

REPUBLIC OF NAURU

AN ACT (No. 3 of 1997)

**To provide for the control and management of the public moneys of Nauru;
to repeal the Public Moneys Ordinance 1968; and for related purposes.**

(Certified: 13 June 1997)

Enacted by the Parliament of Nauru as follows:

PART I - PRELIMINARY

SHORT TITLE AND COMMENCEMENT

1. This Act may be cited as the Public Finances (Control and Management) Act 1997 and shall come into force on a date to be notified by the Minister in the Gazette.

[note: this Act commenced in accordance with section 1 on 30 June 1997, per Gazette No.56 of 1997]

INTERPRETATION

2(1) In this Act, unless the context otherwise requires -

“accounting officer” means a public officer who -

- (a) is charged with the duty of collecting, receiving or accounting for, or who in fact collects, receives or accounts for, any public moneys; or
- (b) is charged with the duty of disbursing, or who in fact disburses, any public moneys; or
- (c) is charged with the receipt, custody or disposal of, or the accounting for, public property or who in fact receives, holds, disposes of or accounts for public property;

“Appropriation Act” means an Act, howsoever titled, of the kind referred to in section 5;

"commit " means to bind by contract;

"department" has the same meaning as in the Public Service Act;

"departmental head" means the Head of the Department in relation to the department in respect of which money may be drawn from the Treasury Fund to meet expenditure charged upon or to be charged under a division of expenditure;

"dispose", in relation to public property, means to destroy or otherwise dispose of the property so that after disposal it is no longer available to any person in Nauru or elsewhere;

"division of expenditure" means a group of sub-divisions of expenditure in respect of a department which are set out in the estimates of expenditure or any supplementary estimates of expenditure, or until the Appropriation Act is enacted in respect of any financial year, in the supply legislation in respect of that financial year;

"expenditure" means expenditure charged upon, or to be charged upon, the Treasury Fund by the Constitution or any other written law;

"Government Loans Fund" means the Fund established by section 5 of the Government Loans Act;

"Head of the Department" has the same meaning as in the Public Service Act

"item" means an item of expenditure within a sub-division of expenditure;

"moneys" includes cheques, other negotiable instruments and orders for the payment or receipt of money or for the transfer of property;

"property" means property other than moneys;

"public moneys" means all revenue, loan, trust, and other moneys and all stamps, bonds, debentures, investments, negotiable instruments and other securities raised, received or held, whether temporarily or otherwise, by or on account of the Republic, whether within or outside Nauru;

"public property" means property belonging to or in the possession, care or custody of or under the control of the Republic;

"relevant department" in relation to a departmental head, means the department of which he is Head of the Department, or for which he is responsible by virtue of section 14 for the control of revenue, expenditure, public moneys, public property or other asset';

"responsible Minister" means in respect of any division of revenue or expenditure, the Minister responsible for the department by or in respect of which moneys may be withdrawn from the Treasury Fund to meet expenditure under that division of expenditure;

"Secretary for Finance" means the Head of the Department for the department responsible for finance matters;

"Secretary for Justice" means the Head of the Department for the department responsible for justice matters;

"sub-division of expenditure" means the expenditure or service specified by a sub-division shown in the estimates of expenditure, or any supplementary estimates of expenditure, for a financial year;

"Supplementary Appropriation Act" means an Act, howsoever titled, of the kind referred to in section 6;

"supply legislation" includes, in relation to a financial year, a proposed law recommended in respect of that financial year by the Cabinet in pursuance of, and in accordance with, Article 61 of the Constitution, even though that proposed law has not been enacted;

"Trust Fund" means the fund maintained under section 24;

"unforeseen contingency" means an event or state of affairs which -

- (a) has happened or arisen, or appears about to happen or arise; and
- (b) makes necessary or expedient the urgent expenditure of moneys; and
- (c) was not foreseen, and could not reasonably have been foreseen, so that authorisation of the expenditure could not have been included in the Appropriation Act or a Supplementary Appropriation Act for the financial year in which the expenditure has to be incurred;

but does not include an increase in the price of goods or services or in wages or salaries or any similar event which necessitates an increase in expenditure already authorised for that financial year.

