

## NIUE CONSTITUTION ACT 1974

Act 42 of 1974 (NZ) – 19 October 1974

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An Act to make provision for self-government by the people of Niue, and to provide a constitution for Niue

29 August 1974

1. Short Title and commencement

(1) This Act may be cited as the Niue Constitution Act 1974.

(2) This Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General, by Proclamation.

[This Act came into force on 19 October 1974. See the Niue Constitution Act Commencement Order 1974 (S.R. 1974/286)]

2. Application to Niue

This Act shall extend to Niue as part of the law of Niue.

3. Niue to be self-governing

Niue shall be self-governing.

4. Constitution of Niue

(1) The Constitution set out in its Niuean language version in the First Schedule to this Act and in its English language version in the Second

Schedule to this Act shall be the Constitution of Niue (in this Act called the Constitution), and shall be the supreme law of Niue.

(2) Where the Constitution provides that any New Zealand Court or Department of Government or statutory authority shall perform any function or exercise any power in relation to Niue, that Court, or, as the case may be, the officers of that Department or the members and staff of that authority are by this Act authorised and required to perform that function or exercise that power in accordance with the Constitution.

#### 5. British nationality and New Zealand citizenship

Nothing in this Act or in the Constitution shall affect the status of any person as a British subject or New Zealand citizen by virtue of the British Nationality and New Zealand Citizenship Act 1948.

[see now Citizenship Act 1977]

#### 6. External affairs and defence

Nothing in this Act or in the Constitution shall affect the responsibilities of Her Majesty the Queen in right of New Zealand for the external affairs and defence of Niue.

#### 7. Economic and administrative assistance

It shall be a continuing responsibility of the Government of New Zealand to provide necessary economic and administrative assistance to Niue.

#### 8. Co-operation between New Zealand and Niue

Effect shall be given to the provisions of sections 6 and 7 of this Act, and to any other aspect of the relationship between New Zealand and Niue which may from time to time call for positive co-operation between New Zealand and Niue after consultation between the Prime Minister of New Zealand and the Premier of Niue, and in accordance with the policies of their respective Governments; and, if it appears desirable that any provision be made in the law of Niue to carry out these policies, that provision may be made in the manner prescribed in the Constitution, but not otherwise.

#### 9. New Zealand Representative

(1) There shall be appointed under the State Services Act 1962 a New Zealand Representative in Niue.

(2) The New Zealand Representative shall be stationed in Niue, and shall be the representative of the Government of New Zealand in Niue.

[The State Services Act 1962 was repealed and replaced by the State Sector Act 1988]

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## CONSTITUTION OF NIUE

### PART I THE EXECUTIVE GOVERNMENT OF NIUE

1. Executive authority vested in the Crown

The executive authority of Niue is vested in Her Majesty the Queen in right of New Zealand, and the Governor-General of New Zealand is accordingly the representative of Her Majesty the Queen in relation to Niue.

#### The Cabinet

2. Cabinet of Ministers of Niue

(1) There shall be a Cabinet of Ministers of Niue (hereinafter referred to as the Cabinet) which shall consist of the Premier of Niue (who shall be a member of the Niue Assembly) and 3 other members of the Niue Assembly.

(2) Subject to this Constitution, the executive authority of Niue may be exercised on behalf of Her Majesty by the Cabinet, which shall have the general direction and control of the executive government of Niue, and shall have such other functions and powers as are conferred on it by law.

3. Ministers to be collectively responsible

(1) The members of the Cabinet (hereinafter referred to as Ministers) shall be collectively responsible to the Niue Assembly.

(2) Subject to Article 7 of this Constitution, the Ministers shall continue in office until their successors are appointed pursuant to Article 5 (2) of this Constitution.

#### 4. Premier of Niue

(1) There shall be a Premier of Niue, who shall be elected to that office by an absolute majority of the members present and voting at a meeting of the Niue Assembly.

(2) The Niue Assembly shall proceed to elect the Premier at the first meeting of the Assembly after a general election, and also in each of the following circumstances:

(a) If the Premier ceases to be a member of the Assembly for any reason other than the dissolution thereof; or

(b) If the Premier tenders his resignation by writing under his hand addressed to the Speaker or is deemed to have tendered his resignation pursuant to Article 6(3) or Article 7(3) of this Constitution.

#### 5. Appointment of Ministers after election of Premier

(1) As soon as practicable after his election to that office, the Premier elect shall nominate to the Speaker, with their consent, 3 other members of the Niue Assembly for appointment as Ministers.

(2) Upon receiving those nominations, the Speaker shall appoint as Ministers the Premier elect and the members so nominated.

(3) Appointments under subclause (2) of this Article shall be made by the Speaker by instrument under the Seal of Niue.

(4) If the Premier elect has not within 7 days after but excluding the date of his election to that office submitted to the Speaker his nominations for appointments to the Cabinet pursuant to this Article, his election to that office shall have no effect, and, subject to Article 26 (1) (d) of this Constitution, a meeting of the Niue Assembly shall be held as soon as practicable for the purpose of again electing a Premier.



## 6. Vote of confidence in Cabinet

(1) At any meeting of the Niue Assembly-

(a) The Premier, or another Minister acting on behalf of the Premier, may give notice of his intention to move a vote of confidence in the Cabinet, either generally or on any measure proposed by the Cabinet for adoption by the Assembly;

(b) Any 4 or more members of the Assembly who are not Ministers may give notice of their intention to move a vote of no confidence in the Cabinet.

(2) Any motion of which notice is given under subclause (1) of this Article shall be voted on at a meeting of the Niue Assembly held not earlier than 5 days nor later than 10 days after but excluding the date of the giving of the notice.

(3) If the motion of confidence is lost, or, as the case may be, the motion of no confidence is carried, the Premier shall be deemed to have tendered his resignation from his office at the expiration of 5 days after but excluding the date of the meeting of the Niue Assembly, unless before the expiration of that period he requests the Speaker to dissolve the Assembly.

## 7. Vacation of office by Ministers

(1) Any Minister, other than the Premier, shall vacate his office if-

(a) His appointment to that office is revoked by the Speaker, acting on the request of the Premier, by instrument under the Seal of Niue; or

(b) He ceases to be a member of the Niue Assembly for any reason other than the dissolution thereof; or

(c) He resigns his office by writing under his hand delivered to the Speaker.

(2) Within 7 days after the occurrence of any vacancy in the office of Minister, other than the Premier, the Premier shall nominate to the Speaker, with the consent of the member, a member of the Niue Assembly for appointment as a Minister, and the Speaker shall by instrument under the Seal of Niue appoint the member so nominated.

(3) If the Premier does not, within 7 days after but excluding the date of the occurrence of a vacancy in the office of a Minister, other than the Premier, nominate a Minister pursuant to subclause (2) of this Article, he shall be deemed to have tendered his resignation from his office as Premier at the expiration of that period of 7 days.

## 8. Temporary Ministers

(1) Whenever it appears to the Premier that any Minister will, by reason of illness or absence from Niue, be unable to discharge his functions in Niue for a period of 7 days or longer, the Premier shall nominate to the Speaker, with the consent of the member, a member of the Niue Assembly for appointment as a temporary Minister, and the Speaker shall, by instrument under the Seal of Niue, appoint that member accordingly.

(2) Every such temporary Minister shall be appointed in place of the Minister who is unable to discharge his functions in Niue, and, subject to subclause (3) of this Article, shall hold office, as if he had been appointed under Article 5 of this Constitution.

(3) Every such temporary Minister, unless he sooner vacates his office pursuant to Article 7 of this Constitution, shall remain in office until the Minister in whose place he is appointed is again able to discharge his functions in Niue.

## 9. Acting Premier

(1) Whenever, by reason of illness or absence from Niue, the Premier is temporarily prevented from discharging his functions in Niue, the Speaker, acting on the request of the Cabinet, may, by instrument under the Seal of Niue, appoint another Minister to discharge the functions of Premier until such time as the Premier is capable of again discharging his functions or has vacated his office.

(2) Where the Premier dies or tenders his resignation to the Speaker after a dissolution of the Niue Assembly and before the appointment of the Ministers after the general election following that dissolution, the Speaker, acting on the request of the Cabinet, shall, by instrument under the Seal of Niue, appoint another Minister to discharge the functions of Premier until the Ministers are appointed after that general election.

## 10. Official oath

Every Minister shall, before assuming the functions of his office, take and subscribe before the Speaker the following oath:

I,....., being chosen and accepted as Premier of Niue (or a Minister), swear by Almighty God that I will to the best of my judgment, at all times when thereto required, freely give my counsel and advice for the good management of the affairs of Niue, and that I will not directly or indirectly reveal such matters as may be debated in the Cabinet or any committee of the Cabinet and committed to my secrecy, but that I will in all such things be a true and faithful Premier of Niue (or Minister). So help me God.

## 11. Allocation of responsibilities to Ministers

(1) The Premier shall from time to time, by writing under his hand countersigned by the Clerk of the Cabinet and published in the Niue Gazette, allocate to any Minister (including himself) the primary responsibility for any Department or function of Government, and may from time to time in like manner vary any such allocation

(2) The Premier shall have the primary responsibility for any Department or function of Government in respect of which, for the time being, no allocation under subclause (1) of this Article is in effect.

## 12. Meetings of Cabinet

(1) No business shall be transacted at any meeting of the Cabinet unless at least 3 Ministers are present.

(2) The Cabinet shall not be disqualified for the transaction of business by reason only that there is a vacancy among its members, or that, in any case where Article 8 of this Constitution applies, no appointment has been made pursuant to that Article. No proceedings of the Cabinet shall be questioned on the ground that some person who acted as a Minister in relation to those proceedings was not qualified so to act.

