



REPUBLIC OF NAURU

**Passports Act 2011**

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**Act No. 5 of 2011**

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REPUBLIC OF NAURU

# Passports Act 2011

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Act No. 5 of 2011

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An Act to provide for Nauruan passports and travel-related documents, and for related purposes

*Certified on 15 April 2011*

Enacted by the Parliament of Nauru as follows:

## PART 1 – PRELIMINARY MATTERS

**1 Short title**

This Act may be cited as the *Passports Act 2011*.

**2 Commencement**

This Act commences on 1 July 2011.

**3 Interpretation**

(1) In this Act, unless the contrary intention appears:

**'affected person'**, for a reviewable decision, see section 38(2);

**'authorised officer'** means:

- (a) a person who, within the meaning of the Vienna Convention on Diplomatic Relations, is a member of the diplomatic staff of a Nauruan mission; or

(b) a person who, within the meaning of the Vienna Convention on Consular Relations, is a consular officer of a Nauruan consular post; or

(c) a person appointed under section 47;

**'blank Nauruan travel document'** means a document in the form of a Nauruan travel document that has not been issued to any person;

**'certificate of identity'** means a document issued under section 14;

**'child'** means a person who is under 18 years of age and has never been married;

**'contact'**, between a child and a non-consenting person, includes contact in person or by telephone, mail or e-mail;

**'container'** includes baggage, a mail receptacle, and any other thing that could be used to carry goods (whether or not designed for that purpose);

**'country of nationality'**, for a person, means the country of which the person claims to be a national;

**'customs officer'** means an Officer as defined in section 4 of the *Customs Act 1921-2010*;

**'de facto partner'**, see subsection (2);

**'Department'** means the Department responsible for administering this Act;

**'diplomatic passport'** means a Nauruan passport issued under section 8;

**'Director of Police'** means the person from time to time holding, occupying or performing the duties of the Director of Police mentioned in section 6 of the *Nauru Police Force Act 1972-1987*;

**'false Nauruan travel document'** means a document that:

(a) is not a Nauruan travel document but that purports to be a Nauruan travel document; or

(b) is a Nauruan travel document that has been altered by a person who is not authorised to alter the document;

**'Head of the Department'** means the Head, within the meaning of the *Public Service Act 1998*, of the Department;

**'holder'**, for a Nauruan travel document, means the person to whom the document has been issued;

**'misleading information'** means information that is misleading in a

material particular because it:

- (a) does not include relevant information; or
- (b) includes misinformation;

**'Nauruan citizen'** means a person, other than a person who has ceased to be a Nauruan citizen under a law made under Article 75, who is a citizen of Nauru under:

- (a) Article 71, 72, 73 or 74; or
- (b) a law made under Article 75;

**'Nauruan passport'** means an ordinary, diplomatic, official or Presidential passport issued under Part 2;

**'Nauruan travel document'** means a Nauruan passport or a travel-related document;

**'non-consenting person'**, for an application for a Nauruan passport to be issued to a child, means a person with parental responsibility for the child who has not given his or her consent to the child travelling internationally;

**'official passport'** means a Nauruan passport issued under section 9;

**'ordinary Nauruan passport'** means a Nauruan passport other than a diplomatic, official or Presidential passport;

**'parent'**, of a child:

- (a) includes the child's adoptive parent, as defined in the *Adoption of Children Ordinance 1965-1967*; and
- (b) excludes a person whose parental rights have been extinguished under that Ordinance;

**'parental responsibility'**, for a child, see subsection (3);

**'possession'**, for an item, includes control over the item;

**'prescribed'** means prescribed by regulation;

**'Presidential passport'** means a Nauruan passport issued under section 10;

**'refugee travel document'** means a document issued under section 13;

**'reviewable decision'**, see section 38(1);

**'serious foreign offence'** means an offence that, within the meaning of the *Extradition of Fugitive Offenders Act 1973*, is a relevant offence against the law of a designated country;

**'serious offence'** means an offence for which the maximum penalty is imprisonment for at least 12 months;

**'spouse'**, of a person, means the person's husband, wife or de facto partner;

**'travel-related document'** means:

- (a) a refugee travel document; or
  - (b) a certificate of identity.
- (2) A person is the **'de facto partner'** of another person if:
- (a) the person lives with the other person as a part of a couple; and
  - (b) the person is not married to the other person.
- (3) A person has **'parental responsibility'** for a child if the person is:
- (a) the child's parent; or
  - (b) entitled to guardianship or custody of, or access to, the child under a law of Nauru.

