

PUBLIC FINANCE (CONTROL AND MANAGEMENT)

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Public Finance (Control and Management) Act 1997

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Public Finance (Control and Management) Act 1997

TABLE OF AMENDMENTS

The Public Finance (Control and Management) Act 1997 No 3 was certified on 13 June 1997 and commenced on 30 June 1997 (GN No 258/1997; Gaz 56/1997).

Amending Legislation	Certified	Date of Commencement
Statute Law Revision Act 2011 No 8	15 April 2011	15 April 2011
Interpretation (Consequential Amendments) Act 2011 No 18	3 November 2011	3 November 2011
Public Finance (Control and Management) (Amendment) Act 2012 No 16	6 November 2012	25 January 2013 (except Sch [4] in so far as it inserts s 15E, which is yet to commence)
Public Finance (Control and Management) (Amendment) Act 2019 No 9	11 June 2019	1 July 2019
Public Finance (Control And Management) (Amendment) Act 2020 No 18	23 October 2020	23 October 2020
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

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An Act to provide for the control and management of the public moneys of Nauru, to repeal the *Public Moneys Act 1968* and for related purposes.

Enacted by the Parliament of Nauru as follows:

PART 1 — PRELIMINARY

[Pt 1 heading am Act 16 of 2012 s 3 and Sch[1], opn 25 Jan 2013]

1 Short title and commencement

This Act may be cited as the *Public Finance (Control and Management) Act 1997* and commenced on 30 June 1997.

[s 1 subst Act 8 of 2011 s 12 and Sch 1[130], opn 15 Apr 2011]

2 Interpretation

- (1) In this Act: ***‘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;
 - (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;

‘Commissioner of Police’ means the Commissioner of Police appointed under the *Nauru Police Force Act 1972*;

[def insrt Act 18 of 2020 s 4, opn 23 Oct 2020]

‘commit’ means to bind by contract;

‘department’ has the same meaning as in the *Public Service Act 2016*;

[def am Act 8 of 2011 s 12 and Sch 1[131], opn 15 Apr 2011]

‘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 a person in the Republic 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 1972*;

[def am Act 8 of 2011 s 12 and Sch 1[131], opn 15 Apr 2011]

‘Head of Department’ has the same meaning as in the *Public Service Act 2016*;

[def am Act 16 of 2012 s 3 and Sch[2]. opn 25 Jan 2013]

‘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 the Republic;

‘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 or she is Head of the Department, or for which he or she 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 Department for the department responsible for finance matters;

‘Secretary for Justice’ means the Head of 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; and

‘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;
 - (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;
 - (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 Courts shall have the same authority as a departmental head;
 - (d) the President shall be deemed to be the responsible Minister in respect of the Department of Audit; and
 - (e) the Commissioner of Police shall be deemed to be the head of department in respect of the Nauru Police Force.

[subs (2) subst Act 18 of 2020 s 4, opn 23 Oct 2020]

- (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.

3 Application

- (1) 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 the Republic, 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.
- (2) Nothing in subsection (1) limits the application of Part 3A.

[subs (2) insrt Act 16 of 2012 s 3 and Sch[3]. opn 25 Jan 2013]

4 Powers and responsibilities of Minister and responsible Ministers

- (1) The Minister and every responsible Minister have, in addition to the powers otherwise conferred on them by this Act and any other written law, full powers to do all things that are necessary or convenient to be done, whether in the Republic 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.

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- (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 or she 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.

[The next page is 30,801]

PART 2 — ANNUAL APPROPRIATION

[Pt 2 heading am Act 16 of 2012 s 3 and Sch[1], opn 25 Jan 2013]

5 Annual estimates and the Appropriation Act

- (1) The estimates of revenue and expenditure which are laid before Parliament in accordance with Article 59 of the *Constitution* 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; and
 - (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.

6 Supplementary Appropriation Acts

- (1) Where it is 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 of that financial year;
 - (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.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[131], opn 15 Apr 2011]

[subs (3) am Act 8 of 2011 s 12 and Sch 1[131], opn 15 Apr 2011]

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

7 Approval of estimates of expenditure

- (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.

8 Withdrawals from the Treasury Fund

- (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 of the *Constitution*.
- (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 subdivision a sum or further sum, as the case may be, out of any surplus arising on any other sub-division of the same division.

[subs (5) am Act 8 of 2011 s 12 and Sch 1[131], opn 15 Apr 2011]

- (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 or she 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 3 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.

[The next page is 31,001]

PART 3 — DEALING WITH PUBLIC MONEYS

[Pt 3 heading am Act 16 of 2012 s 3 and Sch[1], opn 25 Jan 2013]

9 Public accounts

The Minister shall, in consultation with the Auditor General, maintain, or cause to be maintained, as the public accounts of the Republic separate accounts in respect of:

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

10 Custody of public moneys

- (1) Public moneys may be kept with such bank or banks, in the Republic 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, an accounting officer shall not open a public or official account in any bank without the written authority of the Minister.

