

**REPUBLIC OF NAURU**  
**BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL 2017**  
**EXPLANATORY MEMORANDUM**

The *Births, Deaths and Marriages Bill 2017* (the Bill) is a Bill for the *Births, Deaths and Marriages Registration Act 2017* to repeal the Births Deaths and Marriages Act 1957 (the Act).

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

**EXPLANATION OF CLAUSES**

**PART 1 - PRELIMINARY**

**Clause 1** provides that, once enacted, the short title of the Bill will be the *Births, Deaths and Marriages Bill 2017*.

**Clause 2** sets out when the Bill's provisions will commence on the 1<sup>st</sup> February 2018.

**Clause 3** is the definitional clause which defines key words used in the Act.

**PART 2 - ADMINISTRATION**

**Clause 4** provides for the appointment of a Registrar by the Minister after consultation with the Cabinet.

No person shall be appointed as a Registrar of Births, Deaths and Marriages if such person has not been employed in the Registry of Births, Deaths and Marriages for a term of at least 5 years.

**Clause 5** provides that the Minister may upon the recommendation of the Registrar appoint a person to be a Deputy Registrar. The Deputy Registrar shall exercise such powers as may be delegated by the Registrar. If the Registrar is absent, the Deputy Registrar shall act as the Registrar.

**Clause 6** provides for the functions of the Registrar which are to:

- (a) establish and maintain a separate Register for:
  - (i) births;
  - (ii) deaths;
  - (iii) stillbirths;

- (iv) marriages;
- (v) adoptions;
- (vi) change of names; and
- (vii) national identity codes.

(b) perform certain duties and functions as prescribed by the Act or other laws.

The Registrar will now have 7 separate registers instead of 3 to record the information of life events for each person.

**Clause 7** provides that the Registrar shall have a seal marked as the “*Registrar of Births, Deaths and Marriages, Republic of Nauru*”. The certificate or document issued by the Registrar shall be by the seal which signifies the validity of the document and is conclusive evidence for any purpose.

**Clause 8** provides that the following forms part of the Registers of Birth, Deaths and Marriages:

- (a) a register or record of births, deaths and marriages that are maintained by the Administration of the Island of Nauru;
- (b) a register or record of births, deaths and marriages that was in existence before the commandment of the Births, Deaths and Marriages Act 1957;
- (c) a register or record of births, deaths and marriages that existed before the 31 January 1968, certified by the Administrator to the best of his or her knowledge as the true record of births, deaths and marriages that occurred in Nauru on and after 25 January 1915; and
- (d) a register or record of marriages that was before 31 January 1968, certified by the Administrator to be, best of his or her knowledge and belief, a true record of marriages that occurred in Nauru on and after 7 July 1921.

**Clause 9** provides that the Registrar shall register each birth, death or marriage occurring in the Republic, including other matters contained in clause 6(a).

Registration of such events is compulsory.

**Clause 10** provides that the Registrar may cause a search of information to be made or permit the inspection of a source document, or provide a person with a print-out, certificate copy of a source of document or information requested only if:

- (a) the request is in respect of a named person;
- (b) the request is for a source document named person’s birth, death, marriage or change of name;

- (c) the person making the request satisfies the Registrar that he or she is a person authorised by law to access the information;
- (d) the request is made in a manner approved by the Registrar; and
- (e) the prescribed fee is paid.

**Clause 11** provides that the following person may obtain birth information or name change information in the form of a print out or certificate:

- (a) the person who is the subject of the information;
- (b) a guardian or immediate family member of the person who is the subject of the information ;
- (c) any person, if the person who is the subject of the birth information was born 75 years ago;
- (d) any person, in the case of a still birth, where the still birth occurred more than 20 years from the time the information is sought;
- (e) the persons listed below.

The following persons may obtain death information in a form of a print-out death certificate:

- (a) person authorised to register a death under clause 37;
- (b) an immediate family member of the person who is the subject of the death information;
- (c) any person, if the person who passed away 20 years ago or more or was born 75 years ago or more from the date the information was sought;
- (d) the person listed below.

The following persons may obtain marriage information print out or certificate:

- (a) a person who is the subject of the marriage information;
- (b) immediate family member of a person who is the subject of the marriage information;
- (c) any person, in the case of a marriage that occurred 75 years ago or more;
- (d) the person listed below.

The following person may also obtain births, deaths, marriage or change of name print outs or certificates:

- (a) person granted a power of attorney or has been given written authority to obtain the information by the person who is the subject of the information;
- (b) a person who requires the information for use in proceedings in a court or quasi-judicial body;

- (c) an executor, administrator, or trustee of an estate or trust who requires the information for the administration of the estate.
- (d) the Nauru Lands Committee established under the Nauru Lands Committee Act 1956;
- (e) a public authority to prevent, detect, investigate, prosecute and punishment of offences;
- (f) the Nauru Police Force;
- (g) a person who satisfies the Registrar that he or she requires the information for a proper purpose related to the purpose of recording information under the Act;
- (h) family members for the purpose of undertaking family history research.