(2) For the purposes of this Act and where the context so requires or allows-

- (a) all expenditure incurred or authorised in respect of Parliament and the Judiciary shall be deemed to be expenditure incurred or authorised in respect of a department; and
- (b) in respect of Parliament, the Speaker shall have the same authority as the responsible Minister in respect of a Department and the Clerk of Parliament shall have the same authority as a departmental head; and

- (c) in respect of the Judiciary, the Chief Justice shall have the same authority as the responsible Minister in respect of a Department and the Registrar of the Supreme Court shall have the same authority as a departmental head; and
- (d) the President shall be deemed to be the responsible Minister in respect of the Department of Audit; and
- (e) the Secretary for Justice shall be deemed to be the departmental head in respect of the Nauru Police Force.

(3) A reference in this Act to any Act which is subsequently repealed shall, unless the context otherwise requires, be deemed to be reference to any written law replacing or substantially replacing that Act.

APPLICATION

3. This Act applies to all public moneys, public property, income, expenditure, assets and liabilities of the Republic received held or disbursed whether within or outside Nauru, other than that the responsibility for and the supervision and control of which, is vested by the Constitution or any other written law in some other person or body

POWERS AND RESPONSIBILITIES OF MINISTER AND RESPONSIBLE MINISTERS

4(1) The Minister and every responsible Minister have, in addition to the powers otherwise conferred on them by this Act and any other law, full powers to do all things that are necessary or convenient to be done, whether in Nauru or elsewhere, for or in connection with the performance of the responsibilities, duties and functions which they are required by this Act to perform.

(2) The Minister shall supervise the income, expenditure, assets and liabilities of the Republic to which this Act applies so as to ensure that a full accounting is maintained and for that purpose shall have -

- (a) the management of the Treasury Fund, the Trust Fund and the Government Loans Fund; and
 - (b) the supervision, control and direction of all matters related to public moneys and public property and the financial affairs of the Republic which are not assigned to any other person or body by the Constitution, this Act or any other written law.
- (3) A responsible Minister is responsible for presenting the annual estimates and any supplementary estimates of the revenue and expenditure of the department for which he is responsible to the Cabinet.

- (4) For the purposes of subsection (3), the responsible Minister shall -
- (a) ensure that the estimates are properly prepared by the appropriate public officers of the department; and
 - (b) ensure that before any estimates or supplementary estimates of revenue and expenditure are presented to the Cabinet, they are submitted to the Minister for examination together with any further information that the Minister may require in relation to them.

PART II- ANNUAL APPROPRIATION

ANNUAL ESTIMATES AND THE APPROPRIATION ACT

5(1) The estimates of revenue and expenditure which are laid before Parliament in accordance with Article 59 shall be set out as follows:-

- (a) the estimates of revenue shall be set out under appropriate divisions and sub- divisions of revenue and shall show the department responsible for the collection and receipt of revenue under each division of revenue;
 - (b) the estimates of expenditure shall be set out under divisions of expenditure for the services required and shall show sub-divisions under each division of expenditure and the department by or in respect of which moneys may be withdrawn from the Treasury Fund in respect of each division of expenditure.
- (2) Notwithstanding that some expenditure may already have been authorised by another written law, the estimates of expenditure referred to in subsection (1)(b) shall include all moneys which it is anticipated will be withdrawn from the Treasury Fund during the financial year to meet expenditure of the Republic.
- (3) The proposals for the expenditure to which the estimates relate shall be presented by means of a Bill for an Appropriation Act at the same time as the estimates of revenue and expenditure are laid before Parliament.

SUPPLEMENTARY APPROPRIATION ACTS

6(1) Where is It necessary in respect of any financial year to provide for -

- (a) expenditure additional to the expenditure set out in the estimates, and any previous supplementary estimates, in respect or that financial year; or
- (b) expenditure not set out in the estimates, or any previous supplementary estimate, in respect of that financial year; or

- (c) a reduction in the expenditure set out in the estimates, or any previous supplementary estimates, in respect of that financial year,

proposals for that expenditure or that reduction in expenditure shall be presented to Parliament by means of a Bill for a Supplementary Appropriation Act.

(2) Supplementary estimates setting out the sums required under the appropriate divisions and sub-divisions of expenditure shall be laid before Parliament at the same time as the Bill referred to in subsection (1) is presented.

(3) Where an increase or decrease is anticipated in the revenue shown in the estimates and the previous supplementary estimates in respect of that financial year; the supplementary estimates of expenditure shall be accompanied by supplementary estimates of revenue.