[subs (3) am Act 8 of 2011 s 12 and Sch 1[131], opn 15 Apr 2011]

- (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 a person appointed by the Minister as an agent to sell stamps on behalf of the Republic.

11 Overdrawing of bank accounts

- (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 \$10,000,000, or such greater amount as may be approved from time to time by resolution of Parliament, by overdrawing or authorising public officers of his or her department to overdraw, a bank account of the Republic.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[131], opn 15 Apr 2011]

- (2) The total of the amounts overdrawn under subsection (1) may not exceed \$10,000,000 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.

12 Ministerial directions to limit expenditure

- (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 Auditor General by the Head of Department of the responsible Minister within 7 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 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.

13 Commitments for future years

- (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 \$50,000, the authorisation referred to in that subsection may be made by the Minister, upon being satisfied upon the recommendation or the responsible Minister.
- (3) Where the total for the financial year of expenditure referred to in subsection (1) does not exceed \$5,000, the authorisation referred to in that subsection may be made by the departmental head where he or she 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 or her 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.
- (5) 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.
- (6) In this Section, ‘*service*’ includes the supplying of goods, the construction of buildings and the provision of personal and other services.

14 Control of revenue, expenditure, public property, and other asset

- (1) Subject to any written procedural directions of the Minister, a departmental head shall, in respect of the department of which he or she is the Head of the Department, or any other department for which he or she 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 or her under this Act may be exercised or performed on his or her behalf by an accounting officer under his or her 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.

15 Unforeseen contingencies

- (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.

[The next page is 31,201]

PART 3A — PROCUREMENT

[Pt 3A insrt Act 16 of 2012 s 3 and Sch[4]. opn 15 Oct 2020]

15A Objectives

- (1) The objectives of this Part are to advance government priorities and objectives by a system of procurement for public authorities directed towards:
 - (a) obtaining value in the expenditure of public money;
 - (b) providing for ethical and fair treatment of participants; and
 - (c) ensuring probity, accountability and transparency in procurement operations.
- (2) The Minister and the procurement agent shall, in administering this Part, have regard to and seek to further the objectives of this Part.

15B Interpretation

In this Part:

'conduct' includes arrange the conduct of and **'conducted by'** includes arranged through;

'procurement agent' means:

- (a) an independent procurement agent which shall be independent of the Government of Nauru; or
- (b) an instrumentality of the Republic or State owned enterprise, statutory or other Government corporations appointed by the Cabinet;

[def subst Act 9 of 2019 s 4, opn 1 July 2019]

'procurement manual', see Section 15D;

'procurement operations' of a public authority means:

- (a) the procurement of goods or services required by the authority for its operations, including (without limitation) the procurement of intellectual property and the procurement of construction works;
- (b) the management of goods of the authority, including (without limitation) the care, custody, storage, inspection, stocktaking or distribution of goods of the authority; or
- (c) the management of the authority's contracts for services, but does not include operations excluded from this definition by the Regulations; and

'public authority' means:

- (a) a Minister;
- (b) a Department;
- (c) instrumentality of the Republic or State owned enterprise, including:
 - (i) Nauru Rehabilitation Corporation;
 - (ii) RONPHOS;
 - (iii) Nauru Utilities Corporation;
 - (iv) Nauru Air Corporation; and
 - (v) Eigigu Holdings Corporation,

- but not including an instrumentality or enterprise declared by the Regulations not to be a public authority; or
- (d) a person declared by the Regulations to be a public authority.

15C Procurement agent

- (1) The Republic may engage a procurement agent with the function of conducting procurement operations on behalf of public authorities as required or contemplated by this Act.
- (2) The independent procurement agent shall be selected following a competitive tendering process conducted jointly by:
 - (a) the Chief Secretary;
 - (b) the Secretary for Finance; and
 - (c) one other person, who is not a public officer, nominated by the Cabinet.
- (3) The Cabinet in appointing a Government instrumentality or a State owned enterprise, statutory or other Government corporation as a procurement agent:
 - (a) may prescribe terms and conditions to satisfy the objective of procurement under Section 15A prior to appointment as procurement agent; and
 - (b) may appoint such Government instrumentality or State owned enterprise, statutory or other Government corporation for a period of 5 years or such other period the Cabinet may deem fit.
- (4) A procurement agent appointed under subsection (1), shall be engaged for a period not exceeding 5 years.
- (5) An independent procurement agent appointed under subsection (2), may be engaged for a further period not exceeding 5 years without a further competitive tendering process, where the Secretary for Finance is satisfied that the agent has met the performance criteria specified in the agent's contract for the previous period of engagement and Cabinet approves the engagement of the agent.
- (6) An independent procurement agent shall not be engaged for a period in excess of a cumulative period of 10 years unless such procurement agent has been selected at subsequent competitive tendering processes.
- (7) The procurement agent's terms and conditions of engagement:
 - (a) shall require procurement operations to be conducted on behalf of public authorities in accordance with this Act;
 - (b) shall set out standard terms under which the agent will conduct procurement operations on behalf of a public authority at the request of the public authority;
 - (c) shall require the agent to provide reports to Cabinet and to each public authority relating to the conduct of procurement operations;
 - (d) shall require at least 1 representative of the agent to be a resident of the Republic at all times during the term of the contract;
 - (e) shall contain provisions designed to enhance the skills of the employees of public authorities in relation to procurement operations, including through training to be provided by the agent; and
 - (f) may contain any other provisions.