(3) Notice of every meeting of the Cabinet and a copy of every paper to be considered at that meeting shall be given to each Minister, and to the Secretary to the Government.

(4) The Secretary to the Government shall have the right to attend any meeting of the Cabinet and to speak on any matter under consideration by the Cabinet, and he shall so attend if required to do so by the Premier.

(5) The decision of the Cabinet on any matter shall be taken only by the Ministers present at a meeting of the Cabinet.

(6) Subject to this Article, the Cabinet shall regulate its own procedure in such manner as it thinks fit.

### 13. Rules, other enactments, and decisions of Cabinet

Any rule or other enactment of the Cabinet shall have effect, and any other decision of the Cabinet shall be duly authenticated, when that rule or other enactment, or the record of that decision, has been signed by the Premier, whether or not he was present at the meeting of the Cabinet at which the rule or other enactment or decision was made, and by the Clerk of the Cabinet.

### 14. Clerk of the Cabinet

There shall be an officer of the Niue Public Service to be called the Clerk of the Cabinet, who shall be responsible for arranging the business for, and keeping the minutes of, meetings of the Cabinet, and for conveying decisions of the Cabinet to the appropriate person or authority, and shall perform with respect to the Cabinet such secretarial and other functions as may be required.

### The Seal of Niue

### 15. Seal of Niue

(1) There shall be a Public Seal of Niue (in this Constitution referred to as the Seal of Niue), to be in such form or forms as the Cabinet from time to time approves.

(2) The Seal of Niue shall be in the custody of the Speaker.

(3) The Seal of Niue may be used by the Speaker for the authentication of any public document in relation to the Government of Niue or for the execution of any document required by law to be executed under the Seal of Niue.

(4) Judicial notice shall be taken of the Seal of Niue in all Courts.

## PART II THE LEGISLATIVE GOVERNMENT OF NIUE

The Niue Assembly

16. Niue Assembly

(1) There shall be in and for Niue a legislative Assembly to be called the Niue Assembly.

(2) The Niue Assembly shall consist of—

(a) The Speaker; and

(b) Twenty members to be elected by secret ballot under a system of universal suffrage in the following manner:

(i) Fourteen members, each of whom shall represent a village constituency, shall be elected by the electors of that constituency;

(ii) Six members shall be elected by the persons qualified to be electors of Niue voting on a common roll, which, for the purpose of electing those members, shall comprise the rolls of the several village constituencies.

(3) Subject to this Article and to Articles 17, 18, 19, 24, and 25 of this Constitution, the boundaries of village constituencies, the qualifications and disqualification of electors and of candidates, the mode of electing members of the Niue Assembly, and the terms and conditions of their membership shall be as prescribed by law:

Provided that—

(a) There shall be 14 village constituencies; and

(b) Every person qualified to be an elector for the election of members of the Niue Assembly shall be entitled to vote in one, and one only, village constituency; and

(c) Any determination or redetermination of the boundaries of any village constituency shall, so far as practicable, having due regard to local community interest, be made in accordance with the principle that the number of electors in that village constituency should not be substantially greater

or smaller than the number of electors in any other village constituency.

(4) Unless the context otherwise requires, every reference in this Constitution to a member of the Niue Assembly shall be construed as a reference to a member elected pursuant to subclause (2) (b) of this Article, and shall, in any case where the Assembly has been dissolved, be read as a reference to a person who was a member of the Assembly immediately before that dissolution.

## 17. Nationality and residential qualifications of electors and candidates

(1) Without limiting the provisions of any law prescribing any additional qualifications, a person shall be qualified to be an elector for the election of members of the Niue Assembly, or to be a candidate at any such election, if, and only if, that person-

(a) Is either-

(i) a New Zealand citizen; or

(ii) A permanent resident of Niue as defined by Act; and,

(b) Has been ordinarily resident in Niue throughout the period of 12 months immediately preceding an application for enrolment as an elector or, as the case may be, nomination as a candidate.

This section was amended by s 2 of the Constitution Amendment (No. 1) Act of 1992

(2) For the purposes of this Article, a person shall be deemed to be ordinarily resident in Niue if, and only if,-

(a) He is actually residing in Niue; or

(b) Having been actually resident in Niue with the intention of residing there indefinitely, he is outside Niue but has, and has had ever since he left Niue, an intention to return and reside there indefinitely:

Provided that any person who has been outside Niue continuously for any period of more than 3 years shall be deemed not to have such an intention, unless during the whole or substantially the whole period of that absence he was undergoing a course of education or of technical training or instruction, or

was in the service of the Government of Niue.

#### 18. Public servants may become candidates or be elected

(1) Employees of the Niue Public Service who become candidates for election as members of the Niue Assembly shall be granted leave of absence for the purposes of their candidature in accordance with such terms and conditions as may be prescribed by law.

(2) If any such employee is elected as a member of the Assembly, he shall, on being declared so elected, be deemed to have been granted leave of absence without salary from his employment in the Niue Public Service for the period during which he is a member.

#### 19. Members disqualified from becoming public servants or interested in Government contracts

The seat of any member of the Niue Assembly shall become vacant—

(a) If he becomes an employee of the Niue Public Service, or, being an employee of that Service at the time of his election, he accepts paid employment in that Service; or

(b) If he otherwise becomes interested in the execution or enjoyment of any contract under which any public money is payable, except to such extent as may be permitted by law.

#### 20. Speaker of Niue Assembly

(1) The Speaker of the Niue Assembly shall be elected to that office by an absolute majority of the members present and voting at a meeting of the Niue Assembly.

(2) Only a person who is qualified for election as a member of the Niue Assembly may be elected as Speaker.

(3) If any person elected as Speaker is, at the time of that election, a member of the Niue Assembly, he shall vacate his office as a member when he enters upon the duties of the office of Speaker.

(4) The election of the Speaker shall take place, before the dispatch of any

other business, at the first meeting of the Assembly after each general election, and, at a meeting of the Assembly called for that purpose, as soon as possible after any vacancy in the office of Speaker has occurred.

(5) Before a person who has been elected Speaker enters upon the duties of his office, he shall take and subscribe before the Clerk of the Niue Assembly at a meeting of the Assembly the Oath of Allegiance prescribed in Article 21 of this Constitution, and the provisions of that Article shall apply with the necessary modifications as if the references therein to a member were a reference to the Speaker.

(6) The Speaker may resign his office by writing under his hand addressed and delivered to the Clerk of the Niue Assembly, and shall vacate his office—

(a) On the entry into office of a new Speaker elected when the Assembly first meets after a general election; or

(b) If he ceases to be qualified for election as a member of the Assembly; or

(c) If he becomes a candidate at any election of a member or members of the Assembly.

(7) If at any meeting of the Assembly the Speaker is absent or the office of Speaker is vacant, the members of the Assembly present at that meeting shall elect one of their number, not being a Minister, to preside over that meeting until the Speaker is again present, or, as the case may be, until a Speaker has been elected and has entered upon the duties of his office.

(8) If, at any time when the Assembly is not meeting, the Speaker is, by reason of illness or absence from Niue, temporarily prevented from performing his functions, or the office of Speaker is vacant, then, until the Assembly again meets, or, as the case may be, the Speaker is again able to perform his functions, those functions shall be performed by a member of the Assembly, not being a Minister, who has presided over a meeting of the Assembly pursuant to subclause (7) of this Article. If more than one member of the Assembly is so qualified and is available to perform the functions of the Speaker, those functions shall be performed by the member who most recently presided over a meeting of the Assembly, pursuant to that subclause.

(9) If it appears that no person is, for the time being, qualified and available to perform the functions of the Speaker,—

(a) A meeting of the Assembly shall be called as soon as possible, and the Clerk of the Niue Assembly shall perform such of the functions of the Speaker as are required to be performed for the purpose of enabling that meeting to be



held, and the provisions of Article 22 (6) of this Constitution shall not apply to that meeting; or

(b) In any case where the Assembly has been dissolved and the ensuing general election has not taken place, a meeting of those persons who were members of the Assembly immediately before its dissolution shall be called as soon as possible for the purpose of electing one of their number to perform the functions of the Speaker until the Speaker is again able to perform his functions, or, as the case may be, the new Assembly first meets; and the Clerk of the Niue Assembly shall do everything necessary to ensure that the meeting is called and to certify to the result of the election. The person elected shall, for the purpose of subclauses (7) and (8) of this Article, be deemed to be a person who has presided over a meeting of the Assembly.

(10) Every document, including the certificate on any Bill, signed by the Speaker in the performance of his functions shall be counter-signed by the Clerk of the Niue Assembly, and, where, pursuant to this Article, any such document or certificate is signed by a member performing the functions of the Speaker. it shall be so stated on the document or in that certificate.

## 21. Members to take Oath of Allegiance

Except for the purpose of enabling this Article to be complied with and for the election of a Speaker, no member of the Niue Assembly shall be permitted to sit or vote therein until he has taken and subscribed the following oath before the Speaker namely:

I,....., swear by Almighty God that I will be faithful and bear true allegiance to Her (or His) Majesty [Specify the name of the reigning Sovereign, as thus: Queen Elizabeth the Second], Her (or His) heirs and successors, according to law, and that I will justly and faithfully carry out my duties as a member of the Niue Assembly. So help me God.

## 22. Procedure of Niue Assembly

(1) The Niue Assembly shall meet at such places and at such times as the Speaker, acting on the request of the Premier, from time to time appoints in that behalf:

Provided that, if more than 6 weeks has elapsed since the time of the last meeting of the Assembly, any 4 or more members of the Assembly who are not Ministers may request the Speaker to appoint a place and time for a meeting of

the Assembly, and the Speaker shall appoint a place and time in that behalf, such time to be not earlier than 5 days nor later than 10 days after but excluding the date of the making of the request.

