
Mining Act 1977

NIUE LAWS LEGISLATION AS AT DECEMBER 2006

MINING ACT 1977

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To make provision for mining for minerals in Niue, and for incidental or connected matters

PART 1 PRELIMINARY

1 Short title

This is the Mining Act 1977.

2 Interpretation

In this Act –

"access licence" means any licence granted under section 20;

"alienation" means alienation as defined in section 2 of the Niue Amendment (No 2) Act 1968;

"Chief Mining Inspector" means the Chief Mining Inspector appointed under section 5;

"Crown land" means Crown land as defined in section 2 of the Niue Amendment (No 2) Act 1968;

"licence" means any access licence, mining licence or prospecting licence;

"mine" means any mine, quarry, tunnel, excavation, working or any other place where any mining is being carried on or has been carried out;

"miner" means any person, including a body corporate holding a valid and subsisting mining licence;

"minerals" means all minerals, mineral substances, gold, silver, precious metals, ferrous metals, non-ferrous metals, bauxite, phosphate, phosphate rock, diatomaceous earth, marble, coal, bitumen, lignite, precious stones, and petroleum existing in their natural state on or under the surface of any land, and includes any prescribed substance within the meaning of the Atomic Energy Act 1945, but does not include any coral, common clay, common sand, common gravel, common stone or common earth;

"mining" means mining operations;

"Mining Inspector" means:

- (a) The Chief Mining Inspector; or
- (b) A Mining Inspector duly appointed and holding office, under this

Act, as a Mining Inspector;

"mining licence" means a mining licence issued under this Act;

"mining operations" and **"mining purposes"** means operations in connection with mining for any mineral, and includes –

(a) The removal of overburden by mechanical or other means, and the stacking, deposit, storage, and treatment of any substance considered to contain any mineral;

(b) The deposit or discharge of any mineral, material, debris, tailings, refuse, or waste-water produced from, or consequent on, any such operations or purposes;

(c) The erection, maintenance, and use of plant and machinery, and the construction or use of roads, races, dams, railways, channels, batteries, buildings, dwellings, and other works connected with such operations or purposes; and

(d) The lawful use of land, water, pools and natural depositories of water (whether containing

water or not) and the doing of all lawful acts incidental or conducive to any such operations or purposes;

"Niuean land" has the same meaning as in section 2 of the Niue Amendment (No 2) Act 1968;

"prescribed substances" means uranium, thorium, plutonium, neptunium, or any of their respective compounds, or any such other substance as Cabinet may prescribe by notice in the Gazette, being a substance which in its opinion is or may be used for the production of atomic energy or research into matters connected with it;

"prospecting" means searching for minerals in the soil or substrata of any land to assess whether the soil or substrata is suitable for the mining of any mineral, or to test the mineral bearing qualities of any soil or substrata, but does not include mining;

"prospecting licence" means a prospecting licence issued under section 18;

"prospector" means any person holding a valid and subsisting prospecting licence;

"Registrar" means the Registrar of the Court.

3 Minerals property of Crown

(1) All minerals on or under the surface of any land (including the seabed) within the territorial limits of Niue, are declared to be the property of the Crown.

(2) All grants of Crown land and all alienations of Niuean land shall be deemed to be made subject to the reservation to the Crown of all minerals on or under the surface of the land.

4 Atomic Energy Act 1945

Nothing in this Act shall affect or derogate from the Atomic Energy Act 1945 or be deemed to affect or derogate from its provisions, and should there be any conflict between that Act and this Act, that Act shall prevail.

PART 2 ADMINISTRATION

5 Mining Inspectors

(1) There may be appointed, under Part 6 of the Constitution a Chief Mining Inspector and such number of other Mining Inspectors as may be required for the purpose of this Act.

(2) The Chief Mining Inspector shall have all the powers of and be deemed to be a Mining Inspector.

6 Duties of Mining Inspectors

It shall be the duty and function of a Mining Inspector –

(a) To inspect mines;

(b) When he has reason to believe that any mining or other operation or activity being carried on at any mine, or that the state or condition of any mine, constitutes a hazard or danger to any person, livestock or building, to give to any miner or to the duly authorised agent or servant of the miner, or to any person engaged in mining at the mine, reasonable directions for, or with a view to, removing, preventing or alleviating the hazard or danger; and

(c) To ensure that the provisions of this Act are duly observed.

