

**Immigration (Amendment) Bill 2012**

**EXPLANATORY MEMORANDUM**

**BACKGROUND AND OBJECTIVES**

The objective of the *Immigration (Amendment) Bill 2012* is to simplify and modernise the Immigration Act. In this respect, many of the clauses of the Bill serve only to update the language and style of the Act to make it easier to understand and administer. However, this Bill also proposes changes to the underlying structure and mechanisms of the Act, for example by removing unnecessary complexity and presenting the provisions in a more logical order.

**EXPLANATION OF CLAUSES**

**Clauses 1 to 4** are formal provisions.

**Schedule 1** contains the substantive amendments to the Act.

**Item 1** updates the style of the heading to Part 1.

**Item 2** amends the Short title of the Act.

**Item 3** amends the interpretation section.

New definitions of authorised officer and immigration officer are included. A reference to an immigration officer is to include a reference to the Principal Immigration Officer and appointed immigration officers. An authorised officer is an expanded concept that also includes a police officer. The provisions of the Act relating to such matters as giving directions to persons arriving, departing or transiting Nauru are left to immigration officers and other matters such as those relating to offences may be dealt with by authorised officers.

A definition of Secretary is included to support the transfer of some of the functions of the Principal Immigration Officer to the Secretary for the purposes of instituting appropriate administrative arrangements.

The definition of passport is altered so that the regulations deal with any exclusions of categories of documents rather than this being a matter for a Gazette notice. This ensures that the exclusions can be readily located and allows the regulations to be comprehensive in coverage.

**Item 4** inserts a provision making it clear that the Act binds the Republic.

**Item 5** updates the style of the heading to Part 2.

**Item 6** reworks into a modern framework the provisions for the appointment of the Principal Immigration Officer, immigration officers, identity cards and delegation of functions by the Minister, the Secretary and the Principal Immigration Officer.

**Item 7** updates the style and language used in section 4.

**Item 8** alters the references in section 5 to immigration officers to authorised officers as part of the readjustment of this terminology. The powers are substantively the same except that express reference to an authorised officer being assisted by others is included. The offence of hindering or obstructing an authorised officer is modernised.

**Item 9** updates the style of the heading to Part 3.

**Item 10** amends section 6 and includes an amendment that means that forms required for the purposes of submitting passenger and crew lists will be approved by the Secretary rather than the Principal Immigration Officer. The offence provision in subsection (2) is modernised to clarify the defence contained in subsection (3).

**Item 11** updates the language and style of section 7.

**Item 12** introduces the new and simplified approach requiring every person who is not a Nauruan citizen to have a valid visa authorising the person's entry to and presence in Nauru. New section 9 contemplates the regulations providing exemptions. This will be for commercial aircraft and vessel crew members.

**Item 13** shifts the responsibility for issuing removal orders from the Principal Immigration Officer to the Secretary. The issuing of such orders involves a very high level of responsibility suited to the position of a Head of Department. Delegation is available should that be considered appropriate in certain cases.

**Item 14** replaces current section 15 which deals with appeals. The language is changed to that of review since that more accurately reflects the nature of the scheme. This is an internal review of certain decisions of the Principal Immigration Officer or Secretary by the Minister.

**Item 15** repeals Parts IV and V except section 16.

**Item 16** updates the language and style of section 16, renumbers it as section 43 and relocates it in Part 5 at the end of the Act.

**Item 17** updates the style of the heading to Part VI and renumbers it as Part 4.

**Item 18** updates the language of section 25.

**Item 19** updates the language and style of section 26.

**Item 20** corrects the heading to section 28.

**Item 21** updates the language of section 32.

**Item 22** updates the language in section 38.

**Item 23** inserts a new Part 6. The new Part includes a general offence of providing false or misleading information and allows a statutory declaration verifying information to be required in appropriate cases. New section 41 replaces section 14. New section 42 provides an evidentiary aid. Section 16 of the current Act is redesignated as section 43. Section 44 is the new regulation making power. The regulations may make provisions relating to visas, including their suspension and cancellation.

**Schedule 2** provides a transitional provision so that the person holding office as the Principal Immigration Officer immediately before the commencement of the Schedule continues to hold that office as if appointed by the Chief Secretary under the new provisions when they come into operation.



REPUBLIC OF NAURU

## Immigration Act 1999

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As in force from ~~15 April 2011?~~

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This compilation comprises Act No. 6 of 1999 as amended and in force from ~~15 April 2011?~~ (being, at the time the compilation was prepared on ~~9 May 2011?~~, the date of commencement of the most recent amendment).

The notes section at the end of the compilation includes a reference to the law by which each amendment was made. The Table of Amendments in the notes section sets out the legislative history of individual provisions.

The operation of amendments that have been incorporated in the text of the compilation may be affected by application provisions that are set out in the notes section at the end of the compilation.

This compilation is prepared and published in a legislation database by the Nauru Parliamentary Counsel under the *Legislation Publication Act 2011*.

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REPUBLIC OF NAURU

# Immigration Act 1999

An Act to make provision for the entry of persons into Nauru, the presence of non-citizens in Nauru, and the departure or removal of persons from Nauru.

