
Land Act 1969

NIUE LAWS LEGISLATION AS AT DECEMBER 2006

LAND ACT 1969

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To provide for the control and tenure of land, the survey of land, the registration of title to land and other like purposes

1 Short title

This is the Land Act 1969.

2 Interpretation

In this Act –

"approved form" means a form approved by Cabinet;

"boundary mark" means any concrete peg or post, iron pipe, or spike in rock or other survey mark or other fixture used to denote a boundary;

"Court" means the Land Court;

"dealing" means every transfer, transmission, charge, lease, encumbrance or other alienation or transaction affecting any land or interest in land under this Act;

"endorsement", in addition to its ordinary meaning includes anything written upon or at the foot of any document for giving effect to any of the purposes of this Act;

"instrument" means any printed or written deed, map, plan or other dealing affecting any land or interest in any land;

"Land Court" means the land division of the High Court;

"lease", in relation to any Niuean land, includes, in addition to its ordinary meaning, any

licence, grant, or other alienation conferring upon any person a right at law or in equity to the use or occupation of the land for any purpose, or a right to enter on it for the purpose of removing from it timber or any other valuable thing attached to or forming part of it, whether that alienation confers a right of exclusive possession or not;

"Mangafaoa" in relation to any Niuean land means the family or group of persons descended from a common ancestor, including any person who has been legally adopted into the family, who at any given time are recognised as entitled by Niuean custom to any share or interest in the land, and excludes a former member of the family legally adopted into some other family. Where Niuean land is owned by a single person exclusively, that person is the Mangafaoa of the land;

"owner" in relation to Niuean land other than land held under lease or licence may be construed as reference to the Mangafaoa or a member of the Mangafaoa;

"register" means to enter on the Land Register under this Act;

"Registrar" means the Registrar of the Court and includes a Deputy Registrar;

"surveyor" means any surveyor or other person for the time being authorised by Cabinet to act as such for the purposes of this Act.

PART 1 REGISTRATION

3 The Land Register

(1) There shall be kept in the Land Registry a book of record called "the Land Register and the Registrar shall, under this Part, enter in respect of each separate section of land in Niue (whether Crown land or Niuean land) the name, area and a plan certified by the Register under section 47 (3).

(2) The Registrar shall enter in that part of the Land Register relating to any section of land, the substance of every Court order or other instrument relating to the land of which registration is by this or any other enactment required or permitted, and which is duly presented to the Registrar for registration.

(3) [Repealed by 2004/269]

4 Compulsory registration of instruments

(1) Every instrument affecting or relating to the title to any land shall be registered: Provided that it shall not be necessary to register –

(a) Any lease or occupation order for a period not exceeding 2 years;

(b) Any transfer, security charge or other instrument disposing of any lease, being a lease for a period not exceeding 2 years;

(c) Any will;

(d) Any appointment of a special representative.

(2) Notwithstanding subsection (1) no instrument of alienation affecting Niuean land shall be registered until the alienation referred to in such instrument has been confirmed by the Court.

5 Effect of registration

(1) No instrument, dealing or other matter which is by this Act or any other enactment required to be registered or entered in the Land Register shall until it has been registered or entered be effectual to create or extinguish or transfer or charge any interest in land.

(2) The Land Register shall in no way constitute conclusive evidence of ownership or of title.

6 Language of instruments

Every instrument affecting Niue land shall be in the English language and shall be accompanied by a translation into the Niuean language to the satisfaction of the Registrar.

7 Instruments to be signed and attested

(1) (a) The execution by every person of an instrument required to be registered under this Act shall be attested by a person authorised to take statutory declarations under section 720 of the Niue Act 1966.

(b) No person shall attest the signature of any part to any instrument in or by virtue of which such person acquires or disposes of any interest.

(2) The attesting witness shall add to his signature his place of abode and calling, office, or description and shall certify in such attestation that the instrument has been explained by him to the party whose signature is attested and that such party appeared to understand its contents.

(3) (a) The date of the execution shall be stated in the instrument and no person shall sign the instrument as an attesting witness unless the date of execution has been so stated in the instrument.

(b) Where the instrument is executed on different dates by several parties, the date of execution by each party shall be stated in the instrument.

8 Registrar may be required to give his reasons in writing

Should the Registrar refuse to register any instrument, then the person seeking the registration of it may, in writing, require the Registrar to give, in writing his reasons for refusing to

register such instrument and the Registrar shall give his reasons accordingly.

