



REPUBLIC OF NAURU

NAURU SUPERANNUATION ACT 2018

No. 42 of 2018

An Act to provide for a superannuation scheme for the Republic, the management, controls and penalties for non-compliance and for related purposes

Certified: 18th December 2018

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Enacted by the Parliament of Nauru as follows:

PART 1 – PRELIMINARY

1 Short Title

This Act may be cited as the *Nauru Superannuation Act 2018*.

2 Commencement

This Act commences on 2 January 2019.

3 Act binds the Republic

This Act binds the Republic.

4 Interpretation

In this Act:

'benefit' means the amount the member is entitled to upon the occurrence of certain events under Part 5;

'Board' means the Nauru Super Scheme Board established under section 10;

'contribution rate' means the contributions by the employee or employer at a rate specified in the Schedule;

'contract of service' means a written or oral contract, whether expressed or implied, to employ a person as an employee whether for a fixed or indefinite period which includes a task;

'employee' means a person whose employed under a contract of service and includes an apprentice, learner and part time work;

'employer' includes any person who employs one or more persons on a contract of service on payment of wages or salary including the Government of Nauru and its instrumentalities of the Republic;

'employer contribution' means a mandatory contribution to the Nauru Super Scheme as required by this Act, made by an employer at the contribution rate;

'employment' means part time or full time service with an employer under a contract of service;

'Fund' means the contributions paid, any additional benefits including assets for the time being:

- (a) held by or on behalf of the Trustee; and
- (b) by a managed investment scheme appointed by the Trustee,-

in the Nauru Super Scheme.

'basic salary or wages' means any salary or wages paid to any employee before any other benefits are included or any deductions made to the salary or wages;

'member' means an employee who has been eligible to become a member of the Nauru Super Scheme in accordance with the Act;

'member contribution' means a deduction at the contribution rate from each payment of the member's basic salary or wages by the employer;

'Minister' means the Minister responsible for the administration of this Act;

'Nauru Super Scheme' means the Superannuation Scheme established under this Act;

'non-resident person' means a person who is not a resident individual under section 5;

'pay period' in relation to an employee, means:

- (a) if the employee is paid monthly, a calendar month;
- (b) if the employee is paid fortnightly, a fortnight;
- (c) if the employee is paid weekly, a week; or
- (d) for an employee who is paid other than monthly, fortnightly or weekly, the relevant time period.

'person' includes an individual, a firm or body corporate;

'Trustee' means any person appointed to the Board of Nauru Super Scheme as Trustee under the Trust Deed;

'Trust Deed' means the Nauru Super Trust Deed or any amendments and other subsequent instrument which is or shall be the governing document of the Nauru Super Scheme;

'voluntary contributions' means any contribution to the Nauru Super Scheme other than the mandatory contribution.

5 Resident and non-resident individuals

(1) For the purposes of this Act, a person is a resident:

- (a) if he or she is a Nauruan citizen; and
- (b) resides permanently in Nauru.

(2) A Nauruan citizen is deemed not to be a resident of Nauru for the purposes of this Act:

- (a) whose only permanent home is outside Nauru; and
- (b) who does not reside permanently in Nauru.

(3) Despite subsection (1), a citizen of Nauru who is an employee of the Government of Nauru posted abroad is a resident individual.

6 Objective of the Act

The objective of the Act:

- (a) is to establish the Nauru Super Scheme;
- (b) is to establish the Nauru Super Scheme Board;
- (c) is to make it mandatory for contributions by employees and employers to the Nauru Super Scheme;
- (d) is to facilitate the process and establish appropriate mechanisms to enable contributions to be paid to the Nauru Super Scheme; and
- (e) is to provide for long-term savings and asset accumulation by resident individual in Nauru in order to provide a benefit that they will receive.

PART 2 - NAURU SUPER SCHEME

7 Nauru Super Scheme

- (1) The Nauru Super Scheme is hereby established.
- (2) The Nauru Super Scheme:
 - (a) consists of the Fund held on Trust by the Trustees for the benefit of the resident individual employees who are members;
 - (b) and or by a managed investment scheme appointed by the Trustee that such assets may be held in the name of the Trustee or member;
 - (c) are contributions or payments required under the Trust Deed and the Act to be made; and
 - (d) money accruing from the investment of the Fund.
- (3) The Nauru Super Scheme is a body corporate with perpetual succession.
- (4) The Nauru Super Scheme may:
 - (a) sue and be sued;
 - (b) enter into contracts and other legal obligations; and
 - (c) acquire, hold, manage and dispose of real or personal properties.

