

IMMIGRATION AMENDMENT ACT 2005

(No. 7 of 2005)

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REPUBLIC OF NAURU

(No. 7 of 2005)

**A BILL
FOR
AN ACT**

To amend the Immigration Act 1999, to correct existing errors and to clarify and expand upon powers of the Minister, the Principal Immigration Officer, and Immigration Officers, in particular in relation to entry and search, the removal of non-citizens convicted of serious offences and to increase penalties for offences under the Act.

(Certified : 2nd October 2005)

Be it enacted by the Parliament of Nauru as follows :-

Short Title

1. (a) This Act may be cited as the Immigration Amendment Act 2005.
- (b) The Immigration Act 1999 is herein referred to as the principal Act.

Commencement

2. This Act shall be deemed to have come into force on a date to be notified by the Minister in the Gazette.

Amendment to Section 3(3)

3. Section 3(3) of the principal Act is amended by -
 - (a) adding the words “or instructions” after the word “directions”, in the first and last lines; and
 - (b) deleting the words “not consistent with this Act”.

Amendment to Section 5(1)(a)

4. Section 5(1)(a) of the principal Act is amended by -
 - (a) adding the words “and search”, after the word “upon”; and
 - (b) replacing the words “vessel or aircraft in Nauru”, with “vessel, aircraft, vehicle, premises or places”.

Amendment to Section 5(1)(b)(ii)

5. Section 5(1)(b)(ii) of the principal Act is amended by replacing the words “has reasonable grounds to believe is”, with “suspects may be”.

Insert a new Section 5(6)

6. Section 5 of the principal Act is amended by adding after subsection (5), a new subsection (6) as follows -

“(6) A person who –

(a) refuses to answer any question in the course of interrogation under subsection (1)(b);

(b) gives any such question an answer which the person knows or ought to know is false or misleading; or

(c) when required under subsection (1)(c) to produce a document which is in the person’s power to produce, refuses or fails to produce it within a reasonable time, or produces a document which the person knows or has reasonable cause to believe to be false or misleading;

commits an offence

Insert new Section 5(7)

7. Section 5 of the principal Act is amended by adding after subsection (6), a new subsection (7) as follows -

“(7)(a) In addition to any other actions that may be taken under this Act, an immigration officer may issue a non-citizen, who has remained in Nauru despite their permit having expired or who entered Nauru pursuant to section 8(3) and becomes a prohibited immigrant, with an infringement notice imposing a fine in a sum prescribed by the Regulations;

(b) A fine imposed under this section is a debt owed to the Republic.”

Amendment to Section 9(2)

8. Section 9(2) of the principal Act is amended by -

(a) replacing the word “shall”, with “may”; and

(b) deleting the word “as”.

Amendment to Section 9(4)

9. Section 9(4) of the principal Act is amended by deleting the words “and (c) extensions of visas”.

Insert a new Section 9(5)

10. Section 9 of the principal Act is amended by adding after subsection (4), a new subsection (5) as follows -

“(5) A permit shall not be granted to a person unless and until that person has repaid any debts he owes to the Republic”.

Insert a new Section 10(1)

11. Section 10(1) of the principal Act is amended by replacing the word “persons”, in the first line, with “non-citizens”.

Amendment to Section 10(1)(d)

12. Section 10(1)(d) of the principal Act is amended by -

- (a) replacing the words “5(1)(e)”, with “5(1)(g); and
- (b) deleting the word “or”, at the end of Section 10(1)(d)(ii).

Amendment to Section 10(1)(f)

13. Section 10(1)(f) of the principal Act is amended by replacing the entire subsection with the following -

“(f) a person who has, before or after the commencement of this section, been convicted of an offence, in Nauru or another country, which is punishable by either a fine of not less than \$5,000 or a sentence to death or imprisonment of not less than 2 years, and has not received a free pardon”.