#### **4 Application**

- (1) Unless the contrary intention appears, this Act extends to:
- (a) acts, omissions, matters and things outside Nauru; and
  - (b) all persons, irrespective of their nationality or citizenship.
- (2) An offence against this Act applies whether or not the conduct or a result of the conduct constituting all or part of the alleged offence occurs in Nauru.

#### **5 Act binds Republic**

This Act binds the Republic.

## **PART 2 – NAURUAN PASSPORTS**

### **Division 1 – Issue of Nauruan passports**

#### **6 Entitlement to ordinary Nauruan passport**

Subject to section 7 and Part 4, the Minister must, on application by a Nauruan citizen, issue the citizen with an ordinary Nauruan passport.

**7 Minimum requirements for issue of any Nauruan passport**

- (1) The Minister must not issue a Nauruan passport to a person unless the Minister is satisfied:
  - (a) that the person is a Nauruan citizen; and
  - (b) of the person's identity.
- (2) An application for a Nauruan passport must be:
  - (a) made in the prescribed form; and
  - (b) accompanied by the prescribed fee and the documents specified on the prescribed form.

**Division 2 – Diplomatic and other official passports**

**8 Issue of diplomatic passport**

- (1) Subject to subsection (2), the Minister may issue a diplomatic passport for travel for diplomatic purposes.
- (2) The Minister may only issue a diplomatic passport to a Nauruan citizen who is:
  - (a) a member of Parliament; or
  - (b) if the Speaker of Parliament is not a member of Parliament – the Speaker of Parliament; or
  - (c) a person who, within the meaning of the Vienna Convention on Diplomatic Relations, is a member of the diplomatic staff of a Nauruan mission; or
  - (d) a person who, within the meaning of the Vienna Convention on Consular Relations, is a consular officer of a Nauruan consular post; or
  - (e) the spouse or dependent of a person mentioned in paragraphs (a) to (d); or
  - (f) with the written approval of Cabinet – another person.

**9 Issue of official passport**

The Minister may only issue an official passport to a Nauruan citizen to whom the issue of the passport is appropriate to facilitate travel on official government business.



**10 Issue of Presidential passport**

The Minister may only issue a Presidential passport to the President.

**PART 3 – TRAVEL-RELATED DOCUMENTS**

**Division 1 – Issue of travel-related documents**

**11 Issue of travel-related document**

Subject to section 12 and Part 4, the Minister may, on application by or on behalf of a person, issue the person with a travel-related document.

**12 Minimum requirements for issue of travel-related document**

- (1) The Minister must not issue a travel-related document to a person unless the Minister is satisfied of:
  - (a) the person's identity; and
  - (b) that the person is qualified for the issue of the document under Division 2.
- (2) An application for a travel-related document must be:
  - (a) made in the prescribed form; and
  - (b) accompanied by the prescribed fee and the documents specified on the prescribed form.
- (3) An application for a travel-related document may be made by the Republic on behalf of a person.

**Division 2 – Classes of travel-related documents**

**13 Refugee travel document**

- (1) In this section:

**'Refugee Convention'** means the Convention relating to the Status of Refugees dated 28 July 1951, and the Protocol in force under that Convention.
- (2) The Minister may issue a refugee travel document to a person who is present in Nauru if the person is:
  - (a) not a Nauruan citizen; and
  - (b) a refugee recognised under the Refugee Convention; and

- (c) qualified for the issue of the document under subsection (3) or (4).
- (3) A person is qualified if the person is lawfully resident or otherwise lawfully present in Nauru.
- (4) A person is qualified if the person:
  - (a) is not lawfully resident or otherwise lawfully present in Nauru; and
  - (b) is unable to obtain a travel document from the person's country of lawful residence.

#### **14 Certificate of identity**

- (1) The Minister may issue a certificate of identity to a person who is qualified for the issue of the certificate under subsection (2), (3) or (4).
- (2) A person is qualified if:
  - (a) the person is not a Nauruan citizen; and
  - (b) the person intends to leave Nauru in the immediate future; and
  - (c) the person is stateless or unable to obtain a valid travel document from the person's country of nationality; and
  - (d) unless the person is stateless – either:
    - (i) the person's country of nationality has consented to the issue of the certificate; or
    - (ii) the Minister is satisfied that it is reasonable to issue the person with the certificate even though the person's country of nationality has not consented to the issue.
- (3) A person is qualified if:
  - (a) the person is a Nauruan citizen; and
  - (b) the person does not hold a Nauruan passport because the issue of a Nauruan passport to the person is unnecessary or undesirable; and
  - (c) the Minister is satisfied the person needs to travel urgently because of a medical emergency or family crisis.
- (4) A person is qualified if the person:
  - (a) is a Nauruan citizen; and
  - (b) cannot obtain a Nauruan passport because the person is not in a country in which an application for a Nauruan passport can be processed.

## PART 4 – REFUSAL TO ISSUE NAURUAN TRAVEL DOCUMENT

### Division 1 – Children

#### 15 Child without parental consent or court order for travel

- (1) The Minister must not issue a Nauruan travel document to a child unless:
  - (a) each person who has parental responsibility for the child consents to the child travelling internationally; or
  - (b) an order of a Court permits the child to travel internationally; or
  - (c) the Minister exercises discretion under subsection (2).
- (2) Subject to subsections (3) and (4), the Minister may exercise discretion to issue a Nauruan travel document to a child if:
  - (a) the Minister believes on reasonable grounds that the child's physical or psychological welfare would be adversely affected if the child were not able to travel internationally; or
  - (b) the Minister believes on reasonable grounds that:
    - (i) the child urgently needs to travel internationally because of a family crisis; and
    - (ii) it is not possible to contact a non-consenting person to seek the person's consent to the child travelling internationally within a reasonable period of time; or
  - (c) the following circumstances apply:
    - (i) the child is outside Nauru; and
    - (ii) the child departed Nauru less than 12 months before the application for the travel document was made; and
    - (iii) the Minister considers that a travel document should be issued to enable the child to return to Nauru; or
  - (d) the applicant has been unable to locate or contact a non-consenting person for a reasonable period, having made reasonable attempts to do so; or
  - (e) a non-consenting person is missing and presumed dead; or
  - (f) a non-consenting person is medically incapable of giving consent; or
  - (g) there has been no contact between the child and a non-consenting person for at least 2 years before the application is made; or

- (h) the child:
    - (i) is at least 16 years old; and
    - (ii) has had no contact with a non-consenting person for at least 12 months before the application is made; or
  - (i) other prescribed circumstances exist.
- (3) However, if the Minister has been given court documents demonstrating that there are proceedings before a court that may affect the ability of the child to travel internationally, the Minister must not exercise discretion under subsection (2) unless the Minister reasonably believes that the child should be permitted to travel internationally because of a medical emergency or family crisis.
- (4) In addition, the Minister must not exercise discretion under subsection (2) if the Minister believes that issuing a travel document to the child will be harmful to the interests of the child.
- (5) If the Minister refuses to exercise discretion under subsection (2), the Minister may declare that he or she is refusing to exercise the discretion because the matter should be dealt with by a court.
- (6) For subsection (1), a reference to:
- (a) a person consenting to a child travelling internationally includes a person consenting to the issue of a Nauruan travel document to the child; and
  - (b) an order of a court permitting a child to travel internationally includes an order permitting:
    - (i) the issue of a Nauruan travel document to the child; or
    - (ii) contact outside Nauru between the child and another person.

## **Division 2 – Law enforcement and security**

### **16 Nauruan law enforcement matter**

The Minister must not issue a Nauruan travel document to a person if:

- (a) a warrant for the person's arrest is in force in Nauru in relation to a serious offence against a law of Nauru; or
- (b) the person (whether or not the person is in prison) is prevented from travelling internationally under a law of Nauru, or an order or other direction (however described) made under a law of Nauru.

## **17 International law enforcement matter**

The Minister may refuse to issue a Nauruan travel document to a person if:

- (a) a warrant for the person's arrest is in force in Nauru or a foreign country in relation to a serious foreign offence; or
- (b) the person (whether or not the person is in prison) is, in relation to a serious foreign offence, prevented from travelling internationally under a law of a foreign country or an order or other direction (however described) made under a law of a foreign country; or
- (c) the Minister believes on reasonable grounds that issuing a Nauruan travel document to the person would compromise proceedings under a law of a foreign country in relation to a serious foreign offence that the person is alleged to have committed.

## **18 Potential for harmful conduct**

The Minister may refuse to issue a Nauruan travel document to a person if the Minister believes on reasonable grounds that:

- (a) if the document were issued to the person, the person would be likely to engage in conduct that might:
  - (i) prejudice the security of Nauru or a foreign country; or
  - (ii) endanger the health or physical safety of another person (whether in Nauru or a foreign country); or
  - (iii) constitute a serious offence against this Act; or
  - (iv) constitute a prescribed serious offence against another Act; and
- (b) it is necessary to refuse to issue the document to prevent the person from engaging in the conduct.

### **Division 3 – Other reasons**

## **19 Repeated loss or theft**

The Minister may refuse to issue a Nauruan travel document to a person if, in the 5 year period immediately before the application for the document is made, 3 or more Nauruan travel documents issued to the person have been lost or stolen.

**20 Debt owed to Nauru**

The Minister may refuse to issue a Nauruan travel document to a person if the Minister believes on reasonable grounds that the person owes money to Nauru for:

- (a) expenses incurred by Nauru on behalf of the person in a foreign country; or
- (b) money lent to the person by Nauru when the person was outside Nauru; or
- (c) expenses incurred by Nauru to enable the person to depart from a foreign country.

**21 Concurrently valid Nauruan travel document**

The Minister must not issue a Nauruan travel document to a person who holds a valid Nauruan travel document unless:

- (a) the person intends to travel to a country that will not accept a travel document showing evidence of travel to a particular country and the travel document already held by the person shows evidence of travel to the country; or
- (b) the travel document issued is a diplomatic, official or Presidential passport and the travel document already held by the person is a different class of travel document.

**PART 5 – VALIDITY OF NAURUAN TRAVEL DOCUMENTS**

**22 When Nauruan travel document ceases to be valid**

A Nauruan travel document ceases to be valid on the earliest of the following:

- (a) the end of the day specified on the document as the date of expiry, which must not be later than the end of the prescribed maximum period of validity for a document of that class;
- (b) when another Nauruan travel document is issued to the person (unless the other document has been issued to the person as a concurrently valid travel document because one of the circumstances mentioned in section 21 applies);
- (c) when it is cancelled under section 24;
- (d) for a certificate of identity issued to a person qualified under section 14(2) – when the person returns to the person's country of

nationality and is able to obtain a valid travel document from that country;

- (e) for a certificate of identity issued to a person qualified under section 14(3) – when the person completes the journey for which the certificate was issued;
- (f) for a certificate of identity issued to a person qualified under section 14(4) – when the person arrives in a country in which an application for a Nauruan passport can be processed;
- (g) for a diplomatic, official or Presidential passport issued to a person because of the office the person or another person holds – the day the person or other person ceases to hold the office;
- (h) for a diplomatic or official passport issued to a person because the person is the spouse or dependant of another person – the day the person stops being the spouse or dependant of the other person.

### **23 Nauruan travel document not renewable**

- (1) A Nauruan travel document is not renewable.
- (2) This section does not prevent the Minister issuing a new Nauruan travel document to a person whose travel document has ceased to be valid.

### **24 Cancellation of Nauruan travel document**

- (1) The Minister may cancel a Nauruan travel document.
- (2) Without limiting subsection (1), the Minister may cancel a Nauruan travel document that has been issued to a person if:
  - (a) the Minister intends to issue another travel document to the person immediately after cancelling the document; or
  - (b) the document has been lost or stolen; or
  - (c) the Minister becomes aware of a circumstance that would have permitted the Minister to refuse to issue the document to the person under section 17, 18, 19 or 20; or
  - (d) prescribed circumstances exist in which the document may be cancelled.
- (3) The Minister must cancel a Nauruan travel document if the Minister becomes aware of a circumstance that would have required the Minister to refuse to issue the document under section 7(1), 12(1), 15(1), 16 or 21.

## **PART 6 – OFFENCES**

### **25 False or misleading information**

- (1) A person commits an offence if:
- (a) the person gives information to another person in relation to an application for a Nauruan travel document; and
  - (b) the information is misleading; and
  - (c) the person is reckless about whether the information is misleading.

Penalty: \$20,000 and 10 years imprisonment

- (2) A person commits an offence if:
- (a) the person gives a document to another person in relation to an application for a Nauruan travel document; and
  - (b) the document contains misleading information; and
  - (c) the person is reckless about whether the document contains misleading information.

Penalty: \$20,000 and 10 years imprisonment

- (3) However, a person does not commit an offence under subsection (2) if the person, when giving the document to the other person:
- (a) draws the misleading aspect of the document to the other person's attention; and
  - (b) to the extent to which the person can reasonably do so – gives the other person the information necessary to correct the document.

