
Environment Act 2003

NIUE LAWS LEGISLATION AS AT DECEMBER 2006

ENVIRONMENT ACT 2003

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1. Short Title

PART 1 PRELIMINARY

2 Interpretation

3 Objectives

4 Matters to be taken into account

PART 2 ADMINISTRATION

The Environment Department

5 Establishment of the Department

6 Functions of the Department

7 Staff of the Department

8 Annual Report of the Department

Director for Environment

9 Functions of the Director

10 Power of Director to delegate

Environment Officers

11 Environment Officers

12 Identification of Environment Officers

13 Power of Environment Officer to inspect

14 Power of Environment Officer to seize

Environment Council

15 Establishment of the Environment Council

16 Functions of the Council

**PART 3
ENFORCEMENT**

17. [Repealed]

18. Proceedings for restraint of breaches of Act

19 Orders of the High Court

20 Civil claims for environmental damage

21 Common law causes of action

Environmental Offences

22 Limitation period for offences

23 Offences

24 Liability of company

25 Company liability in case of bankruptcy

Additional Penalties for Environmental Offences

26 Additional penalties

27 Community service orders

**PART 4
MISCELLANEOUS**

28 Application

- 29 Effect of this Act on other Acts
- 30 Non-exemption from environmental management responsibilities
- 31 Environment Officers not personally liable
- 32 Regulations

SCHEDULE

To allow for the development of environmental policy and law, to establish an Environment Department and to provide enforcement powers to environment officers

1 Short title

This is the Environment Act 2003.

PART 1 PRELIMINARY

2 Interpretation

In this Act –

"Act" includes its regulations;

"approval" includes any permit, consent or licence issued under this Act; **"Council"** means the Environment Council established by section 15; **"Department"** means the Environment Department established under Part 2;

"development" means any project, undertaking or other activity proposed by any public authority or any other body or person which may significantly affect human health or society, the environment, or use of natural resources;

"Director" means the Director for Environment appointed under this Act;

"environment" includes all natural and social systems and their constituent parts, including people, communities, and economic, aesthetic, cultural and social factors; and all aspects of the surroundings of humans whether affecting them as individuals or in their social groupings;

"judicial officer" means the Chief Justice, a Judge, a Commissioner, or 2 Justices of the Peace sitting together;

"land" includes all things growing on land; buildings and other things permanently fixed to land; land covered by water, such as reefs and the seabed of the territorial sea;

"Minister" means the Minister responsible for environmental matters; **"NEMS"** means the Niue Environment Management Strategy;

"occupier" in relation to any land means any lessee, licensee, or other occupant of the land and includes the owner or the agent, or representative of the owner where there is no apparent

occupier;

"public authority" means any Ministry, Department, Division, Board, agency, authority, statutory body, statutory corporation, or administrative office and includes a member of staff or other person who exercises functions on behalf of a public authority;

"rules" includes standards, guidelines, measures, codes of practice, operational procedures and technical specifications;

"sustainable development" means development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs and involves using resources to improve the quality of human life while living within the carrying capacity of supporting ecological systems.

3 Objectives

The objectives of this Act are to –

- (a) Provide a mechanism for the development of environmental policy and law;
- (b) Establish an Environment Department; and
- (c) Provide enforcement powers for environment officers.

4 Matters to be taken into account

All persons exercising functions and powers under this Act shall take into account the following matters –

- (a) The maintenance and enhancement of the quality of the environment;
- (b) The efficient use and development of natural and physical resources;
- (c) The concept of sustainable development;
- (d) The protection of the water lens from contamination;
- (e) The protection of indigenous flora and indigenous fauna and their habitats;
- (f) The protection of the coastal zone from inappropriate use and development;
- (g) The protection of historic areas from inappropriate use and development;
- (h) The relationship of Niueans and their culture and traditions to their lands and historic areas;
- (i) The conservation and sustainable use of biological resources; and

(j) Compliance with multilateral environment agreements to which Niue is a party.

PART 2 ADMINISTRATION

The Environment Department

5 Establishment of the Department

The Environment Department is established by this Act.