8 Seal of Nauru Super Scheme

- (1) The Nauru Super Scheme shall have a seal.
- (2) The seal shall be affixed on every instrument or document which the Nauru Super Scheme shall execute in addition to the signatures of the Board or authorised signatories.

(3) The seal shall be kept with the Chairperson of the Board.

9 Functions of the Nauru Super Scheme

The functions of the Nauru Super Scheme are to:

- (a) ensure compulsory registration of all resident individual employees;
- (b) ensure the employers register their resident individual employees to the Fund;
- (c) ensure the contributions are duly paid by the employers and collected;
- (d) keep and maintain accurate accounts and records of members contributions;
- (e) undertake prosecution for non compliance in the Act under its name;
- (f) enforce collection and payment of contributions to the Fund;
- (g) keep the assets of the Fund separate from its own assets;
- (h) ensure investment of the Fund in secured investment for members' benefit;
- (i) provide support to the Trustees for ensuring security of and a better return for value for members contributions; and
- (j) exercise such other functions or powers as may be provided under this Act or as prescribed.

PART 3 – ESTABLISHMENT OF NAURU SUPER SCHEME BOARD

10 Board

- (1) The Nauru Super Scheme shall be managed and administered by a Board.
- (2) The Board is responsible to the Minister.

11 Members of the Board

- (1) The Board in section 10 shall consist of 3 members comprising of the following:
 - (a) 2 Trustees of the Nauru Super Scheme; and
 - (b) a member appointed by the Cabinet on the recommendation of the Minister.
- (2) The Cabinet shall appoint the Chairperson of the Board from amongst the members of the Board.
- (3) The members of the Board shall be appointed for a term not exceeding 3 years and may be eligible for reappointment.

- (4) The members shall be appointed on such terms and conditions as approved by the Cabinet.

12 Qualification of Board

- (1) The Cabinet in appointing members of the Board shall have regard to whether the persons so selected to be members collectively possess the appropriate knowledge, skills and experience in the exercise of the Board's powers and performance of its functions.
- (2) A person is disqualified to be appointed or from continuing as a member if he or she is:
 - (a) an undischarged bankrupt or an individual who has an arrangement with any of his or her creditors;
 - (b) an individual who has been sentenced to imprisonment for a term of 12 months or more by a court of the Republic or any other country and has not received a pardon in or outside of the Republic;
 - (c) an individual who lacks capacity in respect of his or her duties as a member within the meaning of the Mentally-disordered Persons Act 1963; or
 - (d) a holder of an elected office.

13 Responsibilities of Board members

The members shall severally and jointly at all times:

- (a) act bona fide in the best interest of the members of the Nauru Super Scheme;
- (b) exercise reasonable care and diligence in the performance of responsibilities, duties and functions;
- (c) take reasonable steps through the processes of the Board to obtain sufficient information and advice about all matters to be decided by the Board to allow for the making of informed decisions; and
- (d) exercise discretion with respect to all matters to be decided by the Board.

14 Functions of the Board

- (1) The functions of the Board are to:
 - (a) exercise in relation to all matters affecting the Nauru Super Scheme, the same degree of care, skill and diligence as a reasonable and prudent person would exercise in dealing with his or her property for the benefit of the members;
 - (b) authorise the Manager of the Fund to employ such officers as may be necessary for carrying out the functions of the Nauru Super Scheme;

- (c) carry out the functions of the Nauru Super Scheme by identifying secured investments of the Fund for members benefit;
 - (d) determine questions regarding contributions to the Nauru Super Scheme;
 - (e) advise the Cabinet on matters relating to the Nauru Super Scheme; and
 - (f) provide quarterly reports to Cabinet.
- (2) The Board has all the powers necessary and convenient for carrying out its functions under this Act.
- (3) The Board shall manage its affairs by implementing appropriate and effective governance systems and processes including quality assurance process for measuring the performance of the Board, having due regard to internationally accepted best standards in these matters.
- (4) The Board in consultation with the Cabinet may rescind or amend the Trust Deed and ensure such amendment shall not adversely affect a member's rights or claims to benefits or amount of benefits that have accrued up until the date of amendment unless:
- (a) the consent of the member is obtained;
 - (b) the amendment is necessary to comply with the Act; or
 - (c) the amendment is solely to correct a mistake which advantageously alters a member's right or claim to accrued benefits or amount of those accrued benefits.

