

**GOVERNMENT OF NAURU**

**REVIEW OF ENVIRONMENT  
RELATED LAWS**



**SPREP**

Secretariat of the South Pacific Regional  
Environment Programme

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## TABLE OF ABBREVIATIONS

EEZ	Exclusive Economic Zone
EIA	Environmental impact assessments
CBD	Convention on Biological Diversity
DCIR	Department of Commerce, Industry and Resources
LMO's	Living Modified Organisms
NEA	National Executing Agency
NEMS	National Environment Management Strategy
POPS	Persistent Organic Pollutants
SPREP	South Pacific Regional Environment Programme

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## **1. BACKGROUND**

### **1.1 The National Environment Management Strategy**

The National Environment Management Strategy (NEMS) for Nauru has identified the inadequacy or non-enforcement of environmental legislation, and the need for the integration of existing legislation for environmental management and protection, are major constraints to the promotion of environmentally sustainable development in Nauru. In general, consultations have indicated that much existing environment - related legislation is not relevant to current conditions in Nauru.

### **1.2 Some examples of deficiencies in Nauru's environment management laws**

There seems to be some doubt about the relevance of some parts of the Wild Birds Preservation Ordinance, that allows for the protection of Australian magpies, when these were allegedly all shot by occupying Japanese forces during the Second World War. Uncertainty also exists about the actual dates of the closed season for black noddies, with most people unable to give the correct dates, when asked. The closed season for hunting is also said to be openly flouted by some groups. It is clear that in this case, anyway, the legislation needs to be reviewed, and regulations clarified and advertised through an awareness campaign by the authorities.

Similarly, the Litter Prohibition Act is often ignored by both young and old, because of either ignorance or perceived immunity from prosecution. Whether the lack of enforcement is a deliberate policy of the ministry responsible, or whether the legislation and prescribed penalties are inappropriate, is open to discussion. The method and degree of enforcement and imposition of penalties need to be broadly re-considered in view of the apparent general attitude of the Nauruan people, and some lateral thinking applied to find solutions.

### **1.3 The Need for a Comprehensive Review**

The review of the environmental aspects of these separate pieces of legislation is needed, to facilitate their appropriate administration and enforcement. It is suggested that new legislation will be required in a number of areas, including the possibility of a single Act that expresses the Government's overall environmental management and protection policy.

The Department of Commerce Industry and Resources (DCIR), acting as the 'National Executing Agency' (NEA), is the legal entity responsible for executing the National Project. DCIR has been responsible for the overall co-ordination, management and supervision of all aspects of this Review.

## **1.4 Developing an Environment Management Act**

An important step in the development of an Environment Management Act is the collection of relevant data and information on –

- relevant Acts and Ordinances
- environmental practices and projects
- obligations under international conventions and agreements.

In order to develop policy, legal, administrative, decision-making and public participation systems for the Environment Management Act a thorough consultation with govt. departments, SOEs, and NGOs that are relevant in the fields of environment has been carried out to ensure that a comprehensive picture is gained of the status of the environmental concerns, activities/projects, international obligations etc.

The Department of CIR as the NEA has sought the assistance of a consultant to provide support for this Review in the gathering of the above information necessary for –

- identifying the gaps and needs in Nauru's environment related legislation;
- conducting this Review of Environment Related Laws in Nauru; and
- drafting an Environment Management Act. In producing this Review the consultant has worked in close association with the Department of CIR.

## **2. STATUS OF NAURU'S WRITTEN LAWS**

### **2.1 General Observations**

This Review was greatly facilitated by the willing cooperation of the officers of Nauru's Department of Justice. This is a key repository of Nauru's written laws, although it cannot be confidently said that even the Justice Department has access to all of Nauru's laws.

There has been no publication of volumes of Nauru's revised and reprinted laws at any point of time. Problems of accessing Nauru's statutes are exacerbated by the fact that many pre-independence Ordinances dating back to the 1920's are still current in Nauru. These relate to important areas of law such as customs and border control, public health, criminal law and business licensing. Some of these laws are in fact Ordinances for the Territory of New Guinea for reasons of history and colonial authority. This is the case for the Customs Ordinance, and so there are many anomalies in the wording of this law and difficulties in usefully applying it in Nauru are inevitable. Interestingly this law still applies in Nauru 30 years after it ceased to have application in the former Territory of New Guinea.

There is a current emphasis in the region on enacting modern laws relating to money laundering and suppression of terrorism. While there may be clear grounds for supporting the enactment of such laws throughout the region, it is



inevitable that some people will question the allocation of such priority when the very basic laws applying in Nauru are in such need of review and modernization. The laws relating to border control and the processes of the criminal law are clear examples of this.

There is also a growing range of matters provided for in international conventions and regional agreements that need to be made a part of the domestic legal framework in Nauru. These relate to critically important matters such as the regulation of hazardous wastes and chemicals (and the control of their transboundary movement), the elimination of ozone depleting substances, the protection of biodiversity and the regulation of genetically modified organisms, and matters relevant to the effects of climate change.

It is hoped that this Review may contribute to the formulation and enactment of appropriate laws that will achieve compliance with Nauru's international and regional obligations, and protect the people and environment of Nauru in some useful ways.

## **2.2 The need for revision and reprint of the laws**

Given the matters noted in 2.1 it is timely that support be given to the Justice Department of Nauru to revise and reprint its statutes. This is critical in terms of making the laws accessible to government, courts, law enforcement agencies, commercial interests and the general community. It would also provide a timely opportunity for a comprehensive review of Nauru's statutes to be undertaken.

While it is true that some of Nauru's laws are available on the internet due to the commendable work of the University of South Pacific, it must be noted that the available laws are not nearly exhaustive, or even representative of the major laws that should be readily accessible. And they lack the necessary authority as to their validity and accuracy that is an important outcome from an official comprehensive statutory revision.

In the absence of a recent revision of laws it should be understood that the laws identified in this Review may not be exhaustive or an entirely accurate reflection of the current environment related laws in Nauru.

## **3. SCOPE AND METHODOLOGY**

### **3.1 Current and proposed legislation**

This review of Nauru's legislation includes both current laws, and those that are at an advanced stage of formulation and drafting, but which have not yet been enacted.

Each current law is referred to as an “Ordinance” if it was enacted prior to 1968, or as an “Act” if it was enacted after Independence. Proposed laws are termed “Bills”.

This Review includes details of model laws that have been prepared in recent years for the Pacific region in relation to marine pollution prevention and to biosecurity. These are important areas of law in the context of environmental management and for this reason, and for the sake of completeness, they have been included. It will be necessary however for some follow-up to be undertaken to determine whether any action is being taken in Nauru in relation to their possible enactment.

### **3.2 Assessing the relevance of laws to this Review**

It is common that legislative reviews applying to particular areas of the law require a subjective determination as to the relevance of particular laws, and therefore as to their inclusion in the Review.

In this case however, the basic objectives of this Review are clear and are related to an intention to draft an Environment Management Act for Nauru. This shall have particular application in the context of meetings Nauru’s international obligations arising under environment related Conventions and regional agreements. These matters then form the basis of determining the relevance of any particular law to this Review. The critical concepts are –

- Matters relating to constitutional authority and jurisdiction
- Administrative arrangements affecting the management of the environment
- Environment Protection and Management
- Protection of Human Health
- Natural Resources
- Control of Transboundary movements
- Recognition and protection of culture and traditional institutions and values
- Public awareness and participation (including the involvement of the private sector)
- Other regulatory regimes
- Regional and international cooperation and harmonisation of arrangements

The laws (and proposed laws) of Nauru are therefore reviewed under the above headings.

#### **Note**

It will be noted that in relation to some of the categories of laws covered in this Review, no laws have in fact been identified.

This applies to areas of the law relating to reserves, mining and minerals, water resources, public awareness and participation, physical planning, building control and regional and international cooperation.

In these parts of the Review it is noted that no relevant laws have been identified.

They have however been incorporated in this Review so that it may be easily updated and added to (as noted in 3.3) when laws applying in these areas are enacted in the future. If an Environment Management Act is passed then some of these areas shall be addressed in such a law.

### **3.3 Utilising and Up-dating this Review**

The methodology outlined above permits the Review to be kept current by making suitable changes to its provisions periodically. These changes could include the following matters –

- Deleting any laws that have been repealed
- Adding any new laws, or laws that have been inadvertently omitted from this Review
- Noting any amendments made to a law, either as additions to, deletions from or changes made to the law

If this Review is periodically up-dated in this fashion then it may be applied to the following purposes for an extended period of time –

- As an up to date account of the current state of Nauru's environment related laws
- As the basis of "country reports" to meetings of the parties to international environment conventions
- As a comprehensive review of environment related laws in Nauru for the purposes of implementing international and regional environment conventions and programmes
- As a tool to be used by consultants implementing aid funded programmes or domestic law reform initiatives in Nauru relevant to the environment or natural resources contexts

## 4. REVIEW OF RELEVANT LEGISLATION

### 4.1 MATTERS RELATING TO CONSTITUTIONAL AUTHORITY AND JURISDICTION

#### 4.1.1 The Constitution as the Supreme Law

THE CONSTITUTION OF NAURU [1968]

*Year passed: 1968*

*Date of effect: 31<sup>st</sup> January 1968*

*Amended: 1968 (A range of amendments arising from the Constitution Convention of Nauru – 17<sup>th</sup> May 1968)*

#### Main objects

To make constitutional arrangements for Nauru and to provide for the basis of its government and legal authority.

#### Relevance to this Review

This is the basis of all laws in Nauru. (No reference is made in the Constitution to environment related matters).

#### Substance of the relevant provisions

- |           |   |
|-----------|---|
| Article 1 | Nauru is an independent republic.   |
| Article 2 | This Constitution is Nauru's supreme law and any law which is inconsistent with a provision of this Constitution is void to the extent of the inconsistency.  |
| Part II   | <p>Makes detailed provision in relation to the protection of fundamental rights and freedoms, and specific provision is made for -</p> <ul style="list-style-type: none"> <li>• Article 3 (<i>Preamble</i>) – reference is made to certain basic rights and freedoms including –             <ul style="list-style-type: none"> <li>- freedoms of life, liberty, security, the enjoyment of property and the protection of the law</li> <li>- freedom of conscience, expression and peaceful assembly and association</li> <li>- respect for private and family life</li> </ul> </li> </ul> <p>(There is no reference to the right to have a healthy environment or to principles of sustainability and the rights of future generations)</p> <ul style="list-style-type: none"> <li>• Article 4 – The right to life</li> </ul> |

- Article 5 – Protection of personal liberty (this right is subject to any law aimed at preventing the spreading of disease)
- Article 6 – Protection from forced labour (which does not include labour required by the sentence or order of a court, or labour which is reasonably required as part of reasonable and normal communal or civic obligations)
- Article 7 – Protection from inhuman treatment
- Article 8 – Protection from deprivation of property (this does not prevent the taking of property that is reasonably necessary because it is in a dangerous state or is injurious to the health of human beings, animals or plants)
- Article 9 – Protection of person and property (the right to search persons and enter property can be validly exercised if it is reasonably required in the interests of, *inter alia*, public health, the development and utilization of natural resources or the development and utilization of property for a beneficial community purpose. *Note* – laws may only authorize entry into property if the purpose of entering relates to taxation of the carrying out of necessary works on publicly owned property on the land. All other rights of entry are dependant upon there being an order of a court authorizing the entry.)
- Article 10 – Protection of the law
  - all offences must be defined by law
  - all persons charged with an offence must be afforded a fair hearing within a reasonable time by an independent and impartial court
  - all persons are presumed innocent until proven guilty
  - other basic rights and protections are prescribed and all actions taken against offenders must be done in accordance with these rights and procedures
- Article 11 – Freedom of conscience, thought and religion
- Article 12 – Freedom of expression
- Article 13 – Freedom of assembly and association
- Article 14 – The rights and freedoms are enforceable by the Supreme Court

Part III Makes comprehensive provision in relation to the President and the Executive, including provisions relating to –

- Article 16 – The President
- Article 17 – Executive Authority vests in the Cabinet
- Article 18 – The Cabinet
- Article 19 – Appointment of 4 or 5 Ministers
- Article 23 – Appointment of Ministers to Departments (The President may assign responsibility for any business of government to himself or to any Minister, and may revoke any such assignment).