[s 15C subst Act 9 of 2019 s 5, opn 1 July 2019]

15D Procurement manual

- (1) The Secretary for Finance is responsible for:
 - (a) the preparation of a procurement manual governing procurement operations of public authorities;
 - (b) the regular review of the manual and its modification or substitution as required; and
 - (c) the publication of the manual in up-to-date form (including on a government website).
- (2) The procurement manual shall comply with any requirements set out in the Regulations and shall be approved by Cabinet.

15E Conduct of procurement operations of public authorities

- (1) Procurement operations of a public authority shall be conducted in accordance with the Regulations and the procurement manual.
- (2) The Regulations may (without limitation):
 - (a) require procurement operations of a public authority to be conducted by the procurement agent; and
 - (b) leave matters to be determined according to the discretion of the Minister, the Secretary for Finance or the procurement agent.
- (3) Procurement operations of a public authority not required under the Regulations to be conducted by the procurement agent may be so conducted under an agreement between the authority and the agent as set out in the agent's contract.
- (4) A public authority shall not artificially divide a procurement operation in order to avoid a requirement of the Regulations.
- (5) A public authority is excused from compliance with subsection (1) to the extent that compliance would be inconsistent with the terms of an agreement between the Republic of Nauru and a foreign government or an international or regional institution.
- (6) A public authority is excused from compliance with subsection (1):
 - (a) in circumstances of disaster, war or social unrest; or
 - (b) if the Secretary for Finance grants an approval to that effect.

[s 15E insrt Act 16 of 2012 s 3 and Sch [4], opn 15 Oct 2020]

[The next page is 31,401]

PART 4 — WRITE OFF, SALE AND DISPOSAL

[Pt 4 heading am Act 16 of 2012 s 3 and Sch[1]. opn 25 Jan 2013]

16 Uncollected revenue

- (1) Where any revenue which should have been received or collected by a department has not been received or collected within a period of 6 months from the time it should have been received or collected, the head of department shall report the fact to the Secretary for Justice.
- (2) Upon receiving a report under subsection (1), the Secretary for Justice shall advise the head of department in writing whether in his or her opinion the revenue is recoverable and if so, by what means, and shall send a copy of the advice to the Auditor General.

17 Write off

- (1) Subject to this Act and any other law, the Minister on the joint recommendation of the head of department 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;
 - (b) abandon irrecoverable amounts of revenue, debts, and overpayments;
 - (c) approve *ex gratia* refunds or payments; and
 - (d) approve that nugatory expenditure shall stand charged in the accounts.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[131], opn 15 Apr 2011]

- (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.

[subs (2) am Act 8 of 2011 s 12 and Sch 1[131], opn 15 Apr 2011; Act 16 of 2012 s 3 and Sch[5]. opn 25 Jan 2013]

- (3) Where a responsible Minister considers that the retention by the Republic of any public property held within his or her department is likely to cause unreasonable risk of injury to a person or of damage to any property, he or she may by written order condemn that property and write it off.

[subs (3) am Act 16 of 2012 s 3 and Sch[5]. opn 25 Jan 2013]

- (4) [omitted]

[subs (4) omitted by the Law Revision Commission under powers authorised by Act 10 of 2019]

18 Sale of public property

- (1) Where a head of department certifies that public property for which he or she is responsible:
 - (a) is no longer or is not required;
 - (b) will in the circumstances specified in the certificate no longer or not be required;
 - (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 property shall be sold in accordance with this Section.

[subs (2) am Act 16 of 2012 s 3 and Sch[6]. opn 25 Jan 2013]

(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 head of department of the relevant department or to a public officer nominated by him or her in writing to receive it, and the head of department 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.

19 Disposal of public property

(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 head of department of the relevant department to the Auditor General not later than 7 days after the date on which the order is made or the certificate is given.

20 Unlawful disposal of public property

- (1) No public property shall be sold, given away, destroyed or otherwise disposed of by a 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; 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.

[subs (3) revised by Law Revision Commission under powers authorised by Act 10 of 2019]

[The next page is 31,601]

PART 5 — TRUST MONEYS

[Pt 5 heading am Act 16 of 2012 s 3 and Sch[1]. opn 25 Jan 2013]

21 The Trust Fund

- (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.

22 Trust moneys in Treasury Fund

- (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.

23 Trust Funds otherwise dealt with

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.