15 Meetings of the Board

- (1) Subject to this Act, the Board shall regulate its own procedure for meetings.
- (2) The Board is to hold such meetings as are necessary for performing its functions.
- (3) The Chairperson shall appoint the times and places of the meetings of the Board and the secretary to the Board may serve written notice of such meetings to all its members.
- (4) A meeting of the Board may be held by a quorum of 2 members, being assembled together at the time and place appointed for the meeting.
- (5) The Chairperson or in his or her absence any member appointed by the Minister, shall preside at a meeting of the Board.

16 Vacation of office

- (1) The Cabinet on the recommendation of the Minister may revoke the appointment of a member.
- (2) The Minister shall by notice in the Gazette declare the office of the member vacant if the member:

- (a) becomes bankrupt, applies to take the benefits of any law for the relief of the bankrupt or insolvent debtors, compounds with his or her creditor to assign his or her remuneration for their benefit;
- (b) resigns from office in writing to the Minister;
- (c) is nominated to be a candidate in a general election, by-election and general election resulting from early dissolution of Parliament under Article 41(7) of the Constitution, to contest for a seat in Parliament;
- (d) is absent from 2 successive meetings of the Board except on leave granted by the Chairperson;
- (e) fails to comply with his or her duties under the Act;
- (f) is considered by not less than 2 health practitioners to be incapable of performing his or her duties effectively; or
- (g) is convicted of any offence involving fraud or dishonesty.

17 Disclosure of interest

- (1) A member of the Board shall declare his or her conflict as soon as practicable after the member becomes aware that he or she has a conflict of interest.
- (2) A member who fails to declare his or her conflict of interest and participates in a decision making process shall be dismissed from the office.

18 Liability of members

A member shall not be personally liable for any act or omission done or made in his or her capacity as a member in good faith and in the exercise of reasonable care and diligence in the course of the operations of the Nauru Super Scheme.

19 Manager of the Fund

- (1) The Board may appoint a Manager of the Fund with the functions as specified in the Act and other functions as determined by the Board.
- (2) The Manager of the Fund shall be appointed for a term of 2 years and may be eligible for reappointment for a further term of 2 years.
- (3) The Manager of the Fund in consultation with the Board may appoint an officer of the Nauru Super Scheme as may be necessary to carry out the function of the Nauru Super Scheme.

20 Functions of the Manager of the Fund

The Manager of the Fund shall:

- (a) monitor the payment of contributions by the employers to the Nauru Super Scheme;

- (b) enforce and carry out recovery proceedings under Part 6;
- (c) provide monthly reports to the Board on the payment of contributions, recovery proceedings taken and any other matters relating to the Nauru Super Scheme; and
- (d) exercise any other functions delegated under any written law or by the Board.

21 Delegation

- (1) The Board may by resolution delegate to the Manager of the Fund any of its powers and functions except for its power of delegation.
- (2) A delegation may be subject to conditions specified in the resolution or instrument of delegation.
- (3) A power or function delegated under subsection (1) shall be exercised or performed in accordance with the resolution or instrument of delegation.

22 Membership of the Nauru Super Scheme

- (1) An employee is eligible to become a member if he or she:
 - (a) is in a contract of services with an employer;
 - (b) is a resident individual; and
 - (c) is aged 18 years and above.
- (2) Where an employee becomes a member under subsection (1), he or she shall remain a member of the Nauru Super Scheme in accordance with the Act.
- (3) An employer shall pay contributions to the Nauru Super Scheme in accordance with this Act.

