REPUBLIC OF NAURU

Civil Aviation Bill 2010

Serial No. 9 of 2010

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REPUBLIC OF NAURU

Civil Aviation Bill 2010

Serial No. 9 of 2010

A Bill for:

An Act to regulate civil aviation.

Certified on....

Enacted by the Parliament of Nauru as follows:

PART 1 – PRELIMINARY MATTERS

1 Short title

This Act may be cited as the *Civil Aviation Act 2010*.

2 Commencement

This Act commences on the day it receives the certificate of the Speaker under Article 47.

3 Objects

The objects of this Act are to regulate the civil aviation system of Nauru to:

(a) ensure and improve its safety, security and efficiency; and

(b) implement Nauru's obligations under international civil aviation and meteorological agreements.

4 Application

Unless the contrary intention appears, this Act applies to the following:

(a) a person, aircraft, aeronautical product, air service or aviation related service in Nauru;

(b) a Nauru registered aircraft, whether the aircraft is within or outside Nauru;

(c) the holder of an aviation document, whether the holder is within or outside Nauru, who is exercising or purporting to exercise privileges under the document;

(d) a foreign registered aircraft operating in Nauru.

5 Act binds Republic

This Act binds the Republic.

PART 2 – INTERPRETATION

6 Definitions

In this Act, unless the contrary intention appears:

'accident', see section 7;

'adopted rule' means a foreign rule adopted under section 177(1);

'adoption statement', for an adopted rule, see section 177(3)(a);

'aerodrome', see section 9;

'aerodrome control service' means an air traffic control service for the control of aerodrome traffic;

'aerodrome flight information service' means a service to give advice and information for the safe and efficient conduct of flights in the vicinity of the aerodrome;

'aerodrome traffic' means:

(a) traffic in the manoeuvring area of the aerodrome; and

(b) aircraft flying in the vicinity of the aerodrome;

'aeronautical information service' means a service that collects and distributes aeronautical information and data necessary for the safety, regularity and efficiency of air navigation in accordance with the requirements of Annex 15 to the Convention;

'aeronautical product' means any part or material that:

(a) is, or is intended by its manufacturer to be, a part of or used in an aircraft; and

(b) is not excluded from this definition by the regulations;

'aeronautical telecommunications service' means a telecommunications service provided to support the following services (as they are defined in Annex 10 to the Convention):

(a) an aeronautical broadcasting service;

(b) an aeronautical fixed service;

(c) an aeronautical mobile service;

(d) an aeronautical radio navigation service;

'air service' means a regular or casual flight of an aircraft between Nauru and one or more points in a foreign country made to transport passengers, mail or cargo;

'air services agreement' means an agreement between 2 or more countries to allow civil aviation operations between their territories;

'air traffic' means all aircraft in flight or operating in the manoeuvring area;

'air traffic control service' means a service to:

(a) prevent collisions between:

  (i) aircraft; or

  (ii) aircraft and anything else in the manoeuvring area; and

(b) expedite and maintain the safe and efficient flow of air traffic;

'air traffic service', for the aerodrome, includes the following:

(a) the aerodrome control service;

(b) the area control service;

(c) the approach control service;

(d) the alerting service;

(e) the aerodrome flight information service;

(f) the flight information service;

(g) any other service considered by the Minister to be necessary or desirable for the safe and efficient operation of the civil aviation system;

'aircraft' means a machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth;

'alerting service' means a service provided to notify and assist appropriate organisations if an aircraft needs search and rescue aid;

'approach control service' means an air traffic control service for arriving or departing controlled flights;

'appropriate authority', of a foreign country, means the authority responsible for the regulation of civil aviation in the country;

'area control service' means an air traffic control service for controlled flights in controlled airspace;

'Authority' means the Civil Aviation Authority of Nauru established by section 11;

'aviation document' means a document required under section 32;

'aviation related service' means any equipment, facility or service operated in support of or in conjunction with the civil aviation system;

'aviation security offence' means an offence against:

(a) Part 10; or

(b) Part 11, Division 2; or

(c) section 142; or

(d) Part 6, Division 2 or 3 of the *Counter Terrorism and Transnational Organised Crime Act 2004*;

'aviation security officer' means a person authorised to be an aviation security officer under section 111;

'aviation security service' means the service designated under section 110 to provide aviation security services;

'baggage' means the personal property of a passenger or crew member that is:

(a) carried on an aircraft by agreement with the operator of the aircraft; or

(b) intended to be carried on an aircraft by the passenger or crew member;

'cargo' means any property carried on an aircraft other than mail, stores and baggage;

'chairperson', means the chairperson of the Authority mentioned in section 14;

'Chief Commissioner' means the person mentioned in section 84(2);

'Commission' means an Accident Investigation Commission established under section 82(1);

'Commissioner' means a member of a Commission appointed under section 84(1);

'competent authority', in relation to an aircraft that has made a forced landing, means:

(a) the governing authority of the country in which the aircraft lands; or

(b) if the aircraft lands in a place that is not within the territory of any country – the governing authority of any country;

'contracting State' means a State that is a signatory to the Convention, and includes an organisation established by a group of States that are signatories to the Convention to issue an aviation related document or authorisation on behalf of those States;

'controlled airspace' means airspace of defined dimensions within which an air traffic control service is provided to controlled flights;

'controlled flight' means a flight that is required to make use of an air traffic control service under this Act;

'Convention' means the Convention on International Civil Aviation done at Chicago on 7 December 1944, including the following:

(a) each amendment to the Convention that has entered into force under Article 94(a) of the Convention and been ratified by Nauru;

(b) each Annex or amendment to an Annex adopted under Article 90 of the Convention;

(c) the international standards and recommended practices and procedures adopted and amended from time to time under Article 37 of the Convention;

'crew member' means a person assigned by the operator of an aircraft for duty on the aircraft while it is in flight;

'dangerous good' means an article or substance capable of posing a risk to health, safety, property or the environment that:

(a) is listed in, or classified as a dangerous good under, ICAO's Technical Instructions for the Safe Transport of Dangerous Goods by Air; or

(b) has properties that would result in the article or substance being classified as a dangerous good under ICAO's Technical Instructions for the Safe Transport of Dangerous Goods by Air;

'Department' means the Department responsible for administering this Act;

'Director' means the person from time to time holding, occupying or performing the duties of the position of Director of Civil Aviation mentioned in section 24;

'emergency rule', see section 178(1);

'firearm' means:

(a) a gun, rifle or pistol, whether discharged by force of explosives or not; and

(b) includes a firearm not capable of discharging any shot, bullet or other missile until it is completed, repaired or assembled;

'flight information service' means a service to give advice and information for the safe and efficient conduct of flights;

'foreign country' means a country other than Nauru;

'foreign in-flight security officer' means a person:

(a) employed and trained by the government of a foreign country to provide security for aircraft and their passengers and crew; and

(b) operating as a security officer under an arrangement between Nauru and the foreign country;

'foreign international airline' means an international airline other than a Nauru international airline;

'foreign rule' means a civil aviation rule that has been made and published by another contracting State, and includes part of a foreign rule;

'foreign registered aircraft' means an aircraft registered in a foreign country or under a joint or international registration plan;

'Gazette notice' means a notice published in the Gazette;

'Head of the Department' means the Head, within the meaning of the *Public Service Act 1998*, of the Department;

'holder', for an aviation document, means the person entitled to exercise privileges under the document;

'ICAO' means the International Civil Aviation Organisation established under the Convention, and includes any successor organisation;

'in flight', for an aircraft, see section 8;

'incident' means an occurrence, other than an accident, associated with the operation of an aircraft that affects or could affect the safety of the operation of the aircraft;

'information notice', see section 162(1);

'international agreement' means a convention, treaty, contract or understanding between the Republic and one or more other countries, and includes part of an international agreement;

'international air service' means an air service conducted between Nauru and one or more points in a foreign country;

'international airline' means an organisation that offers or operates an international air service, or intends to offer or operate such a service;

'international registration plan' means a plan:

(a) for the registration, by an international organisation, of aircraft operated or intended to be operated by an international operating agency; and

(b) approved by the Council of ICAO under Article 77 of the Convention;

'interpretation statement', for an adopted rule, see section 177(3)(b);

'joint registration plan' means a plan:

(a) for joint registration, by contracting States constituting an international operating agency, of aircraft operated, or intended to be operated, by the agency; and

(b) approved by the Council of ICAO under Article 77 of the Convention;

'judicial officer' means a judge or magistrate;

'licence' means a scheduled international air service licence or an open aviation market licence;

'licensee' means the holder of a licence;

'manoeuvring area' means the part of the aerodrome used for the take-off and landing of aircraft and the surface movement of aircraft associated with take-off and landing, but does not include an area set aside for loading, unloading or maintaining an aircraft;

'member' means a member of the Authority mentioned in section 13(1);

'Nauru international airline' means an international airline in which the Republic or citizens of Nauru have majority ownership and effective control;

'Nauru registered aircraft' means an aircraft registered under section 41(3);

'navigation installation' means:

(a) any building, facility, work, equipment or place (whether or not part of the aerodrome) intended to assist in the control of air traffic or as an aid to air navigation; and

(b) includes any adjacent land, equipment or place used in connection with the installation;

'non-scheduled international flight' means an international flight that is not operated as part of a scheduled international air service;

'open aviation market licence' means a licence granted under section 60(1) to operate:

(a) scheduled international air services; and

(b) non-scheduled international flights engaged in the carriage of passengers, cargo or mail for remuneration or hire;

'operate', for an aircraft, means to fly or use the aircraft, or to cause or permit the aircraft to fly or be used, whether or not a person is with the aircraft during the operation;

'ordinary rule', see section 175(1);

'owner', for an aircraft, includes a person entitled to possession of the aircraft for 28 days or longer;

'passenger', for an aircraft, means a person other than a crew member carried on the aircraft;

'pilot-in-command', for an aircraft, means the pilot responsible for the operation and safety of the aircraft;

'possession', for an item, includes having control over the item;

'proposed decision notice', see section 162(2);

'Register' means the Nauru Register of Aircraft established under section 28(1);

'registered aircraft' means a Nauru registered aircraft or a foreign registered aircraft;

'Registry' means the Civil Aviation Registry established under section 29(1);

'regulated item' means:

(a) a dangerous good; or

(b) an item specified in a direction given under section 114(2);

'rule' means an ordinary or emergency rule, including an adopted rule;

'scheduled international air service' means a series of flights performed:

(a) by aircraft for the transport of passengers, cargo or mail between Nauru and one or more points in a foreign country; and

(b) on such a regular or frequent basis that the flights constitute a systematic service, whether or not they are performed under a published timetable and open to use by any person;

'scheduled international air service licence' means a licence granted under section 60(1) to operate a scheduled international air service;

'screening' means the application of human, technical or other means to identify and detect regulated items;

'security restricted area' means an area declared by the Director to be a security restricted area under section 106(1);

'security assessment' means an investigation of a person's history, including their criminal history, to determine whether the person poses a threat to aviation security;

'security designated navigation installation' means a navigation installation designated under section 105;

'serious incident' means an incident involving circumstances indicating that an accident nearly occurred;

'smoke' means to smoke, hold or otherwise have control over an ignited tobacco product, weed or plant;

'voice recording' means:

(a) a recording, transcript or record of words spoken by:

(i) a crew member on the flight deck of an aircraft in flight; or

(ii) a person providing an air traffic service to an aircraft in flight; and

(b) includes part of a voice recording.