(2) The Speaker shall preside at every meeting of the Niue Assembly at which he is present.

(3) Except where this Constitution otherwise provides, every question before the Niue Assembly shall be decided by a majority of the votes of the members present.

(4) Subject to any law requiring any member of the Assembly to refrain from voting on any matter concerning a contract in whose execution and enjoyment he is interested, every member present when any question is put to the Niue Assembly shall vote thereon.

(5) The Speaker or other presiding officer shall not have a casting vote and the Speaker shall not have a deliberative vote, but a member presiding in place of the Speaker shall have a deliberative vote.

(6) Subject to Article 20(9) (a) of this Constitution, no business shall be transacted at any meeting of the Niue Assembly if the number of members then present, including any member presiding in place of the Speaker, is less than 10.

(7) The powers of the Niue Assembly shall not be affected by any vacancy in its membership.

(8) No Bill shall be passed unless it has been read 3 times in the Assembly.

(9) Any Bill or other business before the Assembly at its dissolution shall lapse.

(10) Subject to this Constitution, the Niue Assembly may from time to time make Standing Orders for the regulation and orderly conduct of its proceedings and the despatch of business.

## 23. Languages

(1) The Speaker or any member of the Niue Assembly may speak in the Assembly either in the Niuean language or in the English language:

Provided that the Clerk of the Niue Assembly shall, at the request of the Speaker or of any member made through the Speaker, arrange for the remarks of

the Speaker or of any member to be translated into the English language or the Niuean language, as the case may be.

(2) Every Bill introduced into the Niue Assembly and every Act shall be in the Niuean language and also in the English language:

Provided that the Assembly may, by resolution, determine that any Bill or Act shall be in the Niuean language or the English language only.

(3) The records of proceedings in the Niue Assembly or in Committees thereof shall be in the Niuean language, and such of those records as are specified in the Standing Orders of the Assembly or as the Assembly may by resolution determine shall also be in the English language.

(4) The Niuean version and the English version of this Constitution and, subject to subclause (5) of this Article, the Niuean version and the English version of any record of proceedings in the Niue Assembly or any Committee thereof and of any enactment shall be equally authentic:

Provided that if in any case there is any apparent discrepancy between any provision of the Niuean version and of the English version of this Constitution or of any such record or of any enactment, then, in construing that provision, regard shall be had to all the circumstances that tend to establish the true intent and meaning of that provision.

(5) In the case of any record of proceedings in the Niue Assembly or any Committee thereof the Assembly may by resolution determine, and in the case of any enactment it may be expressly provided, that where there is any conflict between the Niuean version and the English version of any such record or of any such enactment, one version only, being either the Niuean version or the English version, shall prevail.

#### 24. Privileges of Niue Assembly and its members

(1) The validity of any proceedings in the Niue Assembly or in any Committee thereof, and the validity of any certificate duly given by the Speaker under Article 34 or Article 35 of this Constitution shall not be questioned in any Court.

(2) Neither the Speaker nor any member or officer of the Niue Assembly in whom powers are vested for the regulation of procedure or the conduct of business or the maintenance of order shall in relation to the exercise by him of any of those powers be subject to the jurisdiction of any Court.

(3) Neither the Speaker nor any member of the Niue Assembly nor any person entitled to speak therein shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Assembly or in any Committee thereof.

(4) No person shall be liable to any proceedings in any Court in respect of the publication by or under the authority of the Niue Assembly of any report, paper, vote, or proceeding.

(5) Subject to this Article, the privileges of the Niue Assembly and of the Committees thereof and the privileges of members and the Speaker of the Assembly and of the persons entitled to speak therein may be determined by Act; and any such Act may, subject to Article 31 of this Constitution, define offences relating to breach of privilege or contempt of the Assembly, and may make provision for the trial and punishment of such offences by the High Court, but not otherwise.

## 25. Remuneration of Premier, other Ministers, other members of the Niue Assembly, and the Speaker

(1) The Niue Public Service Commission may from time to time, and shall when there is a general alteration of the levels of remuneration of employees of the Niue Public Service, report and make recommendations to the Assembly as to the levels of remuneration and other entitlements of the Premier, other Ministers, the members of the Assembly who are not Ministers, and the Speaker.

(2) The Premier, the other Ministers, the members of the Niue Assembly who are not Ministers, and the Speaker may receive such remuneration and allowances and such other benefits as may be prescribed by Act.

(3) If, in the opinion of the Speaker, any Bill, or any amendment to any Bill, deals with a matter to which this Article relates, that Bill or that amendment may not be introduced unless—

(a) There is before the Assembly a report and recommendations made by the Niue Public Service Commission pursuant to this Article; and

(b) The issues raised by that Bill or by that amendment are, in the opinion of the Speaker, substantially similar to those considered in the Commission's report and recommendations.

## 26. Dissolution of Niue Assembly

(1) The Speaker shall, by notice in the Niue Gazette, dissolve the Niue Assembly—

(a) At the expiration of 3 years from the date of the last preceding general election, if it has not been sooner dissolved;

(b) At any time after the expiration of 2 years and 9 months from the date of the last preceding general election, if the Premier so requests;

(c) If, pursuant to Article 6 (3) of this Constitution, the Premier requests him to dissolve the Assembly;

(d) If a new election of Premier has been held pursuant to Article 5 (4) of this Constitution and that new election has become of no effect pursuant to that subclause.

(2) There shall be a general election of the members of the Niue Assembly at such time, being not less than 4 weeks nor more than 6 weeks after the date of every dissolution of the Assembly, as the Speaker shall, at the request of the Premier, appoint, or, if the Premier makes no such request within 7 days of any dissolution, as the Speaker, acting in his own discretion, shall appoint, by notice in the Niue Gazette.

## 27. Clerk of the Niue Assembly

(1) There shall be an officer of the Niue Public Service to be called the Clerk of the Niue Assembly, who shall be responsible for—

(a) Arranging the business and keeping the records of the proceedings of the Niue Assembly; and

(b) Arranging for the signing of documents and giving of certificates by the Speaker, whenever any signature or certification by the Speaker is required pursuant to this Constitution or to any enactment, and keeping the records of all documents and certificates so signed or given.

(2) The Clerk of the Niue Assembly shall perform with respect to the Speaker and to the members of the Assembly such secretarial and other functions as may be required.

## The Making of Laws

## 28. Power to make laws

- (1) Subject to this Constitution, the Niue Assembly may make laws for the peace, order, and good government of Niue.
- (2) The powers of the Niue Assembly shall extend to the making, in relation to Niue, of laws having extra-territorial operation, that is to say, affecting or concerning any person or matter or thing outside Niue or any act done or omitted outside Niue.
- (3) Without limiting the generality of the powers conferred by this Article, those powers shall include the power to repeal or revoke or amend or modify or extend, in relation to Niue, any law in force in Niue.
- (4) Except to the extent to which it is inconsistent with this Constitution, no Act and no provision of any Act shall be deemed to be invalid solely on the ground that it is inconsistent with any law in force.

## 29. Introduction of Bills, etc., into Niue Assembly

Subject to this Constitution and to the Standing Orders of the Niue Assembly, any member of the Assembly may introduce any Bill or propose any motion for debate in or present any petition to the Assembly, and the same shall be considered and disposed of in accordance with the Standing Orders.

## 30. Restrictions with regard to financial measures

Except with the recommendation or consent of the Premier or another Minister acting on behalf of the Premier, the Niue Assembly shall not proceed upon any Bill (including an amendment to any Bill) which, in the opinion of the Speaker, would dispose of or charge any of the public revenues of Niue, or revoke or alter, otherwise than by way of reduction, any disposition thereof or charge thereon, or impose or alter or abolish any toll, rate, due, fee, fine, or tax.

## 31. Special provisions with regard to measures affecting the criminal law or personal status

This section was repealed by s 3 of Constitution Amendment (No. 1) Act 1992

## 32. Special provisions with regard to measures affecting the Niue Public

## Service

(1) The Niue Assembly shall not proceed upon any Bill or upon an amendment to any Bill, after its introduction, if, in the opinion of the Speaker, that Bill or that amendment makes provision concerning-

(a) The pay, allowances, discipline, control, and management of the Niue Public Service; or

(b) The appointment, promotion, transfer, retirement, removal, suspension, and dismissal of employees of the Niue Public Service, including the review of or appeals against any decisions in relation thereto,-

unless the Assembly has before it a report, made by the Niue Public Service Commission pursuant to this Article, on the legal, constitutional, and policy issues raised by that Bill or by that amendment.

(2) If, pursuant to this Article, the Assembly by resolution decides to request the Niue Public Service Commission to report in relation to a Bill or to an amendment, the Speaker shall cause to be sent to the Niue Public Service Commission a copy of that resolution, and an account of the Assembly's discussions thereon, together with a copy of that Bill, or as the case may be, of that amendment and of the Bill to which it relates; but, if the Assembly takes a contrary decision, the Bill or the amendment to which that decision relates shall lapse.

(3) When, pursuant to this Article, the Assembly has received the report of the Niue Public Service Commission in relation to a Bill or an amendment to a Bill, and a new or revised amendment is thereafter introduced, the requirements of this Article shall not apply in relation to that new or revised amendment, unless, in the opinion of the Speaker, it raises legal, constitutional, or policy issues which were not raised by the previous request to that Commission or by its report.

