

Act No. 15 of 2008

Parliament of Nauru

Disaster Risk Management Act 2008

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REPUBLIC OF NAURU

(No.15 of 2008)

An Act
to provide for Disaster Risk Management and Related Matters in Nauru

(Certified 18 December 2008)

The Parliament of Nauru enacts:

PART 1-
PRELIMINARY

1. Short Title and Commencement –

- (1) This Act may be cited as the Disaster Risk Management Act 2008.
- (2) This Act shall come into force on a date to be notified by Cabinet by notice in the Gazette.

2. Interpretation –

In this Act, unless the context otherwise requires -

“Agency” means a Government Agency or non-government agency and includes all Essential Services;

“Centre” means the National Emergency Operations Centre established in accordance with section 9;

“Community” means the people within a district and their community committee or elected community representatives;

“Council” means the National Disaster Risk Management Council established under section 6;

“Director of Police” means the Director of the Nauru Police Force;

“Disaster” means an actual or probable risk of serious disruption to the functioning of a community causing widespread human, material, economic or environmental loss and which exceeds the ability of the affected community to cope using its own resources;

“Disaster Area” means that part or those parts of Nauru in which a State of Disaster is declared under section 10;

“Disaster Management” means the organisation and management of resources for dealing with all aspects of a Disaster declared under section 10;

“Disaster Risk Management” means performing and undertaking all activities including structural and non-structural measures to avoid or to limit risks and lessen the impacts of natural, man-made, environmental or technological Disasters;

“Disaster Risk Management Plan” means the plan approved under section 6(3)(c) for Disaster Risk Management;

“Disaster Risk Management Report” means the report provided to Parliament under section 6(3)(1);

“Disaster Risk Reduction” means minimising and reducing Disaster risks or vulnerabilities so as to avoid adverse impacts of hazards within the broad context of sustainable development;

“Emergency Activity” means an Agency:

- (a) performing a role or discharging a responsibility in accordance with the Disaster Risk Management Plan;
- (b) training or practising for an activity referred to in paragraph (a) or being on active standby duty;
- (c) travelling to or from a place where an activity referred to in paragraph (a) or (b) has occurred or is to occur; or
- (d) the President exercising his or her powers under section 10;

“Essential Service” includes any government or private entity producing and/or supplying electricity, water and food supply, telecommunications services, transportation services, public broadcasting including radio and television, health and hospital services, and overnight accommodation for tourists;

“Government Agency” means:

- (a) A Government Instrumentality; and
- (b) Any other body corporate or unincorporated body constituted by or under an Act or an agreement for a public purpose; and
- (c) Any member or officer of such an instrumentality or body; and
- (d) Any person in the service of the Government of Nauru upon whom any function, power, duty or responsibility is conferred by or under any Act;

“Mitigation” means regulatory and physical measures undertaken in anticipation of the occurrence of a potential disaster, including Preparedness and long-term risk reduction measures to ensure that Disasters are prevented or their effects mitigated;

“Mitigation and Preparedness Advisory Committee” means the committee established under section 7(1);

“National Controller” means the national controller appointed under section 8;

“Preparedness” means having arrangements and systems in place including education and awareness to ensure that in the event of a Disaster the resources required for an affected community are efficiently mobilised and deployed and that a program of Recovery can be implemented;

“Recovery” means the coordinated process of supporting Disaster affected communities in reconstruction of physical infrastructure and restoring their social, economic, and physical wellbeing;

“Recovery Advisory Committee” means the committee established under section 7(2);

“Response” means activities undertaken in anticipation of, during and immediately after a Disaster to ensure that its effects are minimised and that the people affected are given immediate relief and support;

“State of Disaster” means a state of disaster declared under section 10.

PART 2 -
ADMINISTRATION

3. Essential Services –

Each Essential Service shall work with the National Disaster Risk Management Council through the National Controller to ensure that it develops and can implement a business continuity plan consistent with the Disaster Risk Management Plan, which enables it to provide the most effective service possible during a Disaster.

4. Functions, Duties and Powers of the Director of Police –

(1) The Director of Police's functions, in relation to Disaster Risk Management, are:

- (a) coordinating the maintenance of the Disaster Risk Management Plan and all necessary sub-plans for approval by the Council;
- (b) facilitating implementation of the Disaster Risk Management Plan;
- (c) preparing, reviewing and testing the Disaster Risk Management Plan to ensure it properly protects life, property and essential infrastructure from the potential or actual impact of any Disaster;
- (d) coordinating any necessary improvements to the Disaster Risk Management Plan;
- (e) providing Disaster Risk Management advice and secretarial and administrative support to the Council;
- (f) making recommendations to the Council in relation to the constitution of committees convened under section 7;
- (g) coordinating the effective management of the Centre;