### **PART 3 - REGISTRATION OF BIRTHS**

**Clause 12** provides for the compulsory notification of births. Where a child is born at a hospital in the Republic, the Director of Medical Services shall notify or cause the birth to be notified to the Registrar within 7 days of the child's birth.

**Clause 13** requires the compulsory registration of births within 21 days of the birth by one or both parents jointly.

A guardian may register the birth in the same manner and form as the parents would have registered the birth. That is, within 21 days and providing the required particulars to the Registrar.

**Clause 14** provides for the particulars of births to be provided to the Registrar for the registration of a birth of a child. The particulars are:

- (a) name;
- (b) gender;
- (c) date;
- (d) place of birth;
- (e) name of the mother as it appears in the marriage certificate;
- (f) name of the father as it appears in the marriage certificate;
- (g) where the parents are not married, the names of the respective parents as it appears in their birth certificates;
- (h) nationality of the parents;
- (i) registered districts of the parents;
- (j) tribe; and
- (k) any other information as prescribed by regulations.

A Nauruan citizen when registering a birth shall register the surname:

- (a) biological father; or

- (b) biological mother, if the name of the biological father of the person born is not provided.

If a biological father intends to register the name of the person whose biological mother is a Nauruan and both the biological parents are not married to each other or to any other person, the father shall prior to registration:

- (a) obtain the consent of the biological mother; or
- (b) obtain an Order from the Court declaring him as the father.

If a foreign person registers a birth, the foreign person's second name may be registered as the child's surname.

The Registrar shall not register a proposed name for registration under subsection (1) where the proposed name including the surname and combination of which in any language is more than 5 words.

The Registrar shall not register a name that is a prohibited name including in Nauruan or any other language.

The Cabinet can make regulations declaring certain names or class of names to be prohibited.

**Clause 15** provides that a birth not registered in the Republic under a former Act or other law shall be registered under this Act by the Registrar.

**Clause 16** provides that where a birth of any person is not registered under clause 13 or under any former Acts, the Registrar shall register such birth:

- (a) on an application for registration of birth;
- (b) upon payment of a late fee prescribed by regulations;
- (c) a statutory declaration verifying the information in clause 14.

**Clause 17** provides that the Registrar may be notified within 28 days from the date of the birth of the person where a person is born:

- (a) in an aircraft during a flight; or
- (b) on a vessel during a voyage, -

to the Republic by one or both parents, a guardian, the Captain of the aircraft or the Master of the vessel.

**Clause 18** requires one or both parents to register a stillbirth. Such details required for the registration of stillbirths shall be prescribed by regulations.

**Clause 19** allows the names of Nauruans born outside of the Republic to be registered in the Republic. The particulars required for the registration of the name shall correspond with the particulars in clause 14.

**Clause 20** allows the registration of birth of a foreign child in the Republic if both parents are foreigners. Such registration of birth is not deemed to be the recognition or declaration that the foreign child is a citizen of the Republic.

The Registrar shall record the nationality or citizenship of the foreign child as that of the foreign parents.

**Clause 21** provides that parents of the child who is to be baptised shall provide the birth certificate of the child to the officiating minister prior to the time of baptism.

If a child is given a baptismal name different to the registered name, the officiating minister shall provide a certificate or notification of the baptismal name to the parents.

The parents may register the baptismal name with the Registrar. If the parents apply to register the baptismal name, the Registrar:

- (a) shall not substitute the registered name with the baptismal name; and
- (b) may only register the baptismal name in the Register without altering or making changes to the registered name in the birth certificate.

The registered name shall be recognised as the name of all official purposes.

**Clause 22** provides that the Registrar may register the change of name by deed poll. Change of name by deed poll can be done by a person who has attained the age of 18 years or by the parents of a child under the age of 18 years.

An application to the Registrar to register a change of name under this clause shall be:

- (a) in the prescribed form;
- (b) accompanied by the deed poll; and
- (c) the reason or reasons for the change of name.

A certificate or certified copy issued by the Registrar after registration of change of names shall show the name as changed and no other name. Registration of any change of name by deed poll may be prescribed by regulations. Such application shall be accompanied by the prescribed fee.

**Clause 23** provides that the Registrar may register the change of name if upon application for change of name, the Registrar is satisfied that:

- (a) the application is in accordance with this Part;
- (b) as to the identity and age of the person whose name is to be changed;
- (c) that the change of name is not sought for a fraudulent or other improper purpose, to conceal any criminal convictions or to conceal any deportation or prohibition of entry into any foreign country;
- (d) that the proposed name is not and does not contain a prohibited name; and
- (e) the requirements of clause 22 have been met where the application is in relation to a minor.

**Clause 24** allows for a parent or guardian or legal custodian of a child to apply to the court for an order to change the name of a child.