## PART 1— PRELIMINARY

### 1 Short title ~~and commencement~~

This Act may be cited as the *Immigration Act 1999* ~~and shall come into force on a date to be notified by the Minister by notice in the Gazette.~~

### 2 Interpretation

In this Act, unless the context otherwise requires:

~~*‘appropriate form’* means a form approved by the Principal Immigration Officer for use in any particular case;~~

*‘airport’* means the Nauru International Airport;

*‘authorised officer’* means:

(a) an immigration officer; or

(b) a police officer;

~~*‘authorised officer’*, when used in a provision of this Act, means an officer authorised by the Minister or the Principal Immigration Officer for the purposes of that provision;~~

*‘captain’* means the captain, master or other person for the time being in charge of a vessel or aircraft, but does not include a ship’s pilot;

*‘contravention’* includes failure to comply;

*‘crew member’* means ~~any~~ a person for the time being in the

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service of a vessel or aircraft;

~~‘crime’ includes any offence;~~

~~‘dependant’, in relation to a person, means:~~

~~(a) a spouse, other than a spouse who is formally separated;  
or~~

~~(b) a child under the age of 18 years; or~~

~~(c) a person wholly dependent on the first-mentioned person  
for financial, psychological or physical support;~~

‘enter’, in relation to Nauru, means:

(a) in the case of a person arriving by sea:

(i) ~~where if~~ a restricted area has been declared in  
relation to ~~the a~~ port — leaving the restricted area to  
enter Nauru; or

(ii) in any other case — disembarkation in Nauru from  
the vessel in which ~~he the person~~ has arrived; and

(b) in the case of a person arriving by air:

(i) at the airport — leaving the restricted area to enter  
Nauru; or

(ii) at any place other than the airport — landing in  
Nauru;

and includes re-entry;

~~‘formal separation’, in relation to a marriage or a spouse,  
means separation of marriage pursuant to an order of a court;~~

**‘immigration officer’** ~~includes:~~ means:

(a) the Principal Immigration Officer; or

(b) a person appointed as an immigration officer under  
section 3A;

~~(a) the Principal Immigration Officer; and~~

~~(b) a police officer;~~

~~‘Nauruan passport’ means a passport issued under the~~

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~~Passports Act 1997;~~

~~'non-citizen' means a person who is not a Nauruan citizen;~~

**'passenger'** means a person travelling or intending to travel on board a vessel or aircraft;

**'passport'** includes a document of identity issued from official sources, whether in or outside Nauru, and having the characteristics of a passport, but does not include a document, ~~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 of a class declared by the Regulations not to be a passport;~~

~~'permit' includes any permit, permission, visa or other authorisation granted under this Act;~~

~~'port' includes the Nauru International Airport;~~

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

~~'Principal Immigration Officer' means the officer appointed as the Principal Immigration Officer under section 3;~~

~~'prohibited immigrant' means a person who is a prohibited immigrant under section 10;~~

**'removal order'** means an order for the removal of a person from Nauru made under section 11;

~~'repealed laws' means the written laws which are repealed, or the adoption of which is repealed, by section 20;~~

**'restricted area'** means an area declared as a restricted area under section 4;

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

~~'undesirable immigrant' means a person declared to be an undesirable immigrant under section 10(3);~~

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

**'vessel'** includes ~~any a~~ boat, ship, canoe or other floating craft, whether or not propelled by motor, but does not include an

aircraft;

'**visa**' means a visa granted ~~to a non-citizen under section 9 under the Regulations.~~

## **2A Act binds Republic**

This Act binds the Republic.

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## **PART ~~II~~2— ADMINISTRATON**

### **3 Administration of this Act**

- ~~— (1) There shall be a Principal Immigration Officer and such other immigration officers as are necessary or desirable for the administration of this Act, who shall be public officers.~~
- ~~— (2) Subject to subsection (3), the Principal Immigration Officer has the general administration of this Act.~~
- ~~— (3) The Minister may give to the Principal Immigration Officer directions or instructions, not inconsistent with this Act, as to the exercise of any power, discretion or function or the performance of any duty under this Act, and the Principal Immigration Officer and immigration officers shall comply with those directions or instructions.~~
- ~~— (4) The Principal Immigration Officer may delegate to any person in writing any power, duty or function of his office, other than this power of delegation.~~
- ~~— (5) A delegation under subsection (4) is revocable and does not prevent the exercise of a power, duty or function by the Principal Immigration Officer.~~
- ~~— (6) The Principal Immigration Officer may authorise an immigration officer to carry out such functions and perform such duties on behalf of the Principal Immigration Officer as are specified in the authorisation.~~

### **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.

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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).

## **4 Restricted areas**

- (1) The Minister may, by ~~notice in the Gazette~~Gazette notice, declare places at ~~a port or airport~~ports as restricted areas for the purposes of:
  - (a) the questioning of persons arriving in or leaving Nauru; and
  - (b) the holding of persons arriving in Nauru until they are permitted by an immigration officer to enter Nauru; and
  - (c) the holding of persons leaving Nauru who have completed immigration formalities until embarkation; and
  - (d) the holding of persons in transit via Nauru to ~~some other~~another country,

and may declare the limits of those places together with such other details as may be necessary or desirable to delimit the places.

- (2) A person must not enter or be in a restricted area unless the person is ~~No person other than a person authorised to do so or a person~~ in the process of entering, leaving or transiting through Nauru ~~may enter or be in a restricted area.~~

Maximum penalty: \$10,000.

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- (3) ~~For the purposes of subsection (2), the following persons are authorised to enter a restricted area:~~ Subsection (2) does not apply to:

- (a) an immigration authorised officer;
- (b) a public officer entering for legitimate purposes of customs, quarantine or agricultural quarantine matters;
- (c) any other person authorised by or under any a law, either expressly or by necessary implication.

