

# NAURU UTILITIES CORPORATION

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# Nauru Utilities Corporation Act 2011

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# Nauru Utilities Corporation Act 2011

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## TABLE OF AMENDMENTS

The Nauru Utilities Corporation Act 2011 No 13 was certified on 24 June 2011 and commenced on 1 August 2011 (s 2).

<b>Amending Legislation</b>	<b>Certified</b>	<b>Date of Commencement</b>
Nauru Utilities Corporation (Amendment) Act 2016 No 7	29 January 2016	29 January 2016
Nauru Utilities Corporation (Amendment) Act 2019 No 3	21 March 2019	21 March 2019
Public Enterprises Act 2019 No 11	11 June 2019	11 June 2019
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021



An Act to establish the Nauru Utilities Corporation and for related purposes.

Enacted by the Parliament of Nauru as follows:

## PART 1 — PRELIMINARY MATTERS

### 1 Short title

This Act may be cited as the *Nauru Utilities Corporation Act 2011*.

### 2 Commencement

This Act commences on 1 August 2011.

### 3 Objectives

The objectives of this Act are to:

- (a) ensure essential utilities services are provided by the Nauru Utilities Corporation;
- (b) enable the Corporation to operate efficiently and independently while allowing for necessary oversight by the Minister to ensure the Corporation is financially viable and performs its functions fully and in a way that is not detrimental to customers; and
- (c) ensure the powers and functions of the Corporation are exercised and performed in a safe way.

### 4 Definitions

In this Act:

**‘Acting Chief Executive Officer’** means the person appointed under Section 6A of this Act;

[def insrt Act 7 of 2016 s 4, opn 29 Jan 2016]

**‘approved auditor’**

[def rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019]

**‘CEO’** means the chief executive officer of the Corporation appointed in accordance with the *Public Enterprises Act 2019*;

[def subst Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019]

**‘Corporation’** means the Nauru Utilities Corporation established by Section 5(1);

**‘customer’** means a person to whom the Corporation supplies a product or provides a service under an agreement between the person and the Corporation;

**‘estimates’**

[def rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019]

**‘fee’** means a fee determined under Section 13(1)(a);

**‘fuel’** means petrol, diesel or aviation fuel;

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

[def insrt Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019]

*'post-paid customer'* means a customer who receives a product or service before the customer pays fees for the product or service;

*'prescribed'* means prescribed by regulations;

*'product'* means electricity, water or fuel; and

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

[def subst Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019]



## PART 2 — NAURU UTILITIES CORPORATION

### DIVISION 1 — GENERAL MATTERS

#### **5 Establishment of Corporation**

- (1) The Nauru Utilities Corporation is established.
- (2) The Corporation:
  - (a) is a body corporate with perpetual succession;
  - (b) has a common seal; and
  - (c) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property and of suing and being sued.
- (3) All courts, judges and persons acting judicially shall:
  - (a) take judicial notice of the common seal of the Corporation affixed to a document; and
  - (b) presume the seal was duly affixed.

#### **6 Chief executive officer**

[s 6 rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Section 64 of the Public Enterprises Act 2019 applies.]

#### **6A Appointment of Acting CEO**

[s 6A rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Section 64(4) of the Public Enterprises Act 2019 applies.]

#### **7 Board of Directors**

- (1) The Corporation shall have a Board of directors appointed and holding office in accordance with the *Public Enterprises Act 2019*.
- (2) The business, operations and affairs of the Corporation shall be managed by, or under the direction or supervision of, the Board.

[s 7 subst Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019]

#### **7A Chairperson and Deputy Chairperson**

[s 7A rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Section 39 and Section 61 of the Public Enterprises Act 2019 applies.]

#### **7B Vacation of office**

[s 7B rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Part 6 Div 1 of the Public Enterprises Act 2019 applies.]

#### **7C Remuneration of the Board**

[s 7C rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Section 46 of the Public Enterprises Act 2019 applies.]