23 Exemption from contributing to the Nauru Super Scheme

A non resident individual employed in the Republic of Nauru is exempt from making mandatory contribution to the Nauru Super Scheme.

24 Change of Name

- (1) An employer shall immediately inform the Board of any change of business name or address of such business.
- (2) Any member who changes his or her name by way of a deed poll and duly registered with the Registrar of Births, Deaths and Marriages shall inform the Board immediately through his or her employer.
- (3) Where an employer is informed of the changes in subsections (1) or (2) and fails to inform the Board the employer commits an offence and is liable to a fine not exceeding \$300.

PART 4 – CONTRIBUTION TO THE NAURU SUPER SCHEME

25 Contribution to the Nauru Super Scheme

For the purposes of this Act, an employer shall pay the contribution to be:

- (a) credited to the account of the member on whose behalf the contribution was made; and
- (b) held and applied by the Fund to provide those benefits to which members shall be entitled.

26 Member mandatory contribution to the Nauru Super Scheme

- (1) This section applies in respect of a member who is in the employment of an employer.
- (2) The employer shall deduct from the member's basic salary or wages the members mandatory contribution at the contribution rate:
 - (a) on each pay period of a member; and
 - (b) an amount equal to the contribution rate.
- (3) The amount of member mandatory contribution shall be based on the actual basic salary or wages.
- (4) The amount of the contribution shall be rounded up to the nearest cent.

27 Voluntary contributions to the Nauru Super Scheme

- (1) A member may make a voluntary contribution to the Nauru Super Scheme as notified by the member to the Board.
- (2) A member shall give a written direction to his or her employer to deduct from his or her basic salary or wages an additional contribution specified in the written direction.
- (3) The employer shall deduct a voluntary contribution to the Nauru Super Scheme at the same pay period as the employer is required to pay the mandatory contribution under section 28.
- (4) A member may at any time pay a lump sum amount to the Nauru Super Scheme as a voluntary contribution.
- (5) The amount of the voluntary contribution shall be rounded up to the nearest cent.

28 Employer mandatory contribution to the Nauru Super Scheme

- (1) This section applies to an employer who is required to make mandatory contributions to the Nauru Super Scheme at the contribution rate in addition to the member's basic salary or wages.

- (2) An employer shall pay to the Nauru Super Scheme:
 - (a) an employer contribution at the contribution rate for a member;
 - (b) during each pay period to which a payment of basic salary or wages relates; and
 - (c) paid in addition to the basic salary or wages of the member.
- (3) The amount of any employer mandatory contribution is calculated on the member's basic salary or wages multiplied by the contribution rate.
- (4) The amount of employer mandatory contribution shall be based on the actual basic salary or wages.
- (5) The contractual terms or conditions of the parties in an employer and employee relationship shall not have the effect of defeating the purpose of this Act.
- (6) The payment of an amount of employer mandatory contribution shall be accompanied by details of employer mandatory contributions paid in respect of each member on the relevant form provided to members in respect of the payments of salary or wages to which the contribution relates.

29 Payment of contributions to the Nauru Super Scheme

Any contributions to the Nauru Super Scheme:

- (a) contributed by the employer on behalf of the member; and
- (b) contributed as deduction from the member's basic salary or wages, -

shall be paid into the Nauru Super Scheme in not more than 7 days from the date the deduction and contribution was made.

30 Payment of contributions to the Board is deemed for the Nauru Super Scheme

- (1) Any contributions deducted or payable to the Nauru Super Scheme by a person under this Act shall be paid to the Board and deemed for the purpose of this Act to be paid to the Nauru Super Scheme.
- (2) All contributions received by the Board shall immediately be paid to the Nauru Super Scheme.

31 Employer failure to make mandatory contributions constitute a debt

An employer who fails to make any employer mandatory contributions to the Nauru Super Scheme shall constitute a debt payable by the employer to or on behalf of the Nauru Super Scheme and be deemed to become due and payable by the employer to the Nauru Super Scheme on the date on which the payment was made or due.

PART 5 – BENEFITS

32 Benefits to be withdrawn from the Nauru Super Scheme

- (1) A member shall be entitled to withdraw his or her benefits in the Nauru Super Scheme in accordance with this Act.
- (2) Despite subsection (1), a member may be entitled to certain benefits prior to his or her retirement date as determined by the Board in accordance with the Act.