### **26 Improper use or possession of travel document**

- (1) A person commits an offence if:
- (a) the person uses a Nauruan travel document for travel; and
  - (b) the document has been cancelled; and
  - (c) the person is reckless about whether the document has been cancelled.



Penalty: \$20,000 and 10 years imprisonment

- (2) A person commits an offence if:
- (a) the person uses a Nauruan travel document for travel or identification; and
  - (b) the document was not issued to the person.

Penalty: \$20,000 and 10 years imprisonment

- (3) The holder of a Nauruan travel document commits an offence if the holder:
- (a) gives the document to another person; and
  - (b) is reckless about whether the document is or will be used by the other person for travel or identification.

Penalty: \$20,000 and 10 years imprisonment

- (4) A person commits an offence if:
- (a) the person has possession of a Nauruan travel document; and
  - (b) the document was not issued to the person; and
  - (c) the holder of the document has not consented to the person having possession of the document; and
  - (d) the person is reckless about whether or not the holder of the document has consented to the person having possession of the document.

Penalty: \$20,000 and 10 years imprisonment

## **27 Selling travel document**

- (1) A person commits an offence if the person sells a Nauruan travel document.

Penalty: \$20,000 and 10 years imprisonment

- (2) However, it is not an offence for an authorised officer to collect a prescribed fee for the issue of a Nauruan travel document in the exercise of a power or function under this Act in good faith.

## **28 Damaging travel document**

- (1) A person commits an offence if:
- (a) the person engages in conduct; and

- (b) as a result of the conduct, a current Nauruan travel document is damaged or destroyed; and
- (c) the person knew the conduct would result in the damage or destruction.

Penalty: \$2,000 and 12 months imprisonment

- (2) However, a person does not commit an offence under subsection (1) if the person:
  - (a) has a reasonable excuse; or
  - (b) is an authorised officer who destroys or damages the document in the exercise of a power or the performance of a function under this Act in good faith.

## **29 Obstruction of official**

A person commits an offence if:

- (a) the person intentionally obstructs another person; and
- (b) the person obstructed is attempting to exercise a power or perform a function under this Act; and
- (c) the person knows the person obstructed is attempting to exercise a power or perform a function under this Act.

Penalty: \$20,000 and 10 years imprisonment

## **30 Possessing false travel document**

- (1) A person commits an offence if:
  - (a) the person has possession of a document; and
  - (b) the document is a false Nauruan travel document; and
  - (c) the person is reckless about whether the document is a false Nauruan travel document.

Penalty: \$20,000 and 10 years imprisonment

- (2) A person commits an offence if:
  - (a) the person has possession of a document; and
  - (b) the document is a blank Nauruan travel document; and

- (c) the person is reckless about whether the document is a blank Nauruan travel document.

Penalty: \$20,000 and 10 years imprisonment

- (3) However, a person does not commit an offence under subsection (1) or (2) if the person:
  - (a) has a reasonable excuse; or
  - (b) is an authorised officer who possesses the document in the exercise of a power or the performance of a function under this Act in good faith.

### **31 Taking or sending a document across international borders**

- (1) A person commits an offence if:
  - (a) the person takes or sends a document across the international border of a country; and
  - (b) the document is a false Nauruan travel document; and
  - (c) the person is reckless about whether the document is a false Nauruan travel document.

Penalty: \$20,000 and 10 years imprisonment

- (2) A person commits an offence if:
  - (a) the person takes or sends a Nauruan travel document across the international border of a country; and
  - (b) the person is not the holder of the document; and
  - (c) the holder of the document has not consented to the person taking or sending the document across the border; and
  - (d) the person is reckless about whether the holder of the document has consented to the person taking or sending the document across the border.

Penalty: \$20,000 and 10 years imprisonment

- (3) However, a person does not commit an offence under subsection (1) or (2) if the person:
  - (a) has a reasonable excuse; or
  - (b) is an authorised officer who takes or sends the document across the border in the exercise of a power or the performance of a function under this Act in good faith.

**32 Issue of passport contrary to this Act**

An authorised officer to whom the Minister has delegated the function of issuing a Nauruan travel document commits an offence if:

- (a) the officer issues a Nauruan travel document; and
- (b) the issue of the document is contrary to this Act; and
- (c) the officer knows that the issue of the document is contrary to this Act.

