



REPUBLIC OF NAURU

Provident Fund Act 1938

As in force from 29.5.90 to 9.10.12

This compilation comprises Ordinance No. 2 of 1938 as amended and in force from 29 May 1990 to 9 October 2012 (being the day before this Act was **repealed** by the *Provident Fund (Repeal) Act*, Act No. 13 of 2012). This version of the Act is now of historical relevance only.

The notes section at the end of the compilation includes a reference to the law by which each amendment was made. The Table of Amendments in the notes section sets out the legislative history of individual provisions.

The operation of amendments that have been incorporated in the text of the compilation may be affected by application provisions that are set out in the notes section at the end of the compilation.

This compilation is prepared and published in a legislation database by the Nauru Parliamentary Counsel under the *Legislation Publication Act 2011*.

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REPUBLIC OF NAURU

Provident Fund Act 1938

An Ordinance to provide for the establishment of a Provident Fund for officers employed in the Public Service of Nauru and a Provident (Employees) Fund for persons employed by the Republic otherwise than as employees in the Public Service of Nauru

1 Short title

This Act may be cited as the *Provident Fund Act 1938*.

2 Interpretation

In this Act, unless the contrary intention appears:

'Account' means an account kept in the books of the Republic, in pursuance of section six of this Act;

'Administration' means the Republic of the Island of Nauru;¹

'Contribution' means a contribution to the Fund;

'Dependant', in relation to a member, means a person who, in the opinion of the President, was, at the date of the death of the member, wholly or substantially dependent on him for maintenance;

¹ The *Provident Fund (Amendment) Act 1990* attempted to update all references to pre-Independence titles and institutions, including replacing all references to 'the Administration' with references to 'the Republic'. Because of the formulation of this amendment, it did not have the effect of amending 'Administration' in section 2, nor 'Administration Contribution' from the table in section 5.

Section 3 of the *Interpretation Act 1971* provides: 'Unless the context otherwise requires or the subject or context is inconsistent with such amendment, the words 'Territory of Nauru' or 'Island of Nauru' shall, where they are used or appear in any written law, instrument or document in force or made at the commencement of this Act, be replaced from that date by the words 'Republic of Nauru'.' Because the direction made by that section is not unconditional and does not relate expressly to expressions used in this Act, no textual change to give effect to it is incorporated in this compilation.

'Fund' means the Provident Fund established under the provisions of this Act;

'Member' means a member of the Fund;

'Membership' means membership of the Fund;

'Officer' means a person appointed under Division 3 of Part II the *Public Service Ordinance 1961-1966* by the President;

'Salary', in relation to a member, means the member's salary or wages, and includes:

- (a) any variation in his salary or wages made under subsection (2) of section twenty-seven of the *Public Service Ordinance 1961-1966*; and
- (b) any allowance payable to the member by way of salary or wages, other than:
 - (i) an allowance in respect of duties that he is called upon to perform temporarily;
 - (ii) a fee allowed as an emolument of office; and
 - (iii) a bonus or overtime payment;

'Service' means continuous service with the Republic.

3 Establishment of Fund

- (1) There shall be a Provident Fund.
- (2) The fund shall be deemed to have been established on the first day of July, One thousand nine hundred and thirty-seven.

4 Membership of Fund

- (1) A person:
 - (a) who is appointed an officer on or after the commencement of the *Provident Fund Ordinance 1966* and is not a contributor to the superannuation fund established under the *Superannuation Act 1966-1973*;
 - (b) who is an employee in the Public Service and has had, either before or after the commencement of the *Provident*

Fund Ordinance 1966, not less than one year of service;
or

may become a member by applying in writing to the President to become a member.

- (2) Where a person makes application for membership, his membership shall commence from the first day of the month following the receipt of his application by the President.
- (3) A person who is on the date of commencement of the *Provident Fund Ordinance 1966* a member of the Fund continues to be a member of the Fund.