7 Accident

(1) An ***'accident'*** is an occurrence associated with the operation of an aircraft that takes place between the time a person boards the aircraft with the intention of flight and the time all persons have disembarked and the engine, propellers or rotors of the aircraft have come to rest, and in which:

(a) a person is fatally or seriously injured as a result of:

(i) being in the aircraft; or

(ii) direct contact with part of the aircraft, including a part that has become detached from the aircraft; or

(iii) direct exposure to jet blast; or

(b) the aircraft sustains damage or structural failure that:

(i) adversely affects the structural strength, performance or flight characteristics of the aircraft; and

(ii) would normally require major repair or replacement of the affected component; or

(c) the aircraft is missing or completely inaccessible.

(2) For subsection (1)(a), an injury to a person does not include:

(a) a self-inflicted injury; or

(b) an injury intentionally inflicted by another person; or

(c) an injury to a stowaway hiding outside the areas of the aircraft normally available to passengers and crew.

(3) For subsection (1)(b), damage or structural failure to the aircraft does not include:

(a) engine failure or damage limited to the engine, its cowlings or accessories; or

(b) damage limited to propellers, wing tips, antennae, tyres, brakes, fairings, small dents or puncture holes in the aircraft skin.

8 Aircraft in flight

(1) An aircraft is ***'in flight'*** from the time all the aircraft's external doors are closed after embarkation until an external passenger door is open for disembarkation.

(2) However, if an aircraft makes a forced landing, it is taken to be in flight until the competent authority assumes responsibility for the aircraft and all persons and property on board the aircraft.

9 Aerodrome

(1) The ***'aerodrome'*** is the area that constituted the aerodrome under the *Air Navigation Act 1971* immediately before the commencement of this Act.

(2) The boundaries of the aerodrome may be varied by regulation.

(3) This section does not affect the operation of any other law relating to the land on which the aerodrome is located.

10 General interpretation

(1) This Act must not be interpreted as:

(a) requiring a person to contravene or operate an aircraft in contravention of a law of a foreign country that applies to the person or aircraft; or

(b) limiting the privileges or immunities of:

(i) a military aircraft of a foreign country; or

(ii) the officers and crew of a military aircraft of a foreign country.

(2) A term relating to civil aviation that is not defined in this Act has the meaning given to the term by ICAO.

PART 3 – CIVIL AVIATION AUTHORITY

11 Establishment

The Civil Aviation Authority of Nauru is established.

12 Object and functions

(1) The object of the Authority is to promote safety and security in civil aviation.

(2) In addition to its other functions under this Act, the Authority must advise the Minister on civil aviation matters.

(3) In exercising its powers and performing its functions, the Authority must:

(a) promote full and effective consultation and communication with relevant persons; and

(b) have regard to the objects of this Act; and

(c) act consistently with Nauru's obligations under international agreements about civil aviation and meteorology; and

(d) act in accordance with the directions of the Minister relating to the civil aviation policy of the Government.

(4) The Minister must give all directions to the Authority in writing and must, as soon as practicable after a direction is given, publish it in the Gazette.

(5) The Minister must not give a direction to the Authority to do, or not do, a particular act, or bring about a particular result, in relation to a particular person.

13 Appointment of members

(1) The Authority consists of:

(a) the Head of the Department; and

(b) 2 other members appointed by Cabinet by Gazette notice.

(2) A person may be appointed to be a member even if the person is the holder of an aviation document or otherwise has an interest in the civil aviation industry.

14 Chairperson

The Head of the Department is the chairperson of the Authority.

15 Period and conditions of appointment

A member appointed under section 13(1)(b):

(a) may be appointed for up to 3 years and is eligible for re-appointment; and

(b) subject to section 16, holds office on the terms and conditions determined by Cabinet.

16 Vacation of office

(1) A member appointed under section 13(1)(b) vacates office if:

(a) the member's term of office expires and the member is not re-appointed; or

(b) the member resigns by written notice to Cabinet; or

(c) the member is removed from office under subsection (2); or

(d) the member is absent, except on leave granted by the Authority, from 3 consecutive meetings of the Authority; or

(e) the member is sentenced to imprisonment for an offence; or

(f) the member dies.

(2) Cabinet may remove a member appointed under section 13(1)(b) from office for:

(a) mental or physical incapacity to carry out the member’s duties satisfactorily; or

(b) neglect of duty; or

(c) contravention of a condition of appointment; or

(d) dishonest or dishonourable conduct.

(3) The chairperson vacates office if the chairperson ceases to hold office as the Head of the Department.

(4) The exercise of a power or the performance of a function by the Authority is not invalid only because of a vacancy in the membership of the Authority.

17 Meetings of Authority

(1) The Authority must meet as often as is necessary for the exercise of its powers and the performance of its functions.

(2) However:

(a) the Minister may, at any time, call a meeting of the Authority; and

(b) the Authority must meet at least once every 3 months.

(3) The chairperson must make appropriate arrangements for the Authority to meet.

18 Presiding member at meetings

(1) The chairperson must preside at all meetings of the Authority at which he or she is present.

(2) If the chairperson is absent from a meeting, the members present must appoint another member to preside at the meeting.

19 Procedure at meetings

(1) At a meeting of the Authority:

(a) a quorum consists of 2 members; and

(b) the chairperson has a casting vote.

(2) The Authority must keep full and accurate minutes of its proceedings and decisions.

(3) Subject to this Part, the Authority may decide its own procedures.

20 Disclosure of interest

(1) If a member has a direct or indirect interest in a matter being considered or about to be considered by the Authority, the member must disclose the nature of the interest at a meeting of the Authority as soon as practicable after the relevant facts come to the member's knowledge.

(2) The Authority must keep a record of the disclosure.

(3) The member, while having the interest:

(a) must not take part in any deliberation or decision of the Authority about the matter; and

(b) does not form part of the quorum of the Authority in a deliberation or decision of the Authority relating to the matter.

21 Staff of the Authority

(1) The Chief Secretary, acting on the recommendation of the chairperson, may appoint staff to the Authority under the *Public Service Act 1998*.

(2) The staff of the Authority are subject to the directions of the chairperson in the performance of their duties.

22 Committees

The Authority may, from time to time, establish the committees it considers necessary to enable it to exercise its powers and perform its functions.

23 Annual report

(1) The Authority must, by 31 October each year, give the Minister a report on its activities for the 12 month period ending on 1 July the same year.

(2) Cabinet may make regulations prescribing the matters that must be included in the report.

PART 4 – DIRECTOR OF CIVIL AVIATION

24 Appointment of Director

(1) The Chief Secretary, acting on the recommendation of the Minister, must appoint the Director of Civil Aviation under the *Public Service Act 1998.*

(2) A person is not eligible to be Director if the person, directly or indirectly:

(a) is engaged by a body corporate that operates or provides air services to Nauru; or

(b) has a financial or proprietary interest in a body corporate mentioned in paragraph (a).

25 Vacation of office

The Director vacates office if:

(a) the Director's period of appointment expires and the Director is not re-appointed; or

(b) the Director resigns by written notice to Cabinet; or

(c) the Director is terminated by Cabinet in accordance with the terms and conditions of the Director’s appointment; or

(d) the Director becomes ineligible to be Director under section 24(2); or

(e) the Director dies.

26 Powers and functions of Director

(1) The Director's principal powers and functions are to:

(a) control entry into the civil aviation system by granting aviation documents; and

(b) take appropriate action in the public interest to enforce this Act, including carrying out inspections and audits.

(2) The Minister, the Head of the Department or another member of the Authority must not attempt to direct or influence the Director in the exercise of the following powers:

(a) granting, suspending or revoking a particular aviation document;

(b) enforcing the Act in relation to a particular case.

PART 5 – SERVICE PROVISION

27 Responsibility of Authority

(1) The Authority must ensure the provision of the following services for the safe conduct of civil aviation in Nauru:

(a) a national weather service to provide public weather forecasting and meteorological warning services in a timely and efficient manner;

(b) air traffic services;

(c) search and rescue services;

(d) fire fighting services;

(e) an aeronautical telecommunications service;

(f) an aeronautical information service;

(g) aviation security services at the aerodrome and each navigation installation outside the aerodrome;

(h) any other service required to be provided under the Convention or this Act that is not being adequately provided.

(2) The Authority may make arrangements with any person to provide a service mentioned in subsection (1).

28 Nauru Register of Aircraft

(1) The Authority must establish the Nauru Register of Aircraft.

(2) The Authority must record in the Register the prescribed details of each Nauru registered aircraft.

(3) The Authority may, at the request of a person, record in the Register a financial interest held by the person in a Nauru registered aircraft.

29 Civil Aviation Registry

(1) The Authority must establish the Civil Aviation Registry.

(2) Copies or evidence of the following must be kept at the Registry:

(a) this Act, including each regulation and rule made under this Act;

(b) all material incorporated into a regulation or rule by reference;

(c) for each adopted rule – the relevant adoption statement and interpretation statement;

(d) each current aviation document, and a record of each variation, revocation, suspension or surrender of an aviation document;

(e) each current licence, and a record of each variation, revocation, suspension or surrender of a licence;

(f) the Register;

(g) the address for service of each current applicant for, and holder of, an aviation document;

(h) each delegation, authorisation and exemption made or granted under this Act;

(i) each accident or incident notification made under section 77;

(j) each document required to be lodged at the Registry under this Act.

(3) Any person may:

(a) inspect a document kept at the Registry free of charge; and

(b) purchase a copy of a document kept at the Registry for the prescribed fee.

(4) A certificate given by the Authority about the contents of the Registry is evidence of the matters stated in it in the absence of proof to the contrary.

30 Minister may request information

The Authority must give the Minister (or another person specified by the Minister) any information requested by the Minister relating to the Authority or civil aviation in Nauru.

31 Director to give information

The Director must give the Authority any information or documents requested by the Authority for the maintenance of the Register and the Registry.

PART 6 – PARTICIPATION IN CIVIL AVIATION SYSTEM

Division 1 – Aviation documents

Subdivision 1 – Requirement for aviation document

32 Rules requiring aviation document

The rules may provide that an aviation document must be held by or in relation to any of the following:

(a) Nauru registered aircraft;

(b) aircraft pilots;

(c) crew members;

(d) air traffic service personnel;

(e) aviation security service personnel;

(f) aircraft maintenance personnel;

(g) air services;

(h) air traffic services;

(i) the aerodrome or an aerodrome operator;

(j) navigation installation providers;

(k) aviation training organisations;

(l) aircraft design, manufacture and maintenance organisations;

(m) aeronautical procedures;

(n) the aviation security service;

(o) aviation meteorological services;

(p) aeronautical telecommunications services;

(q) any other aviation related service, person, aircraft or aeronautical product operated in support of or in conjunction with the civil aviation system;

(r) any person, service or thing within a class specified in paragraphs (a) to (q).

33 Failure to hold aviation document

A person commits an offence if the person:

(a) intentionally engages in conduct for which an aviation document is required; and

(b) does not hold the aviation document; and

(c) is reckless about whether the person holds the aviation document.

Penalty: $10,000 and 12 months imprisonment.

34 Compliance with document

The holder of an aviation document commits an offence if:

(a) the holder intentionally engages in conduct; and

(b) the conduct results in a contravention of this Act or the conditions of the aviation document; and

(c) the holder is reckless about whether the conduct will result in the contravention.

Penalty: $10,000 and 12 months imprisonment.

Subdivision 2 – Grant of aviation document

35 Application for aviation document

(1) An application for an aviation document must be made to the Director.

(2) The application must be:

(a) in the prescribed form; and

(b) accompanied by the prescribed fee and prescribed documents.

(3) After considering the application, the Director may grant or refuse to grant the document.

(4) The Director must grant the document if satisfied that:

(a) the person, product, service, facility or activity for which the application is made meets the prescribed requirements for the document; and

(b) each person who is likely to control the exercise of privileges under the document:

(i) holds the prescribed qualifications and experience to exercise the privileges; and

(ii) is a fit and proper person to participate in the civil aviation system, as decided under section 36; and

(iii) meets any other prescribed requirement; and

(c) civil aviation safety and security will not be adversely affected if the Director grants the document.