Amendment to Section 10(1)(h)

14. Section 10(1)(h) of the principal Act is amended by deleting the words “, other than a Nauruan citizen”.

Amendment to Section 10(1)(i)

15. Section 10(1)(i) of the principal Act is amended by deleting the words “, other than a Nauruan citizen”.

Amendment to Section 10(1)(n)

16. Section 10(1)(n) of the principal Act is amended by replacing the “.”, at the end of the section, with “, or”.

Insert a new Section 10(1)(o)

17. Section 10(1) of the principal Act is amended by adding after subsection (1) (n), a new subsection (1)(o) as follows –

“(o) a person convicted of an offence under this Act”.

Insert a new Section 11(12)

18. Section 11 of the principal Act is amended by adding after subsection (11), a new subsection (12) as follows –

“(12) For the purpose of subsection (9), the Principal Immigration Officer may use any money or property belonging to or found on the person removed in payment of the whole or any part of the cost of any passage, accommodation, and maintenance under subsection (7)’.

Amendment to Section 13(1)

19. Section 13(1) of the principal Act is amended by replacing the words “\$3,000.00”, with “\$10,000.00”.

Amendment to Section 13(1)(j)

20. Section 13(1)(j) of the principal Act is amended by replacing the words “5(1)(e)”, with “5(1)(g)”.

Amendment to Section 13(1)(o)

21. Section 13(1)(o) of the principal Act is amended by replacing the words “exempted under section 9(3)”, with “described under section 8(3)”.

Amendment to Section 13(1)(p)

22. Section 13(1)(p) of the principal Act is amended by replacing the words “exempted under section 10(3)”, with “described under section 8(3)”.

Amendment to Section 13(1)(t)

23. Section 13(1)(t) of the principal Act is amended by replacing the words “section 11(7)”, with “section 15(3)”.

Amendment to Section 14(1)

24. Section 14(1) of the principal Act is amended by replacing the words “\$1,000.00” with “\$10,000.00”.

Amendment to Section 17

25. Section 17 of the principal Act is amended by deleting subsection 17(3) entirely.

Amendment to Section 19(b)

26. Section 19(b) of the principal Act is amended by deleting the words “extension and renewal”, after the words “refusal of grant”.

Amendment to Section 19(f)

27. Section 19(f) of the principal Act is amended by -
(a) replacing the word “of”, for “or”;
(b) replacing the word “\$1,000.00”, with “\$10,000.00”.

Insert new Part VI

28. The principal Act is amended by inserting after section 24, a new Part VI as follows -

“25. In this Part, unless the context otherwise suggests :

“child” means a person under the age of 18 years;

“exploitation” includes forced labour or service, slavery or practices similar to slavery, servitude, removal of organs, and sexual servitude;

“fraudulent travel or identity documents” means a travel or identity document that

- (a) has been made, or altered in any way, by a person other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a country;
- (b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- (c) is being used by a person other than the lawful holder.

“illegal entry” means entering Nauru or any other country without complying with the requirements for lawful entry of that country;

“material benefit” includes any type of financial or non-financial inducement, payment, bribe, reward, advantage or service;

“receiving country” means a country into which a trafficked person or smuggled migrant is brought as part of an act of trafficking persons or smuggling of migrants;

“smuggled migrant” means a person who is subject to smuggling of migrants;

“smuggling of migrants” means the arranging or assisting of an unauthorized migrant’s illegal entry into any country;

“trafficked person” means a person who is subject to trafficking in persons;

“trafficking in persons” means the recruitment, transportation, transfer, harbouring or receipt of a person for the purpose of exploitation;

“unauthorized migrant” for a country, means a person who is not a citizen of the country or in possession of all the documents required by the law of the country for that person’s lawful entry;

“unlawful employee” for an employer, means a person whom the employer knows, or is reckless to the fact that, is not entitled under law to undertake employment in the employer’s service;

“unlawful means” means any of the following meanings –

- (a) threat
- (b) use of force or other form of coercion;
- (c) abduction;
- (d) fraud, including producing, providing or procuring fraudulent travel or identity documents for the unauthorized migrant;
- (e) deception;
- (f) abuse of power or of a position of vulnerability; or
- (g) giving or receiving payments or benefits to achieve the consent of a person having control over another person.