(4) Where any amendment is made to a Bill for a Supplementary Appropriation Act, the supplementary estimates which are laid before Parliament in respect of the Bill shall be altered correspondingly.

APPROVAL OF ESTIMATES OF EXPENDITURE

7(1) The enactment by Parliament of the Appropriation Act for a financial year shall constitute the approval of Parliament of the estimates of expenditure for the period to which that Act relates.

(2) The enactment by Parliament of any Supplementary Appropriation Act shall constitute the approval of Parliament of the supplementary estimates, together with the amendments if any, which were laid before Parliament at the same time.

WITHDRAWALS FROM THE TREASURY FUND

8(1) No moneys shall be withdrawn from the Treasury Fund during any financial year except to meet expenditure which is charged upon the Treasury Fund by means of the Appropriation Act, a Supplementary Appropriation Act or any other written law recommended to Parliament by the Cabinet in accordance with Article 59.

(2) Upon the enactment of an Appropriation Act or a Supplementary Appropriation Act, expenditure shall become charged upon the Treasury Fund to the extent provided in that Act.

(3) Subject to subsection (5), a charge of expenditure under subsection (2) may only become charged in accordance with the estimates and any supplementary estimates or expenditure for that financial year as approved by Parliament in accordance with section 7

(4) Following the enactment of the Appropriation Act or any Supplementary Appropriation Act for a financial year, all moneys withdrawn from the Treasury Fund during that financial year shall be accounted for as a debit against the appropriate division and sub-division of expenditure in the estimates or supplementary estimates to which the Act relates

(5) Notwithstanding subsection (3), If it becomes necessary to alter the amounts assigned to the sub-division under a division of expenditure or to create a new sub-division, the Cabinet may authorise the Minister to direct in writing that there shall be applied in aid of any sub-division which may be deficient or any new sub-division a sum or further sum, as the case may be, out of any surplus arising on any other sub-division of the same division.

(6) Nothing in subsection (5) shall be taken as authorising the withdrawal from the Treasury Fund, for expenditure under any division of expenditure, moneys exceeding in total the amount appropriated under that division by the Appropriation Act and any Supplementary Appropriation Act for the financial year to which a direction under that subsection relates.

(7) Where the Minister gives a direction in writing under subsection (5), he shall cause a copy of that direction to be laid before Parliament on the next convenient sitting day after the direction has been given and in any case, no later than three sitting days after the direction was given.

(8) Where any services or purposes remain unpaid at the end of a financial year, the responsible Minister may authorise the transfer from the Treasury Fund to an appropriate suspense account in the Trust Fund of a sum of money in respect of the payment of those services or purposes.

(9) A transfer under subsection (8) shall be treated as a payment from the Treasury Fund in respect of the financial year in which the transfer was made.

PART III- DEALING WITH PUBLIC MONEYS

PUBLIC ACCOUNTS

9, The Minister shall, in consultation with the Director of Audit, maintain, or cause to be maintained, as the public accounts of the Republic separate accounts in respect of -

- (a) the Treasury Fund; and
- (b) the Trust Fund; and
- (c) the Government Loans Fund

CUSTODY OF PUBLIC MONEYS

10(1) Public moneys may be kept with such bank or banks, in Nauru or elsewhere, as the Minister from time to time directs, and all public moneys paid into a bank shall continue to be public moneys, the property of the Republic lent by the Republic to the bank.

(2) Public moneys may be kept in such other ways as may from time to time be authorised by or under any Act or by resolution of Parliament.

(3) Except as authorised by a written law, no accounting officer shall open a public or official account in any bank without the written authority of the Minister.

(4) Except with the prior approval of the Minister under section 11, no public or official account may be overdrawn.

(5) Nothing in this section prohibits the provision by regulation for the custody of public moneys by public officers, or in the case of stamps, by the person by whom the stamps are printed or by any person appointed by the Minister as an agent to sell stamps on behalf of the Republic.

OVERDRAWING OF BANK ACCOUNTS

11(1) Notwithstanding anything in the Government Loans Act 1972, but subject to subsection (2), the Minister may, in order to meet any current requirement of the Republic, borrow an amount not exceeding ten million dollars, or such greater amount as may approved from time to time by resolution of Parliament, by overdrawing or authorising public officers of his department to overdraw, a bank account of the Republic-

(2) The total of the amounts overdrawn under subsection (1) may not exceed ten million dollars at any one time unless Parliament otherwise resolves.

