
  - (d) prescribe fees and charges for the services provided by the Authority or any other person under this Act; and
  - (e) prescribe a method for calculating fees and charges referred to in paragraph (d) (for example, an hourly rate); and
  - (f) prescribe the amount of bonds and the manner and circumstances in which they are to be paid, held, and, if applicable, returned; and

- (g) prescribe the method or procedure for the taking and analysing of samples, the recording and certifying of the results, and the disposal of the samples; and
  - (h) prescribe the procedure for claiming compensation; and
  - (i) prescribe information to be kept in the register; and
  - (j) prescribe the form of any certificate that may be issued under the Act; and
  - (k) provide for the extermination of rats on vessels, and the form of any rat extermination certificate; and
  - (l) regulate the disposal of rubbish and other things in a biosecurity emergency area; and
  - (m) provide for the electronic filing of declarations, applications, and other documents required by this Act; and
  - (n) prescribe the manner and language of markings on containers of incoming and outgoing restricted items; and
  - (o) prescribe the methods of handling, sealing, treating, and disposing of containers holding restricted items; and
  - (p) provide for the placing and use of amnesty bins or other containers for prohibited or restricted items at points of entry and departure; and
  - (q) prescribe additional measures, consistent with this Act, to implement in Niue the standards and requirements relating to the International Plant Protection Convention, the World Organisation for Animal Health, and the Pacific Plant Protection Organisation, and any other organisation; and
  - (r) prescribe the offences created by this Act that constitute infringement offences for the purposes of this Act; and
  - (s) prescribe infringement fees not exceeding 20 penalty units for each infringement offence, which may be different fees for different offences (including different fees for a first, second, or third offence); and
  - (t) prescribe the form of infringement notices and reminder notices; and
  - (u) prescribe any other matter that this Act requires to be prescribed or that is necessary for carrying out or giving effect to this Act.
- (3) Before making regulations under this section, Cabinet must
- (a) obtain the advice of the Biosecurity Authority; and
  - (b) consult other government departments as appropriate.

**88 Biosecurity emergency regulations**

- (1) For the purposes of dealing with a biosecurity emergency, Cabinet may make regulations for 1 or more of the following purposes:



- (a) to confer on the Biosecurity Authority, or specified officers of the Authority, powers necessary to deal with the emergency that are in addition to those already conferred by this Act in relation to biosecurity emergencies:
  - (b) to prescribe the disposal, destruction, treatments, and other measures to be adopted in respect of any thing (whether inside or outside an emergency area) that is infected, contaminated, or infested with or by the pest or disease to which the emergency relates or that may have come into contact with any thing that is so infected, contaminated, or infested:
  - (c) to prescribe measures to be taken to prevent the pest or disease to which an emergency relates from spreading, including but not limited to the cleaning of private homes and utensils, removal of stagnant water, and disposal of rubbish:
  - (d) to prohibit or restrict the use of the seaport or airport, or of any facilities at the seaport or airport:
  - (e) to create 1 or more exclusion zones within an emergency area and control the movement of humans and any thing into, out of, and within such a zone:
  - (f) to prohibit specified activities in an emergency area:
  - (g) to provide for the destruction or treatment of any thing:
  - (h) to require the treatment of land in an emergency area:
  - (i) to regulate the use of any area subject to restrictions in relation to the emergency for a specified period after the lifting of the restrictions:
  - (j) to make any other arrangements that Cabinet believes, after consulting the Biosecurity Authority, are reasonably necessary to control the biosecurity emergency.
- (2) Regulations made under this section may include a penalty for conviction on breach of the regulation to an amount
- (a) not exceeding 20 penalty units, if the breach is by an individual; and
  - (b) not exceeding 100 penalty units, if the breach is by any other person.
- (3) Regulations made under this section are revoked (and have no continuing effect) on the day that the declaration in relation to the biosecurity emergency is revoked, unless the declaration is renewed, in which case the regulations are revoked (and have no continuing effect) on the day that the renewed declaration is revoked.
- (4) Subsection (3) does not apply to regulations made under subsection (1)(i). Instead, the regulations are revoked on the date specified in the regulations, which must be no later than 30 days after the declaration is revoked.

- (5) The Government of Niue is not responsible for the cost of the treatment or destruction of any thing as the result of any person exercising a power conferred by a regulation made under this section.
- (6) The owner of any land, premises, vehicle, vessel, or other thing that is used, lost, destroyed, or damaged as the result of any action taken by a person exercising a power conferred by a regulation made under this section is not entitled to compensation.