- Article 25 – Chief Secretary
- Part IV      Makes comprehensive provision in relation to the Legislature, including provisions relating to –
- Article 28 – The Parliament (18 MP's or a greater number prescribed by law)
  - Article 29 – Electors (Persons over 21 years)
  - Article 38 – Rules for Parliamentary Procedure
  - Article 46 – Voting (to be decided by majority present)
  - Article 47 – Enactment of laws (become law on the date when the Speaker certifies that it has been passed by the Parliament)
- Part V      Makes comprehensive provision in relation to the Judicature, including provisions relating to –
- Article 48 – Supreme Court (superior court of record)
  - Article 49 – Matters concerning the Constitution
  - Article 56 – Subordinate courts (to be established by law)
  - Article 57 - Appeals
- Part VI      Makes comprehensive provision in relation to public finances.
- Part VII     Makes comprehensive provision in relation to the public service.
- Part VIII    Makes comprehensive provision in relation to citizenship.
- Part IX      Makes provision in relation to the declaration of emergencies and the exercise of emergency powers.
- Article 83    The right to mine phosphate is vested in the Republic of Nauru, unless otherwise provided by law. And nothing in the Constitution makes the Government of Nauru responsible for rehabilitation of land from which phosphate was mined before 1<sup>st</sup> July 1967.
- Article 85    Laws in force in Nauru before Independence Day (31<sup>st</sup> January 1968) shall continue in force subject to the Constitution, until repealed by a later law.

#### **4.1.2 Acts adopting and clarifying the Laws of Nauru**

##### **LAWS REPEAL AND ADOPTING ORDINANCE 1922 - 1967**

*Year passed:* 1922

*Date of effect:* 23<sup>rd</sup> September 1922

Main objects

To provide that German laws shall cease to apply in Nauru, and that certain laws of England, the Commonwealth of Australia, Queensland and Papua shall apply as laws of Nauru.

#### Relevance to this Review

It appears that some laws from foreign jurisdictions still have force in Nauru by reason of the provisions of this Act.

#### Substance of the relevant provisions

- Section 3 All laws of the German Empire that are expressed to extend to Nauru shall cease to extend to Nauru.
- Section 10 The Acts of the Commonwealth of Australia specified in the First Schedule shall, as far as they are applicable apply to Nauru. (Some relevant laws include Commerce (Trade Descriptions) Act 1905, patents and trademark laws and the Meteorology Act 1906)
- Section 11 The Acts of the State of Queensland specified in the Second Schedule shall, as far as they are applicable apply to Nauru. (Only the Criminal Code appears to remain applicable in Nauru)
- Section 14 The Ordinances of the Territory of Papua specified in the Third Schedule shall, as far as they are applicable apply to Nauru. (There are no laws remaining in this Schedule that appear to be of relevance).
- Section 16 All references to authorities, persons, places, subjects, matters and things in the adopted laws, shall be deemed to be references to the corresponding or analogous authorities, persons, places, subjects, matters and things in Nauru.

#### CUSTOM AND ADOPTED LAWS ACT 1971

*Year passed:* 1971 (No. 11)

*Date of effect:* 5<sup>th</sup> January 1972

*Repealed the following laws:* The Merchant Shipping Ordinance 1924-1967

#### Main objects

To make better provision relating to the institutions, customs and usages of Nauruans, and to adopted laws.

#### Relevance to this Review

This Act requires that courts have regard to Nauruan customs in certain matters, and clarifies the laws of England which have application in Nauru. It also makes it clear that many laws of England which relate to issues of environmental management are not to be adopted as part of the laws of Nauru.

### Substance of the relevant provisions

Section 2 “Court” is defined to mean any court having jurisdiction in Nauru, and any court having jurisdiction to hear an appeal from a court in Nauru.

Section 3 The institutions, customs and usages of the Nauruan people prior to the commencement of this Act must be accorded recognition by every court, unless they are abolished, altered or limited by any law. These matters specifically relate to –

- Title to and interests in land (other than interests granted in accordance with any written law)
- Right to dispose of real and personal property (during their lives or by will)
- Succession to deceased estates and person who die without making a will
- Any matter affecting Nauruans only

Customs and usages whereby persons may be entitled to deal with a person’s child or property without their consent are abolished.

Section 4 All laws of England which were in force in England on the 31<sup>st</sup> January 1968 are adopted as laws of Nauru. This includes the principles and rules of equity.

The common law and rules of equity are to be administered concurrently in all civil cases.

Section 5 The laws of England adopted under section 4 shall only have application insofar as the circumstances of Nauru and the limits of its jurisdiction permit. And they must not be inconsistent with any statute applying in Nauru.

All references to persons, places, matters and things in the adopted laws of England shall be construed as referring to the corresponding or analogous person etc in Nauru.

Judges and magistrates are given a discretion to construe the adopted laws so that they are rendered applicable to Nauru.



Section 6 Certain laws of England specified in the First Schedule are not adopted by reason of section 4.

(For the purposes of this Review, it is noted that these matters relate to –

- Agriculture
- Animals
- Fisheries
- Forestry
- Land Drainage and Improvement
- Local Government
- Mines, Minerals and Quarries
- Open Spaces and Recreation Grounds
- Public Health
- Water Supply
- Waters and Watercourses

Various amendments are made to the Schedules of the Laws Repeal and Adopting Ordinance 1922 – 1967 (sections 8 – 10)

#### INTERPRETATION ACT 1971

*Year passed:* 1971 (No. 12)

*Date of effect:* 5<sup>th</sup> January 1971

*Repealed the following laws:* The Interpretation Ordinance 1956 - 1967

#### Main objects

To make better provision in the law relating to the construction, interpretation and publication of the law.

#### Relevance to this Review

This law make provision which generally affects the interpretation and application of all laws, and some aspects of this has particular relevance to laws applying to environmental management.

#### Substance of the relevant provisions

Section 2 Definitions are given for a range of words used in laws, and some of relevance in the context of this Review are –

- “Districts”
- “Export”
- “Import”
- “Land”
- “Occupy”

- “Prescribed”
- “Property”
- “Public place”
- “Regulation”
- “Ship, vessel or boat”
- “Street or road”

- Section 18 A relevant treaty or international agreement referred to in a written law or which has been presented to Parliament may be referred to as an aid to the interpretation of any written law.
- Section 19 Laws must be construed so as to be consistent with the international obligations of the Government of Republic (rather than be construed so as not to be consistent with them).
- Section 25 All subsidiary legislation (i.e. regulations etc) shall be published in the Gazette.
- Section 26 There is a presumption that any power in an Act to make regulations shall –
- Confer the power on Cabinet
  - Enable the regulations to take effect upon their publication
  - Require that the regulations are laid before Parliament within the 6 sitting days next following their publication
- Section 31 The power to make regulations shall be deemed to include the power to revoke or vary the regulations.
- Section 32 Regulations made under any Act may provide for offences punishable by fines not exceeding \$500 or imprisonment not exceeding 6 months, or any other fines or imprisonment specifically provided by the Act.
- Section 33 All references to an Act shall include reference to any regulations made under the Act.
- Section 36 The word “may” used in any written law indicates that the exercise of a power is discretionary, but the use of the word “shall” indicates that the power conferred must be exercised.
- Part IV Makes provision in relation to the exercise of powers and duties under written laws, and clarifies that –
- Words applying to a public office have application to all persons who later hold that office (section 37)
  - A power to appoint includes a power to remove (section 38)

- Any power may be exercised from time to time as the occasion requires (section 39)
- The powers of the President and the Cabinet may be delegated by the President or the Cabinet (as the case may be) to a Minister (section 40(1))
- The President may authorize a person to exercise a lawful power if the person empowered is absent or ill (section 41)
- A power to do anything includes power to do anything to enforce the doing of that thing (section 44)
- A power to appoint a board, commission or committee includes the power to appoint a chairman, deputy chairman, vice chairman and secretary, unless a contrary intention appears in the law (section 45)
- A power to appoint a person to be member of a board, commission or committee may be exercised by appointing make the appointment by reference to an official designation of a public officer, unless the contrary intention appears in the law. In such cases the person currently holding the designated office shall be the member so appointed (section 46)
- A power to appoint members to a board, commission or committee includes the power to make alternate appointments, and to appoint temporary members in the case of illness or absence of the member (section 47)

Section 64 Fines imposed under a written law, and the costs of any prosecutions, shall be paid to the Treasury Fund in the absence of any express provision in a law to the contrary.

Section 65 Corporations may be punished for offences if the offence is capable of being committed by a body corporate. The punishment must be of a nature that a corporation is capable of suffering.

Section 69 Any power to issue licences, permits etc under a written law includes a power to impose such conditions as the issuing authority deems expedient.

Section 74 No written law shall affect the rights of the Republic, unless it is expressly provided or appears by necessary implication that the Republic is bound by the law.

## REGULATIONS VALIDITY ACT 2001

*Year passed:* 2001 (No. 7)

*Date of effect:* 19<sup>th</sup> December 2001

Main objects

To retrospectively validate certain regulations.

Relevance to this Review

This law validates a number of regulations that have relevance to environmental management.

Substance of the relevant provisions

Section 3 The regulations listed in the Schedule are deemed to have complied with the requirements of the Interpretation Act relating to the laying of them before the Parliament even though this was not done within the required 6 day period.

These validated regulations include –

- The Fisheries Regulations 1998
- The Animals Regulations 2001

**4.1.3 Acts declaring the jurisdiction of Nauru**

## SEA BOUNDARIES ACT 1997

*Year passed:* 1997 (No. 16)

*Date of effect:* 13<sup>th</sup> June 1997

*Administered by*

Main objects

To demarcate Nauru's sea boundaries and the maritime zones within those boundaries, and to declare the rights of the Republic of Nauru in these zones.

Relevance to this Review

The effective exercise of jurisdiction over a nation's maritime zones has many implications for its capacity to protect its environment and implement its international obligations.

Substance of the relevant provisions

Section 2 Definitions are given to "the baseline of Nauru", "median line" and "mile".