(3) The principal and interest of any moneys borrowed under this section shall be charged on and payable from the Treasury Fund.

(4) Nothing in this section authorises any expenditure not authorised by the Constitution or a written law.

MINISTERIAL DIRECTIONS TO LIMIT EXPENDITURE

12. (1) Notwithstanding that provision for any expenditure is included under any division of expenditure in the estimates of expenditure or any supplementary estimates of expenditure for a financial year, the responsible Minister may, and where Cabinet so directs, shall direct in writing that the whole or any part of that expenditure shall not be incurred and that moneys shall not be withdrawn from the Treasury Fund in respect of that expenditure.

- (2) A copy of every direction made by a responsible Minister under subsection (1) shall be delivered to the Director of Audit by the Head of the Department of the responsible Minister within seven days of the giving of the direction
- (3) Where a direction is given by a responsible Minister under subsection (1), no person shall incur the expenditure to which the direction relates or to withdraw moneys from the Treasury Fund to meet it.
- (4) Nothing in this section empowers a responsible Minister or the Cabinet to direct-
- (a) that expenditure which the Republic is obliged to incur by the Constitution or a written law or in accordance with a lawful commitment of the Republic shall not be incurred; or
 - (b) that moneys shall not be withdrawn from the Treasury Fund to meet that expenditure.

COMMITMENTS FOR FUTURE YEARS

13(1) Where in any financial year provision has been made authorising the withdrawal of moneys from the Treasury Fund in that financial year to meet expenditure on any service, the Cabinet may, where it is satisfied upon the recommendation of the responsible Minister that it is necessary in the interests of the Republic that a commitment should be entered into, authorise the departmental head in writing to commit the Republic to incur expenditure chargeable upon the Treasury Fund for a similar service in future financial years.

(2) Where the total for the financial year of expenditure referred to in subsection (1) does not exceed fifty thousand dollars, the authorisation referred to in that subsection may be made by the Minister, upon being satisfied upon the recommendation of the responsible Minister.

(3) Where the total for the financial year of expenditure referred to in subsection (1) does not exceed five thousand dollars, the authorisation referred to in that subsection may be made by the departmental head where he considers it necessary in the interests of the Republic that a commitment should be entered into, without any authority other than that conferred upon him by this subsection.

(4) Notwithstanding subsections (1), (2) and (3), the amount of the expenditure which the Republic may be committed to incur in respect of any service in future financial years shall be limited to such amount as is reasonable, having regard to the existing provision for expenditure on that service and any expenditure previously authorised.

(6) No moneys shall be withdrawn from the Treasury Fund to meet any expenditure under this section unless -

(a) the moneys to meet any expenditure under this section are included in the estimates of expenditure for the financial year in which they are to be withdrawn from the Treasury Fund; and

(b) the expenditure is lawfully charged upon the Treasury Fund.

(8) In this section, "service" includes the supplying of goods, the construction of buildings and the provision of personal and other services.

CONTROL OF REVENUE, EXPENDITURE, PUBLIC PROPERTY, AND OTHER ASSETS

14(1) Subject to any written procedural directions of the Minister, a departmental head shall, in respect or the department of which he is the Head of the Department, or any other department for which he is responsible by virtue of this Act -

(a) control the revenue or expenditure of the department; and

(b) be responsible for all public moneys collected, received or disbursed all services and public property and other assets of the Republic received, held or disposed of by or on account of the department.

(2) A departmental head shall define in writing the extent to which the powers and duties conferred or imposed on him under this Act may be exercised or performed on his behalf by an accounting officer under his control, and may give such directions and exercise such control as is necessary to secure the proper exercise or performance of those powers and duties.

(3) No person shall commit the Republic to incurring expenditure which is or will be a charge upon the Treasury Fund unless the withdrawal of moneys to meet that expenditure is authorised by law or authority to do so has been given by the Cabinet or the Minister under section 13.

UNFORESEEN CONTINGENCIES

15(1) Where-

(a) provision for expenditure on unforeseen contingencies is included in the estimates or supplementary estimates for a financial year; and

(b) moneys are withdrawn from the Treasury Fund in that financial year to meet that expenditure,

provision for the expenditure may be subsequently included under any other division and sub-division of expenditure in any supplementary estimates of expenditure approved by Parliament.