(5) For the purpose of granting an aviation document, the Director may, subject to the rules, accept foreign qualifications or recognise foreign certifications.

(6) If the Director refuses to grant the document, the Director must give the applicant an information notice for the decision.

36 Fit and proper person test

(1) In this section:

'affected person', for a decision under this section, means:

(a) the subject of the decision; or

(b) if the subject of the decision is not the holder of, or applicant for, the aviation document to which the decision relates – the holder of, or applicant for, the aviation document;

'subject', for a decision under this section, means the person the Director decides is or is not a fit and proper person to participate in the civil aviation system.

(2) To decide whether a person is a fit and proper person to participate in the civil aviation system, the Director must consider the following matters with regard to the degree and nature of the proposed participation:

(a) the person's history of compliance with transport safety regulatory requirements;

(b) the person's experience in the transport industry;

(c) the person's knowledge of the relevant civil aviation regulatory requirements;

(d) the person's history of physical and mental health;

(e) the person's criminal history;

(f) any other relevant matter.

(3) The Director may consider information obtained from any source.

(4) Before making a decision that the person is not a fit and proper person to participate in the civil aviation system, the Director must:

(a) give each affected person a proposed decision notice for the proposed decision; and

(b) consider any submissions received in response to the notice.

(5) The Director must not, in a proposed decision notice given under this section or an information notice given under section 35(6) because the Director decides a person is not a fit and proper person:

(a) if the notice is given to an affected person who is not the subject of the proposed decision or decision – include the reasons for the decision or proposed decision; or

(b) disclose the identity of the person who gave the information to the Director without the consent of the person.

37 Conditions and period of document

(1) Subject to this section and the rules, the Director may grant an aviation document for the period and subject to the conditions the Director considers appropriate.

(2) It is a condition of an aviation document that the each person who is likely to control the exercise of privileges under the document continues to be a fit and proper person to participate in the civil aviation system, as decided under section 36.

(3) It is a condition of an aviation document that authorises the provision of an aviation related service that the holder of the document:

(a) complies with rules requiring the holder to establish and follow a management system; and

(b) provides sufficient training, supervision and resources to each employee engaged in the provision of the service to ensure compliance with prescribed safety standards and practices and the conditions of the document.

38 Renewal of aviation document

(1) If the holder of an aviation document wishes to renew the document, the holder must apply to the Director for the renewal at least 1 month before the document expires.

(2) If the application is not decided before the document expires, the document continues in force until the application is decided.

(3) Section 35 applies to the application as if it were an application for a new document.

39 Matters prescribed by rules

The rules may prescribe the requirements, standards and application procedure for an aviation document and the maximum period for which each document may be granted.

Division 2 – Registration

40 Requirement for registration

(1) The owner of an aircraft that flies to, from or over Nauru must hold a valid certificate of registration for the aircraft issued by:

(a) the Director; or

(b) the appropriate authority of a contracting State; or

(c) the appropriate authority of a foreign country that is party to an agreement with Nauru that provides for the acceptance of the foreign country's registration.

(2) An aircraft registered in a foreign country cannot be registered in Nauru except under a joint or international registration plan.

41 Application for registration

(1) An application for registration of an aircraft must be made to the Director.

(2) The application must be:

(a) in the prescribed form; and

(b) accompanied by the prescribed fee and prescribed documents.

(3) After considering the application, the Director may register or refuse to register the aircraft.

(4) If the Director refuses to register the aircraft, the Director must give the applicant an information notice for the decision.

42 Conditions and period of registration

Subject to the rules, the Director may register an aircraft for the period and subject to the conditions the Director considers appropriate.

43 Matters prescribed by rules

The rules may prescribe the requirements, standards and application procedure for the registration of an aircraft and the maximum period for which registration may be granted.

44 Transfer of responsibilities

The Minister, acting on the recommendation of the Authority or the Director, as the case requires, may do any of the following:

(a) by agreement with the appropriate authority for a foreign international airline – transfer to the appropriate authority all or part of the responsibility the Authority or the Director has under this Act for a Nauru registered aircraft operated by the airline;

(b) by agreement with the appropriate authority for a foreign registered aircraft operated by a Nauru international airline – vest in the Authority or the Director all or part of the responsibility the Authority has under this Act for the aircraft;

(c) grant exemptions from this Act relevant to an exercise of the Minister's powers under this section.

Division 3 – Surveillance and sanctions

Subdivision 1 – Powers of Director

45 Monitoring

(1) This section applies to a person who:

(a) holds an aviation document; or

(b) operates, maintains, services or conducts an activity in relation to an aircraft, aeronautical product or aviation related service.

(2) The Director may require the person to:

(a) undergo or conduct the inspections and monitoring the Director considers necessary in the interests of civil aviation safety and security; and

(b) give information the Director considers relevant to the inspections and monitoring.

46 When sanctions may be imposed

(1) In this section:

'sanctions', in relation to an aviation document, mean any of the following:

(a) the suspension of the document (in whole or in part) for a specified period;

(b) the imposition of conditions on the document for a specified period;

(c) the imposition of permanent conditions on the document;

(d) the revocation of the document (in whole or in part).

(2) The Director may impose sanctions in relation to an aviation document if:

(a) the Director believes on reasonable grounds that it is necessary to do so in the interests of civil aviation safety or security; or

(b) the holder of the document has contravened this Act or the conditions of the document; or

(c) the Director believes on reasonable grounds the holder is carrying out activities under the document in a reckless or incompetent way; or

(d) the holder has owed an outstanding amount to the Authority for a fee, charge or levy for at least 6 months.

(3) Before making a decision to revoke (in whole or in part) or impose permanent conditions on an aviation document, the Director must:

(a) give the holder of the document a proposed decision notice for the proposed decision; and

(b) consider any submissions received in response to the notice.

(4) If the Director decides to impose sanctions in relation to an aviation document, the Director must give the holder of the document:

(a) an information notice for the decision; and

(b) a written notice directing the holder to give the aviation document to the Director within 14 days after receiving the notice, so the document can be surrendered or marked appropriately by the Director.

(5) The holder of an aviation document commits an offence if the holder intentionally fails to comply with a notice given under subsection (4)(b).

Penalty: $2,500.

47 Amending or revoking document in other cases

(1) The Director may:

(a) amend or revoke an aviation document on the request of the holder of the document; or

(b) amend or revoke an aviation document because the activity for which the document was granted is no longer being carried out by the holder of the document; or

(c) amend an aviation document to correct a clerical error.

(2) Before deciding to amend or revoke a document under subsection (1)(b), the Director must:

(a) give the holder of the document a proposed decision notice for the proposed decision; and

(b) consider any submissions received in response to the notice.

(3) If the Director decides to amend or revoke an aviation document under subsection (1)(b), the Director must give the holder of the document an information notice for the decision.

48 Powers to detain, seize and destroy aircraft and products

(1) The Director, acting on a warrant issued by a judicial officer under subsection (2), may take any of the following action:

(a) seize and detain an aircraft or aeronautical product;

(b) prohibit or impose conditions on the operation of an aircraft or the use of an aeronautical product.

(2) A judicial officer may issue a warrant to take the action on the application of the Director if the officer is satisfied that the action is necessary to protect persons or property.

(3) A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct results in the contravention of a prohibition or condition imposed under subsection (1)(b); and

(c) the person is reckless about whether the conduct will result in the contravention.

Penalty: $5,000.

(4) The Director may give notice of a prohibition or condition imposed under subsection (1)(b) to a person other than the owner or operator of the aircraft or

product if the Director considers it necessary to do so in the interests of safety or security.

(5) An aircraft or aeronautical product may only be detained for so long as is necessary:

(a) in the interests of safety or security; or

(b) for the prosecution of an offence against this Act.

(6) If the Director decides to take action under this section in relation to an aircraft or product, the Director must give the owner or operator of the aircraft or product an information notice for the decision.

(7) In this section, a reference to an aircraft or aeronautical product includes a reference to a class of aircraft or aeronautical product.

Subdivision 2 – Powers of court

49 Special orders of court for safety offences

(1) If a Court finds a person guilty of an offence against section 140, the Court may, in addition to imposing a penalty for the offence:

(a) disqualify the person from holding an aviation document, either permanently or for a specified period; or

(b) impose conditions on an aviation document held by the person for up to 12 months; or

(c) if the offence was committed in the course of the person making a commercial gain – order the person to pay an amount up to 3 times the value of the commercial gain, which may be recovered as if the amount were a fine.

(2) The registrar of the Court must give a copy of an order made under subsection (1) to the Director.

50 Effect of disqualification

(1) A period of disqualification begins on the date the order of disqualification is made or a later date specified by the Court.

(2) If a person disqualified from holding an aviation document holds an aviation document when the period of disqualification begins:

(a) the document has no effect for the period of disqualification; and

(b) if the period of disqualification expires before the expiry of the term of the document – the document continues to have no effect until the holder meets the prescribed requirements for re-activating the document.

51 Surrender of document on disqualification

(1) A person who is disqualified from holding an aviation document commits an offence if the person:

(a) holds an aviation document at the time of the disqualification; and

(b) does not surrender the document to the Director within 7 days after the date the disqualification begins.

Penalty: $2,500.

(2) Strict liability applies to subsection (1).

(3) The Director must retain a surrendered document until the period of disqualification has expired or the disqualification has been removed and the document is re-activated.

52 Applying for aviation document while disqualified

(1) A person commits an offence if the person:

(a) is disqualified from holding an aviation document; and

(b) intentionally applies for the document; and

(c) is reckless about whether the person is disqualified from holding the document.

Penalty: $10,000 and 12 months imprisonment.

(2) The court may disqualify a person convicted of an offence against subsection (1) from holding an aviation document for a further period of up to 12 months in addition to the original period of disqualification.

(3) An aviation document obtained by a person while disqualified from holding the document has no effect, whether or not the person is convicted of an offence under this section.

PART 7 – LICENSING OF INTERNATIONAL AIR SERVICES

Division 1 – Requirement for licence

53 Unlicensed operation of scheduled international air service

A person commits an offence if the person:

(a) operates a scheduled international air service; and

(b) does not hold a licence to operate the service; and

(c) is reckless about whether the person holds the licence.

Penalty: $100,000.

54 Unlicensed operation of non-scheduled international flight

(1) A person commits an offence if the person:

(a) operates a non-scheduled international flight for remuneration or hire between Nauru and one or more points in a foreign country; and

(b) is not authorised by Cabinet or under an open aviation market licence to operate the flight; and

(c) is reckless about whether the person is authorised to operate the flight.

Penalty: $100,000.

(2) The holder of an open aviation market licence may operate a non-scheduled international flight engaged in the carriage of passengers, cargo or mail for remuneration or hire to or from the places specified in the licence.

55 Compliance with licence conditions

A licensee commits an offence if the licensee:

(a) intentionally engages in conduct; and

(b) the conduct results in a contravention of the conditions of the licensee's licence; and

(c) is reckless about whether the conduct will result in the contravention.

Penalty: $100,000.

56 Agent offences

(1) A person commits an offence if:

(a) the person intentionally acts as an agent for a scheduled international air service; and

(b) the service is operated without a licence; and

(c) the person is reckless about whether the service is operated without a licence.

Penalty: $100,000.

(2) A person commits an offence if:

(a) the person intentionally acts as an agent for a non-scheduled international flight between Nauru and one or more points in a foreign country; and

(b) the flight is operated without the authorisation of Cabinet or an open aviation market licence; and

(c) the person is reckless about whether the flight is operated without the authorisation or licence.

Penalty: $100,000.

