



No. 372

Niue (Sexual Offences) Amendment Act 2024

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An Act to reform sexual offences under the Niue Act 1966.

The Niue Assembly enacts as follows—

- Title**
This Act is the Niue (Sexual Offences) Amendment Act 2024.
- Commencement**
This Act comes into force on the day after the date on which this Act becomes law in accordance with Article 34 of the Constitution.
- Principal Act amended**
This Act amends the Niue Act 1966.

Sexual offences

4 Section 156 replaced (Indecent assault)

Replace section 156 (section 28 of the Criminal Law Code) with:

“156 Indecent assault of, or indecency with, person of or over 16

- “(1) A person is liable to imprisonment for a term not exceeding 7 years if they—
- “(a) indecently assault another person of or over the age of 16 years; or
 - “(b) do anything indecent to another person of or over the age of 16 years with their consent but the consent was obtained by a false and fraudulent representation as to the nature and quality of the act or in other circumstances where apparent consent was not valid.
- “(2) In this section, **do anything indecent** includes if the defendant—
- “(a) does the thing on or with the other person; or
 - “(b) induces or permits the other person to do the thing on or with the defendant.”

5 Sections 161 and 162 replaced

Replace sections 161 and 162 (sections 34 and 35 of the Criminal Law Code) with:

“161 Definitions relating to sexual offences

- “(1) For the purposes of this Act, —
- genitalia** includes a surgically constructed or reconstructed organ analogous to naturally occurring male or female genitalia (whether the person concerned is male, female, or of indeterminate sex)
- penis** includes a surgically constructed or reconstructed organ analogous to a naturally occurring penis (whether the person concerned is male, female, or of indeterminate sex)
- rape** means sexual connection with a person—
- “(a) without the person’s consent to the connection; and
 - “(b) without a reasonable belief that the person consents to the connection
- sexual connection** means—
- “(a) connection effected by the introduction to the slightest degree into the genitalia or anus of one person, otherwise than for genuine medical purposes, of—
 - “(i) a part of the body of another person; or
 - “(ii) an object held or manipulated by another person; or
 - “(b) connection between the mouth or tongue of one person and a part of another person’s genitalia or anus; or
 - “(c) the continuation of connection of a kind described in paragraph (a) or (b).
- “(2) There is no presumption of law that a person is by reason of their age incapable of sexual connection.
- “(3) To avoid doubt, the actions described in paragraphs (a) to (c) of the definition of sexual connection in subsection (1) amount to sexual connection if—
- “(a) they are done by the defendant with or on the other person; or

- “(b) the defendant induces or permits the other person to do any of those actions with or on them.

“161A Circumstances that do not amount to consent

- “(1) For the purposes of sections 161 to 162B and 163 to 164A, **consent** does not include the following:
 - “(a) apparent consent extorted by fear of bodily harm or by threats of bodily harm to the person or to a third person; or
 - “(b) apparent consent obtained by personating another person; or
 - “(c) apparent consent obtained by a false and fraudulent representation as to the nature and quality of the act.
- “(2) Subsection (1) does not limit the circumstances in which a person does not consent to sexual activity.

“162 Rape

- “(1) A person who commits rape is liable to imprisonment for a term not exceeding 14 years.
- “(2) A person may be convicted of rape of another person at a time when they were married to each other.

“162A Attempted rape and assault with intent to commit rape

- “(1) A person who attempts to commit rape is liable to imprisonment for a term not exceeding 10 years.
- “(2) A person who assaults another person with intent to commit rape of the other person is liable to imprisonment for a term not exceeding 10 years.

“162B Sexual connection with dependent family member

- “(1) A person is liable to imprisonment for a term not exceeding 16 years if they have or attempt to have sexual connection with a dependent family member who is under the age of 21 years. (*See* section 162C for the definition of dependant family member.)
- “(2) It is no defence to a charge under this section that the dependent family member consented.
- “(3) The dependent family member cannot be charged as a party to an offence under this section.

“162C Dependent family member defined

- “(1) For the purposes of section 162B, one person (**person A**) is a dependent family member of another person (**person B**)—
 - “(a) if person A is living with person B and person B is—
 - “(i) person A’s parent, step-parent, foster parent, guardian, uncle, or aunt; or
 - “(ii) a parent, step-parent, or foster parent of a person described in subparagraph (i); or
 - “(iii) a child of person A’s parent or step-parent; or
 - “(iv) the spouse or de facto partner of a person described in subparagraphs (i) to (iii); or
 - “(b) if person A is living with person B as a member of person B’s family and person B is not a person referred to in paragraph (a)

but has a responsibility for, or significant role in, person A's care or upbringing.

