

## REPUBLIC OF NAURU

### PUBLIC FINANCE (CONTROL AND MANAGEMENT) (AMENDMENT) BILL 2019

#### EXPLANATORY MEMORANDUM

The *Public Finance (Control and Management) (Amendment) Bill 2019* is a Bill for the *Public Finance (Control and Management) (Amendment) Act 2019*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

#### **EXPLANATION OF CLAUSES**

**Clause 1** provides that, once enacted, the short title of the Bill will be the *Public Finance (Control and Management) (Amendment) Act 2019*.

**Clause 2** sets out when the Bill's provisions will commence which is upon certification by the Speaker.

**Clause 3** is the enabling provision for the amendment of the *Public Finance (Control and Management) Act 1997*.

**Clause 4** deletes and replaces the definition for procurement agent. This clause now clearly defines who can be a procurement agent such as:

- (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.

**Clause 5** amends section 15C of the Act. Subclause (1) allows the Republic to engage a procurement agent to conduct procurement operations on behalf of public authorities or as contemplated by the Act.

Subclause (2) allows the selection of independent procurement agent following a competitive tendering process which will be conducted jointly by the:

- (a) the Chief Secretary;
- (b) the Secretary for Finance; and
- (c) one other person (who is not a public officer) nominated by Cabinet.

Subclause (3) now allows the Republic to appoint a Government instrumentality or a state owned enterprise, statutory or other Government corporation as a procurement agent. The Cabinet:

- (a) may prescribe terms and conditions to satisfy the objective of procurement under section 15A of this Act prior to appointment as procurement agent;
- (b) may appoint such Government instrumentality or state owned enterprise, statutory or other Government corporation for a period of 5 years or such other periods the Cabinet may deem fit.

This will ensure that the objectives of the Act are met. This relates to:

- (a) obtaining value for money 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.

Subclause (4) allows the appointment of a procurement agent for a period not exceeding 5 years.

Subclause (5) allows the reappointment of an independent procurement agent for a further period not exceeding 5 years without a further competitive tendering process. The reappointment of an independent procurement agent under this clause is subject to the Secretary for Finance being 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.

Subclause (6) prevents the engagement of an independent agent for a period in excess of a cumulative period of 10 years unless such procurement agent has been selected at subsequent competitive tendering processes.

Subclause (7) provides that the procurement agent's terms and conditions of engagement:

- (a) must require procurement operations to be conducted on behalf of public authorities in accordance with this Act;
- (b) must 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) must require the agent to provide reports to Cabinet and to each public authority relating to the conduct of procurement operations;
- (d) must require at least 1 representative of the agent to be a resident of Nauru at all times during the term of the contract;
- (e) must 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.

This is also in support of the objectives of the Act in ensuring value for money, ethical and fair treatment of participants, accountability and transparency in procurement operations.