7 Failure to comply with directions

Where any miner, or the duly authorised agent or servant of any miner, or any person engaged in mining to whom any directions are given under section 6(b) knowingly and wilfully fails to comply with the directions, he commits an offence and, on conviction, shall be liable to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 2 months or, where the offender is a body corporate, to a fine not exceeding 10 penalty units.

8 Special powers of Mining Inspectors

(1) A Mining Inspector may in the exercise of duties, functions or powers under this Act enter any mine or any place where minerals obtained by mining are stored or kept, or any place where he has reason to believe that any such minerals, are or may be stored or kept.

(2) Save with the prior written consent of a Judge or of a Commissioner, a Mining Inspector shall not exercise any of the powers conferred by this subsection –

(a) At any time between the hours of sunset and sunrise; or

(b) In or upon any private dwelling or private garden, except with the permission of the occupier.

(3) A Mining Inspector may take and retain on behalf of the Crown from any mine or any place where minerals that are obtained, or apparently obtained, by mining are stored or kept, reasonable samples of any minerals, soil or earth.

9 Obstruction prohibited

(1) Any person who obstructs, hinders, disobeys, assaults, threatens, or abuses any Mining Inspector while the Inspector is performing any duty, exercising any power or carrying out any function imposed or conferred upon the Inspector by this Act, commits an offence, and, on conviction, shall be liable to a fine not exceeding 1 penalty unit or to imprisonment for a term not exceeding 1 month, or, where the person is a body corporate, to a fine not exceeding 5 penalty units.

(2) Nothing in this section shall derogate from section 7.

10 Mining Office

(1) There shall be a Mining Office which shall be situated in Alofi at such place as Cabinet shall specify.

(2) The Mining Office shall be under the control of the Chief Mining Inspector.

(3) At the Mining Office there shall be kept copies of all licences, documents, notices and other writings and instruments issued under this Act, which shall comprise the public records or the Mining Office.

(4) The public records of the Mining Office shall be open to inspection, without fee, by members of the public on any day except a Saturday, or a holiday at all reasonable hours fixed by the Chief Mining Inspector.

(5) (a) None of the public records of the Mining Office shall, without the prior consent of the Cabinet, or a Judge or Commissioner of the Court, or the Chief Mining Inspector be removed from the Mining Office.

(b) Any such Judge or Commissioner may order the Chief Mining Inspector to cause any of such public records to be produced in any court.

(6) Any person who knowingly and wilfully removes any of such public records, contrary to subsection (5) from the Mining Office, commits an offence and, on conviction, shall be liable to a fine not exceeding 1 penalty unit, or to imprisonment for a term not exceeding one month or, if the removal was made with any fraudulent or other dishonest intent, to a fine not exceeding 3 penalty units or to imprisonment for a term not exceeding 9 months.

11 Office of miner

(1) Every miner shall have, in Niue, an office and shall, in writing, inform the Chief Mining Inspector at the Mining Office of the location of that office or any change in the location of that office.

(2) Any miner who, for more than 7 clear days, is in breach of subsection (1) commits an offence and, on conviction, shall be liable to a fine not exceeding 0.5 penalty units.

(3) Any notice or other document which any person may wish to serve upon or deliver to any miner shall be deemed to have been validly served upon or delivered to the miner if it be delivered at the office referred to in subsection (1) of the miner as the same is recorded in the records of the Mining Office.

(4) Nothing in subsection (3) shall preclude the service or delivery of any notice or other document in any manner sanctioned by law.

PART 3
ACQUISITION OF LAND

12 Acquisition of Niuean land

Cabinet shall have the authority to investigate and acquire Niuean land by way of lease or purchase for the following purposes –

- (a) For mining and for all purposes necessary effectually to carry on mining operations in or on the land for any mineral;
- (b) For cutting and constructing on the land water races, drains, dams, and roads, to be used in connection with such mining;
- (c) For the erection on it of any buildings and machinery to be used in connection with any such mining;
- (d) For boring, sinking for, pumping or raising water;
- (e) For residence on it in connection with any or all such purposes.