The Court may order the change of name if satisfied that:

- (a) the change of name is in the best interest of the child; and
- (b) the proposed name is not and does not contain a prohibited name.

When the court makes an Order, the Registrar of the Court shall provide a sealed copy of the Order to the Registrar who on receipt of such Order registers the change of name.

**Clause 25** provides that if there is change of name of a person whose birth is registered under this Act or the former Act the Registrar shall:

- (a) register the change of name; and
- (b) retain all other information about the birth of that person provided at the initial registration of birth.

#### **PART 4 – REGISTRATION OF ADOPTIONS**

**Clause 26** provides that no adoptions other than adoptions under the Adoption of Children Act 1965 shall be a registrable adoption.

An adoption under the Adoption of Children Act 1965 that is not registered under the former Act may be registered under this Act.

**Clause 27** provides that in making an adoption Order, the Resident Magistrate shall provide to the Registrar a sealed copy of the Order together with a notice to include the following information:

- (a) registered name of the minor, if any, immediately before the making of the Order;
- (b) the name to be registered after the making of the Order;
- (c) the date and place of birth of the minor;
- (d) the gender of the minor;
- (e) the forenames and surnames, if any, of the biological parents, the last previous adoptive parents of the child;
- (f) the forenames and surnames, occupation and address of the adoptive parent or parents of the child;
- (g) the name of the judicial officer granting the Order;
- (h) the date the Order was made; and
- (i) any other information as the Registrar requires.

The Registrar upon receiving the information stated above shall amend the birth information by:

- (a) registering the name of the child by an adoption Order in substitution of the name of the child immediately prior to the adoption; and
- (b) registering the name and details of each adoptive parent in substitution of the name and details of the natural or last adoptive parents.

**Clause 28** provides if the birth of a person was not registered under the former Act or this Act, but an adoption Order was made by the Court, the Registrar shall register the adoption as if the birth was registered under clause 13.

**Clause 29** provides that if an adoption Order is subsequently varied or removed, the Registrar of the Court making the Order is to provide a sealed copy of the Order to the Registrar. Once the Registrar receives a copy of an Order, the Registrar shall register the Order in line with clause 27.

**Clause 30** provides that the Registrar shall not register the name of a foreign person adopted under the written laws of a foreign country by a Nauruan.

**Clause 31** provides that if a person requests any information in the Register in respect of a birth of a person to whom Part of this Act relates, the Registrar shall provide:

- (a) the most recent registered information;
- (b) a true record of the entry in the Register.

The Registrar however shall not divulge or reveal or make accessible any historical registration other than the limitation provided in this section.



**Clause 32** provides that if a person requests to inspect the information in the Register in respect of a birth registered under the Act, the Registrar may allow the person to inspect the Register if the Registrar is satisfied that:

- (a) the information he or she is seeking is important to the purpose for which the inspection is required; and
- (b) allow the information to be inspected will not be unjustified invasion of the privacy of any person.

**Clause 33** provides that for the purpose of clauses 31 and 32 an application for the request shall be:

- (a) in the prescribed form;
- (b) accompanied by a prescribed fee;
- (c) supported with the detailed reasons for requesting for inspection or information.

**Clause 34** provides that the Registrar may provide adoption information to registration authorities overseas. The Registrar may supply to the foreign authority information about the adoption, if the Registrar is satisfied that:

- (a) an authority constituted in a foreign country has the function of recording information relating to births within a foreign country; and
- (b) a person who has been adopted in the Republic was born in the foreign country.

## **PART 5 – REGISTRATION OF DEATHS**

**Clause 35** requires the Director Medical Services to notify or cause the death to be notified to the Registrar immediately after the death of a person.

**Clause 36** provides for compulsory registration of deaths. The Registrar shall register each death with the delivery of the particulars of death given to him or her in the prescribed form.

Any death in the Republic not registered under the former Act or other law shall be registered under this Act.

**Clause 37** provides that the particulars of death to be provided for the purpose of registration are:

- (a) name;
- (b) age;
- (c) gender;

- (d) address;
- (e) nationality;
- (f) tribe
- (g) date of death;
- (h) place of death;
- (i) date of burial or cremation;
- (j) name and address of approved person conducting the funeral service of the deceased person;
- (k) name and address of person registering death; and
- (l) such other requirements which is prescribed by regulations.

**Clause 38** provides for that the right to register a death vests in the person in the order of priority:

- (a) spouse of the deceased;
- (b) adult child of the deceased;
- (c) parents of the deceased;
- (d) adult siblings of the deceased; or
- (e) in the case of a deceased who is a minor or still born child of the parents or the guardians; or
- (f) if there are no persons described in paragraphs (a) to (e), any person who knew or was living with the deceased.

If a person who is at the top of the order of priority stated above is unavailable or unwilling to register the death, the right to register passes to the person in the next order of priority. For example, if the spouse of the deceased is unavailable or unwilling to register the deceased, then the adult child of the deceased may register the deceased. The order of priority will continue until someone in the order of priority is willing and available to register the deceased.

