



REPUBLIC OF NAURU

**Immigration (Amendment) Bill 2012**

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**Serial No. 12 of 2012**

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REPUBLIC OF NAURU

# Immigration (Amendment) Act 2012

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Serial No. 12 of 2012

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A Bill for

An Act to amend the *Immigration Act 1999*

Certified on [ ]

Enacted by the Parliament of Nauru as follows:

**1 Short title**

This Act may be cited as the *Immigration (Amendment) Act 2012*.

**2 Commencement**

This Act commences on a date fixed by the Minister by Gazette notice.

**3 Act amended**

Schedule 1 amends the *Immigration Act 1999*.

**4 Transitional provision**

Schedule 2 provides for a transitional provision.

## SCHEDULE 1 – AMENDMENT OF IMMIGRATION ACT 1999

section 3

**[1] Amendment of heading to Part I**

*omit*

Part I

*substitute*

PART 1

**[2] Amendment of section 1 (Short title and commencement)**

**2.1** Heading to section 1

*omit, substitute*

**1 Short title**

**2.2** Section 1

*omit*

and shall come into force on a date to be notified by the Minister by notice in the Gazette

**[3] Amendment of section 2 (Interpretation)**

**3.1** Section 2

definitions of '*appropriate form*', '*authorised officer*', '*crime*', '*dependant*', '*immigration officer*', '*Nauruan passport*', '*non-citizen*', '*permit*', '*port*', '*Principal Immigration Officer*', '*prohibited immigrant*', '*repealed laws*' and '*undesirable immigrant*'

*omit*

---

**3.2** Section 2

*insert (in alphabetical order)*

**'authorised officer'** means:

- (a) an immigration officer; or
- (b) a police officer;

**'contravention'** includes failure to comply;

**'immigration officer'** means:

- (a) the Principal Immigration Officer; or
- (b) a person appointed as an immigration officer under section 3A;

**'Principal Immigration Officer'** means the person holding or acting in the office of the Principal Immigration Officer established under section 3;

**'Secretary'** means the Head of Department;

**'unlawfully in Nauru'** – a person who contravenes section 9 is unlawfully in Nauru;

**3.3** Section 2, definition of **'crew member'**

*omit*

any

*substitute*

a

**3.4** Section 2, definition of **'enter'**, (a)(i)

*omit*

where

*substitute*

if

---

**3.5** Section 2, definition of **'enter'**, (a)(i)

*omit*

the port

*substitute*

a port

**3.6** Section 2, definition of **'enter'**, (a)(ii)

*omit*

he

*substitute*

the person

**3.7** Section 2, definition of **'passport'**

*omit*

, which may be a document called or purporting to be a passport that the Minister by notice in the Gazette declares is not to be taken to be a passport

*substitute*

of a class declared by the Regulations not to be a passport;

**3.8** Section 2, definition of **'vessel'**

*omit*

any

*substitute*

a

**3.9** Section 2, definition of **'visa'**

*omit*

to a non-citizen under section 9

*substitute*

---

under the Regulations

**[4] Insertion of section 2A**

After section 2

*insert:*

**2A Act binds Republic**

This Act binds the Republic.

**[5] Amendment of heading to Part II**

*omit*

**PART II**

*substitute*

**PART 2**

**[6] Substitution of section 3**

Section 3

*omit, substitute*

**3 Principal Immigration Officer**

- (1) The Chief Secretary, acting on the recommendation of the Minister, must appoint a public officer to be the Principal Immigration Officer.
- (2) The Principal Immigration Officer is subject to control and direction by the Minister.

**3A Immigration officers**

- (1) The Chief Secretary may appoint a public officer to be an immigration officer to assist the Principal Immigration Officer.
  - (2) An appointment is subject to the conditions specified in the instrument of appointment.
-

- (3) When performing functions or exercising powers under this Act, an immigration officer is subject to control and direction by the Principal Immigration Officer.
- (4) Nothing in this Act precludes an immigration officer from also being authorised to perform functions and exercise powers under any other Act.