(3) A person commits an offence if:

(a) the person intentionally acts as an agent for an air service or flight; and

(b) the service or flight is operated in contravention of the conditions of a licence; and

(c) the person is reckless about whether the service or flight is operated in contravention of the conditions of the licence.

Penalty: $100,000.

Division 2 – Grant of licence

57 Application for licence

(1) A person may apply to the Minister for a licence.

(2) The application must be:

(a) in the prescribed form; and

(b) accompanied by the prescribed fee and prescribed documents.

(3) The Minister must publish a Gazette notice:

(a) specifying the licence applied for and the name of the applicant; and

(b) inviting written submissions in response to the application within a specified time at least 21 days after the notice is first published.

58 Consideration of application – Nauru international airline

(1) The Minister must take into account the following matters in considering an application for a scheduled international air service licence made by a Nauru international airline:

(a) any relevant international agreement to which Nauru is a party, including an air services agreement and any associated arrangement;

(b) the safety and security requirements for the grant of the licence;

(c) the ability of the applicant to finance the operation of the proposed service under the licence;

(d) the likelihood of the applicant operating the proposed service in a satisfactory way, including in relation to safety, security and reliability;

(e) written submissions received under section 57(3)(b);

(f) the experience, competence, qualifications and professional reputation of the applicant and each person who will be responsible for the management and control of the air service;

(g) the insurance to be held by the applicant for the operation of the service;

(h) any other matter the Minister considers relevant and has informed the applicant will be considered.

(2) The Minister must take into account the following matters in considering an application for an open aviation market licence made by a Nauru international airline:

(a) any relevant international agreement to which Nauru is a party, including an air services agreement and any associated arrangement;

(b) the safety and security requirements for the grant of the licence;

(c) any other matter the Minister considers relevant and has informed the applicant will be considered.

59 Consideration of application – foreign international airline

The Minister must take into account the following matters in considering an application for a licence made by a foreign international airline:

(a) any relevant international agreement to which Nauru is a party, including an air services agreement and any associated arrangement;

(b) the safety and security requirements for the grant of the licence;

(c) any other matter the Minister considers relevant and has informed the applicant will be considered.

60 Decision on application

(1) After considering an application for a licence, the Minister may, with the consent of Cabinet, grant or refuse to grant the licence.

(2) However, regardless of the consent of Cabinet, the Minister must refuse to grant the licence if it would be contrary to an international agreement mentioned in section 58 or 59.

(3) If the Minister decides to refuse to grant the licence, the Minister must give the applicant an information notice for the decision.

61 Conditions and period of licence

(1) The Minister may grant a scheduled international air service licence subject to conditions, including conditions about:

(a) the places that may be served and the routes that may be followed under the licence; and

(b) the maximum capacity that may be provided under the licence; and

(c) the date before which the service must begin under the licence.

(2) An open aviation market licence must specify the places that may be served under the licence.

(3) The Minister may grant a licence for the period the Minister considers appropriate.

62 Renewal of licence

(1) If a licensee wishes to renew a licence, the licensee must apply to the Minister for the renewal at least 3 months before the licence expires.

(2) If the application is not decided before the licence expires, the licence continues in force until the application is decided.

(3) Sections 57 to 61 apply to the application as if it were an application for a new licence.

63 Transfer of scheduled international air service licence

(1) A Nauru international airline holding a scheduled international air service licence may apply to the Minister for the licence to be transferred to another person.

(2) A Nauru international airline holding an open aviation market licence may apply to the Minister for the licence to be transferred to another Nauru international airline.

(3) The application must be lodged at least 3 months before the date of the proposed transfer.

(4) Sections 57 to 61 apply to the application as if it were an application for a new licence.

64 Publication of decision

The Minister must publish notice of a decision under this Division in the Gazette within 28 days after the decision is made.

65 Requirements of Act continue to apply

An aircraft used for an air service operated under a licence is not, because it is being used for the service, exempt from the operation of any requirement under this Act.

66 Information to be given

A licensee must give the Minister the following on request:

(a) proof of the insurance held by the licensee for a service or flight operated under the licence;

(b) specified financial and statistical returns and statements.

67 Registration of licences

The Minister must give the Authority a copy of each licence granted and a note of each variation, revocation, suspension or surrender of a licence for the Registry.

Division 3 – Sanctions

68 Variation of licence conditions

(1) The Minister may, with the consent of Cabinet, vary the conditions of a licence of the Minister's own motion or on the application of the licensee if the Minister believes on reasonable grounds that it is necessary or desirable to do so in the public interest.

(2) The Minister may vary the conditions of a licence by adding, removing or amending conditions.

(3) If a proposed variation would change the routes operated or the capacity of the service provided under the licence, the Minister must publish a Gazette notice:

(a) specifying the proposed variation; and

(b) inviting written submissions in response to the application within a specified time at least 21 days after the notice is published.

(4) Before deciding to vary a condition of the Minister's own motion, the Minister must:

(a) give the licensee a proposed decision notice for the proposed decision; and

(b) consider any submissions received in response to the notice.

(5) In considering an application for a variation of conditions, the Minister must:

(a) take into account all the matters required to be considered under section 58 or 59 for the grant of the licence; and

(b) consider any submissions received under subsection (4)(b).

(6) If the Minister decides to vary the conditions of a licence of the Minister's own motion, the Minister must give the licensee an information notice for the decision.

69 Suspension of licence

(1) The Minister may, with the consent of Cabinet, suspend a licence for a specified period if:

(a) the Minister believes on reasonable grounds that the licensee has contravened a condition of the licence; or

(b) the Director (or a person equivalent to the Director in a contracting State) has suspended or revoked a safety approval required to operate services under the licence.

(2) If the Minister decides to suspend a licence, the Minister must give the licensee an information notice for the decision.

70 Revocation of licence

(1) The Minister may, with the consent of Cabinet, revoke a licence if:

(a) the licensee has contravened a condition of the licence; or

(b) the licence was granted under an international agreement between Nauru and a foreign country and:

(i) the agreement has been terminated or has ceased to bind Nauru or the foreign country; or

(ii) Nauru has become entitled under the agreement to revoke the licence.

(2) If the Minister decides to revoke a licence, the Minister must give the licensee an information notice for the decision.

71 Notice of decision

The Minister must publish notice of a decision under this Division in the Gazette within 28 days after making the decision.

PART 8 – AIRCRAFT OPERATIONS

Division 1 – Restrictions on aircraft operations

72 Military aircraft

A military aircraft must not fly over or land in Nauru except with the written approval of Cabinet.

73 Landing aircraft in Nauru

(1) In this section:

'stopping for non-traffic purposes' means landing for any purpose other than to take on or discharge passengers, cargo or mail.

(2) The following aircraft are authorised to land in Nauru:

(a) a Nauru registered aircraft;

(b) an aircraft authorised to do so under a licence;

(c) an aircraft registered in a contracting State that is engaged in:

(i) a non-scheduled international flight and stopping in Nauru for non-traffic purposes; or

(ii) a scheduled international air service and stopping in Nauru for non-traffic purposes with the written approval of the Authority; or

(d) an aircraft authorised to do so by Cabinet.

(3) A person commits an offence if:

(a) the person lands an aircraft in Nauru; and

(b) the aircraft is not authorised to land in Nauru under subsection (2); and

(c) the person is reckless about whether the aircraft is authorised to land.

Penalty: $100,000.

74 Operation of aircraft over high seas

A person operating a Nauru registered aircraft over the high seas must ensure it is operated in accordance with the Rules of the Air contained in Annex 2 to the Convention.

Division 2 – Pilot-in-command

75 Duties of pilot-in-command

The pilot-in-command of an aircraft:

(a) is responsible for the safe operation of the aircraft in flight, the safety and well-being of all passengers and crew, and the safety of cargo carried on the aircraft; and

(b) has final authority to control the aircraft while in command and for the maintenance of discipline of all persons on board the aircraft; and

(c) subject to section 76, must comply with this Act.

76 Contravention of Act during emergencies

(1) The pilot-in-command of an aircraft may contravene this Act in response to:

(a) an emergency that arises in flight; or

(b) an emergency (other than an emergency that arises in flight) that necessitates the urgent transportation of persons or cargo for the protection of life or property.

(2) However, the contravention is permitted only if the pilot-in-command is satisfied that:

(a) the emergency involves a danger to life or property; and

(b) the extent of the contravention goes only as far as is necessary to deal with the emergency; and

(c) there is no other reasonable means of alleviating, avoiding or assisting with the emergency; and

(d) the degree of danger to life or property involved in complying with the Act is clearly greater than the degree of danger involved in contravening it.

(3) If a contravention of this Act is an offence, it is a defence to the offence to prove that the contravention was permitted under this section.

(4) Subsection (1)(b) does not permit:

(a) the operation of an aircraft that is not registered; or

(b) a contravention relating to the airworthiness of an aircraft; or

(c) the operation of an aircraft by a person who is not lawfully entitled to operate the aircraft.

(5) A pilot-in-command who contravenes this Act under this section commits an offence if the pilot-in-command intentionally fails to:

(a) notify the relevant air traffic service of the contravention as soon as practicable; or

(b) notify the Director of the contravention and the circumstances that necessitated it as soon as practicable; or

(c) comply with a request from the Director for a written report of the contravention.

Penalty: $5,000.

(6) The commission of an offence under subsection (5) does not prevent a pilot-in-command relying on the other provisions of this section.

PART 9 – ACCIDENTS AND INCIDENTS

Division 1 – Notification

77 Obligation to notify accidents and incidents

(1) The pilot-in-command of an aircraft commits an offence if:

(a) the aircraft is involved in an accident; and

(b) the pilot-in-command fails to notify the accident in accordance with section 78 to the Authority as soon as practicable.

Penalty: $10,000.

(2) A person commits an offence if:

(a) the rules require the person to notify an incident to the Authority; and

(b) the person fails to notify the incident in accordance with section 78 to the Authority.

Penalty: $10,000.

(3) The operator of an aircraft commits an offence if:

(a) the aircraft is involved in an accident; and

(b) due to injury or death, the pilot-in-command is unable to notify the Authority of the accident; and

(c) the operator of the aircraft fails to notify the accident in accordance with section 78 to the Authority as soon as practicable.

Penalty: $10,000.

(4) A person commits an offence if:

(a) the person is co-ordinating a search and rescue operation for an aircraft; and

(b) the person fails to notify the Authority of the operation as soon as practicable.

Penalty: $10,000.

(5) Strict liability applies to an offence against this section.

78 Particulars of notification

(1) A notification of an accident or incident must include as much of the following information as is reasonably available to the person making the notification:

(a) the type, nationality and registration marks of the aircraft;

(b) the name of the owner, operator and hirer (if any) of the aircraft;

(c) the name of the pilot-in-command of the aircraft;

(d) the date and time of the accident;

(e) the last point of departure and the intended point of landing of the aircraft;

(f) the position of the aircraft with reference to an easily defined geographical point;

(g) the number of persons killed or seriously injured in the accident or incident (if any);

(h) the nature and extent of the damage to the aircraft caused by the accident or incident;

(i) any other prescribed information.

(2) If all the information specified in subsection (1) is not immediately available to the person making the notification, a further notification containing the information not included in the first notification must be given to the Authority as soon as practicable.

79 Notification of Minister and Director

The Authority must notify the Minister and the Director of an accident, incident or search and rescue operation as soon as practicable after the Authority is notified of the accident, incident or operation.

80 Notification of country of registration

If the Authority is notified of an accident or serious incident involving a foreign registered aircraft, the Authority must forward the following to the appropriate authority of the country of registration:

(a) a copy of the notification;

(b) a copy of all relevant information relating to the accident or incident held by the Authority;

(c) notification of any investigation being held into the accident or incident.