33 Benefits on reaching the age of 55 years and retired

A member shall apply to the Board for withdrawal of his or her entire benefit from the Nauru Super Scheme on attaining the age of 55 years and is no longer employed or retired.

34 Benefit in employment

- (1) A member may be entitled to withdraw his or her benefits from his or her voluntary contribution account while in employment:
 - (a) after becoming a member of the Nauru Super Scheme for at least 2 or more years; and
 - (b) withdrawal of an amount of not less than \$500 after every 2 years or subsequent 2 years.
- (2) A member shall apply to the Board for partial withdrawal of his or her benefit from the Nauru Super Scheme under this section.

35 Benefit payable on total and permanent disablement

- (1) A member who suffers a total and permanent disablement that prevents him or her from engaging in any further employment shall apply to the Board for withdrawal of his or her benefit from the Nauru Super Scheme.
- (2) For the purpose of this section, '**total and permanent disablement**' means in the Board's opinion after medical verification that a member:
 - (a) became totally incapacitated by accident or illness as a result of that incapacity:
 - (i) is unable to be engaged in any employment, he or she involved in immediately before becoming incapacitated; and
 - (ii) has been absent from employment for 6 consecutive months as a result of the accident or illness; or
 - (b) has suffered the:
 - (i) loss of two limbs includes the loss of whole hand or foot;
 - (ii) sight of both eyes;

(iii) loss of one limb includes the loss of whole hand or foot; or

(v) sight of one eye.

(3) The date for which a member who suffers a total and permanent disablement under subsection (2)(a) may, whichever is earlier:

(a) commencing on the date of 6 months consecutive in which the member is absent from employment; or

(b) commencing on the last period of continuous absence from employment during which the member is deemed to have suffered total and permanent disablement.

(3) The date for which a member who suffers a total and permanent disablement under subsection (2)(b) may claim a benefit under this section commencing from the date he or she suffered such loss.

36 Benefits exempt from taxation

Any benefit paid or credited to a member from the Nauru Super Scheme shall be exempt from taxation under the Business Tax Act 2016.

37 Payment to nominee on member's death

(1) A member shall provide to the Board his or her nomination to receive payment of the member's benefit from the Nauru Super Scheme upon the member's death.

(2) Subject to subsection (3), where a nominee of a member is a minor who is under the age of 18 years the benefit of the deceased member shall remain in the Nauru Super Scheme until the nominee reaches the age of 18 years or above.

(3) A nominee of a deceased member who reaches the age of 18 years or above shall apply to the Board to withdraw his or her entitlement to the benefit from the Nauru Super Scheme.

(4) A nominee of a deceased member who suffers from mental incapacity the Nauru Super Scheme shall pay the amount of the benefit for that nominee to the Court and the Supreme Court shall make orders to determine the payment of the benefit of the deceased member to such nominee.

PART 6 – RECOVERY OF CONTRIBUTIONS

38 Definition

For the purpose of this Part, '**Secretary**' means the Secretary for Justice.

39 Garnishee

(1) Where a payer fails to pay a member's contribution or employer mandatory contribution within 10 days from the due date, the Nauru Super Scheme shall apply to the Court to issue a garnishee order:

- (a) requiring the payer to pay the contribution due; and
 - (b) the date the payment is due.
- (2) The garnishee order issued by the Court shall remain effective for a period of 12 months from the date of its issue.
 - (3) A payer shall pay the amount specified in the notice under subsection (1) by the dates specified in the notice.
 - (4) Where a payer who is served with an order under subsection (1) is unable to comply with the notice, the person shall notify the Court in writing within 21 days after receipt of the notice, stating the reasons for the payer's inability to pay.
 - (5) The Court shall make orders to accept or reject the request by the payer.
 - (6) Where the payer has paid the whole or part of the amount due or has made a satisfactory arrangement to the Nauru Super Scheme for payment of amount due, the payer shall apply to the Court to have the garnishee order revoked or amended.
 - (7) For the purpose of this section, '**payer**' means an employer or any other person who may be holding money for and on behalf of the employer including the bank.

