

PUBLIC ENTERPRISES

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Public Enterprises Act 2019

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Public Enterprises Act 2019

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The Public Enterprises Act 2019 No 11 was certified and commenced on 11 June 2019 (GN No 458/2019; Gaz 102/2019).

Amending Legislation	Certified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021
Electoral (Amendment) Act 2021 No 18	14 September 2021	s 23: 14 September 2021
Nauru Seabed Minerals Authority Act 2024 No 13	20 August 2024	s 69: 20 August 2024

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An Act to provide for the regulation of public enterprises in the Republic and for related purposes.

Enacted by the Parliament of Nauru as follows:

PART 1 — PRELIMINARY

1 Short title

This Act may be cited as the *Public Enterprises Act 2019*.

2 Commencement

This Act commences upon certification by the Speaker and came into effect on 11 June 2019.

3 Definitions

In this Act:

‘assessment’ includes a general or specific clinical or medical examination resulting in a provisional, differential or definitive diagnosis;

‘Accountable Minister’ in relation to a public enterprise, means the Minister appointed by the Cabinet as the Accountable Minister for that public enterprise;

‘articles’ for a public enterprise that is a corporation means the corporation’s articles of incorporation required under the *Corporations Act 1972*;

‘Board’ in relation to a public enterprise, means the directors of a public enterprise acting together;

‘chief executive officer’ means the person appointed under Section 64 to be the chief executive officer of a public enterprise;

‘community service obligation’ means an obligation referred to in Section 25;

‘community service obligation agreement’ means an agreement between the Responsible Minister and a State-owned enterprise for the undertaking of a community service obligation by the State-owned enterprise;

‘corporation’ means a corporation incorporated under the *Corporations Act*;

‘Corporations Act’ means the *Corporations Act 1972*;

‘constitution’ in the case of a public enterprise that is a corporation or of a subsidiary of a public enterprise, means its memorandum and articles of incorporation;

‘director’ in relation to a public enterprise that:

- (a) is a corporation, has the same meaning as in Section 2 of the *Corporations Act*; or
- (b) is not a corporation, means a member of the governing body of the public enterprise;

‘executive officer’ in relation to a public enterprise, means:

- (a) the chief executive officer, however described; or
- (b) any other employee of the entity responsible for its management;

'financial year' for a public enterprise, means a period that is a financial year for accounting purposes for the public enterprise;

'Government' means the Government of Nauru;

'Government controlled enterprise' means a public enterprise that is stated to be a Government controlled enterprise under its designation under Section 8(1);

'prescribed' means prescribed by regulations made under this Act;

'primary objective':

- (a) in relation to a State-owned enterprise, has the meaning set out in Section 22; and
- (b) in relation to a Government controlled enterprise, has the meaning set out in Section 23;

'public enterprise' means a State-owned enterprise or a Government controlled enterprise;

'public enterprise principles' means the principles set out in Section 7;

'public service employee' means a person employed in a department of the public service and includes a temporary employee, casual employee or contract employee;

'Responsible Minister' in relation to a public enterprise, means the Minister appointed by the Cabinet as the Responsible Minister for that public enterprise;

'statement of corporate intent' means the statement of corporate intent required by Section 27;

'State-owned enterprise' means a public enterprise that is stated to be a State-owned enterprise under its designation under Section 10(1);

'subsidiary' has the same meaning as in Section 4(1) of the *Corporations Act 1972*;

'weighted average cost of capital' means the cost of capital that is calculated in accordance with the prescribed methodology; and

'working day' means any day other than a Saturday, Sunday or public holiday.

4 Objective

The objective of this Act is to provide for the regulation and governance of public enterprises according to public enterprise principles.

5 Application of this Act with other Acts

- (1) This Act:
 - (a) applies in addition to the *Corporations Act* and any other Act that creates an entity designated as a public enterprise; but
 - (b) prevails in the event of any conflict.
- (2) Anything done under this Act counts towards compliance with the other Acts and, anything done under the other Acts counts towards compliance with this Act.

6 Act binds the Republic
This Act binds the Republic.

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PART 2 — PUBLIC ENTERPRISE PRINCIPLES

7 **Public enterprise principles**

For the purposes of this Act, the public enterprise principles for a public enterprise are:

- (a) the principle of prudent and efficient management according to which:
 - (i) a State-owned enterprise shall operate on a commercial basis that is efficient and profitable; and
 - (ii) a Government controlled enterprise shall operate efficiently and effectively;
- (b) the principle of measureable performance according to which a public enterprise shall identify its business goals;
- (c) the principle of responsible management according to which the management of a public enterprise shall be competent, honest and accountable;
- (d) the principle of transparent performance according to which a public enterprise shall report its performance fully, publicly and timeously; and
- (e) the principle of monitored performance according to which a public enterprise shall be subject to rigorous monitoring, approval and review.

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PART 3 — ESTABLISHMENT OF PUBLIC ENTERPRISE

DIVISION 1 — NATURE OF PUBLIC ENTERPRISE

8 What is public enterprise

- (1) A public enterprise is an entity that is:
 - (a) wholly owned by the Republic or its nominees or controlled by the Government; and
 - (b) designated as a public enterprise by its Responsible Minister by notice in the Gazette.
- (2) A Responsible Minister shall not designate an entity as a public enterprise unless the designation has been approved by the Cabinet under Section 10.
- (3) A public enterprise shall be one of the following:
 - (a) a corporation; or
 - (b) an entity created by an Act.

9 Types of public enterprise

- (1) A public enterprise may be:
 - (a) a State-owned enterprise; or
 - (b) a Government controlled enterprise.
- (2) The designation of an entity as a public enterprise under subsection (1) shall state whether the public enterprise is a State-owned enterprise or a Government controlled enterprise.

10 Cabinet approval of designation as public enterprise

- (1) The Cabinet may approve the designation of an entity as a public enterprise, either as a State-owned enterprise or Government controlled enterprise, if the Cabinet considers that it is in the public interest that the entity is governed by public enterprise principles.
- (2) The Cabinet, upon approving the designation of an entity as a public enterprise, shall appoint separate Ministers as the Responsible Minister and Accountable Minister respectively for that public enterprise.

11 Revocation of designation

The Responsible Minister, after consultation with the Accountable Minister, may by notice in the Gazette revoke the designation of an entity as a public enterprise and the revocation is effective on the date specified in the notice.

12 Constitution of public enterprise shall be consistent with this Act

The constitution of a public enterprise shall be consistent with this Act and regulations made under this Act and shall be void to the extent of any inconsistency.

13 **Meaning of Government control**

For the purposes of this Act, unless the context otherwise requires, an entity is controlled by the Government:

- (a) in the case of a corporation, if the Republic:
 - (i) holds at least 50% of the shares of the corporation;
 - (ii) has the power to exercise or control the exercise, of voting rights attached to at least 50% of the shares of the corporation; or
 - (iii) has the power to dispose of or control the disposition of at least 50% of the shares of the corporation; and
- (b) in the case of an entity created by an Act, if the Republic:
 - (i) has the power to appoint a majority of the persons who are directors of that entity;
 - (ii) shall consent or approve before a person may be appointed as a director of that entity; or
 - (iii) otherwise has the power to determine the outcome or decisions about the entity's management or financial and operating policies.

14 **Republic not bound by Public Enterprises Act 2019 or transaction**

- (1) No act or transaction by a public enterprise or its subsidiary binds the Republic or creates a liability on the part of the Republic unless the Republic agrees to be bound or to be liable.
- (2) The Responsible Minister and Accountable Minister, as agents of the Republic may jointly give a guarantee or other commercial support in respect of a liability of a public enterprise provided the requirements under the *Constitution* and the *Treasury Fund Protection Act 2004* are strictly complied with.

DIVISION 2 — SHARES, SECURITIES AND PERSONAL PROPERTY

15 **Republic may acquire shares and securities issued by public enterprise**

- (1) The Republic may acquire shares and other securities issued by a public enterprise.
- (2) Money payable by the Republic for the acquisition of shares and other securities issued by a public enterprise shall be paid out of funds appropriated by Parliament for that purpose.