13 Crown land open for mining

All Crown land shall be open for mining, subject to and in accordance with this Act or regulations made under this Act.

14 Niuean land open for mining

Without limiting this Act, if minerals are discovered on or under Niuean land, the land shall, with the written consent of the owner or occupier, be open for mining, subject to and under this Act.

15 Niuean land may be declared open for mining without consent of owner

(1) If the owner or occupier of any Niuean land fails or refuses to consent to the acquisition of land for mining, the Assembly may by resolution direct Cabinet to declare the land to be open for mining as if it were Crown land.

(2) Where the Assembly resolution is passed under subsection (1) Cabinet shall cause to be served on the owner or occupier of the land a notice in writing stating that unless, within a period of 6 months after the date on which the notice was served, the owner or occupier consents to the land being open for mining, the land may be declared to be open for mining as if it were Crown land.

(3) No owner or occupier of land who has had served on him a notice under subsection (2) shall, within the period of one year after the date of receipt of the notice, enter into any arrangement with any other person for the mining of any mineral on or under the land to which the notice relates.

(4) If satisfactory arrangements (including, if necessary, an agreement to grant a right of way) have not been made by the owner or the occupier within the period of 6 months referred to in subsection (2), Cabinet within 3 months after the expiry of the said period of 6 months, shall declare the land in respect of which the notice was served or any part of it to be open for mining if Cabinet considers it to be in the national interest to do so.

(5) Where any land is required under this section is proven by the owner or occupier to be their only land that owner or that occupier shall be provided with alternative land of an equal value at some other place in Niue.

16 Agreement with owner for mining

Instead of recommending that any land be declared to be open for mining under section 15, Cabinet may agree in writing with the owner or occupier of the land that it shall be open for mining in the same manner as Crown land.

17 Area of mining lease

(1) The area of any land comprised in a mining lease shall not exceed 40 acres and the length of the area, as far as practicable, shall not exceed twice its width.

(2) Nothing in subsection (1) shall restrict the area of land required for the purpose of mining for a prescribed substance within the meaning of the Atomic Energy Act 1945.

PART 4 GRANT OF LICENCES

18 Prospecting licences

(1) Cabinet shall have the authority to grant prospecting licences.

(2) Cabinet shall make regulations under this section to regulate the granting of prospecting licences.

19 Mining licences

(1) Cabinet shall have the authority to grant mining licences under this Act or under any regulations made under this Act.

(2) No person shall engage in mining in, upon or under any land unless, in relation to that land, the person holds a mining licence issued to the person under subsection (1).

(3) Any person who engages in mining contrary to subsection (2) commits an offence and, on conviction, shall be liable to a fine of 5 penalty units or to imprisonment for a term not exceeding 2 months or, where the person is a body corporate, to a fine not exceeding 20 penalty units.

(4) Where any person is convicted of an offence contrary to subsection (2) the Court may, on convicting or sentencing the person, make an order vesting in the Crown all or any vehicles,

machinery, equipment, tools or other things used by the person in the commission or in furtherance of the offence and upon the making of any such order, the vehicles, machinery, equipment, tools or other things so vested shall be forfeited to and become the absolute property of the Crown and shall be dealt with or disposed of in such manner as the Cabinet may direct.

(5) No person shall, as of right, be entitled to the grant of a mining licence.

(6) Subject to section 27, where, in respect of any piece or area of land, there is in existence a subsisting mining licence, no mining licence shall be granted in respect of the piece or area of land without first consulting the miner holding the subsisting licence.

(7) No mining licence shall be granted for a period in excess of 50 years commencing on the date of issue.

20 Access licence

(1) Where a miner is unable to obtain reasonable access to any area or piece of land mentioned in the mining licence held by the miner, the miner may apply in writing to Cabinet for a grant to the miner of an access licence to that area or piece of land over any other area or piece of land to be specified in the licence.

(2) On the receipt of any such application and if Cabinet considers the application to be reasonable in the circumstances, Cabinet shall grant the access licence sought subject to any reasonable conditions that it may specify.

(3) Every access licence shall be effectual only during the subsistence of the mining licence to which it relates.