- (h) facilitating all necessary training exercises, post-disaster Recovery and post-exercise debriefs and preparing all necessary reports to the Council;
 - (i) facilitating the preparation of the Disaster Risk Management Report to Parliament in accordance with section 6(3)(l);
 - (j) providing advice and regular reports to the Council on the activities of the Mitigation and Preparedness Advisory Committee established under section 7;
 - (k) reporting to the Council on the Preparedness of all Agencies for a Disaster;
 - (l) conducting Community education and awareness programs to assist Communities in their ability to contribute to the Mitigation of and Response to a Disaster;
 - (m) coordinating and reporting to the Council on the development of a database of Disaster Management information including but not limited to; hazard maps, vulnerability assessment reports and resulting maps, training information, exercise reports, Disaster Management resources and emergency contact details;
 - (n) reviewing the Disaster Risk Management Plan and related sub plans after any Disaster;
 - (o) serving as National Controller in accordance with section 8; and
 - (p) performing or undertaking any other activity as directed by the Council.
- (2) The Director of Police shall:
- (a) undertake periodic audits of all Government Agencies to determine their Preparedness levels and whether they have taken all necessary steps to implement the Disaster Risk Management

- Plan, and report on their state of Preparedness and any deficiencies in the implementation of the Plan to the Council;
- (b) provide a report to the Council on his or her audit of Government Agencies on or before the 30th January of each year;
 - (c) undertake periodic audits of all Essential Services to determine whether:
 - (i) Essential Services have a business continuity plan in accordance with section 3; and
 - (ii) Essential Services have the ability to implement the business continuity plan;
 - (d) provide a report to the Council on his or her audit of Essential Services and their ability to provide a service in accordance with section 3 on or before the 30th January of each year; and
 - (e) assist Essential Services to develop a business continuity plan in accordance with section 3.
- (3) For the purpose of performing an audit under paragraph (a) or (c) of subsection (2), the Director of Police may by written request compel any Government Agency or Essential Service to give the Director of Police any information that the Director of Police reasonably believes necessary to perform such audit.
- (4) Within 28 days of receiving a request under subsection (3), the Government Agency or Essential Service to which the request has been made shall provide the information to the Director of Police unless:
- (a) the Director of Police has agreed to allow an extension of time for the provision of the information; or

(b) the Director of Police has agreed that the Government Agency or Essential Service is not able to give the information.

(5) If the Director of Police has agreed to an extension of time under paragraph (a) of subsection (4) the Government Agency or Essential Service shall surrender the information within the time specified in the extension.

(6) The Director of Police may interview any employee of any Government Agency or any Essential Service for the purposes of performing an audit.

5. Delegation by the Director of Police –

The Director of Police may by instrument delegate with or without conditions, to any person or class of person employed or engaged in the administration of this Act, all or any of the Director of Police's functions, duties or powers under this Act except this power of delegation.

6. National Disaster Risk Management Council –

(1) Cabinet shall appoint the National Disaster Risk Management Council.

(2) The Council consists of the Minister responsible for National Disaster Management who is chairperson, the Director of Police who is deputy chairperson, heads of departments and any other person appointed by Cabinet.

(3) The Council shall:

(a) have overall responsibility for Disaster Management;

(b) formulate policy for Disaster Risk Reduction and Disaster Management;

(c) approve the Disaster Risk Management Plan and ensure it provides for proper Disaster Risk Reduction and Disaster Management;

- (d) facilitate the implementation of the Disaster Risk Management Plan;
 - (e) coordinate activities of Agencies relating to the Mitigation of, Preparedness for, Response to and Recovery from Disasters;
 - (f) provide direction to and receive reports from the Director of Police;
 - (g) provide advice to the President in relation to the declaration of a State of Disaster and its subsequent revocation;
 - (h) provide advice and support to Cabinet in relation to Disaster Risk Reduction and Disaster Management for national planning;
 - (i) establish and ensure the:
 - (i) Mitigation and Preparedness Advisory Committee;
 - and
 - (ii) Recovery Advisory Committee,
 are convened as required;
 - (j) ensure that effective Community awareness and education programs are conducted to assist Communities in their ability to contribute to the Mitigation of and Response to Disaster;
 - (k) ensure that all relevant support is provided to the Centre; and
 - (l) prepare on or before the 30th of September each year a Disaster Risk Management Report to be tabled before Parliament detailing the activities of the Council and the implementation of the Disaster Risk Management Plan.
- (4) Ordinary Council Meetings shall be convened at least quarterly and on such dates as determined by the Minister responsible for National Disaster Management in accordance with Disaster Management needs.

- (5) Emergency Council meetings shall be convened as required by the Minister responsible for National Disaster Management.