16 **Restrictions on dealing with public enterprise shares**

- (1) A share or other security that is issued by a public enterprise and held by the Republic:
 - (a) shall not be subject to a charge without the consent of the Responsible Minister given in writing after consultation with the Cabinet; and
 - (b) shall comply with the requirements of the *Treasury Fund Protection Act 2004*.
- (2) A charge or trust created or given by the Republic in contravention of subsection (1) is void.

17 Restrictions on charge over personal property

- (1) Personal property of a public enterprise shall not be subject to a charge unless the charge is created or given in the ordinary course of the usual business of the public enterprise.
- (2) Where the charge relates to more than 20% of the total assets of the public enterprise, the consent in writing of the Responsible Minister, given after consultation with the Accountable Minister, shall be obtained before the charge is created.
- (3) A charge under this Section shall be consistent with the requirements of the *Treasury Fund Protection Act 2004*.
- (4) A charge created or given in contravention of subsection (1) or (2) is void.

DIVISION 3 — CAPACITY, POWERS AND RESTRICTIONS ON ACTIVITIES

18 Powers of public enterprise

- (1) A public enterprise has full powers and capacity to do any act for the purpose of performing its functions.
- (2) Subsection (1) applies except as provided otherwise in this Act, any other written law or the constitution of the public enterprise.

19 Responsible Minister shall approve certain activities

- (1) A public enterprise shall not do any of the following without the prior approval of the Responsible Minister:
 - (a) incur a liability if the total value of the liabilities of the public enterprise including the proposed liability will exceed 50% or, if the statement of corporate intent stipulates a lower percentage, that percentage of the value of the assets of the public enterprise as set out in its most recent audited financial statements;
 - (b) make an investment or 2 or more related investments, of an amount exceeding 30% of the value of the assets of the public enterprise as set out in its most recent audited financial statements;
 - (c) incorporate a subsidiary;
 - (d) be a party to an agreement to form a joint venture;
 - (e) make an investment of any amount outside the Republic; or
 - (f) anything that is prescribed by regulations as requiring the prior approval of the Responsible Minister under this Section.
- (2) The Responsible Minister shall consult with the Accountable Minister and the Cabinet before exercising the power to approve under subsection (1).

DIVISION 4 — SUBSIDIARIES

20 Restrictions on subsidiaries of public enterprise

- (1) The constitution of the subsidiary of a public enterprise shall not be inconsistent with this Act or the constitution of the public enterprise.
- (2) A subsidiary of a public enterprise shall not be a party to an agreement to form a joint venture that is inconsistent with this Act or the constitution of the public enterprise.

21 Subsidiary shall provide information

The subsidiary of a public enterprise shall provide the public enterprise with:

- (a) all information and documents that are necessary or expedient for compliance by the public enterprise with its obligations under this Act in relation to the subsidiary; and
- (b) any other information that the public enterprise requests in writing.

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PART 4 — PRINCIPLE OF PRUDENT AND EFFICIENT MANAGEMENT

DIVISION 1 — PRIMARY OBJECTIVE

22 State-owned enterprise – primary objective

- (1) The primary objective of a State-owned enterprise is to be a successful business.
- (2) A State-owned enterprise is a successful business if:
 - (a) it is at least as profitable and efficient as comparable businesses in the private sector; and
 - (b) it generates, for each financial year, a net operating profit after tax, that is, not less than its weighted average cost of capital prescribed as a percentage.
- (3) A State-owned enterprise shall conduct its business and operations with a view to being a successful business.
- (4) This Section:
 - (a) overrides anything that may be contained in the constitution of the State-owned enterprise or in any other written law; and
 - (b) does not affect the validity or enforceability of any contract or other transaction entered into by a State-owned enterprise.

23 Government controlled enterprise – primary objective

The primary objective of a Government controlled enterprise is to operate in an efficient and effective manner, achieving the objectives contained in, and acting in accordance with its establishing Act or constitution.

24 Public enterprise shall give effect to statement of corporate intent

Each public enterprise, and each of its subsidiaries if it has any, shall strive:

- (a) to give effect to its statement of corporate intent; and
- (b) not to do anything that is inconsistent with its statement of corporate intent.

DIVISION 2 — COMMUNITY SERVICE OBLIGATION

25 State-owned enterprise may undertake community service obligations

- (1) The Responsible Minister may, with the approval of the Cabinet, propose in writing to a State-owned enterprise that the State-owned enterprise:
 - (a) provide a specified service or perform specified activities; or
 - (b) cease providing a specified service or cease performing specified activities.
- (2) The State-owned enterprise shall, within one month after receiving the proposal, give the Responsible Minister a notice in which the State-owned enterprise:
 - (a) agrees to give effect to the proposal; or
 - (b) states, with full reasons, that giving effect to the proposal would be inconsistent with the primary objective of the State-owned enterprise.

- (3) Where the State-owned enterprise gives the Responsible Minister a notice under subsection (2)(b), the Responsible Minister and the State-owned enterprise shall enter into good faith negotiations with a view to agreeing arrangements under which the State-owned enterprise can give effect to the Responsible Minister's proposal without acting inconsistently with its primary objectives.
- (4) Where an agreement is reached under subsection (3), the arrangements for giving effect to the Responsible Minister's proposal are binding only if incorporated in an agreement that complies with this Section.

26 Requirements for community service obligation agreement

- (1) A community service obligation agreement:
 - (a) shall be in writing;
 - (b) shall first be approved by the Cabinet;
 - (c) may include provision for funding or other resources from the Republic to the State-owned enterprise;
 - (d) if it provides for the State-owned enterprise to provide goods or services, shall:
 - (i) specify the goods or services, including any particular quantities;
 - (ii) specify an estimate of the annual total cost to the State-owned enterprise for providing the goods or services, and an estimate of the annual total revenue to be received by the State-owned enterprise for doing so; and
 - (iii) specify how the performance of the State-owned enterprise in providing the goods or services will be monitored and assessed;
 - (e) shall specify the funding or other resources to be provided by the Republic under the agreement; and
 - (f) may include any other matter, not inconsistent with this Act, that is agreed between the Responsible Minister and the State-owned enterprise.
- (2) Money payable by the Republic under a community service obligation agreement is payable out of funds appropriated by Parliament for that purpose.
- (3) Subject to appropriation by Parliament under subsection (2), the obligations of the Republic and the State-owned enterprise under a community service obligation agreement are binding.

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PART 5 — PRINCIPLE OF MEASURABLE PERFORMANCE

DIVISION 1 — STATEMENT OF CORPORATE INTENT

27 Public enterprise shall have statement of corporate intent

- (1) A public enterprise shall have, at the start of each financial year, a statement of corporate intent that specifies for the group comprising the public enterprise and its subsidiaries, if any, in respect of that year (“year 1”) and the following 2 financial years (“years 2 and 3”), the matters set out in Section 28.
- (2) In the case of a State-owned enterprise, the statement of corporate intent shall be approved by the directors in accordance with Section 29.
- (3) In the case of a Government controlled enterprise, the statement of corporate intent and any amendment to it shall be approved by the Responsible Minister in accordance with Section 30.

28 Content of statement of corporate intent

- (1) The statement of corporate intent shall contain the following:
 - (a) a description of the main business of the public enterprise;
 - (b) a statement of the business goals of the public enterprise, demonstrating how those goals are consistent with its primary objective;
 - (c) a description of the nature and scope of the activities that the public enterprise intends to undertake;
 - (d) a statement of the strategies of the public enterprise for achieving its:
 - (i) business goals; and
 - (ii) primary objective;
 - (e) a statement or summary of the targets or benchmarks that the public enterprise will use to measure its performance against its business goals and its primary objective;
 - (f) a statement of the current or anticipated borrowing of the public enterprise, including borrowing by a subsidiary;
 - (g) a statement of the accounting policies that the public enterprise will apply for financial records and reporting;
 - (h) a summary indicative balance sheet and profit and loss statement:
 - (i) for the public enterprise; or
 - (ii) if it has one or more subsidiaries, the group that is the public enterprise and its subsidiaries;
 - (i) a statement of the proposed dividend and distribution policy of the public enterprise;
 - (j) for State-owned enterprises, a description of any community service obligations and their impact on the forecasted financial outcomes of the State-owned enterprise;
 - (k) a statement as to the manner in which the requirements of the *Constitution, Treasury Fund Protection Act 2004* and any other applicable written laws are intended to be complied with; and
 - (l) subject to the approval of the Board in the case of a State-owned

enterprise, any other matter that the Responsible Minister directs a public enterprise to include in its statement.