#### **7D Disclosure of interest**

[s 7D rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Section 53 of the Public Enterprises Act 2019 applies.]

## **7E Procedures of Board Meetings**

[s 7E rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Part 6 Div 3 of the Public Enterprises Act 2019 applies.]

## **7F Voting by ex officio members**

[s 7F rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Part 6 Div 3 of the Public Enterprises Act 2019 applies.]

### DIVISION 2 — POWERS AND FUNCTIONS OF CORPORATION

## **8 Functions of Corporation – electricity**

The functions of the Corporation in relation to electricity are to:

- (a) generate, acquire, exchange, transport, distribute, market and otherwise supply electricity;
- (b) undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any function in paragraph (a); and
- (c) do anything that the Corporation determines to be conducive or incidental to the performance of a function in paragraph (a) or (b).

## **9 Functions of Corporation – water**

The functions of the Corporation in relation to water are to:

- (a) acquire, store, treat, distribute, market and otherwise supply water for any purpose;
- (b) undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose in paragraph (a); and
- (c) do anything that the Corporation determines to be conducive or incidental to the performance of a function in paragraph (a) or (b).

## **10 Functions of Corporation – fuel**

The functions of the Corporation in relation to fuel are to:

- (a) buy, sell, store and transport fuel; and
- (b) do anything the Corporation determines to be conducive or incidental to the performance of a function mentioned in paragraph (a).

## **11 Powers and functions of Corporation – general**

- (1) The Corporation has any other functions that are conferred on it by this Act or any other written law.
- (2) The Corporation may do anything:
  - (a) necessary or convenient for the performance of its functions; or
  - (b) specified in this Act or any other written law.

## **12 Outsourcing arrangements**

The Corporation may, with the consent of Cabinet, make an arrangement with another person for the person to exercise a power or perform a function of the Corporation.

## **13 Fees for products and services**

- (1) The Corporation may:

- (a) subject to any prices order made under Section 6(1) of the *Prices Regulation Act 2008*, determine the fees it will charge for supplying a product or providing a service;
  - (b) determine when the fees shall be paid; and
  - (c) determine a method to assess the supply of a product to a customer if:
    - (i) it is not possible to read a meter that measures the supply of the product at an appropriate time; or
    - (ii) there is no meter to measure the supply of the product.
- (2) The method of assessing supply determined under subsection (1)(c) shall be reasonable and applied consistently.

#### DIVISION 3 — FINANCIAL MANAGEMENT

### 14 Money of Corporation

- (1) The money of the Corporation consists of the following:
  - (a) amounts appropriated for the Corporation from the Treasury Fund;
  - (b) amounts received directly by the Corporation;
  - (c) income from investments by the Corporation;
  - (d) proceeds from the disposal of the Corporation's property;
  - (e) amounts received by the Corporation in payment of fees; and
  - (f) any other amounts that become payable to the Corporation under a written law.
- (2) The money of the Corporation shall be paid into an account with a financial institution that has been approved for the purpose by the Minister.

### 15 Approval of budget estimates

[s 15 rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Part 7 of the Public Enterprises Act 2019 applies.]

### 16 Approval required for certain contracts and transactions

[s 16 rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Part 3 Div 3 of the Public Enterprises Act 2019 applies.]

### 17 Account keeping

[s 17 rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Part 7 of the Public Enterprises Act 2019 applies.]

### 18 Audit of accounts

[s 18 rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Part 7 of the Public Enterprises Act 2019 applies.]

#### DIVISION 4 — REPORTING REQUIREMENTS

### 19 Annual report

[s 19 rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Part 7 of the Public Enterprises Act 2019 applies.]

#### DIVISION 5 — ADMINISTRATIVE AND LEGAL MATTERS

### 20 Directions by Minister

[s 20 rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Part 8 Div 1 of the Public Enterprises Act 2019 applies.]