9 Court may make order to restore effect of lost instruments

(1) On proof to the satisfaction of the Court that any instrument has been lost or destroyed before the same has been registered under this Act, it may make an order under this section if it is satisfied –

- (a) That the said instrument was duly executed by or on behalf of the parties to it; and
- (b) In the case of an instrument requiring confirmation, that it was duly confirmed, or if it was not so confirmed, that the Court had made a pronouncement in favour of confirmation; and
- (c) That the instrument was not wilfully destroyed by or with the connivance of the applicant for an order under this section.

(2) By an order under this section the Court may declare the nature and effect of the instrument to which the order relates, and the instrument shall be deemed to have been of the nature and to have had effect under its tenor, as declared in this order.

(3) Instead of or in addition to making an order declaring the nature and effect of the instrument, the Court may, on application under this section make an order vesting any land or interest in land to which the instrument related in any person or persons claiming under the instrument or in any other person or persons claiming under or through the first-mentioned person or persons.

(4) On any application under this section the Court shall be guided in all matters by what it deems to be the real justice of the case.

PART 2 INVESTIGATION OF TITLE

10 Determination of title

(1) The Court shall determine every title to and every interest in Niuean land according to the customs and usages of the Niuean people, as far as the same can be ascertained.

(2) The Court may refuse to proceed with any application for investigation of title for the determination of the Mangafaoa or relative interests in that land, until it has before it a plan of the survey of the land affected by it.

(3) The Court may at any stage of the proceedings require that all claims relating to such land, whether by the applicant or by any other person, shall be made in writing to the Court within a time to be fixed by the Court, after which time no further claims for inclusion will be admitted, except by the leave of the Court and upon such terms as the Court determines.

11 Court may require written statement

The Court may require any person having an interest in any application under this Part to lodge with the Court a statement in writing setting out any one or more particulars of the following matters –

- (a) The boundaries of the portion of the land which he claims;
- (b) The grounds of the claim;
- (c) The genealogical tables showing descent from the ancestor or ancestors through whom title is claimed down to and including all persons admitted by the claimant as entitled with him under his claim;
- (d) The names and the approximate location of cultivations, villages, burial places, with the names of relatives of the claimant and persons included in his claim who have been buried there, and any other places or marks of historical interest;
- (e) Any other proof or signs of occupation of or connection with the land by the claimant and other persons included in his claim.

Ownership

12 Ownership determined by ascertaining and declaring Mangafaoa

The Court shall determine the ownership of any land by ascertaining and declaring the Mangafaoa of that land by reference to the common ancestor of it or by any other means which clearly identifies the Mangafaoa.

13 Relative interests

(1) (a) At any time after the ownership of land has been determined the Court upon application, may ascertain or declare the several members of the Mangafaoa and their relative interests in the land.

(b) The jurisdiction of the Court under this section shall not be exercised except for the purposes of allocating moneys derived from land or any other purposes relating to this Act.

(2) Relative interests shall, in all cases where it can be conveniently done, be expressed in shares or decimal points of a share.

Leveki Mangafaoa

14 Appointment of Leveki Mangafaoa

(1) When the ownership of any land has been determined any member of that Mangafaoa who was reached the age of 21 years may apply in writing to the Court for an order appointing a Leveki Mangafaoa of that land.

(2) If the application is signed by members who in the Court's opinion constitute a majority of the members of the Mangafaoa whether resident in Niue or elsewhere the Court shall issue an order appointing the person named in the application as the Leveki Mangafaoa of that land.

(3) If no such application is received within a reasonable time, or applications are each signed by members who, though having attained the age of 21 years, constitute less than a majority of the Mangafaoa who have attained such age the Court may appoint a suitable person to be Leveki Mangafaoa of that land.

(4) The appointment of a Leveki Mangafaoa shall not be questioned on the grounds that any member of the Mangafaoa was absent from Niue, but the Court may consider any representation made in writing by any member so absent.

(5) Any person who is domiciled in Niue, and whom the Court is satisfied is reasonably familiar with the genealogy of the family and the history and locations of Mangafaoa land, may be appointed as a Leveki Mangafaoa of any land, but if he is not a member of the Mangafaoa he shall not by virtue of such appointment acquire any beneficial rights in the land.