Division 2 – Investigations

Subdivision 1 – Preliminary matters

81 Definitions

In this Division:

'authorised officer' means a person appointed under section 87.

'occurrence' means an accident or incident notified to the Minister that occurred in Nauru.

Subdivision 2 – Establishment of Accident Investigation Commission

82 Establishment of Commission

(1) Cabinet must, by Gazette notice, establish an Accident Investigation Commission to investigate an occurrence if:

(a) Nauru is required to investigate the occurrence under the Convention; or

(b) Cabinet considers it necessary or desirable to investigate the occurrence in the interests of civil aviation safety or security.

(2) The Commission remains in existence until it has presented its final report and Cabinet, by Gazette notice, declares that it has ceased to exist.

83 Commission responsible to Cabinet

The Commission must report directly to Cabinet.

84 Membership of Commission

(1) On establishing the Commission, Cabinet must, by Gazette notice, appoint 3 Commissioners, of whom:

(a) one must be must be a judge or a lawyer with at least 10 years experience in practice; and

(b) one must be a person with significant aviation industry experience who is either:

(i) the holder or former holder of a commercial pilot's licence or an aircraft maintenance engineer's licence; or

(ii) a senior manager in civil aviation safety; and

(c) one must be a person with qualifications and experience relevant to the functions of the Commission.

(2) The Commissioner appointed under subsection (1)(a) is the Chief Commissioner.

(3) A Commissioner holds office:

(a) for the term of the Commission, unless the Commissioner vacates office earlier under section 85; and

(b) on the terms and conditions determined by Cabinet.

85 Vacation of office

(1) A Commissioner vacates office if the Commissioner:

(a) dies; or

(b) resigns by written notice to Cabinet; or

(c) is terminated under the terms and conditions of the Commissioner's appointment.

(2) If a Commissioner vacates office under subsection (1), Cabinet must appoint a replacement under section 84.

(3) The exercise of a power or the performance of a function of the Commission is not invalid only because of a vacancy in its membership.

86 Staff of Commission

(1) Cabinet, acting on the recommendation of the Chief Commissioner, may appoint staff to the Commission.

(2) The staff of the Commission are subject to the directions of the Chief Commissioner in the performance of their duties.

87 Authorised officers

The Chief Commissioner may appoint a person to be an authorised officer for an investigation.

Subdivision 3 – Object, powers and functions of Commission

88 Object of Commission

(1) The object of the Commission is to investigate the occurrence in order to determine the circumstances and causes of the occurrence to avoid similar occurrences in the future.

(2) It is not the object of the Commission to determine the person responsible for the occurrence.

89 General powers and functions of Commission

The Commission has the following powers and functions for the investigation of the occurrence:

(a) to make, co-ordinate and direct inquiries and investigations;

(b) to gather evidence relevant to the investigation;

(c) to determine who should be involved in the investigation;

(d) to prepare and publish findings and recommendations resulting from its inquiries and investigations;

(e) to give a written report of the investigation to Cabinet, including any recommendations for action that it considers would reduce the likelihood of similar occurrences in the future;

(f) to co-ordinate and co-operate with the accident investigation organisations of contracting States, including collecting evidence on their behalf;

(g) any other power or function conferred on the Commission by this or another Act.

90 Investigative powers

(1) In addition to its powers under this Act, the Commission has the same investigative powers conferred on a Commission of Inquiry by the *Commissions of Inquiry Ordinance 1948-1967*.

(2) If there is an inconsistency between this Act and the *Commissions of Inquiry Ordinance 1948-1967*, this Act prevails.

91 Custody of aircraft

(1) The Commission may take custody of an aircraft involved in the occurrence (including its contents) for the time the Commission considers necessary for the investigation.

(2) The aircraft must not be moved or interfered with except to the extent necessary to:

(a) extract persons, animals, mail and cargo from the aircraft; or

(b) prevent the aircraft being destroyed or damaged; or

(c) eliminate danger or an obstruction caused by the aircraft.

92 Powers of entry and investigation

(1) A Commissioner or an authorised officer may do the following for the investigation of the occurrence:

(a) enter and inspect an aircraft, building or other place (including the aerodrome);

(b) inspect, copy, take extracts from or seize and detain a document or record;

(c) if necessary to preserve or record evidence – prohibit or restrict access to the site of the occurrence;

(d) seize, detain, remove, preserve, protect or test an aircraft, aeronautical product or other thing.

(2) However, a Commissioner or authorised officer does not have power to enter a residential house without a warrant issued by a judicial officer under subsection (3).

(3) A judicial officer may issue a warrant to enter a residential house if the judicial officer is satisfied that the entry is essential to the investigation of the accident.

(4) A person exercising a power of entry under this section must:

(a) carry a written authority issued by the Chief Commissioner specifying:

(i) the name and office of the person; and

(ii) the powers the person is authorised to exercise; and

(iii) the source of the person's authority to exercise the powers; and

(b) produce the authority and evidence of the person's identity before exercising the power and on any later request.

Subdivision 4 – Proceedings of Commission

93 Hearings and meetings

The Chief Commissioner may determine:

(a) the frequency, location and times of the hearings and meetings of the Commission; and

(b) the procedures to be followed at the hearings and meetings of the Commission.

94 Appointment of expert assessors

The Chief Commissioner may appoint a suitably qualified person as an expert assessor for the investigation.

95 Preliminary reports

If it considers it necessary to do so in the interests of civil aviation safety, the Commission may:

(a) make preliminary reports and recommendations to Cabinet before making its final report; and

(b) give notice of a preliminary report or recommendation to the Authority.

96 Right of response to report

If the Commission proposed to make a report that states or infers that the conduct of a specified person contributed to the cause of an occurrence, the Commission must, before making the report:

(a) give the person an opportunity to respond to the proposed report, either in writing or in person; and

(b) consider any response of the person before making the report.

97 Conduct of investigation

(1) The Commission must comply with a requirement of the Convention to allow a person to participate or be represented in an investigation.

(2) Except with the consent of the Commission, no other person may:

(a) participate in the investigation of an occurrence by the Commission; or

(b) undertake an independent investigation at the site of an occurrence being investigated by the Commission; or

(c) examine material removed from the site of an occurrence being investigated by the Commission.

98 Final report

When the Commission has concluded its investigation into the occurrence, it must submit its final report to Cabinet.

Division 3 – Use of Voice Recordings

99 Admissibility of voice recordings – criminal proceedings

A voice recording is not admissible in criminal proceedings against a crew member or a person providing air traffic services.

100 Admissibility of voice recordings – civil proceedings

A voice recording is not admissible in civil proceedings unless the Court is satisfied, on application for the admission of the recording by a party to the proceedings, that:

(a) a question of material fact in the proceedings cannot be properly determined from other evidence available to the Court; and

(b) the voice recording would assist in the proper determination of the question; and

(c) the public interest in the proper determination of the question outweighs the public interest in protecting the privacy of a person recorded on the voice recording.

101 Examination of voice recording

(1) If a Court admits a voice recording under section 100, only the following persons may be present at the examination of the recording:

(a) the persons constituting the Court;

(b) the legal representatives of each party to the proceedings;

(c) other persons the Court directs may be present.

(2) The court may make orders limiting or prohibiting disclosure of the voice recording.

102 Limitation on use of voice recording

A voice recording admitted under section 100 is not evidence for the purpose of determining the liability of a crew member or person providing air traffic services for an accident or incident.

103 Voice recording not grounds for disciplinary action

A person is not entitled to take disciplinary action against an employee of the person on the basis of information in a voice recording.

104 Disclosure of voice recording

(1) A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct results in the disclosure of a voice recording; and

(c) the person is reckless about whether the conduct will result in the disclosure.

Penalty: $10,000 and 12 months imprisonment.

(2) Subsection (1) does not apply to a disclosure made:

(a) in the course of an investigation into an accident or incident conducted under Division 2; or

(b) during:

(i) criminal proceedings, other than criminal proceedings of the kind mentioned in section 99; or

(ii) civil proceedings in which the voice recording is admitted under section 100; or

(c) in accordance with an order of the Court under section 101(2).

PART 10 – AVIATION SECURITY

Division 1 – Right of access

105 Security designated navigation installations

The Minister may, by Gazette notice, designate a navigation installation to be a security designated navigation installation.

106 Security restricted areas

(1) The Director may declare, by sign, that an area within the aerodrome or a security designated navigation installation is a security restricted area.

(2) An area may be designated a security restricted area:

(a) at all times; or

(b) during specified times only.

107 Right of access – security restricted areas

(1) The following persons may enter or be present in a security restricted area:

(a) a police officer on duty;

(b) an aviation security officer on duty;

(c) a person who is:

(i) authorised by the Director, aerodrome manager or other person in control of the area to be in the area; and

(ii) wearing an aerodrome identity card issued and worn in accordance with the rules;

(d) a passenger passing through the area to embark or disembark an aircraft through a gateway or thoroughfare approved for that purpose by the Director or aerodrome manager;

(e) a person authorised to enter or be present in the area under the rules.

(2) A person commits an offence if the person:

(a) is in a security restricted area; and

(b) is not authorised to be in the area; and

(c) is reckless about whether the person is authorised to be in the area.

Penalty: $10,000 and 12 months imprisonment.

(3) A person commits an offence if:

(a) the person is in a security restricted area; and

(b) an aviation security officer tells the person they are in a security restricted area and directs the person to:

(i) state the person's name, address and reason for being in the area; or

(ii) leave the area; and

(c) the person intentionally fails to comply with the direction.

Penalty: $10,000 and 12 months imprisonment.

(4) An aviation security officer must not direct a person to leave a security restricted area unless:

(a) the person is not a person mentioned in subsection (1); or

(b) the officer reasonably believes that it is necessary for the person to leave the area in the interests of safety or security.

108 Power to require drivers to stop vehicles

(1) An aviation security officer in uniform may direct the driver of a vehicle in a security restricted area to stop the vehicle and remain stopped for as long as is reasonably necessary to screen or search the vehicle or a person or item in the vehicle under sections 116 and 117.

(2) A person commits an offence if the person intentionally fails to comply with a direction given under subsection (1).

Penalty: $10,000 and 12 months imprisonment.

109 Powers of entry of aviation security officers

(1) Subject to this section, an aviation security officer may, to exercise powers or perform functions under this Act, enter:

(a) the aerodrome; or

(b) a navigation installation; or

(c) an aircraft; or

(d) a vehicle, building or place in the aerodrome or a navigation installation.

(2) The officer must not use force to gain entry unless the officer is accompanied by a police officer.

(3) If the Nauru Police Force has temporarily taken command of a situation at the aerodrome or navigation installation, the power of entry of an aviation security

officer in relation to the aerodrome or installation is subject to the directions of the most senior police officer present at the aerodrome or installation.

Division 2 – Provision of aviation security services

110 Provider of aviation security services

The Minister must, by Gazette notice, designate a provider of aviation security services.

111 Aviation security officers

The Minister may, by Gazette notice, authorise a person engaged by the aviation security service to be an aviation security officer for this Act.

112 Objects of aviation security service

The objects of the aviation security service are to:

(a) prevent aviation crimes; and

(b) safeguard international civil aviation operations against acts of unlawful interference; and

(c) protect persons and property from dangers arising from the commission or attempted commission of such crimes.

113 Powers and functions of aviation security service

(1) Without limiting the powers and functions of the aviation security service under this or any other Act, the powers and functions of the aviation security service include the following:

(a) to conduct searches and screening of persons, baggage and cargo for each international air service arriving in or leaving Nauru;

(b) to conduct searches and screening of aircraft, the aerodrome and navigation installations;

(c) to conduct security patrols of the aerodrome and navigation installations;

(d) to review current and new civil aviation security techniques, systems, devices, practices and procedures.