A comprehensive definition is given to "conserving and managing" in the following terms –

“includes adopting and using all rules, regulations, methods and measures that –

- (a) are required to build, restore or maintain, or are useful in rebuilding, restoring or maintaining, any living marine resources or the marine environment; or
- (b) are designed to ensure that –
  - (i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis; and
  - (ii) irreversible or long-term ill effects on the living marine resources or the environment are avoided; and
  - (iii) there will be a multiplicity of options available with respect to future uses of these resources”.

Section 3 The inland waters are all waters on the landward side of the baseline of Nauru.

Section 4 Nauru’s territorial sea extends for 12 nautical miles from the baseline. The sovereignty of the Republic extends over the territorial sea, the airspace over it and the sea and sub-soil beneath it, and may be exercised subject to the rules of international law.

Section 5 The contiguous zone of the Republic is contiguous to the territorial sea and extends seawards from the outer limit of the territorial sea for a distance of 24 miles from the baseline. Within the contiguous zone, the Republic may exercise control necessary to –

- (a) prevent infringement of any customs, fiscal, immigration or sanitary laws within Nauru; and
- (b) punish any infringement of those laws committed within Nauru.

Section 6 The EEZ comprises all that area of sea having its inner limit being the outer limit of the territorial sea, and its outer limit a line drawn 200 miles from the baseline. The Minister may declare that the EEZ extends to 200 miles from the baseline for the purposes of implementing any international agreement.

Within the exclusive economic zone, the Republic has -

- (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the seabed, the subsoil under the seabed, and the waters over the seabed; and
- (b) exclusive jurisdiction over the establishment, operation and use of artificial islands, installations and structures; and
- (c) jurisdiction over marine scientific research and the protection and preservation of the marine environment as provided or conferred by international law; and
- (d) such other rights as are conferred or recognised by international law.

Section 7 All areas of seabed, and the subsoil under the seabed, of the exclusive economic zone shall be treated, for the purposes of any law, as part of the continental shelf of the Republic.

The Republic has and may exercise sovereign and exclusive rights over the continental shelf for the purpose of –

- (a) exploring it and exploiting its mineral and other non-living resources, and living sedentary species on or under the seabed or subsoil; and
- (b) authorising and regulating drilling on the continental shelf for all purposes; and
- (c) such other rights as are conferred or recognised by international law

Section 8 Provision is made for the rights of passage of ships and aircraft, subject to the laws of Nauru and rule of international law.

Section 9 The President may proclaim the baseline and other lines for the purposes of this Act and a copy of these shall be deposited with the Secretary-General of the United Nations.

Section 10 The Minister may certify charts for determining the limits of the zones provided for under this Act, and judicial notice shall be taken of any such charts.

Section 11 Regulations may be made in relation to the following matters –

- the passage of ships and the designation of sea lanes and traffic separation schemes in the territorial sea;
- the construction, operation, use and protection of navigational aids, cables and pipelines, artificial islands and other installations and facilities in the territorial sea and the exclusive economic zone;
- the preservation of the environment and the prevention, reduction and control of pollution of the internal waters, the territorial sea and the exclusive economic zone;
- the conduct of marine scientific research and hydrographic surveys in the territorial sea and exclusive economic zone;
- the exploration and exploitation of the exclusive economic zone for the production of energy from waters, currents and winds, and for other economic purposes;
- any other matters that are necessary or convenient to give effect to the rights and obligations of the Republic in relation to the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf, or are necessary to give full effect to the provisions of this Act

The SEA BOUNDARIES PROCLAMATION 1997 was made in accordance with section 9 of the Act.

#### **4.1.4 Acts related to the enforcement of an Environment Act**

##### CRIMINAL PROCEDURE ACT 1972

*Year passed:* 1972 (No. 21)

*Date of effect:* 24<sup>th</sup> November 1972

*Repealed the following laws:* The Judiciary Ordinance 1957 – 1967 and the Criminal Procedure Ordinance 1957 - 1966

*Administered by the Department of Justice*

##### Main objects

To make provision for the procedure to be followed in criminal cases in the Supreme Court and the District Court.

##### Relevance to this Review

This law is of relevance to any criminal prosecutions which may be undertaken in relation to offences against any environment law.

##### Substance of the relevant provisions

- Section 43 The District Court has authority to cause to be brought before it any person who is in Nauru and is charged with an offence committed within Nauru, or which may be inquired into or tried within Nauru.
- Section 50 Any person other than a public prosecutor conducting the prosecution in any criminal proceedings may do so personally or by a barrister and solicitor or pleader.
- Section 75 Magistrates have the power to issue search warrants authorizing a police officer or other person named in the warrant to search a building, ship, aircraft, vehicle, box, receptacle or place. The magistrate must be satisfied on oath that in fact or according to reasonable suspicion that an offence has been committed and that the relevant investigation requires that such a search be conducted.
- Section 99 Proceedings against a person who is not normally resident in Nauru and which relates to an offence committed on the open sea within the territorial waters of Nauru may only be instituted with the leave of Cabinet and upon the certificate purporting to be signed by the Secretary to the Cabinet. (Note this does not apply to prosecutions taken in the District Court).
- Section 118 The court may order that a convicted person or person found guilty of an offence to pay to a private or public prosecutor such reasonable costs as the court determines. Costs may also be ordered against a prosecutor in the event of an acquittal. (A "private prosecutor" is any person who prosecutes the case other than a public prosecutor or police officer appearing in the case).
- Section 121 The court may order that monies being part of any fine imposed or any monies found on or in possession of any convicted person, be used to pay compensation arising from the criminal conduct or to defray any expenses incurred from it.

## CRIMINAL JUSTICE ACT 1999

*Year passed:* 1999 (No. 8)

*Date of effect:* 18<sup>th</sup> October 1999

*Administered by the Department of Justice*

### Main objects

To provide new methods of dealing with offenders

### Relevance to this Review



This law would permit appropriate penalties to be applied to persons committing littering offences and other offences which affect the environment. The option of requiring community services is seen as effective and appropriate in this context.

Substance of the relevant provisions

- Section 2 This Act applies to offences committed before and after its commencement.
- Part II Makes comprehensive provision in relation to probation. Probation orders can be made for a period not longer than 1 year after the expiry of a period of community service ordered under sections 22 or 23 (section 8)
- Part III Makes comprehensive provision for Community Service as a sentencing option.
- Section 19 The Minister may establish community service groups.
- Section 20 the Chief Probation Officer is ex officio the Chief Controller of Community Service Groups, and shall be responsible for their general administration, control and supervision, subject to the directions of the Secretary for Justice.
- Section 21 A person ordered to serve in a Community Service Group shall be in its legal custody for the period of detention for performance of community service. Such persons are subject to the control, directions and supervision of the Controller.
- Section 22 An offender who is not less than 13 years of age and who is found guilty of an offence punishable by imprisonment may be ordered to perform community service in a Community Service Group for a period not exceeding 12 months. This can be done with or without conviction. A fine or other monetary penalty may also be imposed on the offender.
- Section 23 Orders to perform community service may be made in relation to offenders who have not paid fines. The order to perform community service shall cancel the portion of unpaid fine to which the order relates.
- Section 24 An order for community service shall not be made until a report of the offender's character and personal history has been made by a probation officer and considered by the court.
- Section 25 An order for community service must state the following matters –

- the duration of each period of custody
- the Controller to whom the offender is required to report on the first occasion
- the day and time that the offender is required to report
- the number of occasions each week that the offender must report

Section 26 A period of service shall be spent doing activities, attending classes and groups and undergoing instruction as is determined by the Controller. During this time the offender may be directed by the Controller to engage in work, which may be –

- at a hospital, church or charitable or educational institution
- at a home of an old, infirm or handicapped person
- on public lands
- clearing litter or debris at any place used by the general public
- preventing coastal erosion or any other measure for the protection or preservation of the environment

No remuneration is payable for this work.

Part IV Makes comprehensive provision for parole.

Section 42 A general power to make regulations is provided for.

#### **4.2 ADMINISTRATIVE ARRANGEMENTS AFFECTING THE MANAGEMENT OF THE ENVIRONMENT**

NAURU REHABILITATION CORPORATION ACT 1997

*Year passed:* 1997 (No. 10)

*Date of effect:* 13<sup>th</sup> June 1997

*Administered by the Nauru Rehabilitation Corporation*

##### Main objects

To establish a Corporation charged with responsibility for coordinating, promoting, carrying out, managing and participating in rehabilitation works in Nauru.

##### Relevance to this Review

This law make specific provision for the rehabilitation of degraded lands in Nauru.

##### Substance of the relevant provisions

Section 3 The Nauru Rehabilitation Corporation is established and certain matters relating to its Constitution are contained in the First Schedule.

Section 4 The functions of the Corporation include –

- carrying out projects for the rehabilitation and development of worked out phosphate lands and unworked phosphate lands as directed by the Minister
- to implement government policy regarding the rehabilitation and development of worked out phosphate lands

Section 15 A general regulation making power is provided for.

## NAURU FISHERIES AND MARINE RESOURCES AUTHORITY ACT 1997

*Year passed:* 1997 (No. 17)

*Date of effect:* 13<sup>th</sup> June 1997

*Amended:* 2004

*Administered by the Nauru Fisheries and Marine Resources Authority*

### Main objects

To establish the Nauru Fisheries and Marine Resources Authority and to provide for its powers and functions.

### Relevance to this Review

This law vests authority for matters related to the regulation, management and conservation of the Nauru's fisheries and marine resources in the Authority. As such the Authority becomes a significant player in the area of resource management and conservation.

### Substance of the relevant provisions

Section 2 "Fisheries" are defined as the living aquatic resources of Nauru's declared jurisdictional zones. "Marine resources" means the living and non-living resources and the environment of the seas.

Section 3 The Authority is established as a body corporate.

Section 4 The Authority's objects include –

- the management, development, conservation and protection of Nauru's fisheries and marine resources
- the promotion of sustainable utilization of the fisheries and marine resources to achieve economic growth, improved

social standards and nutritional standards, human resource development, increased employment and sound ecological balance

- the pursuit of effective strategies for managing the fisheries and marine resources so as to maintain the integrity of the marine eco-systems, to preserve the biodiversity, to avoid adverse impacts to the marine environment and to minimize the risk of long-term or irreversible effects of resource extraction operations
- the enhancement of administrative, legal, surveillance and enforcement capacities for the management, development, conservation and protection of the fisheries and marine resources.

Section 5 The Authority's functions include –

- the administration and enforcement of all laws relating to fisheries and marine resources
- consultation and cooperation with government departments and agencies and with international, regional and sub-regional organizations
- securing the attendance and representation of the Republic at international, regional and sub-regional meetings, conferences, workshops and similar gatherings concerned with the management, development, conservation and protection of the fisheries and marine resources
- representing the Republic in the conduct of negotiations of any relevant international treaty, convention or agreement

Section 16 The Authority has power to appoint its officers and employees.

Section 17 The funds of the Authority include monies it receives for its services and also all revenues and monies paid to the Republic by any other State or international or regional organization in respect of the management, development, conservation and protection of the fisheries and marine resources. (But the 2004 amendment requires that such funds be paid into the Treasury Fund)

## PORT AUTHORITY ACT 2006

Year passed: 2006 (No.4)

Date of effect: 17<sup>th</sup> June 2006

Repealed the following laws: Nil

Administered by the Port Authority of Nauru

### Main objects

To establish the Port Authority of Nauru and provide for the sea port management in Nauru.