(6) In appointing any Leveki Mangafaoa the Court may expressly limit his powers in such manner as it sees fit.

15 Powers and functions of Leveki Mangafaoa

(1) The Leveki Mangafaoa of any land, subject to this section and to the terms of his appointment and to any order or direction of the Court, shall have power to control the occupation and use of the land under Niuean custom and shall have power to alienate the land in accordance with the subject to Part 3.

(2) In the exercise of his powers under this section the Leveki Mangafaoa shall under Niuean custom consult with the members of the Mangafaoa whether resident in Niue or elsewhere and shall in particular meet the requirements as to consultation laid down by section 17(3) in relation to the sale and lease of land and the giving of security charges over land.

16 Removal and replacement of Leveki Mangafaoa

(1) The Court may remove from office any Leveki Mangafaoa if in its opinion he cannot by reason of mental or physical disability or for any reason carry out his duties satisfactorily or if he is shown to the satisfaction of the Court to have exercised his powers otherwise than in accordance with Niuean custom or in accordance with equity and good conscience or if he tenders his resignation in writing to the Registrar.

(2) Upon the death or removal from office of any Leveki Mangafaoa a new Leveki Mangafaoa may be appointed in the manner provided by section 14 and all the provisions of that section so far as they are applicable shall apply accordingly.

PART 3
ALIENATION OF NIUEAN LAND

General Provisions

17 Alienation of Niuean land

(1) No Niuean land or any interest of the Mangafaoa in it may be alienated except in accordance with and subject to this section.

(2) (a) For the purposes of this section and of this Part a contract of sale of timber, minerals, crops, or other valuable things attached to or forming part of any Niuean land, or being the produce of it, shall be deemed to be an alienation of that land, unless the thing so sold or agreed to be sold has been severed from the land before the making of the contract.

(b) The term "crops" as used in this subsection shall not extend to any crop which attains maturity and may be harvested within the period of 2 years from sowing or planting.

(3) Subject to section 22 as to the confirmation by the Court, Niuean land may be alienated by the Leveki Mangafaoa in any of the following ways –

(a) He may transfer the land to the Crown under and subject to section 43;

(b) He may lease the land under and subject to sections 26 and 29;

(c) He may give a security charge over the land under and subject to sections 26 and 32.

(4) Nothing in this section shall be construed to affect the operation of any of the following provisions –

(a) Section 30 relating to the execution by the Registrar, in certain cases, of renewals of leases;

(b) Section 31 relating to the making by the Court of occupation orders;

(c) Section 33 relating to the making of an order for the appointment of a receiver;

(d) Sections 34 to 39 relating to the making of partition orders;

(e) Sections 40 to 42 relating to the making by the Court of exchange orders;

(f) Sections 44 to 46 relating to the making by the Court of an order setting apart any Niuean land as a reservation for communal purposes;

(g) Section 51 relating to the taking of land by the Crown for public purposes;

(h) Section 14 and 15 of the Electric Power Supply Act 1960 relating to the taking of land by the Crown for public purposes;

(i) Sections 47 and 89 of the Niue Amendment Act (No 2) 1968 relating to the making by the Court of orders creating easements or rights of way over Niuean land;

(j) Part 4 of the Niue Amendment Act (No 2) 1968 relating to the making by the Court of orders vesting Niuean land in bodies corporate for church purposes;

(k) Part 7 of the Niue Amendment Act (No 2) 1968 relating to the declaration of any Niuean land as a road;

(l) Part 16 of the Niue Act 1966 relating to the declaration by the Court of Niuean land to be subject to such land development provisions and the constitution of charges in respect of it;

(m) The [Mining Act 1977](#) in so far as it relates to the issue, grant, suspension, revocation or surrender of any licence affecting or relating to Niuean land.

18 Interest in Niuean land not to be taken in execution

(1) No interest of any person in Niuean land shall be capable of being taken in execution or otherwise rendered available by any form of judicial process for the payment of his debts or liabilities, whether in favour of the Crown or in favour of any other person.

(2) Nothing in this section shall affect the operation of any security charge or other charge to which the land is or may be subject.

19 Restrictions on disposition of proceeds of Niuean land

(1) An assignment of any rent, purchase money, cropping proceeds or other money which is or may become receivable in respect of Niuean land or any interest of the Mangafaoa in it may be given in the approved form by the Leveki Mangafaoa, or (in respect of his personal interest) by a member of the Mangafaoa or by any lessee or licensee, to any of the following –

(a) The Crown;

(b) [Repealed 5/94/1984]

(c) Any lending institution approved by Cabinet.