- (2) Regulations may be made:
 - (a) prescribing additional matters that shall be contained in the statement of corporate intent; or
 - (b) dis-applying one or more matters set out in subsection (1).

DIVISION 2 — APPROVAL OF STATEMENT OF CORPORATE INTENT

29 State-owned enterprise – approval of statement

- (1) The directors of a State-owned enterprise:
 - (a) shall give the Responsible and Accountable Ministers a final draft of the statement of corporate intent not less than 2 months before the start of the financial year to which it will apply, (year 1);
 - (b) shall not approve or adopt the statement of corporate intent without first taking into account any comment by the Responsible Minister on the draft; and
 - (c) shall give the Responsible and Accountable Ministers a copy of the statement of corporate intent within 10 working days after approving or adopting it.
- (2) The Responsible Minister shall consult with the Accountable Minister and the Cabinet before providing any comments under subsection (1).

30 State-owned enterprise – amendment of statement

- (1) A State-owned enterprise may amend its statement of corporate intent at any time but the directors:
 - (a) shall give the Responsible and Accountable Ministers a final draft of the amendment not less than 2 months before they approve or adopt it;
 - (b) shall not approve or adopt the amendment without first taking into account any comment by the Responsible Minister on the draft; and
 - (c) shall give the Responsible Minister a copy of the amendment within 10 working days after approving or adopting it.
- (2) The Responsible Minister shall consult with the Accountable Minister and the Cabinet before providing any comments under subsection (1).
- (3) The Responsible Minister shall table the approved statement of corporate intent or amendment, in Parliament as soon as practicable after receiving it.

31 Government controlled enterprise – approval and amendment of statement

- (1) The directors of a Government controlled enterprise shall give the Responsible and Accountable Ministers a final draft of the statement of corporate intent not less than 2 months before the start of the financial year to which it will apply, (year 1).
- (2) The Responsible Minister, after consulting the Accountable Minister, may:
 - (a) approve the draft statement of corporate intent; or
 - (b) approve the draft statement of corporate intent with approval conditional upon specified amendments to the draft.
- (3) The directors:

- (a) shall without delay adopt the statement of corporate intent as approved by the Responsible Minister; and
 - (b) may subsequently amend it only with the written approval of the Responsible Minister given after consulting the Accountable Minister.
- (4) The Responsible Minister shall table the statement of corporate intent or any subsequent amendment to it as soon as practicable after the Minister approves the statement or amendment.

DIVISION 3 — BUSINESS PLAN

32 Public enterprise shall have business plan

- (1) A public enterprise shall have, at the start of each financial year, a business plan that applies to that financial year (“year 1”) and to the following 2 financial years (“years 2 and 3”).
- (2) The business plan shall contain the matters set out in Section 33.
- (3) In the case of a State-owned enterprise, the business plan shall be approved or adopted by the directors in accordance with Section 34.
- (4) In the case of a Government controlled enterprise, the business plan and any amendment to it shall be approved by the Responsible Minister in accordance with Section 36.

33 Content of business plan

- (1) The business plan shall contain information about the operations, strategic direction, and financial projections of the public enterprise for years 1, 2 and 3.
- (2) The information shall be sufficient for the Responsible Minister to conclude that the business plan demonstrates that the public enterprise will achieve its primary objective in years 1, 2 and 3.
- (3) Where a public enterprise has one or more subsidiaries, the business plan shall, for each subsidiary and for the group as a whole, include information that corresponds to the information required under subsections (1) and (2) about the operations, strategic direction and financial projections of the public enterprise.

DIVISION 4 — APPROVAL OF BUSINESS PLAN

34 State-owned enterprise – approval of business plan

- (1) The directors of a State-owned enterprise:
 - (a) shall give the Responsible Minister a final draft of the business plan not less than 3 months before the start of the financial year to which it will apply, (year 1);
 - (b) shall not approve or adopt the business plan without first taking into account any comment by the Responsible Minister on the draft; and
 - (c) shall give the Responsible Minister a copy of the business plan within 10 working days after approving or adopting it.
- (2) The Responsible Minister shall consult with the Accountable Minister and the Cabinet before providing any comments under subsection (1).

35 State-owned enterprise – amendment of business plan

- (1) A State-owned enterprise may amend its business plan at any time but the directors:
 - (a) shall give the Responsible Minister a final draft of the amendment not less than 2 months before they approve or adopt it;
 - (b) shall not approve or adopt the amendment without first taking into account any comment by the Responsible Minister on the draft; and
 - (c) shall give the Responsible Minister a copy of the amendment within 10 working days after approving or adopting it.
- (2) The Responsible Minister shall consult with the Accountable Minister and the Cabinet before providing any comments under subsection (1).

36 Government controlled enterprise – approval and amendment of business plan

- (1) The directors of a Government controlled enterprise shall give the Responsible and Accountable Ministers a final draft of the business plan not less than 2 months before the start of the financial year to which it will apply, (year 1).
- (2) The Responsible Minister, after consulting the Accountable Minister, may:
 - (a) approve the draft business plan; or
 - (b) approve the draft business plan with approval conditional upon specified amendments to the draft.
- (3) The directors:
 - (a) shall adopt the business plan as approved; and
 - (b) may subsequently amend it only with the written approval of the Responsible Minister given after consulting the Accountable Minister and the Cabinet.

[The next page is 6601]

PART 6 — PRINCIPLE OF RESPONSIBLE MANAGEMENT

DIVISION 1 — APPOINTMENT OF BOARD

37 Board of directors

- (1) A public enterprise shall have a Board of directors.
- (2) The Board shall:
 - (a) be appointed by the Responsible Minister in writing subject to the approval of each appointment by the Cabinet; and
 - (b) consist of at least 3, but no more than 7, directors.
- (3) The Responsible Minister:
 - (a) before appointing a person as a director of a public enterprise, shall be satisfied that the person to be appointed has the skills, knowledge and experience to assist the public enterprise in achieving its primary objectives; and
 - (b) shall not appoint a person if the Responsible Minister has any reason to believe that he or she is not a fit and proper person to be appointed.
- (4) When appointing a director of a public enterprise the Responsible Minister should, wherever possible, seek to achieve gender equality within the membership of that Board.
- (5) In relation to any matter that is not provided for by this Act, a person appointed as a director of a public enterprise holds office on the terms and conditions set out in his or her written appointment.

38 Eligibility for appointment

The following persons are not eligible for appointment to the Board of a public enterprise:

- (a) a person who is under 18 years of age;
- (b) a person who is not a natural person;
- (c) a person who is an undischarged bankrupt in any jurisdiction;
- (d) a person who has been convicted in any jurisdiction of an offence of dishonesty and sentenced to imprisonment for not less than 12 months;
- (e) a person who is prohibited under a written law or by order of court from being a director or promoter of, or being concerned or taking part in the management of, a corporation;
- (f) a person who is a mentally impaired person under Section 4 of the *Mental Health Act 1963*;
- (g) a Minister in Government, a Member of Parliament or any other elected public official;
- (h) a public service employee in the department of the public service with policy or operational responsibility for the principal business of the public enterprise; or
- (i) a public service employee if his or her appointment would result in more than 2 directors, or more than half of total directors appointed at any time, of the public enterprise who are public service employees.

39 Appointment of chairperson

The Responsible Minister shall appoint a member of the Board to be the chairperson of the Board.

40 Term of office

- (1) Subject to Section 41, a director of a public enterprise holds office for:
 - (a) a term of 3 years from the date of appointment; or
 - (b) any shorter term that is specified in the director's written appointment.
- (2) A director of a public enterprise may be reappointed.