### 33. Special provisions with regard to measures affecting Niuean land

(1) The Niue Assembly shall not proceed upon any Bill or upon an amendment to any Bill, after its introduction, if in the opinion of the Speaker, that Bill or that amendment makes provision concerning-

(a) The customary title to Niuean land; or

(b) The alienation of Niuean land, or

(c) The purchase, taking, or other acquisition of Niuean land for any public purpose, or

(d) repealed

This paragraph was repealed by s 7 of the Constitutional Amendment (No. 1) Act of 1992

(2) If the Assembly by resolution decides that any Bill or amendment to which this Article applies is worthy of consideration by a Commission of Inquiry pursuant to this Article, the Cabinet shall as soon as possible consider whether and in what manner it should act to enable effect to be given to the Assembly's decision; but, if the Assembly takes a contrary decision in relation to any such Bill or amendment, that Bill or that amendment shall lapse.

(3) Whenever the Assembly has by resolution decided that any Bill or amendment to which this Article applies is worthy of consideration by a Commission of Inquiry pursuant to this Article, -

(a) The Cabinet may establish a Commission of Inquiry with appropriate terms of reference, or may make any necessary alteration in the terms of reference of a Commission of Inquiry already established to inquire into any matter affecting Niuean land; and the Premier shall as soon as possible inform the Assembly of any arrangement that has been made by the Cabinet to enable effect to be given to the Assembly's decision; and

(b) Whenever it appears that such an arrangement has been made by the Cabinet, the Speaker shall cause to be sent to the Commission of Inquiry designated by the Cabinet for the purpose of considering the Bill or the amendment to which the Assembly's resolution relates a copy of that resolution and an account of the Assembly's discussions thereon, together with a copy of the Bill or, as the case may be, a copy of the amendment and of the Bill to which it relates, and the Commission of Inquiry shall, pursuant to this Article, in due course make its report to the Assembly.

(4) When, pursuant to this Article, the Assembly has received the report of a Commission of Inquiry in relation to a Bill or to an amendment to a Bill and a new or revised amendment is thereafter introduced, the requirements of this Article shall not apply in relation to that new or revised amendment, unless, in the opinion of the Speaker, it raises legal, constitutional, or policy issues which were not raised by the previous report of that Commission of Inquiry.



(5) In this Article-

"Alienation", in relation to Niuean land, means the making or grant of any transfer, sale, gift, lease, licence, easement, profit, mortgage, charge, encumbrance, trust, or other disposition, whether absolute or limited, and whether legal or equitable; and includes a contract to make any such alienation, and also includes the surrender or variation of a lease, licence, easement, or profit and the variation of the terms of any other alienation as hereinbefore defined;

"Customary title" means title in accordance with the customs and usages of Niue;

"Niuean land" means land in Niue vested in the Crown but held by Niueans according to the customs and usages of Niue; and includes any land granted by the Crown in fee simple before the 1st day of April 1916 and any customary land declared to be Niuean freehold land or native freehold land by an order of any Court before the 1st day of November 1969.

#### 34. When Bills become law

(1) Subject to the requirements of Article 35 of this Constitution in those cases to which that Article applies, a Bill shall become law if, and only if-

(a) It has been passed by the Niue Assembly; and

(b) The Speaker, being satisfied that it has been passed in accordance with this Constitution and with the Standing Orders of the Assembly, has endorsed on a copy of the Bill a certificate of compliance with the requirements of this Article, and has, in the presence of the Clerk of the Niue Assembly, signed that certificate and sealed that copy with the Seal of Niue, and inscribed thereon the date of that signing and sealing; and

(c) The Clerk of the Niue Assembly has, in the presence of the Speaker, countersigned the certificate on that copy of the Bill.

(2) A Bill which becomes law in accordance with the requirements of this Article, shall be an Act of the Niue Assembly.

(3) Subject to its provisions, an Act shall come into force on the date of its certification and sealing.

### 35. Power of the Niue Assembly to repeal or amend this Constitution

(1) A Bill repealing or amending or modifying or extending any of the provisions of the Niue Constitution Act 1974 or of this Constitution or making any provision inconsistent with any of those provisions shall become law if, and only if-

(a) It has been passed by the Niue Assembly in compliance with the following requirements:

(i) On both the final reading, and on the reading which preceded it, the Bill receives the affirmative votes of not less than two-thirds of the total membership of the Assembly, as provided in Article 16 (2) (b) of this Constitution; and

(ii) The vote on the final reading takes place at least 13 weeks after but excluding the day of the vote on the reading which preceded it; and

(b) It has thereafter been submitted to a poll, conducted in a manner prescribed by law, of the persons who at the time of that poll were entitled to vote as electors at a general election of members of the Niue Assembly, and has at that poll received the support-

(i) In the case of any Bill repealing or amending or modifying or extending any of the provisions of sections 2 to 9 of the Niue Constitution Act 1974 or of Articles 1 and 69 of this Constitution or of this Article, by two-thirds of the votes validly cast; and

(ii) In any other case, of a majority of the votes validly cast; and

(c) The Speaker, being satisfied that it has been passed in accordance with this Constitution and with the Standing Orders of the Assembly, has endorsed on a copy of the Bill a certificate of compliance with the requirements of this Article, and has, in the presence of the Clerk of the Niue Assembly, signed that certificate and sealed that copy with the Seal of Niue, and inscribed thereon the date of that signing and sealing; and

(d) The Clerk of the Niue Assembly has, in the presence of the Speaker, countersigned the certificate on that copy of the Bill.

(2) A Bill which becomes law in accordance with the requirements of this Article shall be part of this Constitution and shall be described as a constitutional amendment.

(3) Subject to its provisions, a constitutional amendment shall come into force on the date of its certification and sealing.

36. New Zealand Parliament not to legislate for Niue, and New Zealand subordinate legislation not to apply to Niue, except with consent

(1) No Act, and no provision of any Act, of the Parliament of New Zealand passed on or after Constitution Day shall extend to Niue as part of the law of Niue, unless-

(a) The passing of that Act or the making of that provision, so far as it extends to Niue, has been requested and consented to by resolution of the Niue Assembly; and

(b) It is expressly declared in that Act that the Niue Assembly has requested and consented to the enactment of that Act or of that provision.

(2) No subordinate legislation made after Constitution Day pursuant to any Act of the Parliament of New Zealand shall extend to Niue as part of the law of Niue unless-

(a) At the date of its making, the Act pursuant to which that subordinate legislation was made extends to Niue as part of the law of Niue; and

(b) The extension to Niue of that subordinate legislation has been requested and consented to by the Cabinet of Ministers of Niue; and

(c) It is expressly declared in that subordinate legislation that the Cabinet of Ministers of Niue has requested and consented to that extension.

(3) Any Act of the Parliament of New Zealand which, pursuant to this Article, extends to Niue as part of the law of Niue, shall have the same force and effect as if it were an Act of the Niue Assembly.

(4) In this Article the term "subordinate legislation" means any Order in Council, Proclamation, regulations, rules, or other subordinate legislation.

### PART III THE JUDICIARY

The High Court of Niue

### 37. High Court established

(1) There shall be a Court of record, to be called the High Court of Niue, for the administration of justice in Niue.

(2) Except as provided in this Constitution or by law, the High Court shall have all such jurisdiction (both criminal jurisdiction, and civil jurisdiction including jurisdiction in relation to land) as may be necessary to administer the law in force in Niue.

(3) There shall be 3 Divisions of the High Court, namely-

(a) A Civil Division;

(b) A Criminal Division; and

(c) A Land Division.

(4) A Judge of the High Court may exercise any of the jurisdiction and powers of a Judge of any Division.

(5) Subject to the subclauses (1), (2), (3), and (4) of this Article and to Article 38, each Judge of the High Court, or any 2 or more Judges, may, at any time in Niue or beyond Niue, exercise all the powers of the High Court.

### 38. Jurisdiction of Divisions of the High Court

(1) Each Division of the High Court shall hear and determine-

(a) Such proceedings as are, under or by virtue of any enactment, to be heard and determined by that Division;

(b) Such other proceedings as may from time to time be determined by the Chief Justice, either generally or in any particular proceedings or classes of proceedings.

(2) The Land Division shall have all the jurisdiction and powers in relation to land that immediately before the commencement of this Article were conferred on the Land Court of Niue, and shall have such other jurisdiction as may be conferred on it by enactment.

### 39. Judges of the High Court

(1) The High Court shall consist of 1 or more Judges, each of whom shall be appointed under the provisions of this Constitution.

(2) If only 1 Judge is so appointed, he shall be the Chief Justice of Niue, but if more than 1 Judge is appointed, one of them shall be appointed as the Chief Justice of Niue.

(3) A person shall not be qualified for appointment as a Judge of the High Court under this Article, unless he possesses such qualifications as may, subject to this Constitution, be prescribed by Act.

### 40. Acting Chief Justice of the High Court

Where any vacancy exists in the office of Chief Justice, or it appears that the Chief Justice is, for any reason, for the time being unable to perform the functions of his office, those functions may be performed by another Judge of the High Court, and if there is more than one such Judge who is able to perform these functions, then by the Judge who is senior in terms of the date of his appointment to that office, and that Judge may continue to perform those functions until a new Chief Justice is appointed, or, as the case may be, until the Chief Justice is again able to perform the functions of his office.

### 41. Temporary Judges

The Cabinet may at any time appoint any person of any age who is otherwise qualified for appointment to hold office as Chief Justice or as another Judge for such time, not exceeding one year, as is specified in the warrant or appointment.