However, if a person whom before he or she dies makes a testamentary instrument (example a Will or codicil) and in his or her testamentary instrument provides that a particular person to register the death and administer the estate, the testamentary instrument shall override the order of priority stated above.

**Clause 39** provides that a person who has the right to register a death under clause 38 shall register the death in the prescribed form.

**Clause 40** provides that a health practitioner who attended the person in his or her last illness or examination or post mortem of the deceased shall issue a notification of death.

The notification of death issued shall provide the following details of the deceased:

- (a) name;
- (b) age or date of birth;
- (c) gender;
- (d) address;
- (e) nationality;
- (f) tribe;
- (g) date of death;
- (h) cause of death; and
- (i) place of death.

**Clause 41** provides that it is the duty of a health practitioner to report the death of a person who died under suspicious circumstances to the Police.

If the health practitioner reports a death to the Police, the health practitioner shall not without the direction of the Police issue a notification of death.

In the case of a child who is still born, the health practitioner shall not issue a notification of stillbirth without reporting the matter to the Police where he or she has any reason or cause to believe of any suspicious circumstances of a stillbirth or infanticide(killing a child).

**Clause 42** provides that if a Resident Magistrate is notified of a death under the Inquests Act 1977, the Resident Magistrate shall:

- (a) notify the Registrar; and
- (b) if the Resident Magistrate has certified that an inquest into the death is unnecessary, -  
provide to the Registrar such information as the Registrar requires for the purposes of registering the death.

If the Resident Magistrate has not certified that an inquest into a death is unnecessary, the Registrar shall not register the death until after the inquest has been held.

After the inquest into a death has been held, the Resident Magistrate shall notify the Registrar of his or her findings and provide to the Registrar such information as the Registrar requires for the purpose of registering the death.

**Clause 43** provides that an approved person who conducts a funeral service for a person whose death occurred in the Republic shall notify the Registrar within 7 days from the date of the burial or cremation.

**Clause 44** provides that an approved person or person under clause 38 shall notify the Registrar within 7 days from the date of disposal of the human remains.

**Clause 45** allows the Registrar to require a person to notify death. If the Registrar is satisfied that an approved person failed to comply with clauses 43 and 44, the Registrar shall issue a prescribed notice in writing requiring the approved person to notify the death by a date specified by the Registrar.

Any person who contravenes this clause commits an offence and upon conviction is liable to a fine not more than \$50,000 or a term of imprisonment not more than 2 years.

**Clause 46** provides the Registrar may be notified of a death occurring in following circumstances:

- (a) on an aircraft during a flight to the Republic by the Captain;
- (b) on a vessel during a voyage to the Republic by the Master;
- (c) outside the Republic of a person born in the Republic;
- (d) outside the Republic of a person born in the Republic by a person under clause 38;
- (e) outside the Republic of a person leaving property in the Republic by a person under clause 38.

A person notifying the death as stated above shall within 14 days from the date the death is known or if unknown within 14 days from the date of death is discovered. A person notifying a death that occurred outside the Republic shall do so as soon as possible.

## **PART 6 – REGISTRATION OF MARRIAGES**

### ***Division 1 – Compulsory registration of marriages***

**Clause 47** provides that the Registrar shall register each marriage occurring in the Republic. This clause also allows a marriage solemnised in the Republic, not registered under a former Act or other law to be registered under this Part.

**Clause 48** provides for registration of foreign marriages of Nauruans. If a Nauruan marries outside the Republic whether or not the marriage is registered in the foreign country in accordance with the laws of the foreign country, the marriage shall be registered in the Republic.

The Registrar may require particulars or evidence of such marriage which shall correspond to the particulars under clause 54. If satisfied with the particulars provided, the Registrar may register the marriage.

**Clause 49** provides that a marriage shall be a voluntary union between one man and one woman.

**Clause 50** provides that the marriageable age is at least 18 years. No person may solemnise a marriage of a person who has not attained the age of at least 18 years.

### ***Division 2 – Marriage Officers***

**Clause 51** provides for who are the Marriage Officers. The Marriage officers are:

- (a) Registrar;
- (b) Deputy Registrar;
- (c) approved persons authorised by the Cabinet to solemnise marriages.

Cabinet may appoint such approved persons to be Marriage Officers upon a request made by the approved organisations to the Registrar.

**Clause 52** provides that the Registrar will keep a list of all the Marriage officers such as the names, religious denomination, residential and email addresses, and telephone numbers.

The Registrar shall publish in the Gazette in the month of January in each year a notice containing the list of persons authorised to solemnise marriages with the corresponding particulars itemised above.

**Clause 53** provides that if a marriage officer dies or ceases to be authorised to solemnise marriages, the Registrar shall remove that person's name from the list of Marriage Officers.