(2) Except as provided in by subsection (1) no assignment, charge or other disposition shall be given over the proceeds of any rent, purchase money, or other money which is or may become receivable in respect of Niuean land or any interest in it.

20 Purchase money, rents or other proceeds of alienation

(1) All proceeds from any alienation, whether by way of purchase money, rent, or otherwise

shall be paid to the Registrar for distribution to the Leveki Mangafaoa or the persons entitled to it.

(2) The receipt of the Registrar shall be a sufficient discharge for any money so paid in the same manner as if the money had been paid to the persons entitled to it.

(3) All money so paid into the Court shall after any necessary deduction be paid out of Court to the Leveki Mangafaoa or the persons entitled to it as determined by any order of the Court.

21 Registrar may charge commission

(1) The Registrar shall be entitled to charge a commission at the rate of 5 per cent on the money paid into the Court under section 20.

(2) The Court, having regard to the amount of money paid, to the number of persons entitled to it, and any other relevant matters, may direct that a lower rate of commission be charged in any specified case.

Confirmation

22 Alienation to be confirmed

(1) No alienation of Niuean land by the Leveki Mangafaoa shall have any force or effect unless and until it has been confirmed by the Court.

(2) An appeal shall lie to the Court of Appeal from any decision of the Court to grant or refuse confirmation of an alienation or from any variation by the Court of the terms of any alienation.

(3) Nothing in this section shall apply to any arrangement or decision of the Leveki Mangafaoa by which any person is given the right to use any land for a period not exceeding 2 years.

23 Application for confirmation

No confirmation of an alienation of Niuean land by the Leveki Mangafaoa shall be granted, unless an application for it is made by or on behalf of a party to the instrument of alienation within 6 months after the date of the execution of the instrument by the Leveki Mangafaoa.

24 Orders of a confirmation

Confirmation shall be granted by an order of the Court and a certificate of such confirmation shall be endorsed or otherwise written on the instrument of alienation signed by a Judge of the Court, or by the Registrar acting under the authority of a Judge and sealed with the seal of the Court.

25 Effect of confirmation

Subject to Part 1 as to registration on confirmation being granted, the instrument of alienation

shall (if otherwise valid) take effect under its tenor as from and including the date at which it would have taken effect if no such confirmation had been required.

26 Conditions of confirmation

(1) Subject to this section, no alienation shall be confirmed unless the Court is satisfied as to the following matters –

(a) That the instrument of alienation has been executed in the manner required by this Act;

(b) That the alienation is not contrary to equity or good faith, or to the interests of the persons alienating or to the public interest;

(c) That having regard to the relationship (if any) of the parties and to any other special circumstances of the case the rental or consideration (if any) for the alienation is adequate;

(d) That any lease which exceeds 5 years duration and any security charge has been agreed to by the majority of the members of the Mangafaoa whether resident in Niue or elsewhere;

(e) That the alienation is not otherwise prohibited by law.

(2) The Court may confirm an alienation notwithstanding any informality or irregularity in the mode of execution of the instrument of alienation if, having regard to the interest of all the parties, it is satisfied that the informality or irregularity is immaterial.

(3) No confirmation of an alienation shall be questioned or invalidated on the ground of any error or irregularity in the procedure by which it was applied for or granted.

27 Confirmation of instruments in pursuance of precedent contract

When any valid contract to grant or renew a lease, or any other valid contract of alienation, has been duly confirmed, the confirmation of any lease or other instrument of alienation under that contract shall, if the instrument is duly executed under this Act, be granted by the Court as a matter of right.

28 Alteration of instruments on confirmation

(1) On an application for confirmation, the Court may, with the consent of all parties to the instrument of alienation, make, under the seal of the Court, such alterations as may be thought necessary in order to justify confirmation, and may thereupon confirm the alienation.

(2) The instrument of alienation as so altered shall, if otherwise valid, take effect as if the alterations had been made before its execution.

Leases

29 Leases of Niuean land not to exceed 60 years

(1) Except as provided in this section no lease of Niuean land shall be for a longer period than

60 years (including any term or terms of renewal to which the lessee may be entitled).