(2) In exercising its powers and performing its functions, the aviation security service must cooperate with:

(a) the Nauru Police Force; and

(b) aircraft operators; and

(c) authorities administering aviation security in other contracting States; and

(d) international organisations relating to civil aviation security.

114 Directions of Minister

(1) The Minister may make directions about the exercise of powers under this Part by the aviation security service, including special directions relating to specific security risks.

(2) A direction may specify that a particular item is a regulated item.

(3) The aviation security service must act in accordance with the Minister's directions.

115 Powers of police

A police officer, in addition to the officer's other powers under this or any other Act, has all the powers of an aviation security officer under this Act.

Division 3 – Security screening and searches

Subdivision 1 – Conducting security screening and searches

116 When screening or search may be conducted

(1) An aviation security officer may screen or search a person or item entering or present in a security restricted area.

(2) However, an officer may only screen or search a person or an item in the possession of a person with the consent of the person.

(3) An item may be screened or searched without the consent of a person if it is not in the possession of a person.

117 How search must be conducted

(1) In this section:

'outer clothing' includes a coat, jacket, jumper, cardigan or similar item;

'pat down search' means:

(a) a search of a clothed person in which the officer conducting the search does any of the following:

(i) runs or pats the officer's hand over the body of the person, whether outside or inside the clothing (other than the underclothing) of the person;

(ii) inserts the officer's hand inside a pocket or pouch in the clothing (other than the underclothing) of the person;

(iii) directs the person to do any of the following for the purpose of a visual inspection:

(A) open the person's mouth;

(B) display the palms of the person's hands;

(C) display the soles of the person's feet;

(D) lift or rub the person's hair; and

(b) may include a search of:

(i) an item in the possession of the person; and

(ii) the person's outer clothing removed for the search; and

(iii) gloves, footwear (including socks or stockings), head coverings, belts, jewellery or other accessories removed for the search.

(2) An aviation security officer may conduct a search of a person by directing the person to do any of the following:

(a) remove, raise, lower or open the person's outer clothing, unless the person has no other clothing or only underclothing, under the outer clothing;

(b) remove gloves, footwear (including socks or stockings), head coverings, belts, jewellery and other accessories;

(c) allow the officer to conduct a pat down search.

(3) A female person must be searched by a female officer unless the search is made with a mechanical, electrical, electronic or other similar device.

118 Procedure following detection of regulated item

(1) In this section:

'carry' means carry in or into a security restricted area.

(2) An aviation security officer may seize a regulated item in the possession of a person detected during screening or searching if the officer has reasonable grounds to believe that the item cannot lawfully be carried by the person under this or any other Act.

(3) The officer must, if reasonably practicable, return the item to the person from whom it was seized if the officer determines that the item can lawfully be carried by the person.

(4) If the officer determines that the item cannot lawfully be carried by the person, the officer must not allow the person to carry the item.

(5) If the officer believes the item is evidence of an aviation security offence, the officer:

(a) must seize the item and give it to a police officer; or

(b) if the officer has reasonable grounds to believe that the item poses an imminent risk to safety – may destroy or otherwise dispose of the item immediately.

(6) The officer must record action taken under subsection (5) in writing.

119 Foreign in-flight security officers

The Minister may exempt a foreign in-flight security officer accompanied by a police officer from a requirement to be screened or searched.

Subdivision 2 – Refusal of consent

120 Application

This Subdivision applies if a person refuses to consent to the screening or search of the person or an item in the person's possession under Subdivision 1.

121 Effect of refusal

The refusal does not of itself constitute reasonable grounds for suspecting that an aviation security offence has been, is being or is likely to be committed.

122 Powers of aviation security officers

(1) An aviation security officer may:

(a) deny the person entry to the area; or

(b) direct the person to:

(i) leave the area; and

(ii) remove an item in the person's possession from the area.

(2) An aviation security officer may detain the person if the officer has reasonable grounds to suspect that:

(a) an aviation security offence has been, is being or is likely to be committed by the person or another person; and

(b) the screening or search of the person or an item in the person's possession is likely to disclose evidence of the offence.

(3) If the person is detained, the aviation security officer must deliver the person to a police officer for search or screening under section 123 as soon as practicable.

123 Powers of police

(1) A police officer may, without a warrant:

(a) search or screen the person and an item in the person's possession; and

(b) detain the person for the search or screening and detain an item found during the search if the officer has reasonable grounds to suspect that:

(i) an aviation security offence has been, is being or is likely to be committed, whether by the person or another person; and

(ii) the search, screening or detention of the item is likely to disclose evidence of the offence.

(2) The police officer must, before the search or screening is conducted and on any later request:

(a) show the person evidence of the officer's identity; and

(b) inform the person that the search is authorised under this section.

124 Powers of operator

The operator of an aircraft may refuse to carry the person on the aircraft.

Division 4 – Special powers of aviation security officers

125 Power of detention – serious aviation crimes

(1) An aviation security officer may detain a person in or in the vicinity of the aerodrome or a navigation installation if the officer has reasonable grounds to believe that an offence has been, is being or is likely to be committed by the person under Part 6, Division 2 or 3 of the *Counter Terrorism and Transnational Organised Crime Act 2004*.

(2) The officer may:

(a) search the person and an item in the person's possession; and

(b) detain an item in the person's possession that may be evidence of the offence.

(3) The officer must, before the search is conducted and on any later request:

(a) show the person evidence of the officer's identity; and

(b) inform the person that the search is authorised under this section.

(4) The officer may search the person even if the officer has previously searched the person under this Part.

(5) The officer must, within 3 working days after taking action under this section, give the Director a written report of how and why the action was taken.

(6) The officer must, as soon practicable, deliver the person and any item detained to a police officer.

126 Use of force

(1) An aviation security officer may use reasonable force to:

(a) prevent a person from entering a security restricted area under section 122(1)(a); or

(b) detain a person under section 122(2) or 125.

(2) An aviation security officer may use reasonable force to remove a person from a security restricted area if:

(a) the person fails to comply with a direction to leave given under section 122(1)(b) or section 107(3); and

(b) the officer warns the person that they will be removed if they do not comply with the direction; and

(c) the person continues to fail to comply with the direction.

Division 5 – Security assessments

127 Conducting security assessment

(1) The Director may conduct a security assessment in relation to a person if:

(a) the person falls within a category of persons in relation to whom a security assessment is required under the rules; and

(b) the person consents to the assessment.

(2) If the person refuses to consent to the assessment, the person must not be granted an authorisation under the rules that requires a favourable security assessment decision.

(3) In conducting the security assessment, the Director may:

(a) seek and receive any information the Director considers relevant; and

(b) give weight to any of the information the Director considers appropriate in the circumstances.

(4) If the Director is satisfied on reasonable grounds that the person:

(a) does not pose a threat to aviation security – the Director must make a favourable security assessment decision in relation to the person; or

(b) may pose a threat to aviation security – the Director must make an adverse security assessment decision in relation to the person.

128 Action following adverse security assessment decision

(1) After making an adverse security assessment decision in relation to a person, the Director must:

(a) if a favourable security assessment decision is required for a previous authorisation granted to the person under the rules by:

(i) the Director – revoke the authorisation; or

(ii) a person other than the Director – direct the person to revoke the authorisation; and

(b) if the person is employed by the holder of an aviation document – notify the employer of the decision but not the reasons for it; and

(c) give the person an information notice for the decision.

(2) A person must comply with a direction to revoke an authorisation under subsection (1)(a)(ii).

129 Review of security assessment decision

(1) The Director may review a favourable security assessment decision the Director has made in relation to a person if:

(a) new information is made available to the Director about the person; or

(b) the Director has reason to suspect that the person may pose a threat to aviation security.

(2) Before reviewing a security assessment decision, the Director must:

(a) advise the person that the Director is reviewing the decision; and

(b) if a favourable security assessment decision is required for an authorisation granted to the person under the rules by:

(i) the Director – suspend the authorisation for the period of the review; or

(ii) a person other than the Director – direct the person to suspend the authorisation for the period of the review.

(3) The Director must complete the review within 20 working days after advising the person of the review.

(4) The review may result in a new security assessment decision.

(5) A person must comply with a direction to suspend an authorisation under subsection (2)(b)(ii).

130 Proposed adverse security assessment decision

(1) Before making an adverse security assessment decision under section 127 or 129 in relation to a person, the Director must:

(a) give the person a proposed decision notice for the proposed decision; and

(b) consider any submissions received in response to the notice.

(2) The Director must consider submissions made by the person before making a decision.

PART 11 – OFFENCES

Division 1 – Preliminary matters

131 Definitions

In this Part:

'aircraft' means a Nauru or foreign registered aircraft:

(a) in Nauru; or

(b) if the next landing of the aircraft is Nauru – in flight outside Nauru.

132 Liability under Criminal Code

The Criminal Code applies to a person's conduct on an aircraft in flight outside Nauru as if the person engaged in the conduct in Nauru.

Division 2 – Unruly passenger offences

133 Acts endangering safety

A person on an aircraft commits an offence if:

(a) the person intentionally engages in conduct; and

(b) the conduct endangers the aircraft or another person; and

(c) the person is reckless about whether the conduct will endanger the aircraft or another person.

Penalty: $50,000 and 2 years imprisonment.

134 Disruptive conduct towards crew member

(1) A person on an aircraft commits an offence if:

(a) the person intentionally engages in conduct; and

(b) the conduct is disruptive conduct towards a crew member; and

(c) the person is reckless about whether the conduct is disruptive towards the crew member.

Penalty: $5,000 and 6 months imprisonment.

(2) For subsection (1), a person engages in disruptive conduct towards a crew member if the person:

(a) uses threatening, offensive or insulting words towards the crew member; or

(b) behaves in a threatening, offensive, insulting or disorderly way towards the crew member; or

(c) does anything that interferes with the performance of the crew member's duties.

(3) It is a defence to a prosecution for an offence against subsection (1) if:

(a) the disruptive conduct consisted of using offensive or insulting words towards a crew member; and

(b) the defendant establishes that he or she believed on reasonable grounds that the words would not be overheard by the crew member.

135 Disruptive conduct towards passenger

(1) A person on an aircraft commits an offence if:

(a) the person intentionally engages in conduct; and

(b) the conduct is disruptive conduct towards a passenger; and

(c) the person is reckless about whether the conduct is disruptive towards the passenger.

Penalty: $2,500.

(2) For subsection (1), a person engages in disruptive conduct towards a passenger if the person:

(a) uses threatening, offensive or insulting words towards the passenger; or

(b) behaves in a threatening, offensive, insulting or disorderly way, whether the behaviour is directed towards the particular passenger or not.

(3) It is a defence to a prosecution for an offence against subsection (1) if:

(a) the disruptive conduct consisted of using offensive or insulting words towards the passenger; and

(b) the defendant proves that he or she had reasonable grounds to believe that the words would not be overheard by the passenger.

136 Interference with aircraft

A person on an aircraft commits an offence if the person intentionally tampers or interferes with:

(a) the aircraft; or

(b) part of the aircraft; or

(c) aircraft equipment, including smoke detectors.

Penalty: $10,000 and 12 months imprisonment.

137 Intoxicated persons

(1) A person commits an offence if the person is intoxicated and boards an aircraft.

Penalty: $5,000.

(2) A person commits an offence if the person is on board an aircraft and becomes intoxicated.

Penalty: $3,000.

(3) An offence against subsection (1) or (2) is a strict liability offence.

(4) For this section, a person is intoxicated if the pilot-in-command or a crew member has reasonable grounds to believe that the person is under the influence of an intoxicating liquor or substance to such an extent that the person:

(a) is incapable of properly conducting himself or herself; or

(b) actively presents a hazard to the aircraft or to other persons; or

(c) behaves in an offensive or unruly way.

