



REPUBLIC OF NAURU

# BUSINESS LICENCES ACT 2017

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No. 19 of 2017

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An Act to repeal the *Business Licences Act 2011* and to provide for the granting of, administration and regulation of business licences

Certified: 3<sup>rd</sup> August 2017

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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 *Business Licences Act 2017*.

### 2 Commencement

This Act commences upon certification by the Speaker.

### 3 Definitions

In this Act:

**'applicant'** means any individual, partnership, association, business or corporation applying for a licence under this Act or any person appearing as owner, partner, officer, director, trustee or other official of a partnership, association, business or corporation on such application for licence under this Act;

**'authorised officer'** means an officer authorised by the Minister under section 26;

**'business'** means any form of economic activity, trade, profession, commerce, craftsmanship, calling or other activity carried on for the purpose of generating revenue for gain;

**'business person'** means a person carrying out any form of business;

**'licence'** means business licence granted to a person under section 10;

**'licensee'** means the holder of a business licence granted under sections 10, 14 and 15;

**'Minister'** means the Minister for Justice and Border Control;

**'occasional licence'** means a short term licence granted for a specific period and nature of business activity;

**'person'** includes a partnership and an unincorporated or corporate body and any branch thereof;

**'Registrar'** means the Registrar of Business Licences;

**'Register'** means the Business Licences Register;

**'Secretary'** means the Secretary for Justice and Border Control.

## **PART 2- REGISTRAR AND REGISTER OF BUSINESS LICENCES**

### **4 Registrar of Business Licences**

- (1) The Secretary shall be the Registrar of Business Licences.
- (2) The Registrar shall:
  - (a) maintain the Register;
  - (b) perform other duties under this Act; and
  - (c) do all things as are necessary to be done for the proper administration of this Act.
- (3) The Registrar has the powers expressly conferred by this Act or any other written law to be able to perform his or her functions and exercise powers under this Act.
- (4) The Minister may, on the recommendation of the Secretary appoint a Deputy Registrar.
- (5) The Deputy Registrar may perform such functions and exercise such powers as the Registrar may in writing from time to time direct or authorise him or her to do.

### **5 Business Licence Register**

- (1) The Registrar shall be responsible for establishing and maintaining a Register of Business Licences under this Act.
- (2) Upon the payment of prescribed fees:
  - (a) the Register shall be made available for inspection by the applicant during business hours; and
  - (b) certified copies of the entries in the Register shall be provided.

## **PART 3 - BUSINESS LICENCES**

### **6 Prohibition on conducting business without a licence**

No person shall commence or carry on any business without a licence granted under this Act.

### **7 Pre-requisite for licences**

An application for a licence shall only be accepted for consideration by the Registrar if the applicant has already registered a:

- (a) business name under the Business Names Act 1976;

- (b) firm or partnership under the Partnership Act 1976;
- (c) corporation under the Corporations Act 1972; or
- (d) tax identification number issued under the Revenue Administration Act 2014.

**8 Application for a business licence**

- (1) A person who applies for a licence shall do so in the prescribed form.
- (2) The applicant shall pay the prescribed fee prior to the granting of the licence.

**9 Licence not to be granted to minors**

A licence shall not be granted to a person under the age of 18 years.

**10 Consideration of application**

- (1) The Registrar shall consider each application lodged and inform the applicant of the decision within 7 days of the date of the lodgement of the application.
- (2) Where the Registrar is satisfied that the application complies with the requirements of this Act, he or she shall grant the licence to the applicant.

**11 Licence conditions**

A licence granted under this Act shall be:

- (a) for the specified business activity in the licence; and
- (b) subject to special or general conditions.

**12 Non-acceptance of licence conditions**

- (1) A person may, no later than 7 days after the licence was granted, return the licence to the Registrar and apply for the reimbursement of the licence fee if:
  - (a) a licence is granted subject to the conditions specified under section 11; and
  - (b) the person to whom the licence is granted does not wish to operate the business on the conditions specified.
- (2) The Registrar shall cancel the licence and arrange for the reimbursement of the licence fee.

**13 Duration of licence**

A licence is valid for 12 months from the date the licence was granted.

**14 Occasional licences**

- (1) A person may apply to the Registrar for an occasional licence in the prescribed form to carry on a business for a period not exceeding 30 days.
- (2) The provisions of this Act shall apply to an occasional licence subject to any necessary modifications to give effect to this section.
- (3) An occasional licence may be granted:
  - (a) subject to the conditions as the Registrar thinks fit;
  - (b) to the same person, not more than 3 times in a year; and
  - (c) on payment of the prescribed fee.
- (4) If an occasional licence holder carries on with the business activity under the expired occasional licence, he or she commits an offence and upon conviction is liable to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 6 months or both.