## 5 Powers of immigration authorised officers

- (1) For the purposes of ~~enforcing the administration of~~ this Act, an immigration authorised officer may:
- (a) without a search warrant, enter ~~upon on~~ and search any a vessel, aircraft, vehicle, premises or places; and
  - (b) question any a person:
    - (i) who desires to enter or leave Nauru; or
    - (ii) whom ~~he the officer~~ suspects may be ~~a prohibited immigrant~~ unlawfully in Nauru; or
    - (iii) whom ~~he the officer~~ believes can give material information regarding any a person referred to in subparagraph (i) or (ii); and
  - (c) require any 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 immigration officer to carry out his official duties; and
  - (d) require any a person who desires to enter or leave Nauru to make and sign a declaration in ~~such form as is prescribed or is approved by the Principal Immigration Officer~~ the form required by the Regulations; and
  - (e) prevent any a person whom ~~he the officer~~ believes ~~to be a prohibited immigrant or is otherwise not entitled~~ is not authorised to enter Nauru from entering Nauru; and
  - (f) prevent a person in respect of whom a removal order is in force from leaving the vessel or aircraft on which the person has been placed for removal; and

- (g) require any a person who desires to enter Nauru to submit to be examined by a medical officer and to undergo and assist in the carrying out of any test or investigation as the medical officer requires.

(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.

- (2) Where If an immigration authorised officer has reasonable cause to suspect:

- (a) that a person has committed an offence against this Act; or  
(b) that the presence of a person in Nauru is or would be unlawful,

he the officer may, without warrant, arrest that the person.

- (3) Where If a person arrested under subsection (2) is a passenger or a member of the crew of a vessel or aircraft, the immigration authorised officer who arrested the person may hand over custody of the person to the captain until the vessel or aircraft leaves Nauru.

~~(4) In exercising powers under this Act, an immigration officer may use such force against any person or property as is reasonably necessary.~~

- (5) For the purposes of 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

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(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.

~~—(6) A person who:~~

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

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

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

~~commits an offence.~~

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

~~—(8) A fine imposed under this section is a debt owed to the Republic.~~

### **PART ~~III~~ 3 — ARRIVAL, ENTRY AND REMOVAL**

#### **6 Arrival reports~~Passenger and crew lists~~**

- (1) ~~Upon~~ On arrival of a vessel or aircraft in Nauru, the captain ~~shall~~ must deliver to an immigration officer a list, in a form approved by the ~~Principal Immigration Officer~~ Secretary, of all officers, crew, passengers and other persons on board the vessel or aircraft.

(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.

~~(2) Where If the captain of a vessel or aircraft fails to make a report under this section, or furnishes provides a list or statement under subsection (1) which he the captain knows to be false or misleading, the captain, the owner and the agent of the vessel or aircraft are each guilty of each commit an offence.~~

~~Maximum penalty: \$10,000.~~

~~(3) It is a defence to a prosecution for an offence against this sectionsubsection (2) if the person chargeddefendant proves satisfies the Court that the arrival was caused by stress of weather, medical or other emergency or there was other reasonable cause for the contravention.~~

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## **7 Arrival of vessels ~~and~~ aircraft in Nauru**

(1) ~~Upon-On~~ arrival of a vessel in Nauru, the captain ~~shall~~must:

(a) not permit any person to disembark until disembarkation has been authorised by an immigration officer; and

(b) ~~where heif the captain~~ reasonably believes ~~any a~~ person on board ~~his the~~ vessel is ~~a prohibited immigrant, 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 ~~—inform an immigration officer and prevent the person from disembarking unless the disembarkation is authorised by an immigration officer; and~~

(i) immediately inform an immigration officer; and

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(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 him the captain is required to have a visa but is not entitled to one ~~is prohibited from disembarkation.~~

Maximum penalty: \$10,000.

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- (2) In preventing a person from disembarkation under subsection (1)(b) or (c), the captain may use such force as is reasonably necessary.

~~(3) Where the captain of an aircraft arriving in Nauru reasonably believes any person on board his aircraft is a prohibited immigrant, a stowaway or a person who is in the course of deportation or compulsory repatriation, he shall immediately inform an immigration officer.~~

- (4) The captain of a vessel or aircraft arriving in Nauru ~~shall~~ must immediately comply with any instruction or direction given by an immigration officer and ~~shall~~ must by all reasonable means facilitate boarding by and provide ~~any~~ necessary assistance to an immigration officer.

Maximum penalty: \$10,000.

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~~(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.~~

~~(5) A captain who contravenes subsection (1), (3) or (4) is guilty of an offence.~~

**8** Information to be provided on entry and departure~~Entry of persons~~

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

Maximum penalty: \$10,000.~~is guilty of an offence.~~

- (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

- ~~(2)~~ Subject to subsection (3), no personA person who is not a Nauruan citizen shall must not enter or remain in Nauru from overseas without a valid permit to do so.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.

- ~~(3)~~ A person who proves to the satisfaction of an immigration officer that he is:

- ~~(a)~~ a Nauruan citizen; or
- ~~(b)~~ the holder of a Nauruan Official passport; or
- ~~(c)~~ a person or a member of a class of persons whom the Regulations may prescribe or the Minister may by order specify,

may enter Nauru without a permit.

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- ~~(4) Where the entry of a person or class of persons prescribed or specified under subsection (3)(c) is subject to any prescribed or specified conditions, the entry of that person, or a member of that class of persons, shall be made subject to those conditions.~~
- ~~(5) Where a person referred to in subsection (3), other than a Nauruan citizen, ceases to hold the employment or appointment, or enjoy the status or privilege, which entitled him to enter Nauru without a permit:~~
- ~~(a) he shall, for the purposes of this Act, be deemed to be a person seeking to enter Nauru with effect from the date when he ceases to hold that employment or appointment or enjoy that status or privilege; and~~
- ~~(b) where he has not been granted a permit within four months from that date — his presence in Nauru becomes unlawful.~~
- (64) It is a defence to a prosecution for an offence against this section if the ~~person charged~~ satisfies the Court ~~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.

