



REPUBLIC OF NAURU

## Treasury Fund Protection Act 2004

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**As in force from 15 April 2011**

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This compilation comprises Act No. 3 of 2004 as amended and in force from 15 April 2011 (being, at the time the compilation was prepared on 22 May 2011, the date of commencement of the most recent amendment).

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.

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REPUBLIC OF NAURU

## Treasury Fund Protection Act 2004

An Act to ensure compliance with the Constitution in financial matters and protect against the unauthorised withdrawal of moneys from the Treasury Fund

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**1 Short title**

This Act may be cited as the *Treasury Fund Protection Act 2004*.

**2 Commencement**

This Act shall come into force on the day it is certified by the Speaker.

**3 Withdrawal of monies from the Treasury Fund without Parliamentary approval**

A person must not make, direct or permit a withdrawal of any money from the Treasury Fund, or any other Fund established by Parliament or the Constitution, unless the withdrawal has been authorised by an Act of Parliament.

Penalty: \$10,000 or imprisonment for 3 years or both.

**4 Cabinet not to authorise withdrawal after 30 September in any year**

- (1) Cabinet may, in respect of a financial year commencing 1 July, recommend to Parliament a proposed law authorising the withdrawal of moneys from the Treasury Fund for the purpose of meeting expenditure necessary to carry on the services of the Republic of Nauru after the commencement of that financial year until the expiration of three months or the coming into operation of the appropriation law, whichever is the earlier.

- (2) If:
- (a) a proposed law recommended in accordance with subsection (1) has not come into effect by 1 July of that financial year; and
  - (b) the appropriation law has not come into operation on or before 1 July of that financial year;

the Cabinet may authorise the withdrawal of moneys in accordance with the proposed law referred to in paragraph (a) but the amount of moneys so withdrawn shall not exceed one-quarter of the amount withdrawn under the authority of the appropriation law or laws in respect of the preceding financial year.

- (3) The authorisation of Cabinet under subsection (2) cannot be exercised after 30 September in any year.
- (4) An authorisation given by Cabinet contrary to this section is a breach of section 1 and every member of Cabinet shall be liable as a principal offender.

**5 Cabinet not to give orders or directions contrary to the Constitution**

If Cabinet gives any order for the withdrawal of moneys from the Treasury Fund or any other Fund established by law without the authorisation of a law made by Parliament, each member of Cabinet is liable for the offence of conspiracy to subvert the Constitution.

Penalty: \$50,000 or imprisonment for 5 years or both.

**6 Public officers not to advise Cabinet or other persons to subvert the Constitution**

- (1) Any public officer who provides advice and comfort to the Cabinet or any Minister that any action he may take or authorise that is in breach of this Act or of the Constitution is not so in breach or informs the Cabinet or Minister of ways and means to so subvert the Constitution or breach this Act without appearing so to do commits an offence.

Penalty: \$10,000 or imprisonment for 3 years or both.

- (2) A public officer who is found guilty of an offence under this Act shall cease to be a member of the public service and may not be so employed, or employed in an instrumentality of the Republic for a period of 5 years.
- (3) It is a defence to a prosecution under this Act that the accused satisfies the court that the advice so given was based on a belief that was genuinely held and was reasonably so held.
- (4) This section has effect notwithstanding anything contained to the contrary in the *Public Service Act 1998* or any other statute in operation in Nauru.

**7 Revenues and monies raised or received by Nauru to be paid into the Treasury Fund and recorded**

- (1) All revenues and monies raised or received by Nauru in accordance with Article 58 of the Constitution of Nauru including, loans, soft loans, grants, etc, shall strictly be paid into the Treasury Fund and properly recorded. If the President, Minister or the Cabinet directs otherwise or if any public servant (including a consultant) on his own volition or on the instructions of the political functionaries stated above, does anything contrary to the provisions of this section, he or she commits an offence.

Penalty: \$10,000 or imprisonment for 3 years or both.

- (2) A statement of all revenues and other monies paid into the Treasury Fund shall be caused to be prepared and laid before Parliament by the Minister within one month after the end of each financial year notwithstanding the fact that the detailed and audited yearly statement of all accounts relating to public monies shall be laid separately in Parliament by the Minister.
- (3) This section has effect notwithstanding anything contained to the contrary in any other statute in operation in Nauru.

**8 Cabinet not to authorise the mortgage of property of the Republic or instrumentalities or give guarantees**

- (1) No mortgage or other charge over property of the Republic or of an instrumentality of the Republic has any force or effect at law or equity unless the mortgage or charge and the purpose thereof have been approved by Parliament.

- (2) No guarantee given by the Cabinet on behalf of the Republic has any force or effect or binds the Republic unless and until the guarantee and the purpose therefor have been approved by Parliament.
- (2A) The provisions of subsections (1) and (2) hereof shall apply to any mortgage or other charge over property of the Republic or of an instrumentality of the Republic and to any guarantee given by the Cabinet on behalf of the Republic whether such mortgage, charge or guarantee was made or given before or after the commencement of this Act.
- (3) This section has effect notwithstanding anything to the contrary in any other Act or law.
- (4) Any person (including the President and a Minister) who gives or purports to give any mortgage or charge or guarantee in contravention of this section or that is not made or given subject to its being approved by the Parliament within a period of 90 days commits an offence.

Penalty: \$10,000 or imprisonment for 3 years or both.

# Notes for Treasury Fund Protection Act 2004

## Table of Constituent Legislation

Short title	Number	Certification	Commencement
<i>Treasury Fund Protection Act 2004</i>	2004/03	21.05.2004	21.05.2004
<i>Treasury Fund Protection (Amendment) Act 2008</i>	2008/17	18.12.2008	18.12.2008*
<i>Statute Law Revision Act 2011</i>	2011/08	15.04.2011	15.04.2011

\* Section 2 of the *Treasury Fund Protection (Amendment) Act 2008* provides:

'Subject to Section 5, this Act shall commence on the day of certification.'

and s. 5 of that Act provides:

'The amendments to the principal Act effected by this Act shall be deemed to have been part of the principal Act from the day on which the principal Act came into effect.'

## Table of Amendments

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

Provision affected	How affected
Section 3	Am. by Act 2008/11.
Section 6	Subs. (3) am. by Act 2008/11.
Section 7	Subs. (1) am. by Act 2008/11.
Section 8	Subs. (1) am. by Act 2008/11. Subs. (2) am. by Act 2008/11. Subs. (2A) ad. by Act 2008/17. Subs. (3) am. by Act 2008/11. Subs. (4) am. by Act 2008/11.