21 Form of licence

(1) Every licence shall be in writing and in triplicate and shall –

(a) Contain the full names, occupation and address in Niue of the person in whose favour it is granted;

(b) Specify each and every area or piece of land in relation to which it is granted;

(c) Specify the term of the licence;

(d) Specify each and every species of minerals in respect of which the licence is granted;

(e) Set forth the consideration, whether the payment of a lump sum or otherwise, that the miner is to pay to the Crown for the grant of the licence;

(f) Contain such other conditions, not inconsistent with this Act, as are agreed upon between the miner concerned and Cabinet, being conditions to which the licence is to be subject; and

(g) Be dated with the date of issue.

(2) Every licence shall be executed by the Premier in the presence of a witness who shall, on the licence, duly attest the signature of the Premier.

(3) Every licence shall be signed by the miner concerned, or by the duly authorised agent of such miner, in the presence of a Cabinet Minister or of a Mining Inspector who shall, on the licence, duly attest the signature of the miner or agent.

(4) There shall be payable to the Crown on the issue of a licence the sum of one hundred dollars.

(5) Every such sum shall be paid by the person in whose favour the licence is granted.

(6) On the payment of any such fee, a receipt for the same shall be endorsed upon each copy of the licence by the person duly authorised to receive the fee.

22 Validity of licence

No licence shall be valid or effectual for any purpose whatsoever until, in relation to it there has been compliance with this Act.

23 Licence deemed to have been confirmed

Every licence issued or granted under this Act affecting or relating to Niuean land, and every suspension, revocation or surrender of any such licence shall be deemed to have been duly confirmed by the Court under the Land Act 1969.

24 Registration of licence

(1) Every licence and every assignment, transmission, surrender or revocation of any licence shall, for the purpose of Part 1 of the Land Act 1969, be deemed to be an instrument within the meaning of section 2 of that Act and shall be subject to Part 1 of that Act.

(2) Nothing in section 7 of the Land Act 1969 shall apply to a licence or to the assignment, transmission, surrender or revocation of the licence.

25 Destruction of licence

(1) No person shall destroy or mutilate any licence or make any unauthorised entry upon any licence.

(2) Any person who knowingly and wilfully acts contrary to subsection (1) commits an offence and, on conviction, shall be liable to a fine not exceeding 1 penalty unit or, if the act was done with any fraudulent or other dishonest intent, to a fine not exceeding 2.5 penalty units or to imprisonment for a term not exceeding 6 months.

26 Licence to constitute contract

Every licence issued under this Act shall, subject to this Act, constitute a contract between the Crown and the miner.

27 Surrender, cancellation and suspension of licence

Cabinet may suspend, cancel or cause the surrender of a licence if it is in the national interest to do so.

PART 5 COMPENSATION

28 Compensation

Where land is acquired for the purposes of this Act, there shall be paid to the owner or occupier entitled to the land acquired compensation.

29 Claims for compensation against the Crown

Subject to this Act, every claim against the Crown for compensation in respect of any matter for which compensation is expressly provided for by this Act, whether for injurious affection of land, the value of improvements, or otherwise, shall be made in the Court.

30 Payment of compensation

All compensation payable by the Crown under this Act shall be paid from the Government Account out of money appropriated by the Assembly for that purpose.

31 Compensation not payable in respect of minerals

Compensation shall in no case be payable in respect of the value of any mineral on, in, under, or forming the surface of any land.

32 Compensation not payable unless expressly provided for

No person shall have any right or claim to compensation against the Crown in respect of any matter arising under this Act except where provision for compensation is expressly made by this Act.

33 Owner and occupier of land entitled to compensation

The owner or occupier of any land in respect of which a mining licence has been granted shall be entitled to compensation (according to their respective interests) for all loss and damage suffered or likely to be suffered by that owner or occupier as a result of the grant of the mining licence or the exercise of the rights conferred by that licence.

34 Amount of compensation

(1) The amount of compensation claimed under this Act against the holder of a mining licence or against any person exercising any of the rights conferred by this Act shall, in default of agreement, be determined by the Court.