24 Trust accounts

- (1) 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 purpose 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.

[The next page is 31,801]

PART 6 — SURCHARGE

[Pt 6 heading am Act 16 of 2012 s 3 and Sch[1]. opn 25 Jan 2013]

25 Imposition of surcharge

- (1) Where it appears to the Minister that a 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 or her 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 or she 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 or her by or in writing under this Act wilfully or negligently, regard being had for all the circumstances, responsible, at a time when he or she 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, 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 or her hand served on that person, notify him or her that he or she intends to surcharge him or her 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.
- [subs (1) revised by Law Revision Commission under powers authorised by Act 10 of 2019]
- (2) Where, within 14 days of the service of the notice on him or her, or within such further time as the Minister may allow him or her for the purpose, a person served with a notice issued by the Minister under subsection (1):
- (a) informs the Minister in writing, that he or she is willing to be surcharged the amount specified in the notice, the Minister may surcharge him or her that amount or, if he or she thinks fit, any smaller amount and shall, in any event, notify him or her in writing of his or her decision in the matter; or
 - (b) does not inform the Minister that he or she 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.

26 Proceedings before the District Court

- (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 such evidence relevant to the matter being inquired into and to make written or oral submissions relating to such evidence.
- (2) The District Court, having under subsection (1) 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 or her.
- (3) Upon receiving a certificate given by the District Court under subsection (2), 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 or her with an amount not exceeding that certified by the District Court as fair and reasonable and, if he or she does so, shall notify him or her 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.

27 Appeal against surcharge

- (1) A person who is dissatisfied with any surcharge made against him or her by the Minister under Section 26(3) shall have a right to appeal to the Supreme Court within a period of 1 month, or such further period as a Judge may direct, from the date on which he or she 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 *Supreme Court Act 2018* relating to civil 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 or she 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.

28 Recovery of surcharge

- (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 a 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; 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 the Republic 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.

[The next page is 32,001]

PART 7 — MISCELLANEOUS AND GENERAL

[Pt 7 heading am Act 16 of 2012 s 3 and Sch[1]. opn 25 Jan 2013]

29 **Payments without probate, etc**

- (1) Notwithstanding the provisions of any other written law, on the death of a 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 a 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 \$1,000 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.

30 **Refunds, etc, charged upon the Treasury Fund**

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.

31 **Erroneous receipt**

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.

32 **Regulations**

- (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 the following:
 - (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; and
- (h) the keeping of accounts of trust moneys not held in the Trust Fund.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[131], opn 15 Apr 2011]

(2) [subs (2) rep Act 8 of 2011 s 3 and Sch[24], opn 3 Nov 2011]

- (3) Regulations may be made under subsection (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.

33 Delegation of powers, etc

- (1) The Minister may from time to time, by an instrument in writing under his or her hand, delegate, to the extent that he or she considers necessary or expedient for the proper administration of this Act, any of his or her 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 subsection (1) may be varied or cancelled by the Minister at any time by an instrument in writing under his or her hand.
- (3) A copy of every instrument signed by the Minister under this Section shall be delivered to the Auditor General by the Secretary for Finance within 7 days after it is made.

34 Repeal

- (1) The *Public Moneys Act 1968* is repealed.
- (2) [subs (2) rep Act 8 of 2011 s 3 and Sch[25], opn 3 Nov 2011]

35 Saving

- (1) All funds and accounts established by or under the *Public Moneys Act 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.

[The next page is 38,001]

Public Finance (Control and Management) Regulations 2013

TABLE OF PROVISIONS

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Public Finance (Control and Management) Regulations 2013

TABLE OF AMENDMENTS

The Public Finance (Control and Management) Regulations 2013 SL 1 were notified and commenced on 25 January 2013 (reg 2(1) and GN No 58/2013; Gaz 11/2013) except regs 5, 6 and 7 which commenced on 15 October 2020 (GN No 905/2020; Gaz 223/2020).

Amending Legislation	Notified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

[The next page is 38,401]

The Cabinet makes the following Regulations under the *Public Finance (Control and Management) Act 1997*:

PART 1 — PRELIMINARY

1 Citation

These regulations may be cited as the *Public Finance (Control and Management) Regulations 2013*.

2 Commencement

- (1) Subject to subregulation (2), these regulations commence on the day after the day on which they are published in the Gazette.
- (2) Regulations 5, 6 and 7 commence on the day on which new Section 15E of the Act inserted by the *Public Finance (Control and Management) (Amendment) Act 2012* commences.

3 Interpretation

In these Regulations:

'common item', in relation to a public authority, means goods or services identified by the Secretary for Finance as a common item by notice in writing to the authority; and

'principal officer' of a public authority means:

- (a) if the authority is a Minister, the Minister;
- (b) if the authority is a Department, the Head of Department; or
- (c) in any other case, the chief executive officer of the authority.