**3B Identity cards**

- (1) The Principal Immigration Officer and each immigration officer must be issued with an identity card that:
  - (a) specifies the officer's name and office; and
  - (b) bears a recent photograph of the officer; and
  - (c) is in a form capable of being worn or displayed on outer clothing.
- (2) When exercising a power as an authorised officer under this Act in relation to a person, the Principal Immigration Officer or immigration officer must:
  - (a) produce his or her identity card for the person's inspection before exercising the power; or
  - (b) display the identity card so it is clearly visible to the person when the officer is exercising the power.
- (3) If it is not practicable to comply with subsection (2), the officer must produce the identity card for the person's inspection at the first reasonable opportunity.
- (4) A person must return his or her identity card to the Secretary on ceasing to be an immigration officer.

Maximum penalty: \$500.

**3C Delegation**

- (1) The Minister may delegate to the Secretary or the Principal Immigration Officer his or her functions or powers under this Act (other than a function or power specified by the Regulations).
- (2) The Secretary may delegate to the Principal Immigration Officer or to an immigration officer his or her functions or powers under



this Act (other than a function or power specified by the Regulations).

- (3) The Principal Immigration Officer may delegate to an immigration officer his or her functions or powers under this Act (other than a function or power specified by the Regulations).

**[7] Amendment of section 4 (Restricted areas)**

**7.1** Section 4(1)

*omit*

notice in the Gazette, declare places at ports

*substitute*

Gazette notice, declare places at a port or airport

**7.2** Section 4(1)(d)

*omit*

some other country

*substitute*

another country

**7.3** Section 4(2)

*omit, substitute*

- (2) A person must not enter or be in a restricted area unless the person is in the process of entering, leaving or transiting through Nauru.

Maximum penalty: \$10,000.

**7.4** Section 4(3)

*omit*

For the purposes of subsection (2), the following persons are authorised to enter a restricted area:

*substitute*

---

Subsection (2) does not apply to:

**7.5** Section 4(3)(a)

*omit, substitute*

(a) an authorised officer;

**7.6** Section 4(3)(c)

*omit* (second occurring)

any

*substitute*

a

**[8] Amendment of section 5 (Powers of immigration officers)**

**8.1** Heading to section 5

*omit, substitute*

**5 Powers of authorised officers**

**8.2** Section 5(1)

*omit*

enforcing this Act, an immigration officer

*substitute*

the administration of this Act, an authorised officer

**8.3** Section 5(1)(a) to (e) (inclusive)

*omit, substitute*

(a) without a search warrant, enter on and search a vessel, aircraft, vehicle, premises or place; and

(b) question a person:

(i) who desires to enter or leave Nauru; or

(ii) whom the officer suspects may be unlawfully in Nauru; or

- (iii) whom the officer believes can give material information regarding a person referred to in subparagraph (i) or (ii); and
- (c) require a person referred to in paragraph (b) to produce such documents in his or her possession as may be necessary or desirable to enable the officer to carry out official duties; and
- (d) require a person who desires to enter or leave Nauru to make and sign a declaration in the form required by the Regulations; and
- (e) prevent a person whom the officer believes is not authorised to enter Nauru from entering Nauru; and

**8.4** Section 5(1)(g)

*omit* (wherever occurring)

any

*substitute*

a

**8.5** Section 5

After subsection (1)

*insert*

(1A) In exercising powers under this Act, an authorised officer may:

- (a) use such force as is reasonably necessary; and
- (b) be assisted by such persons as he or she considers necessary in the circumstances.

**8.6** Section 5(2)

*omit*

Where an immigration officer

*substitute*

If an authorised officer

---

**8.7** Section 5(2)

*omit*

he may, without warrant, arrest that person

*substitute*

the officer may, without warrant, arrest the person

**8.8** Section 5(3)

*omit*

Where a person arrested under subsection (2)

*substitute*

If a person arrested

**8.9** Section 5(3)

*omit*

immigration officer

*substitute*

authorised officer

**8.10** Section 5(4) to (8) (inclusive)

*omit, substitute*

- (5) For section 10 of the *Criminal Procedure Act 1972*, an offence against this Act is a cognisable offence and, for sections 15 and 20 of that Act, an authorised officer other than a police officer will, if he or she arrests a person without warrant, be regarded as a private person.
- (6) A person must not:
- (a) hinder or obstruct an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or
  - (b) refuse or fail to comply with a requirement of an authorised officer under this section; or

- (c) when required by an authorised officer under this section to answer a question, refuse or fail to answer the question to the best of the person's knowledge, information and belief; or
- (d) falsely represent, by words or conduct, that he or she is an authorised officer or other person with powers under this Act.

Maximum penalty: \$10,000.

**[9] Amendment of heading to Part III**

*omit*

PART III

*substitute*

PART 3

**[10] Amendment of section 6 (Arrival reports)**

**10.1** Heading to section 6

*omit, substitute*

**6 Passenger and crew lists**

**10.2** Section 6(1)

*omit*

Upon

*substitute*

on

**10.3** Section 6(1)

*omit*

shall

*substitute*

must

**10.4** Section 6(1)

*omit*

Principal Immigration Officer

*substitute*

Secretary

**10.5** Section 6(2) and (3)

*omit, substitute*

(2) If the captain of a vessel or aircraft:

(a) fails to make a report under this section; or

(b) provides a list or statement which the captain knows to be false or misleading,

the captain, the owner and the agent of the vessel or aircraft each commit an offence.

Maximum penalty: \$10,000.

(3) It is a defence to a prosecution for an offence against subsection (2)(a) if the defendant proves that the arrival was caused by stress of weather, medical or other emergency or there was other reasonable cause for the contravention.

**[11] Amendment of section 7 (Arrival of vessels and aircraft in Nauru)**

**11.1** Heading to section 7

*omit, substitute*

**7 Arrival of vessels or aircraft**

**11.2** Section 7(1)

*omit*

Upon

---

*substitute*

On

**11.3** Section 7(1)

*omit*

shall

*substitute*

must

**11.4** Section 7(1)(b) and (c)

*omit, substitute*

(b) if the captain reasonably believes a person on board the vessel is a stowaway, a person required to have a visa but who is not entitled to one or a person who is in the course of deportation or compulsory repatriation —

(i) immediately inform an immigration officer; and

(ii) prevent the person from disembarking unless the disembarkation is authorised by an immigration officer; and

(c) prevent from disembarking any other person whom an immigration officer informs the captain is required to have a visa but is not entitled to one.

Maximum penalty: \$10,000.

**11.5** Section 7(3)

*omit*

**11.6** Section 7(4)

*omit wherever occurring*

shall

*substitute*

must

---

**11.7** Section 7(4)

*omit*

any

**11.8** Section 7(4)

at the foot of the provision

*insert*

Maximum penalty: \$10,000.

**11.9** Section 7(5)

*omit, substitute*

- (5) If a person enters Nauru unlawfully as a result of the captain of a vessel or aircraft contravening this section, the captain, the owner and the agent of the vessel or aircraft are jointly and severally liable to pay to the Republic all expenses incurred by the Republic in connection with the care, maintenance and treatment of the person and with the removal of the person from Nauru (not exceeding in the case of removal, the costs of removal to the place from which the person was brought by the vessel or aircraft).
- (6) The expenses may be recovered in an action brought by or in the name of the Republic.

**[12] Substitution of sections 8 to 10 (inclusive)**

Sections 8 to 10 (inclusive)

*omit, substitute*

**8 Information to be provided on entry and departure**

- (1) A person entering or departing from Nauru must:
  - (a) appear before an immigration officer; and
  - (b) provide the officer with such information as the officer may require or as may be prescribed by the Regulations.

Maximum penalty: \$10,000.

---



- (2) It is a defence to a prosecution for an offence against this section if the defendant proves that the entry or departure was caused by stress of weather, medical or other emergency or there was other reasonable cause for the contravention.

**9 Requirement for visa**

- (1) A person who is not a Nauruan citizen must not enter or remain in Nauru without a valid visa authorising that entry or presence.

Maximum penalty: \$10,000.

- (2) The Regulations may exempt a person from the application of subsection (1) absolutely or subject to conditions.
- (3) The burden of proof that a person has a valid visa authorising the entry to or the presence of the person in Nauru or is exempt under subsection (2) lies on the defendant.
- (4) It is a defence to a prosecution for an offence against this section if the defendant proves that the entry or departure was caused by stress of weather, medical or other emergency or there was other reasonable cause for the contravention.
- (5) If a decision is made not to grant an application for a visa, the applicant must be given written notice of the decision and a statement of the reasons for the decision.