## **9 — Visas**

- ~~(1) The Principal Immigration Officer may grant a non-citizen a permit, to be known as a visa, in accordance with this Act, to:~~
- ~~(a) travel to, enter and remain in Nauru; or~~
- ~~(b) enter and remain in Nauru; or~~
- ~~(c) remain in Nauru,~~
- ~~according to its terms.~~
- ~~(2) The classes, terms, conditions and fees of visas may be prescribed.~~
- ~~(3) The Minister may, by notice in the Gazette, exempt a person or a class of persons to whom the notice applies from the payment of any prescribed fee.~~

- ~~(4) The Regulations may provide for:~~
- ~~(a) a visa being held by two or more persons; and~~
  - ~~(b) the exemption of any person or class of persons from the payment of a visa fee.~~
- ~~(5) A permit shall not be granted to a person unless and until that person has repaid any debts he owes to the Republic.~~

**10 Prohibited immigrants**

- ~~(1) The following non-citizens are prohibited immigrants:~~
- ~~(a) a person who, not being entitled to enter Nauru without a permit under section 8(2), or not being a person entering Nauru in lawful custody under subsection (7), is not the holder of a valid permit granted under this Act;~~
  - ~~(b) a person who, being the holder of a valid permit granted under this Act, enters Nauru other than in accordance with this Act;~~
  - ~~(c) a person in respect of whom a removal order is in force;~~
  - ~~(d) a person who:~~
    - ~~(i) refuses to submit to an examination by a medical officer after being required to do so under section 5(1)(g), or to undergo, or to assist in the carrying out of, any test or investigation which the medical officer may require; or~~
    - ~~(ii) at the time of his entry into Nauru, is certified by a medical officer to be suffering from a contagious or infectious disease or a mental disorder, or to be mentally defective, so that his presence in Nauru is a danger to the community;~~
  - ~~(e) a person who at the time of entry into Nauru is a reputed prostitute, or who is living on or receiving, or who prior to entering Nauru lived on or received, the proceeds of prostitution;~~
  - ~~(f) a person who has, before or after the commencement of this section, been convicted of an offence, in Nauru or another country, which is punishable by either a fine of not less than \$5,000 or a sentence to death or imprisonment~~

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~~of not less than 2 years, and has not received a free pardon;~~

~~(g) a person who is considered to be an undesirable immigrant under subsection (3);~~

~~(h) a person who has arrived in Nauru as a stowaway;~~

~~(i) a person who is in the course of deportation or compulsory removal from any other country;~~

~~(j) a person who is a member of any class of persons declared by the Minister by notice in the Gazette to be prohibited immigrants for the purposes of this section;~~

~~(k) a person who, immediately prior to the commencement of this Act, was a prohibited immigrant under the repealed laws;~~

~~(l) a dependant of a prohibited immigrant, unless the Principal Immigration Officer declares that the dependant is not a prohibited immigrant;~~

~~(m) a holder of a permit granted to or in respect of him under this Act which has expired or has been cancelled, unless he is otherwise entitled or authorised to remain in Nauru under this Act;~~

~~(n) any other person whom the Regulations provide is a prohibited immigrant; or~~

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

~~(2) Unless otherwise expressly provided by this Act, the entry into or presence in Nauru of a prohibited immigrant is unlawful.~~

~~(3) The Principal Immigration Officer may, in consequence of information received from any Government, through official or diplomatic channels, or from any other source deemed by the Principal Immigration Officer to be reliable, declare, prior to the entry of a person into Nauru or within one year after the entry, that the person is an undesirable immigrant.~~

~~(4) A declaration under subsection (3) is subject to confirmation or otherwise by the Minister, or in the case of any decision involving matters of internal security, the Minister responsible for internal security matters, whose decision is final and shall not be questioned in any court.~~

- ~~(5) The burden of proof that a person is not a prohibited immigrant lies upon that person.~~
- ~~(6) In any case where an immigration officer refuses to allow a person to enter Nauru in respect of any person on the ground that the person is a prohibited immigrant he shall, if so requested by the person, inform him of the class of prohibited immigrant of which he is considered to be a member.~~
- ~~(7) Notwithstanding subsection (1)(a), a person who enters or is in Nauru in order to:~~
  - ~~(a) be tried by a court having jurisdiction over him; or~~
  - ~~(b) serve a sentence of imprisonment; or~~
  - ~~(c) be detained in lawful custody for any other reason;~~~~is not a prohibited immigrant and may enter and remain in Nauru in lawful custody without a permit, for so long as may be necessary for the purpose for which he is entering or remaining in Nauru, and for so long as he remains in lawful custody.~~

## 11 Removal orders

- (1) The ~~Principal Immigration Officer~~Secretary may make a removal order directing that a person who is ~~a prohibited immigrant or is otherwise~~ unlawfully in Nauru ~~shall~~must, from the date of service of the order ~~or a future date specified in 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:~~
  - (a) leave or be removed from Nauru; and
  - (b) remain out of Nauru, either indefinitely or for a period specified in the order.
- (2) A removal order ~~shall~~must be carried into effect in such manner as the ~~Principal Immigration Officer~~Secretary directs.
- (3) The ~~Principal Immigration Officer shall~~Secretary must, if so requested by a person in respect of whom a removal order is made, inform ~~him~~the person of the reason for making the removal order.
- (4) A person against whom a removal order is made may, before ~~he~~the person leaves Nauru and while being conveyed to the place

of ~~his~~ departure, be kept in prison or in police custody, and while so kept is ~~deemed taken~~ to be in lawful custody.

