



REPUBLIC OF NAURU

# PUBLIC ENTERPRISES BILL 2019

---

No. of 2019

---

A Bill for an Act to provide for the regulation of public enterprises in Nauru and for related purposes

Certified:

## Table of Contents

<b>PART 1- PRELIMINARY .....</b>	<b>5</b>
1 Short title .....	5
2 Commencement.....	5
3 Definitions .....	5
4 Purpose .....	7
5 Application of this Act with other Acts .....	7
6 Act binds the Republic .....	7
<b>PART 2- PUBLIC ENTERPRISE PRINCIPLES.....</b>	<b>7</b>
7 Public enterprise principles .....	7
<b>PART 3- ESTABLISHMENT OF PUBLIC ENTERPRISE.....</b>	<b>8</b>
<b><i>Division 1—Nature of public enterprise.....</i></b>	<b>8</b>
8 What is public enterprise .....	8
9 Types of public enterprise.....	8
10 Cabinet approval of designation as public enterprise.....	8
11 Revocation of designation.....	9
12 Constitution of public enterprise must be consistent with this Act .....	9
13 Meaning of Government control .....	9

14	Republic not bound by public enterprises act or transaction .....	9
	<b><i>Division 2—Shares, securities and personal property</i></b> .....	<b>10</b>
15	Republic may acquire shares and securities issued by public enterprise.....	10
16	Restrictions on dealing with public enterprise shares .....	10
17	Restrictions on charge over personal property.....	10
	<b><i>Division 3—Capacity, powers and restrictions on activities</i></b> .....	<b>11</b>
18	Powers of public enterprise.....	11
19	Responsible Minister must approve certain activities.....	11
	<b><i>Division 4 —Subsidiaries</i></b> .....	<b>11</b>
20	Restrictions on subsidiaries of public enterprise .....	11
21	Subsidiary must provide information .....	11
	<b>PART 4 – PRINCIPLE OF PRUDENT AND EFFICIENT MANAGEMENT</b> .....	<b>12</b>
	<b><i>Division 1 – Primary objective</i></b> .....	<b>12</b>
22	State-owned enterprise – primary objective .....	12
23	Government controlled enterprise: primary objective.....	12
24	Public enterprise must give effect to statement of corporate intent.....	12
	<b><i>Division 2 – Community service obligation</i></b> .....	<b>13</b>
25	State-owned enterprise may undertake community service obligations.....	13
26	Requirements for community service obligation agreement.....	13
	<b>PART 5 – PRINCIPLE OF MEASURABLE PERFORMANCE</b> .....	<b>14</b>
	<b><i>Division 1 – Statement of corporate intent</i></b> .....	<b>14</b>
27	Public enterprise must have statement of corporate intent .....	14
28	Content of statement of corporate intent.....	14
	<b><i>Division 2—Approval of statement of corporate intent</i></b> .....	<b>16</b>
29	State-owned enterprise: approval of statement.....	16
30	State-owned enterprise: amendment of statement.....	16
31	Government controlled enterprise: approval and amendment of statement.....	17
	<b><i>Division 3—Business plan</i></b> .....	<b>17</b>
32	Public enterprise must have business plan .....	17
33	Content of business plan.....	17
	<b><i>Division 4 – Approval of business plan</i></b> .....	<b>18</b>
34	State-owned enterprise: approval of business plan.....	18
35	State-owned enterprise: amendment of business plan .....	18
36	Government controlled enterprise: approval and amendment of business plan .....	19
	<b>PART 6 – PRINCIPLE OF RESPONSIBLE MANAGEMENT</b> .....	<b>19</b>
	<b><i>Division 1 – Appointment of Board</i></b> .....	<b>19</b>
37	Board of directors .....	19
38	Eligibility for appointment .....	20
39	Chair and deputy chair .....	20