41 When director ceases to hold office

- (1) A director of a public enterprise ceases to hold office when he or she:
 - (a) has served the term of his or her appointment;
 - (b) resigns;
 - (c) is removed by the Responsible Minister;
 - (d) ceases to be eligible for appointment to the Board of a public enterprise;
 - (e) is convicted of an offence punishable by imprisonment for a term of not less than 12 months;
 - (f) is convicted of an offence involving dishonesty;
 - (g) is nominated as a candidate or elected as a Member of Parliament; or
 - (h) in any jurisdiction, is banned from acting as a director of a body corporate.
- (2) Despite Section 42, a public service employee serving as a director of a public enterprise at the time this Act comes into force may continue to serve for a period of up to 3 years after this Act comes into force unless removed by the Responsible Minister under subsection 1(c).

42 Resignation and removal

- (1) A director of a public enterprise may resign by giving written notice to the Responsible Minister.
- (2) The Responsible Minister may, at any time and for any reason, and after consultation with the Accountable Minister, remove a director of a public enterprise by giving that person written notice of removal.

43 Resignation of candidate for election to Parliament

[s 43 rep Act 18 of 2021 s 23(1), opn 14 Sep 2021. Section 59 of the Electoral Act 2016 applies]

44 Responsible Minister shall table notice of change in directors

- (1) The Responsible Minister shall table in Parliament notice of:
 - (a) the appointment of a director of a public enterprise; or
 - (b) a director of a public enterprise ceasing to hold office under Section 41.
- (2) The Responsible Minister shall table the notice within 15 sitting days after the director's appointment or cessation of holding office.

45 Defect or irregularity in appointment

Anything done by or in relation to a person purporting to act under an appointment to the Board of directors of a public enterprise is not invalid merely because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

46 Remuneration

- (1) In the case of a public enterprise in which all the shares are held by the Republic or its nominees, a director of that public enterprise is entitled to be paid by the public enterprise the remuneration and allowances that are determined by the Cabinet and specified in the director's written notice of appointment.
- (2) In any other case, a director of a public enterprise is entitled to be paid the remuneration and allowances specified in its establishing Act or constitution or otherwise determined with the approval of a majority of the shareholders.

DIVISION 2 — DIRECTORS' CONDUCT

47 Honesty and good faith

A director of a public enterprise, in discharging or exercising functions, duties and powers as a director, shall:

- (a) act honestly in the best interests of the public enterprise;
- (b) act in good faith and for a proper purpose;
- (c) act with reasonable care and diligence;
- (d) ensure that he or she has sufficient information and advice to make conscientious and informed decisions; and
- (e) comply with the code of conduct of the public enterprise.

48 Ensuring that primary objective achieved

A director of a public enterprise shall take all reasonable steps to ensure that the public enterprise achieves its primary objective.

49 Due compliance

A director of a public enterprise shall take all reasonable steps to ensure that the public enterprise complies with:

- (a) the applicable law; and
- (b) its constitution or establishing Act.

50 Avoiding insolvency

- (1) A director of a public enterprise shall take all reasonable steps to ensure that, the public enterprise does not incur a debt if incurring the debt:
 - (a) results in the public enterprise becoming unable to pay all its debts as and when they become due and payable; or
 - (b) creates or is likely to create a substantial risk that the public enterprise will be unable to pay all its debts as and when they become due and payable.
- (2) A director of a public enterprise who contravenes subsection (1), is jointly and severally liable with the public enterprise for payment of the debt unless the director establishes that:

- (a) the debt was incurred without the director's express or implied authority or consent; or
 - (b) at the time that the debt was incurred, the director, after due inquiry, did not have reasonable cause to suspect that incurring the debt would have either of the consequences set out in subsection (1)(a) and (b).
- (3) In this Section, '*debt*' includes a contingent financial obligation, for example, a guarantee.

51 Improper use of position as director or employee

- (1) A director or an employee of a public enterprise shall not improperly use:
- (a) his or her position as director or employee; or
 - (b) information obtained as a result of that position.
- (2) Improper use of position or information includes using that position or information to:
- (a) gain an advantage for oneself or another person; or
 - (b) cause detriment to the public enterprise or another person.
- (3) The prohibition in subsection (1), on improper use of position or information continues after a person has ceased to be a director or employee of a public enterprise.
- (4) A person who contravenes subsection (1) or is party to a contravention of subsection (1), is liable to compensate the public enterprise for any loss it suffers as a result of the contravention.
- (5) In this Section, advantage and detriment are not limited to financial advantage or detriment.

52 Breach of confidentiality

- (1) A director or an employee of a public enterprise shall not for any purpose use or knowingly disclose any information, document or communication of which he or she becomes aware through his or her connection with the public enterprise, except to the extent:
- (a) that the use or disclosure is authorised or required under this Act or any other written law;
 - (b) that the person providing the information authorised its disclosure at the time of providing the information;
 - (c) necessary to enable the Minister, the Board or the chief executive officer to publish statistical information concerning the subject matter of the functions and powers of the public enterprise; or
 - (d) necessary to enable the Board to give advice to the Minister.
- (2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 5 years or to both.
- (3) A person who contravenes subsection (1), is liable to the public enterprise for any profit made in consequence of any damage suffered by the public enterprise as a result of the contravention, in addition to any criminal penalty that may be imposed.

53 Disclosure of interest

- (1) A director of a public enterprise shall disclose to the Board of the public

enterprise any interest of the director that may conflict with the proper performance of his or her duties and functions as a director of the public enterprise.

- (2) A director shall disclose the interest as soon as he or she becomes aware of it.
- (3) A director shall not act as director or vote in relation to any matter in which he or she has an interest unless:
 - (a) the director has disclosed the interest to the Board; and
 - (b) the Board has consented to the director acting or voting.
- (4) For the purposes of this Section, it does not matter:
 - (a) whether an interest is direct, indirect, pecuniary or non-pecuniary; or
 - (b) when the interest was acquired.

54 When interest of related party counts as director's interest

- (1) For the purposes of Section 53(1), "*interest of the director*" includes the interest of a related party, that is, a director of a public enterprise is taken to have the interest that a related party has.
- (2) In relation to a director of a public enterprise, a related party is any of the following:
 - (a) a director's spouse, child or parent;
 - (b) a corporation other than the public enterprise of which the director is also a director or executive officer;
 - (c) a subsidiary of a corporation other than the public enterprise of which the director is a director or executive officer;
 - (d) a corporation of which the director's spouse, child or parent is a director or executive officer;
 - (e) a corporation if the director or the director's spouse, child or parent owns or controls the exercise of votes attached to shares that together exceed the prescribed percentage of the shares of the corporation or company; or
 - (f) a person who, with the director, is a party to a contract, arrangement or understanding, whether formal or informal, written or verbal, enforceable or unenforceable for:
 - (i) acquiring, holding, selling or otherwise dealing in shares or other securities in concert; or
 - (ii) exercising voting rights in a specified body corporate in concert.

55 Register of interests

A public enterprise shall maintain a register that records all disclosures of interests made by a director or employee of the public enterprise under Section 53 or 58.

56 Code of conduct

- (1) The Board of a public enterprise shall:
 - (a) establish and approve a code of conduct governing the directors and employees of the public enterprise; and
 - (b) at least once every 3 years, review the content and operation of the code.
- (2) The code shall:

- (a) provide for the matters set out in Section 57; and
 - (b) be consistent with this Act and any other written law.
- (3) A breach of the code by a director or employee of the public enterprise shall be recorded in the annual report of the public enterprise.

57 Content of code of conduct

A code of conduct for a public enterprise shall provide at least for the following matters:

- (a) the standards of conduct for directors and employees;
- (b) the active promotion of ethical behaviour and facilitating reporting of unlawful or unethical behaviour;
- (c) the circumstances in which directors and employees may accept gifts and other benefits, including reporting and recording those gifts and benefits;
- (d) the use by directors and employees of the resources of the public enterprise, including phones, vehicles, and other property;
- (e) regulation of business travel, including its cross-over with personal travel;
- (f) regulation of conflicts of interest, including procedures for identification, reporting, and resolving a conflict of interest;
- (g) managing breaches of the code, including monitoring compliance and reporting breaches;
- (h) the use and disclosure of information by directors and employees;
- (i) reducing or eliminating improper influence on directors and employees in their position as a director or employee of the public enterprise; and
- (j) trading in and holding shares, securities, or other financial instruments by directors and employees.