### Appointment, Tenure of Office, and Salaries of Judges

#### 42. Appointment of Judges

The Chief Justice and other Judges of the High Court shall be appointed as follows:

(a) The Chief Justice of the High Court shall be appointed by the Governor-General, acting on the advice of Cabinet tendered by the Premier.

(b) The other judges of the High Court shall be appointed by the Governor-General, acting on the advice of Cabinet tendered by the Chief Justice of the High Court and the Minister of Justice.

#### 43. Tenure of office of Judges

(1) Except in the case of an appointment made under Article 41, no person who has attained the age of 68 years shall be appointed to or continue to hold office as the Chief Justice or other Judge of the High Court.

(2) Nothing done by the Chief Justice or other Judge of the High Court in the performance of his functions shall be deemed to be invalid by reason only that he has reached the age at which he is required by this Article to retire or that his term has expired, as the case may be.

(3) The Chief Justice or any other Judge of the High Court may resign his office in writing under his hand addressed to the Governor-General.

#### 44. Salaries of Judges

(1) The salaries of the Chief Justice and other Judges of the High Court shall be determined by Act, and shall be a charge on the Niue Government Account.

(2) The salaries of those Judges shall not be diminished during their period of office, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by enactment.

#### 45. Removal of Judges from office

(1) The Chief Justice and any other Judge of the High Court shall not be removed from office except by the Governor-General acting on the advice of Cabinet tendered by the Premier and given in accordance with a recommendation contained in a resolution of the Niue Assembly.

(2) The only ground upon which the Chief Justice and any other Judge may be removed from office is that of inability to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or misbehaviour.

#### Commissioners of the High Court

#### 46. Commissioners of the High Court

(1) Cabinet may appoint Commissioners of the High Court of Niue, who shall hold office for such time as shall be specified in their warrants of appointment.

(2) No person who has attained the age of 68 years or who is a Member of the Niue Assembly shall be appointed to or continue to hold office as a Commissioner of the High Court.

(3) Subject to subclause (2), the office of Commissioner of the High Court may with the approval of the Public Service Commission be held concurrently with any office in the Niue Public Service, or any other position or employment, but a Commissioner of the High Court who is a member of the Niue Public Service shall not in the exercise of his functions be under the control of the Niue Public Service Commission.

(4) Nothing done by a Commissioner of the High Court in the performance of his functions shall be deemed to be invalid by reason only that he has reached the age at which he is required by this Article to retire, or that his term of office has expired.

(5) A Commissioner of the High Court may resign by writing under his hand addressed to the Premier.

#### 47. Temporary Commissioners

The Cabinet may at any time appoint any person of any age who is otherwise qualified for appointment to hold office as a Commissioner of the High Court for such time, not exceeding one year, as is specified in his warrant of appointment.

#### 48. Jurisdiction of Commissioners of the High Court

(1) A Commissioner of the High Court shall possess and may exercise such of the functions of a Judge of the High Court (whether judicial or administrative, but excluding those vested exclusively in the Chief Justice) as may be prescribed by Act, either generally or with respect to any particular Commissioner or Commissioners of the High Court, and all references in any enactment to a Judge of the High Court shall be construed as applying to a Commissioner of the High Court within the limits of the jurisdiction

conferred on him.

(2) An Act may provide for appeals from a Commissioner of the High Court to a Judge of that Court.

#### 49. Remuneration of Commissioners of the High Court

(1) Commissioners of the High Court shall receive such salaries and allowances as may from time to time be prescribed by enactment; but if any Commissioner is appointed on terms which do not require him to devote the whole of his time to performing the duties of that office, he shall receive by way of salary and allowances, the amount that is appropriate, having regard to the extent of the duties performed by him and to the terms and conditions of his appointment

(2) The salaries of Commissioners shall be a charge on the Niue Government Account.

(3) During the term of office of any Commissioner, his salary may be increased whether to take account of any increase in general levels of remuneration or for any other reason, but his salary shall not during the term of his office be reduced, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by enactment.

#### 50. Removal of Commissioners from office

(1) A Commissioner of the High Court shall not be removed from office except by Cabinet, acting in accordance with a recommendation of the Chief Justice.

(2) The only ground upon which a Commissioner may be removed from office is that of inability to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or of misbehaviour.

#### Justices of the Peace

#### 51. Justices of the Peace

(1) The Cabinet may appoint Justices of the Peace for Niue, who shall hold office for such time as may be prescribed in their warrants of appointment.



(2) Any two Justices of the Peace for Niue, acting together, shall possess and may exercise in Niue any of the functions that are by law conferred generally on Commissioners of the High Court; and Article 48 of this Constitution, with the necessary modifications, shall apply as if references therein to a Commissioner of the High Court were a reference to any 2 Justices of the Peace for Niue; but this subclause shall not apply in the case of any Justice of the Peace who is a member of the Niue Assembly or who has attained the age of 68 years.

(3) A Justice of the Peace for Niue shall not be removed from office except by Cabinet acting in accordance with a recommendation of the Chief Justice.

(4) Justices of the Peace shall receive, in respect of any duties they perform, such remuneration as may from time to time be prescribed by enactment.

## Court of Appeal

### 52. Court of Appeal established

(1) There shall be a Court of Appeal of Niue, which shall be a superior Court of record.

(2) Subject to Articles 53 and 54, the Judges of the Court of Appeal shall be—

(a) The Chief Justice and other Judges of the High Court who shall be a members of the Court by virtue of their office; and

(b) Such other persons, possessing such qualifications as shall be prescribed by Act, as may from time to time be appointed by the Governor-General acting on the advice of the Cabinet tendered to him by the Premier.

(3) The Chief Justice shall be the President of the Court of Appeal, but in his absence the Judge present who is highest in seniority shall preside.

(4) Judges of the Court of Appeal shall take seniority according to the respective dates of their first appointment as Judges whether of the High Court or of the Court of Appeal or of any Court in any place outside Niue.

(5) An appointment under paragraph (b) of subclause (2) of this Article shall be for a period of time or for the trial or hearing of one or more particular causes or matters, as may be specified in the instrument of appointment.

### 53. Number of Judges

(1) Any 3 Judges of the Court or Appeal may at any time in Niue or beyond Niue, exercise all the powers of the Court:

Provided that the Court may have its judgment delivered by any one of the Court's members who is available, and, if there is no such member, then through the Registrar of the Court of Appeal.

(2) The judgment of the Court of Appeal shall be in accordance with the opinion or the majority of the judges present.

### 54. Judges not to sit on appeals from own decision

A Judge of the Court of Appeal shall not sit on the hearing of an appeal from any decision made by him or by a Court on which he sat as a member.

### 55. Determination of Court of Appeal

(1) Except as provided in subclause (2) of this Article, or as may be provided by enactment, the determination of the Court of Appeal shall be final.

(2) Nothing in this Article shall limit the right of Her Majesty in Council, upon the petition of any person aggrieved by any decision of the Court of Appeal to admit that person's appeal therefrom upon such conditions as Her Majesty in Council shall think fit to impose.

### 55A. Jurisdiction of Court of Appeal

(1) Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to hear and determine any appeal from a judgment of the High Court.

(2) Subject to the provisions of this Constitution, and such time limits as may be prescribed by enactment within which an appeal shall be commenced, and except where under any Act a judgment of the High Court is declared to be final, an appeal shall lie to the Court of Appeal from a judgment of the High Court-

(a) As of right, if the High Court certifies that the case involves a

substantial question of law as to the interpretation or effect of any provision of this Constitution;

(b) As of right, from any conviction by the High Court in the exercise of its criminal jurisdiction whereby the appellant has been sentenced to death or to imprisonment for life or for such term, or to such fine, and from any such sentence (not being a sentence fixed by law) as shall be prescribed by Act;

(c) As of right, when the matter in dispute on the appeal amounts to not less than such value as shall be prescribed by Act;

(d) With the leave of the High Court in any other case, if in the opinion of that Court the question involved in the appeal is one which by reason of its general or public importance, or of the magnitude of the interest affected, or for any other reason, ought to be submitted to the Court of Appeal for decision;

(e) In such other cases as may be prescribed by Act.

(3) Notwithstanding anything in subclause (2) of this Article, and except where under any Act a judgment of the High Court is declared to be final, the Court of Appeal may, in any case in which it thinks fit and at any time, grant special leave to appeal to that Court from any judgment of the High Court, subject to such conditions as to security for costs and otherwise as the Court of Appeal thinks fit.

(4) In this Article the term "judgment" includes any judgment, decree, order, writ, declaration, conviction, sentence, or other determination.

#### 55B. Transmission of order of Court of Appeal

The determination of the Court of Appeal on any appeal from the High Court shall be transmitted to the Registrar of the High Court by the Registrar of the Court of Appeal under the seal of the Court of Appeal, and judgment shall thereupon be entered by the High Court in conformity with that determination, or such other proceedings by way of a new trial or otherwise shall be taken in the High Court as are required by that determination.

#### Oath of Allegiance and Judicial Oath

#### 55C Oath of Allegiance and Judicial Oath

(1) The Chief Justice, and other Judges of the High Court, and every Judge of

the Court of Appeal, and every Commissioner, and Justice of the Peace for Niue, shall, as soon as may be after his acceptance of office, take and subscribe the following oaths:

(a) An Oath of Allegiance in the following form-

I,....., swear by Almighty God that I will be faithful and bear true allegiance to Her (or His) Majesty [Specify the name of the reigning Sovereign, as thus: Queen Elizabeth the Second] as the Head of State of Niue, Her (or His) heirs, and successors, in accordance with the Constitution and the law. So help me God;

(b) The Judicial Oath in the following form-

I,....., swear by Almighty God that I will well and truly serve Her (or His Majesty (Specify as above) as the Head of State or Niue, Her (or His) heirs, and successors, in accordance with the Constitution and the law, in the office of .....; and I will do right to all manner of people, without fear or favour, affection or ill will. So help me God.