40 Departure Prohibition Order

- (1) The Nauru Super Scheme may apply to the Court for an order to prohibit the departure of a person from Nauru where:
 - (a) a person is liable to pay mandatory contributions required to be paid under this Act;
 - (b) the amount is due and payable but has not been paid; and
 - (c) to prevent the person from departing Nauru without:
 - (i) fully satisfying the liability; or
 - (i) making arrangements satisfactory to the Nauru Super Scheme for the liability to be fully satisfied.
- (2) A departure prohibition order shall remain in force until it is revoked by the court.
- (3) A departure prohibition order in respect of a person does not prevent the deportation or removal of a person from Nauru under the Immigration Act 2014.
- (4) The Manager of the Fund shall as soon as practicable after receiving a departure prohibition order in respect of the person:

- (a) serve a copy of the departure prohibition order to the person at the address of the person last known to the Nauru Super Scheme;
 - (b) give a copy of the departure prohibition order and such information as the Manager of the Fund or the Nauru Super Scheme deems necessary to the Secretary; and
 - (c) where necessary the police shall assist the Manager of the Fund in serving the departure prohibition order
- (5) The Manager of the Fund may give a copy of the departure prohibition order and information described in subsection (4)(b) to any other department or agency if he or she deems necessary to give effect to the departure prohibition order.
- (6) The Manager of the Fund is not liable for any suit, action or proceeding including constitutional redress in any court of the Republic.

41 Contravening a departure prohibition order

- (1) A person who is the subject of a departure prohibition order commits an offence where:
- (a) a departure prohibition order is in force in respect of the person;
 - (b) the person knows that the departure prohibition order is in force; and
 - (c) he or she departs from Nauru.
- (2) A person who commits an offence under this section is liable upon conviction to a fine not exceeding \$10,000 or a term of imprisonment not exceeding 2 years or to both.

42 Authorisation to depart Nauru

- (1) A person who is the subject of a departure prohibition order may apply to the Court to authorise the person to depart Nauru.
- (2) An authorisation to depart Nauru under this section is subject to conditions issued by the Court and may include:
- (a) the time when the person shall return to Nauru; and
 - (b) security to be provided by the person.
- (3) The Court shall as soon as practicable after issuing an authorisation to depart Nauru:
- (a) issue a copy of the authority to the person; and
 - (b) give a copy of the authorisation to the Secretary and any other person who was given a copy of the departure prohibition order.

43 Revocation of departure prohibition order

- (1) The Court may revoke a departure prohibition order at any time.
- (2) The Court may revoke the departure prohibition order, where:
 - (a) the liability to which the departure prohibition order relates is fully satisfied;
 - (b) arrangements satisfactorily made to the Board for the liability to which the departure prohibition order relates is fully satisfied; or
 - (c) the Court determines that the liability to which the departure prohibition order relates is uneconomical to recover.
- (3) The court shall as soon as practicable after revoking the departure prohibition order in respect of a person:
 - (a) issue a copy of the revocation to the person at the last known address; and
 - (b) give a copy of the revocation to the Secretary and any other person who was given a copy of the departure prohibition order.

44 Late payment penalty of mandatory contributions

- (1) A person who fails to pay on or before the due date for members or employers mandatory contributions shall within 10 working days after the end of the pay period make payments to the Nauru Super Scheme.
- (2) A person who fails to pay within the time specified in subsection (1) is liable for a late payment penalty of \$100 per day for the period commencing on the date the payment was due and ending on the date the payment was paid.
- (3) Late payment penalty payable by a person is a debt due to the Treasury Fund and is to be paid to Nauru Revenue Office.
- (4) The Manager of the Fund may serve a person liable for late payment penalty a notice of the amount of late payment penalty owed by the person.
- (5) A notice under subsection (4):
 - (a) may be included in any other notice issued by the Manager of the Fund to the person liable for late payment penalty; and
 - (b) is prima facie evidence of the matters stated in the notice.
- (6) Late payment penalty payable by a person is borne personally by the person and is not recoverable from any other person.