Penalty: \$20,000 and 10 years imprisonment

**33 Failure to notify authorised officer of lost or stolen travel document**

The holder of a Nauruan travel document commits an offence if:

- (a) the document is lost or stolen; and
- (b) the holder is reckless about whether the document has been lost or stolen; and
- (c) the holder fails to report the loss or theft to an authorised officer as soon as practicable after the document has been lost or stolen.

Penalty: \$2,000 and 12 months imprisonment

**34 Abuse of public office**

(1) In this section:

**'benefit'** includes any advantage and is not limited to property;

**'detriment'** includes any disadvantage and is not limited to personal injury or to loss of, or damage to, property.

(2) An authorised officer commits an offence if:

- (a) the officer:
  - (i) exercises any influence the officer has under this Act; or
  - (ii) engages in any conduct in the exercise of the officer's duties under this Act; and
- (b) the officer does so with the intention of dishonestly:
  - (i) obtaining a benefit for the officer or another person; or
  - (ii) causing detriment to another person.

Penalty: \$20,000 and 10 years imprisonment

**35 Confidentiality of information**

- (1) A person who has obtained information under this Act commits an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct results in the disclosure of the information to another person; and
  - (c) the person is reckless about whether the person's conduct will result in the disclosure.

Penalty: \$20,000 and 10 years imprisonment

- (2) However, a person does not commit an offence under subsection (1) if the disclosure was made for the purpose of carrying out functions for the administration of this Act.

**PART 7 – SEIZURE OF DOCUMENTS**

**36 Power of authorised officer**

An authorised officer may seize a document if the document:

- (a) is a Nauruan travel document that the officer suspects on reasonable grounds has been obtained using false or misleading information; or
- (b) is a Nauruan travel document, a blank Nauruan travel document or another document that the officer suspects on reasonable grounds has been used in the commission of an offence against this Act; or
- (c) is a Nauruan travel document that has been cancelled or has otherwise ceased to be valid.

**37 Power of customs officer**

- (1) A customs officer may seize a document if the officer suspects on reasonable grounds that the document has been used in the commission of an offence against this Act.
- (2) A customs officer may search a container to seize the document if the officer suspects on reasonable grounds that the document is in the container.
- (3) This section does not authorise a customs officer to enter premises the officer would not otherwise be authorised to enter.

## PART 8 – REVIEWS AND APPEALS

### 38 Reviewable decisions

- (1) A **‘reviewable decision’** is a decision, or a decision to take any action, specified in the Table, column 1.
- (2) An **‘affected person’**, for a reviewable decision, means:
- (a) a person specified opposite the reviewable decision in the Table, column 2; and
  - (b) for a decision in relation to a child – includes a person with parental responsibility for the child.

*Table for section 38*

<b>Column 1</b>	<b>Column 2</b>
<b>Reviewable decision</b>	<b>Affected person</b>
To exercise discretion under section 15(2) to issue a Nauruan travel document to a child	A person with parental responsibility for the child
To refuse to issue a Nauruan travel document (other than a decision in relation to which a declaration under section 15(5) has been made)	The applicant for the document
To cancel a Nauruan travel document under section 24	The holder of the document
To seize a Nauruan travel document under section 36	The holder of the document
To extend, or not to extend, the time for making an application for review under section 40(2)(b)	The applicant for the review
A decision made on review under section 40(4)	An affected person for the decision reviewed

### **39 Notice of reviewable decision**

The person who makes a reviewable decision must give each affected person for the decision a notice specifying the following:

- (a) the decision;
- (b) the reasons for the decision;
- (c) if the decision was made by an authorised officer (whether as a delegate of the Minister or under section 36):
  - (i) that the person may apply to the Minister for review of the decision; and
  - (ii) that the application must be made within 28 days after receiving the notice or be accompanied by an application for an extension of time to make the application;
- (d) if the decision was made by the Minister – that the person may appeal to the Supreme Court against the decision within 28 days after receiving the notice.

### **40 Review of decision**

- (1) An affected person for a reviewable decision made by an authorised officer may apply to the Minister for review of the decision.
- (2) The application for review must be made:
  - (a) within 28 days after the affected person receives notice of the decision under section 39; or
  - (b) within a later time decided by the Minister on application by the affected person.
- (3) The application must be in writing and must set out the reasons for the application.
- (4) To decide the review, the Minister must:
  - (a) affirm the decision; or
  - (b) vary the decision; or
  - (c) set aside the decision and substitute a new decision.