58 Conduct of employees

- (1) An employee of a public enterprise shall comply with the code of conduct of the public enterprise as it relates to employees.
- (2) A public enterprise shall take all reasonable steps to ensure that each of its employees discloses to the public enterprise any interest of the employee that may conflict with the proper performance of his or her duties and functions as an employee of the public enterprise.

59 Public enterprise shall be good employer

A public enterprise shall take all reasonable steps to be a good employer and to promote gender equality through its employment policies and practices.

60 Conduct in relation to subsidiaries

Sections 47 to 59 apply with any necessary modifications to the subsidiary of a public enterprise, as if, references in those Sections to a public enterprise were references to its subsidiary.

DIVISION 3 — MANAGEMENT

61 Board meetings

- (1) The Board of a public enterprise shall meet:
 - (a) at least once in every 2 months; and

- (b) at other times that the Board considers necessary for the efficient management of the business and affairs of the public enterprise.
- (2) The quorum for a Board meeting is a majority of the directors holding office.
- (3) A Board meeting shall be chaired by:
 - (a) the chairperson;
 - (b) in the chairperson's absence, the deputy chairperson; or
 - (c) in the absence of the chairperson and deputy chairperson, a director appointed by the directors present.

62 Procedure at Board meetings

- (1) The Board of a public enterprise decides a matter by a majority of the directors present and voting.
- (2) The chairperson of the meeting has a deliberative vote and, if necessary, a casting vote.
- (3) Except as provided by this Act, the Board may regulate its proceedings as it considers appropriate.
- (4) A public enterprise shall keep written minutes of:
 - (a) all Board meetings; and
 - (b) all meetings of committees of the Board.

63 Resolution in lieu of meeting

- (1) The Board of a public enterprise may pass a resolution of the Board without a meeting if:
 - (a) the Board has previously:
 - (i) agreed that it may from time to time pass a resolution without a meeting; and
 - (ii) determined the method for a director to assent to the resolution; and
 - (b) notice of the resolution, including its terms, has been given to each director or reasonable efforts have been made to give that notice.
- (2) A resolution in lieu of a meeting is passed when the last director has assented to the resolution.

64 Chief executive officer

- (1) A public enterprise, after consultation with the Responsible Minister and approval of the Cabinet, shall appoint a person as the chief executive officer of the public enterprise.
- (2) The chief executive officer is responsible and accountable to the Board for the management of the business and affairs of the public enterprise.
- (3) The public enterprise shall employ the chief executive officer under a contract of employment that provides for:
 - (a) a specified proportion of the chief executive officer's remuneration to be payable, or a specified benefit to become due to the chief executive officer, only if:
 - (i) the chief executive officer achieves specified performance criteria; and
 - (ii) the public enterprise achieves specified commercial outcomes; and

- (b) at least an annual review of the chief executive officer's performance.
- (4) A public enterprise may appoint a person as acting chief executive officer for any period not exceeding 6 months during which the position of chief executive officer is vacant or the chief executive officer is temporarily absent or otherwise unable to perform his or her duties.
- (5) The appointment and the terms and conditions of appointment of the chief executive officer shall be approved by the Cabinet.

65 Delegations

- (1) The Board of a public enterprise may by resolution delegate any of its powers and functions except the power to delegate, to any of the following:
 - (a) a subcommittee of the Board of the public enterprise;
 - (b) a director of the public enterprise;
 - (c) the chief executive officer of the public enterprise; or
 - (d) an employee of the public enterprise.
- (2) The chief executive officer of a public enterprise may by delegation in writing delegate any of the chief executive officer's powers or functions except the power to delegate, to an employee of the public enterprise.
- (3) A delegation is subject to any condition specified in the resolution or written delegation.
- (4) A delegated power or function shall be exercised or performed in accordance with the resolution or written delegation.
- (5) A delegation may be varied or revoked at any time and does not prevent the Board or the chief executive officer exercising or performing the delegated power or function.

66 Restrictions on indemnity for directors and executive officers

A public enterprise shall not:

- (a) exempt a director or an executive officer of the public enterprise from a liability owed to it by the director or executive officer in that capacity;
- (b) indemnify a director or an executive officer of the public enterprise or of its subsidiary in respect of a liability owed to the public enterprise or the subsidiary by the director or executive officer in that capacity; or
- (c) except as permitted by Section 68, indemnify a director or an executive officer of the public enterprise or its subsidiary in respect of a liability owed to a person other than the public enterprise or the subsidiary.

67 Restrictions on indemnity by subsidiary

A subsidiary of a public enterprise shall not:

- (a) exempt a director or an executive officer of the subsidiary from a liability owed to the subsidiary by the director or executive officer in that capacity;
- (b) indemnify a director or an executive officer of the subsidiary in respect of a liability owed by the director or executive officer in that capacity to:
 - (i) the subsidiary;
 - (ii) another subsidiary of the public enterprise; or
 - (iii) the public enterprise;
- (c) indemnify a director or an executive officer of the public enterprise or of another subsidiary of the public enterprise in respect of a liability owed by the director or executive officer in that capacity to:

- (i) the subsidiary;
- (ii) the other subsidiary; or
- (iii) the public enterprise; or
- (d) except as permitted by Section 68, indemnify a director or an executive officer of the subsidiary in respect of a liability owed to a person other than the public enterprise or a subsidiary of the public enterprise.

68 Permitted indemnity of liability owed to third person

- (1) A public enterprise or the subsidiary of a public enterprise may indemnify a director or an executive officer of the public enterprise or the subsidiary in respect of a liability owed by the director or executive officer to a person other than the public enterprise or the subsidiary if:
 - (a) the Responsible Minister with the approval of the Cabinet has given his or her prior written approval;
 - (b) the liability arose out of an act or omission of the director or executive officer in that capacity; and
 - (c) the act or omission was done in good faith and with due care.
- (2) The indemnity given under this Section shall be reported in the annual report of the public enterprise.

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PART 7 — PRINCIPLE OF TRANSPARENT PERFORMANCE

DIVISION 1 — FINANCIAL TRANSPARENCY

69 Financial records

- (1) A public enterprise, and each subsidiary of a public enterprise, shall keep written financial records that:
 - (a) correctly record and explain its transactions and financial position and performance;
 - (b) will enable financial statements to be prepared and audited in accordance with this Act; and
 - (c) will enable other reports required by this Act to be prepared.
- (2) The records required under subsection (1):
 - (a) shall be kept for at least 7 years after the dates of the transactions to which they relate;
 - (b) shall be kept at the principal place of business of the public enterprise; and
 - (c) may be kept in electronic form if they are readily retrievable and convertible into hard copy form.

70 Financial statements

- (1) The Board of a public enterprise shall ensure there is prepared, for each financial year, financial statements for the group consisting of the public enterprise and its subsidiaries.
- (2) The financial statements and the notes to them shall together include all information that is necessary to ensure that the financial statements give a true and fair view of the financial position of the public enterprise and the group consisting of the public enterprise and its subsidiaries.
- (3) Without limiting subsection (2), the financial statements shall consist of:
 - (a) balance sheets, profit and loss accounts, and other financial reports for the year as required by and consistent with applicable accounting standards;
 - (b) notes to the financial statements as required by applicable accounting standards; and
 - (c) a declaration by the directors declaring whether, in their opinion:
 - (i) there are reasonable grounds for believing that the public enterprise and its subsidiaries will be able to pay their debts as they become due and payable; and
 - (ii) the financial statements and the notes to them comply with the requirements of this Act and international accounting standards.
- (4) In this Section and Sections 71 and 72, “*subsidiary*” does not include a joint venture.

71 Financial statements shall be audited

The Board of a public enterprise shall ensure that the financial statements for the group consisting of the public enterprise and its subsidiaries are audited.

72 Audit of financial statements

- (1) The financial statements for the group consisting of a public enterprise and its subsidiaries shall be audited by:
 - (a) the Auditor General; or
 - (b) an appropriately qualified person appointed by the Auditor-General for the purpose and approved by the Cabinet.
- (2) The Board of the public enterprise shall ensure that the auditor has access at all reasonable times to the financial records and any other relevant documents of the public enterprise and its subsidiaries.
- (3) A director or employee of a public enterprise or its subsidiary shall comply with a direction by the auditor including the auditor's staff to answer a question or provide information, explanation, or assistance in connection with the audit.
- (4) Failure without reasonable excuse to comply with a direction given under subsection (3), is a ground for dismissal from office or employment.