### ***Division 3 – Marriage process***

**Clause 54** provides for the marriage application process. A man and woman who desire to marry shall jointly apply to the Registrar in the prescribed form for 7 days before the intended marriage. The particulars will include:

- (a) birth certificates;
- (b) addresses;
- (c) marital status;
- (d) nationalities;
- (e) tribes;
- (f) where applicable if divorced a dissolution order by the Court;
- (g) date of intended marriage; and
- (h) any other information which the Registrar may require specifically for prohibited marriages.

In the application for marriage form, the parties must declare that they are not related and that their marriage will not be prohibited under the Act.

The Registrar shall submit the application to the Minister who may in consultation with the Cabinet:

- (a) endorse the marriage; or
- (b) decline to endorse the intended marriage if prohibited under the Act.

**Clause 55** provides for the Registrar to publish the notice of marriage. Subject to clause 54(3)(b) the Registrar shall publish the Notice to Marry in the Gazette.

**Clause 56** provides for objections to the marriage. A person may lodge with the Registrar an objection to the marriage of any person on the ground that the marriage is one in respect of which the Notice should be revoked.

An objection shall be in writing signed by or on behalf of the person and shall state with his or her full name and residential address and the particulars of the grounds of objection.

The objection shall be given to any Registrar within 4 days of the publication of the Notice to Marry.

Until the objection is withdrawn by the person who is lodging the objection or is discharged under clause 57, the marriage shall not be solemnised.

**Clause 57** provides for the discharge of the objection. Upon receipt of a notice under clause 55, the Registrar shall submit the objection to the Resident Magistrate who shall inquire into the grounds of the objection and if the Resident Magistrate is of the view that those grounds should not prevent the solemnisation of the marriage, he or she shall discharge the objection.

The objection is deemed to be discharged after the expiration of 3 months from the date it was lodged unless during such time the notice of intended marriage was to which the caveat relates has been given.

**Clause 58** provides that a person shall be liable for damages if the court considers the grounds of objection lodged were vexatious and unreasonable.

**Clause 59** provides for the renewal or revocation of notice of marriage if the marriage is not solemnised within 3 months.

If the marriage is not solemnised within 3 months of the publication of the notice by the Registrar, the endorsement by the Minister for the proposed marriage shall lapse.

The person intending to marry may reapply to the Registrar for the renewal of the notice for a period of not more than 3 months.

If the notice has lapsed or not renewed, the person intending to marry may make an application for marriage to any other person.

If the person after giving notice of marriage has no intention of marrying within 3 months of the publication of the marriage, he or she may revoke the notice of marrying by giving a notice of revocation to the Registrar.

The Registrar shall publish the notice of revocation or withdrawal in the Gazette.

**Clause 60** provides that a marriage shall be solemnised in the presence of 2 witnesses who shall:

- (a) sign a certificate;
- (b) the certificate must be signed by the Marriage Officer solemnizing the marriage; and
- (c) certificate shall be signed by the persons marrying – in each other’s presence.

The witnesses to the marriage shall be at least 18 years of age.

**Clause 61** provides that a Marriage Officer shall not solemnise a marriage contrary to the requirements of clause 54(3) and without a current notice of marriage published in the Gazette.

A Marriage Officer commits an offence if he or she does not comply with this clause and upon conviction is liable to a fine not more than \$50,000 or a term of imprisonment of 2 years.

If the Marriage Officer is convicted under this clause, his or her appointment as Marriage Officer shall be revoked.

**Clause 62** provides that every marriage shall be solemnised at a place described in the Notice to Marry published in the Gazette. Every such marriage shall take place between the persons named in the licence according to such form and ceremony as they may think fit to adopt.

**Clause 63** provides that a Marriage Officer solemnising a marriage shall require each of the parties in his presence and in the presence of witnesses to say to the other, “*I AB (name of the person) do take you, CD (name of the person) to be my lawful wedded wife/husband*, or words are nearly corresponding in a language other than English.

After a marriage is solemnised by the Marriage Officer, the Marriage Officer shall say to the parties *“Pursuant to the powers conferred upon me by the Births, Deaths and Marriages Registration Act, I now pronounce to be husband and wife”*.

The Minister may in consultation with the Cabinet make regulations for the declaration of marriage in the Nauruan language.

**Clause 64** provides that if a Marriage Officer other than the Registrar or Deputy Registrar solemnise a marriage, the Marriage Officer shall:

- (a) prepare triplicate copies of the certificate of the marriage in accordance with the prescribed form; and
- (b) require the persons marrying and witnesses to sign the triplicate copies of the certificate; and
- (c) sign the certificate.

The Marriage Officer shall:

- (a) give one of the certificates to the persons married;
- (b) submit a certificate to the Registrar within 7 days of the marriage; and
- (c) retain a certificate for his or her records which shall be given to the religious denominations nominating the appointed Marriage Officer before he or she ceases to be a Marriage Officer.