PART 7 – AUTHORISED OFFICERS

45 Authorised officers

- (1) The Minister may on the recommendation of the Board by notice in the Gazette appoint authorised officers for the purpose of this Act.
- (2) An authorised officer appointed under subsection (1) shall be issued an identification card duly signed by the Minister.
- (3) An authorised officer who has been required to produce his or her identification card and has failed to do so shall not exercise any powers under this Act.

46 Powers of authorised officers

The powers of an authorised officer shall be to:

- (a) ensure compliance with this Act;
- (b) enter any place where persons are believed to be engaged as employees;
- (c) enter any business premises:
 - (i) during business hours and search for relevant documents; and
 - (ii) inspect, remove or make copies of the book, record, document or digital copies of any electronic material;
- (d) take photographs, make video or audio recordings or sketches of the business premises or anything on the business premises;
- (e) question any relevant person;
- (f) require a relevant person to attend at a time and place specified by the authorised officer to be questioned;
- (g) require a person to make a statement; or
- (h) examine, make copies and take extracts of documents or information in the possession of the person.

PART 8 – OFFENCES

47 Offences for obstructing authorised officers

- (1) A person commits an offence if he or she:
 - (a) furnishes to an authorised officer any particulars which to his or her knowledge are false or misleading in any material aspect;
 - (b) refuses or obstructs entry to or search any place or premises permitted by this Act;
 - (c) assaults, threatens, obstructs, hinders, resists, delays, intimidates or fails to take all reasonable measures to ensure the safety of the authorised officer in the performance of his or her functions or powers;

(d) wilfully misleads or by threats, demands or promises, attempts to influence improperly an authorised officer in the performance of his or her functions or powers; or

(e) refuses, obstructs, fails or neglects to provide any particulars, equipment, information, record or other material.

(2) A person who commits an offence under this section is liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment of not exceeding 2 years or to both.

48 Offence for underreporting

Any person who attempts to evade or defeat paying the correct amount of mandatory contributions based on the actual amount of basic salary or wages received by the member commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment of not exceeding 2 years or to both.

49 Offence for colluding not to make payment

(1) Where an employer influences a member to evade payment of any amount of mandatory contributions to the Nauru Super Scheme commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment of not exceeding 2 years or to both.

(2) Where an employer colludes with the employee to evade the payment of any amount of mandatory contributions to the commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment of not exceeding 2 years or to both.

50 General Offences

A person who:

(a) being an employer by whom a payment of salary or wages is made to an employee, fails wholly or in part to make mandatory contribution under this Act;

(b) fails to pay any mandatory contribution;

(c) wilfully or recklessly makes a false or misleading statement in the attempt to mislead the Board;

(d) obtains or attempts to obtain for his or her own advantage or benefit or credit in respect of a payment in whole or in part; or

(e) aids, abets, or incites any person to commit an offence under the Act, -

commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment of 2 years or to both.

PART 9 - MISCELLANEOUS

51 Confidentiality and privilege

- (1) The Board, Manager of the Fund and the authorised officer shall maintain and aid in maintaining the confidentiality of all matters relating to this Act which come to their knowledge and shall not while they are or after they cease to be the holder of the office or Board member, Manager of the Fund and the authorised officer communicate any such matters to any person except for the purpose of carrying this Act into effect.
- (2) A person whom this section applies who wilfully acts in contravention of the provision of this section commits an offence and upon conviction is liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$10,000 or to both.

52 Accounts

The Board shall ensure that:

- (a) proper books of accounts are kept in respect of the Nauru Super Scheme;
- (b) accounts for each financial year are prepared in respect of the Nauru Super Scheme; and
- (c) the accounts of each financial year of the Nauru Super Scheme are audited.

53 Annual reports

- (1) The Board shall cause to be prepared an annual report of its activities during the previous financial year.
- (2) The Board shall forward a copy of its annual report to the Minister who shall table it in Parliament.
- (3) The Minister shall lay the annual accounts and report before Parliament.
- (4) The annual report of the Board shall incorporate its audited accounts.

54 Actuarial examination

- (1) The Board shall ensure that an actuary examines the position of the Nauru Super Scheme after every 5 years.
- (2) The Board shall ensure that the report of the actuary in respect of the examination is received not later than 3 months after the date on which the financial position of the Nauru Super Scheme was examined.
- (3) The Board shall provide a copy of each report to the Minister who shall cause it to be laid before the Parliament within 14 days of its receipt by the Minister.