(2) Every such lease shall be granted so as to take effect in possession within one year from and including the date of the first execution of it by any party to it.

(3) With the prior written approval of Cabinet, leases may be granted for afforestation purposes or for the purpose of erecting commercial or industrial buildings providing for a renewal period taking the total term beyond 60 years if the right to such period or periods is expressed to be conditional upon the performance during the earlier term or terms of certain specified covenants as to the planting and care of trees, or to the erection in permanent materials of substantial improvements.

(4) A lease may be granted for public purposes or church purposes for a period not exceeding 60 years with perpetual rights of renewal or with other rights of renewal taking the total period beyond 60 years. Every such lease shall be expressed to be for public purposes or church purposes and shall provide for the termination of the lease if the land ceases to be used exclusively for those purposes.

(5) No lease of Niuean land shall make provision for the payment to the lessee of compensation for improvements effected by him on or to the land.

(6) Every lease made under this section shall be in an approved form.

(7) Nothing in this section shall be construed to apply to any lease of Niuean land to the Crown.

30 Registrar may execute renewals

(1) The lessee under any lease of Niuean land (whether granted before or after the commencement of this Act) who claims that he is entitled to a renewal of his lease and that it is difficult or impossible to obtain execution by the Leveki Mangafaoa of an instrument of renewal may apply to the Court for an order directing the Registrar to execute, as an agent of the Mangafaoa, an instrument of renewal in accordance with the terms of the lease, and the Court may make such order accordingly.

(2) On the making of an order under this section, the Registrar shall have full authority in accordance with the terms of the order to execute the renewal of the lease as if he were the duly appointed agent of the Mangafaoa.

Occupation Orders

31 Court may make occupation orders

(1) The Court may under this section make in respect of any Niuean land to a member of the Mangafaoa or the spouse or surviving spouse of a Member or a Member and spouse jointly an occupation order on such terms and conditions not inconsistent with this section as may be specified in the order.

(2) Application for an occupation order shall be made by the Leveki Mangafaoa or by the

member of the Mangafaoa desiring the order, or by both, and shall be accompanied by a description and plan of the area to be occupied.

(3) Every occupation order shall upon registration take effect under its tenor.

(4) Unless the area concerned has already been defined by survey and used or occupied as a separate section an occupation order shall not be made over an area of less than 20 perches in the case of a village site and less than 2 acres for a plantation area.

(5) An occupation order may be made for the personal use of the person for whose favour it is made for his lifetime or for some specified term of years or may be granted upon terms that it passes to that person's successors under Niuean custom.

(6) Every occupation order of village site land shall, if possible, be made in favour of a husband and wife jointly.

(7) No rental or premium shall be payable in respect of an occupation order.

(8) Such occupation order may provide for the termination of it and the reversion to the Mangafaoa of the land affected if the person in whose favour it is made or the person otherwise entitled to the benefit of it;

(a) Ceases to make full use of the land for any period of not less than 2 years which may be specified in such occupation order;

(b) Is absent from Niue for any period of not less than 2 years which may be specified in such occupation order otherwise than with the prior written approval of Cabinet for the purpose of any training, education or instruction;

(c) Fails to perform any of the special covenants which may be specified in the order;

(d) Surrenders rights conferred by the order by executing an instrument in the approved form.

(9) (a) The Leveki Mangafaoa or the Registrar may apply to the Court for a certificate that the order has for any reason specified in subsection

(8) terminated and the Court may, if it is satisfied that the order was terminated under subsection (8), give a certificate accordingly.

(b) Any such certificate may be registered.

Security Charges

32 Security charge over Niuean land

(1) Security over Niuean land or any interest of the Mangafaoa in any land and security over

the interest of any nature of any person in Niuean land may be given by means of a security charge created under this section or any other charge created by or under any enactment.

(2) No security over Niuean land or any interests in it as aforesaid shall be given to any person or body except to –

(a) The Crown;

(b) [Repealed 5/94/1984]

(c) Any lending institution approved for the purposes of this section by Cabinet. :

(3) Security over Niuean land or any interest in it of the Mangafaoa, or over the interest of any nature of any person in Niuean land shall be created by an instrument in an approved form executed by the Leveki Mangafaoa or by the other person giving the security and registered under Part 1:

Provided however that any security charge executed by a Leveki Mangafaoa shall be subject to confirmation by the Court as provided by sections 22 to 28.