### Relevance to this Review

The exercise of powers by the Nauru Ports Authority in accordance with this Act can have significant implications on the marine environment.

### Substance of the relevant provisions

Section 2 Definitions are provided for relevant terms, including “dangerous goods” (defined by reference to the *International Maritime Dangerous Goods (IMDG) Code*), “goods” (which include livestock) and “vessel”.

Section 8 Relevant powers of the Authority include powers to –

- provide fire and security services for the purpose of preserving life and property
- control the erection and use of wharfs, docks and other works, both above and below the high water mark
- reclaim, excavate, raise or enclose any land vested in the Authority

Section 14 Defines the roles and powers of the Harbour Master in the event of fire on board a vessel.

Part 10 Makes comprehensive provision in relation to dangerous goods.

Section 50 The Authority must ensure the safe movement, loading, discharging, handling and storage of dangerous goods any may stipulate conditions under which dangerous goods may be handled.

The Authority may make Standing Orders or Codes of Practice which –

- declare any goods to be dangerous
- require dangerous goods to be stowed in containers and on board vessels
- prohibit or restrict the movement, storage and stowage of any dangerous goods with other goods
- direct the times at which dangerous goods may be moved, stored or stowed
- take steps to protect persons and property from danger

Section 55 Offences under this section include –

- fumigating any vessel in the port, or boiling or heating any pitch, tar, resin, turpentine oil or other inflammable oils or liquids on board any vessel
- using a naked light when drawing off spirits, turpentine oil or other inflammable oils or liquids on board a vessel

Section 56 It is an offence to throw, discharge, deposit any harmful substance into any waters of a port. But it is a defence if it is proven that the act was necessitated by reason of an emergency imperiling life, or was caused by an unavoidable accident, collision or stranding.

“Harmful substance” means any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

Section 63 A general power to make Regulations is provided for.

Section 64 The Minister may make Standing Orders or Codes of Practice (which must not be inconsistent with those made by the Authority) and these may relate to –

- the use of whistles, sirens etc.
- prohibiting the loading or discharging of dangerous goods except in accordance with the IMDG Codes
- the cleanliness of the port works and waters, and matters relating to pollution from oil or rubbish
- terms and conditions for the sale and supply of fresh water by the Authority
- the cleaning, fumigating and disinfecting of buildings, wharves, vessels and cargo
- the use of in the port of motor launches, yachts, pleasure craft, surf boards, jet skies and water skis;
- prohibiting any operation which in the opinion of the Authority is undesirable.

### **4.3 ENVIRONMENT PROTECTION AND MANAGEMENT**

#### **4.3.1 General Environment Protection Provisions**

LITTER PROHIBITION ACT 1983

*Year passed:* 1983 (No. 6)

*Date of effect:* 14<sup>th</sup> October 1983

*Repealed the following laws:* Section 15 of the Public Health Ordinance 1967

*Administered by*

Main objects

To make provision for the abatement of litter.

Relevance to this Review

Dealing with littering is an important aspect of environmental management.

Substance of the relevant provisions

- Section 2 Throwing, dropping or depositing litter, refuse or rubbish of any kind in a public place is an offence. The fine is \$300.
- Section 3 A driver of a vehicle from which litter is thrown is deemed to have committed the offence.
- Section 4 There is a duty on persons to report littering offences to the police.
- Section 6 The Minister may authorize the depositing of certain things at certain places.
- Section 7 It is not an offence to deposit serviceable dustbins with tight fitting lids on private or public land, or to deposit litter etc in such bins.
- Section 8 The powers of police officers under the Criminal Procedure Act are vested in district constable for the purposes of enforcing this Act.

## CRIMINAL CODE [1899]

*Year passed:* 1899

*Date of effect:* 23<sup>rd</sup> September 1922 (by reason of the Laws Repeal and Adopting Ordinance 1922 – 1967)

*Administered by the Department of Justice*

Main objects

To make comprehensive provision in relation to the criminal law applying in Nauru.

Relevance to this Review

Some offences under this obsolete have relevance to matters of environment protection, but the deficiencies of its are manifest.

Substance of the relevant provisions

Section 18 Sentence include death, imprisonment (with and without hard labour), detention in an industrial or reformatory school, solitary confinement, whippings, fines and security to keep the peace and be of good behaviour.

Some offences in the Code are relevant to the environment and to its enforcement. These include –

- Sending dangerous or obscene things by post – section 172
- Shooting at customs boats or officers – section 196
- Resisting public officers – section 199
- Disobedience to statute law – section 204
- Disobedience to lawful order issued by statutory authority – section 205
- Common nuisances – section 230
- False information as to the health of foreign ships – section 237
- Exposing for sale things unfit for food – section 238
- Dealing in diseased meat – section 239
- Duty of persons in charge of dangerous things – section 289
- Injuring animals – section 468
- Travelling with infected animals – section 475

#### MOTOR TRAFFIC ORDINANCE 1937 - 1960

*Year passed: 1937*

*Date of effect: 3<sup>rd</sup> November 1937*

*Amended: 1967 (3 amendments)*

*Administered by*

#### Main objects

To provide for the registration of motor vehicles and of motor traffic.

#### Relevance to this Review

This law may be of marginal relevance as most of its operative provisions relate to safety issues and not the environmental consequences that may flow from the use of vehicles.

#### Substance of the relevant provisions

Section 6 The Registrar may register vehicles if he is satisfied that they comply with the requirements of the First Schedule.

(The relevant requirements of the First Schedule are –

- All fittings shall be in such condition as not to be likely to cause annoyance by bad smell of otherwise, or danger to any person or vehicle



- The lubrication of the engine and the carburation of the working mixture shall be so controlled that smoke is not projected from the exhaust or any part
- A motor vehicle shall have an efficient silencer so made and affixed that exhaust shall be projected through the silencer)

Section 33 It is an offence to drive a vehicle on a public highway –

- Unless an efficient silencer is affixed to its exhaust pipe
- Which causes undue noise by reason of its state of disrepair, the manner of its loading, its construction or condition and the condition of its silencer
- To make unnecessary noise with the horn or other means of alarm (other than as a warning of danger)

Section 35 The Registrar may require a registered motor vehicle to be produced for inspection

#### **4.3.2 Marine Pollution**

Note: This is a model law drafted in recent years for possible application by all Pacific Island countries. It has not been ascertained that this Bill is currently being considered for enactment in Nauru. However given its importance to the protection to the marine environment it is noted here as a law that should be considered for adoption by the Government of Nauru, as has been done by some neighbouring countries.

#### [MARINE POLLUTION PREVENTION BILL

*Year drafted* – 2000

#### Main objects

To implement the provisions of the MARPOL Convention and to make comprehensive provision for matters relating to marine pollution and responses to marine pollution incidents.

#### Relevance to this Review

Controls over marine pollution and the capacity of a country to respond to marine pollution incidents are key aspects of its domestic laws and international obligations in the environment context.

#### Substance of relevant provisions

A draft Model Regional Marine Pollution Prevention Bill was prepared in 2000 with assistance from SPREP, SPC and IMO. It is comprehensive and may be

difficult to apply in Nauru's context, but many of its features could be reflected in regulations made under the Territorial Seas and Exclusive Economic Zone Act 1997. These relate to –

- Part II Marine Pollution Prevention
- Part III Marine Pollution Response
- Part IV Marine Casualties
- Part V Liability and Compensation for Oil Pollution Damage
- Part VI Dumping and Incineration of Wastes]

#### SALVAGE OF DERELICT WRECKS ACT 1969

*Year passed:* 1969 (No. 5)

*Date of effect:* 19<sup>th</sup> December 1969

*Repealed the following laws:* Nil

*Administered by*

#### Main objects

To provide for the salvage of derelict wreck and for the appointment of a Receiver of Wreck.

#### Relevance to this Review

These issues may have impacts on the marine environment, but their relevance is marginal.

#### Substance of the relevant provisions

- Section 2 Cabinet has power to appoint a person to be the Receiver of Wreck.
- Section 4 All owners, masters and crew of every Nauruan vessel must use their best endeavours to save any wreck.
- Section 5 Rules apply to persons finding wrecks.
- Section 6 The receiver of wrecks is empowered to take possession of all wreck as trustee.
- Section 10 All wreck is vested in the receiver.

Section 34 “Wreck” includes wreckage, jetsam, flotsam, lagan and derelict vessels and goods found in the sea apparently abandoned by its true owner.

### 4.3.3 Wildlife Protection

#### WILD BIRDS PRESERVATION ORDINANCE 1937

*Year passed:* 1937 (No. 14)

*Date of effect:* 30<sup>th</sup> November 1937

*Repealed the following laws:* The Wild Birds Preservation Ordinance (No. 12 of 1924) and the Wild Birds Preservation Ordinance 1936.

*Administered by*

#### Main objects

To provide for matters related to the preservation of wild birds.

#### Relevance to this Review

This is the principal law in Nauru dealing with the protection of wildlife.

#### Substance of the relevant provisions

Section 4 Defines “Close season” to mean the period stated in the Schedule opposite the name of any bird specified in the Schedule.

Section 5 It is an offence to take any bird that is specified in the Second Schedule (currently only frigate birds). The fine is up to 5 pounds.

Section 6 In relation to birds specified in the First Schedule, it is an offence to –

- knowingly or willfully destroy or take such a bird
- use any lime, trap, snare, net or other instrument to destroy or take such a bird
- possess such a bird

(The birds stated in the First Schedule are magpies, snipe, quail, etsirer or Nauru canaries, white noddies and black noddies) The fine is up to 1 pound for a first offence and up to 5 pounds and imprisonment for up to 14 days for subsequent offences.

Section 7 Any person who destroys, takes or possess any eggs of a bird listed in the First Schedule during the specified close season commits an offence. The same fines as in section 6 apply.

## FISHERIES ACT 1997

*Year passed: 1997 (No. 18)*

*Date of effect: 13<sup>th</sup> June 1997*

*Repealed the following laws: The Marine Resources Act 1978*

*Administered by the Nauru Fisheries and Marine Resources Authority*

### Main objects

To make provision for the management, development, protection and conservation of Nauru's fisheries and living marine resources.

### Relevance to this Review

Orders may be made under this Act which prohibit the taking of certain fish and marine resources, and restricts the means by which they may be lawfully taken.