[The next page is 38,601]

PART 2 — PROCUREMENT OPERATIONS

4 Purpose of Part

This Part is made for the purposes of Part 3A of the Act.

5 Annual procurement plans

Each public authority shall, in conjunction with the procurement agent, prepare a procurement plan for each financial year in accordance with the procurement manual.

6 Procurement operations over \$3,000 shall be conducted by procurement agent

- (1) Procurement operations of a public authority with a value exceeding \$3,000 shall be conducted by the procurement agent on behalf of the authority.
- (2) The value of a procurement operation is to be determined in accordance with the procurement manual.
- (3) Subject to Section 15E(5) of the Act and the procurement manual, procurement operations of a public authority funded by a foreign government or international or regional institution shall be conducted by the procurement agent on behalf of the authority.
- (4) There shall be a procurement plan prepared in accordance with the procurement manual for each procurement operation subject to this regulation.

7 Procurement of common items

- (1) Procurement operations of a public authority involving the procurement of a common item shall be conducted in accordance with this regulation.
- (2) The Secretary for Finance may, by notice in writing to a public authority, identify goods or services that are to be treated as common items by the public authority.
- (3) The procurement agent is to procure or arrange for the procurement, storage and distribution of common items.
- (4) A public authority shall contact the procurement agent if it requires a common item.

8 Procurement manual

- (1) The procurement manual shall embody the following principles:
 - (a) procurement operations should not be conducted unless the operations are necessary for the purposes of the public authority and funding is available;
 - (b) employees engaged in procurement should be provided with suitable training;
 - (c) in determining whether to enter into an arrangement for the conduct by the procurement agent on behalf of a public authority of procurement

- operations, the principal officer of the authority should take into account the nature of the operations and the training and experience of the employees of the authority;
- (d) subject to principles set out in the manual allowing for payments for goods or services in stages and advance payments, payments should be made in arrears and only if the goods or services are provided satisfactorily;
 - (e) payments for goods or services should be made promptly;
 - (f) for procuring goods or services or goods and services, including construction works but not including professional services of a consultant:
 - (i) the principal method of procurement should be by a single stage competitive tender; and
 - (ii) if a method other than the principal method is chosen, such as multiple stage competitive tender, restricted competitive tender, direct procurement or obtaining quotations, the reasons for that decision should be recorded in writing and should relate to one or more of the following:
 - (A) the estimated value of the procurement operation;
 - (B) the nature of the procurement operation;
 - (C) the nature of the market; or
 - (D) any urgency or other relevant circumstance;
 - (g) for procuring professional services of a consultant, the principal method of procurement should be by request for proposals, although the manual may contemplate circumstances when other methods should be used;
 - (h) requirements and technical specifications for a procurement operation should describe the requirements in terms of performance or outcome rather than by prescription of detailed characteristics, although the manual may set out circumstances in which it is appropriate to refer to a known manufacturer's specification or equivalent;
 - (i) procurement operations should be carried out in a manner that does not discriminate against a potential supplier on the basis of nationality, race, religion, gender or other irrelevant factor;
 - (j) procurement operations should be carried out in a manner that assesses the qualifications and capacity of potential suppliers to provide the goods or services and their integrity;
 - (k) procurement operations should be conducted in a manner that ensures that commercially sensitive information is kept securely and is treated as confidential;
 - (l) procurement operations should be conducted in the manner set out in the documentation provided to potential suppliers, including by evaluating the suppliers only in accordance with criteria set out in the documentation;
 - (m) the reasons for a supplier being unsuccessful in relation to a particular procurement operation should be communicated to the supplier on request;
 - (n) records should be kept of each procurement operation; and
 - (o) a system should be established for dealing with complaints by potential suppliers.

- (2) Subject to any international agreements to which the Republic is a party, the procurement manual shall contain provisions establishing a system for according preference to goods produced in the Republic or services provided by citizens of the Republic in appropriate cases.
- (3) The procurement manual may contain provisions requiring each public authority to cause an independent review to be conducted within a specified period after the end of a financial year of each of its procurement operations conducted during the financial year and exceeding a specified value.

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Public Finance (Control and Management) (Financial Instructions) Regulations 2018

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<i>Regulation</i>	<i>Title</i>
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3	Interpretation
4	Secretary for Finance to issue directions
5	Financial Instructions

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Public Finance (Control and Management) (Financial Instructions) Regulations 2018

TABLE OF AMENDMENTS

The Public Finance (Control and Management) (Financial Instructions) Regulations 2018 SL 13 were notified and commenced on 11 May 2018 (GN No 357/2018; Gaz 75/2018).

Amending Legislation	Notified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

[The next page is 43,401]

The Cabinet makes the following Regulations under Section 32(1)(g) of the *Public Finance (Control and Management) Act 1997*:

1 Citation

These Regulations may be cited as the *Public Finance (Control and Management) (Financial Instructions) Regulations 2018*.

2 Commencement

These Regulations commence on the day they are notified in the Gazette.