6 Functions of the Department

(1) The Department, in addition to any function specified elsewhere in this Act, has the following functions –

- (a) To administer and implement this Act;
- (b) To formulate environmental and resource management objectives;
- (c) To facilitate the formulation of environmental policies and legislation;
- (d) To design and implement programmes with line agencies for –
 - (i) environmental planning and natural resources management;
 - (ii) environmental impact assessment;
 - (iii) waste management and pollution control;
 - (iv) nature conservation;
 - (v) protection of historic areas; and
 - (vi) such other sectors as may be designated by the Council.
- (e) To promote environmental awareness, public information campaigns, and environmental education;
- (f) To review environmental legislation, including this Act, and where necessary to propose amendments and regulations;
- (g) To monitor, and enforce environmental laws and policies;
- (h) To act as a secretariat to the Council;
- (i) To oversee the formulation of collaborative policies and programmes with other public

authorities and with non-governmental organisations on environmental matters and to advise on, promote, and assist in implementing these policies and programmes;

(j) To promote the study of the environment through research and surveys, listings, classifications and compilation of databases;

(k) To undertake studies and reports;

(l) To promote community involvement in environmental decision-making;

(m) To encourage and foster knowledge, innovations and practices embodying traditional lifestyles that promote the protection, conservation, improvement and management of the environment; and

(n) To facilitate compliance with and implementation of multilateral environment agreements relating to the environment.

(2) The Director shall set priorities for the work of the Department.

7 Staff of the Department

The Department shall consist of a Director and such other officers to be appointed by the Niue Public Service Commission as may be necessary for the administration of this Act.

8 Annual Report of the Department

The Director for Environment shall furnish to the Minister a report each financial year regarding the operations of the Department and the discharge of its functions and shall include a copy of the accounts of the Department for that financial year.

Director for Environment

9 Functions of the Director

The Director is to –

(a) Oversee the efficient, effective and economical management of the Department;

(b) Give advice to such person as he or she is accountable to on matters concerning any aspect of the environment and concerning any function of the Department; and

(c) Carry out any other acts necessary to properly discharge his or her functions.

10 Power of Director to delegate

(1) The Director may delegate any of his or her functions and powers, other than this power of delegation, to any authorised person.

(2) In this section "authorised person" means a member of staff of any government department or statutory authority.

Environment Officers

11 Environment Officers

The Niue Public Service Commission may appoint in writing any appropriately qualified person to be an Environment Officer, including constables, quarantine officers, fisheries officers and public health inspectors.

12 Identification of Environment Officers

Each Environment Officer shall be furnished with an identification card which shall be produced –

- (a) If practicable, on each occasion before the Officer proceeds to act under this Act; and
- (b) On demand.

13 Power of Environment Officer to inspect

(1) It is a condition of every approval issued under this Act that the holder must permit an Environment Officer to carry out inspections authorised under this, or any other Act, of any place, other than private residential premises, to which the approval relates.

(2) The owner or occupier of any place in respect of which an Environment Officer is exercising powers or carrying out duties pursuant to this or any other Act, shall –

- (a) Give the Officer all reasonable assistance to enable him or her to exercise those powers and carry out those duties;
 - (b) Furnish all information in relation to the exercise of those powers and the carrying out of those duties that the Officer may reasonably require; and
 - (c) Not be required to answer a question or give information tending to incriminate himself or herself and the Officer shall caution such person accordingly.
- (3) For the purpose of the administration of this Act, an Environment Officer may at any reasonable time –

(a) Enter and inspect any place to which an approval has been issued under this Act to determine whether any activity is being undertaken in violation of that approval;

- (b) Enter and inspect any place where the Officer has reasonable grounds to believe that documents pertaining to any offence under this Act may be found;
- (c) Stop and inspect any aircraft, vessel or vehicle to ascertain whether it, or the manner in which it is being operated, complies with this Act; or
- (d) Require the production of any documents that are required to be kept under this Act or any other documents that are related to the purpose for which the Officer is exercising any power or performing any duty under this Act.

(4) Where a judicial officer is satisfied on evidence in writing made under oath by an Environment Officer that –

- (a) There are reasonable grounds to believe that it is appropriate for the administration of this Act for the Officer to do anything set out in subsection (3); and
- (b) The Officer may not be able to carry out duties under this Act effectively without a search warrant issued under this subsection because –
 - (i) no person is present to grant access to a place that is locked or is otherwise inaccessible;
 - (ii) a person has denied the Officer access to a place or there is reasonable ground for believing that a person may deny the Officer access to a place;
 - (iii) a person has prevented the Officer from doing anything set out in subsection (3);
 - (iv) there are reasonable grounds to believe that an attempt by the Officer to do anything set out in subsection (3) without the order might defeat the purpose of the inspection or cause an adverse effect,the judicial officer may issue an order authorising the Officer to do anything set out in subsection (3) that is set out in the order, and the order must be exercised within 14 days of the date of issue.

(5) An Environment Officer may not enter private residential premises except –

- (a) With the consent of the owner or occupier; or
- (b) Under the authority of any search warrant issued under subsection (4).

14 Power of Environment Officer to seize

(1) An Environment Officer may, without a court order or a search warrant, seize any thing that is produced to the Officer, or that is in plain view during an inspection under this section, if the Officer has reasonable grounds to believe that there has been an offence committed under this Act and that the thing to be seized will afford evidence as to the commission of the offence.

(2) An Environment Officer seizing any thing under subsection (1) shall –

- (a) Inform the person of the reason for the seizure;
- (b) Give the person a receipt for the article that has been seized; and
- (c) Remove the seized article to a place of safekeeping and deal with the seized article in the same manner as if it were seized under the authority of a search warrant.

Environment Council

15 Establishment of the Environment Council

(1) This section establishes the Environment Council.

(2) The Council shall be selected by Cabinet and comprise –

- (a) One member from each of the following public authorities: Health, Planning, Police, Public Works, Community Affairs and the Tourism Office;
- (b) Two members from Agriculture, Forests and Fisheries;
- (c) A member to be selected by the Chamber of Commerce to represent private sector commercial interest;
- (d) Two members to represent interest groups or the community generally, not effectively represented by members in the preceding paragraphs; and
- (e) The Director.

16 Functions of the Council

(1) The functions of the Council are –

- (a) To advise the Minister on environmental, planning, development and resource management policies and on ways of resolving conflicts between these policies;
- (b) To advise the Minister on draft laws and draft rules;
- (c) To advise the Minister on how to resolve conflicts in the implementation of the NEMS;
- (d) To review the work of the Department.

(2) Schedule 1 applies to the appointment of members and the procedures of the Council.

PART 3 ENFORCEMENT

17 [Repealed]

18 Proceedings for restraint of breaches of Act

Without prejudice to the power of the Court to strike out vexatious proceedings, any person may bring proceedings in the Court for an order to remedy or stop a breach of this Act, whether or not any right has been, or may be, infringed as a result of that breach.

19 Orders of the Court

(1) Where the Court is satisfied that a breach of this Act has occurred, or that a breach is likely to occur unless stopped by an order of the Court, it may make any order it thinks fit to remedy or stop the breach including enforcement orders, declarations, and injunctions.

(2) Where an injunction or other remedy is sought concerning any development, the Court must order that no person is required to give an undertaking as to damages or to provide security for costs.

(3) The Court must not award costs against a person who brings proceedings to stop any development or who asks for any order requiring compliance with this Act unless the Court is satisfied that the person has acted maliciously in bringing the proceedings and that the proceedings have no merit.

20 Civil claims for environmental damage

Notwithstanding the results of any criminal proceedings arising under this Act, a person who has suffered loss as a result of any environmental incident may bring civil proceedings which may include a claim for –

(a) Economic loss resulting from a pollution incident or from activities undertaken to prevent, mitigate, manage, clean up or remedy any pollution incident;

(b) Loss of earnings arising from damage to any natural resource;

(c) Loss of any natural environment or resource.

21 Common law causes of action

Common law causes of action are preserved under this Act. Environmental Offences

22 Limitation period for offences

A prosecution for an offence under this Act may not be commenced more than 3 years after –

- (a) The date on which the offence was committed; or
- (b) The date on which the evidence of the offence first came to the attention of the prosecuting body, whichever is later.

23 Offences

(1) Any person who –

- (a) Provides false or misleading information under a requirement under this Act to provide information;
- (b) Does not submit any report or provide information as required under this Act;
- (c) Submits any false or misleading report in respect of any tests or inspections required pursuant to this Act;
- (d) Hinders or obstructs an officer who is exercising powers or carrying out duties, or attempting to do so under this Act;
- (e) Fails to give all reasonable assistance to an officer who is exercising powers or carrying out duties, or attempting to do so, under this Act;
- (f) Offers or gives any inducement to any person exercising functions and powers under this Act which might reasonably be considered to have the purpose of influencing a decision of that person under this Act;
- (g) Fails to comply with any approval, requirement or condition imposed under this Act;
- (h) Fails to comply with any approval, requirement or condition imposed by any public authority under this Act;
- (i) Does not comply with the terms of any order of the court made under this Act and served on that person;
- (j) Is guilty of an offence and liable to a fine not exceeding 100 penalty units or to a term of imprisonment not exceeding 12 months, or both such fine and imprisonment.

(2) Where an offence under this Act is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

24 Liability of company

(1) If a company fails to comply with this Act, each person who is a director of the company or who is concerned in managing the company, is taken to have failed to comply with that provision, unless the person satisfies the court that –

(a) He or she has no actual, imputed or constructive knowledge of the failure by the company to comply with the provision; or

(b) He or she was not in a position to influence the conduct of the company concerning its failure to comply with the provision, or, if in such a position, he or she used all due diligence to prevent the failure to comply by the company.

(2) If a company fails to comply with any provision of this Act, each person who is a director of the company or who is concerned in managing it may be proceeded against and convicted whether or not the company has been proceeded against and whether or not it has been convicted.

(3) The company remains liable for any offence committed by it whether or not proceedings are commenced against the directors or those concerned with managing the company.

25 Company liability in case of bankruptcy

Where any company commits an offence under this Act, any penalty or award of environmental damages against that company shall take precedence over any secured or preferred claim lodged in any action for bankruptcy against that company.

Additional Penalties for Environmental Offences

26 Additional penalties

(1) The court may, in addition to any other punishment that may be imposed under this Act and having regard to the nature of the offence and the circumstances surrounding its commission, make an order –

(a) For temporary or permanent closure or suspension of any activity or facility or cancellation or modification of any approval if the activity pollutes or damages human health or the environment beyond the limits set forth by this Act;

(b) For indemnification of the Government, occupiers, or any person whose interest is affected by the damage caused to the environment or to human health;

(c) For replacement and restitution to their natural state of things affected;

(d) For rehabilitation of the environment affected at the cost of the party responsible for the offences;

(e) Directing the offender to compensate any affected party, in whole or in part, for any environmental damage or the cost of any remedial or preventive action taken or caused to be taken as a result of the act or omission that constituted the offence;

- (f) Prohibiting the offender from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- (g) Directing the offender to take such action as the court considers appropriate to remedy or avoid any harm to the environment that results or may result from the act or commission that constituted the offence;
- (h) Directing the offender to post such bond or pay such amount of money to the Department or into court as will ensure compliance with any order made under this section;
- (i) Directing the seizure and forfeiture of any vessel, aircraft, or vehicle used in the commission of any offence;
- (j) Requiring the offender to comply with such other reasonable conditions as the court considers appropriate and just in the circumstances.

(2) Where an offender has been convicted of an offence under this Act, the court may, at the time the sentence is imposed and on the application of the person aggrieved, order the offender to pay to that person an amount by way of satisfaction or compensation for loss of or damage to property or income suffered by that person as a result of the commission of the offence.

(3) Where an amount that is ordered to be paid under subsections (1) or (2) is not paid within the specified time, a civil judgment may be filed with the court and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in the court in civil proceedings.

(4) The court may in addition to any other punishment that may be imposed under this Act impose a fine for each day the offence continues until compliance is fulfilled.

27 Community service orders

(1) Upon the conviction of any person, the prosecution may make submissions to the court on the appropriateness of a community service order and of the availability of any community service work.

(2) The court may sentence a person to a community service order instead of or in addition to a fine.

(3) The court may order a person sentenced to a community service order to work under appropriate supervision a specified number of hours for a charitable or community cause or organisation, and where possible, the work should relate to environmental matters.

(4) The court may specify whether the Director, a constable or some other person is to supervise the community service order work.

PART 4 MISCELLANEOUS

28 Application

- (1) This Act applies to all areas under the jurisdiction of Niue.
- (2) This Act applies to all persons, whether incorporated or unincorporated.
- (3) This Act binds the Crown.