40	Term of office.....	21
41	When director ceases to hold office.....	21
42	Resignation and removal .....	21
43	Resignation of candidate for election to Parliament .....	22
44	Responsible Minister must table notice of change in directors.....	22
45	Defect or irregularity in appointment .....	22
46	Remuneration .....	23
	<b><i>Division 2 – Directors’ conduct.....</i></b>	<b>23</b>
47	Honesty and good faith.....	23
48	Ensuring that primary objective achieved.....	23
49	Due compliance .....	23
50	Avoiding insolvency .....	23
51	Improper use of position as director or employee.....	24
52	Breach of confidentiality.....	25
53	Disclosure of interest.....	25
54	When interest of related party counts as director’s interest .....	26
55	Register of interests .....	26
56	Code of conduct.....	26
57	Content of code of conduct .....	27
58	Conduct of employees .....	27
59	Public enterprise must be good employer .....	28
60	Conduct in relation to subsidiaries.....	28
	<b><i>Division 3 – Management.....</i></b>	<b>28</b>
61	Board meetings.....	28
62	Procedure at board meetings .....	28
63	Resolution in lieu of meeting .....	29
64	Chief executive officer.....	29
65	Delegations.....	30
66	Restrictions on indemnity for directors and executive officers.....	30
67	Restrictions on indemnity by subsidiary .....	31
68	Permitted indemnity of liability owed to third person .....	31
	<b>PART 7 – PRINCIPLE OF TRANSPARENT PERFORMANCE .....</b>	<b>32</b>
	<b><i>Division 1 – Financial transparency .....</i></b>	<b>32</b>
69	Financial records.....	32
70	Financial statements .....	32
71	Financial statements must be audited.....	33
72	Audit of financial statements.....	33
	<b><i>Division 2 – Operational transparency .....</i></b>	<b>33</b>
73	Annual report .....	33

74	Content of annual report .....	34
75	Responsible Minister must table annual report in Parliament .....	35
76	Publication of summary of annual report.....	35
77	Half-yearly report .....	35
	<b>PART 8 – PRINCIPLE OF MONITORED PERFORMANCE .....</b>	<b>36</b>
	<i><b>Division 1 – Oversight by Ministers.....</b></i>	<b>36</b>
78	Role of Responsible and Accountable Ministers .....	36
79	Resolutions of wholly owned public enterprise are effected by Responsible and Accountable Ministers.....	36
80	Responsible Minister may require disclosure by public enterprise .....	36
	<i><b>Division 2 – Public enterprise monitoring unit.....</b></i>	<b>37</b>
81	Public enterprise monitoring unit must be established.....	37
82	Functions of public enterprise monitoring unit.....	37
83	Public enterprise monitoring unit may require disclosure.....	38
84	Public enterprise monitoring unit must report on each public enterprise.....	38
	<b>PART 9 – MISCELLANEOUS .....</b>	<b>39</b>
85	Regulations .....	39
86	Transitional provisions .....	40
87	Transitional regulations.....	40
88	Consequential amendments .....	41
	<b>SCHEDULE 1 .....</b>	<b>42</b>
	<b>SCHEDULE 2 .....</b>	<b>43</b>

Enacted by the Parliament of Nauru as follows:

## PART 1- PRELIMINARY

### 1 Short title

This Act may be cited as the *Public Enterprises Act 2019*.

### 2 Commencement

This Act commences upon certification by the Speaker.

### 3 Definitions

In this Act:

**'assessment'** includes a general or specific clinical or medical examination resulting in a provisional, differential or definitive diagnosis;

**'Accountable Minister'** in relation to a public enterprise, means the Minister appointed by Cabinet as the Accountable Minister for that public enterprise;

**'articles'** for a public enterprise that is a corporation means the corporation's articles of incorporation required under the *Corporations Act 1972*;

**'board'** in relation to a public enterprise, means the directors of a public enterprise acting together;

**'chief executive officer'** means the person appointed under section 64 to be the chief executive officer of a public enterprise;

**'community service obligation'** means an obligation referred to in section 25;

**'community service obligation agreement'** means an agreement between the Responsible Minister and a State-owned enterprise for the undertaking of a community service obligation by the State-owned enterprise;

**'corporation'** means a corporation incorporated under the Corporations Act;

**'Corporations Act'** means the Corporations Act 1972;

**'constitution'** in the case of a public enterprise that is a corporation or of a subsidiary of a public enterprise, means its memorandum and articles of incorporation;

**'director'** in relation to a public enterprise that: