

**NIUE LAWS
LEGISLATION AS AT DECEMBER 2006**

BUSINESS LICENCE ACT 1997

1997/216 – 1 April 1997

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1 Short title

This is the Business Licence Act 1997.

2 Interpretation

In this Act and any regulations made under it –

"business" includes any profession, occupation, or commercial trade, carried on for the purposes of making, or acquiring a commercial profit, or commercial gain but, does not include:

(a) The profession, occupation, or function of any person employed as a servant of the Crown;

(b) The profession of a bona fide minister of religion;

"business person" means –

(a) Any person, or body of persons whether corporate, or unincorporate engaging in, or carrying on a business;

(b) The agent of a business person (other than an employee) engaged in carrying on business on behalf of the business person;

"business premises" means any area of land, house, building, place, vehicle, boat, ship, vessel or aircraft where any business person engages in, or carries on any business;

"foreign enterprises" and **"foreign interest"** has the same meaning as under the Development Investment Act 1992; **"Gazette"** means the Gazette, or any other periodic publication printed and available on Niue;

"goods" means any form of tangible moveable property excluding those things attached to and forming part of the land unless such things are to be severed from the land for the purposes of sale;

"hawker" includes any person who, carrying goods, regularly travels to any place in which he does not usually reside and there sells any of those goods;

"licence" means a licence duly issued under section 11 and in force under this Act; **"Licensor"** means the Financial Secretary or his appointed agent;

"prescribed fee" means the fee prescribed in the Business Licence Regulations;

"public show" means an event that takes place on open ground to which the general public has access whether or not an entrance fee is payable; **"retail business"** means a business carried on by a retailer; **"retailer"** means any person whose business it is to sell goods to the public generally, or to any class, or section of the public;

"sale" means a transfer of goods from one person to another in consideration of a price paid in money and shall include the bartering, or exchanging of goods;

"service business" means the business carried on by a service provider;

"service provider" means any person the principle object of whose business it is to provide services to the public generally, or to any class or section of the public;

"stall" means a makeshift table and its immediate surrounds from which goods are sold on any one day; **"wholesale business"** means the business of selling goods only to licensed retailers.

3 Administration

Subject to section 4, this Act shall be administered by the Licensor.

4 Foreign enterprises and foreign interests

This Act shall be subject to the Development Investment Act 1992, in regard to all foreign enterprises and foreign interests.

5 Act not to apply

(1) This Act shall not apply to any person who carries on the business of selling goods solely from –

- (a) a ‘stall’; or
- (b) the ‘makete’ (market) situate at Alofi.

(2) Notwithstanding subsection 1(a) and (b) this Act shall not apply to any person carrying on the business of a hawker.

6 Act not to bind

This Act shall apply to corporate bodies in which the Crown has a shareholding, or bodies incorporated by Act of the Assembly but, shall not apply to the Crown.

7 Prohibitions

(1) Subject to section 5 no person shall directly, or indirectly engage in or carry on any business unless a licence has first been obtained, provided however, it shall be lawful for the spouse, child or servant of a licensed business person to engage in, or carry on the business of that licensed business person.

(2) No licence shall be capable of being transferred, assigned, made the subject of any security, or otherwise dealt with but, shall be strictly personal to the business person to whom it has been issued, provided however, where a licenced business person dies, or becomes a person of unsound mind, or becomes bankrupt, or insolvent, the licence held by such business person shall ensure in favour of his personal representative, trustee, or other persons entitled to administer his estate or control his affairs.

(3) It shall be unlawful for any licensed business person to engage in, or carry on any business

- (a) Other than that business stated in the licence; or
- (b) At a place other than that place stated in the licence; or
- (c) Contrary to any terms and conditions of the licence.

8 Applications for licence

(1) Any person desiring to carry on any business shall make application to the Licensor for a licence to carry on the business.

(2) Each such application shall be delivered to the Licensor in the form prescribed and shall specify:

(a) The full name, occupation and address in Niue of the applicant;

(b) Whether the applicant intends his business to be that of a –

(i) sole operator;

(ii) partnership;

(iii) family business;

(iv) duly incorporated company;

(c) The precise nature of the business for which the licence is sought;

(d) The type of licence sought, namely;

(i) a wholesaler's licence;

(ii) a retailer's licence;

(iii) a service provider's licence;

(e) Each business premise at, in, or from which, the applicant desires, or intends to engage in, or carry on the business;

(f) The opening and closing hours of the business for which, approval is sought;

(g) All other permits required to operate the business.

(3) Each such application shall be dated and signed by the applicant, or by his duly authorised agent.

(4) Every such application shall be accompanied by the prescribed application fee.

(5) Any applicant who knowingly and wilfully makes any false, or misleading statement in any such application commits an offence and on conviction shall be liable to a fine not exceeding 5 penalty units.

9 Advertising new applications

(1) The Licensor shall advertise all new applications for a business licence seeking any objections to the proposed business licence.

(2) The advertisement is to be published in the Gazette and broadcast over local radio and local television informing the public of:

(a) The name of the person seeking the licence;

(b) The nature of the business, and

(c) The location of the business stated in the business application.

(3) Any objections shall be in writing and delivered to the Licensor within 10 working days of the notice being published, or broadcast.

(4) No objection shall be considered if not received within the 10 working days specified in subsection (3).

10 Receipt of applications

(1) Upon expiry of the 10 working days referred to in section 9(3) the Licensor shall upon payment of the prescribed fee issued to the applicant a licence in the prescribed form within a period not exceeding 10 days.

(2) The Licence may be subject to such reasonable conditions considered, by the Licensor necessary to achieve orderly and balanced business activity throughout Niue.

(3) The licence shall state –

(a) The full name of the applicant;

(b) The type of business;

(c) The place of business;

(d) Any conditions imposed by the Licensor.

11 Issue of licence

Every licence shall have a registered number endorsed on it and on the issue of any licence, the Licensor shall forthwith deliver the licence to the business person named.

12 Refusal of licence

(1) The Licensor may refuse to grant, or renew a licence if he is reasonably of the opinion –

(a) The applicant is not a fit, or proper person to hold such a licence; or

(b) The issue of the licence would cause harm, or annoyance to the residents of any locality on Niue; or

(c) The issue of the licence would result in a serious imbalance in the particular market the applicant intends to operate having regard to—

(i) objections made under section 9(3);

(ii) any market analysis made, or required by the Licensor.

(2) Upon refusal of a licence, the Licensor shall forthwith, by written notice inform the applicant of such refusal together with the grounds for refusal.

(3) The Licensor shall deliver the written notice of refusal to the applicant.

13 Duration of licence

Every licence shall expire on 31 March, unless the licence shall be renewed under section 14.

14 Renewal of licence

(1) At any time during the month of March, a business person may renew his licence by delivering to the Licensor an application form in writing for the renewal of the licence.

(2) Each such application for renewal shall specify:

(a) The number of the licences to be renewed; and

(b) The full name, occupation and address in Niue of the applicant; and

(c) Any change in the matters set out in section 10 (3).

(3) Each such application shall be dated and signed by the applicant, or by his duly authorised agent and shall be accompanied by the prescribed fee.

(4) On receipt of any such application for renewal together with the prescribed fee, by the Licensor, the licence shall be renewed for a period of one year commencing on 1 April, provided however, the Licensor may refuse to renew the licence if he is reasonably satisfied that the applicant is no longer a fit and proper person to hold a licence.

(5) In the event of refusing to renew a licence, the Licensor shall within 7 days of the refusal, deliver a notice to the applicant for renewal, advising of the refusal.

(6) On receipt by the applicant for renewal of a notice from the Licensor refusing to renew a licence, such licence shall forthwith be revoked.

(7) On the renewal of any licence under subsection (4), the Licensor shall issue and deliver a certificate of renewal to the business person named in the certificate.

(8) One month prior to 31 March the Licensor shall insert a notice in the local newspaper and broadcast such notice over the local radio and television reminding persons to renew their business licence.

15 Licence to be exhibited

(1) A licensed business person shall exhibit his current business licence in a conspicuous position, visible to members of the public at, in, or upon each of his business premises, respectively at, in, or from which, he carries on the business stated in his licence.

(2) It shall be permissible for a true copy of a current business certificate to be exhibited, provided however, the true copy is a true copy issued under section 16.

(3) Any licensed business person who fails to comply with subsection (1) commits an offence and on conviction shall be liable to a fine not exceeding 2 penalty units.

16 Copies

(1) On paying the prescribed fee to the Licensor the licensed business person shall be entitled to receive from the Licensor a true copy of any licence, or any certificate of renewal of any licence issued to, or held by such business person.

(2) Each such copy shall be marked "true copy" and shall have the same effect as the original document.

17 Fees

(1) Fees shall be payable as prescribed in the Business Licence Regulations.

(2) The Licensor, or any person duly authorised to act on his behalf, shall issue an official Government receipt in respect of each fee received.

(3) All fees paid under this Act shall be paid into and shall form part of the general revenue of the Government.

18 Delivery of documents

(1) Any applications, or objections required by this Act to be made to the Licensor shall be in writing and delivered;

(a) Personally to the office of the Licensor; or

(b) By post.

(2) Any licence, or notice required by this Act to be delivered by the Licensor to any person shall be in writing and delivered –

(a) Personally to that person; or

(b) By post to that person's address stated on the licence.

(3) Any document despatched by post shall be deemed to have been received on the date upon which, in the normal course of post it would have been delivered.

19 A licensed wholesaler

(1) A licensed wholesaler shall be entitled to engage in, or carry on a wholesale business in respect of the goods for which, he is licensed to carry on a wholesale business provider however, he sells only to a licensed retailer and, or a licensed service provided.

(2) Records of all business sales and purchases shall be kept.

20 A licensed retailer

(1) A licensed retailer shall be entitled to sell goods to the public.

(2) A record of all business sales and local purchases shall be kept.

21 A licensed service provider

(1) A licensed service provider shall be entitled to offer services to the public from his business premises.

(2) If goods are sold without the provision of a service then a retailers license shall also be required.

(3) A record of all business services provided and business purchases made, shall be kept.

22 Register of licences

(1) The Licensor shall keep, in a convenient form, a Register of Licences which, shall consist of a duplicate of all licenses, certificates of renewal of licence, notices of refusal to renew licence and of any orders made by the Court, under this Act relating to any licence.

(2) Each such duplicate shall be marked "duplicate" and shall have the same evidential value as the original.

(3) Any person may between 10am and 3pm on any day except a Saturday, or Public Holiday inspect such Register of Licences.

23 Business premises

(1) The Licensor, or any other person authorised in writing so to do by the Licensor, or any constable may at any time between the hours of 9am and 4pm on any day, not being a Saturday, or holiday, enter upon any business premise for the purpose of carrying out an inspection of it.

(2) When carrying out such an inspection of the business premises, entry to any private property shall not be permitted without the consent of the occupier of it and, in the absence of any such consent, the prior consent of the Court.

(3) Should the requirements specified in any such notice not be carried out, or put into effect within the period of time stipulated in such notice then, upon the expiration of such period, no person thereafter shall be entitled to carry on business at, in, or from the premises concerned without the prior written conditional or unconditional consent of the Licensor, until such time as such requirements shall have been carried out, or put into effect.

(4) Nothing in this section shall derogate, or be deemed to derogate from the Public Health Act 1965.

24 Appeals to the Court

(1) Any applicant for a licence may appeal to the High Court against the failure, or refusal of the Licensor to issue the licence sought by the applicant.

(2) Any applicant for the renewal of a licence may appeal to the Court against a decision of the Licensor not to renew the licence.

(3) Any applicant for a licence to whom a licence has been issued may appeal to the Court against any condition imposed by the Licensor in respect of the licence.

(4) Where the Licensor has issued any licence (not being a renewal of a licence) any person aggrieved at the issue of the licence may appeal to the Court.

25 Time for making appeals

(1) Any such appeal under section 23 shall, subject to subsection (2) not be made after the expiration of 2 weeks after the effective date of the act, ruling, refusal, notice or decision which is the subject matter of the appeal.

(2) Notwithstanding subsection (1), the Court may if it thinks it just and equitable to do so extend, or enlarge by not more than 2 months and either unconditionally, or subject to such conditions which, it may think fit to impose, the period of time within which any such appeal shall be made.

26 Powers of the Court

(1) On the hearing of any appeal brought in accordance with sections 24 and 23, the Court may, by order –

(a) Dismiss the appeal; or

(b) Allow the appeal; or

(c) Dismiss the appeal in part and allow it in part; or,

(d) Modify, vary, or amend the act, ruling, refusal, notice, or decision which is the subject matter of the appeal in such manner and to such an extent which the Court thinks just.

(2) Any such appeal shall be final.

27 Offences

(1) Subject to subsection (2) any person who engages in, or carries on any business contrary to this Act commits an offence and on conviction shall be liable –

(a) For a first offence, to a fine not exceeding 5 penalty units;

(b) For a second, or a subsequent offence, to a fine not exceeding 10 penalty units, or to imprisonment for a term not exceeding 20 days, or to both such a fine and such imprisonment.

(2) Nothing contained in subsection (1) shall derogate from section 8 (5) or section 15 (2).

(3) Any person who buys any goods from any wholesaler, or retailer who is not licensed, or gives any reward for any services provided by any service provider, who is not licensed, knowing that such wholesaler, retailer, or service provider should be licensed, commits an offence and on conviction shall be liable to a fine not exceeding 2 penalty units.

28 Regulations

Cabinet may make regulations as may be deemed necessary, or expedient to give full effect to this Act and to regulate licence fees and any other matters required in the administration of this Act.