- (5) The ~~Principal Immigration Officer~~Secretary may ~~at any time~~ vary or revoke ~~any a~~ removal order made, or ~~any~~ directions given, ~~by him~~ under this section.
- (6) A person against whom a removal order has been made may be removed:
- (a) to the place from which ~~he the person~~ came; or
  - (b) with the approval of the Minister, to a place in the country to which ~~he the person~~ belongs, or to ~~any a~~ place to which ~~he the person~~ consents to be removed, provided that the Government of the last-mentioned place consents to receive ~~him the person,~~
- (7) The captain of a vessel or aircraft ~~which is~~ proceeding to a place to which a person is directed to be removed under ~~subsection (6) this section~~ and who is required by the ~~Principal Immigration Officer or by an immigration officer~~Secretary to do so ~~shall must~~:
- (a) receive a person against whom a removal order has been made on board the vessel or aircraft; and
  - (b) afford ~~him the person~~ a passage to that place and proper accommodation and maintenance during the passage.
- (8) ~~Where If~~ a captain fails to comply with subsection (7), the captain, the owner of the vessel or aircraft and any agent of the owner in Nauru ~~are each guilty of each commit~~ an offence.

Maximum penalty: \$10,000.

- (9) Except as provided by section ~~127(5)~~, the cost of ~~any~~ passage, accommodation and maintenance under subsection (7) ~~shall must~~ be paid by the person removed, or if the Minister so directs, out of the Treasury Fund, which is appropriated accordingly.
- (10) ~~Where If~~ a person against whom a removal order has been made holds a ticket for ~~his the person's~~ conveyance from Nauru to a place outside Nauru, the ~~Principal Immigration Officer~~Secretary may, on behalf of the person arrange, with or without the person's consent, for the ticket to be applied for or towards the conveyance of the person.

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- (11) ~~Where~~ If a person ~~in respect of~~ against whom a removal order is made ~~under this section~~ has been sentenced to ~~any~~ a term of imprisonment, the sentence ~~shall~~ must, unless the Minister otherwise directs, be served before the order is carried into effect.
- (12) For the purpose of subsection (9), the ~~Principal Immigration Officer~~ Secretary may use ~~any~~ money or property belonging to or found on the person removed in payment of the whole or ~~any~~ a part of the cost of ~~any~~ passage, accommodation, and maintenance under subsection (7).

**~~12~~ — Expenses incurred in respect of a prohibited immigrant**

- ~~(1) Subject to subsections (2) and (3), the captain, owner and agent of any vessel or aircraft from which a prohibited immigrant disembarks are jointly and severally liable to pay to the Republic all expenses incurred by the Republic in connection with the care, maintenance or treatment of the prohibited immigrant and with his removal or conveyance from Nauru.~~
- ~~(2) Notwithstanding subsection (1):~~
- ~~(a) the amount of liability for removal or conveyance from Nauru of a prohibited immigrant shall not exceed the costs of removing or conveying him to the place from which he was brought by the vessel or aircraft; and~~
- ~~(b) the Minister may, if he thinks fit, direct that the whole or any part of the expenses shall be paid out of the Treasury Fund, which is appropriated accordingly.~~
- ~~(3) This section shall not apply:~~
- ~~(a) to a person who is a prohibited immigrant by reason of being declared by the Principal Immigration Officer, after his entry into Nauru, to be an undesirable immigrant; or~~
- ~~(b) to a prohibited immigrant entering Nauru in lawful custody in accordance with section 10(7); or~~
- ~~(c) to a prohibited immigrant who at the time of his entry into Nauru is in possession of a permit purporting:~~
- ~~(i) to authorise him to enter Nauru; and~~
- ~~(ii) to be granted under this Act.~~

- ~~(4) Any expenses incurred under this section may be recovered in an action brought by or in the name of the Republic.~~

## **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.~~

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## **PART IV — MISCELLANEOUS**

### **13 — Offences**

— (1) A person who:

- (a) ~~for the purpose of obtaining for himself or for any other person or of assisting any other person to obtain any permit, exemption or other advantage under this Act or with intent to deceive an immigration officer, makes an oral declaration, or makes or causes or omits to make or causes to be made any statutory declaration, return, statement, application or other writing which he knows or has reasonable cause to believe to be incorrect or misleading; or~~
- (b) ~~otherwise than with the authority of the Principal Immigration Officer (the burden of proof of which is upon him) alters, or wilfully defaces, any permit, or any official or certified copy of any permit, made or granted under this Act; or~~
- (c) ~~fails to appear before an immigration officer or furnish any required or prescribed information to an immigration officer in contravention of section 8; or~~
- (d) ~~enters or is in a restricted area in contravention of section 4; or~~
- (e) ~~while in a restricted area, fails to comply with any lawful directions of an immigration officer; or~~
- (f) ~~resists, hinders or obstructs any immigration officer or other officer or person in the lawful execution of his duty or in the lawful exercise of his powers under this Act; or~~
- (g) ~~knowingly misleads or attempts to mislead any immigration officer in relation to any matter material to the performance or exercise by any immigration officer of any duty, function, power or discretion under this Act; or~~
- (h) ~~unlawfully uses or without lawful authority (the burden of proof of which is upon him) has in his possession any forged or unlawfully altered permit or other document granted or purported to have been granted under this Act, or any forged or unlawfully altered birth certificate, marriage certificate or other document purporting to establish age, status or identity; or~~