(4) Except as provided in this section no security shall be given or constituted over Niuean land or any interest in it.

(5) No charge or security charge over Niuean land or any interest shall be enforceable by sale of the land or interest charged.

33 Appointment of Receiver

The Court, on application and proof of default, may enforce a charge or security charge as aforesaid by appointing in respect of the land or interest charged a receiver and section 56 of the Niue Amendment Act (No 2) 1968 shall apply as if the receiver had been appointed under that section.

Partitions

34 Jurisdiction to partition Niuean land

(1) The Court shall have exclusive jurisdiction to partition Niuean land.

(2) The jurisdiction to partition shall be discretionary and the Court may refuse to exercise it in any case in which it is of the opinion that partition would be inexpedient in the public interest or in the interests of the Mangafaoa or other persons interested in the land.

35 Court may apportion rights and obligations

(1) When a partition order is made, the Court may, in that order or in any subsequent order made on the application of any person interested, or of the Registrar, or of its own motion, apportion or adjust as between the several pieces into which the land has been partitioned all rights, obligations, or liabilities arising from any lease, occupation order, or charge to which the land is subject at the date of the partition of it and every such order of apportionment or

adjustment shall have effect according to its tenor in the same manner in all respects as if all necessary transfers, releases, covenants, and other dispositions or agreements had been duly made in that behalf by all persons concerned.

(2) In the exercise of its powers under this section the Court shall not make any apportionment or adjustment without the consent of each and every –

(a) Lessee of the land; and

(b) Person having an interest in the land, by virtue of an order made under section 31, where the order has been made upon the terms mentioned in that section; and

(c) Person or body in whose favour a security charge created under section 32, subsists over the land or over any interest in the land.

(3) Subject to subsection (2) the Court may exercise the powers of apportionment or adjustment, conferred upon it by subsection (1).

36 Discretionary powers of Court

In partitioning any land the Court may exercise the following discretionary powers –

(a) It may where the Leveki Mangafaoa wishes to allocate a portion of the land to a member of the Mangafaoa or the Mangafaoa has become unduly large or in cases of irreconcilable family disputes, partition the land among groups of members of the Mangafaoa on what appears to the Court to be the general desire of the persons concerned to be just and equitable;

(b) It shall avoid, as far as practicable, the subdivision of any land into areas which because of their smallness or their configuration or for any other reason, are unsuitable for separate ownership or occupation;

(c) It may appoint new Leveki Mangafaoa in respect of the pieces of land affected by any partition orders.

37 Combination of several areas of land

When the Mangafaoa of one area of land is also the Mangafaoa of any other areas of land, the Court may, for the purposes of partition between groups of members of the Mangafaoa, treat those several areas as a single area owned by them and make an order or orders of partition accordingly.

38 Saving of interests charged on partitioned land

If, on the partition of any land, the share or interest of any person is subject to any right, charge, or interest vested in any other person, that right, charge, or interest shall, subject to any apportionment or adjustment made under section 35 attach to and affect the land or interest that is allocated by the partition order to the owners of the first-mentioned share or

interest.

39 Entries in Land Register

When any land is partitioned by the Court, the Registrar shall give effect to the partition by entries in the land Register, recording particulars of any new section thereby created and to the extent necessary for cancelling or amending any former entry.

Exchanges

40 Court may make exchange orders

- (1) The Court may make an order of exchange of Niuean land.
- (2) Any interest in Niuean land may be exchanged for an interest in any other Niuean land or in Crown land.

41 Conditions of exchange

The Court shall not make an order of exchange unless satisfied –

- (a) That the exchange is not detrimental to the interests of the Mangafaoa affected by it;
- (b) (i) That the interests to be so exchanged are in the opinion of the Court approximately equal in value; or
(ii) That where in the opinion of the Court the interests so exchanged are so unequal in value as to require this course, a sufficient sum of money by way of equality of exchange has been actually paid, or sufficient security for the payment of it has been given;
- (c) That the majority (or where there are less than 5 members, the whole of the members of the Mangafaoa) of the members of the Mangafaoa whether resident in Niue or elsewhere consent to the exchange;
- (d) That the Minister consents to the exchange of any Crown land.