Application of this Part

26. This Part applies to conduct constituting an offence under this Part that took place in or outside Nauru in the following circumstances -
- (a) if Nauru is the receiving country or the exploitation occurs in Nauru;
or
 - (b) if –
 - (i) the receiving country is a country other than Nauru; and
 - (ii) the offence of trafficking in persons or smuggling of migrants originates in Nauru or transits Nauru; or
 - (c) if the person who engages in the offence of trafficking in persons or smuggling of migrants is a Nauruan citizen or a Nauruan visa holder.

Offence of Trafficking in Persons

27. A person who engages in trafficking in a person knowing that the person’s entry into Nauru or any other country was arranged by unlawful means commits an offence.

Offence in Trafficking in Children

28. A person who engages in trafficking in a person who is a child, regardless of whether the child's entry into Nauru or any other country was arranged, commits an offence.

Exploitation of Persons not Legally Entitled to Work

- 29.(1) An employer who, while allowing an unlawful employee to undertake employment in the employer's service, takes an action with the intention of preventing or hindering the employee from –
- (a) leaving Nauru;
 - (b) ascertaining or seeking that person's entitlement under the law of Nauru; or
 - (c) disclosing to any person the circumstances of that person's employment by the employer;
- commits an offence.
- (2) Without limiting the generality of subsection (1), the following are examples of actions of the kind mentioned in that subsection –
- (a) taking or retaining possession or control of a person's passport, any other travel or identity documents, or travel tickets;
 - (b) preventing or hindering a person from –
 - (i) having access to a telephone or any other means of telecommunication available;
 - (ii) using a telephone or any other means of telecommunication available;
 - (iii) using a telephone or any other means of telecommunication privately;
 - (iv) leaving premises; or
 - (v) leaving premises unaccompanied.

Consent of Trafficked Persons

- 30 For sections 27, 28 and 29, it is not a defence –
- (a) that the trafficked person or unlawful employee consented, or
 - (b) that the person charged believed consent was given.

Offence of Smuggling Migrants

31. A person who engages in the smuggling of a migrant either knowing or being reckless as to the fact that the person's entry into a receiving country is illegal, in order to obtain a material benefit commits an offence.

Offence to Facilitate Stay of Unauthorised Migrants

32. A person who knowingly facilitates the continued presence of an unauthorized migrant in a receiving country –
- (c) by an unlawful means; and
 - (d) in order to obtain a material benefit;
- commits an offence.

Offence Related to Fraudulent Travel or Identity Documents

33. A person who makes, obtains, gives or sells or possesses a fraudulent travel or identity document for the purpose of facilitating –
- (e) trafficking in persons; or
 - (f) smuggling of migrants;
- commits an offence.

Aiding, Abetting, etc.

34. (1) A person who intentionally aids, abets, counsels or procures the commission of an offence under this Part by another person is taken to have committed the offence is punishable as if the offence had been committed by that person.
- (2) A person does not commit an offence of aiding, abetting, counseling or procuring the commission of an offence if, before the offence was committed, the person –
- (a) terminated that person's involvement; and
 - (b) took all reasonable steps to prevent the commission of the offence.

Incitement to Commit an Offence

35. A person who intentionally urges or incites the commission of an offence under this Part commits an offence.

Conspiring to Commit an Offence

- 36.(1) A person who conspires with another person to commit an offence under this Part commits an offence.
- (2) A person does not commit the offence of conspiracy if, before the taking of action under the agreement, the person –
- (a) withdrew from the agreement; and
 - (b) took all reasonable steps to prevent the commission of the offence.

Attempting to Commit an Offence

37. A person who attempts to commit an offence under this Part commits an offence.

Penalty

38. A person convicted of an offence against this Part is liable to a penalty or fine not exceeding \$50,000."

I hereby certify that the above is a fair print of a Bill for an Act entitled **Immigration (Amendment) Act 2005** which has been passed by Parliament of Nauru and is presented to the Speaker for his Certificate under Article 47 of the Constitution.



Clerk of Parliament
2nd October 2005

Pursuant to Article 47 of the Constitution of Nauru, **I, Valdron K. Dowiyogo**, Speaker of Parliament **hereby certify** that the **Immigration (Amendment) Act 2005**, has been passed by Parliament of Nauru.



Speaker
2nd October 2005