5 Amount of contributions

- (1) Contributions shall be made by each member and by the Republic on the basis of a percentage on the salary of each member as follows:

Period of service commencing on or after the 1st July, 1937	Member's Contribution	Administration Contribution
Up to, but not exceeding six years	% 5	% 5
Exceeding six years but not exceeding twelve years	5	6½
Exceeding twelve years but not exceeding eighteen years	5	8
Exceeding eighteen years	5	10

- (2) The amount of salary to be taken into account for the purposes of the last preceding subsection shall not exceed such amount as the President from time to time determines.

6 Payment of contributions

- (1) Contributions shall be payable in the manner prescribed by the Ordinance and on the due dates, which, except where otherwise prescribed by this Act, shall be the thirtieth day of June and the thirty-first day of December in each year.
- (2) Each member's contributions shall, as they become payable, be debited to his current account and shall be credited to the

personal account to be kept. in the member's name and to be known as 'A' account.

- (3) Where the amount at credit in a member's current account on any due date for payment of a contribution is less than the amount so payable, the President shall, by notice in writing addressed to the member, require the member to pay, within thirty-one days after the date of the notice, the amount of the deficiency into his current account.
- (4) Contributions by, and in respect of, a member who fails to comply with the requirement of the President under the last preceding subsection thereupon cease to be payable and the contribution made by the Republic on the date in respect of which the member made default shall be cancelled.
- (5) For the purposes of the accounts at the credit of the member to whom the last preceding subsection applies the Fund shall be deemed to have been closed to contributions in pursuance of Section 18 of this Act.
- (6) The contributions of the Republic in respect of each member shall be credited to a personal account to be kept in the member's name and to be known his 'B' account.

7 *[Repealed]*

8 Interest on contributions

- (1) Interest shall be paid on contributions to 'A' and 'B' accounts from the dates upon which the contributions paid under Sections 6 and 7 of this Act are credited to the respective accounts on the basis of minimum monthly balances, and shall be at a rate as the President may from time to time determine taking into account the ruling commercial rate in the relevant investment markets.
- (2) The moneys required for the interest specified in the last preceding subsection shall be provided from the interest earnings of the contributions to 'A' and 'B' accounts and, if these earnings are insufficient, the amount of the deficiency shall be provided by the Republic.
- (3) Interest shall be credited to the accounts in respect of which it is paid.

9 Accounts with excessive credit balances

Whenever a member's total credit balances in the Fund reach an amount equal to the amount of salary received by the member during the preceding five years of service, the Republic shall cease to make payments to the credit of the 'B' account of the member but interest shall continue to accrue in respect of the amount at credit in the member's 'B' account and shall continue to be credited to that account.

10 Statements to members

As soon as practicable after the thirtieth day of June and the thirty-first day of December in each year, the President shall submit to each member a statement showing the position of his 'A' and 'B' accounts.

11 Payment of moneys

- (1) Subject to this section, a member may not resign from membership or withdraw the whole or any portion of the amounts at credit in his 'A' and 'B' accounts.
- (2) Where a member, before completing three years of service, retires or is retired from the Public Service, or becomes a contributor to the superannuation fund established under the *Superannuation Act 1966-1973*, the amount at credit in the member's 'A' account shall be paid to him but all rights to payment of the amount at credit in the member's 'B' account shall be forfeited by him and the amount at credit in the 'B' account shall be transferred to the Treasury account in the books of the Republic:

Provided that where it is shown to the satisfaction of the President that a member retires or is retired from the Public Service by reason of the physical or mental incapacity of himself or any dependent member of his family who habitually resides with the member in Nauru, the member may, with the approval of the President, be paid, in addition to the amount at credit in his 'A' account, the whole or any portion of the amount at credit in his 'B' account.

- (3) Subject to this Act, a member who retires or is retired from the Public Service after completing three. Years' service shall be paid all amounts at credit in his 'A' and 'B' accounts.

- (4) A member remaining in the service may not withdraw any part of the amounts at credit in his 'A' and 'B' Accounts unless, for exceptional reasons, approved by the President:

Provided that there shall be no withdrawal from the 'B' Account until the member has completed three years' service.