### Substance of the relevant provisions

Section 11 The Minister may, by notice in the Gazette, prohibit fishing or fisheries activity by any one or more of the following –

- by species, sub-species, class or type of fish;
- by size, weight or dimensions of fish or of parts of fish;
- by age or growth stage of fish;
- by limits set on catches, fishing efforts, the number of persons who may engage in the fishing or fisheries activity or any other related matters;
- in a specified area of water or at a specified place;
- by class or type of boat;
- by fishing method;
- by the use, carrying on board a boat or possession of a class, type, size or quantity of fishing equipment, navigational or safety equipment or equipment used in connection with a fisheries activity;
- by the failure to use, carry on board a boat or possess a class, type, size or quantity of fishing equipment, navigational or safety equipment or equipment used in connection with a fisheries activity;
- by class, type, category or manner of conduct of a fisheries activity;
- by time, date or season, or by period, or indefinitely;
- by class or category of persons

Section 42 Cabinet may make regulations, and some relevant areas in which regulations may be made are –

- the means of determining the total allowable catch either generally or in respect of an individual fishery, the maximum sustainable yield of fish, precautionary reference points, fishing quotas, fishery areas, licence priorities and quotas and related matters, and determining those matters; and
- regulating the conduct of fishing and fisheries activities; and
- regulating, controlling and managing research, surveys, study and education regarding fish, fisheries resources and the marine environment; and
- the monitoring and surveillance of fishing and fishing activities and the gathering, storing and use of information regarding boats, fishing and fisheries activities, including its use as evidence in proceedings under this Act; and
- the furnishing of returns containing information in relation to fishing, fisheries activities; and
- prescribing penalties of fines not exceeding \$100,000 for offences against the regulations; or offences against any provision of the Act for which no penalty is provided.

#### CUSTOMS ORDINANCE 1921 – 1941 (TERRITORY OF NEW GUINEA)

*Year passed:* 1921

*Date of effect:* 28<sup>th</sup> October 1921

*Administered by* the Chief Collector of Customs

#### Main objects

To provide for the regulation and collection of customs.

#### Relevance to this Review

Customs laws have implications relating to transboundary movements.

#### Substance of the relevant provisions

Part VI Provision is made in relation to the export of goods.

Section 100 No prohibited exports may be exported.

Section 101 The Administrator may by proclamation prohibit the exportation of any goods the prohibition of which is necessary for the preservation of flora and fauna of Nauru.

A prohibition may authorize the prohibition of the exportation of goods generally or to any specified place, and either absolutely or

so as to allow the exportation of the goods subject to any condition or restriction.

#### **4.3.4 Reserves**

No laws have been identified which could be considered to fall into this category. It is however retained in this Review so that any relevant laws can be noted if they are enacted in the future. An Environment Management Act might make such provision.

#### **4.3.5 Animals**

ANIMALS ACT 1982

*Year passed:* 1982 (No. 6)

*Date of effect:* 23<sup>rd</sup> August 1982

*Repealed the following laws:* Sections 13-18A of the Licences Ordinance and the Bee Importation Prohibition Ordinance.

*Administered by*

##### Main objects

To make provision in relation to the licensing of animals and as to animals generally.

##### Relevance to this Review

This Act deals with issue of controlling animals and also with their protection.

##### Substance of the relevant provisions

- Section 2 "Animal" includes birds, fish, reptiles, insects and spiders.
- Section 3 The Minister appoints a public officer to be the licensing authority under this Act.
- Section 4 Provision is made for the licensing of dogs.
- Section 5 The grounds upon which a licence is to be refused are stated.
- Section 6 Licensed dogs must wear a disc.
- Section 7 Unlicensed dogs may be seized and kept at a place designated by the Minister.

- Section 8 Dogs which have been seized shall be destroyed after 48 hours, unless the owner notifies the Director of Police and proves that the dog was licensed at the time it was seized.
- Section 11 A dog may be seized and destroyed if it is considered by a health inspector to be dangerous or diseased.
- Section 12 There is a specific power to destroy dogs if the Director of Health reports an outbreak of rabies.
- Section 13 Cabinet may prohibit the import of certain animals into Nauru, or prohibit their import from certain countries. Imports can be conditional upon the importation being duly licensed.
- The importation of all female dogs is prohibited. So too is the importation of male dogs which have not been rendered permanently incapable of procreation. Bees of all species and sub-species may not be imported.
- Section 14 There is a power to destroy all animals which have been unlawfully imported.
- Section 15 It is an offence to facilitate the escape of any impounded animal.
- Section 16 Provision is made for owners and keepers of animals to be civilly liable for injuries and damage caused by them.
- Section 17 It is an offence to cause unnecessary suffering to animals. (This does not apply to customary practices of slaughtering pigs, catching fish and hunting noddly-birds, or to anything done in self-defence.
- Section 18 Regulations may be made to extend the application of the provisions of this Act relating to dogs, to any other prescribed animal.
- Section 20 A general regulation making power is provided for.

## ANIMALS REGULATION 2000

*Year passed:* 2000

*Date of effect:* 19<sup>th</sup> December 2001 (by virtue of the Regulations Validity Act 2001)

*Repealed the following laws:* The Animals (Prescribed Fees) Regulations  
*Administered by*

Main objects

To extend the provisions of the Animals Act to most other animals.

Relevance to this Review

This law applies regulatory control over animals.

Substance of the relevant provisions

Regulation 3 The provisions of the Animals Act are applied to all other animals except bees and any animals which may not be imported under a prohibition made by Cabinet.

Regulation 4 A scale of licence fees applies to dogs, imported animals other than birds, day-old chicks and other birds.

## CRIMINAL CODE [1899]

*Year passed:* 1899

*Date of effect:* 23<sup>rd</sup> September 1922 (by reason of the Laws Repeal and Adopting Ordinance 1922 – 1967)

*Administered by the Department of Justice*

Main objects

To make comprehensive provision in relation to the criminal law applying in Nauru.

Relevance to this Review

Some offences under this obsolete have relevance to matters of environment protection, but the deficiencies of its are manifest.

Substance of the relevant provisions

Some offences in the Code are relevant to the environment and to its enforcement. These include –

- Injuring animals – section 468
- Travelling with infected animals – section 475

**4.3.6 Quarantine Arrangements**

## AGRICULTURAL QUARANTINE ACT 1999

*Year passed:* 1999 (No. 5)



*Date of effect:* 18<sup>th</sup> October 1999

*Administered by*

### Main objects

To provide for the protection of plants, animals and public health and the protection, development and utilization of natural resources and the environment by preventing the introduction and spread of diseases and pests

### Relevance to this Review

Effective quarantine requirements and procedures are an important aspect of environmental management.

### Substance of the relevant provisions

- Section 4     The application of this Act does not derogate from the Animals Act.
- Part II        Makes provision for the appointment and powers of Quarantine Officers.
- Part III       Makes provision for quarantine management, including matters related to –
- Declarations, restrictions and prohibitions (section 8)
    - Importations of animals, animal products, plant material and other goods, any articles likely to introduce disease, and disease agents
    - Declaration of quarantinable diseases and pests
    - Declaration of restricted areas
    - Declaration of infected places
    - Declaration of countries to be free of diseases and pests
    - Procedures for dealing with ballast waters
    - Declaration of places for examination and testing
    - Prohibition and regulation of exports
  - Permission to import disease agents for biological control or research purposes. (section 9)
  - Declaration of precautionary measures to be taken by ships and aircraft coming from certain places (section 10)
  - Prohibitions of goods from certain places (section 11)
- Part IV        Makes comprehensive provision in relation to examination and quarantine requirements, including provision for –
- Entry by vessels and aircraft (section 12)
  - Restricted areas (section 13)
  - Questions and declarations (section 14)

- Examination upon entry (section 15)
  - Health certificates (section 16)
  - Importation of live animals (section 17)
  - Goods and cargo in transit (section 18)
  - Notification of disease or infestation (section 19)
  - Examination of plants and animals within Nauru (section 20)
  - Quarantine orders (section 21)
- Part V Deals with Quarantine Emergencies, including provision relating to –
- Declaration of quarantine emergencies (section 22)
  - Action in cases of emergencies (section 23)
- Part VI Powers are given in relation to –
- Prohibiting exports (section 24)
  - Exports of plants (section 25)
  - Export of animals (section 26)
- Part VII Offences are prescribed, including –
- Quarantine offences (section 27)
  - Offences by masters (section 28)
  - Offences by quarantine officers (section 29)
  - Powers of arrest or person subject to quarantine orders (section 30)
  - Forfeiture of plants animals and other goods (section 31)

#### **4.3.7 Dangerous and Hazardous Substances**

PORT AUTHORITY ACT 2006

Year passed: 2006 (No.4)

Date of effect: 17<sup>th</sup> June 2006

Repealed the following laws: Nil

Administered by the Port Authority of Nauru

##### Main objects

To establish the Port Authority of Nauru and provide for the sea port management in Nauru.

##### Relevance to this Review

The powers by the Nauru Ports Authority extend to matters related to the control of dangerous goods which can adversely affect the environment.

### Substance of the relevant provisions

Section 2 Definitions are provided for relevant terms, including “dangerous goods” (defined by reference to the *International Maritime Dangerous Goods (IMDG) Code*), “goods” (which include livestock) and “vessel”.

Part 10 Makes comprehensive provision in relation to dangerous goods.

Section 50 The Authority must ensure the safe movement, loading, discharging, handling and storage of dangerous goods any may stipulate conditions under which dangerous goods may be handled.

The Authority may make Standing Orders or Codes of Practice which –

- declare any goods to be dangerous
- require dangerous goods to be stowed in containers and on board vessels
- prohibit or restrict the movement, storage and stowage of any dangerous goods with other goods
- direct the times at which dangerous goods may be moved, stored or stowed
- take steps to protect persons and property from danger

Section 55 Offences under this section include –

- fumigating any vessel in the port, or boiling or heating any pitch, tar, resin, turpentine oil or other inflammable oils or liquids on board any vessel
- using a naked light when drawing off spirits, turpentine oil or other inflammable oils or liquids on board a vessel

Section 56 It is an offence to throw, discharge, deposit any harmful substance into any waters of a port. But it is a defence if it is proven that the act was necessitated by reason of an emergency imperiling life, or was caused by an unavoidable accident, collision or stranding.

“Harmful substance” means any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

Section 63 A general power to make Regulations is provided for.

Section 64 The Minister may make Standing Orders or Codes of Practice (which must not be inconsistent with those made by the Authority) and these may relate to –

- prohibiting the loading or discharging of dangerous goods except in accordance with the IMDG Codes
- the cleaning, fumigating and disinfecting of buildings, wharves, vessels and cargo

#### CRIMINAL CODE [1899]

*Year passed:* 1899

*Date of effect:* 23<sup>rd</sup> September 1922 (by reason of the Laws Repeal and Adopting Ordinance 1922 – 1967)

*Repealed the following laws:* Nil

*Administered by the Department of Justice*

#### Main objects

To make comprehensive provision in relation to the criminal law applying in Nauru.

#### Relevance to this Review

Some offences under this obsolete have relevance to matters of environment protection, but the deficiencies of its are manifest.

#### Substance of the relevant provisions

Some offences in the Code are relevant to the environment and to its enforcement. These include –

- Sending dangerous or obscene things by post – section 172
- Duty of persons in charge of dangerous things – section 289

#### **4.3.8 Promotion of renewable energy**

No laws have been identified which could be considered to fall into this category. It is however retained in this Review so that any relevant laws can be noted if they are enacted in the future. An Environment Management Act might make such provision.

#### **4.4 PROTECTION OF HUMAN HEALTH**

##### PUBLIC HEALTH ORDINANCE 1925 - 1967

*Year passed:* 1925

*Date of effect:*

*Amended:* 1967

*Repealed the following laws:*

*Administered by the Department of Health*

### Main objects

To make provision for the safety of the public health of Nauru.

### Relevance to this Review

Issues of public health are clearly relevant to the environment.

### Substance of the relevant provisions

- Section 7 All houses, premises, and the grounds in which they stand, shall be kept clean.
- Section 8 No stagnant water shall be allowed to lie in such grounds for more than 24 hours unless treated by efficient drainage, or with petroleum or other suitable oil.
- Section 9 No tins, bottles, coco-nut shells or husks, or other receptacle capable of holding water shall be allowed to remain on premises or grounds.
- Section 10 All tanks and vessels used for retaining water shall be efficiently covered with mosquito-proof gauze, or shall be treated with kerosene or other suitable oil.
- Section 12 The guttering and downpipes of all houses must be kept clean and efficient.
- Section 13 The Government Medical Officer (GMO) has power to enter any premises for purposes of inspection.
- Section 15 No person shall deposit or cause to be deposited any tin, bottle or other receptacle in any street, road or other public place, or on any other person's property.
- Section 16 All persons who sell or deal in foodstuffs shall keep them properly protected from flies. The may order the destruction of foods if this requirement is breached.
- Section 17 The Administrator, on the recommendation of the GMO, may order the destruction of trees or plants which retain water.
- Section 18 The GMO may prohibit the sale of fruit, vegetables and other food that is unfit for human consumption.

Section 19 The penalty for a breach of this Law is a fine not exceeding [10 pounds] or imprisonment not exceeding 1 month.

Section 18 This section is inserted by the 1967 amending Ordinance. The numbering appears to be incorrect.

Regulations may be made for any necessary matter, and specifically in relation to –

- the prevention of disease
- the maintenance of health
- sanitation in respect of any place, premises, vehicle or receptacle
- the control and inspection of –
  - the preparation, sale and distribution of food
  - the slaughtering of animals
  - eating houses and food shops
  - barber shops

#### HEALTH (EATINGHOUSES) REGULATIONS 1974

Year passed: 1974

Date of effect: 1<sup>st</sup> July 1975

Administered by the Department of Health

#### Main objects

To regulate eatinghouses.

#### Relevance to this Review

These Regulations apply matters related to the protection of human health.

#### Substance of the relevant provisions

Regulation 3 All premises used as eating houses must be licenced and hold a certificate under the Health (Registration of Premises) Regulations.

Regulation 4 All eatinghouses must have separate kitchens, and kitchens must have adequate natural lighting and ventilation, and suitable artificial lighting.

Regulation 5 A range of requirements apply to eatinghouses related to –

- lighting and ventilation
- sufficient floor space to enable cleaning

- proper floor covering or construction
- light coloured walls which may be easily cleaned
- ratproof construction
- canopies and airducts over cooking appliances as directed
- no direct communication to sleeping quarters or toilets
- sufficient toilets for each sex

Regulation 6	The storage and display of foodstuffs is regulated.
Regulation 7	Benches and shelves must be constructed so as to be readily cleansed and be free from damp and contamination.
Regulation 8	An adequate supply of hot water is required.
Regulation 9	There must be sufficient metal watertight receptacles for refuse.
Regulation 10	Wash-hand basins must be provided.
Regulation 13	Eatinghouses must be maintained in good repair.
Regulation 14	Cupboard etc. must be kept clean.
Regulation 15	The storage of food is regulated.
Regulation 16	Eatinghouses must not be used as a depot for parcels or clothing.
Regulation 17	Floors must be swept.
Regulation 18	Utensils must be cleaned.
Regulation 19	Tea towels etc must be clean.
Regulation 20	Hand must be washed after use of the toilet.
Regulation 21	Persons preparing food must not contaminate it.
Regulation 22	The clothing of persons preparing food must be clean, washable and light coloured, and the body and all clothing must be in a state of cleanliness.
Regulation 23	Persons suffering from communicable diseased must not be employed in eating houses.

The maximum fine is \$100.

## SANITARY INSPECTORS ORDINANCE 1921

*Year passed:* 1921

*Date of effect:*

*Repealed the following laws:* Nil

*Administered by the Department of Health*

### Main objects

To provide for the powers of sanitary inspectors.

### Relevance to this Review

This law is out of date but vests important powers of inspection for health related purposes.

### Substance of the relevant provisions

- Section 2 All medical officers, sanitary inspectors and assistants appointed by the Administrator may enter and inspect houses, premises and land at any time.
- Section 3 It is the duty of sanitary inspectors to make systematic inspections of districts at certain periods and intervals to keep informed of the sanitary condition of the island.
- Section 4 In the event that a house, premises or land is found to be unclean the inspector shall direct that it be cleaned and put in a sanitary condition.
- Section 5 Sanitary inspectors shall carry out any other measures of sanitary improvement which the Administrator, on the advice of the Medical Officer, may direct.

## CRIMINAL CODE [1899]

*Year passed:* 1899

*Date of effect:* 23<sup>rd</sup> September 1922 (by reason of the Laws Repeal and Adopting Ordinance 1922 – 1967)

*Administered by the Department of Justice*

### Main objects



To make comprehensive provision in relation to the criminal law applying in Nauru.

#### Relevance to this Review

Some offences under this obsolete have relevance to matters of environment protection, but the deficiencies of its are manifest.

#### Substance of the relevant provisions

Some offences in the Code are relevant to the environment and to its enforcement. These include –

- False information as to the health of foreign ships – section 237
- Exposing for sale things unfit for food – section 238
- Dealing in diseased meat – section 239
- Travelling with infected animals – section 475

#### ILLICIT DRUGS CONTROL ACT 2004

*Year passed:* 2004 (No. 12)

*Date of effect:* 6<sup>th</sup> September 2004

*Amended:* 2006

*Repealed the following laws:* Dangerous Drugs Act 1952-1968

*Administered by*

#### Main objects

To make provision for ways and means to check and prohibit the abuse of dangerous drugs, narcotics, intoxicants and other psychotropic substances in Nauru.

#### Relevance to this Review

This law is concerned with controlling the adverse impacts to human health and to the environment that arise from illicit drugs and the drug abuse.

#### Substance of the relevant provisions

- Part 2 Prescribes a range of offences, and related matters, including –
- Unlawful importation and exportation (section 4)
  - Unlawful export (section 5)
  - Unlawful possession, manufacture, cultivation and supply (section 6)
  - Controlled chemicals and equipment (section 7)
  - Parties to an offence (section 8)
  - Conspiracy (section 9)

- Attempts (section 10)
- Aiding the commission of an offence in another country (section 11)
- Cognizable offences (section 12)
- International traveller's exemption (section 13)
- General exemption (section 14)

Part 3 Deals comprehensively with powers of investigation, search and seizure. These include matters relating to –

- Interception of communications (section 15)
- Use of tracking devices (section 16)
- Controlled delivery (section 17)
- Power to search vehicle (section 18)
- Power to search a person (section 19)
- Internal concealment (section 20)
- Powers of customs officers (sections 21 – 28)
- Search warrants (sections 29 – 30)
- Assistance and use of aids (section 31)
- Reasonable force (section 32)
- Protection of informers and undercover police and customs officers (section 36)
- Authorised officers (section 37)
- Disposal and storage of seized illicit drugs (section 38)
- Collection and processing of evidence at seizure (section 39)
- Forfeiture (section 40)

Part 4 Deals with a range of evidentiary matters, including –

- Presumptions relating to possession (section 41)
- Presumptions relating to samples (section 42)
- Admissibility of official records (section 43)
- Proofs under foreign laws (section 44)
- Analyst certificates as evidence (section 45)
- Interfering with evidence (section 46)
- Overseas law enforcement agencies (section 47)

Section 52 A general regulation making power is provided for.

## **4.5 NATURAL RESOURCES**

### **4.5.1 Land**

LANDS ACT 1976

*Year passed:* 1976 (No. 13)

*Date of effect:* 23<sup>rd</sup> September 1976

*Repealed the following laws:* The Lands Ordinance 1921 – 1968 and section 4 of the Laws Repeal and Adopting Ordinance 1922 - 1967

*Administered by*

### Main objects

To make provision for the leasing of land for industry and public purposes and for the removal of trees, crops, soil and sand, and the payment of compensation and other monies.

### Relevance to this Review

This law is the principal Act in Nauru dealing with the fundamental resource of land.

### Substance of the relevant provisions

- Section 2 Definitions are given to “non-phosphate-bearing land”, “phosphate-bearing land” and “worked out phosphate bearing land”.
- Section 3 No freehold land may be transferred to a person other than a Nauruan person. It is a criminal offence to transfer freehold land or attempt to do so in contravention of this section. All dealings in land must have the written consent of the President.
- Section 4 Grants of title before 1922 are recognized.
- Section 5 Land may be leased for the purposed of the phosphate industry and for any other public purpose. The Council, the Corporation and any statutory corporation seeking such a lease (not exceeding 27 years), easement or licence to enter land and to remove sand must notify the Minister. The Minister may notify the landowner request that the lease etc be granted.
- Section 6 Procedures are prescribed for cases where a minority of landowners refuse to grant the interest sought.
- Section 7 The class of land sought to be leased must be determined at the outset.
- Section 8 The rights of the corporation in relation to land leased for the mining of phosphate include the right to –
- mine all or any of the phosphate on that land and to take and retain possession of any such phosphate and to remove it

from that land for sale by the Corporation or for the use by the Corporation locally as may be approved by the Minister;

- remove any buildings situated on that land;
- remove the topsoil, trees and vegetation from that land and use, destroy or otherwise dispose of them,
- remove coral and limestone from that land and use or otherwise dispose of it; and
- do all such other things on or in relation to that land as are reasonably required to be done for the purpose of mining phosphate on the land.

Section 9 Provision is made for the payments to be paid to landowners of land used for mining phosphate.

Section 10 Provision is made for rents to be paid for leased lands.

Section 11 Provision is made for payments for easements etc.

Section 12 Rights are prescribed for the removal and disposal of trees and vegetation and for the taking of sand. Compensation payments are specified in the Schedules.

Section 13 Rights are given for the removal of coral and limestone from certain lands. Compensation payments are specified in the Schedules.

Section 14 A general regulation making power is provided for.

#### NAURU LANDS COMMITTEE ORDINANCE 1956 - 1963

*Year passed:* 1956

*Date of effect:*

*Administered by*

#### Main objects

To provide for the establishment of a Nauru Lands Committee and related purposes.

#### Relevance to this Review

This law is of marginal relevance but is a key law applying to lands in Nauru.

#### Substance of the relevant provisions

Section 2 Definitions are given to “Nauruan” and “Pacific Islanders” (to have then same meaning as is given in the Nauruan Community

Ordinance 1956) and “Council” (which is the Nauru Local Government Council).

Section 3 The Nauru Lands Committee is established. Its members are appointed by the Council.

Section 6 The Committee has power to determine questions of ownership of land, and rights in relation to land, where such questions arise -

- between Nauruans or Pacific Islanders
- between Nauruans and Pacific Islanders

Section 7 A right of appeal lies to the Central Court which may make such order as it thinks just. The decision of the Central Court is final.

#### **4.5.2 Fisheries**

##### **FISHERIES ACT 1997**

*Year passed:* 1997 (No. 18)

*Date of effect:* 13<sup>th</sup> June 1997

*Repealed the following laws:* The Marine Resources Act 1978

*Administered by the Nauru Fisheries and Marine Resources Authority*

##### Main objects

To make provision for the management, development, protection and conservation of Nauru’s fisheries and living marine resources.