DIVISION 2 — OPERATIONAL TRANSPARENCY

73 Annual report

- (1) A public enterprise shall submit to the Responsible Minister and Accountable Minister a report of the operations of the public enterprise and its subsidiaries for the financial year to which it relates.
- (2) The public enterprise shall submit the annual report to the Responsible Minister and Accountable Minister no later than 6 months after the end of that financial year.

74 Content of annual report

- (1) The annual report shall include:
 - (a) the audited financial statements required by this Act for the financial year to which it relates; and
 - (b) the report of the auditor for those financial statements.
- (2) Subject to subsection (3), the annual report shall also contain the following for the financial year to which it relates:
 - (a) a review of operations during the financial year of each of the public enterprise and its subsidiaries and the result of those operations;
 - (b) a report of the extent to which the public enterprise and its subsidiaries have achieved the outcomes specified in the statement of corporate intent for the financial year;
 - (c) a statement of the dividend or distribution paid or to be paid by the public enterprise to the Government for the financial year;
 - (d) if the public enterprise is a State-owned enterprise, details of any community service obligation agreement applicable during the financial year, including:
 - (i) the cost of the community service or services performed under the agreement; and
 - (ii) the revenue received by or payable to the public enterprise under the agreement;
 - (e) details of any significant changes in the affairs of the public enterprise during the financial year;

- (f) details of any matter or circumstance arising since the end of the financial year that has significantly affected, or may significantly affect, the operations of the public enterprise in future financial years;
 - (g) details of any breach of the code of conduct of the public enterprise during the financial year; and
 - (h) any other matter that the Responsible Minister, after consultation with the Accountable Minister, has directed the public enterprise to include in the report.
- (3) The annual report may omit information that the Board of the public enterprise reasonably considers is likely to materially prejudice the commercial interests of the public enterprise or a subsidiary if disclosed.
- (4) Where information is omitted under subsection (3), the annual report shall say so.

75 Responsible Minister shall table annual report in Parliament

The Responsible Minister shall table the annual report of a public enterprise in Parliament within 15 sitting days after receiving it.

76 Publication of summary of annual report

- (1) A public enterprise shall arrange for publication of a summary of the annual report:
- (a) on an internet site maintained by the public enterprise or public enterprise monitoring unit to which the public have access; or
 - (b) in the Gazette.
- (2) The summary of the annual report shall:
- (a) be published within one month after the report is submitted to the Responsible Minister; and
 - (b) compare the actual performance of the public enterprise during the financial year to which the report relates with the targets or benchmarks set in its statement of corporate intent for that financial year.

77 Half-yearly report

- (1) A public enterprise shall submit to the Responsible Minister and Accountable Minister a half-yearly report of the operations of the public enterprise for the first half of the financial year to which it relates.
- (2) The public enterprise shall submit the half-yearly report to the Responsible Minister and Accountable Minister not later than 2 months after the end of the first half of that financial year.
- (3) The half-yearly report shall:
- (a) state to what extent the public enterprise and its subsidiaries have achieved the business goals specified in its statement of corporate intent for the financial year; and
 - (b) include any other matters that the Responsible Minister, after consultation with the Accountable Minister, has directed the public enterprise to include.

[The next page is 7001]

PART 8 — PRINCIPLE OF MONITORED PERFORMANCE

DIVISION 1 — OVERSIGHT BY MINISTERS

78 Role of Responsible and Accountable Ministers

- (1) For each public enterprise that is a company, the Responsible Minister jointly with the Accountable Minister, may exercise all the powers and rights that shareholders have in relation to the public enterprise under the law or the constitution of the public enterprise.
- (2) Subsection (1) is subject to any other provision in this Act.

79 Resolutions of wholly owned public enterprise are effected by Responsible and Accountable Ministers

- (1) For the purposes of this Act or of the constitution of a public enterprise, a resolution of the shareholders or members of the public enterprise means, in the case of a public enterprise that is wholly owned by the Republic, a resolution effected by the Responsible and Accountable Ministers jointly under subsection (2).
- (2) The Responsible and Accountable Ministers effect a resolution by:
 - (a) recording the terms of the resolution in a document; and
 - (b) signing the document jointly.
- (3) Any requirement that a resolution of the shareholders or members of the public enterprise be lodged with a body or officer is satisfied by lodging the resolution effected by the Responsible and Accountable Ministers.
- (4) A notice of a resolution effected by the Responsible and Accountable Ministers is not required.
- (5) This Section applies notwithstanding anything to the contrary in any written law or in the constitution of the public enterprise.

80 Responsible Minister may require disclosure by public enterprise

- (1) The Responsible Minister for a public enterprise may in writing direct the public enterprise to disclose specified information or documents relating to the affairs of the public enterprise or its subsidiary.
- (2) The public enterprise shall disclose the information or documents to the person or persons specified in the direction, which may include:
 - (a) the Responsible Minister; or
 - (b) the public.
- (3) The Responsible Minister shall:
 - (a) consult the Accountable Minister on the content of the proposed direction;
 - (b) consult with the Board of the public enterprise before giving a direction under subsection (1); and
 - (c) before giving the direction, take into account any matter raised by the Board.

- (4) The Responsible Minister shall not direct the disclosure of information relating to an individual, if the individual is identifiable from the information.
- (5) Subject to the terms of the Responsible Minister's direction, a public enterprise may impose reasonable conditions on the use of information disclosed under this Section, including restrictions of its further disclosure.
- (6) Compliance with a direction under subsection (1) does not give rise to any civil or criminal liability.

DIVISION 2 — PUBLIC ENTERPRISE MONITORING UNIT

81 Public enterprise monitoring unit shall be established

There shall be established a public enterprise monitoring unit with the functions set out under Section 82.

82 Functions of public enterprise monitoring unit

- (1) The function of the public enterprise monitoring unit is to provide financial, commercial and public enterprise policy analysis and advice to the Minister responsible for the administration of this Act on all matters related to the operation, performance and governance of public enterprises.
- (2) Matters related to the operation, performance and governance of public enterprises include the following:
 - (a) statements of corporate intent, business plans, and half-yearly and annual reports;
 - (b) performance of public enterprises against their primary objectives, business goals, and performance targets and benchmarks;
 - (c) compliance by public enterprises with this Act;
 - (d) proposals relating to major transactions by public enterprises;
 - (e) commercialisation and privatisation of State-owned enterprises;
 - (f) best practice by public enterprises for encouraging and enhancing efficiencies and service delivery, and for improving performance;
 - (g) the selection, appointment and evaluation of directors of public enterprises;
 - (h) agreements for community service obligations;
 - (i) the overall performance of public enterprises;
 - (j) investment in, loans to, and guarantees of public enterprises; and
 - (k) the risks associated with the public enterprise sector that could affect the Government's investment in public enterprises.

83 Public enterprise monitoring unit may require disclosure

- (1) The head of the public enterprise monitoring unit may, by notice in writing to a public enterprise, require the public enterprise to disclose to the unit, to enable the unit to discharge its functions:
 - (a) any specified document in the possession or control of the public enterprise; or
 - (b) specified information about the public enterprise and its affairs and activities.
- (2) A public enterprise shall comply with a notice under subsection (1) within 10 working days after receiving it.

84 Public enterprise monitoring unit shall report on each public enterprise

- (1) For each public enterprise, the public enterprise monitoring unit shall:
 - (a) within 6 months after the end of the financial year of the public enterprise, submit a report on the performance of the public enterprise; and
 - (b) ensure that within 7 months after the end of the financial year of the public enterprise there is published a summary report on the performance of the public enterprise.
- (2) The report shall be submitted to:
 - (a) the Minister responsible for the administration of this Act; and
 - (b) the Responsible Minister and Accountable Minister for the public enterprise in question.
- (3) The summary report shall include:
 - (a) summary financial statements;
 - (b) an assessment of the achievement of the public enterprise measured against appropriate financial and non-financial performance measures;
 - (c) an assessment of whether the public enterprise has achieved its business goals; and
 - (d) a statement whether the public enterprise has achieved its primary objectives.
- (4) The Minister referred to in subsection (2)(a) shall table the report submitted under subsection (1)(a) in Parliament as soon as practicable after receiving it and arrange for its publication on an internet site maintained by the public enterprise monitoring unit to which the public has access.

