



REPUBLIC OF NAURU

Immigration (Amendment) Act 2012

Act No. 10 of 2012

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REPUBLIC OF NAURU

Immigration (Amendment) Act 2012

Act No. 10 of 2012

An Act to amend the *Immigration Act 1999*

Certified on 10 October 2012

Enacted by the Parliament of Nauru as follows:

1 Short title

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

2 Commencement

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

3 Act amended

Schedule 1 amends the *Immigration Act 1999*.

4 Transitional provision

Schedule 2 provides for a transitional provision.

SCHEDULE 1 – AMENDMENT OF IMMIGRATION ACT 1999

section 3

[1] Amendment of heading to Part I

omit

Part I

substitute

PART 1

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

2.1 Heading to section 1

omit, substitute

1 Short title

2.2 Section 1

omit

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

[3] Amendment of section 2 (Interpretation)

3.1 Section 2

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passport*', '*non-citizen*', '*permit*', '*port*', '*Principal Immigration Officer*', '*prohibited immigrant*', '*repealed laws*' and '*undesirable immigrant*'

omit

3.2 Section 2

insert (in alphabetical order)

'authorised officer' means:

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

'contravention' includes failure to comply;

'immigration officer' means:

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

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

'Secretary' means the Head of Department;

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

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

omit

any

substitute

a

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

omit

where

substitute

if

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

omit

the port

substitute

a port

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

omit

he

substitute

the person

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

omit

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

substitute

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

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

omit

any

substitute

a

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

omit

to a non-citizen under section 9

substitute

under the Regulations

[4] Insertion of section 2A

After section 2

insert:

2A Act binds Republic

This Act binds the Republic.

[5] Amendment of heading to Part II

omit

PART II

substitute

PART 2

[6] Substitution of section 3

Section 3

omit, substitute

3 Principal Immigration Officer

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

3A Immigration officers

- (1) The Chief Secretary may appoint a public officer to be an immigration officer to assist the Principal Immigration Officer.

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

3B Identity cards

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

Maximum penalty: \$500.

3C Delegation

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

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

[7] Amendment of section 4 (Restricted areas)

7.1 Section 4(1)

omit

notice in the Gazette, declare places at ports

substitute

Gazette notice, declare places at a port or airport

7.2 Section 4(1)(d)

omit

some other country

substitute

another country

7.3 Section 4(2)

omit, substitute

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

Maximum penalty: \$10,000.

7.4 Section 4(3)

omit

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

substitute

Subsection (2) does not apply to:

7.5 Section 4(3)(a)

omit, substitute

(a) an authorised officer;

7.6 Section 4(3)(c)

omit (second occurring)

any

substitute

a

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

8.1 Heading to section 5

omit, substitute

5 Powers of authorised officers

8.2 Section 5(1)

omit

enforcing this Act, an immigration officer

substitute

the administration of this Act, an authorised officer

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

omit, substitute

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

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

8.4 Section 5(1)(g)

omit (wherever occurring)

any

substitute

a

8.5 Section 5

After subsection (1)

insert

- (1A) In exercising powers under this Act, an authorised officer may:
 - (a) use such force as is reasonably necessary; and
 - (b) be assisted by such persons as he or she considers necessary in the circumstances.

8.6 Section 5(2)

omit

Where an immigration officer

substitute

If an authorised officer

8.7 Section 5(2)

omit

he may, without warrant, arrest that person

substitute

the officer may, without warrant, arrest the person

8.8 Section 5(3)

omit

Where a person arrested under subsection (2)

substitute

If a person arrested

8.9 Section 5(3)

omit

immigration officer

substitute

authorised officer

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

omit, substitute

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

Maximum penalty: \$10,000.

[9] Amendment of heading to Part III

omit

PART III

substitute

PART 3

[10] Amendment of section 6 (Arrival reports)

10.1 Heading to section 6

omit, substitute

6 Passenger and crew lists

10.2 Section 6(1)

omit

Upon

substitute

on

10.3 Section 6(1)

omit

shall

substitute

must

10.4 Section 6(1)

omit

Principal Immigration Officer

substitute

Secretary

10.5 Section 6(2) and (3)

omit, substitute

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

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

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

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

Maximum penalty: \$10,000.

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

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

11.1 Heading to section 7

omit, substitute

7 Arrival of vessels or aircraft

11.2 Section 7(1)

omit

Upon

substitute

On

11.3 Section 7(1)

omit

shall

substitute

must

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

omit, substitute

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

- (i) immediately inform an immigration officer; and

- (ii) prevent the person from disembarking unless the disembarkation is authorised by an immigration officer; and
- (c) prevent from disembarking any other person whom an immigration officer informs the captain is required to have a visa but is not entitled to one.

Maximum penalty: \$10,000.

11.5 Section 7(3)

omit

11.6 Section 7(4)

omit wherever occurring

shall

substitute

must

11.7 Section 7(4)

omit

any

11.8 Section 7(4)

at the foot of the provision

insert

Maximum penalty: \$10,000.