(2) The oaths required to be taken by this Article shall be taken before the following persons-

(a) In the case of the Chief Justice, before the Governor-General;

(b) In the case of any other Judge of the High Court, or any Judge of the Court of Appeal, before the Governor-General or before the Chief Justice;

(c) In the case of a Commissioner of the High Court or a Justice of the Peace, before the Chief Justice or any Judge of the High Court, or the Speaker of the Niue Assembly.

(3) If any person mentioned in this Article declines or neglects, when the oaths required to be taken by him under this Article are duly tendered, to take those oaths, he shall if he has already entered on his office vacate the same, and if he has not entered on the same be disqualified from entering on the same; but no person shall be compelled in respect of the same appointment to the same office to take any oath more than once:

Provided that no proceedings before any such person may be questioned in any Court solely on the ground that that person failed to take the oaths prescribed by this Article.

Part III was repealed and replaced by s 4 of the Constitution Amendment (No. 1) Act of 1992.

#### PART IV THE PUBLIC REVENUES OF NIUE

##### 56. Legislative control of public revenue and expenditure

(1) No taxes shall be imposed except by law.

(2) All revenue received by the Government of Niue shall be paid into an appropriate public fund or account; and every such fund or account, unless established by existing law, shall be established by or pursuant to Act.

(3) All expenditure of public money, unless authorised by existing law, shall be authorised by Act.

##### 57. Niue Government Account

(1) There shall be a Niue Government Account.

(2) All taxes and other revenues and money raised or received by the Government of Niue shall be paid into the Niue Government Account, unless required or permitted by law to be paid into any other public fund or account.

##### 58. Annual estimates and appropriations

(1) Except as provided in Article 59(4)(b) of this Constitution or where authorised by a specific appropriation contained in any existing law or in any Act, all expenditure of public money in any financial year shall be charged to votes specified in the Appropriation Act and in accordance with the estimates for that year.

(2) Each Appropriation Act shall relate to one financial year, and shall lapse at the end of that year.

##### 59. Cabinet to supervise expenditure

(1) It shall be the responsibility of the Cabinet to make proposals to the Assembly as to the projected levels of public revenue and of public expenditure in each financial year, and as to all other budgetary matters. In particular, the Premier or another Minister shall introduce or take responsibility in the Assembly for all Bills relating to financial measures, and for the submission of a detailed statement of estimated expenditure in

respect of each financial year.

(2) The Cabinet shall also be accountable to the Assembly for all public expenditure, and for relating such expenditure to the appropriations made by the Assembly pursuant to Article 58 of this Constitution, or to any discretion to approve expenditure pursuant to subclause (4) of this Article, and shall lay the accounts for each financial year before the Assembly.

(3) Any delegation by the Cabinet, whether or not to one or more of its own members, of the power to approve public expenditure shall, subject to existing law, be made by or pursuant to Act, and shall be without prejudice to the generality of the Cabinet's continuing responsibilities under this Article.

(4) Subject to such lower limits and such restrictions as may from time to time be prescribed by any enactment, the Cabinet may approve the expenditure of such sums as it considers necessary-

(a) In anticipation of provision to be made in the Appropriation Act for any financial year; but the total amount issued and paid under this paragraph in relation to any vote in any financial year shall not exceed the unexpended balance of the corresponding vote in the Appropriation Act for the preceding financial year, together with an amount equal to one-fourth of that vote, and all money so spent shall be included in the estimates for that year; or

(b) Where, during the period between the passing of the Appropriation Act for any financial year and the end of that financial year, it is desirable that money should be expended in excess of or without the appropriation of the Niue Assembly, but the total amount of all sums issued and paid under this paragraph in any financial year shall not exceed one and a half percent of the total amount of all sums appropriated by the Appropriation Act for that financial year.

(5) All expenditure made under subclause (4) (b) of this Article shall be charged as unauthorised expenditure to the appropriate fund or account.

(6) A statement of the unauthorised expenditure for any financial year shall be included in the accounts for that year laid before the Assembly.

## 60. Audit

(1) The Audit Office of New Zealand shall be the auditor of the Niue Government Account and of all other public funds or accounts, and of the accounts of all Departments and Offices of executive government, and of such other public or statutory authorities or bodies as may be provided by law.

(2) The Audit Office shall, at least once annually, prepare and forward to the Speaker of the Niue Assembly for presentation to the Assembly a report containing such information as is required to be submitted by any enactment, together with such other information relating to the Niue Government Account, or to such other funds or accounts which under this Constitution or under any enactment are required to be audited by the Audit Office, as that office considers desirable.

## PART V HEALTH, EDUCATION, AND OTHER SOCIAL SERVICES

### 61. Health, education, and other social services

(1) The Cabinet shall be responsible for establishing and maintaining in Niue such hospitals and other institutions and for providing such other services as it considers necessary for the public health.

(2) The Cabinet shall be responsible for establishing and maintaining in Niue such public schools and for making such other provision as it considers necessary to provide educational opportunities for the people of Niue.

(3) The Cabinet shall be responsible for establishing and maintaining such other institutions and services and for making such other provision as it considers necessary to provide a reasonable standard of living for the people of Niue and to secure their economic, social, and cultural welfare.

(4) Nothing in this Article shall be construed as limiting the powers conferred on the Cabinet by Article 2 of this Constitution to exercise on behalf of Her Majesty the executive authority of Niue.

## PART VI THE NIUE PUBLIC SERVICE

### 62. Niue Public Service

(1) There shall be a Niue Public Service comprising such employees as may be necessary to assist the Cabinet in exercising the executive authority of Niue and to perform such other functions or exercise such powers as may be prescribed by law.

(2) Except as provided in subclause (4) of this Article, no person shall be employed in the service of the Government of Niue unless he is an employee of the Niue Public Service.

(3) Except as may otherwise be provided by Act, employment by a public corporation or other statutory authority or public body constituted under the law of Niue shall, for the purposes of this Article, be considered as employment in the service of the Government of Niue.

(4) Subclause (2) of this Article shall not apply to Service remunerated by way of fees or commission only, or honorary Service, or service as—

(a) A Judge or Commissioner of the High Court or []a Justice of the Peace for Niue, or any other judicial officer appointed by or pursuant to existing law or Act; or

This paragraph was amended by s 8 of the Constitution Amendment (No. 1) Act of 1992 by removing the words "of the Land Court, a Judge of the Land Appellate Court", from the place marked []

(b) A Minister, or any other member or the Speaker of the Niue Assembly; or

(c) A member of the Niue Public Service Commission.

### 63. Secretary to the Government

(1) There shall be an officer of the Niue Public Service to be called the Secretary to the Government, who shall be the permanent head of the Niue Public Service and the chief administrative officer of the Government of Niue.

(2) In addition to the other functions and powers conferred upon him by law, the Secretary to the Government shall be responsible to the Cabinet for the general direction of the work of all departments and offices of the executive government. The head of each Department or office shall account for the work of that Department or office to the Secretary to the Government, as well as to the Minister primarily responsible for that Department or office or, as the case may be, for the function performed by that Department or office.

(3) Notwithstanding anything in Article 69 (2) of this Constitution, the Niue Public Service Commission shall consult the Premier and shall obtain the concurrence of the Cabinet before it appoints any person to be Secretary to the Government.

(4) Notwithstanding anything in any enactment, no appeal by any employee of the Niue Public Service shall lie against the promotion or appointment of any person to the office of Secretary to the Government.



## Niue Public Service Commission

### 64. Niue Public Service Commission

(1) There shall be a Public Service Commission for Niue, to be called the Niue Public Service Commission.

(2) The Commission shall consist of 3 members who shall be appointed by the Cabinet.

(3) The Chairman of the Commission shall be appointed by the Cabinet from amongst the members of the Commission.

(4) Each member of the Commission, and the Chairman, shall be appointed for a term of 3 years but may from time to time be re-appointed.

(5) Each member of the Commission shall receive such salary allowances and benefits as the Cabinet determines from time to time.

(6) A member of the Commission may resign his office at any time by written notice to the Premier, or may be removed from office by the Cabinet on the ground that he is unable to discharge the functions of his office (whether by reason of infirmity of body or mind or from any other cause) or misbehaviour."

This section was repealed and replaced by s 5 of the Constitution Amendment (No. 1) Act of 1992

### 65. Acting members of Commission

(1) In the event of the incapacity, by reason of illness or absence or any other cause, of any member of the Commission, the Cabinet may appoint a person to act in place of that member during that incapacity.

(2) Any person acting in place of a member of the Commission pursuant to this Article shall be deemed for all purposes to be a member of the Commission, and no appointment of any such person, and no act done by him in his capacity as a member of the Commission shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

This section was repealed and replaced by s 6 of the Constitution Amendment

66. Procedure of Commission

- (1) At all meetings of the Niue Public Service Commission, 2 members shall form a quorum.
- (2) The Commission shall have power to invite such other persons as it thinks fit to assist in its deliberations.
- (3) At least 2 members of the Commission shall concur in any decision of the Commission.
- (4) Any matter which may be decided by the Commission at a meeting may also be decided by a minute of the Commission signed by all the members.
- (5) Subject to this Constitution, the Commission shall regulate its own procedure.

67. Delegation of powers

- (1) Without prejudice to its continuing responsibility for the organisation and management of the Niue Public Service, the Commission may from time to time, either generally or particularly, delegate any of its powers in relation to the Niue Public Service ( including this power of delegation ) to any of its members or any other person [] or to the Secretary to the Government.