**[13] Amendment of section 11 (Removal orders)**

**13.1** Section 11(1)

*omit*

The Principal Immigration Officer may make a removal order directing that a person who is a prohibited immigrant or is otherwise unlawfully in Nauru shall, from the date of service of the order on the person or after the completion of any sentence of imprisonment which he may be serving, as is specified in the order

*substitute*

The Secretary may make a removal order directing that a person who is unlawfully in Nauru must, from the date of service of the order or a future date specified in the order

**13.2** Section 11(2)

*omit*

shall

*substitute*

must

**13.3** Section 11(2)

*omit*

Principal Immigration Officer

*substitute*

Secretary

**13.4** Section 11(3)

*omit*

Principal Immigration Officer shall

*substitute*

Secretary must

**13.5** Section 11(3)

*omit*

him

*substitute*

the person

**13.6** Section 11(4)

*omit*

he

*substitute*

the person

---

**13.7** Section 11(4)

*omit*

deemed

*substitute*

taken

**13.8** Section 11(5) and (6)

*omit, substitute*

- (5) The Secretary may vary or revoke a removal order made, or directions given, under this section.
- (6) A person against whom a removal order has been made may be removed:
- (a) to the place from which the person came; or
  - (b) with the approval of the Minister, to a place in the country to which the person belongs, or to a place to which the person consents to be removed, provided that the Government of the last-mentioned place consents to receive the person.

**13.9** Section 11(7)

*omit*

which is

**13.10** Section 11(7)

*omit*

subsection (6) and who is required by the Principal Immigration Officer or by an immigration officer to do so shall

*substitute*

this section and who is required by the Secretary to do so must

**13.11** Section 11(7)(b)

*omit*

---

him

*substitute*

the person

**13.12** Section 11(8)

*omit*

Where

*substitute*

If

**13.13** Section 11(8)

*omit*

are each guilty of

*substitute*

each commit

**13.14** Section 11(8)

at the foot of the provision

*insert*

Maximum penalty: \$10,000.

**13.15** Section 11(9)

*omit*

section 12

*substitute*

section 7(5)

**13.16** Section 11(9)

*omit*

any

---

**13.17** Section 11(9)

*omit*

shall

*substitute*

must

**13.18** Section 11(10)

*omit*

Where

*substitute*

If

**13.19** Section 11(10)

*omit*

his

*substitute*

the person's

**13.20** Section 11(10)

*omit*

Principal Immigration Officer

*substitute*

Secretary

**13.21** Section 11(11)

*omit*

Where

*substitute*

If

---

**13.22** Section 11(11)

*omit*

in respect of

*substitute*

against

**13.23** Section 11(11)

*omit*

under this section has been sentenced to any term of imprisonment, the sentence shall

*substitute*

has been sentenced to a term of imprisonment, the sentence must

**13.24** Section 11(12)

*omit*

Principal Immigration Officer

*substitute*

Secretary

**13.25** Section 11(12)

*omit (first and third occurring)*

any

**13.26** Section 11(12)

*omit (second occurring)*

any

*substitute*

a

---

**[14] Substitution of section 12**

Section 12

*omit, substitute*

**12 Review of decisions relating to visas and removal orders**

- (1) An application for a review of a decision under this Act may be made to the Minister as follows:
    - (a) an applicant for a visa may apply to the Minister for review of a decision to refuse to grant the application or to impose visa conditions;
    - (b) the holder of a visa may apply to the Minister for review of a decision to vary, or impose further, visa conditions or to suspend or cancel the visa;
    - (c) a person against whom a removal order is issued may apply to the Minister for review of the decision to issue the order.
  - (2) Subject to this section, the application for review must be made within 14 days after the person receives notice of the decision or, in the case of a removal order, is served with the order.
  - (3) If the reasons for a decision are not given in writing at the time it is made and a person who may apply for review of the decision requires, within 14 days after the making of the decision, the decision maker to give reasons in writing, the time for making an application for review runs from the time when the person receives the written statement of reasons.
  - (4) An application for review must be in writing and must set out the reasons for the application.
  - (5) On a review, the Minister may:
    - (a) affirm the decision; or
    - (b) vary the decision; or
    - (c) set aside the decision and substitute a new decision.
  - (6) Notice of the Minister's decision on a review must be published in the Gazette.
-

**[15] Repeal of Parts IV and V except section 16**

Parts IV and V except section 16

*omit*

**[16] Amendment and relocation of section 16**

**16.1** Section 16(1)

*omit*

shall lie

*substitute*

lies

**16.2** Section 16(1)(c)

*omit (first and third occurring)*

any

*substitute*

a

**16.3** Section 16(1)(c)

*omit*

for the time being in force

**16.4** Section 16(1)

*omit*

for or on account of or

**16.5** Section 16(1)

*omit*

any duty

*substitute*

---



a duty

**16.6** Section 16(2)

*omit*

Where

*substitute*

If

**16.7** Section 16(2)

*omit*

shall

*substitute*

does

**16.8** Section 16

renumber section 16 (as amended by this item) as section 43 and relocate it in Part 5 (as inserted by this Act) before section 44 (Regulations)