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- ~~(i) knowingly uses or has in his possession any unlawfully issued or otherwise irregular permit or other document granted, issued or purported to have been granted or issued under this Act; or~~
- ~~(j) refuses or fails to submit to a medical examination, or to undergo or assist in carrying out any test or investigation in connection with a medical examination, when so required under section 5(1)(g); or~~
- ~~(k) having arrived in or is about to leave Nauru as a passenger, fails to appear before an immigration officer as directed by him; or~~
- ~~(l) unlawfully enters or is unlawfully in Nauru; or~~
- ~~(m) refuses or fails to comply with any notice issued to him under this Act with which he is required to comply; or~~
- ~~(n) refuses or fails to comply with a term or condition of any permit granted to him under this Act; or~~
- ~~(o) not being a person described under section 8(3) nor the holder of a permit to do so — engages in any business, profession, employment or religious vocation, whether for reward or not; or~~
- ~~(p) employs or continues to employ any person who is neither described under section 8(3) nor the holder of a permit to work; or~~
- ~~(q) aids or incites another person to enter or remain in Nauru in circumstances in which the other person would be or become a prohibited immigrant, or harbours or assists any person whom he knows or has reasonable cause to believe to be a prohibited immigrant; or~~
- ~~(r) uses any certificate, permit or exemption granted to or in respect of any other person as if it had been granted to or in respect of himself; or~~
- ~~(s) gives, sells, lends or parts with possession of any certificate, permit or exemption in order that, or intending or knowing or having reasonable cause to believe that, it may be used in contravention of paragraph (o); or~~
- ~~(t) having been directed by any order made under section 11 to remain out of Nauru, and not holding a permit under~~

~~section 15(3), returns to Nauru in contravention of the order;~~

~~is guilty of an offence and liable to a penalty of a fine not exceeding \$10,000 or imprisonment for one year, or both.~~

- ~~— (2) For the purposes of any proceedings for an offence under subsection (1)(a), any declaration, return, statement, application or other writing under that subsection shall be deemed to have been made, or the causing of it to be made shall be deemed to have been done, at the time and place at which it was received by the immigration officer or other person to whom it was addressed.~~
- ~~— (3) Where any person is convicted of an offence under subsection (1)(a), the court may, in addition to any penalty imposed for the offence, cancel any permit which was granted in consequence of the false declaration, return or statement.~~
- ~~— (4) Where a person is convicted of an offence under subsection (1), the Minister may, in addition to any penalty imposed by any court for such an offence, direct that any permit granted in respect of the person be cancelled.~~
- ~~— (5) A person in respect of whom a removal order has been made who fails to remain out of Nauru in accordance with the terms of the order is guilty of an offence.~~
- ~~— (6) Where a prohibited immigrant, other than a prohibited immigrant authorised under this Act to enter or be in Nauru, enters Nauru on or from a vessel or aircraft, whether or not with the knowledge of the captain, owner or agent:
  - ~~(a) the captain, owner, and agent are each guilty of an offence; and~~
  - ~~(b) the vessel or aircraft may, by order of the Court, be detained until provision has been made, to the satisfaction of the Principal Immigration Officer, by the captain, owner or agent as the case may be, for the conveyance out of Nauru of the prohibited immigrant.~~~~
- ~~— (7) In any proceedings for an offence under this section, a person is deemed to know the contents of any declaration, return, statement, application or other writing which he has signed or marked, whether or not he has read the declaration, return, statement, application or other writing.~~

**14 Penalties**

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- ~~— (1) A person convicted of an offence against this Act for which no penalty is specified is liable to a fine not exceeding \$10,000.~~
- ~~— (2) Where a fine is imposed under this Act upon the captain, owner or agent of a vessel or aircraft, the vessel or aircraft may, by order of the Court, be detained until the fine has been paid or guaranteed to the satisfaction of the Principal Immigration Officer, and the Court when imposing the fine may order execution against the vessel or aircraft in satisfaction of the fine.~~

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**15 Appeals**

- ~~— (1) A person aggrieved by a decision of the Principal Immigration Officer or an immigration officer under this Act, other than a decision made by the Principal Immigration Officer or an immigration officer acting in any particular case in accordance with the directions of, or instructions given by, the Minister, may appeal by written petition to the Minister who may, in his discretion, uphold, vary or revoke the decision.~~
- ~~— (2) An appeal or action under this section shall be lodged or commenced:
  - ~~(a) where the person is granted a permit to enter or remain in Nauru for the purpose of conducting the appeal — within 14 days after the grant of the permit; or~~
  - ~~(b) in any other case — within 14 days after his receiving notice of the decision.~~~~
- ~~— (3) The Principal Immigration Officer may grant a person, including a prohibited immigrant, a permit in the prescribed form to enter or remain in Nauru for the purposes of conducting an appeal under subsection (1), and where the permit has been granted, any removal order made against the person is stayed until the conclusion of the appeal, whether by way of decision, withdrawal, or otherwise.~~

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**16 No claim for damages maintainable for things done in good faith**

- ~~— (1) No claim for damages shall lie against:
  - ~~(a) the Republic; or~~
  - ~~(b) an immigration officer; or~~~~

~~(c) any person delegated or authorised by this Act or any other law for the time being in force to perform or exercise any duty or power under this Act; or~~