If a Marriage Officer fails to comply with this clause, he or she commits an offence and upon conviction is liable to a fine of not more than \$50,000 or a term of imprisonment not more than 2 years or to both.

The requirement to submit the marriage certificate to the Registrar is extremely important as it would avoid a person getting married twice since the Register would contain the information relating to any marriage.

**Clause 65** provides that upon receipt of a marriage certificate under clause 64, the Registrar shall:

- (a) record the certificate in the Register;
- (b) publish the marriage in the Gazette.

If the Registrar fails to comply with this clause, he or she commits an offence and upon conviction is liable to a fine of not more than \$50,000 or to a term of imprisonment not more than 2 years or to both.



**Clause 66** provides for a change of name in a marriage certificate. If a person marries under this Act and later changes his or her name under the Act, he or she may apply to the Registrar in the prescribed form to vary the marriage certificate by substituting the changed name with the name recorded in the marriage certificate.

The Cabinet may make regulations for the purpose of this section.

#### ***Division 4 – Prohibited marriages***

**Clause 67** provides that a marriage shall not be solemnised between 2 persons who fall within the relationships set out in the Schedule.

No Marriage Officer, Court or any person shall authorise or permit the solemnisation or celebration of a proposed union of man and a woman whose relationship falls within the relationships provided in the Schedule.

If any person who contracts, conspires, aids, abets, solemnises or celebrates a prohibited marriage, he or she commits an offence and upon conviction is liable to a fine of not more than \$50,000 or a term of imprisonment of not more than 10 years or to both.

Persons living together whose relationship fall within the relationships provided in the Schedule i.e. of a prohibited marriage, such relationship shall not be validated by any laws in any manner or form.

#### ***Division 5 – Void marriages***

**Clause 68** provides for grounds where marriages are void. A marriage is void if:

- (a) when the marriage was solemnized, either party was lawfully married to some other person under the laws of the Republic or a foreign country;
- (b) the marriage is prohibited under Division 4;
- (c) there was mistaken identity of the other person;
- (d) there was misunderstanding the nature and language of the solemnisation of the marriage;
- (e) a person had medical, physical and mental incapacity of the solemnisation of the marriage;
- (f) a person was induced into the solemnisation of the marriage;
- (g) the marriage was under duress, coercion or other oppressive manner by one of the parties to the marriage or by a third person;
- (h) the person was below the age of 18 years; and
- (i) it is contrary to clause 54(3).

#### ***Division 6 – Recognition of marriage solemnised in foreign country***

**Clause 69** provides for the recognition of marriages solemnised in foreign country.

Where a Nauruan applies to the Registrar for recognition of his or her marriage solemnised in a foreign country, he or she shall provide particulars of the marriage in a prescribed form.

The particulars to be provided shall include:

- (a) a certificate issued by the marriage authority of the foreign country certifying that the marriage was solemnised;
- (b) photographs and documentary evidence of the marriage;
- (c) the local laws of the foreign country the marriage was solemnised in; and
- (d) a copy of the certificate of marriage duly translated into the English language by a practising lawyer, judicial officer or a Head of a Diplomatic Mission.

**Clause 70** provides that marriage solemnised in a foreign country shall not be recognised as a marriage in the Republic if the marriage is:

- (a) between a male and another male; or
- (b) between a female and another female;
- (c) not recognized as a lawful marriage under the written laws of the foreign country;
- (d) a customary marriage practiced in the foreign country; or
- (e) of a person under the age of 18 years.

This ensures that child marriages are not recognised in the Republic.

#### ***Division 7 – Additional marriage ceremony***

**Clause 71** allows a person to remarry if he or she provides an Order from the Court that the earlier marriage has been dissolved.

**Clause 72** provides that a Marriage Officer shall not solemnise a marriage between persons:

- (a) where a person seeking to marry is already legally married; or
- (b) whom the Marriage Officer has received information that the persons seeking to marry are already legally married.

**Clause 73** provides that a contract of marriage or any other form of arrangement or understanding shall be void and not recognised under the laws of the Republic.

#### ***Division 8 – Legitimation of children***

**Clause 74** provides that a person whose parents were not married to each other at the time of birth but later married each other, will by virtue of their marriage become the legitimate child of his or her parents from the date of his or her birth.

**Clause 75** provides that any child of a marriage that is void shall be deemed to be a legitimate child of the marriage.

### ***Division 9 – Dissolutions to be recorded***

**Clause 76** provides that upon making of the order of dissolution of marriage or an order declaring that a party to the marriage is presumed to be dead and the marriage is dissolved or an order declaring the marriage void, the Registrar of the Court shall provide to the Registrar a sealed Order of the Court to the Registrar.

**Clause 77** provides for the record of dissolution of marriage outside the Republic. If the Registrar is satisfied that a marriage registered under the Act or former Act or any other law has ended as a result of a legal process outside the Republic, the Registrar shall record in the Register as part of the information in respect of the marriage that fact and particulars in respect of the relevant legal process. The Registrar may require such information in respect of the ending of the marriage and the relevant legal process as in all the circumstances the Registrar considers necessary.