##### Relevance to this Review

The fisheries resource of Nauru is a crucial natural resource and the legal provisions applying to the development and conservation of the fisheries is a key element of the environment protection regime applying in this country.

##### Substance of the relevant provisions

Section 2 Wide ranging definitions are given, and these include definitions for “access agreement”, “aquaculture”, “based in Nauru”, “boat”, “crew member”, “driftnet”; “driftnet fishing”, “fish”, “fisheries activity”, “fisheries waters”, “fishery”, “Fishery Strategy”, “fishing”, “fishing boat”, “foreign boat”, “import”, “licensed boat”, “national boat”, “observer”, “Regional Licensing Arrangement” and “Regional Vessel Monitoring System”.

The “Authority” is the Nauru Fisheries and Marine Resources Authority established by the Nauru Fisheries and Marine Resources Authority Act 1997.

Section 3 This Act applies to all boats and persons within the fishery waters. It also applies to Nauruan registered fishing vessels and to national boats outside of the fisheries waters. And in accordance with the principles of hot pursuit it may be applied to vessels which have fished in the fisheries waters and left them.

Section 4 Responsibility for the utilization, management, development, conservation and protection of fish in the fisheries waters is vested in the Authority, which must act in accordance with the policy directions of the Minister.

The Minister, the Authority and any person having powers and functions under this Act must have regard to the management principles stated in this section, which include –

- the principle that Nauru's fisheries and marine resources shall be managed, developed, conserved and protected as a sustainable asset for future generations; and
- the sustainable utilisation of the fisheries and marine resources of Nauru to achieve economic growth, improved social standards, improved nutritional standards, human resource development, increased employment and a sound ecological balance; and
- the need to follow and adopt internationally recognised and accepted conservation and management measures to fisheries and marine resources, in accordance with the applicable rules and principles of international law; and
- the need to apply the precautionary approach to the management and conservation of fisheries resources taking account of the best scientific information available, but not so that the absence of adequate scientific information may be used as a reason for postponing or failing to take conservation and management measures; and
- any principles of maximum sustainable yields, allowable levels of fishing, precautionary reference points or total allowable catch which may be supported or adopted by the Republic from time to time; and
- the dependence of the people of Nauru on the fish and marine resources of fisheries waters for their food and livelihood; and
- the need to avoid adverse impacts on the marine environment, to preserve biodiversity, to maintain the

integrity of marine ecosystems and to minimise the risk of long-term or irreversible effects of fishing operations; and

- any relevant international obligations or bilateral or multilateral agreements of the Republic, or applicable rules of international law, relating to the exercise of jurisdiction of the Republic in fisheries waters; and
- any fisheries and marine resources policy of the Republic; and
- any Fishery Strategy drawn up in accordance with this Act

Section 5 Particular principles are to be applied to the exercise of powers under this Act relating to foreign persons and boats, and these are

—

- whether the state to which that person or boat belongs has cooperated with the Republic in, and made substantial contributions to, the development of Nauru's fishing industry, fishery research and the identification and management of fishing resources; and
- any rights of a reciprocal nature granted to Nauruan citizens or boats by that state; and
- whether that state, its fishing associations and its fishing boats have cooperated with the Republic in the enforcement of fishing laws, the undertaking of flag state responsibility and the conservation and management of fishing resources, including the provision of information for those purposes; and
- whether, and to what extent, the fishing boats of that state have traditionally engaged in such fishing; and
- the good standing or otherwise of any foreign boat involved; and
- any relevant international, regional or sub-regional obligations of the Republic, or applicable rules of international law, relating to the exercise of jurisdiction of the Republic over any part of fisheries waters

Section 6 Provision is made in relation to conventions, treaties, agreements and arrangements providing for access to the fisheries waters and the right to fish in accordance with such arrangements.

Section 7 Provision is made for the provision and exchange of information about the fisheries. This is a responsibility of the CEO and shall be in accordance with any applicable international, regional or sub-regional arrangements.

Section 8 Comprehensive provision is made in relation to access agreements applying to the fisheries.

- Section 9 The Minister, acting on the advice of the Authority, may determine the total allowable catch in respect of the fisheries waters, or part of them. The maximum number of licences can be fixed by the Minister, acting on the advice of the Authority.
- Section 10 The Minister may require that the Authority draw up a Fishery Strategy for any fishery. Procedures applying to such Strategies are prescribed.
- Section 11 The Minister may, by notice in the Gazette, prohibit fishing or fisheries activity by any one or more of the following –
- by species, sub-species, class or type of fish;
  - by size, weight or dimensions of fish or of parts of fish;
  - by age or growth stage of fish;
  - by limits set on catches, fishing efforts, the number of persons who may engage in the fishing or fisheries activity or any other related matters;
  - in a specified area of water or at a specified place;
  - by class or type of boat;
  - by fishing method;
  - by the use, carrying on board a boat or possession of a class, type, size or quantity of fishing equipment, navigational or safety equipment or equipment used in connection with a fisheries activity;
  - by the failure to use, carry on board a boat or possess a class, type, size or quantity of fishing equipment, navigational or safety equipment or equipment used in connection with a fisheries activity;
  - by class, type, category or manner of conduct of a fisheries activity;
  - by time, date or season, or by period, or indefinitely;
  - by class or category of persons
- Section 12 The CEO has power to register boats and grant certificates of registration, permits, licences and other authorizations in accordance with this Act. Deeming provisions apply to vessels which are licensed in accordance with a Regional Licensing Arrangement.
- Part II Deals with monitoring and enforcement, including provision for –
- observers (section 13)
  - authorised officers (section 14)
  - deeming all offences to be cognizable offences under the Criminal Procedure Act (i.e an arrest can be made without a warrant) (section 16)



- powers of authorized officers (section 17)
- seizure of boats, vehicle and aircraft (section 18)
- immobilization of boats, vehicles and aircraft (section 19)
- disposal of seized fish and other things (section 20)

Part III Prescribes a range of offences, including –

- breach of fishing prohibitions (section 22)
- fishing without or in breach of a licence (section 23)
- foreign boats in fisheries waters (section 24)
- ban on driftnet fishing (section 25)
- import of illegally taken fish (section 26)
- obstruction of authorized officers and observers (section 27)

Part IV Makes provision in relation to dealing with offences, including –

- liability of masters and others (section 28)
- offences triable in the District Court (section 29)
- jurisdiction of the court (section 30)
- evidence by certificate (section 31)
- presumptions (section 32)
- forfeiture of boats and other property (section 33)
- compensation for loss and damage may be awarded (section 34)
- costs in fisheries prosecutions ( section 35)
- cancellation of licences (section 36)
- dealing with seized boats and things (section 37)

Section 42 Cabinet may make regulations, and these may particularly relate to –

- the means of determining the total allowable catch either generally or in respect of an individual fishery, the maximum sustainable yield of fish, precautionary reference points, fishing quotas, fishery areas, licence priorities and quotas and related matters, and determining those matters; and
- the grant, conditions, suspension and cancellation of licences, permits and other authorisations to engage in or use a boat for fishing or a fisheries activity; and
- the registration and marking of boats used for fishing and fishing equipment; and
- regulating the conduct of fishing and fisheries activities; and
- regulating, controlling and managing research, surveys, study and education regarding fish, fisheries resources and the marine environment; and
- the identification of officers authorised to perform duties under this Act; and

- the monitoring and surveillance of fishing and fishing activities and the gathering, storing and use of information regarding boats, fishing and fisheries activities, including its use as evidence in proceedings under this Act; and
- the seizure, custody, dealing with and disposal of any boat, fish or other thing under this Act; and
- service in actions, the giving of evidence in proceedings, presumptions which may arise in or in relation to proceedings, and any other procedural matters, in any proceedings under this Act; and
- the sale or disposal of unclaimed fishing equipment found in any waters; and
- the furnishing of returns containing information in relation to fishing, fisheries activities; and
- any fees, charges, taxes, royalties, bonds or securities payable in respect of any matter under this Act; and
- prescribing penalties of fines not exceeding \$100,000 for offences against the regulations; or offences against any provision of the Act for which no penalty is provided.

## FISHERIES REGULATIONS 1998

*Year passed: 1998*

*Administered by the Nauru Fisheries and Marine Resources Authority*

### Main objects

To provide for the registration and licensing of fishing vessels, and other matters under the Fisheries Act.

### Relevance to this Review

Conditions applying to fishing vessel licences can impose requirements aimed at conserving the fish resource. Other aspects of these regulations are important in the context of the conservation and proper management of Nauru fisheries.

### Substance of the relevant provisions

- |               |  |
|---------------|--|
| Part II       | Makes provision for the registration of small boats.   |
| Part III      | Makes provision in relation to the licensing of fishing boats and fishing activities.                                |
| Regulation 27 | Imposes a range of conditions on foreign and national boats which are licensed in accordance with these Regulations. |

Regulation 28	Conditions relate to automatic location communicators
Regulations 29	Deals with game fishing licences.
Regulation 30	Conditions relate to game fishing licences.
Part IV	Deals with approvals for fishing research, including provisions for – <ul style="list-style-type: none"> <li>• research plans (regulation 31)</li> <li>• research permits (regulation 32)</li> <li>• conditions on research permits (regulation 33)</li> </ul>
Regulation 41	Using explosives and poisons in a fishing activity is an offence. A fine not exceeding \$5,000 may be imposed.
Regulation 42	The CEO must approve the placing of any fish aggregating device.
Regulation 43	It is an offence to import live fish into Nauru, or to introduce any non-indigenous fish without the approval of the CEO, and in accordance with any conditions imposed by the CEO.
Regulation 44	The Minister may declare the price and range of prices of fish for sale, the method of sale and the premises at which fish may be sold.
Regulation 45	Any person who is fishing or engaged in any fishing activity may be required to furnish information relating to the activity to the CEO.

### **4.5.3 Mining and minerals**

No laws have been identified which provide generally for the regulation of mining and related activities. It is however retained in this Review so that any relevant laws can be noted if they are enacted in the future.

### **4.5.4 Water resources**

No laws have been identified which could be considered to fall into this category. It is however retained in this Review so that any relevant laws can be noted if they are enacted in the future. An Environment Management Act might make such provision.

## **4.6 Control of transboundary movements**

CUSTOMS ORDINANCE 1921 – 1941  
(TERRITORY OF NEW GUINEA)

*Year passed: 1921*  
*Date of effect: 28<sup>th</sup> October 1921*  
*Administered by the Chief Collector of Customs*

### Main objects

To provide for the regulation and collection of customs.

### Relevance to this Review

Customs laws have implications relating to transboundary movements.