- “(2) In subsection (1), —
aunt, in relation to person A, includes a half-sister of one of person A's parents
foster parent includes a former foster parent
guardian includes a former guardian
step-parent includes a former step-parent
uncle, in relation to person A, includes a half-brother of one of person A's parents.”

6 Section 165 replaced (Sexual intercourse with woman or girl who is an idiot or imbecile or of unsound mind)

Replace section 165 (section 38 of the Criminal Law Code) with:

“165 Sexual connection with person with significant intellectual impairment

A person is liable to imprisonment for a term not exceeding 7 years if—

- “(a) they have or attempt to have sexual connection with another person who has a significant intellectual impairment that means they do not understand the nature and quality of the act or its potential consequences; and
“(b) they knew, or had good reason to believe, that the other person has a significant intellectual impairment.”

7 Sections 170 and 171 replaced

Replace sections 170 and 171 (sections 43 and 44 of the Criminal Law Code) with:

“170 Bestiality

- “(1) A person who commits bestiality is liable to imprisonment for a term not exceeding 10 years.
“(2) This offence is complete upon penetration.

“171 Attempted bestiality

A person who attempts to commit bestiality is liable to imprisonment for a term not exceeding 5 years.”

8 Section 172 replaced (Incest)

Replace section 172 (section 45 of the Criminal Law Code) with:

“172 Incest

- “(1) Sexual connection is incest if—
“(a) it is between 2 people whose relationship is that of parent and child, siblings, half-siblings, or grandparent and grandchild; and
“(b) the person charged knows of the relationship.
“(2) A person of or over the age of 16 years who commits incest is liable to imprisonment for a term not exceeding 10 years.
“(3) In this section, —
child includes an illegitimate child; and
grandchild has a corresponding meaning.”

9 New section 172A inserted (Voyeurism)

After section 172 (section 45 of the Criminal Law Code), insert:

“172A Voyeurism

A person is liable to imprisonment for a term not exceeding 18 months if they intentionally observe a person who—

- “(a) does not consent to being observed; and
- “(b) is in a place that, in the circumstances, would reasonably be expected to provide privacy; and
- “(c) is—
 - “(i) naked or has their genitals, pubic area, buttocks, or female breasts exposed, partially exposed, or clad solely in undergarments; or
 - “(ii) engaged in an intimate sexual activity; or
 - “(iii) engaged in showering, toileting, or other personal bodily activity that involves dressing or undressing.”

Sexual offences involving children under 16

10 Sections 163 and 164 replaced

Replace sections 163 and 164 (sections 36 and 37 of the Criminal Law Code) with:

“163 Sexual connection or attempted sexual connection with child under 12

- “(1) A person is liable to imprisonment for a term not exceeding 14 years if they have sexual connection with a child under the age of 12 years.
- “(2) A person is liable to imprisonment for a term not exceeding 10 years if they attempt to have sexual connection with a child under the age of 12 years.
- “(3) It is no defence to a charge under this section that the child consented, or that the person charged believed that the child consented and was of or over the age of 12 years.
- “(4) The child cannot be charged as a party to an offence against this section.

“163A Indecent assault of, or indecency with, child under 12

- “(1) A person is liable to imprisonment for a term not exceeding 10 years if they—
 - “(a) indecently assault a child under the age of 12 years; or
 - “(b) do an indecent act with, or on, a child under the age of 12 years; or
 - “(c) induce or permit a child under the age of 12 years to do an indecent act with or on them.
- “(2) It is no defence to a charge under this section that the child consented, or that the person charged believed that the child consented or was of or over the age of 12 years.
- “(3) The child cannot be charged as a party to an offence against this section.

“164 Sexual connection or attempted sexual connection with child between 12 and 16

- “(1) A person is liable to imprisonment for a term not exceeding 10 years if they have or attempt to have sexual connection with a child who is 12 years of age or older but under the age of 16 years.
- “(2) Except as provided in this section, it is no defence to a charge under this section that the child consented or that the person believed that the child consented or was of or over the age of 16 years.
- “(3) It is a defence to a charge under this section if the person charged proves that—
 - “(a) the child consented; and
 - “(b) before the time of the act concerned, they had taken reasonable steps to find out whether the child was of or over the age of 16 years; and
 - “(c) at the time of the act concerned, they believed on reasonable grounds both that the child consented and was of or over the age of 16 years.
- “(4) It is also a defence to a charge under this section if the person charged proves that—
 - “(a) the child consented; and
 - “(b) the difference in age (if any) between that person and the child is no more than 36 months.
- “(5) The child cannot be charged as a party to an offence against this section.