7. Establishment of Committees –

- (1) There shall be a Mitigation and Preparedness Advisory Committee and
 - (a) The chairperson of the Mitigation and Preparedness Advisory Committee shall be the Director of Police. The Council shall appoint the other members of the Mitigation and Preparedness Advisory Committee.
 - (b) The Council shall establish terms of reference for the Mitigation and Preparedness Advisory Committee and receive reports from the committee.
- (2) The Council may establish a Recovery Advisory Committee and –
 - (a) The Chairperson and other members of the Recovery Advisory Committee shall be appointed by the Council.
 - (b) The Council shall establish terms of reference for the Recovery Advisory Committee and receive reports from the committee.

8. National Controller –

- (1) The National Controller shall be the Director of Police or the person exercising the powers and duties of the Director of Police if he or she is not present in Nauru.
- (2) The National Controller shall direct the Response to a Disaster and shall report to the Council on the Response to a Disaster.
- (3) The National Controller may:
 - (a) determine the priority of the Response roles of any Agencies in the event of a State of Disaster;

- (b) direct and coordinate the activities of Agencies in the event of a State of Disaster; and
 - (c) by instrument delegate with or without conditions to any person or class of persons employed or engaged in the administration of this Act, all or any of the powers or functions of the National Controller under this Act except this power of delegation.
- (4) In addition to and without limiting the generality of subsection (3), during a State of Disaster the National Controller may:
- (a) allocate and coordinate the use of all available resources of the Government which the National Controller in consultation with the Council considers necessary or desirable for responding to the Disaster;
 - (b) direct any Government Agency to do or refrain from doing any act or to exercise or perform or refrain from exercising or performing any function, power, duty or responsibility;
 - (c) take possession and make use of any person's property as the National Controller considers necessary or desirable in responding to the Disaster;
 - (d) control and restrict entry into, movement within and departure from the Disaster Area or any part of it; and
 - (e) compel the evacuation of any or all persons from the Disaster Area or any part of it.
- (5) If a direction is given to a Government Agency under paragraph (b) of subsection (4) the Government Agency shall comply with that direction and the direction prevails over anything to the contrary in any other Act or law.

- (6) Cabinet shall determine the amount of compensation payable to a person who sustains pecuniary loss or damage as a result of the National Controller exercising his powers under paragraph (c) of subsection (4).
- (7) A person aggrieved by a decision under subsection (6) may apply to the Supreme Court of Nauru for review of a determination made by Cabinet.

9. National Emergency Operations Centre –

- (1) The Council shall nominate a suitable location for the housing of the National Emergency Operations Centre.
- (2) The Council shall facilitate staffing of the Centre and its maintenance and resourcing.

PART 3 -
STATE OF DISASTER

10. Powers and duties of President –

- (1) In the event of a Disaster the President shall consult with Cabinet and may declare a State of Disaster to exist in the whole or any part of Nauru.
- (2) Before declaring a State of Disaster the President shall be satisfied that:
 - (a) the Disaster is of a type which constitutes or is likely to constitute a significant and widespread danger to life or property; and
 - (b) the nature and the type of Disaster to be confronted requires a coordinated Response; and
 - (c) the declaration of a Disaster is in the best interests of Nauru.
- (3) The President may at any time revoke or vary a declaration under this section.

- (4) Immediately on making, revoking or varying a declaration under this section, a State of Disaster shall exist, cease to exist or exist as varied for the purposes of this Part.
- (5) On the making, revocation or variation of a declaration under this section the President shall as soon as practicable cause notice of the making, revocation or variation of the declaration to be broadcast by television and radio stations throughout Nauru and placed in the Government Gazette.
- (6) Production of a Government Gazette containing the notice making, revoking or varying the declaration under this section is evidence of the making, revocation or variation (as the case requires) and a copy of the declaration under this section is evidence of the terms of the declaration.
- (7) A declaration made under this section remains in force for not more than 28 days, but another declaration may be made before, at or after the end of that period by the Parliament if Parliament is sitting or it is practicable for Parliament to sit, or by the President if it is impracticable for Parliament to sit.
- (8) The President may, after consultation with Cabinet and the Council, if he reasonably believes compliance with an Act or subordinate instrument prescribing the functions, powers, duties or responsibility of a Government Agency would inhibit the Response or Recovery declare the operation of the whole or any part of that Act or subordinate instrument suspended.
- (9) A declaration made under subsection (8) has effect until a further declaration is made by the President reviving the operation of the Act or the subordinate instrument or until 28 days have elapsed from revocation of the declaration of the State of Disaster, whichever is sooner.

- (10) If a State of Disaster has been declared under this section the President shall report to Parliament on the State of Disaster and the powers exercised under subsection (8) as soon as practicable if Parliament is sitting or on the first sitting day of the next meeting of Parliament if Parliament is not sitting.
- (11) During a State of Disaster the Minister responsible for National Disaster Management shall convene the Council at least weekly to receive reports on the progress of the Disaster.
- (12) The President shall revoke the Declaration of a State of Disaster immediately upon the circumstances described in subsection (2) ceasing to exist.