### **41 Appeal against decision**

- (1) An affected person for a reviewable decision made by the Minister may appeal against the decision on a point of law to the Supreme Court.

- (2) The notice of appeal must be filed within 28 days after the affected person receives notice of the decision under section 39.
- (3) The notice of appeal must state fully the grounds on which the appeal is made.
- (4) The appeal does not affect the operation or implementation of the reviewable decision.
- (5) However, the Court may make an order staying or otherwise affecting the operation or implementation of so much of the decision as the Court considers appropriate to effectively hear and decide the appeal.
- (6) To decide the appeal, the Court must:
  - (a) affirm the decision; or
  - (b) refer the matter back to the Minister with directions to reconsider the whole or any specified part of the matter.

## **PART 9 – CRIMINAL LIABILITY**

### **42 Elements of an offence**

- (1) An offence against this Act consists of physical elements and fault elements.
- (2) A physical element of an offence against this Act may be:
  - (a) conduct; or
  - (b) a result of conduct; or
  - (c) a circumstance in which conduct, or a result of conduct, happens.
- (3) A fault element for a particular physical element of an offence against this Act may be intention, knowledge or recklessness.

### **43 Conduct and engaging in conduct**

- (1) Conduct is an act, an omission to perform an act or a state of affairs.
- (2) To engage in conduct is to:
  - (a) perform an act; or
  - (b) omit to perform an act.



**44 Intention**

- (1) A person has intention in relation to conduct if the person means to engage in that conduct.
- (2) A person has intention in relation to a result if the person means to bring it about or is aware that it will happen in the ordinary course of events.
- (3) A person has intention in relation to a circumstance if the person believes that it exists or will exist.

**45 Knowledge**

A person has knowledge of a result or circumstance if the person is aware that it exists or will exist in the ordinary course of events.

**46 Recklessness**

- (1) A person is reckless in relation to a result if:
  - (a) the person is aware of a substantial risk that the result will happen; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (2) A person is reckless in relation to a circumstance if:
  - (a) the person is aware of a substantial risk that the circumstance exists or will exist; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (3) The question of whether taking a risk is unjustifiable is one of fact.
- (4) If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness satisfies the fault element.

**PART 10 – ADMINISTRATIVE MATTERS**

**47 Appointment of authorised officers**

- (1) The Minister may appoint a person to be an authorised officer for this Act.
- (2) The Minister may appoint a person under subsection (1):
  - (a) by name; or

- (b) by reference to a class of persons; or
- (c) by reference to the office, position or designation held or occupied by the person.

#### **48 Request for personal information**

- (1) The Minister may request information from any person for the purposes of this Act.
- (2) The information requested from the person may include personal information about another person.
- (3) The person from whom the information is requested:
  - (a) is authorised to give the information to the Minister; and
  - (b) is not civilly or criminally liable for giving the information.

#### **49 Disclosure of information**

The Minister may only disclose information about a person (the **'relevant person'**) obtained under this Act:

- (a) to the following persons:
  - (i) a person who has issued a document given to the Minister in relation to the relevant person's application for a Nauruan travel document;
  - (ii) the Director of Police;
  - (iii) a Court;
  - (iv) the Head of the Department;
  - (v) a person exercising powers or performing functions under this Act; and
- (b) for the following purposes:
  - (i) to inform the person about the status of a Nauruan travel document;
  - (ii) to confirm or verify information about the person for the purposes of this Act;
  - (iii) to facilitate or otherwise assist the international travel of the relevant person under a Nauruan travel document;
  - (iv) law enforcement;
  - (v) the operation of family law and related matters;
  - (vi) another purpose prescribed for this section.

**50 Delegation of Minister's powers**

- (1) The Minister may, in writing, delegate to an authorised officer any of the Minister's powers and functions under the following provisions:
  - (a) the power to issue an ordinary Nauruan passport or a travel-related document under section 6 or 11, unless the exercise of the power requires the exercise of discretion under section 15(2);
  - (b) the power to request information under section 48;
  - (c) the power to disclose information under section 49;
  - (d) the power to endorse or make observations on a Nauruan travel document under section 55.
- (2) In exercising a delegated power or function, the authorised officer must comply with any directions of the Minister.

**51 Application on behalf of child**

An application for a Nauruan travel document to be issued to a child may be made on behalf of the child by a person with parental responsibility for the child.