(2) Where provision for expenditure has been subsequently included under another division and sub-division in accordance with subsection (1), the expenditure shall be debited against that division and sub-division and shall cease to be a debit against the provision for unforeseen contingencies.

(3) Where at the end of a financial year any expenditure remains debited against a provision for expenditure on unforeseen contingencies included in the estimates or the supplementary estimates of expenditure for that financial year, the Minister shall lay before Parliament a written statement of the expenditure which remains debited against that provision.

4) A statement under subsection (3) shall be laid before Parliament within one month of the end of the financial year to which it refers or, where Parliament does not meet within one month after the end of the financial year, at the next meeting of Parliament.

PART IV - WRITE OFF, SALE AND DISPOSAL

UNCOLLECTED REVENUE

16(1) Where any revenue which should have been received or collected by a department has not been received or collected within a period of six months from the time it should have been received or collected, the departmental head shall report the fact to the Secretary for Justice.

(2) Upon receiving a report under subsection (1), the Secretary for Justice shall advise the departmental head in writing whether in his opinion the revenue is recoverable and if so, by what means, and shall send a copy of the advice to the Director of Audit.

WRITE OFF

17(1) Subject to this Act and any other law, the Minister on the joint recommendation of the departmental head of the relevant department and the Secretary for Finance, may in respect of public moneys and public property, by written order -

- (a) write off losses or deficiencies of public moneys and the value of lost, deficient, condemned, unserviceable or obsolete public property; and
- (b) abandon irrecoverable amounts of revenue, debts, and overpayments; and
- (c) approve ex gratia refunds or payments; and

- (d) approve that nugatory expenditure shall stand charged in the accounts.
- (2) An order under subsection (1) relating to deficient, condemned, unserviceable or obsolete public property shall include a direction that -
- (a) the public property shall be sold in accordance with section 18; or
- (b) where the Minister considers that the public property has no commercial value, the property is condemned and shall be disposed of in accordance with section 19.
- (3) Where a responsible Minister considers that the retention by the Republic of any public property held within his department is likely to cause unreasonable risk of injury to any person or of damage to any property, he may by written order condemn that property and write it off.
- (4) Where any issue of a postage stamp of the Republic is withdrawn from sale at the Philatelic Bureau of the Republic, the Secretary for Finance shall immediately order the write off and disposal of all stamps of that issue remaining unsold on the date of the withdrawal

SALE OF PUBLIC PROPERTY

18(1) Where a departmental head certifies that public property for which he is responsible -

- (a) is no longer or is not required; or
- (b) will in the circumstances specified in the certificate no longer or not be required; or
- (c) is likely to become replaceable or obsolete before it is required; or
- (d) is unserviceable or about to become unserviceable but should nevertheless be sold and not written off,

the responsible Minister may authorise in writing the sale of the property.

- (2) Where -
- (a) a responsible Minister authorises the sale of public property under subsection (1); or
- (b) the Minister has ordered the sale of public property under section 17(2)(a),

the properly shall be sold in accordance with this section.

(3) Public property may be sold -

(a) by public auction or by public tender or, with the approval of the Cabinet, by tender from specified invited tenderers; or

(b) by private sale, in which case the price shall not be lower than the sum of the price paid by the Republic for it plus a reasonable percentage of that price which shall be added on in respect of freight, buying commission, insurance, handling costs and other associated expenses.

(4) Notwithstanding subsection (3)(b), the regulations may prescribe the circumstances under which and the manner in which public property may be sold at a price lower than that provided in subsection (3)(b).

(5) Public property sold under this section shall be paid for in money and not in kind, and the money shall be paid by or on behalf of the purchaser to the departmental head of the relevant department or to a public officer nominated by him in writing to receive it, and the departmental head shall keep an account of the amount of money received in respect of each item of property sold.

(6) All moneys received under this section shall be received on behalf of the Republic and paid by the person receiving it into the Treasury Fund for the credit of a revenue sub-head entitled Sale of Surplus Assets.

(7) Where any public property is lost, damaged or destroyed and any moneys are received by the Republic by way of compensation or indemnity in respect of the loss, damage or destruction, those moneys shall, for the purposes of this section, be treated as having been received as the proceeds of the sale of that public property.

DISPOSAL OF PUBLIC PROPERTY

19(1) An order for disposal of public property under section 17 shall -

(a) specify the manner of disposal; and

(b) nominate a public officer to carry out or to supervise the carrying out of the disposal.

(2) The public officer nominated under subsection (1) shall, immediately after the property has been disposed of certify the disposal in writing to the person ordering the disposal, giving details of the time, place and manner of the disposal.

(3) A copy of every order or certificate given under this section shall be delivered by the departmental head of the relevant department to the Director of Audit not later than seven days after the date on which the order is made or the certificate is given.

UNLAWFUL DISPOSAL OF PUBLIC PROPERTY

20(1) No public property shall be sold, given away, destroyed or otherwise disposed of by any person except in accordance with this Act.

(2) Any public property sold, given away, destroyed or otherwise disposed of contrary to this Act shall remain the property of the Republic.

(3) This section does not apply to -

(a) the sale in the normal course of business of the Republic, of publications, postage stamps, money order, postal orders or other similar things; or

(b) the consumption or destruction of property by its proper use for the purposes of the Republic where the consumption or destruction is inherent in that use.

PART V - TRUST MONEYS

THE TRUST FUND

21(1) All moneys received by or on behalf of the Republic, being moneys which are subject to a trust, other than moneys required by a written law or an order of a Court to be paid into any other fund or to be otherwise dealt with, shall be paid into the Trust Fund.

(2) The Secretary for Finance shall ensure that moneys subject to a trust which are paid into the Trust Fund are accounted for so that at all times the liability of the Republic to hold them on trust, and the nature of the trust, are apparent.

TRUST MONEYS IN TREASURY FUND

22 (1) Notwithstanding any other provision of this Act, where moneys subject to a trust have been paid into the Treasury Fund, moneys to an amount not exceeding the amount of those moneys paid in may be withdrawn from the Treasury Fund at any time in order to discharge the obligations of the Republic in relation to the trust.

(2) A withdrawal under subsection (1) shall not be made without the prior written authority of the Secretary for Finance.

- (3) The expenditure incurred by a withdrawal of moneys under subsection (1) shall become charged to the Treasury Fund.
- (4) There shall not be included in the estimates of revenues and expenditure referred to in section 5, any
- (a) anticipated receipts into the Treasury Fund of moneys subject to a trust; or
 - (b) anticipated withdrawal of those moneys in discharge of the obligations of the Republic in relation to the trust.

TRUST FUNDS OTHERWISE DEALT WITH

23. Where a written law or an order of a Court requires moneys subject to a trust to be paid into a fund other than the Trust Fund or to be dealt with in some other manner -

- (a) those moneys shall be dealt with as the written law or the order requires; and
- (b) accounts shall be kept of those moneys and funds in the prescribed manner.

TRUST ACCOUNTS

24(i) The responsible Minister may establish such trust accounts as are necessary for the purposes of this Act.

- (2) A trust account established under subsection (1) shall define the purposes for which it is established.
- (3) All moneys standing to the credit of a trust account are moneys standing to the credit of the Trust Fund.
- (4) The responsible Minister may direct that a trust account be closed and after all liabilities of the account have been met -
- (a) the account shall be closed; and
 - (b) any moneys standing to the credit of the account which are not required for the purposes of the account, and the balance of any moneys standing to the credit of the account after it is closed, shall be credited to the Trust Fund.

PART VI - SURCHARGE

IMPOSITION OF SURCHARGE

25.(1) Where it appears to the Minister that any person who is or was a public officer, or who is or was paid a salary or wages out of the Treasury Fund-

(a) has in contravention of duties assigned to him by, or in writing under, this Act wilfully or negligently, regard being had for all the circumstances, failed to collect, or to cause to be collected any moneys owed to the Republic, or any moneys which should have been paid to the Republic for the collection of which he is or was responsible;

(b) has wilfully or negligently, regard being had for all the circumstances, made any improper payment of public moneys or caused any such improper payment to be made;

(c) has incurred, or has committed the Republic to incur, any expenditure which is or will be a charge on the Treasury Fund otherwise than in accordance with law; or

(d) is or was in contravention of duties assigned to him by or in writing under this Act wilfully or negligently, regard being had for all the circumstances, responsible, at a time when he is or was a public officer or is or was paid a salary or wages out of the Treasury Fund, for any deficiency in or for the destruction of or damage to any public moneys, stamps, securities, or other property of the Republic;

the Minister may, by notice in writing served on that person, require that person, within a reasonable time to provide an explanation therefor; and

- (i) if no explanation is offered; or
- (ii) if the Minister is not satisfied with the explanation

the Minister may by notice in writing under his hand served on that person, notify him that he intends to surcharge him an amount to be specified in that notice not exceeding the amount of the moneys not collected, the payment, the expenditure, the deficiency or loss, or the value of the property destroyed or damaged, as the case may be.