**21 Staff members**

The Corporation may engage persons to assist it in the exercise of its powers and the performance of its functions on terms and conditions determined by the Chief Executive Officer.

**22 Power of entry**

- (1) A staff member may enter land or a building and remain there for as long as is necessary to exercise a power or perform a function of the Corporation.
- (2) A staff member may only enter land or a building under subsection (1):
  - (a) during daylight hours; and
  - (b) except with the consent of the occupier of the land or building, at least 24 hours after written notice of the entry has been given to the occupier by the Chief Executive Officer.
- (3) Where, the entry is necessary to take action in an emergency to prevent injury to a person or damage to property, the staff member may enter the land or building:
  - (a) at any time; and
  - (b) without the consent of the occupier or giving notice to the occupier.
- (4) A person shall not obstruct a staff member exercising a power of entry or performing a power or function of the Corporation, under this Section.

Maximum penalty: \$10,000 and 12 months imprisonment.

**23 Delegation**

The Corporation may delegate any of its powers or functions to a staff member.

**24 Protection from liability**

- (1) This Section applies to a person who is or has been a staff member.
- (2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (3) In addition, the person is not civilly or criminally liable for an act done or omitted to be done by the Corporation in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (4) Subsections (2) and (3) do not affect any liability the Corporation would, apart from those subsections, have for the act or omission.

**25 Corporation shall not indemnify Chief Executive Officer**

- (1) The Corporation shall not:
  - (a) indemnify a person who is or has been the Chief Executive Officer against a liability incurred as the Chief Executive Officer; or
  - (b) exempt a person who is or has been the Chief Executive Officer from a liability incurred as the Chief Executive Officer.
- (2) An instrument is void to the extent that it provides for the Corporation to do something that subsection (1) prohibits.

- (3) Subsection (1) does not prevent the Corporation from indemnifying a person against civil liability, other than a liability to the Corporation, unless the liability arises out of conduct involving a lack of good faith.
- (4) Subsection (1) does not prevent the Corporation from indemnifying a person against a liability for costs and expenses incurred by the person:
  - (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
  - (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.

### **25A Election candidates – resignation**

[s 25A rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Section 43 of the Public Enterprises Act 2019 applies.]

### **25B Election candidates – Board of Directors**

[s 25B rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Section 43 of the Public Enterprises Act 2019 applies.]

### **25C Public service employees – exempt**

[s 25C rep Act 11 of 2019 s 88 and Sch 2 cl 8, opn 11 June 2019. Section 43 of the Public Enterprises Act 2019 applies.]



## PART 3 — MISCELLANEOUS

### 26 Safety standards

- (1) The Cabinet may prescribe safety standards for the exercise of powers and the performance of functions of the Corporation.
- (2) The Corporation shall comply with the prescribed safety standards in exercising its powers and performing its functions.

Maximum penalty: \$100,000.

- (3) Where the Corporation makes an arrangement under Section 12 for another person to exercise a power or perform a function of the Corporation, the person shall comply with the prescribed safety standards in exercising the power or performing the function.

Maximum penalty: \$100,000.

### 27 Regulations

- (1) The Cabinet may make regulations under this Act.
- (2) Without limiting subsection (1), the regulations may provide for the following:
  - (a) the minimum period between the issue of an invoice for payment of fees to a post-paid customer and the time for payment of the fees; and
  - (b) the action the Corporation may take to enforce the payment of fees by a post-paid customer and the procedures that shall be followed before the action is taken.
- (3) The regulations may:
  - (a) give a person discretion to decide a matter; and
  - (b) apply, adopt or incorporate, with or without changes, the whole or part of a document as in force or existing at a particular time or from time to time.