3 Interpretation

In these Regulations:

'Financial Instructions' means written instructions issued by the Secretary for Finance under Regulation 5 and provided to Government departments and agencies or published on the Department of Finance's website from time to time.

4 Secretary for Finance to issue directions

For the purposes of these Regulations, the Secretary for Finance shall from time to time, issue directions in the form of Financial Instructions.

5 Financial Instructions

The Secretary for Finance may issue Financial Instructions in relation to the following:

- (a) the collection, receipt, custody, issue, expenditure, care and management of and due accounting for all public moneys and the duties of the persons concerned;
- (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 the Act; and
- (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.

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Public Finance (Control and Management) (Sale of Public Property) Regulations 2019

TABLE OF PROVISIONS

<i>Regulation</i>	<i>Title</i>
1	Citation
2	Commencement
3	Interpretation
4	Sale of public property
5	Manner of sale

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Public Finance (Control and Management) (Sale of Public Property) Regulations 2019

TABLE OF AMENDMENTS

The Public Finance (Control and Management) (Sale of Public Property) Regulations 2019 SL 2 were notified and commenced on 10 February 2019 (GN No 113/2019; Gaz 24/2019).

Amending Legislation	Notified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

[The next page is 48,401]

The Cabinet makes the following Regulations under Section 18(4) of the *Public Finance (Control and Management) Act 1997*:

1 Citation

These Regulations may be cited as the *Public Finance (Control and Management) (Sale of Public Property) Regulations 2019*.

2 Commencement

These Regulations come into effect on the day they are notified in the Gazette.

3 Interpretation

In these Regulations:

‘public property’ means government owned vehicles; and

‘private sale’ means where the property is offered to an individual or group of individuals but not the public generally.

4 Sale of public property

(1) For the purposes of Section 18(4) of the Act, public property shall be sold by private sale if such public property:

- (a) is no longer required;
- (b) is replaceable or has been replaced; or
- (c) is unserviceable or about to become unserviceable; and
- (d) is approved for private sale by the Cabinet.

(2) The sale of public property under subregulation (1) shall take place after:

- (a) a physical inspection of the property; and
- (b) the value of the property has been determined by Treasury based on the purchase cost of the property less any accumulated depreciation based on the rates used in the Government accounts.

5 Manner of sale

The sale of public property in these Regulations shall be:

- (a) by private sale at the value provided by Treasury; and
- (b) on a cash basis only.

[The next page is 50,001]

Public Finance (Control and Management) (Government Vehicles Write-Off) Regulations 2024

TABLE OF PROVISIONS

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5	Head of Department to cause inspection and appraisal of vehicle intended to be written-off
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7	Responsibility of the mechanic
8	Mechanic to inspect vehicle
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SCHEDULE

FORM — REQUEST FOR WRITING OFF OF VEHICLE

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Public Finance (Control and Management) (Government Vehicles Write-Off) Regulations 2024

TABLE OF AMENDMENTS

The Public Finance (Control and Management) (Government Vehicles Write-Off) Regulations 2024 SL 8 were notified and commenced on 3 April 2024 (GN No 449/2024; Gaz 171/2024).

Amending Legislation	Notified	Date of Commencement
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[The next page is 50,401]

The Cabinet makes the following Regulations under Section 32 of the *Public Finance (Control and Management) Act 1997*:

1 Citation

These Regulations may be cited as the *Public Finance (Control and Management) (Government Vehicles Write-Off) Regulations 2024*.

2 Commencement

These Regulations commence on the date they are notified in the Gazette.

3 Interpretation

In these Regulations:

‘Head of Department’ includes a Secretary as defined under the *Public Service Act 2016* or a Chief Executive Officer as defined under the *Public Enterprises Act 2019*;

‘mechanic’ means a mechanic employed in the Government of Nauru Garage or any such other qualified person authorised by the Secretary for Finance to appraise the condition and value of a motor vehicle; and

‘vehicle’ means a motor vehicle including a motorcycle that is owned by the Government, statutory bodies or instrumentalities.

4 Objective of the Regulations

The objective of these Regulations is to give effect to Section 17 of the Act, for the purposes of providing a procedure for the writing-off of vehicles.

5 Head of Department to cause inspection and appraisal of vehicle intended to be written-off

For the purpose of ascertaining whether a vehicle is to be written-off, a Head of Department may cause a vehicle to be inspected and appraised by a mechanic where the vehicle:

- (a) is damaged in an accident or by any other means;
- (b) constantly breaks down and is out of service or use; or
- (c) constantly requires maintenance and repair.

6 Request to be in writing

A request under Regulation 5, shall be made in writing in the Form in the Schedule.

7 Responsibility of the mechanic

Where a request is made by a Head of Department under Regulation 6 for a vehicle to be written-off, the mechanic shall recommend:

- (a) whether the vehicle is beyond repair due to the damage;
- (b) the value of the repair is beyond the market value of the vehicle; or

- (c) for the vehicle to be maintained or repaired, as it is not in the condition to be written-off and is still capable of being used for Government services.

8 Mechanic to inspect vehicle

- (1) Upon receipt of a request for inspection of a vehicle, under Regulation 6, the mechanic shall:
 - (a) undertake a full inspection of the vehicle; and
 - (b) provide an opinion in accordance with Regulation 7.
- (2) The mechanic shall provide his or her opinion under subregulation (1) in the Form.
- (3) The duly completed Form by the mechanic shall be provided to the Head of Department.

9 Head of Department to refer report to the Secretary for Finance

- (1) Where the mechanic recommends that a vehicle is to be written-off, the Head of Department shall refer the Report to the Secretary for Finance.
- (2) The Secretary for Finance shall then refer the request to write-off a vehicle by the Head of Department to the Minister for Finance for his or her consideration.
- (3) Where the Minister is satisfied, based on the information provided that a vehicle be written-off, he or she shall recommend it to the Cabinet for its consideration.
- (4) Where the Cabinet approves that a vehicle be written-off, the Minister shall then issue a written Order under Section 17 of the Act.

10 Vehicle not to be written off

- (1) Where the mechanic has given an advice that a vehicle shall not be written off or is capable of being maintained or repaired, the Head of Department shall not make any recommendation to the Secretary for Finance for the vehicle to be written-off.
- (2) The Head of Department shall undertake the necessary repairs for maintenance as advised by the mechanic to ensure that the vehicle is roadworthy and fit for service of the Government.
- (3) The Head of Department shall not abandon the vehicle without any repairs or maintenance, which may cause further damage to the vehicle and which in future prevents the vehicle from being repaired or maintained due to normal wear and tear.

11 Head of Department's duty to advise the Chief Secretary or the Board

- (1) In case of the public service, the Head of a Department shall submit to the Chief Secretary, a copy of the:
 - (a) the Report of the mechanic, where the mechanic has declined the request for write-off; and
 - (b) the decision of the Minister duly completed in the Form where the Cabinet and the Minister have decided that the vehicle be written-off.

- (2) In the case of an instrumentality or statutory body, the Chief Executive Officer shall submit to the Board a copy of the:
- (a) the Report of the mechanic, where the mechanic has declined the request for write-off; and
 - (b) the decision of the Minister duly completed in the Form where the Cabinet and the Minister have decided that the vehicle be written-off.

12 Transitional provision

A Head of Department or the Secretary for Finance shall with regard to a vehicle that is the subject of a request to be written off under Section 17, before the commencement of these Regulations, re-submit proposals to be undertaken in accordance with these Regulations upon its the commencement.

[The next page is 50,601]

SCHEDULE

FORM



REPUBLIC OF NAURU

PUBLIC FINANCE (CONTROL AND MANAGEMENT) ACT 1997

Public Finance (Government Vehicles Write-Off) Regulations 2024

REQUEST FOR WRITING OFF OF VEHICLE

[Regulation 6]

PART 1 — DEPARTMENT / STATUTORY BODY / INSTRUMENTALITY DETAILS		
(a)	Department / Statutory Body / Instrumentality	
(b)	Name of Head of Department/Statutory Body/ Instrumentality	
(c)	Signature	
(d)	Date	
PART 2 — VEHICLE DETAILS		
(a)	Vehicle Make	
(b)	Vehicle Model	
(c)	Year	
(d)	Engine size	
(e)	Mileage	
(f)	Vehicle Identification Number	
PART 3 — HEAD OF DEPARTMENT'S DESCRIPTION OF CONDITION OF THE VEHICLE		
(g)	Information by the Head of Department or Head of the Statutory Body or Instrumentality on the condition of the vehicle	
PART 4 – MECHANIC'S ASSESSMENT OF THE VEHICLE		
(h)	Mechanic Inspection Report (<i>detailed report required</i>)	

(i)	Recommendation by Mechanic	<input type="checkbox"/> the vehicle is beyond repair due to the damage <input type="checkbox"/> the value of repair is beyond the market value of the vehicle <input type="checkbox"/> the vehicle is to be maintained and repaired as it is not in the condition to be written-off and is still capable of being used for Government services (tick the appropriate box)
(j)	Reasons for Mechanic's recommendation	

Name:

Signature:

Date:

Mechanic's Seal/Stamp

PART 5 — ENDORSEMENT BY THE SECRETARY OF FINANCE

Secretary for Finance:

I agree with the opinion of the mechanic and recommend that this Form be submitted to the Minister for Finance for his consideration.

.....
 Signature Date:

PART 6 — DECISION OF THE CABINET

Decision of the Cabinet

The Cabinet has approved / Not approved the recommendation to write-off the vehicle.

Secretary to Cabinet:

Signature of Secretary to Cabinet Date:

PART 7 — APPROVAL BY THE MINISTER

Minister's approval

I hereby approve that the vehicle referred to above be written-off and direct that it be disposed of in accordance with the law.