(2) Where, within fourteen days of the service of the notice on him, or within such further time as the Minister may allow him for the purpose, a person served with a notice issued by the Minister under the preceding subsection -

(a) informs the Minister in writing, that he is willing to be surcharged the amount specified in the notice, the Minister may surcharge him that amount or, if he thinks fit, any smaller amount and shall, in any event, notify him in writing of his decision in the matter; or

(b) does not inform the Minister that he is willing to be surcharged the amount specified in the notice, the Minister shall report the matter to the District Court to be inquired into and dealt with under section 26 and shall not surcharge that person with the amount specified in the notice or with any other amount unless the District Court certifies under section 26(2) that it is satisfied as a result of the inquiry which it has held, that it is just and reasonable to surcharge that person and then only with the amount certified by the District Court to be fair and reasonable.

PROCEEDINGS BEFORE THE DISTRICT COURT

26(1) Where the District Court receives a report from the Minister under section 25(2)(b), it shall forthwith inquire into the matter reported and shall give the person in respect of whom the report is made an opportunity to attend at the inquiry and to adduce thereat evidence relevant to the matter being inquired into and to make written or oral submissions relating thereto.

(2) The District Court, having under the preceding subsection held an inquiry into any report, shall certify to the Minister and the person in respect of whom the report was made whether or not it is fair and reasonable to surcharge the person in respect of whom the report was made and, if so, the amount, not exceeding the amount specified in the notice served pursuant to section 25(1) which it is fair and reasonable to surcharge him.

(3) Upon receiving a certificate given by the District Court under the last preceding subsection, the Minister -

(a) if the District Court certifies that it is not fair and reasonable to surcharge the person who is the subject of the certificate, shall forthwith notify the person in writing that no surcharge will be imposed; or

(b) if the District Court certifies that it is fair and reasonable to surcharge that person, may surcharge him with an amount not exceeding that certified by the District Court as fair and reasonable and, if he does so, shall notify him forthwith in writing of the surcharge and the amount of it.

(4) In holding an inquiry under this section the District Court shall follow such procedures as it considers accord with the requirements of justice and fairness.

APPEAL AGAINST SURCHARGE

27(1) Any person who is dissatisfied with any surcharge made against him by the Minister under section 26(3) shall have a right to appeal to the Supreme Court within a period of one month, or such further period as a Judge may direct, from the date on which he is notified by the Minister of the surcharge.

- (2) Where an appeal has been commenced in accordance with the preceding subsection, the surcharge shall not have effect until the appeal has been determined or withdrawn.
- (3) The provision of the Appeals Act 1972 relating to appeals from the District Court shall apply so far as they may be applicable to an appeal under this section and the Supreme Court may make such order confirming the surcharge or directing that the person surcharged be released wholly or in part from the surcharge, as may appear just and reasonable and no appeal shall lie to any Court, tribunal or person against any such order of the Supreme Court.
- (4) Where on an appeal under this section the Supreme Court does not wholly set aside the surcharge, the President may, if he thinks fit, upon the application of the appellant or any other person as an act of grace remit the whole or any part of it.

RECOVERY OF SURCHARGE

28(1) Subject to Section 27, the Minister may direct, notwithstanding the provisions of any other written law, that the amount of a surcharge ordered in respect of any person shall be recovered -

- (a) by equal instalments by deductions from the salary, wages, or pension of that person in amounts not exceeding one-fourth of the total salary, wages or pension, as the case may be, of that person payable on each pay-day thereafter; or
- (b) by deduction from any payment due to that person from the Nauruan Landowners Cash Royalty Fund or the Nauruan Land Owners Royalty Trust Fund or the interest payable therefrom

until the full amount of the surcharge is recovered.

- (2) Nothing in this Act shall be taken as preventing the Republic from suing, or as limiting its right to sue, any persons in any Court in Nauru or elsewhere, in respect of any cause of action relating to the public finances of the Republic, save in respect of any matter which has been made the subject of an order for surcharge made by the Minister.

PART VII MISCELLANEOUS AND GENERAL

PAYMENTS WITHOUT PROBATE, ETC.