## **PART 7 – APPROVED ORGANISATIONS**

**Clause 78** provides that any organisation or religious body may apply to the Registrar for approval of an organisation which may nominate persons to solemnise marriages or officiate funeral ceremonies. Every such application shall be accompanied with a signed statement from the highest ranking office bearer and 5 members of the organisation all above the age of 18 years each of whom must provide his or her age and addresses setting out:

- (a) the constitution or objects and beliefs of the organisation; and
- (b) number or approximate number of the members of the organisation above the age of 18 years.

The signatures of the signatories to the application shall be attested by another person and a statutory declaration attached to the statement verifying that the signatures are genuine.

The Registrar shall submit the application to the Minister who shall consult with Cabinet and on satisfaction that the principal object or objects of the organisation is to uphold or promote religious beliefs or philosophical or humanitarian convictions, he or

she may by notice in the Gazette declare the organisation to be an approved organisation.

The Registrar shall publish in the Gazette the approval of an organisation for the purpose of and under the Act.

**Clause 79** provides that the names of every adult member of the approved organisation that have been nominated to be Marriage Officers or funeral officiators shall be sent to the Registrar together with the certificate from the organisation declaring that such members are to be Marriage Officers or funeral officiators. The certificate shall be signed and attested in the manner specified in clause 64 for applications for approval.

The Registrar shall submit the application to the Minister who shall in consultation with the Cabinet, if satisfied that the person nominated is of good character and qualified to be a Marriage Officer or funeral officiator and the submission complies with the Act he or she shall enter the names in the list.

#### **PART 8 – NATIONAL IDENTITY CODES**

**Clause 80** allows the Cabinet to make regulations for national identity codes. A Register will be established and maintained by the Registrar to record national identity codes.

#### **PART 9 - OFFENCES**

**Clause 81** makes it an offence to alter a Register, and any person who alters the register commits an offence and upon conviction is liable to a fine of not more than \$50,000 or a term of imprisonment of not more than 5 years or both.

A person who has lawful custody of a register who permits the alteration of the register commits an offence and upon conviction is liable to a fine of not more than \$50,000 or a term of imprisonment of not more than 5 years or to both.

**Clause 82** provides that a person who knowingly, provides false information to the Registrar or a person empowered to solemnise a marriage which leads to false or incorrect entry in the Register commits an offence and upon conviction is liable to a fine of not more than \$50,000 or a term of imprisonment of not more than 5 years or to both.

**Clause 83** provides that any person having lawful custody of a Register shall keep the Register safely and any such person who negligently loses the Register or willfully or negligently destroys or defaces any entry in the Register, or willfully or negligently allows any entry in the Register to be destroyed or defaced while the Register is in his

or her custody, commits an offence and upon conviction is liable to a fine of not more than \$50,000 or a term of imprisonment of 5 years or to both.

**Clause 84** provides that a person who willfully makes a false statement in a declaration commits an offence. Any person in connection to the proposed religious ceremony of marriages who makes to another person a written statement as specified in clause 54 that to the knowledge of the first person is false, commits of an offence.

A person who forges a document or forges a signature to a document proposing to induce another person to solemnise a marriage commits an offence and upon conviction is liable to a fine not more than \$50,000 or a term of imprisonment of not more than 5 years or to both.

**Clause 85** provides that a person who contracts or enters into a marriage:

- (a) knowing or having reason to believe that the purpose of the marriage is to assist one of the parties to the marriage to obtain an immigration advantage; and
- (b) if any gratification, whether from a party to the marriage or another person, is offered or given or received as an inducement or reward to any party to the marriage for entering into the marriage , -

commits an offence and upon conviction is liable to a fine of not more than \$50,000 or term of imprisonment of not more than 10 years or to both.

If any person who arranges or otherwise assists in arranging a marriage between 2 or other persons, with the intention of assisting one of the parties to the marriage to obtain an immigration advantage, commits an offence and upon conviction is liable to a fine not more than \$100,000 or a term of imprisonment of not more than 10 years or to both.

This section applies to a marriage entered into by any persons whether in the Republic or outside the Republic.

The terms "*gratification*" and "*immigration advantage*" are defined as follows:

**'gratification'** includes:

- money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable;
- any office, employment or contract;

- any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part; and
- any other service, favour or advantage of any description whatsoever;

***‘immigration advantage’***, in relation to a party to a marriage, means the grant or extension of the validity of any visa, permit or re-entry permit under the Immigration Act 2014 or the regulations or any order made for that party or for a child or parent of that party.

**Clause 86** provides that a person to go through a marriage ceremony with another person knowing that the person solemnizing the marriage is not registered to solemnise a marriage commits an offence and upon conviction is liable to a fine of not more than \$50,000 or a term of imprisonment of not more than 2 years or to both.