Minister for Finance:

Signature:.....

Date:

[The next page is 52,001]

Public Finance (Control and Management) (Depreciating Public Property Sale) Regulations 2024

TABLE OF PROVISIONS

<i>Regulation</i>	<i>Title</i>
1	Citation
2	Commencement
3	Definitions
4	Objective of the Regulations
5	Depreciating value property
6	Disposal of used vehicles by private sale
7	Procedure for private sale of a used vehicle
8	Mechanic to give valuation of vehicle
9	Manner in which Minister exercises his or her power for private sale
	SCHEDULE
	FORM

[The next page is 52,201]

Public Finance (Control and Management) (Depreciating Public Property Sale) Regulations 2024

TABLE OF AMENDMENTS

The Public Finance (Control and Management) (Depreciating Public Property Sale) Regulations 2024 SL 16 were notified and commenced on 8 May 2024 (GN No 602/2024; Gaz 226/2024).

Amending Legislation	Notified	Date of Commencement
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[The next page is 52,401]

The Cabinet makes the following Regulations under Section 18(4) of the *Public Finance (Control and Management) Act 1997*:

1 Citation

These Regulations may be cited as the *Public Finance (Control and Management) (Depreciating Public Property Sale) Regulations 2024*.

2 Commencement

These Regulations commence on the date they are notified in the Gazette.

3 Definitions

In these Regulations:

‘*mechanic*’ means a mechanic employed in the Government’s authorised garage, to appraise the condition and value of a vehicle;

‘*price*’ means the price prescribed in Section 18(3)(b) of the Act which includes the purchase price and reasonable percentage of that price which shall be added on in respect of freight, buying commission, insurance, handling cost and other associated costs; and

‘*vehicle*’ has the same meaning given to it under the *Public Finance (Control and Management) (Government Vehicles Write-Off) Regulations 2024*.

4 Objective of the Regulations

The purpose of these Regulations is to prescribe circumstances in accordance with Section 18(4), under which and the manner in which, public property may be sold at a price lower than the price as required by Section 18(3)(b).

5 Depreciating value property

A public property may be disposed of at a lower price where its value has depreciated due to its usage, age and condition.

6 Disposal of used vehicles by private sale

- (1) A vehicle is a public property, the value of which depreciates due to its usage, age and condition.
- (2) A used vehicle which has been ordered by the Minister to be written-off, under Section 17 of the Act and in accordance with the *Public Finance (Control and Management) (Government Vehicles Write-Off) Regulations 2024* may be disposed of by a private sale pursuant to Section 18 of the Act.
- (3) The Secretary shall cause the vehicle to be valued by a mechanic.

7 Procedure for private sale of a used vehicle

A vehicle shall not be disposed of by way of a private sale without obtaining a value of the vehicle in accordance with Regulation 8.

8 Mechanic to give valuation of vehicle

- (1) The Secretary shall obtain a valuation of a vehicle ordered to be disposed of by private sale from a mechanic.
- (2) The mechanic shall on receipt of a request under subregulation (1):
 - (a) undertake a full inspection of the vehicle; and
 - (b) provide a valuation of the vehicle.
- (3) The mechanic shall provide his or her valuation in the Form in the Schedule.
- (4) The duly completed Form shall be provided to the Secretary.

9 Manner in which Minister exercises his or her power for private sale

- (1) Where the Minister is satisfied, based on the information provided that a reasonable value of the vehicle has been ascertained, he or she shall recommend it to the Cabinet for its consideration for private sale at that price.
- (2) The Cabinet shall consider the request by the Minister under subregulation (1), as to:
 - (a) the person to whom the vehicle may be sold; and
 - (b) the value of the vehicle at which it may be sold.
- (3) The Secretary shall ensure that the vehicle is sold in accordance with the approval of the Cabinet in subregulation (2).

[The next page is 52,601]

**SCHEDULE
FORM**

[Regulation 8(3)]

MECHANIC'S VALUATION OF THE VEHICLE				
(a)	Valuation of the vehicle <i>(detailed report required)</i>			
(b)	Recommended value for the vehicle			
<table style="width: 100%; border: none;"><tr><td style="width: 35%; vertical-align: top; padding-right: 20px;">Name: Signature: Date:</td><td style="width: 30%; text-align: center; vertical-align: middle;"><div style="border: 1px solid black; width: 100px; height: 80px; margin: 0 auto;"></div><p>Mechanic's Seal/Stamp</p></td><td style="width: 35%;"></td></tr></table>		Name: Signature: Date:	<div style="border: 1px solid black; width: 100px; height: 80px; margin: 0 auto;"></div> <p>Mechanic's Seal/Stamp</p>	
Name: Signature: Date:	<div style="border: 1px solid black; width: 100px; height: 80px; margin: 0 auto;"></div> <p>Mechanic's Seal/Stamp</p>			

[The next page is 60,001]