**89 Regulations may incorporate material by reference**

- (1) Regulations made under section 87 or 88 may incorporate any of the material described in subsection (2) if the purpose of the regulations (or a purpose of the regulations) is to define terms, prescribe matters, or make other provision in relation to an activity or a thing, including (without limitation) any facility, items, information, practice, premises, process, programme, service, or system.
- (2) The material that may be incorporated by reference, whether in whole or in part, is 1 or more of the following:
  - (a) a standard, framework, code of practice, recommended practice, or requirement of an international organisation or a national organisation;
  - (b) a standard, framework, code of practice, recommended practice, or requirement prescribed in any country or jurisdiction, or by any group of countries;
  - (c) any other written material that deals with technical matters and that can reasonably be regarded as being too large or impractical to include in, or publish as part of, the regulations.
- (3) Material incorporated by reference in reliance on this section has legal effect as part of the regulation that incorporates the material.

**90 Access to material incorporated by reference**

- (1) This section applies if regulations incorporating material by reference in reliance on section 89 are made.
- (2) The Director must
  - (a) make the material (the incorporated material) available for inspection during working hours free of charge at the offices of the Biosecurity Authority and any other place that the Director determines is appropriate; and
  - (b) make copies of the incorporated material available, free of charge, on an Internet site maintained by or on behalf of the Department or the Government of Niue, or both, unless doing so would infringe copyright.
- (3) The Director may make copies of the incorporated material available in any other way that he or she considers appropriate in the circumstances.

- (4) The Director may comply with subsection (2)(b) by providing a hypertext link from an Internet site maintained by or on behalf of the Department or the Government of Niue to a copy of the incorporated material that is available, free of charge, on an Internet site that is maintained by or on behalf of someone else.
- (5) A failure to comply with this section does not invalidate an instrument that incorporates material by reference.

**91 Effect of amendments to material incorporated by reference**

- (1) This section applies if the material incorporated by reference in reliance on section 89 is amended by the originator of the material after the regulations are made.
- (2) For the purposes of this section, material is amended if the material or any part of it
  - (a) is amended or replaced; or
  - (b) expires or is revoked; or
  - (c) otherwise ceases to have effect.
- (3) Amendments made by the originator of the material have no legal effect as part of the regulations in which they are incorporated unless they are specifically incorporated by amending or replacing the regulations in accordance with sections 89 and 90.

**92 Proof of material incorporated**

- (1) A copy of material incorporated by reference in regulations in reliance on section 89 must be
  - (a) certified as a correct copy of the material by the Director; and
  - (b) retained by the Director.
- (2) A certified copy is prima facie evidence of the material incorporated by reference in the regulations and may be used in Court as evidence of that material.

**Part 8**

**Repeals, savings, and consequential provisions**

**93 Repeals and savings**

- (1) The Agriculture Quarantine Act 1984 is repealed.
- (2) Despite subsection (1), regulations made under that Act continue in force as if made under this Act until revoked, amended, or replaced under this Act, but only to the extent that those regulations are not inconsistent with this Act or any regulations made under this Act.
- (3) Despite subsection (1), delegations, directions, notices, agreements, and any other administrative actions or decisions of the Minister, the Director of Agriculture, or any quarantine officer or inspector issued or made under the Agriculture Quarantine Act 1984 continue to have effect as if issued or made under this Act until revoked, amended, or

replaced under this Act, but only to the extent that they are not inconsistent with this Act or any regulations made under this Act.

- (4) Despite subsection (1), import permits issued under the Agriculture Quarantine Act 1984 remain in force until they expire in accordance with their terms, or until expressly revoked under this Act.
- (5) Any bond, agreement, instrument, or arrangement relating to the biosecurity functions of the Government, to which the Government is a party and that is in effect at the commencement of this Act, continues to have effect after that date and is enforceable by or against the Government as if it had been entered into under this Act.
- (6) An item destined for Niue that has left the country of origin but has not arrived in Niue at the date of commencement of this Act requires clearance under this Act before it can be imported.

**94 Continuation of employment arrangements**

All employees of the Department who were appointed before the commencement of this Act are deemed to have been appointed under section 37, 38, 39, or 40 (as applicable) and, subject to this Act, continue in office on the terms and conditions of their original appointment.


*Consequential amendments*

**95 References in other enactments**

- (1) A reference in another Act to the Agricultural Quarantine Act 1984, or any regulations made under it, is, to the extent possible, to be read as a reference to this Act or to regulations or specifications made under it.
  - (2) A reference in another Act to a quarantine officer is, to the extent possible, to be read as a reference to a biosecurity officer exercising equivalent functions under this Act.
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I, Fogianalu Pihigia, Speaker of the Niue Assembly, certify that the requirements of Article 34 of the Niue Constitution have been complied with.

**SIGNED AND SEALED** at the Assembly Chambers this 23<sup>rd</sup> day of December 2016.

  
\_\_\_\_\_  
Speaker of the Niue Assembly



**COUNTERSIGNED** in the presence of the Speaker

  
\_\_\_\_\_  
Clerk of the Niue Assembly

\_\_\_\_\_  
This Act is administered by the Department of Agriculture, Forestry and Fisheries.

This Act was passed by the Niue Assembly on the 14<sup>th</sup> day of December 2016.  
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