**Clause 87** provides that no person shall falsely pretend to be a Marriage Officer and solemnise any marriage. Any person who contravenes this section commits an offence and upon conviction is liable to a fine of not more than \$50,000 or a term of imprisonment of not more than 5 years or to both.

**Clause 88** provides that a person who solemnizes, aids or abets the marriage of a person under the age of 18 years commits an offence and upon conviction is liable to a fine not exceeding \$50,000 or to a term not exceeding 5 years or to both.

**Clause 89** provides that a Marriage Officer who solemnises a marriage without requiring the parties to make the declaration referred to in clause 63 commits an offence and upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 5 years or to both.

**Clause 90** provides that a person who makes a written or oral statement knowing that it is false or being reckless as to whether it is false, for obtaining a source document or a copy of a source document or information commits an offence and upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 5 years or to both.

## **PART 10 - MISCELLANEOUS**

**Clause 91** provides for the power of the Registrar to correct errors after making inquiries to:

- (a) determine whether the registrable event has occurred;
- (b) collect details of a registrable event; or
- (c) ensure that there is a correct record of a registrable event.

The Registrar may correct an error, omission or mis-statement:

- (a) in the case of entry of a birth – shall be made in the presence and attested by the parents of the child;
- (b) in the case of entry of death – shall be made in the presence and attested by the person who notified the Registrar of the death; and
- (c) in the case of a marriage – shall be made in the presence and attested by the persons who were married.

The Registrar shall make the correction by entry in the margin opposite the entry, contain a notation of the date of the correction and sign where the correction was made.

If a correction is made the Registrar shall where practicable, advise the person to whom a certified copy or extract of the entry has been issued containing the error, omission or misstatement and if requested by the person, without a charge, issue to that person a certified copy or extract of the corrected entry.

**Clause 92** provides that where an entry of birth, death or marriage is contained in a register or record of births, deaths or marriages that has been certified and forms part of the Register:

- (a) the birth, death or marriage shall be deemed to have been duly registered;
- (b) the entry shall be deemed to have been made by a person duly appointed to register the birth, death or marriage, as the case may be; and
- (c) in the case of a marriage, the person who officiated at the marriage shall be deemed to have been a person duly appointed for that purpose.

**Clause 93** provides that a birth, death or marriage certificate or change of name shall in any proceedings be received as prima facie evidence of the truth of the information it contains.

**Clause 94** provides that any transaction under the Act may be conducted by electronic means subject to the approval of the Registrar and conditions that the Registrar thinks fit. If allowing the transaction to be conducted electronically, the Registrar may require an electronic scanned copy of a signature to be provided.

**Clause 95** provides that the Registrar shall before making an entry in the Register can make necessary inquiries to inform him or her of the correct particulars. Any person shall provide the relevant information needed.

**Clause 96** provides that it is a defence to prosecution for an offence of failing to provide information to the Registrar if the defendant establishes that the information had not come to the defendant's knowledge.

**Clause 97** provides that a person who intends to marry outside the Republic in accordance with the law of another country or jurisdiction may apply to the Registrar for a certificate of no impediment. An application shall be in the prescribed form, contain the prescribed information and be accompanied by the prescribed fee. The Registrar where satisfied can issue the "Certificate of no Impediment to Marriage".

**Clause 98** provides that a person shall not make a declaration knowing that any statement given will be false. A declaration required under the Act may be made before:

- (a) the Registrar or Deputy Registrar;
- (b) a Resident Magistrate;
- (c) a Commissioner for Oaths;
- (d) a Notary Public;
- (e) the Registrar of the Court;
- (f) a Marriage Officer.

**Clause 99** provides that particulars or information required to be provided to the Registrar shall be in the form determined by the Registrar.

**Clause 100** provides protection from liability for the Registrar in that the Registrar shall not be liable in any suit, action or proceeding including constitutional redress in any Court of the Republic or any quasi-judicial or administrative body for anything done in the bona fide exercise or the purported exercise of a power or function under this Act.

**Clause 101** vests jurisdiction in the District Court to hear and determine offences under the Act and to impose the penalties in respect of the said offences.

This is necessary given that the proposed penalties under the Act are beyond the jurisdiction of the District Court. Under section 18 of the Courts Act 1972, the District Court may be vested jurisdiction by any other written law and this clause accordingly vests that jurisdiction in the District Court.

**Clause 102** provides that Cabinet may make regulations prescribing all matters necessary or convenient to be prescribed under the Act. The regulations may provide for:

- (a) any forms under the Act; and
- (b) fees for application or services required to be paid under the Act.



## **PART 9 – REPEAL, SAVINGS AND TRANSITIONAL**

**Clause 103** provides that the Birth, Deaths and Marriages Act 1957 is repealed.

**Clause 104** provides that despite the repeal of the Birth, Deaths and Marriages Act 1957, all registrations and certificates remains valid.

**SCHEDULE** provides the list of prohibited marriages.