### Substance of the relevant provisions

- Section 5 The Chief Collector of Customs shall be the Head of Customs and shall have chief control of the Customs.
- Section 25 All goods on board any ship, boat or aircraft from parts beyond the seas shall be subject to the control of Customs whilst it is within the limits of Nauru.
- Section 26 The control of Customs includes the right of Customs to examine all goods subject to its control.
- Section 29 Goods imported through the Post Office are subject to the control of Customs.
- Part IV Makes comprehensive provision in relation to the importation of goods.
- Section 44 It is an offence to import any prohibited imports.
- Section 46 The following are included in the list of prohibited imports –
- copies that are in breach of foreign copyrights
  - counterfeit monies
  - blasphemous, indecent and obscene works or articles
  - goods produced in prisons
  - adulterated tea
  - margarine and butter substitute unless coloured and branded
  - goods with false warranties etc.
  - opiates
  - all goods the importation of which is prohibited by proclamation of the Administrator (see section 49)

- Section 47 Spirits and tobacco products may only be imported in the prescribed packages.
- Section 49 The power of prohibiting importation of goods shall authorize prohibition subject to any specified conditions or restrictions, and goods imported contrary to any such condition or restriction shall be prohibited imports.
- Part V Comprehensive provision is made in relation to warehouses and to the warehousing of goods.
- Part VI Provision is made in relation to the export of goods.
- Section 100 No prohibited exports may be exported.
- Section 101 The Administrator may by proclamation prohibit the exportation of any goods –
- being arms, explosives, military stores
  - the export of which in his opinion would be harmful to Nauru
  - the prohibition of which is necessary for the preservation of flora and fauna of Nauru
  - which do not conform to prescribed conditions of purity and soundness and freedom from disease
  - the prohibition of which is necessary for the protection of the revenue of the prevention of fraud or deception.

A prohibition may authorize the prohibition of the exportation of goods generally or to any specified place, and either absolutely or so as to allow the exportation of the goods subject to any condition or restriction.

## AGRICULTURAL QUARANTINE ACT 1999

Year passed: 1999 (No. 5)

Date of effect: 1<sup>st</sup> January 1931

Administered by

### Main objects

To provide for the protection of plants, animals and public health and the protection, development and utilization of natural resources and the environment by preventing the introduction and spread of diseases and pests

### Relevance to this Review

Effective quarantine requirements and procedures are an fundamental aspect of border control.

### Substance of the relevant provisions

- Part II            Makes provision for the appointment and powers of Quarantine Officers.
- Part III           Makes provision for quarantine management, including matters related to –
- Declarations, restrictions and prohibitions (section 8)
    - Importations of animals, animal products, plant material and other goods, any articles likely to introduce disease, and disease agents
    - Declaration of quarantinable diseases and pests
    - Declaration of restricted areas
    - Declaration of infected places
    - Declaration of countries to be free of diseases and pests
    - Procedures for dealing with ballast waters
    - Declaration of places for examination and testing
    - Prohibition and regulation of exports
  - Permission to import disease agents for biological control or research purposes. (section 9)
  - Declaration of precautionary measures to be taken by ships and aircraft coming from certain places (section 10)
  - Prohibitions of goods from certain places (section 11)
- Part IV            Makes comprehensive provision in relation to examination and quarantine requirements, including provision for –
- Entry by vessels and aircraft (section 12)
  - Restricted areas (section 13)
  - Questions and declarations (section 14)
  - Examination upon entry (section 15)
  - Health certificates (section 16)
  - Importation of live animals (section 17)
  - Goods and cargo in transit (section 18)
  - Notification of disease or infestation (section 19)
  - Examination of plants and animals within Nauru (section 20)
  - Quarantine orders (section 21)
- Part V            Deals with Quarantine Emergencies, including provision relating to –
- Declaration of quarantine emergencies (section 22)
  - Action in cases of emergencies (section 23)

- Part VI Powers are given in relation to –
- Prohibiting exports (section 24)
  - Exports of plants (section 25)
  - Export of animals (section 26)

Note: The following is a model law drafted by the SPC in recent years for possible application by all Pacific Island countries. It has not been ascertained that this Bill is currently being considered for enactment in Nauru. However given its importance to the effective control of the transboundary movement of many substances and things regulated by a range of international conventions, it is noted here as a law that should be considered for adoption by the Government of Nauru, as has been done by some neighbouring countries.

#### [BIOSECURITY BILL 2004

##### Main objects

To protect the health, environment and agriculture of Nauru and to facilitate trade in its animal and plant products.

##### Relevance to this Review

This draft law seeks to make comprehensive provision for biosecurity related issues and processes, and to harmonise these in the region.

##### Substance of relevant provisions

Section 2 There are definitions given to “environment”, “export”, “import”, “fish”, “living organism” and “organism” which should be harmonised with those given in related laws. There is no definition of “living modified organism”. “Regulated articles” include all living organisms, whether modified or not.

“Pest risk analysis” or “PRA” is defined but does not appear to be referred to in any substantive provision.

Section 3 The purposes of the law are stated to be –

- controlling the introduction and spread of new pests and diseases affecting plants and animals;
- controlling those pests and diseases affecting plants and animals that are already present in Nauru;
- providing for the safe import and export of animals and animal products and plants and plant products;

- facilitating cooperation in the prevention of the international movement of pests and diseases affecting plants and animals.

There is no application of a precautionary principle.

- Section 7 This law is in addition to any other regulatory law and does not derogate from the application of any such law.
- Section 9 All regulated articles must be declared and submitted for biosecurity control when being brought into Nauru.
- Section 10 Articles may be designated as prohibited articles if they present and unacceptable biosecurity risk to Nauru.
- Section 11 Pests and diseases may be designated as prohibited.
- Section 14 Articles may be exempted from biosecurity control if they pose no biosecurity risk.
- Part 3 Makes comprehensive provision for import and export permits.
- Section 19 Certain exemptions apply, including for goods in transit
- Section 21 Provision is made for export permits, and conditions may be imposed.
- Section 27 Prescribes the duties of importers and exporters to, inter alia, declare goods and make them available for inspection.
- Section 28 Duties are imposed on masters and captains to permit inspections and to file documents.
- Section 29 Restrictions are placed on the disposal at sea of garbage and ballast.
- Part 5 Prescribes the powers of biosecurity officers.
- Section 44 Powers to order destruction or reconsignment are given.
- Part 6 Makes comprehensive provision in relation to the internal control of pests.
- Section 53 The Minister, after receipt of appropriate scientific advice and with the authorisation of Cabinet, may in writing approve the release of



beneficial organisms or biocontrol agents to control or eradicate particular pests or diseases in Nauru.

- Part 7 Makes comprehensive provision for the declaration of biosecurity emergencies, including the making of emergency regulations.
- Part 8 Makes comprehensive provision for the establishment of a National Biosecurity Service.
- Section 58 The office of Director of Biosecurity is established as a position in the public service.
- Section 59 Provides for the appointment of biosecurity officers.
- Part 9 General provision is made for the administration of the Act, including the need to consult broadly in relation to its implementation and any regulations made under it.
- Section 66 Obliges a range of public officials, including environment officers to cooperate in the implementation of this Act.
- Part 11 Makes provision for matters aimed at facilitating international cooperation.
- Section 80 Regulation making powers are vested in the Minister.]

#### **4.7 RECOGNITION AND PROTECTION OF CULTURE AND TRADITIONAL INSTITUTIONS AND VALUES**

##### NAURU ANTIQUITIES ORDINANCE 1935

*Year passed:* 1935

*Date of effect:* 23<sup>rd</sup> February 1935

*Administered by*

##### Main objects

To provide for the protection of Nauru antiquities, relics, curios and article of ethnological and anthropological interest and scientific value.

##### Relevance to this Review

This law is out of date but has application to the protection of matters of cultural importance to Nauru.

##### Substance of the relevant provisions

- Section 2 "Nauru Antiquities" includes Nauru relics and curios and articles of ethnological and anthropological interest or value and articles manufactured by the natives according to Nauru methods and historical remains of any description, and such other articles or things of historical or scientific value or interest and relating to Nauru as may be prescribed.
- Section 3 The Administrator (now to be read as the President) may acquire "on behalf of the Crown" (now to be read as the Government) such Nauru antiquities as he deems expedient, and provide for their safe custody.
- Section 4 No person may remove a Nauru antiquity from Nauru without first offering them for sale at a reasonable price to the Administrator.
- Section 5 It is an offence to export or ship for export any Nauru antiquity without the express permission of the Administrator. The fine is up to 5 pounds. 24 hours notice of such an export must be given. Any antiquities that are entered or shipped for export in contravention of this section shall be forfeited to the Crown.
- Section 6 The Collector of Customs and the Officer in Charge of Police are to seize any antiquity shipped in contravention of this law.
- Section 7 An Order may be made to specifically forbid the acquisition of any specified antiquity.
- Section 8 There is an obligation to report the discovery of –
- Caves or other places in which ancient remains, human or other are to be found; or
  - Representations on rocks or in caves of living beings or inanimate objects; or
  - Deposits of historical remains of any description; or
  - Places used in former times as ceremonial or initiation grounds
- Section 9 Conditions may be placed on the export of any antiquity to provide for their replication by an appropriate means.
- Section 10 The Administrator may appoint a Board to resolve any dispute as to whether an antiquity is in fact covered by the provisions of this law.
- Section 11 Regulations may be made, and these may specifically deal with –

- The duties and powers of the Collector of Customs and the Officer in charge of Police in enforcing the provisions of this Ordinance.
- The constitution of the Board and the procedure thereof for settling disputes under this Ordinance relating to the acquisition and payment for Nauru antiquities.
- Penalties not exceeding Ten pounds (£10) for the breach of any regulation

#### **4.8 PUBLIC AWARENESS AND PARTICIPATION (INCLUDING THE INVOLVEMENT OF THE PRIVATE SECTOR)**

No laws have been identified which could be considered to fall into this category. It is however retained in this Review so that any relevant laws can be noted if they are enacted in the future. An Environment Management Act might make such provision.

#### **4.9 OTHER REGULATORY REGIMES**

##### **4.9.1 Physical Planning**

No laws have been identified which could be considered to fall into this category. It is however retained in this Review so that any relevant laws can be noted if they are enacted in the future.

##### **4.9.2 Building Controls**

No laws have been identified which could be considered to fall into this category. It is however retained in this Review so that any relevant laws can be noted if they are enacted in the future.

##### **4.9.3 Business and Commerce**

LICENCES ORDINANCE 1922 - 1978

*Year passed:* 1967 (No. 12)

*Date of effect:* 29<sup>th</sup> May 1967

*Amended:* 1978

*Administered by*

Main objects

To make provision for the licensing of prescribed businesses, firearms, dogs and pigs.

#### Relevance to this Review

This law makes provision for the licensing of animals. In other respects it is of marginal relevance.

#### Substance of the relevant provisions

- Section 3 Every person in business of the nature specified in the Schedule must hold a licence under this law.
- Section 5 Each licence must state the premises, building or vessel in respect of which it has been issued.
- Section 6 Specific approval from the Administrator must be obtained for a business to deal in wines, spirits and beer.
- Section 7 A store licence does not authorize the sale of firearms, ammunition and explosives.
- Section 11 All persons having possession of any firearm must have them registered each year.
- Section 12 All dog owners must register their dogs. (repealed??)
- Section 13 All boars over the age of 3 months must be licensed.

#### **4.10 REGIONAL AND INTERNATIONAL COOPERATION AND HARMONISATION OF ARRANGEMENTS**

No laws have been identified which could be considered to fall into this category. It is however retained in this Review so that any relevant laws can be noted if they are enacted in the future. An Environment Management Act might make such provision.