PART 4 -
POWERS OF POLICE
IN DISASTERS

11. Police Powers

- (1) A police officer on duty in or near the Disaster Area may exercise the following powers:
 - (a) cause to be closed any road, footpath or open space otherwise providing access to the Disaster Area;
 - (b) prohibit any person or vehicle from entering or passing through the Disaster Area;
 - (c) direct any person on any road or footpath or in any other open space or any vehicle on any road or footpath or any open space within the Disaster Area to immediately leave the Disaster Area by the safest and shortest route;

- (d) authorise a person to enter or remain in the Disaster Area subject to such conditions as the police officer considers appropriate; and
 - (e) any other police powers conferred on a police officer by virtue of his or her office.
- (2) A direction, prohibition or authorisation under subsection (1) may be broadcast in an announcement authorised by the National Controller.
 - (3) If a police officer on duty in or near the Disaster Area has reason to suspect that an offence against this Act is being or is about to be committed the officer may order a person to leave the Disaster Area and may use such force as is reasonably necessary to remove the person from the Disaster Area or to prevent the person from entering the Disaster Area.

PART 5 -

OFFENCES

12. Miscellaneous Offences –

- (1) No person, other than a person engaged in an Emergency Activity, shall obstruct, hinder, or in any way interfere with a person engaged in an Emergency Activity, and a person who does so is guilty of an offence. Penalty: \$500.
- (2) A person shall not, for the purpose of committing or facilitating the commission of any offence under any Act, by words, conduct, or demeanour pretend to be a person engaged in Emergency Activity, and a person who does so is guilty of an offence. Penalty: \$2,000.

- (3) A person who fails without reasonable excuse to obey a prohibition or direction or to act in accordance with the conditions of an authorisation issued under section 11(1) is guilty of an offence. Penalty: \$1,000.
- (4) A person who under section 11(3) is ordered to leave or is removed from a Disaster Area or prevented from entering the Disaster Area shall not attempt to re-enter the Disaster Area and if they do so will be guilty of an offence. Penalty: \$1,000.

13. Looting –

- (1) A person is guilty of an offence if in the course of a Disaster the person without lawful excuse:
 - (a) takes any property that has been left exposed or unprotected; or
 - (b) takes any property from the body of a person who is dead or from a person who has been injured; or
 - (c) takes any vehicle, equipment, stores or property abandoned by reason of the Disaster.

Penalty: a term not exceeding 10 years imprisonment

- (2) A person is guilty of an offence if:
 - (a) the person receives property; and
 - (b) the property has been taken in circumstances constituting an offence against subsection (1); and
 - (c) the person knows of those circumstances.

Penalty: a term not exceeding 10 years imprisonment

PART 6-**MISCELLANEOUS PROVISIONS**14. **Immunities –**

- (1) No action or proceedings shall be brought against the Government of Nauru, the National Controller or any of their officers or servants, or against any other person engaged in Emergency Activity to recover damages for loss or damage to property or to the person in the exercise or performance of powers, duties, or obligations under this Act provided they were exercised in good faith.
- (2) No person shall be personally liable for any Emergency Activity done negligently or otherwise performed in accordance with this Act provided he or she was acting in good faith.

15. **Compensation for Injury –**

Any person who sustains personal injury whilst engaged in an Emergency Activity under this Act, may seek compensation in accordance with the Regulations.

16. **Regulations –**

- (1) Cabinet may make regulations not inconsistent with this Act prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular prescribing matters for and in relation to:
 - (a) the amounts of compensation to be paid to claimants under subsection (6) of section 8 and the grounds and procedures for an appeal to the Supreme Court of Nauru;
 - (b) the amounts to be paid to contractors engaged to perform Recovery or other necessary works under this Act;

- (c) the amounts of compensation to be paid for personal injury and the procedures for claiming such compensation under section 15;
- (d) the training provided to and exercises to be undertaken by members and officers of Agencies for which a role is defined or a responsibility is confirmed by the Disaster Risk Management Plan;
- (e) prescribing fees for training courses conducted by the Director of Police or his or her delegate;
- (f) prescribing conditions of issue or use of property loaned by a Government Agency to volunteers or any third party for the purpose of Disaster Risk Management, Response or Recovery;
- (g) declaring a service additional to the services listed in section 2 to be an Essential Service for the purposes of the Act; and
- (h) the form of any notice or declaration required under this Act.

17. Emergency Powers not affected

Nothing in this Act affects the power of the President to declare a state of Emergency in accordance with Part IX of the Constitution of Nauru.

18. Republic bound

This Act binds the Republic.