(5) However, subsections (1) and (2) do not apply to a person who is or becomes intoxicated:

(a) involuntarily; or

(b) as a result of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force; or

(c) from the use of a drug prescribed by a medical practitioner or dentist that was used in accordance with the directions of the medical practitioner or dentist; or

(d) from the use of a drug for which no prescription is required that was used for a purpose, and in accordance with the dosage level, recommended by the manufacturer.

(6) However, intoxication caused by a drug mentioned in subsection (5)(c) or (d) is self-induced if the person was reckless about whether the drug would significantly impair the person's judgment or control.

138 Failure to comply with directions

(1) A person on an aircraft commits an offence if:

(a) the pilot-in-command or a crew member gives a direction; and

(b) the person intentionally fails to comply with the direction.

Penalty: $5,000.

(2) Subsection (1) applies to a direction given:

(a) to the person specifically or to all passengers; and

(b) verbally or by way of a sign or other written notice.

139 Taking regulated item onto aircraft

(1) A person commits an offence if:

(a) the person intentionally takes or attempts to take an item on board an aircraft; and

(b) the item is a regulated item that the person cannot lawfully carry; and

(c) the person is reckless about whether the item is a regulated item that the person cannot lawfully carry.

Penalty: $100,000 and 5 years imprisonment.

(2) Subsection (1) does not apply to a person authorised to take the item on board the aircraft under this or another Act.

Division 3 – Air safety offences

140 Endangering persons or property

(1) The holder of an aviation document commits an offence if:

(a) the holder intentionally engages in conduct in relation to the activity or service to which the document relates; and

(b) the conduct endangers another person or property; and

(c) the holder is reckless about whether the conduct will endanger the other person or property.

Penalty: $50,000 and 2 years imprisonment.

(2) A person commits an offence if:

(a) the person engages in conduct to operate, maintain or service an aircraft, aeronautical product or aviation related service; and

(b) the conduct endangers another person or property; and

(c) the holder is reckless about whether the conduct will endanger the other person or property.

Penalty: $50,000 and 2 years imprisonment.

Division 4 – General Offences

141 Protection of names

(1) A person commits an offence if the person operates a body corporate under a name that contains or closely resembles the following terms:

(a) Civil Aviation Authority;

(b) Accident Investigation Commission.

Penalty: $1,500.

(2) An offence against subsection (1) is a strict liability offence.

142 Impersonation and obstruction of officials

(1) A person commits a offence if the person intentionally impersonates a person with powers or functions under this Act.

Penalty: $10,000 and 12 months imprisonment.

(2) A person commits an offence if the person:

(a) intentionally obstructs a person exercising powers or performing functions under this Act; and

(b) knows the person who is obstructed is acting in an official capacity.

Penalty: $10,000 and 12 months imprisonment.

143 Misleading information

(1) In this section:

'misleading information' means information that is misleading in a material particular because it:

(a) does not include relevant information; or

(b) includes misinformation.

(2) A person commits an offence if the person:

(a) gives misleading information to another person who is exercising powers or performing functions under this Act; and

(b) knows the other person is acting in an official capacity; and

(c) knows the information is misleading.

Penalty: $10,000 and 12 months imprisonment.

(3) A person commits an offence if the person:

(a) gives a document containing misleading information to another person who is exercising powers or performing functions under this Act; and

(b) knows the other person is acting in an official capacity; and

(c) knows the document contains misleading information.

Penalty: $10,000 and 12 months imprisonment.

(4) Subsection (3) does not apply if the person, when giving the document:

(a) draws the misleading aspect of the document to the other person's attention; and

(b) to the extent to which the person can reasonably do so – gives the other person the information necessary to correct the document.

144 Offences in flight over foreign country

(1) A person commits an offence if:

(a) the person is the operator or pilot-in-command of a Nauru registered aircraft in flight over a foreign country; and

(b) the aircraft is used for a purpose that is detrimental to the security, public order, public health or safety of air navigation of the country; and

(c) the person is reckless about whether the aircraft will be used for that purpose.

Penalty: $30,000 and 18 months imprisonment.

(2) A person commits an offence if:

(a) the person is the operator or pilot-in-command of a Nauru registered aircraft in flight over a foreign country; and

(b) the appropriate authority for the country gives the person a direction; and

(c) the person intentionally fails to comply with the direction.

Penalty: $30,000 and 18 months imprisonment.

(3) Subsection (2) does not apply if the person has reasonable grounds to believe the aircraft or the people on board the aircraft would be endangered by complying with the direction.

145 Smoking on air routes – airline offences

(1) A Nauru international airline commits an offence if:

(a) it is operating a flight carrying passengers; and

(b) either:

(i) prominent notices are not displayed in the aircraft indicating that smoking is not permitted; or

(ii) an announcement is not made to passengers on the aircraft at the start of the flight advising that smoking is not permitted.

Penalty: $30,000.

(2) An offence against subsection (1) is a strict liability offence.

(3) A Nauru international airline commits an offence if:

(a) it is operating a flight carrying passengers; and

(b) a person smokes on the flight; and

(c) the airline is reckless about whether the person is smoking on the flight.

Penalty: $30,000.

146 Failure to maintain accurate records

A person commits an offence if the person:

(a) is required under this Act to:

(i) make an accurate entry in a record; or

(ii) maintain an accurate record; or

(iii) produce an accurate record; and

(b) does not comply with the requirement; and

(c) is reckless about whether the person has complied with the requirement.

Penalty: $2,500.

PART 12 – LEGAL AND ADMINISTRATIVE MATTERS

Division 1 – Civil liability

147 Protection from liability

(1) In this section:

'exercise', of a power, includes the purported exercise of the power;

'performance', of a function, includes the purported performance of the function.

(2) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function under this Act.

148 Nuisance and trespass

(1) This section applies to an aircraft operated in accordance with this Act.

(2) A person may not bring an action for:

(a) nuisance in relation to the noise or vibration caused by the aircraft or aircraft engines at the aerodrome if the noise or vibration is of a kind permitted by the rules; or

(b) nuisance or trespass only because of the flight of the aircraft over property at a height above the ground that, having regard to wind, weather and all other relevant circumstances, is reasonable.

149 Responsibility for loss or damage

(1) A person may recover damages from the owner of an aircraft without the person proving negligence, intention or another cause of action if the person suffers material loss or damage in Nauru caused by:

(a) the aircraft taking off, in flight or landing; or

(b) a person or thing falling from the aircraft taking off, in flight or landing.

(2) Subsection (1) does not apply if the damage or loss was contributed to by the fault of the person who suffered the damage or loss.

(3) If the aircraft was being operated by a person other than the owner at the time the loss or damage occurred, the owner is entitled to be indemnified by the other person against a claim for loss or damage.

Division 2 – Criminal liability

150 Elements of an offence

(1) Subject to section 155, an offence against this Act consists of physical elements and fault elements.

(2) A physical element of an offence against this Act may be:

(a) conduct; or

(b) a result of conduct; or

(c) a circumstance in which conduct, or a result of conduct, happens.

(3) A fault element for a particular physical element of an offence against this Act may be intention, knowledge, recklessness or negligence.

151 Conduct and engaging in conduct

(1) Conduct is an act, an omission to perform an act or a state of affairs.

(2) To engage in conduct is to:

(a) perform an act; or

(b) omit to perform an act.

152 Intention

(1) A person has intention in relation to conduct if the person means to engage in that conduct.

(2) A person has intention in relation to a result if the person means to bring it about or is aware that it will happen in the ordinary course of events.

(3) A person has intention in relation to a circumstance if the person believes that it exists or will exist.

153 Knowledge

A person has knowledge of a result or circumstance if the person is aware that it exists or will exist in the ordinary course of events.

154 Recklessness

(1) A person is reckless in relation to a result if:

(a) the person is aware of a substantial risk that the result will happen; and

(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(2) A person is reckless in relation to a circumstance if:

(a) the person is aware of a substantial risk that the circumstance exists or will exist; and

(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

(3) The question whether taking a risk is unjustifiable is one of fact.

(4) If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness satisfies the fault element.

155 Strict liability offences

(1) If a provision of this Act provides that an offence is a strict liability offence:

(a) there are no fault elements for any of the physical elements of the offence; and

(b) the defence of mistake of fact under the Criminal Code applies.

(2) The existence of strict liability does not make any other defence unavailable.

Division 3 – Diplomatic and consular privileges and immunities

156 Privileges and immunities not affected

This Act does not affect an immunity or privilege that is conferred under the *Diplomatic Privileges and Immunities Act 1976* or the *Consular Privileges and Immunities Act 1976*.

157 Ministerial directions

The Minister may make directions about the application of this Act to persons accorded a privilege or immunity under an Act mentioned in section 156.

Division 4 – Offence proceedings

158 Penalty for offence committed by body corporate

(1) This section applies to a provision of this Act prescribing a fine for an offence.

(2) The fine is the fine for an individual.

(3) If a body corporate is found guilty of the offence, the Court may impose a fine of an amount equal to 5 times the fine for an individual.

159 Liability of executive officers of body corporate

(1) In this section:

'executive officer', of a body corporate, means a director or other person who is concerned with or takes part in the management of the body corporate.

(2) If a body corporate commits an offence against this Act (the ***'principal offence'***), each executive officer of the body corporate:

(a) commits an offence (the ***'secondary offence'***); and

(b) is liable to the penalty applicable to an individual who commits the principal offence.

(3) However, it is a defence for an executive officer to establish that:

(a) the officer did not know, and could not reasonably have been expected to know, the principal offence would be or was being committed; or

(b) the officer exercised due diligence to prevent the commission of the principal offence.

(4) The executive officer may be found guilty of the secondary offence even though the body corporate has not been charged with, or found guilty of, the principal offence.

(5) This section does not affect the liability of the body corporate for the principal offence.

160 Evidence of certain matters and documents

In any proceedings for an offence against this Act, unless the contrary is proved, the following provisions apply:

(a) a copy of an aviation document certified by the Director to be a true copy of the document is evidence of the document and its contents;

(b) a certificate about the contents of the Register or the Registry given by the chairperson is evidence of anything stated in it;

(c) a certificate signed by the Director stating that, on a specified date, a person was or was not the holder of an aviation document is evidence of the matter certified;

(d) it is presumed that a certificate purporting to have been signed by the Director or chairperson has been correctly signed.

161 Offences outside Nauru

(1) This section applies if:

(a) the holder of an aviation document is outside Nauru; and

(b) the holder is exercising or purporting to exercise privileges under the document; and

(c) the holder engages in conduct that would constitute an offence under this Act if the holder engaged in the conduct in Nauru; and

(d) the conduct is not required to comply with a law of another State.

(2) The holder of the document is taken to have committed the offence under this Act and is liable as if the holder had engaged in the conduct in Nauru.

Division 4 – Appeals

162 Interpretation

(1) An ***'information notice'***, for a decision, is a written notice to a person specifying the following:

(a) the decision;

(b) subject to section 36(5) – the reasons for the decision;

(c) that the person may appeal to the Supreme Court against the decision within 28 days after receiving the notice.

(2) A ***'proposed decision notice'***, for a proposed decision, is a written notice to a person about the proposed decision specifying the following:

(a) the proposed decision;

(b) subject to section 36(5) – the reasons for the proposed decision;

(c) that the person may make written submissions to the person giving the notice about the proposed decision within 21 days after receiving it.

163 Who may appeal

(1) A person who is entitled to be given an information notice for a decision may appeal to the Supreme Court against the decision.

(2) The appeal must be started within 28 days after:

(a) if the person receives an information notice for the decision – the day the person receives the notice; or

(b) if paragraph (a) does not apply – the day the person becomes aware of the decision.