## PART 4 — TRANSITIONAL PROVISIONS

### **28 Definitions**

[s 28 omitted by the Law Revision Commission by powers authorised by Act 10 of 2019]

### **29 Assets and liabilities of the Corporation**

[s 29 omitted by the Law Revision Commission by powers authorised by Act 10 of 2019]

### **30 References to NUA**

[s 30 omitted by the Law Revision Commission by powers authorised by Act 10 of 2019]

### **31 CEO of Corporation**

[s 31 omitted by the Law Revision Commission by powers authorised by Act 10 of 2019]

### **32 Staff of Corporation**

[s 32 omitted by the Law Revision Commission by powers authorised by Act 10 of 2019]

### **33 Transitional regulations**

[s 33 omitted by the Law Revision Commission by powers authorised by Act 10 of 2019]



# Nauru Utilities Corporation Regulations 2012

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# Nauru Utilities Corporation Regulations 2012

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## TABLE OF AMENDMENTS

The Nauru Utilities Corporation Regulations 2012 No 5 were notified on 17 October 2012 and commenced on 18 October 2012 (reg 2 and GN No 570/2012; Gaz 141/2012).

<b>Amending Legislation</b>	<b>Notified</b>	<b>Date of Commencement</b>
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021



The Cabinet makes the following regulations under the *Nauru Utilities Corporation Act 2011*:

## PART 1 — PRELIMINARY MATTERS

### 1 Citation

These Regulations may be cited as the *Nauru Utilities Corporation Regulations 2012*.

### 2 Commencement

These Regulations commence on the day after the day on which they are published in the Gazette.

### 3 Interpretation

In these Regulations:

**'advisory committee member'** means a member of the advisory committee established under Section 7 of the Act;

**'associate'** – a person is an associate of another person if:

- (a) one is a relative of the other;
- (b) they are members of the same household;
- (c) they are partners;
- (d) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust;
- (e) one is a body corporate and the other is a director or member of the governing body of the body corporate;
- (f) one is a body corporate and the other is a shareholder in the body corporate;
- or
- (g) a chain of relationships can be traced between them under one or more of the above paragraphs;

**'beneficiary'** of a trust includes an object of a discretionary trust; and

**'relative'** means the spouse, parent or remoter linear ancestor, son, daughter or remoter issue or brother or sister of a person.





## PART 2 — ADVISORY COMMITTEE

### DIVISION 1 — PROCEDURAL MATTERS

#### 4 Chairperson

The Cabinet shall appoint one of the members of the advisory committee to be the Chairperson.

#### 5 Procedures

- (1) Subject to this Regulation, 3 members constitute a quorum of the advisory committee.
- (2) A meeting of the advisory committee will be chaired by the chairperson and, in his or her absence, the members present at a meeting of the advisory committee shall choose one of their number to chair the meeting.
- (3) A decision carried by a majority of the votes cast by members of the advisory committee at a meeting is a decision of the advisory committee.
- (4) Each member present at a meeting of the advisory committee has one vote on any question arising for decision and the member chairing the meeting may exercise a casting vote if the votes are equal.
- (5) A proposed resolution of the advisory committee becomes a valid decision of the advisory committee despite the fact that it is not voted on at a meeting of the advisory committee if:
  - (a) notice of the proposed resolution is given to all members of the advisory committee in accordance with procedures determined by the advisory committee; and
  - (b) a majority of the members express concurrence in the proposed resolution by letter, facsimile, electronic mail or other written communication setting out the terms of the resolution.
- (6) The advisory committee shall have accurate minutes kept of its meetings.
- (7) The advisory committee shall meet at least 2 times each year and shall not, without the approval of the Cabinet, meet more than once each month.

#### 6 Committees

- (1) The advisory committee may establish committees:
  - (a) to advise the advisory committee on any matter; or
  - (b) to carry out functions on behalf of the advisory committee.
- (2) The membership of a committee will be determined by the advisory committee and may include members of the advisory committee.
- (3) The advisory committee will determine who will be the chairperson of a committee.
- (4) The procedures to be observed in conducting the business of a committee will be:
  - (a) as determined by the advisory committee; and
  - (b) to the extent that a procedure is not determined under paragraph (a), as determined by the committee.

- (5) A member of a committee is not entitled to remuneration or an allowance of any kind.

## 7 Secretarial support

The Minister shall, at the request of the advisory committee, provide the committee with secretarial support reasonably necessary for the performance of its functions.

### DIVISION 2 — HONESTY AND ACCOUNTABILITY

## 8 Interpretation of this Division

In this Division:

*'advisory committee member'* includes a member of a committee established by the advisory committee.

## 9 Duty of advisory committee members to act honestly

- (1) An advisory committee member shall at all times act honestly in the performance of the functions of his or her office, whether within or outside the Republic.

Maximum penalty: \$5,000 or 6 months imprisonment.

- (2) Subregulation (1) does not apply to conduct that is of a trivial character and does not result in significant detriment to the public interest.

## 10 Duty of advisory committee members with respect to conflict of interest

- (1) An advisory committee member who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the committee:

- (a) shall, as soon as reasonably practicable, disclose in writing to the Minister full and accurate details of the interest;
- (b) shall not take part in any discussion by the committee relating to that matter;
- (c) shall not vote in relation to that matter; and
- (d) shall be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$5,000.

- (2) Without limiting the effect of this Regulation, an advisory committee member will be taken to have an interest in a matter for the purposes of this Regulation, if an associate of the advisory committee member has an interest in the matter.
- (3) This Regulation does not apply in relation to a matter in which an advisory committee member has an interest while the member remains unaware that he or she has an interest in the matter, but in any proceedings against the member the burden will lie on the member to prove that he or she was not, at the material time, aware of his or her interest.
- (4) A member of the advisory committee will not be taken to have a direct or indirect interest in a matter for the purposes of this Regulation by reason only of the fact that the member has an interest in a matter that is shared in

common with persons of the class whose interests the person represents on the committee generally, or a substantial Section of such persons.

### **11 Removal of advisory committee members**

Non-compliance by an advisory committee member with a duty imposed by this Division constitutes a ground for removal of the member from office.

### **12 Civil liability for contravention of duties**

- (1) Where a person who is an advisory committee member or former advisory committee member is convicted of an offence against Regulation 9 or 10, the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the Republic:
  - (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention, an amount equal to the profit; and
  - (b) if the court is satisfied that any loss or damage has been suffered as a result of the contravention, compensation for the loss or damage.
- (2) Where a person who is an advisory committee member or former advisory committee member is guilty of a contravention of Regulation 9 or 10, the Minister may, whether or not proceedings have been brought for the offence, recover from the person by action in a court of competent jurisdiction:
  - (a) if the person or any other person made a profit as a result of the contravention, an amount equal to the profit; and
  - (b) if any loss or damage has been suffered as a result of the contravention, compensation for the loss or damage.



### PART 3 — RECOVERY OF FEES FROM POST-PAID CUSTOMERS

#### 13 Post-paid customer – invoice for fees

The Corporation shall give each post-paid customer a written invoice for an amount of fees owed by the customer at least 28 days before payment of the amount is required.

#### 14 Post-paid customer – enforcement action

- (1) This Regulation applies if:
  - (a) the Corporation gives a post-paid customer an invoice for an amount of fees; and
  - (b) the customer fails to pay the amount on or before the date on which payment is required.
- (2) The Corporation may enforce payment of the amount by taking either or both of the following actions (**‘enforcement action’**):
  - (a) charging interest, at a rate determined by the Corporation with the approval of Cabinet, on the amount;
  - (b) restricting or ceasing the service for which the amount is owed.
- (3) The Corporation shall not take enforcement action unless the customer has first been given a written notice that:
  - (a) includes a copy of the invoice for the amount; and
  - (b) warns the customer that failure to pay the amount within a further specified period for payment will result in enforcement action being taken.
- (4) The further specified period for payment shall be at least 7 days.