42 Effect of order of exchange

- (1) An order of exchange shall operate under its tenor to transfer and vest the respective interests expressed to be exchanged in the same manner as if all necessary instruments of assurance had been lawfully executed by and between all persons interested, and as if they had all been fully competent in that behalf.
- (2) When any Crown land becomes vested in a Mangafaoa by an order of exchange, the land shall become Niuean land.

Sales

43 Sale of Niuean land to the Crown

- (1) Niuean land may be alienated to the Crown by way of transfer by an instrument of transfer executed by the Leveki Mangafaoa and confirmed by the Court.
- (2) The instrument of transfer shall not be confirmed by the Court until the members of the Mangafaoa and their shares have been ascertained by the Court.
- (3) On application of the Crown or the Leveki Mangafaoa the Court shall be satisfied that the majority (or where there are less than 5 members, the whole of the members of the Mangafaoa) of the members of the Mangafaoa whether resident in Niue or elsewhere consent to the terms and conditions of the sale.
- (4) If some members of the Mangafaoa of the land object to the sale of land to the Crown, the Court may make a partition order setting apart the shares of the members objecting if it is satisfied that the land can be economically subdivided.
- (5) Any members of the Mangafaoa of the land affected by the sale who are absent from Niue may forward their consents or objections in writing to the Registrar or appoint in writing some person to appear and speak on their behalf in the Court.
- (6) In the registration of an instrument of alienation of Niuean land to the Crown duly confirmed by the Court, the land shall become Crown land.

Reservations

44 Reservations for communal purposes

- (1) The Court may on the application of any Leveki Mangafaoa and with the consent of the majority of the members, who in the Court's opinion constitute a majority of the members of the Mangafaoa who are ordinarily resident in Niue, make an order setting apart any Niuean land, which is not subject to any charge, as a reservation for the common use of the residents of a village, or of a Church or other group or institution for such purpose as a burial ground, fishing ground, village site, landing place, place of historic interest, source of water supply, Church site, building site, recreation ground, bathing place or any other specified purpose whatsoever.
- (2) Before making such an order the Court shall be satisfied that the members of the Mangafaoa who are not ordinarily resident in Niue will not as a result of the proposed order suffer undue hardship.

45 Revocation or variation of reservation

- (1) A reservation order may be revoked or varied by the Court whether as to boundaries of the land included in the reservation or as to the purposes of it.
- (2) Where by reason of the revocation or variation of any reservation order under this section any land ceases to be a reservation or part of a reservation the land shall vest, as of its former

estate in the Mangafaoa and in which it was vested immediately before it was constituted or as included in the reservation, or in their successors. In any such case the Court may make an order vesting the land in the Mangafaoa found by it to be entitled to the land, and if necessary ascertaining the members of the Mangafaoa and their relative interests.

46 Management and control of reservations

The Court may by order, vest any reservation in any body corporate or in one or more persons in trust to hold and administer it for the benefit of the persons or class of persons for whose benefit the reservation is constituted, and may appoint a new trustee or new trustees or additional trustees.

PART 4 SURVEYS

47 Control and supervision of surveys

(1) The control and supervision of all surveys of land in Niue, and the preparation of plans in relation thereto shall be the responsibility of the Registrar.

(2) No survey of land shall be conducted except under an order of the Court or by the Registrar or with his prior written authority and all such survey shall be carried out by a surveyor.

(3) Any plan or diagram required to be endorsed on or appended to any instrument or otherwise included in the Land Register shall be prepared by or with the authority of the Registrar and shall be certified by him as representing the true boundaries of the land and such other details as may be relevant as agreed to by the interested parties or as determined by the Court.

(4) No charge shall be made for any survey for the purpose of the initial registration of any section of land or for the preparation of plans in relation thereto.

(5) Fees may be charged for any survey or for the preparation of any plan or diagram otherwise than provided in subsection (4) at such rate as may be fixed by the Registrar.

48 Authority for survey

(1) The Registrar or any person authorised in writing by the Court or by the Registrar may during the hours of daylight enter upon any land for the purpose of carrying out a survey of the land or any part of it and may do all things reasonably necessary for the purposes of such survey.

(2) The Leveki Mangafaoa or the occupier of any land claiming to have suffered damage under subsection (1) by the entry on it for the purposes of survey may lodge a claim for compensation for such damage with the Registrar.

(3) The Registrar may make good any damage caused as aforesaid or may authorise payment in settlement of the claim.