- (5) Where a member is dismissed from the Public Service, he may, subject to the approval of the President, be paid / the amount at credit in his 'A' account but all rights to payment of the amount at credit in the member's 'B' account shall be forfeited by the member and the amount at credit in the 'B' account shall be transferred to the Treasury Fund of the Republic.
- (6) For the purposes of this section:
- (a) an officer shall be deemed to have retired from the Public Service if he ceases to be an officer otherwise than as a result of dismissal under Part VI of the *Public Service Act 1961-1979*; and
- (b) an employee shall be deemed to have retired from the Public Service if he ceases to be an employee otherwise than as a result of dismissal under subsection (6) of section 26 of the *Public Service Act*.

12 Payments to be made on death of member

- (1) In the case of the death of the member, the balances at credit in the member's 'A' and 'B' accounts shall be paid to the member's dependants, or, if he leaves no dependants, the balance at credit in his 'A' account shall become part of the estate of the deceased and the balance at credit in his 'B' account shall be transferred to the revenue account in the books of the Republic.
- (2) Where a member dies and leaves dependants and the balances at credit in the member's 'A' and 'B' accounts amount to less than twelve months' salary calculated at the rate last being received by the member, the Republic shall provide the amount necessary to make up the balances to an amount equal to twelve months' salary so calculated and the balance so made up shall be payable as provided in subsection (1) of this section.

13 Moneys in Fund property of Republic

All moneys at credit in a member's 'A' and 'B' accounts shall be the property of the Republic, and, when payable in pursuance of the provisions of this Act to a member, his dependants or otherwise, shall be subject to a lien by the Republic in respect of any debts due by the member to the Republic.

14 Member becoming of unsound mind

In the event of a member becoming of unsound mind and ceasing to be an officer, the balances at credit in the member's 'A' and 'B' accounts shall become payable to the member's dependants or, if the member has no dependants, the balance at credit in his 'A' account shall become part of the member's and the balance at credit in his 'B' account shall be transferred to the revenue account in the books of the Republic.

15 Distribution among dependants

Where any sum is payable under this Act to a member's dependants and there is more than one dependant, the sum shall be distributed among the dependants in such proportions as the President determines.

16 Interests in Fund not transferable

The interest of a member in the Fund shall not, except as provided in this Act, be assigned, transferred or passed by operation of law to any person other than the member or be liable to be attached, sequestrated or levied upon for, or in respect of, any debt or claim whatever.

17 Investment

The amounts at credit of a member's 'A' and 'B' accounts shall, as far as practicable, be invested by the Republic:

- (a) in securities of the Commonwealth of Australia or Nauru Government Securities as defined by section 2 of the *Public Investments Act 1978*; or
- (b) in such manner as the Minister directs.

18 Modification and closure of Fund

- (1) The President may, with the approval of the Minister and after six months previous notice in writing to each of the members, modify the Fund, in whole or in part, or may close the Fund to further contributions.
- (2) Upon the modification of the Fund or the closure of the Fund to further contributions the amounts standing to the credit of any member shall continue to bear interest and shall remain in the Fund until those amounts (together with the interest thereon) become payable to the member, his dependants, or otherwise, under the preceding provisions of this Act.

18A Regulations²

The Cabinet may make regulations prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

19 Provident (Employees) Fund

- (1) There shall be a Provident (Employees) Fund.
- (2) A person who is employed by the Republic otherwise than as an employee in the Public Service of Nauru is eligible to become a contributor to the Provident (Employees) Fund by making application to become a contributor to the Fund and undertaking to be bound by the rules made for the purposes of this section.
- (3) Contributions are payable by a contributor to the Provident (Employees) Fund at such rate as specified in the rules made for the purposes of this Section and shall be deducted from each payment of salary made to the contributors.
- (4) The President shall on each occasion that a contribution is paid by a contributor to the Provident (Employees) Fund pay to the Fund an amount equal to the amount of contribution paid by the contributor.

² Section 5 of the *Provident Fund (Amendment) Act 1990* inserts, after s.18 a section numbered '19' (the number of an existing section), but the heading to amending section 5, and the amending words, refer to 'new Section 18-A'. This error was corrected by an order of the Minister for Justice made under section 70 of the *Interpretation Act 1971*, so that the section was correctly numbered 18A (GN 209/1990).