(2) In fixing the amount of compensation to be paid to the owner or occupier of land in respect of damage to the land, the Court shall take into consideration the extent to which the whole of the land comprised in the holding of which the land damaged forms part will be detrimentally affected by reason of any reduction in the area usable for other than mining purposes.

PART 6 REGULATIONS

35 Regulations relating to mines

The Cabinet may make regulations for –

- (a) Regulating the working of mines and machinery and providing for the health and safety of persons working, and the safety of property used, in connection with mining operations;
- (b) Providing for the fencing off and filling up of shafts, pits, holes, and excavations;
- (c) Requiring owners of mines to provide such appliances, works, and structures, for safety purposes, as may be specified in the regulations, and requiring the owners to keep them in good repair and condition;
- (d) Regulating the use of cyanide and concentrating plants in or about mines;
- (e) Regulating the storage and use of explosives in or about mines;
- (f) Regulating the use of electricity, and the installation and use of electrical wiring and equipment, in or about mines;
- (g) Providing for the safety of persons employed in drives and excavations;
- (h) Providing for the examination and inspection of mines and machinery in or about mines;
- (i) Requiring the use by persons employed in or about mines of protective clothing, covering, or equipment of a prescribed kind to be used in such work as may be specified;
- (j) Requiring the provision of bathhouses, changehouses, toilets, and other sanitary appliances at mines, and regulating their construction, equipment, control and use;
- (k) Requiring the provision in or about mines of supplies of drinking water and facilities for the consumption of meals, and regulating the construction, equipment and control, and use of such facilities;
- (l) Providing for the supply and maintenance of fire extinguishing appliances, ambulance appliances, and other appliances for use in rescue work, and for the formation and training of rescue and first aid teams;
- (m) Requiring the installation of telephone communications between mines and the nearest

places where medical assistance is obtainable;

(n) Prescribing forms of returns, and the nature of any information and particulars, to be supplied in respect of mines under this Act;

(o) Defining the duties of Mining Inspectors and conferring on those Inspectors all such powers as may be necessary for the efficient performance of their duties;

(p) Requiring copies of regulations made under this section to be displayed at mines.

36 General regulations

(1) Cabinet may make regulations for giving full or fuller effect to this Act.

(2) Without restricting subsection (1), Cabinet may under this section, make regulations –

(a) Prescribing powers, functions, and duties of any officer or other person appointed under this Act or employed or acting in the administration of this Act;

(b) Prescribing forms to be used in conjunction with this Act;

(c) Prescribing the persons or class or classes of persons on whom copies of applications for mining licences are to be served;

(d) Prescribing the fees payable in respect of applications for mining licences and prospecting licences;

(e) Prescribing the rent payable in respect of mining operations;

(f) Prescribing the times at which rents shall be paid and the manner in which they are to be paid;

(g) Prescribing the manner in which money payable under this Act is to be collected, accounted for, and distributed;

(h) Providing for the compilation of mining statistics.

PART 7 MISCELLANEOUS PROVISIONS

37 Levies may be imposed

(1) (a) The Niue Assembly may, by resolution published in the Gazette, impose on all or any minerals mined in, upon or under any land, a levy or levies on the value of the minerals.

(b) The rate of any such levy shall not exceed 5 percent of the market value of the minerals of the mine at which the same were mined on the date of the mining.

- (2) Every such levy shall be paid, by the miner who mined the minerals, prior to the expiration of a period of 9 months from the date of mining of the minerals.
- (3) No minerals shall be exported from Niue, without the prior written consent of Cabinet, until the levy payable in respect thereof has been paid under subsections (1) and (2).
- (4) Any such consent may be given either unconditionally or subject to such conditions as Cabinet may impose.
- (5) Any person who exports, or attempts to export, from Niue any minerals contrary to subsection (3) commits an offence and, on conviction, shall be liable to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 6 months, or to both such a fine and such imprisonment, or, where the person is a body corporate, to a fine not exceeding 40 penalty units.
- (6) Nothing contained earlier in this section shall apply to any minerals obtained by a prospector consequent upon any prospecting of land made, under this Act or regulations made under this Act, by the prospector.