55 Members statements for Nauru Super Scheme

- (1) A member shall be able to access their statement of their accounts at any time during the financial year.
- (2) Where a member finds a discrepancy in his or her statement shall as soon inform the Manager of the Fund within 12 months of the discovery of the discrepancy.

56 Records kept by employers

- (1) The employer shall keep proper accounts and other records in relation to the salary or wages of the employees and the liability of contributions to be easily ascertainable by the Board.
- (2) The records shall be kept for a period of at least 7 years.

57 Records by Nauru Super Scheme

The records of the Nauru Super Scheme shall be kept and maintained at all times.

58 Preservation of right

Unless otherwise provided for under this Act, where at any time a person ceases contributing to the Nauru Super Scheme, the amount to the credit of that person shall continue to attract interest until it is applied to provide the benefit from the Nauru Super Scheme.

59 Protection of entitlements

- (1) A member's benefit shall in no event be:
 - (a) assigned, charged or passed to any creditor of the member; or
 - (b) payable on the death of the member be assets for the payment of the deceased member's debts or liabilities.
- (2) A person who engages in a conduct specified in subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.

60 Nauru Super Scheme not subject to tax

Despite any written law to the contrary, the following incomes are not subject to tax for the purposes of the Business Tax 2016 or the Employment and Services Tax Act 2014 or any withholding or deduction account in connection with tax:

- (a) the income earned under the Nauru Super Scheme; or
- (b) amounts payable in connection with the Funds of the Nauru Super Scheme.

61 Bankruptcy or winding up of employer

- (1) This section applies where the Board in a bankruptcy or winding up proceedings is a liquidator, receiver, personal representatives or similar persons are dealing with the property, business or estate of an employer who has failed to pay mandatory contributions under this Act.
- (2) The amount due to the Nauru Super Scheme shall be a charge on the property of an employer in a bankruptcy or winding up proceedings
- (3) The bankruptcy or winding up proceedings of the employer the charge over the property of the employer shall go:
 - (a) first towards the employer meeting the amount due to the Nauru Super Scheme;
 - (b) then towards payment of any tax due by the employer as a taxpayer under the Business Tax Act 2016 or Employment and Services Tax Act 2014; and
 - (c) remainder of proceeds if any is to be given to the employer.
- (4) The Board may determine the amount payable to discharge the employer's liability in respect of unpaid contributions.
- (5) Despite any written law, the Board shall not distribute any of the property, business or estate of the employer unless the Board determines the amount under subsection (2) has been paid.
- (6) Where the Board distribution is not in accordance with subsection (3), the Board is personally liable to discharge the employer's liability in respect of unpaid contribution.

62 Amendment of rates of contribution in the Schedule

The rate of contribution in the Schedule shall only be amended by enactment of Parliament.

63 Currency translation

An amount taken into account under this Act shall be expressed in Australian dollars.

64 Jurisdiction of the court

The District Court shall have jurisdiction to hear and determine all offences under this Act and, shall have power to impose the penalty or punishment in respect of the offences under this Act.

65 Regulations

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

66 Contributions paid into the Nauru Super Scheme

Any contributions made for the purposes of the Nauru Super Scheme prior to the coming into effect of this Act shall be deemed to have been paid in accordance with this Act.

67 Transitional

- (1) An employer comprised of State-Owned Enterprises or persons or bodies that employ any resident individuals shall contribute to the Nauru Super Scheme on the commencement of this Act.
- (2) An amnesty period shall commence from the 15 January 2019 until 30 June 2019 for:
 - (a) the employers to inform the Nauru Super Scheme of the number of persons employed by each of the employers; or
 - (b) the employees to register and obtain all necessary clearance for joining the Nauru Super Scheme;
- (3) Nothing in this section prohibits an employer from commencing the payment of contributions before 1 July 2019.

SCHEDULE

The contribution rates to be paid to the Nauru Super Scheme are as follows:

- (a) Employer contribution rate – 5%
- (b) Employee contribution rate – 5%