This paragraph was amended by s 8 of the Constitution Amendment (No. 1) Act of 1992 by removing the words "who, in either case, is visiting Niue on the Commission's business" from the place marked []

- (2) Subject to any general or special directions given by the Commission, a person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by enactment and not by delegation.
- (3) Every person purporting to act pursuant to any delegation under this Article shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (4) Any delegation under this section may be made to a specified person or to

persons of a specified class, or may be made to the holder for the time being of a specified office.

(5) The delegation of any powers under this section shall not prevent the exercise of those powers by the Commission or by any person making the delegation.

## Management of Niue Public Service

### 68. Functions and powers of Commission

(1) The Niue Public Service Commission shall be the employing authority for the Niue Public Service, and, subject to this Constitution, shall have the general oversight and control of its organisation and management, and shall be responsible for reviewing the efficiency and economy of all departments and offices of the executive government.

(2) Subject to this Constitution and to any enactment, the Commission may prescribe and determine the terms and conditions of employment of members of the Niue Public Service, and may issue such instructions or exercise such other powers as may be necessary to enable it to perform the functions and carry out the duties described in this Constitution or conferred on it by law.

(3) In the performance or exercise of its functions, powers, and duties in relation to the Niue Public Service, the Commission may conduct such inquiries and investigations as it considers necessary, and, for the purpose of conducting any such inquiry or investigation, the Commission shall have such powers and authority to summon witnesses and to receive evidence as are conferred on a Commission of Inquiry by law.

(4) Except as provided in Article 69(2) of this Constitution, the Commission shall be responsible to the Cabinet for the carrying out of its duties and the performance and exercise of its functions and powers, and the Commission shall, as necessary, inform and advise the Cabinet in relation to any matter affecting the Niue Public Service.

(5) The Commission shall as soon as practicable after the 31st day of March in each year furnish to the Cabinet a report on the state of the efficiency and economy of the Niue Public Service and on the work of the Commission for the year ending with that date. A copy of that report shall be laid before the Niue Assembly.

## 69. Appointments to Niue Public Service

- (1) All employees of the Niue Public Service shall be appointed by the Niue Public Service Commission and, subject to this Constitution and to any enactment, shall hold office on such terms and conditions as may from time to time be prescribed or determined by the Commission.
- (2) In all matters relating to decisions about individual employees (whether they relate to the appointment, promotion, demotion, transfer, disciplining, or cessation of employment of any employee or any other matter) the Commission shall not receive any direction from the Cabinet, but shall act independently.
- (3) In establishing and revising the terms and conditions of employment in the Niue Public Service, the factors to be taken into account shall include—
  - (a) The need for the Niue Public Service to recruit and retain an efficient staff, and, in particular, to provide varied careers and adequate advancement for Niueans with special skills;
  - (b) The need to afford reasonable opportunities of employment in Niue for the people of Niue, and in so doing to have regard to the employment opportunities and levels of remuneration available in New Zealand;
  - (c) The need to act consistently with Government economic and social policy, bearing in mind that the terms and conditions of employment in the Niue Public Service are a major element in the general well-being of Niue.
- (4) The pay and allowances of employees of the Niue Public Service shall be paid from the Niue Government Account out of money appropriated by the Niue Assembly.

## Reports and Recommendations to Assembly

### 70. Commission to make certain reports and recommendations to Assembly

- (1) Pursuant to Article 25 of this Constitution, the Niue Public Service Commission shall from time to time consider whether circumstances require the making of a report and recommendations to the Assembly as to the levels of remuneration and other entitlements of the Premier, the other Ministers, the members of the Assembly who are not Ministers, and the Speaker, and the Commission shall make such a report and recommendations, whenever there is a general alteration of the levels of remuneration of employees of the Niue

Public Service.

(2) The Commission shall send to the Speaker any report and recommendations made under subclause (1) of this Article.

(3) Whenever, pursuant to Article 32 of this Constitution, the Niue Public Service Commission is requested to report on the legal, constitutional, and policy issues raised by any Bill or amendment, it shall as soon as possible, and in any case within one month after receiving the papers relating to the Bill or amendment, respond to that request, either by furnishing its report to the Speaker, or, if it requires further time or information before forming a final opinion, by making that known to the Speaker.

#### PART VII TRANSITIONAL PROVISIONS

#### 71. Existing law to continue

Subject to this Constitution, -

(a) The existing law shall, until repealed, and subject to any amendment thereof, continue in force on and after Constitution Day;

(b) All rights, obligations, and liabilities arising under the existing law shall continue to exist on and after Constitution Day, and shall be recognised, exercised, and enforced accordingly.

#### 72. Premier and Cabinet

(1) The Leader of Government holding office pursuant to section 9 of the Niue Act 1966 (as substituted by section 3 of the Niue Amendment Act 1971) immediately before Constitution Day shall be deemed to have been duly elected under this Constitution as the Premier of Niue and appointed and sworn in as a Minister under this Constitution.

(2) The other appointed members of the Executive Committee of Niue holding office pursuant to section 10 of the Niue Act 1966 (as substituted by section 3 of the Niue Amendment Act 1971) immediately before Constitution Day shall be deemed to have been duly appointed and sworn in under this Constitution as Ministers.

#### 73. Niue Assembly

(1) The elected members of the Niue Island Assembly immediately before Constitution Day shall be deemed to have been duly elected and sworn in under this Constitution as members of the Niue Assembly, and, notwithstanding anything in Article 16 of this Constitution, the Niue Assembly shall consist, during the period commencing on Constitution Day and ending at the time of the first dissolution of the Assembly thereafter, of the Speaker and those members.

(2) Until provision is otherwise made by law, the seat of any member of the Niue Assembly to whom Article 19(b) of this Constitution applies shall not become vacant if-

(a) His interest in the execution or enjoyment of any contract under which any public money is payable is as a member of the general public or of any section or class of the general public; or

(b) On any occasion when he is present at a meeting of the Niue Assembly, any matter concerning a contract in whose execution or enjoyment he is interested comes before the Assembly, he discloses his interest to the Assembly and refrains from otherwise speaking and from voting on that matter.

(3) The Speaker of the Niue Island Assembly who is in office immediately before Constitution Day shall be deemed to have been duly elected and sworn in as Speaker of the Niue Assembly under this Constitution.

(4) Any person becoming a member of the Niue Assembly pursuant to subclause (1) of this Article who has, in the absence of the Speaker of the Niue Island Assembly, presided over any sitting of that Assembly shall, for the purposes of Article 20 of this Constitution, be deemed to be a member of the Niue Assembly who has presided over a meeting of the Assembly.

(5) Notwithstanding anything in Article 22 (6) of this Constitution, business may be transacted at any meeting of the Niue Assembly during the period referred to in subclause (1) of this Article if, but only if, the number of members present is not less than 7.

(6) Any Bill or other business before the Niue Island Assembly immediately before Constitution Day shall not lapse, but shall become a Bill or other business before the Niue Assembly:

Provided that, where any Bill or amendment to a Bill before the Niue Island Assembly pursuant to this subclause has proceeded beyond its introduction and is one to which any one or more of Articles 25, 30, 31, 32, and 33 of this

Constitution applies, the Niue Assembly shall not proceed further upon that Bill or amendment unless the requirements of the applicable Article or Articles have first been met.

(7) Subject to this Constitution, the Standing Orders of the Niue Island Assembly in force immediately before Constitution Day shall be the Standing Orders of the Niue Assembly, and they may be amended, repealed, or added to under Article 22 (10) of this Constitution.

(8) Until an Act first passed pursuant to Article 25 of this Constitution comes into force, the Niue Civil List Regulations 1972 shall continue in full force and effect and shall be deemed to be repealed on the date on which that Act comes into force.

(9) For the purposes of Article 26 (1) of this Constitution, the date of the last preceding general election shall be the date of the last preceding general election of the Niue Island Assembly in being on Constitution Day.

#### 74. The High Court

(1) The High Court of Niue established by Article 37 of this Constitution is hereby declared to be the same Court as the High Court of Niue established by section 53 of the Niue Act 1966.

(2) The High Court is hereby declared also to be the same Court as every other Court which, under existing law, was deemed to be the same Court as the High Court of Niue established by section 53 of the Niue Act 1966.

(3) All judgments, decrees, records, and acts of the High Court of Niue as established by the said section 53 and of every other Court to which subclause (2) of this Article applies shall continue to have full force and effect on and after Constitution Day as judgments, decrees, records, and acts of the High Court established by this Constitution; and all proceedings, civil or criminal, pending in the High Court of Niue immediately before Constitution Day may be continued on and after Constitution Day in the High Court established by this Constitution.

(4) The Judges and Commissioners of the High Court of Niue in office immediately before Constitution Day (other than the Resident Commissioner of Niue) shall continue to hold office on and after Constitution Day as Judges or Commissioners of the High Court established by this Constitution, as if they had been appointed under this Constitution, and those Judges and Commissioners shall receive the salaries and allowances to which they were entitled

immediately before Constitution Day as if those salaries and allowances had been prescribed by enactment pursuant to Article 50 of this Constitution.

## 75. The Land Court

(1) The Land Court of Niue established by Article 40 of this Constitution is hereby declared to be the same Court as the Land Court of Niue established by section 335 of the Niue Act 1966.

(2) The Land Court is hereby declared also to be the same Court as every other Court which, under existing law, was deemed to be the same Court as the Land Court of Niue established by the said section 335.