**[17] Amendment of heading to Part VI**

*omit*

PART VI

*substitute*

PART 4

**[18] Amendment of section 25 (Definitions)**

**18.1** Section 25

*omit*

suggests

*substitute*

---

requires

- 18.2** Section 25, definition of **'fraudulent travel or identity documents'**

*omit*

authorized

*substitute*

authorised

- 18.3** Section 25

*omit (wherever occurring)*

unauthorized

*substitute*

unauthorised

**[19] Amendment of section 26 (Application of this Part)**

- 19.1** Section 26

*omit*

took place in or outside Nauru in the following circumstances

*substitute*

takes place in or outside Nauru in circumstances in which

- 19.2** Section 26(a)

*omit*

if

- 19.3** Section 26(b)

*omit, substitute*

(b) the receiving country is a country other than Nauru and the offence of trafficking in persons or smuggling of

migrants originates in Nauru or the persons or migrants transit Nauru; or

- 19.4** Section 26(c)  
*omit*  
if
- [20]** **Amendment of heading to section 28**  
*omit, substitute*
- 28** **Offence of trafficking in children**
- [21]** **Amendment of section 32 (Offence to facilitate stay of unauthorised migrant)**  
Section 32  
*omit*  
unauthorized  
*substitute*  
unauthorised
- [22]** **Amendment of section 38 (Penalty)**  
Section 38  
*omit*  
penalty or
- [23]** **Insertion of Part 6**  
After section 38  
*insert*
-

## **PART 5 – MISCELLANEOUS**

### **39 False or misleading information**

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in information provided under this Act.

Maximum penalty: \$10,000.

### **40 Statutory declaration**

Information required to be provided under this Act must, at the request of the person to whom it is to be provided, be verified by statutory declaration.

### **41 Powers in respect of vessel or aircraft**

If the captain, owner or agent of a vessel or aircraft is convicted of an offence against this Act, the vessel or aircraft may, by order of the Court, be detained until the fine or any other amount required to be paid under this Act has been paid or guaranteed to the satisfaction of the Secretary, and the Court may order execution against the vessel or aircraft in satisfaction of the fine or other amount.

### **42 Evidentiary presumption**

In proceedings for an offence against this Act, an apparently genuine document purporting to be a certificate signed by the Minister, Secretary or Principal Immigration Officer certifying a matter relating to:

- (a) a delegation under this Act; or
- (b) an appointment of an immigration officer under this Act; or
- (c) a visa granted under this Act;

is, in the absence of proof to the contrary, proof of the matters so certified.

### **44 Regulations**

- (1) The Cabinet may make regulations under this Act.

- (2) The regulations may make provision for or relating to:
- (a) visas, including (without limitation) provision for or relating to:
    - (i) classes of visa; and
    - (ii) the purposes of a visa of a particular class and limitations that apply in relation to entry and presence under a visa of that class; and
    - (iii) applications for a visa and supporting evidence or documentation; and
    - (iv) eligibility for the grant of a visa; and
    - (v) granting of a visa; and
    - (vi) conditions of a visa; and
    - (vii) expiry, renewal and extension of a visa; and
    - (viii) suspension and cancellation of a visa; and
  - (b) the procedure to be followed by persons entering, in transit through, and departing from Nauru, including the form of information to be given; and
  - (c) forms, stamps or directions made, granted or issued under this Act; and
  - (d) fees, charges, bonds or securities payable in respect of a matter under this Act; and
  - (e) facilitation of proof of the commission of offences against the Regulations.
- (3) The regulations may:
- (a) be of general application or vary in their application according to prescribed factors; and
  - (b) give the Minister, the Secretary or the Principal Immigration Officer discretion to decide a matter.

## **SCHEDULE 2 – TRANSITIONAL PROVISION**

### **1 Office of Principal Immigration Officer**

A person holding office as the Principal Immigration Officer under section 3 of the *Immigration Act 1999* immediately before the commencement of this clause continues to hold that office as if the person had been appointed by the Chief Secretary under the section as substituted by this Act (on the same terms and conditions).