- (5) The President may make rules providing for:
- (a) the management and control of the Provident (Employees) Fund, including the investment of moneys forming part of the Fund and the crediting of interest earned by the investment of those moneys to the accounts of contributors; and
 - (b) the payment of benefits to, and in respect of, contributors to the Provident (Employees) Fund.

20 Appropriation of Public Moneys

The Public moneys of the Republic are appropriated to the extent necessary for the purposes of payment of amounts authorized to be paid by the Republic by or under this Act.

Notes for Provident Fund Act 1938

Table of Constituent Legislation

Ordinances

Citation	Number	Made	Gazettal*	Commencement
<i>Provident Fund Ordinance 1938</i>	1938/02	20.04.1938	—	20.04.1938
<i>Provident Fund Ordinance 1938</i>	1941/01	14.03.1942	—	14.03.1942
<i>Provident Fund Ordinance 1951</i>	1951/04	28.08.1951	—	28.08.1951
<i>Provident Fund Ordinance 1955</i>	1955/06	12.11.1955	—	12.11.1955†
<i>Provident Fund Ordinance 1966</i>	1966/09	18.08.1966	11.07.1966‡ 29.08.1966§	02.09.1966 (GN 258/1966)
<i>Ordinances Revision Ordinance 1967</i>	1967/25	29.12.1967	29.12.1967	29.12.1967 (GN 316/1967)

* Gazettal date is of no legal significance for Ordinances made before 30.08.1956 (commencement of the *Interpretation Ordinance 1956*).

† Subsection 2(1) of the *Provident Fund Ordinance 1955* substituted a new s.8. Subsection 2(2) of that Ordinance provides:

‘(2.) The amendment effected by the last preceding subsection shall be deemed to have come into operation on the first day of July, One thousand nine hundred and fifty-four.’.

‡ Reservation for assent by Governor-General.

§ Assent by Governor-General.

Acts

Short title	Number	Certification	Commencement
<i>Public Investments Act 1978</i>	1978/11	20.12.1978	20.12.1978
<i>Provident Fund (Amendment) Act 1990</i>	1990/02	29.05.1990	29.05.1990

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Long title	Am. by Ord. 1966/09; Act 1990/02.
Section 1	Citation rs. by Act 1990/02. Am. by Act 1990/02.
Section 2	Rs. by Ord. 1942/01. Am. by Ord. 1951/04, Ord. 1966/09, Ord. 1967/25, Act 1990/02.
Section 3	Subs. (1) am. by Ord. 1966/09.
Section 4	Rs. by Ord. 1966/09 Subs. (1) am. by Act 1990/02.

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Provision affected	How affected
	Subs. (2) am. by Act 1990/02.
Section 5	Subs. (1) am. by Act 1990/02. Subs. (2) am. by Act 1990/02.
Section 6	Subs. (1) am. by Act 1990/02. Subs. (3) am. by Act 1990/02. Subs. (4) am. by Act 1990/02. Subs. (5) am. by Act 1990/02. Subs. (6) am. by Act 1990/02.
Section 7	Rep. by Ord. 1966/09.
Section 8	Rs. by Ord. 1955/06. Subs. (1) rs. by Act 1990/02. Subs. (2) am. by Act 1990/02.
Section 9	Rs. by Ord. 1942/01; am. by Act 1990/02.
Section 10	Am. by Act 1990/02.
Section 11	Rs by Ord. 1966/09.
Section 12	Subs. (1) am. by Ord. 1942/01, Act 1990/02. Subs. (2) am. by Ord. 1966/09, Act 1990/02.
Section 13	Am. by Act 1990/02.
Section 14	Am. by Ord. 1942/01; Act 1990/02.
Section 15	Am. by Act 1990/02.
Section 16	Am. by Act 1990/02.
Section 17	Am. by Act 1978/11, Act 1990/02.
Section 18	Subs. (1) am. by Act 1990/02. Subs. (2) am. by Act 1990/02.
Section 18A	Ad. by Act 1990/02 (see also GN 209/1990).
Section 19	Rs. by Ord. 1966/09. Subs. (2) am. by Act 1990/02. Subs. (4) am. by Act 1990/02. Subs. (5) am. by Act 1990/02.
Section 20	Ad. by Ord. 1966/09; am. by Act 1990/02.

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