~~(d) any other person;~~

~~for or on account of or in respect of any act, matter or thing done or omitted to be done or purported to be done or omitted to be done, in good faith, in the performance or exercise or intended performance or exercise of any duty or power under this Act.~~

~~(2) Where a claim for damages lies in any other case, section 3 of the Republic Proceedings Act 1972 shall not apply to the claim.~~

#### **17 Expiry of permits**

~~(1) A permit remains in force until it expires according to its terms or to any other provision of this Act, or is sooner cancelled.~~

~~(2) Where the holder of a permit is granted a permit of a different class, the first-mentioned permit expires upon the coming into effect of the second-mentioned permit, unless the Principal Immigration Officer determines otherwise.~~

#### **18 Provision of information**

~~A person who does not complete an application or other form of written information under this Act is deemed to complete it if he causes it to be filled in or if it is otherwise filled in on his behalf.~~

#### **19 Regulations**

~~The Cabinet may make Regulations not inconsistent with this Act prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular prescribing matters for and in relation to:~~

~~(a) application for permits and information to be supplied in relation to applications; and~~

~~(b) the grant, extension and renewal, refusal of grant, terms and conditions, and expiry and cancellation of permits; and~~

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- ~~(c) the procedure to be followed by persons entering, in transit through, and departing from Nauru, including the form of information to be given; and~~
- ~~(d) any forms, stamps or directions made, granted or issued under this Act; and~~
- ~~(e) any fees, charges, taxes, bonds or securities payable in respect of any matter under this Act; and~~
- ~~(f) prescribing penalties or fines not exceeding \$10,000 for offences against the Regulations.~~

## **~~PART V — REPEAL AND SAVING~~**

### **~~20 — Repeal~~**

- ~~(1) The follows written laws are repealed:~~
  - ~~(a) the *Expulsion of Undesirables Ordinance 1961-1967*;~~
  - ~~(b) the *Immigration Restriction Ordinance 1961-1967*.~~
- ~~(2) The First Schedule of the *Laws Repeal and Adopting Ordinance 1922-1967* is amended by deleting the *Immigration Act 1901-1920* of the Commonwealth of Australia from the Schedule, and the adoption of that Act as a law of the Republic is repealed.~~
- ~~(3) The repealed laws shall remain in operation after the commencement of this Act to the extent necessary to give effect to sections 21, 23 and 24 of this Act.~~

### **~~21 — Saving of powers, duties, functions, delegations and appointments~~**

~~Any power, duty, function, appointment or delegation, exercised, performed, made or delegated under the repealed laws and continuing at the date of the commencement of this Act shall continue to have full force and effect as though exercised, performed, made or delegated under the relevant provision of this Act.~~

### **~~22 — Saving of permits~~**

- ~~(1) Subject to subsection (2), all permits granted under the repealed laws which were valid and in force immediately before the~~

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coming into operation of this Act shall continue, on that coming into operation, to have full force and effect for the term for which they were granted or made or until they sooner expire or are revoked according to law.

~~(2) Where the Principal Immigration Officer is of the opinion that a term or condition of a permit granted under the repealed laws is at variance with the provisions of this Act or any direction of the Minister to an extent which makes it unacceptable, he shall by written notice advise the holder of the permit of the term or condition that is unacceptable, and:~~

~~(a) specify the variation in the term or condition required to ensure compliance with this Act and state that the variation shall apply in respect of the permit with effect from a date specified in the notice; or~~

~~(b) require the holder of the permit to make application for a fresh visa in accordance with this Act, and specify a date, being a date not less than 14 days after the date of the notice, upon which the permit ceases to have effect.~~

## **23 Removal orders under repealed laws**

Any order made under the repealed laws directing that a person be removed or deported from or remain out of Nauru indefinitely or for a specified period shall continue to have full force and effect as if it were a removal order made under this Act, so that:

~~(a) where the order has not yet been enforced upon the commencement of this Act — it shall be enforced under this Act as if it were a removal order made under this Act; and~~

~~(b) where a person who has previously left or been removed or deported from Nauru under an order made under the repealed laws enters or is found in Nauru in contravention of the terms of that order — he may again be removed from Nauru without a further order being made under this Act, as if a removal order had been made in respect of him under this Act.~~

## **24 Saving of appeals, actions and claims**

Any appeal, action or claim which was pending or existing under the repealed laws may be made, continued and disposed of as if this Act had not been made.

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## PART ~~VI-4~~ — TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS

### 25 Definitions

In this Part, unless the context otherwise ~~suggests~~requires:

**‘child’** means a person under the age of 18 years;

**‘exploitation’** includes forced labour or service, slavery or practices similar to slavery, servitude, removal of organs, and sexual servitude;

**‘fraudulent travel or identity documents’** means a travel or identity document that:

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

**‘illegal entry’** means entering Nauru or any other country without complying with the requirements for lawful entry of that country;

**‘material benefit’** includes any type of financial or non-financial inducement, payment, bribe, reward, advantage or service;

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

**‘smuggled migrant’** means a person who is subject to smuggling of migrants;

**‘smuggling of migrants’** means the arranging or assisting of an ~~unauthorized~~unauthorised migrant’s illegal entry into any country;

**‘trafficked person’** means a person who is subject to trafficking in persons;

**‘trafficking in persons’** means the recruitment, transportation,

transfer, harbouring or receipt of a person for the purpose of exploitation;

~~'unauthorized~~unauthorised **migrant'**, for a country, means a person who is not a citizen of the country or in possession of all the documents required by the law of the country for that person's lawful entry;

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

**'unlawful means'** means any of the following:

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

## 26 Application of this Part

This Part applies to conduct constituting an offence under this Part that ~~took~~takes place in or outside Nauru in ~~the following~~ circumstances in which:

- (a) ~~if~~ Nauru is the receiving country or the exploitation occurs in Nauru; or
- (b) ~~if~~:
  - ~~(i)~~ — the receiving country is a country other than Nauru; and
  - ~~(ii)~~ — the offence of trafficking in persons or smuggling of migrants originates in Nauru or the persons or migrants ~~transits~~ Nauru; or

- (c) ~~if~~ the person who engages in the offence of trafficking in persons or smuggling of migrants is a Nauruan citizen or a Nauruan visa holder.