38 Moneys payable to the Treasurer

- (1) Subject to subsection (4), all moneys payable by any miner under this Act or any licence held by the miner shall constitute a debt due to the Crown, and shall be paid to the Treasurer by the miner, or by any person receiving the same under this Act from the miner or any agent of the miner.
- (2) Should any such moneys not be duly and punctually paid, the same may be recovered, on behalf of the Crown, by proceedings commenced and prosecuted by the Treasurer or the Cabinet.
- (3) All moneys received under subsection (1) by the Treasurer become part of the general revenue of Niue.
- (4) Nothing contained in this section shall apply to any fine payable or paid by any person, as a penalty or punishment for any offence committed against this Act by the person.

39 Money paid for Niuean land

Money paid for Niuean land acquired under this Act shall be paid to the Registrar whereupon the Registrar shall dispose of the same to the owner or occupier entitled.

40 Disputes

- (1) (a) Any dispute arising under this Act shall be referred to a single arbitrator chosen by the parties, or, if they are unable to agree, to an arbitrator chosen by the Chief Justice.
- (b) Each party shall have power to appoint an assessor to sit with the arbitrator, but the arbitrator alone shall have the power to decide and the award shall be his alone.

(2) Every arbitration shall take place within Niue as a single arbitrator shall decide, and the procedure shall be governed by the Arbitration Act 1908.

41 Appeals

(1) Subject to subsection (5), any person claiming to be adversely affected by any ruling, decision, instruction or direction made, given or issued under this Act by Cabinet may appeal to the Court against the ruling, decision, instruction or direction.

(2) No such appeal shall be made after the expiration of a period of 42 clear days from and after the date of the making, giving or issuing of the ruling, decision, instruction or direction concerned.

(3) On the hearing of any such appeal the Court may –

(a) Dismiss the appeal;

(b) Allow the appeal;

(c) Allow the appeal in part and dismiss it in part;

(d) Modify the ruling, decision, instruction or direction, in such manner and to such extent as it considers just; or

(e) Grant such further or other relief to the appellant as, in the circumstances, it considers reasonable.

(4) –

(5) Nothing contained in this section shall empower any person to appeal against –

(a) Any refusal by Cabinet to grant a mining licence;

(b) Any refusal by Cabinet to consent to any assignment of a mining licence;

(c) Any suspension by Cabinet of a mining licence.

42 Records to be kept

(1) Every miner shall keep in Niue complete, comprehensive, full, proper and accurate records and books of account relating to all mining carried on by the miner; and shall, on demand being made of the miner at any reasonable hour by Cabinet or the Chief Mining Inspector, produce the same to the person making the demand for inspection by that person; and that person shall be entitled, on behalf of the Crown, to make and retain copies of the whole or any parts of the records and books.

(2) Any miner who fails to comply with all or any of the provisions of subsection (1) commits

an offence and, on conviction, shall be liable to a fine not exceeding 2 penalty units.

43 Disused mines

(1) Where any mine has, in the opinion of the Chief Mining Inspector, become disused, the Chief Mining Inspector may give to any person who is lawfully entitled to engage in mining at the mine such reasonable directions as the Chief Mining Inspector considers necessary in order to render the mine safe and harmless to any person, livestock or property.

(2) Any person to whom any directions are lawfully given under subsection (1), and who fails within a reasonable time after the giving of them, fully to comply with the same, commits an offence, and, on conviction, shall be liable to a fine not exceeding 1 penalty unit.

(3) Notwithstanding subsection (1), the Chief Mining Inspector may take such steps and measures to render any disused mine safe and harmless to any person, livestock or property.

(4) The reasonable costs of taking any such steps and measures shall constitute a debt due to the Crown by the person who would have been responsible for rendering the disused mine safe and harmless, if the person had been lawfully given directions in that behalf under subsection (1), and such costs may be recovered by action brought, on behalf of the Crown, by the Chief Mining Inspector or by the Treasurer.

44 Cabinet may delegate

Cabinet may, by notice in the Gazette, delegate to the Chief Mining Inspector all or any of Cabinet's functions, duties and powers under this Act and may in like manner revoke, vary or amend any such delegation.

45 Personal liability of officers

No person shall be personally liable for any act done by him in good faith in the exercise of any duties, powers, or authorities imposed or conferred on him by this Act.

46. [Spent]