29(1) Notwithstanding the provisions of any other written law, on the death of any person to whom, or to whose estate, any sum of money was, or is, payable by the Republic, the Minister may authorise the payment of that sum or any part or parts thereof to any person or persons who the Minister may consider will be entitled to, or to share in, the estate of the person deceased, without requiring the production of probate, letters of administration or proof of a determination by the Nauru Lands Committee as to the person so entitled.

Provided that no moneys exceeding one thousand dollars in total shall be paid in respect of any one deceased person under the provisions of this subsection.

(2) Any payment made under this section shall be valid against all persons whatsoever, and all persons acting under its provisions shall be absolutely discharged from all liability in respect of any moneys duly paid or applied by them under this section.

REFUNDS, ETC., CHARGED UPON THE TREASURY FUND

30. Where any Act provides for the payment of any refund, rebate or drawback in respect of any money paid into the Treasury Fund under the authority of this Act or any other written law and accounted for in the public accounts, the amount of such refund, rebate or drawback shall be charged upon the Treasury Fund and may be withdrawn from the Treasury Fund for that purpose.

ERRONEOUS RECEIPT

31. The repayment of any moneys received in error by the Treasury Fund or the Government Loans Fund is hereby charged on, and may be withdrawn from, that fund in order to effect that repayment.

REGULATIONS

32(1) The Cabinet may make regulations not inconsistent with this Act, but no such regulation shall have retrospective effect, to facilitate the implementation of the provisions thereof and, without prejudice to the generality hereof, the regulations may provide for -

- (a) the collection, receipt, custody, issue, expenditure, care and management of, and the due accounting for, all public moneys and the duties of persons concerned therein;
- (b) the more effectual recording, examination, inspection and departmental checking of all receipts and expenditure and the keeping of all necessary books and accounts;
- (c) the forms for all accounts, books and documents whatsoever required under the provisions of this Act or the regulations made thereunder;
- (d) the purchase, safe custody, issue, sale or other disposal or writing-off of property of the Republic and the proper accounting for, and stock-taking of, such stores and property;
- (e) the preparation of estimates of revenue and expenditure of the Republic;

(f) the authorisation of the reimbursement or the indemnification of public officers in respect of expenses reasonably incurred by them in or in connection with the performance of their duties as public officers and of other persons in respect of expenses reasonably incurred by them in connection with the business of the Republic where no contract for their services exists, and the fixing of rates of payment of travelling, subsistence and other allowances to public officers

(g) the Secretary for Finance to have authority to issue directions on prescribed matters

(h) the keeping of accounts of trust moneys not held in the Trust Fund.

(2) Notwithstanding the provisions of section 26 of the Interpretation Act 1971, any regulations made under the provisions of this section shall be published or notified such manner as the Cabinet may direct and shall come into force on the date specified therein:

(3) A regulation may be made under sub-section (1)(h) notwithstanding that it is inconsistent with an applied statute which relates to the receipt or administration of moneys or funds subject to a trust, and shall, to the extent of the inconsistency, prevail.

DELEGATION OF POWERS, ETC.

33(1) The Minister may from time to time, by an instrument in writing under his hand, delegate, to the extent that he considers necessary or expedient for the proper administration of this Act, any of his powers, duties and functions under this Act, other than those specified in sections 8, 10, 11, 13, 17, 25, 26 and 29, to the Secretary for Finance.

(2) Any delegation made from time to time under the preceding subsection may be varied or cancelled by the Minister at any time by an instrument in writing under his hand.

(3) A copy of every instrument signed by the Minister under this section shall be delivered to the Director of Audit by the Secretary for Finance within seven days after it is made.

REPEAL

34(1) The Public Moneys Ordinance 1968 is repealed.

(2) Where regulations are made by the Cabinet or the Minister under this Act to provide for the manner in which any accounts or other records are to be kept by any public officer, section 73 of the Interpretation Act 1971 shall cease to have effect in relation to those accounts and records.

SAVING

35(1) All funds and accounts established by or under the Public Moneys Ordinance 1968 shall be deemed to be and become funds and accounts established under this Act.

(2) A trust account existing immediately before the commencement of this Act under any written law shall remain as a trust account, subject to any regulation made in relation to the keeping of trust accounts.



REPUBLIC OF NAURU

Public Finances (Control and Management) Act 1997

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