**27 Offence of trafficking in persons**

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

**28 Offence ~~in~~of trafficking in children**

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

**29 Exploitation of persons not legally entitled to work**

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

- (iii) using a telephone or any other means of telecommunication privately;
- (iv) leaving premises; or
- (v) leaving premises unaccompanied.

**30 Consent of trafficked persons**

For sections 27, 28 and 29, it is not a defence:

- (a) that the trafficked person or unlawful employee consented;  
or
- (b) that the person charged believed consent was given.

**31 Offence of smuggling migrants**

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

**32 Offence to facilitate stay of unauthorised migrant**

A person who knowingly facilitates the continued presence of an unauthorised migrant in a receiving country:

- (a) by an unlawful means; and
- (b) in order to obtain a material benefit;

commits an offence.

**33 Offence related to fraudulent travel or identity documents**

A person who makes, obtains, gives or sells or possesses a fraudulent travel or identity document for the purpose of facilitating:

- (a) trafficking in persons; or
- (b) smuggling of migrants;

commits an offence.

**34 Aiding, abetting, etc.**

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

**35 Incitement to commit an offence**

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

**36 Conspiring to commit an offence**

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

**37 Attempting to commit an offence**

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

**38 Penalty**

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

## **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.

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**39** **43** No claim for damages maintainable for things done in good faith

- (1) No claim for damages ~~shall lie~~lies against:
- (a) the Republic; or
  - (b) an immigration officer; or
  - (c) ~~any a~~ person delegated or authorised by this Act or any other law ~~for the time being in force~~ to perform or exercise ~~any a~~ duty or power under this Act; or
  - (d) any other person;
- ~~for or on account of or~~ in respect of any act, matter or thing done or omitted to be done or purported to be done or omitted to be done, in good faith, in the performance or exercise or intended performance or exercise of ~~any a~~ duty or power under this Act.
- (2) ~~Where~~If a claim for damages lies in any other case, section 3 of the *Republic Proceedings Act 1972* ~~shall~~does not apply to the claim.

**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
    - (ii) applications for a visa and supporting evidence or documentation; and
    - (iii) eligibility for the grant of a visa; and
    - (iv) granting of a visa; and
    - (v) conditions of a visa; and
    - (vi) expiry, renewal and extension of a visa; and

(vii) 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.

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## Notes for Immigration Act 1999

### Table of Constituent Legislation

Short title	Number	Certification	Commencement
<i>Immigration Act 1999</i>	1999/06	18.10.1999	06.07.2000 (GN.200 of 2000)
<i>Immigration Amendment Act 2005</i>	2005/07	02.10.2005	02.10.2005 (section 8, Act 2011/08)
<i>Statute Law Revision Act 2011</i>	2011/08	15.04.2011	15.04.2011
<a href="#"><i>Immigration (Amendment) Act 2012</i></a>			

### Table of Amendments

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
om. = omitted   os. = omitted and substituted

Provision affected	How affected
Section 1	Am. by Act 2011/08.
Section 3	Subs. (3) am. by Act 2005/07, os. by Act 2011/08.
Section 5	Subs. (1) am. by Act 2005/07. Subs. (6) ad. by Act 2005/07, am by Act 2011/08. Subs. (7) ad. by Act 2005/07, os. by Act 2011/08. Subs. (8) ad. by Act 2011/08.
Section 9	Subs. (2) am. by Act 2005/07. Subs. (4) am. by Act 2005/07. Subs. (5) ad. by Act 2005/07.
Section 10	Subs. (1) am. by Act 2005/07, Act 2011/08.
Section 11	Subs. (6) am. by Act 2011/08. Subs. (12) ad. by Act 2005/07.
Section 13	Subs. (1) am. by Act 2005/07, Act 2011/08.
Section 14	Subs. (1) am. by Act 2005/07.
Section 16	Subs. (2) am. by Act 2011/08.
Section 17	Subs. (3) rep.. by Act 2005/07.
Section 19	Am. by Act 2005/07.
Part VI	Ad. by Act 2005/07.
Section 25	Ad. by Act 2005/07, am. by Act 2011/08.
Section 26	Ad. by Act 2005/07.
Section 27	Ad. by Act 2005/07.
Section 28	Ad. by Act 2005/07.

As in force from ~~15 April 2011?~~

*Immigration Act 1999*

Provision affected	How affected
Section 29	Ad. by Act 2005/07.
Section 30	Ad. by Act 2005/07.
Section 31	Ad. by Act 2005/07, am. by Act 2011/08..
Section 32	Ad. by Act 2005/07, am. by Act 2011/08.
Section 33	Ad. by Act 2005/07, am. by Act 2011/08.
Section 34	Ad. by Act 2005/07. Subs. (1) am. by Act 2011/08.
Section 35	Ad. by Act 2005/07.
Section 36	Ad. by Act 2005/07.
Section 37	Ad. by Act 2005/07.
Section 38	Ad. by Act 2005/07.