11.9 Section 7(5)

omit, substitute

- (5) If a person enters Nauru unlawfully as a result of the captain of a vessel or aircraft contravening this section, the captain, the owner and the agent of the vessel or aircraft are jointly and severally liable to pay to the Republic all expenses incurred by the Republic in connection with the care, maintenance and treatment of the person and with the removal of the person from

Nauru (not exceeding in the case of removal, the costs of removal to the place from which the person was brought by the vessel or aircraft).

- (6) The expenses may be recovered in an action brought by or in the name of the Republic.

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

Sections 8 to 10 (inclusive)

omit, substitute

8 Information to be provided on entry and departure

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

Maximum penalty: \$10,000.

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

9 Requirement for visa

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

Maximum penalty: \$10,000.

- (2) The Regulations may exempt a person from the application of subsection (1) absolutely or subject to conditions.

- (3) The burden of proof that a person has a valid visa authorising the entry to or the presence of the person in Nauru or is exempt under subsection (2) lies on the defendant.

- (4) It is a defence to a prosecution for an offence against this section if the defendant proves that the entry or departure was caused by stress of weather, medical or other emergency or there was other reasonable cause for the contravention.
- (5) If a decision is made not to grant an application for a visa, the applicant must be given written notice of the decision and a statement of the reasons for the decision.

[13] Amendment of section 11 (Removal orders)

13.1 Section 11(1)

omit

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

substitute

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

13.2 Section 11(2)

omit

shall

substitute

must

13.3 Section 11(2)

omit

Principal Immigration Officer

substitute

Secretary

13.4 Section 11(3)

omit

Principal Immigration Officer shall

substitute

Secretary must

13.5 Section 11(3)

omit

him

substitute

the person

13.6 Section 11(4)

omit

he

substitute

the person

13.7 Section 11(4)

omit

deemed

substitute

taken

13.8 Section 11(5) and (6)

omit, substitute

- (5) The Secretary may vary or revoke a removal order made, or directions given, under this section.

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

13.9 Section 11(7)

omit

which is

13.10 Section 11(7)

omit

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

substitute

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

13.11 Section 11(7)(b)

omit

him

substitute

the person

13.12 Section 11(8)

omit

Where

substitute

If

- 13.13** Section 11(8)
omit
are each guilty of
substitute
each commit
- 13.14** Section 11(8)
at the foot of the provision
insert
Maximum penalty: \$10,000.
- 13.15** Section 11(9)
omit
section 12
substitute
section 7(5)
- 13.16** Section 11(9)
omit
any
- 13.17** Section 11(9)
omit
shall
substitute
must
- 13.18** Section 11(10)
omit

Where

substitute

If

13.19 Section 11(10)

omit

his

substitute

the person's

13.20 Section 11(10)

omit

Principal Immigration Officer

substitute

Secretary

13.21 Section 11(11)

omit

Where

substitute

If

13.22 Section 11(11)

omit

in respect of

substitute

against

13.23 Section 11(11)

omit

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

substitute

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

13.24 Section 11(12)

omit

Principal Immigration Officer

substitute

Secretary

13.25 Section 11(12)

omit (first and third occurring)

any

13.26 Section 11(12)

omit (second occurring)

any

substitute

a

[14] Substitution of section 12

Section 12

omit, substitute

12 Review of decisions relating to visas and removal orders

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

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

Parts IV and V except section 16

omit

[16] Amendment and relocation of section 16

16.1 Section 16(1)

omit

shall lie

substitute

lies

16.2 Section 16(1)(c)

omit (first and third occurring)

any

substitute

a

16.3 Section 16(1)(c)

omit

for the time being in force

16.4 Section 16(1)

omit

for or on account of or

16.5 Section 16(1)

omit

any duty

substitute

a duty

16.6 Section 16(2)

omit

Where

substitute

If

16.7 Section 16(2)

omit

shall

substitute

does

16.8 Section 16

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

[17] Amendment of heading to Part VI

omit

PART VI

substitute

PART 4

[18] Amendment of section 25 (Definitions)

18.1 Section 25

omit

suggests

substitute

requires

- 18.2** Section 25, definition of **'fraudulent travel or identity documents'**
omit
authorized
substitute
authorised
- 18.3** Section 25
omit (wherever occurring)
unauthorized
substitute
unauthorised
- [19] Amendment of section 26 (Application of this Part)**
- 19.1** Section 26
omit
took place in or outside Nauru in the following circumstances
substitute
takes place in or outside Nauru in circumstances in which
- 19.2** Section 26(a)
omit
if
- 19.3** Section 26(b)
omit, substitute
(b) the receiving country is a country other than Nauru and the offence of trafficking in persons or smuggling of migrants originates in Nauru or the persons or migrants transit Nauru; or
-

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

PART 5 – MISCELLANEOUS

39 False or misleading information

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

Maximum penalty: \$10,000.

40 Statutory declaration

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

41 Powers in respect of vessel or aircraft

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

42 Evidentiary presumption

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

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

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

44 Regulations

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

SCHEDULE 2 – TRANSITIONAL PROVISION

1 Office of Principal Immigration Officer

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