(3) The notice of appeal must state fully the grounds on which the appeal is made.

164 Operation and implementation of decision

(1) The appeal does not affect the operation or implementation of the decision.

(2) However, the Court may make an order staying or otherwise affecting the operation or implementation of so much of the decision as the Court considers appropriate to effectively hear and decide the appeal.

(3) The order:

(a) is subject to any conditions stated in it; and

(b) has effect:

(i) for the period stated in it; or

(ii) if no period is stated – until the Court has decided the appeal.

165 Decision on appeal

The Court must make an order:

(a) confirming the decision; or

(b) referring the matter back to the original decision maker with directions to reconsider the whole or any specified part of the matter.

166 Costs

At the hearing of the appeal, the Court may make any order as to costs it considers appropriate.

PART 13 – POWERS OF DELEGATION

167 Delegation of Minister's powers and functions

(1) The Minister may delegate any of the Minister's powers or functions under this Act (other than the power to make ordinary rules) to the Authority.

(2) The Minister's power of delegation includes the power to delegate the power of delegation.

168 Delegation of Authority's powers and functions

The Authority may delegate any of its powers or functions under this Act to:

(a) a member of the staff of the Authority; or

(b) with the written consent of the Minister – another person.

169 Delegation of Director's powers and functions

The Director may, with the written consent of the Minister, delegate any of the Director's powers and functions under this Act, except the power to impose sanctions in relation to an aviation document.

170 How delegation may be made

(1) A power or function may be delegated under this Part to a person:

(a) by name; or

(b) of a specified class; or

(c) by reference to the office, position or designation held or occupied by the person; or

(d) from time to time holding, acting in or performing the duties of a named office, designation or position.

(2) A power or function may be delegated under this Part to a person who is not employed or engaged by the Republic.

PART 14 – SUBORDINATE LEGISLATION

Division 1 – Regulations

171 General regulation power

(1) Cabinet may make regulations under this Act prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to give effect to this Act.

(2) Without limiting subsection (1), Cabinet may make regulations:

(a) prescribing, or providing for the fixing of, fees and charges payable under this Act; and

(b) prescribing contraventions of the rules that constitute offences against this Act; and

(c) prescribing a penalty for an offence against the regulations or prescribed under paragraph (b) of up to $6,000 for an individual or $30,000 for a body corporate; and

(d) prescribing forms for use under this Act; and

(e) providing for the functioning of the Authority or a Commission; and

(f) about the provision of aviation security; and

(g) giving a person discretion to decide a matter; and

(h) providing for:

(i) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act; and

(ii) the service and enforcement of a notice relating to payment of the amount on a person alleged to have committed the offence; and

(iii) the particulars that must be included in the notice.

(3) Regulations may make different provision in relation to different matters or classes of matters.

(4) If a regulation is inconsistent with a rule, the regulation prevails to the extent of the inconsistency.

172 Incorporation of international agreements

(1) Cabinet may make regulations incorporating an international civil aviation or meteorological agreement to which Nauru is a party.

(2) On notification of the regulations, the agreement is taken to be part of the regulations except to the extent of any inconsistency.

(3) The agreement may be incorporated into the regulations by reference.

(4) An agreement incorporated by reference may be incorporated as in force at a particular time or from time to time.

Division 2 – Rules

Subdivision 1 – General provisions

173 Matters to be taken into account in making rules

(1) A person must not make a rule that is inconsistent with:

(a) the standards of ICAO relating to civil aviation safety and security; or

(b) Nauru's international obligations relating to civil aviation safety and security.

(2) A person making a rule must have regard to the following:

(a) the recommended practices of ICAO relating to civil aviation safety and security;

(b) the nature and level of risk of the activity or service for which the rule is made;

(c) the level of risk involved in civil aviation safety and security in Nauru in general;

(d) the need to maintain civil aviation safety and security;

(e) the costs of implementing civil aviation safety and security measures.

174 Incorporation by reference

(1) A rule may incorporate another document by reference.

(2) A document incorporated into a rule by reference:

(a) forms part of the rule; and

(b) may be incorporated as in force at a particular time or from time to time.

Subdivision 2 – Ordinary rules

175 Minister may make ordinary rule

(1) The Minister may make a rule (an ***'ordinary rule'***) for the following:

(a) the implementation of Nauru's obligations under the Convention;

(b) the provision of services under this Act;

(c) any matter incidental to the functions of the Authority, the Director or the Minister under this Act;

(d) any other matter necessary or convenient for the operation of the civil aviation system.

(2) An ordinary rule may be made:

(a) generally; or

(b) for different classes of aircraft, aerodromes, aeronautical products, aeronautical procedures or aviation related services; or

(c) for the same class of aircraft, aerodrome, aeronautical product, aeronautical procedure or aviation related service in different circumstances.

(3) An ordinary rule may give a person discretion to decide a matter.

(4) It is not an offence to contravene an ordinary rule unless the offence is prescribed by regulation.

176 Notice of intention to make ordinary rules

Before making an ordinary rule, the Minister must:

(a) publish a Gazette notice:

(i) specifying the Minister's intention to make the rule; and

(ii) inviting written submissions about the proposed rule within a reasonable time at least 21 days after the notice is published; and

(b) consider any submissions received in response to the notice.

177 Procedure for making ordinary rules by adoption

(1) The Minister may make an ordinary rule by adopting, with or without modification, a foreign rule as in force or existing:

(a) at a specified time; or

(b) from time to time.

(2) An adopted rule remains in force in Nauru even if the foreign rule ceases to have force in the country of its origin unless it is repealed in Nauru.

(3) The Minister must publish an adopted rule in the Gazette with the following:

(a) a statement (an ***'adoption statement'***):

(i) identifying the foreign rule by the country of its origin and its title in the country of its origin; and

(ii) specifying the title of the rule in Nauru; and

(iii) specifying the date the rule commences in Nauru; and

(iv) specifying whether future amendments to the foreign rule will apply to the adopted rule;

(b) a statement (an ***'interpretation statement'***) containing any modifications, directions and information necessary to apply and interpret the rule in Nauru.

(4) The adoption statement or interpretation statement may be amended by the Minister after the rule has commenced by publishing the amended statement in the Gazette.

(5) A reference in an adopted rule to anything in the country of the rule's origin that is not in existence in Nauru is taken to be a reference to the corresponding or closest equivalent thing in Nauru.

Subdivision 3 – Emergency rules

178 Power to make emergency rules

(1) The Director may make a rule (an ***'emergency rule'***) necessary to alleviate or minimise a serious risk to persons or property.

(2) The Director must not make an emergency rule unless it is impracticable in the circumstances for the Minister to make an ordinary rule to effectively alleviate or minimise the risk concerned.

(3) The Minister may revoke an emergency rule.

179 Procedure for making emergency rules

(1) An emergency rule must:

(a) be signed by the Director; and

(b) contain a statement specifying the object of the rule.

(2) An emergency rule must be notified under the *Interpretation Act 1971* in the same way as an ordinary rule.

(3) An emergency rule may remain in force for up to 90 days unless it is renewed under subsection (4).

(4) An emergency rule may be renewed by the Minister for up to 180 days.

(5) The renewal of an emergency rule must be notified in the Gazette.

(6) If an emergency rule is inconsistent with an ordinary rule, the emergency rule prevails.

180 Contravention of emergency rule

A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct results in a contravention of an emergency rule; and

(c) the person is reckless about whether the conduct will result in the contravention.

Penalty: $2,500.

Subdivision 4 – Exemptions

181 Power of exemption

(1) The Minister may exempt a person, aircraft, aeronautical product, aerodrome or aviation related service from a requirement under a rule.

(2) Before granting an exemption, the Minister must be satisfied that:

(a) the requirement has been substantially complied with and further compliance is unnecessary; and

(b) the action taken or provision made in respect of the matter to which the requirement relates is at least as effective as actual compliance with the requirement; and

(c) the requirement is clearly unreasonable, unnecessary or inappropriate in the particular case; and

(d) the risk to safety will not be significantly increased by granting the exemption.

(3) An exemption granted under subsection (1) must be notified in the Gazette.

(4) An exemption may not be granted in relation to a rule that expressly provides that no exemptions may be granted.

PART 15 – REPEALS AND TRANSITIONAL MATTERS

Division 1 – Repeal

182 Repeal

The following Acts are repealed:

(a) the *Air Navigation Act 1971* (Act No. 7 of 1971);

(b) the *Air Navigation (Amendment) Act 1973* (Act No. 9 of 1973);

(c) the *Air Navigation (Amendment) Act 1977* (Act No. 4 of 1977).

Division 2 – Consequential amendments

183 Amendment of Acts

The Schedule amends the Acts mentioned in it.

Division 3 – Transitional matters

184 Definitions

In this Division:

'commencement date' means the date on which section 182 commences;

'previous Authority' means the Civil Aviation Authority established under section 3 of the repealed Act;

'repealed Act' means the *Air Navigation Act 1971* as in force immediately before the commencement date.

185 References to Authority

A reference to the Civil Aviation Authority in an Act or other document in force immediately before the commencement date is taken to be a reference to the Authority.

186 Membership of Authority

(1) If Cabinet does not appoint members of the Authority under section 13(1)(b) on or before the commencement date, the Authority is taken to be constituted by the Minister.

(2) However, Cabinet must appoint members of the Authority under section 13(1)(b) within 12 months after the commencement date.

187 Staff of Authority

(1) A member of the staff of the previous Authority immediately before the commencement date is taken to be a member of the staff of the new Authority on the commencement date.

(2) Subsection (1) does not affect the power of the Chief Secretary to transfer, dismiss or retire the member of staff under the *Public Service Act 1998*.

188 Saving of regulations

Except to the extent of any inconsistency with this Act, the following continue in force as if made under this Act until expressly repealed or revoked:

(a) a regulation made under the repealed Act and in force immediately before the commencement of this Act;

(b) a rule, order, direction, notice or other publication made or issued under the repealed Act.

189 Saving of documents

An aviation document, licence, rating, certificate, permit, authorisation, approval or other document (a ***'document'***) issued under the repealed Act and in force immediately before the commencement date continues in force as if issued under this Act until the earlier of the following:

(a) the expiry of the document;

(b) 12 months after the commencement date.

190 Saving of delegations

A delegation of powers or functions made by the Minister under the repealed Act and in force immediately before the commencement date continues in force as if made in relation to corresponding powers or functions under this Act.

191 General transitional provision

(1) If anything of a kind required or permitted to be done under a provision of this Act was done under a corresponding provision of the repealed Act and still had effect immediately before the commencement date, the thing continues in effect on and after that date as if:

(a) this Act had been in force when it was done; and

(b) it had been done under this Act.

(2) Without limiting subsection (1), if a provision of the repealed Act that corresponds to a provision of this Act would, but for its repeal, have applied in relation to anything done or being done or in existence before the commencement date, the corresponding provision of this Act applies (with the necessary changes) in relation to the thing.

192 Transitional regulations

(1) The regulations may make provision (a ***'transitional regulation'***) about a matter for which:

(a) it is necessary to make provision for the transition from the operation of the repealed Act to this Act; and

(b) this Act does not make provision or sufficient provision.

(2) A transitional regulation may have retrospective operation to a date not earlier than the commencement date.

(3) However, to the extent a transitional regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Republic) by adversely affecting the person's rights or imposing liabilities on the person.

(4) This section expires 12 months after the commencement date.

SCHEDULE – AMENDMENT OF ACTS

section 183

[1] Patents Registration Act 1973

1.1 Section 18(2)

omit

[2] Telecommunications Act 2001

2.1 Section 3, definition ***'foreign aircraft'***

omit

Air Navigation Act 1971

substitute

Civil Aviation Act 2010