[The next page is 7201]

PART 9 — MISCELLANEOUS

85 Regulations

The Minister responsible for the administration of this Act may, by notice in the Gazette setting out the regulations, make regulations for all or any of the following purposes:

- (a) prescribing the methodology for the calculation of the weighted average cost of capital, and the regulations may:
 - (i) set out or describe the methodology, incorporate a methodology by reference, or in any other way determine what the methodology is; and
 - (ii) prescribe a methodology for State-owned enterprises generally, for a class or classes of State-owned enterprise, or for a particular State-owned enterprise;
- (b) prescribing the weighted average cost of capital as a percentage;
- (c) prescribing additional activities that require the prior approval of the Responsible Minister under Section 19;
- (d) prescribing additional matters that shall be contained in the statement of corporate intent, or dis-applying one or more matters set out in Section 28;
- (e) prescribing the percentage of share ownership or control for the purposes of paragraph (e) of the definition of related party in Section 54(2); and
- (f) providing for any other matters that are contemplated by, necessary for, or incidental to, giving full effect to this Act and its proper administration.

86 Transitional provisions

- (1) The entities listed in Schedule 1 are deemed to have been designated public enterprises in accordance with Sections 9(1) and 10(1).
- (2) The Cabinet shall, on commencement of this Act, appoint a Responsible and an Accountable Minister for each of the entities listed in Schedule 1.
- (3) A person who, immediately before the commencement of this Act, is a director or an employee of an entity listed in Schedule 1 continues in office or employment on the terms on which he or she was appointed director or engaged as an employee.
- (4) Subsection (3) applies whether or not, on the commencement of this Act, the number of directors of the public enterprise exceeds the maximum number of directors specified by Section 37(2)(b).

87 Transitional regulations

The Minister responsible for the administration of this Act may, by notice in the Gazette setting out the regulations, make regulations:

- (a) providing transitional provisions relating to public enterprises, which may be in addition to, or in place of, or which may amend, the provisions of Section 86;
- (b) to facilitate the bringing into force of any regulations under this Act;
- (c) providing that subject to such conditions as are specified in the regulations, during a specified transitional period, specified provisions of this Act (including definitions) do not apply; or

- (d) providing for any other matters necessary for facilitating or ensuring an orderly transition from any enactments replaced or amended by this Act to the provisions of this Act.

88 Consequential amendments

The Acts listed in Schedule 2 are amended as set out in that schedule.

[The next page is 7401]

SCHEDULE 1

[Section 9]

DEEMED PUBLIC ENTERPRISES

[Sch 1 am Act 13 of 2024 s 69, opn 20 Aug 2024]

1 State-owned enterprises

The following entities are State-owned enterprises for the purposes of this Act:

- (a) Cenpac Corporation;
- (b) Eigigu Holdings Corporation;
- (c) Naoero Postal Services Corporation;
- (d) Nauru Air Corporation;
- (e) [repealed]
- (f) Nauru Rehabilitation Corporation;
- (g) Nauru (RPC) Corporation;
- (h) Nauru Utilities Corporation; and
- (i) RONPHOS

2 Government controlled enterprises

The following entities are Government controlled enterprises for the purposes of this Act:

- (a) Nauru Fibre Cable Corporation;
- (b) Nauru Fisheries and Marine Resources Authority;
- (c) Nauru Tourism Corporation; and
- (d) Nauru Seabed Minerals Authority.

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SCHEDULE 2

[Section 88]

CONSEQUENTIAL AMENDMENTS

1. Cenpac Corporation Act 2018

The *Cenpac Corporation Act 2018* is amended:

(a) in Section 3, by deleting the definition of ‘**Minister**’ and substituting:

“**Minister**’ means the Minister appointed as the Responsible Minister for the Corporation under the *Public Enterprises Act 2019*”; and

(b) by deleting Section 7 and substituting:

Board of directors

“7 “(1) The Corporation shall have a Board of directors appointed and holding office in accordance with the *Public Enterprises Act 2019*.

“(2) The business, operations and affairs of the Corporation shall be managed by, or under the direction or supervision of, the Board.”;

(c) by deleting Sections 8 to 14;

(d) by deleting Sections 15, 17 and 18;

(e) by deleting Section 19;

(f) in Section 21(2), deleting “Cabinet” and substituting “**Minister**”; and

(g) by deleting Sections 23 and 24.

2. Naoero Postal Services Corporation Act 2018

The *Naoero Postal Services Corporation Act 2018* is amended:

(a) in Section 3, by deleting the definition of “**Minister**” and substituting:

“**Minister**’ means the Minister appointed as the Responsible Minister for the Corporation under the *Public Enterprises Act 2019*”;

(b) in Section 4(1), by deleting “in consultation with the Minister”;

(c) by deleting Section 7 and substituting:

Board of directors

“7 “(1) The Corporation shall have a Board of directors appointed and holding office in accordance with the *Public Enterprises Act 2019*.

“(2) The business, operations and affairs of the Corporation shall be managed by, or under the direction or supervision of, the Board.”;

(d) by deleting Sections 8 and 9;

(e) in Section 10, by deleting subsections (1) to (6);

(f) by deleting Sections 11 to 14;

(g) by deleting Parts 3 and 4; and

(h) by deleting Sections 42 and 43.

3. Nauru Air Corporation Act 1995

The *Nauru Air Corporation Act 1995* is amended by:

(a) deleting Section 3;

(b) in Section 4 in the definition of “**Annual accounts**”, deleting “balance sheet and profit and loss account” and substituting “financial statements as required by the *Public Enterprises Act 2019*”;

(c) deleting the definition of “**Board**” and substituting the following definition:

“**Board**” means the board of directors referred to in Section 7;”;

(d) deleting the following definitions: “**Chairman**”, “**Member**” and “**Vice-Chairman**”;

(e) deleting the definitions of “**Chief Executive Officer**” and “**Minister**” and substituting the following definitions:

“**Chief Executive Officer**” means the chief executive officer appointed under the *Public Enterprises Act 2019*;”

“**Minister**” means the Minister appointed as the Responsible Minister for the Corporation under the *Public Enterprises Act 2019*;”;

(f) deleting Section 7 and substituting:

Board of directors

“7 (1) The Corporation shall have a Board of directors appointed and holding office in accordance with the *Public Enterprises Act 2019*.

(2) The business, operations and affairs of the Corporation shall be managed by, or under the direction or supervision of, the Board.”;

(g) deleting Sections 8 to 18;

(h) deleting Sections 22 and 23;

(i) in Section 25(1), deleting “the Board” and inserting “the Chief Executive Officer after consultation with the Board”;

(j) in Section 26(2), deleting “Board” and inserting “Chief Executive Officer”;

(k) deleting Sections 29, 30 and 33 to 39; and

(l) deleting Schedules 1 and 2.

4 Nauru Fibre Cable Corporation Act 2017

The *Nauru Fibre Cable Corporation Act 2017* is amended:

(a) in Section 4 by:

(i) deleting the definition of “auditor”;

(ii) deleting the definition of “Board” and substituting the following definition:

“**Board**” means the Board of directors referred to in Section 7;”;

(b) in the definition of “Chief Executive Officer”, deleting “in Section 6(1)” and substituting “in accordance with the *Public Enterprises Act 2019*”;

(c) deleting the definition of “Minister” and substituting the following definition:

“**Minister**” means the Minister appointed as the Responsible Minister for the Corporation under the *Public Enterprises Act 2019*;”;

(d) deleting Section 6;

(e) deleting Section 7 and substituting:

Board of directors

“7 (1) The Corporation shall have a Board of directors appointed and holding office in accordance with the *Public Enterprises Act 2019*.

(2) The business, operations and affairs of the Corporation shall be managed by, or under the direction or supervision of, the Board.”;

(f) deleting Sections 8 to 12;

(g) deleting Section 17;

- (h) in Section 18, deleting “Cabinet” and substituting “the Minister”;
- (i) deleting Sections 19 to 21;
- (j) deleting Section 24; and
- (k) deleting Sections 26 to 30.