(4) Any applicant not satisfied with the decision of the Registrar on his claim may apply to the Court to determine the amount (if any) of compensation and the Court shall issue an order accordingly.

49 Authority to enter on land

Before entry is made on any land under section 48 for the purposes of survey the Registrar shall give or cause to be given to the Leveki Mangafaoa or to any occupier of the land such notice as is reasonable in the circumstances.

50 Obstruction

(1) Any person wilfully preventing or obstructing any survey, authorised under this Act or any other enactment, or destroying, effacing or removing any survey pegs or boundary mark placed under the authority of this Act shall be liable on conviction to a fine not exceeding 0.5 penalty units and shall also be liable to make good any loss or damage thereby occasioned.

(2) Any person having knowledge of the removal, destruction or possibility of the removal or destruction of any boundary mark or survey monument shall inform the Registrar who shall take such steps as are necessary and expedient to protect, repair or replace the same.

PART 5 MISCELLANEOUS PROVISIONS

51 Procedure for taking land for public purposes

(1) Cabinet may direct the Registrar to give notice under this section of a proposal to take land for public purposes.

(2) (a) The Registrar shall prepare a plan of the area proposed to be taken on which shall be set forth the names of the Mangafaoa involved and as far as possible the names and addresses of the Leveki Mangafaoa and of any lessee or occupier of the particular areas.

(b) The plan shall be held in the office of the Court and shall be available for public inspection.

(3) (a) The Registrar shall give notice in writing of the proposed taking of land to the Leveki Mangafaoa and to any lessee or other person possessing an interest likely to suffer injury by the taking including any person or body in whose favour a security charge over the land exists.

(b) Each such notice shall advise that the plan may be inspected at the office of the Land Court and that any person may give to the Registrar within 30 days of the date of the notice written notification of his objection to the proposal and his reasons for it.

(4) The Registrar shall, where an objection has been lodged fix a time and place at which the

objector may appear before Cabinet and support the objection by evidence and argument and shall give to the objector notice in writing of such time and place.

(5) If within the said period of 30 days no written notice of objection is received by the Registrar, or if after due consideration of the objection or objections Cabinet is of the opinion that effect should be given to the proposal to take the land for the public purpose, and that no private injury will be done by it for which due compensation is not provided by any enactment Cabinet may recommend to the Minister that the land be taken for the public purpose under section 11 of the Niue Amendment Act (No 2) 1968.

(6) In any case where the ownership of the land proposed to be taken has not been determined or a Leveki Mangafaoa has not been appointed or it is considered desirable to determine the members of the Mangafaoa and their relative interests, the Registrar may apply to the Court to exercise its jurisdiction accordingly.

(7) In any case where under any enactment or otherwise authority exists for the Crown through its servants, agents or workmen to enter on any Niuean land to carry out works for any public purpose, and no express provision is made as to the giving of notice, Cabinet or some person authorised by it shall before any entry is made on the land give to the Leveki Mangafaoa or to any occupier of the land, such notice of his intention to enter as is reasonable in the circumstances.

52 Registrar's powers

(1) The Registrar may in the exercise of his powers under this Act state any case or reserve any question for consideration by the Court, or apply for directions to the Court, and the Court shall have the power to hear and determine the case or question, or give directions accordingly.

(2) Any person aggrieved by a decision of the Registrar given in pursuance of his powers under this Act may appeal to the Court, which may confirm, quash or vary the decision but no appeal shall lie under this subsection in any case where the decision of the Registrar has been given in conformity with the determination by the Court of a case or question stated or reserved by him in connection with the same matter for its consideration under subsection (1).

(3) The Registrar may, for the purposes of this Act –

(a) In writing, require any person to produce any or give any information relating to land or to any interest in land;

(b) In connection with any dealing with any land or interest in it, or with any disposition of it, in writing require any person having the custody or control of any duplicate instrument concerned to bring it into the Land Registry to be endorsed, cancelled, amended, inspected or otherwise dealt with as the case requires;

(c) Make or delete all such entries upon or from the land register, instrument, duplicate, map, plan or other document as are necessary by reason of the operation of this Act or any other enactment.

53 Officers not personally liable

Neither the Registrar nor any members of his staff shall be personally liable to any action or proceeding for or in respect of any act or matter bona fide done, or omitted to be done by him or them in the exercise or supposed exercise of the powers conferred upon them by this Act or any other enactment.

54 [Spent]