29 Effect of this Act on other Acts

- (1) The provisions of this Act apply even if they are inconsistent with any other law.
- (2) Compliance with the requirements of this Act does not relieve a person from separate compliance with any other law of Niue.
- (3) This Act overrides any approval given under any other law or public authority.
- (4) Law, for the purposes of this section, does not include the Constitution.

30 Non-exemption from environmental management responsibilities

This Act does not exempt other public authorities from the execution of their environmental management responsibilities.

31 Environment Officers are not personally liable

The Director, Environment Officers, staff of the Environment Department, members of the Council and authorised persons are not personally liable for anything done or omitted to be done in performing their functions in good faith under this Act.

32 Regulations

- (1) Cabinet may make all such regulations as may be necessary or expedient for giving effect to this Act and for its due administration.
- (2) Without limiting the generality of subsection (1), regulations may be made –
 - (a) Prescribing the procedures and requirements for an environmental impact assessment;
 - (b) Providing for planning and natural resource management;
 - (c) Prescribing waste management and pollution control measures;
 - (d) Providing for the regulation of hazardous substances;
 - (e) Providing for the regulation of hazardous wastes;
 - (f) Prescribing for the identification of species to be protected and their habitats;

- (g) Prescribing rules for the introduction or control of alien or non-native species;
- (h) Providing for the protection, preservation and management of historic areas; and
- (i) Providing for the rehabilitation of any contaminated or polluted land.

SCHEDULE

[Section 16]

Membership and Procedures of the Environment Council

1 Terms of office of members

Members representing the commercial sector and the community hold office for no longer than 2 years but are eligible for reappointment.

2 Remuneration

- (1) Members may be paid allowances including travelling and subsistence allowances.
- (2) The Cabinet is to decide the amount of the allowances.

3 Disclosure of financial interests

(1) A member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council if –

- (a) A member has a direct or indirect financial interest in a matter being considered or about to be considered at a meeting of the Council; and
- (b) The interest appears to raise a conflict with the proper performance of the member's duties.

(2) A member makes sufficient disclosure of the nature of the interest in any matter if the member discloses at a meeting of the Council that the member –

- (a) Is a member of, or is employed by a specified company or other body; or
- (b) Is a partner of, or is employed by a specified person; or
- (c) Has some other specified interest concerning a specified company, or other body, or a specified person.

(3) A member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council if –

(a) A matter being considered or about to be considered at a Council meeting concerns bringing criminal or civil proceedings against a person; and

(b) The member has any personal or financial interest in the matter.

(4) The Council must record particulars of any disclosure made under subsections (1), (2) and (3) in a book kept for that purpose. The book must be available for inspection by any person at all reasonable hours.

(5) After a member has disclosed the nature of an interest in any matter, the member must not be present during any Council deliberation concerning the matter, or take part in any Council decision concerning the matter, unless the Minister or the Council decides otherwise.

(6) A contravention of this section does not invalidate any decision of the Council.

4 General procedures

The Council may determine procedures for Council meetings and the conduct of business at those meetings subject to this Act.

5 Quorum

(1) The quorum for a meeting of the Council is 5 members.

(2) The Chairperson or Deputy Chairperson of the Council must be one of the quorum.

6 Presiding member

(1) The Minister must appoint the Chairperson and the Deputy Chairperson from among the members of the Council.

(2) The Chairperson and the Deputy Chairperson must hold those positions for no longer than 2 years.

(3) The Chairperson of the Council or, if absent, the Deputy Chairperson of the Council presides at Council meetings.

(4) The person presiding at any Council meeting has the decisive vote and, if the votes are equal, has a second or casting vote.

7 Voting

A decision supported by a majority of the votes cast at a Council meeting where a quorum is present is the decision of the Council.

8 Transaction of business outside meetings or by telephone

(1) The Council may carry out its business by circulating papers among all the members of the Council and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Council.

(2) The Council may carry out any of its business by a meeting at which members (or some members) participate by telephone or other means, but only if a member who speaks on a matter can be heard by all the other members constituting the quorum.

(3) The Chairperson and each member have the same voting rights as they have at an ordinary Council meeting for the purpose of –

(a) A resolution under subparagraph (1); or

(b) A meeting held under subparagraph (2).

(4) A resolution approved under subparagraph (1) must be recorded in the minutes of the Council meetings.