5 Nauru Fisheries and Marine Resources Authority Act 1997

The *Nauru Fisheries and Marine Resources Authority Act 1997* is amended:

- (a) in Section 2 by:
 - (i) deleting the definitions of “Board” and “Chief Executive Officer: and substituting the following definition:

“**Board**” means the Board of directors referred to in Section 6;”

“**Chief Executive Officer**” means the chief executive officer of the Authority appointed in accordance with the *Public Enterprises Act 2019*;”
 - (ii) inserting the following definition in the appropriate alphabetical order:

“**Minister**” means the Minister appointed as the Responsible Minister for the Authority under the *Public Enterprises Act 2019*;”;
 - (iii) deleting the definitions of “annual accounts”, “chairman”, “Chief Executive Officer”, “Director” and “Vice-Chairman”;
- (b) deleting Section 6 and substituting the following Section:

Board of directors

- “6 (1) The Authority shall have a Board of directors appointed and holding office in accordance with the *Public Enterprises Act 2019*.
- (2) The business, operations and affairs of the Authority shall be managed by, or under the direction or supervision of, the Board.”
- (c) deleting Sections 7 to 14A;
 - (d) in Section 16(2), deleting “with the approval of the Minister”;
 - (e) in Section 18:
 - (i) in subsection (1), deleting “with the approval of the Cabinet, determines” and substituting “determines, provided it is consistent with the adopted business plan and is in accordance with the *Public Enterprises Act 2019*”; and
 - (ii) deleting subsection (2) and substituting:

“(2) The Authority shall not grant a security over any of its assets, or acquire any asset subject to a security, unless it has been disclosed in the business plan adopted by the Board in accordance with the *Public Enterprises Act 2019*.”;
 - (f) in Section 21:
 - (i) in subsection (1)(b), deleting “Cabinet” and substituting “Minister”; and
 - (ii) in subsection (4), deleting “Cabinet” and substituting “Minister”; and
 - (g) deleting Section 22(1)(a);
 - (h) deleting Sections 24 to 26; and
 - (i) deleting Sections 27 and 28.

6. Nauru (RPC) Corporation Act 2017

The *Nauru (RPC) Corporation Act 2017* is amended by:

- (a) in Section 5, deleting the definitions of “Board”, “Chief Executive Officer”, “Minister”, and “Secretary” and substituting the following definitions:

“**Board**” means the Board of directors referred to in Section 10;”

“**Minister**” means the Minister appointed as the Responsible Minister for the Corporation under the *Public Enterprises Act 2019*.”;

- (b) in Section 6(1), deleting “in consultation with the Minister”;
- (c) in Section 9, deleting subsection (2);
- (d) deleting Section 10 and substituting the following Section:

Board of directors

“**10** (1) The Corporation shall have a Board of directors appointed and holding office in accordance with the *Public Enterprises Act 2019*.

The business, operations and affairs of the Corporation shall be managed by, or under the direction or supervision of, the Board.”;

- (e) deleting Section 11;
- (f) in Section 12, deleting subsections (1) to (6);
- (g) deleting Sections 13 to 18;
- (h) deleting Sections 20 and 21;
- (i) deleting Section 22; and
- (j) deleting Sections 31 and 32.

7. Nauru Tourism Corporation Act 2019

The *Nauru Tourism Corporation Act 2019* is amended by:

- (a) in Section 3, deleting the definitions of “Board” and “Minister and substituting the following definitions:

“**Board**” means the Board of directors referred to in Section 11;”

“**Minister**” means the Minister appointed as the Responsible Minister for the Corporation under the *Public Enterprises Act 2019*.”;

- (b) in Section 10, deleting subsection (2);
- (c) deleting Section 10 and substituting:

Board of directors

“**10** (1) The Corporation shall have a Board of directors appointed and holding office in accordance with the *Public Enterprises Act 2019*.

- (2) The business, operations and affairs of the Corporation shall be managed by, or under the direction or supervision of, the Board.”;

- (d) deleting Section 11;
- (e) in Section 12, deleting subsections (1) to (7);
- (f) deleting Sections 13 to 17;
- (g) deleting Sections 18, 20 and 21;
- (h) deleting Section 22; and
- (i) deleting Sections 24 and 25.

8 Nauru Utilities Corporation Act 2011

The *Nauru Utilities Corporation Act 2011* is amended by:

- (a) in Section 4:
 - (i) deleting the definition of “approved auditor”;
 - (ii) deleting the definition of “CEO” and substituting the following definition:

“**CEO**” means the chief executive officer of the Corporation appointed in accordance with the *Public Enterprises Act 2019*.”;

(iii) inserting the following definition in the appropriate alphabetical order:

“**Minister**” means the Minister appointed as the Responsible Minister for the Corporation under the *Public Enterprises Act 2019*,” and

(iv) deleting the definition of “staff member” and substituting the following definition:

“**staff member**” means a person engaged by the Corporation to assist it in the exercise of its powers and the performance of its functions.”;

(b) deleting Sections 6 and 6A;

(c) deleting Section 7 and substituting the following Section:

Board of directors

“7 (1) The Corporation shall have a Board of directors appointed and holding office in accordance with the *Public Enterprises Act 2019*.

(2) The business, operations and affairs of the Corporation shall be managed by, or under the direction or supervision of, the Board.”;

(d) deleting Sections 7A to 7F;

(e) deleting Sections 15 to 20; and

(f) deleting Sections 25A to 25C.

9. Nauru Rehabilitation Corporation Act 1997

The *Nauru Rehabilitation Corporation Act 1997* is amended by:

(a) in Section 2, inserting the following definition in its appropriate alphabetical order:

“**Minister**” means the Minister appointed as the Responsible Minister for the Corporation under the *Public Enterprises Act 2019*,”

(b) in Section 4:

(i) in paragraph (a), deleting “as directed by the Minister” and substituting “as described in the Corporation’s current business plan”; and

(ii) in paragraph (c), deleting “Minister” and substituting “Cabinet”;

(c) in Section 5, deleting subsection (3);

(d) deleting Section 7 and substituting the following Section:

Board of directors

“7 (1) The Corporation shall have a Board of directors appointed and holding office in accordance with the *Public Enterprises Act 2019*.

(2) The business, operations and affairs of the Corporation shall be managed by, or under the direction or supervision of, the Board.”;

(e) deleting Sections 8 and 9;

(f) deleting Sections 11 to 14;

(g) in the First Schedule, deleting clauses 2 to 6; and

(h) deleting the Second Schedule.

10. RONPHOS Act 2005

The *RONPHOS Act 2005* is amended:

(a) in Section 5 by:

(i) deleting the definitions of “Board” and “Chair” substituting the following definitions:

“**Board**” means the Board of directors referred to in Section 7;”

“**Chair**” means the chairperson of the Board appointed in accordance with the *Public Enterprises Act 2019*;

(ii) deleting the following definitions: “associate”, “Chief Executive Officer”, “director”, “Director of Audit” and “relative”; and

(iii) inserting the following definition in the appropriate alphabetical order;

“**Minister**” means the Minister appointed as the Responsible Minister for the corporation under the *Public Enterprises Act 2019*;

(b) deleting Section 7 and substituting the following Section:

Board of directors

“7 (1) The Corporation shall have a Board of directors appointed and holding office in accordance with the *Public Enterprises Act 2019*.

(2) The business, operations and affairs of the Corporation shall be managed by, or under the direction or supervision of, the Board.”;

(c) deleting Section 8;

(d) deleting subsection 9(c) and substituting the following subsection:

“(c) to establish, maintain and operate such other activities that are included in the Corporation’s business plan adopted by the Board in accordance with the *Public Enterprises Act 2019*.”;

(e) in Section 10(1), deleting “, and the limitations prescribed under Section 11” and substituting “and the *Public Enterprises Act 2019*”;

(f) deleting Section 11 and substituting the following Section:

Limitations

“11 The Corporation shall implement and act in a manner consistent with its business plan adopted by the Board in accordance with the *Public Enterprises Act 2019*.”; and

(g) deleting Sections 11A to 26; and

(h) deleting the Second and Third Schedules.

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