(3) All judgments, decrees, records, and acts of the Land Court of Niue as established by the said section 335 and of every other Court to which subclause (2) of this Article applies shall continue to have full force and effect on and after Constitution Day as judgments, decrees, records, and acts of the Land Court established by this Constitution; and all proceedings pending in the Land Court of Niue established by the said section 335 immediately before Constitution Day may be continued on and after Constitution Day in the Land Court established by this Constitution.

(4) The Judges and Commissioners of the Land Court of Niue (other than the Resident Commissioner) in office immediately before Constitution Day shall hold office on and after Constitution Day as Judges or Commissioners of the Land Court established by this Constitution, as if they had been appointed under this Constitution, and those Judges and Commissioners shall receive the salaries and allowances to which they were entitled immediately before Constitution Day as if those salaries and allowances had been prescribed by enactment pursuant to Article 50 of this Constitution.

## 76. The Land Appellate Court

(1) The Land Appellate Court of Niue established by Article 43 of this Constitution is hereby declared to be the same Court as the Land Appellate Court of Niue established by section 386 of the Niue Act 1966.

(2) The Land Appellate Court is hereby declared also to be the same Court as every other Court which, under existing law, was deemed to be the same Court as the Land Appellate Court of Niue established by the said section 386.



(3) All judgments, decrees, records, and acts of the Land Appellate Court of Niue as established by the said section 386 and of every other Court to which subclause (2) of this Article applies shall continue in full force and effect on and after Constitution Day as judgments, decrees, records, and acts of the Land Appellate Court established by this Constitution; and all proceedings pending in the Land Appellate Court of Niue established by the said section 386 immediately before Constitution Day may be continued on and after Constitution Day in the Land Appellate Court established by this Constitution.

## 77. Appeals from High Court

(1) In any case in which, immediately before Constitution Day, an appeal to the Supreme Court of New Zealand from any final judgment of the High Court of Niue established by section 53 of the Niue Act 1966 was pending, that appeal may be continued on and after Constitution Day and shall otherwise in all respects be heard and disposed of in accordance with the existing law: and the determination of the Supreme Court on any appeal continued pursuant to this subclause shall be transmitted to the Registrar of the High Court by the Registrar of the Supreme Court under the seal of the Supreme Court' and the High Court shall act in respect thereof as if it were a determination of the Court of Appeal of New Zealand transmitted under Article 52 of this Constitution.

(2) In any other case where any final judgment of the High Court of Niue established by the said section 53 has been given before Constitution Day, the right of appeal from that final judgment shall be governed by the provisions of this Constitution as if that final judgment had been a final judgment of the High Court of Niue established by Article 37 of this Constitution.

## 78. Justices of the Peace

(1) Every person holding office immediately before Constitution Day as a Justice of the Peace for Niue shall continue in office as if he had been appointed to that office pursuant to Article 53 of this Constitution.

(2) Subject to Article 53(3) of this Constitution, every such person shall continue to hold office during the pleasure of the Cabinet, and shall be paid the remuneration to which he was entitled immediately before Constitution Day as if that remuneration had been prescribed by enactment pursuant to Article 53(4) of this Constitution.

## 79. Public revenues

(1) The Niue Government Account established by Article 56 of this Constitution is hereby declared to be the same account as the Niue Assembly Account established by section 15 of the Niue Act 1966; and all money in the last-mentioned account immediately before Constitution Day shall on and after Constitution Day be deemed to form part of the Niue Government Account.

(2) The reference in Article 59 (4) of this Constitution to the Appropriation Act for the preceding financial year shall be read as if it included a reference to the Appropriation Ordinance of the Niue Island Assembly for the preceding financial year.

## 80. The Niue Public Service

(1) The Niue Public Service established by Article 62 of this Constitution is hereby declared to be the same Service as the Niue Public Service constituted by Part XXXI of the Niue Act 1966.

(2) Every person who was an employee of the Niue Public Service immediately before Constitution Day shall continue to hold office as an employee of the Niue Public Service as if he had been appointed to that position by the Niue Public Service Commission pursuant to Article 69 of this Constitution.

(3) Where any public corporation or other statutory authority or public body has been constituted before Constitution Day under the law of Niue, nothing in Article 62 (3) of this Constitution shall, in the case of any appointment made before Constitution Day of any person as an employee of that public corporation or other statutory authority or public body, be construed as affecting the validity of that appointment or, in the case of any such appointment made after Constitution Day, be construed as requiring that appointment to be made by the Niue Public Service Commission, except to the extent that, under existing law that appointment was required to be made by the New Zealand State Services Commission.

(4) Where under this Constitution the holder of any office is required to be an employee of the Niue Public Service, any employee of the Niue Public Service holding the corresponding office immediately before Constitution Day shall be deemed to be the holder of that office: but this provision shall be without prejudice to the powers and discretions of the Niue Public Service Commission as the employing authority.

## 81. Seal of Niue

Until the Cabinet approves a different form or forms, the Seal of Niue established by Article 15 of this Constitution shall be in the form or forms approved by the Executive Committee for the Seal of Niue established by section 7 of the Niue Act 1966 (as substituted by section 3 of the Niue Amendment Act 1971).

## PART VIII INTERPRETATION

## 82. Interpretation

(1) In this Constitution, unless the context otherwise requires, -

"Act" means an Act of the Niue Assembly, as that term is used in Article 34 of this Constitution;

"Cabinet" means the Cabinet of Ministers of Niue established by Article 2 of this Constitution;

"Chief Justice" means the Chief Justice of the High Court of Niue appointed under Article 42 of this Constitution; and includes any other Judge of the High Court authorised under Article 40 of this Constitution to perform the office or exercise any function of the Chief Justice;

This definition was replaced by s 10 of the Constitution Amendment (No. 1) Act 1992

"Clerk of the Cabinet" means the Clerk of the Cabinet appointed pursuant to Article 14 of this Constitution;

"Clerk of the Niue Assembly" means the Clerk of the Niue Assembly appointed pursuant to Article 27 of this Constitution;

"Constitution" means this Constitution; and includes the Act of the Parliament of New Zealand entitled the Niue Constitution Act 1974; and also includes any constitutional amendment, as that term is used in Article 35 of this Constitution, when that constitutional amendment has come into force;

"Constitution Day" means the date on which this Constitution comes into force;

"Court of appeal" means the Court of appeal of Niue established by Article 52

of this Constitution;

This definition was inserted by s 10 of the Constitution Amendment (No. 1) Act 1992

"Enactment" means-

(a) Any Act of the Niue Assembly and any Ordinance; and any regulation, rule, bylaw, or other instrument of a like nature made pursuant to any such Act or Ordinance;

(b) Any Act of the Parliament of New Zealand which extends to Niue as part of the law of Niue; and any Order in Council, Proclamation; regulation, rule, ministerial warrant, bylaw, or instrument of a like nature, made pursuant to any Act to which this paragraph applies, if that Order in Council, Proclamation, regulation, rule, ministerial warrant, bylaw, or other instrument extends to Niue as part of the law of Niue;

"Existing law" means any law in force in Niue immediately before Constitution Day; and includes any enactment passed or made before Constitution Day and coming into force on or after Constitution Day;

"High Court" means the High Court of Niue established by Article 37 of this Constitution;

"Judge", in relation to the High Court, means any Judge of that Court including the Chief Justice [];

This definition was amended by s 10 of the Constitution Amendment (No. 1) Act 1992 by removing the words "and, in relation to the Land Court, means any Judge of that Court including the Chief Judge of that Court" from the place marked []

The following two definitions were removed by s 10 of the Constitution Amendment (No. 1) Act 1992 "Land Appellate Court" means the Land Appellate Court of Niue established by Article 43 of this Constitution" and: "Land Court" means the Land Court of Niue established by Article 40 of this Constitution."

"Law" means any law for the time being in force in Niue; and includes this Constitution and any enactment;

"Member of the Niue Assembly", or "Member" used in relation to the Niue Assembly, means any person elected as a member of the Assembly pursuant to Article 16 of this Constitution; but does not include the Speaker: and, in any

case where the Assembly has been dissolved, shall have the extended meaning given to that term by subclause (4) of that Article;

"Minister" means a member of the Cabinet; and includes the Premier; and also includes any member of the Niue Assembly appointed as a temporary Minister pursuant to Article 8 of this Constitution;

"Niue Assembly" or "Assembly" means the Niue Assembly established by Article 16 of this Constitution;

"Niue Public Service" means the Niue Public Service established by Article 69 of this Constitution;

"Niue Public Service Commission" or "Commission" means the Niue Public Service Commission established by Article 64 of this Constitution;

"Ordinance" means an Ordinance of the Niue Island Assembly or of the Island Council of Niue;

"Premier" means the member of the Niue Assembly elected as Premier pursuant to Article 4 of this Constitution after he has been appointed as a Minister pursuant to Article 5 of this Constitution; and includes the Minister discharging the functions of Premier pursuant to subclause (1) or subclause (2) of Article 9 of this Constitution;

"Secretary to the Government" means the Secretary to the Government of Niue appointed pursuant to Article 63 of this Constitution;

"Speaker" means the Speaker of the Niue Assembly elected pursuant to Article 20 of this Constitution and includes any member of the Niue Assembly performing the functions of Speaker pursuant to that Article.

(2) Where in this Constitution any person is required to subscribe an oath, he shall be permitted, if he so desires, to comply with that requirement by making and subscribing an affirmation, and the form of oath prescribed by this Constitution shall be appropriately modified accordingly.

(3) Where under this Constitution the holder of any office is an employee of the Niue Public Service, any reference to the holder of that office shall be construed as including, to the extent of his authority, a reference to any other employee of the Niue Public Service for the time being authorised to exercise or perform all or any of the powers, duties, and functions of that office.