**52 Form of travel documents**

- (1) A Nauruan travel document must be issued in the form approved by the Minister for that class of document.
- (2) In approving the form of a Nauruan travel document, the Minister must be guided by the requirements of the International Civil Aviation Organisation Document 9303 (as existing from time to time).

**53 Name on travel document**

- (1) The name of the person to whom a Nauruan travel document is issued must appear on the document.
- (2) Subject to subsections (3) and (4), the name must be the person's name as it appears on the most recently created of the following documents:
  - (a) an entry of the person's birth in the Register of Births or another register or record of births kept under section 6 of the *Births, Deaths and Marriages Act 1957-2009*;
  - (b) a notice of the grant of citizenship to the person published in the Gazette under section 5(4) of the *Naoero Citizenship Act 2005*;
  - (c) a record of a name change of the person in a register kept under the *Births, Deaths and Marriages Act 1957-2009*;

- (d) a certificate of the person's birth or change of name issued under a law of another place;
  - (e) the previous Nauruan passport issued to the person;
  - (f) another prescribed document.
- (3) Subject to subsection (4), the name may be the person's chosen married name, even if it is not the name that appears on a document mentioned in subsection (2), if the person issuing the travel document is satisfied that the person now uses the name having seen:
- (a) a document mentioned in subsection (2) showing the person's name before the marriage; and
  - (b) one of the following documents:
    - (i) a certificate of the person's marriage issued under section 24 of the *Births, Deaths and Marriages Act 1957-2009*;
    - (ii) an entry of the person's marriage in the Register of Marriages kept under section 22 of the *Births, Deaths and Marriages Act 1957-2009*;
    - (iii) a certificate of the person's marriage issued under a law of another place.
- (4) If a document mentioned in subsection (2) or the person's married name contains more than 2 given names, the person's name as it appears on the Nauruan travel document may include only the first 2 given names.

#### **54 Nauruan travel document remains property of the Republic**

A Nauruan travel document remains the property of the Republic at all times.

#### **55 Endorsements and observations**

- (1) The Minister may endorse, or make observations on, a Nauruan travel document.
- (2) The Minister must not endorse a Nauruan travel document issued to a person with the name of another person.

#### **56 Register of travel documents**

- (1) The Head of the Department must ensure a register of Nauruan travel documents issued under this Act is kept.
- (2) The register must include the date of expiry for each document issued and any other prescribed details.

**57 Regulations**

- (1) Cabinet may make regulations under this Act prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to give effect to this Act.
- (2) Without limiting subsection (1), the regulations may:
  - (a) for an offence against the regulations, prescribe a fine not exceeding \$5000; and
  - (b) give a person discretion to decide a matter; and
  - (c) provide for the issue, use and possession of diplomatic, official and Presidential passports; and
  - (d) make different provision in relation to different matters or classes of matters.

**PART 11 – REPEAL AND TRANSITIONAL MATTERS**

**Division 1 – Repeal of Act**

**58 Repeal**

The *Passports Act 1997* (No. 9 of 1997) is repealed.

**Division 2 – Transitional matters**

**59 Definitions**

In this Division:

***‘commencement date’*** means the date section 58 commences;

***‘repealed Act’*** means the *Passports Act 1997* as in force immediately before the commencement date;

***‘new Act’*** means this Act.

**60 Passports issued under repealed Act**

- (1) A Nauruan passport issued under the repealed Act is taken, from the commencement date, to be a Nauruan passport issued under the new Act.

- (2) The passport:
  - (a) continues to be valid for the unexpired part of the term it would have been valid if the repealed Act remained in force after the commencement date; and
  - (b) cannot be renewed under the repealed Act.
- (3) Subsection (2) does not prevent the Minister from cancelling the passport under the new Act.

## **61 Application under repealed Act**

If an application for a Nauruan passport made under the repealed Act has not been decided immediately before the commencement date, the application is, from the commencement date, taken to be an application for a Nauruan passport made under the new Act.

## **62 Transitional regulations**

- (1) The regulations may make provision (a ***'transitional regulation'***) about a matter for which:
  - (a) it is necessary to make provision to achieve the transition from the operation of the repealed Act to the new Act; and
  - (b) the new Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a date not earlier than the commencement date.
- (3) However, to the extent a transitional regulation has retrospective operation, it must not operate to the disadvantage of a person (other than the Republic) by detrimentally affecting the person's rights or imposing liabilities on the person.
- (4) This section expires 12 months after the commencement date.