“164A Indecent assault of, or indecency with, child between 12 and 16

- “(1) A person is liable to imprisonment for a term not exceeding 7 years if they—
 - “(a) indecently assault a child who is 12 years of age or older but under the age of 16 years; or
 - “(b) do an indecent act with, or on, a child who is 12 years of age or older but under the age of 16 years; or
 - “(c) induce or permit a child who is 12 years of age or older but under the age of 16 years to do an indecent act with or on them.
- “(2) Except as provided in this section, it is no defence to a charge under this section that the child consented or that the person believed that the child consented or was of or over the age of 16 years.
- “(3) It is a defence to a charge under this section if the person charged proves that—
 - “(a) the child consented; and
 - “(b) before the time of the act concerned, they had taken reasonable steps to find out whether the child was of or over the age of 16 years; and
 - “(c) at the time of the act concerned, they believed on reasonable grounds both that the child consented and was of or over the age of 16 years.
- “(4) It is also a defence to a charge under this section if the person charged proves that—
 - “(a) the child consented; and
 - “(b) the difference in age (if any) between that person and the child is no more than 36 months.

- “(5) The child cannot be charged as a party to an offence against this section.”

Transitional provision

11 New section 287A inserted (Transitional provision relating to Niue (Sexual Offences) Amendment Act 2024)

After section 287 (section 173 of the Criminal Law Code), insert:

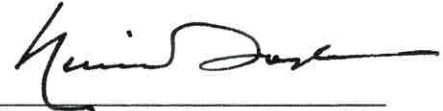
“287A Transitional provision relating to Niue (Sexual Offences) Amendment Act 2024

- “(1) This section applies if—
- “(a) proceedings are commenced on or after the day the Niue (Sexual Offences) Amendment Act 2024 (the **amendment Act**) comes into force for—
 - “(i) an offence under a repealed section in reliance on section 17 of the Interpretation Act 2004; or
 - “(ii) an offence under a repealed section in reliance on section 17 of the Interpretation Act 2004 and, in the alternative, for an offence under a replacement section; and
 - “(b) for—
 - “(i) paragraph (a)(i), the date of the act or omission by the defendant constituting the alleged offence is alleged to have occurred before the amendment Act comes into force;
 - “(ii) paragraph (a)(ii), the date of the act or omission by the defendant constituting the alleged offence cannot be established with sufficient certainty to determine whether it occurred before or after the amendment Act comes into force.
- “(2) A repealed section continues to have effect for the purpose of the proceedings and the defendant is entitled to raise any defence to the offence under the repealed section that would have been available to them immediately before its repeal.
- “(3) Despite subsections (1) and (2), on and from the date the amendment Act comes into force, no prosecution may be taken against a person for an offence under repealed section 170 or 171 (*see* section 43 or 44 of the Criminal Law Code), unless the alleged offending was against—
- “(a) a child under 16 years; or
 - “(b) a living creature other than a human being.
- “(4) In this section, —
- repealed section** means any section or part of a section that is repealed or amended by the amendment Act as it read immediately before its repeal or amendment
- replacement section** means any section or part of a section that is replaced or amended by the amendment Act as it read after its replacement or amendment.”

Niue (Sexual Offences) Amendment Act 2024

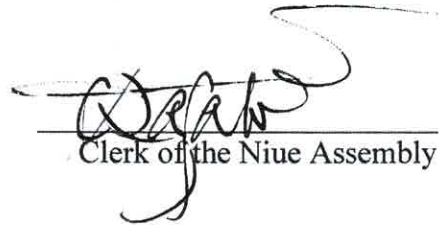
I, Hima Douglas, Speaker of the Niue Assembly, certify that the requirements of Article 34 of the Niue Constitution have been complied with.

SIGNED AND SEALED at the Assembly Chambers this 5th day of JUNE 2024.



Speaker of the Niue Assembly

COUNTERSIGNED in the presence of the Speaker



Clerk of the Niue Assembly

This Act is administered by the Niue Police Department.

This Act was passed by the Niue Assembly on the 29th day of May 2024.