**15 Special categories of licence**

- (1) The Cabinet may by Regulations:
  - (a) establish any special categories of business licences;
  - (b) prescribe any fees;
  - (c) prescribe any special conditions; and
  - (d) prescribe penalties for the breach of any licence conditions.
- (2) Subject to the Regulations made under subsection (1), the provisions of this Act shall apply to any licence granted under this section.

**16 Renewal of licences**

- (1) Applications for the renewal of licences shall be made:
  - (a) at least 1 month prior to the expiry date of the licence;
  - (b) in the prescribed form; and
  - (c) on the payment of prescribed fees.
- (2) A licensee is not liable for prosecution if he or she has:

- (a) lodged an application for the renewal within 30 days of the expiration of his or her licence;
- (b) in the case of an application for renewal he or she has lodged an application in less than 30 days of the expiry of a licence, and has paid the late application fee prescribed by regulations;
- (c) in the case of an application made after the expiry of a licence, he or she shall pay the:
  - (i) prescribed late application fee; and
  - (ii) penalty under section 17.

**17 Operating business on expired licence**

A person who operates a business on expiry of a licence shall pay the following penalties on lodging an application for renewal:

- (a) 1 month from the expiry date of the licence - \$1,000;
- (b) 2 months from the expiry date of the licence - \$3,000;  
or
- (c) 3 months or more from the expiry date of the licence - \$10,000.

**18 Cancellation of licence**

- (1) A licence may be cancelled by the Registrar under any of the following conditions, if:
  - (a) a licensee applies to have his or her licence cancelled;
  - (b) the application contains any misrepresentation or false statement;
  - (c) one or more conditions of the licence is breached;
  - (d) the licensee fails to comply with any directions given by the Registrar; and
  - (e) the licensee assigns or transfers his or her licence in contravention of section 20.
- (2) The Registrar shall provide reasons for the cancellation of the licence within 5 days of the cancellation of the licence if the licence was cancelled for any condition prescribed in subsection (1) (b) to (e).
- (3) Unless a licence is cancelled under this section, the business is deemed to be operating.

**19 Appeals**

- (1) A holder of a cancelled business licence has the right to appeal the decision of the Registrar to the Minister.
- (2) The appeal shall be lodged with the office of the Minister:
  - (a) in writing; and
  - (b) within 14 days after the receipt of the reasons for the cancellation of the licence under section 18 (2).
- (3) The Minister shall provide his or her decision on the appeal in writing within 14 days of the appeal being lodged under subsection (2).

**20 Licence not transferable**

- (1) A licence shall not be assigned or transferred by the licensee to any other person without the prior approval of the Registrar.
- (2) Any licensee who assigns or transfers his or her licence in contravention of subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or to a term of imprisonment not exceeding 6 months or both.

**21 Licence may be varied**

- (1) Subject to this Act, particulars of a licence may be varied on application by the licensee to the Registrar in the prescribed form and on the payment of the prescribed fee.
- (2) The Registrar shall within 7 days record in the Register any variations made.

**22 Licence shall be displayed**

- (1) A licence shall be displayed in a conspicuous place in or at the licensee's place of business.
- (2) A person who contravenes subsection (1) shall:
  - (a) be liable to a fixed penalty of \$1,000.00; and
  - (b) pay the fixed penalty within 7 days of a notice of the breach being served by an authorised officer.
- (3) A person who contravenes this section shall be liable for prosecution and upon conviction is liable to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 6 months or both.



**23 Inspection of business**

- (1) An authorised officer may enter and inspect a business at any reasonable time in the performance or exercise of his or her powers under the Act.
- (2) An authorised officer may require the person operating the business to produce the licence for inspection.
- (3) An authorised officer may issue a notice of breach of any conditions of the licence to the licensee.
- (4) A person who fails to produce a licence under subsection (2) shall be liable for prosecution and upon conviction is liable to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 6 months or both.

**24 Closure of business**

- (1) If the Registrar receives a report from an authorised officer that a business is operating without a licence, the Registrar may in writing, order the person to cease the business operations.
- (2) A person who fails or wilfully refuses to comply with the order of the Registrar under subsection (1), commits an offence and upon conviction is liable to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 6 months or both.

**PART 4 - OFFENCES**

**25 Offences**

- (1) A person, who operates or has an interest in a business, commits an offence if:
  - (a) the business is operating without a licence;
  - (b) the licence has been cancelled by the Registrar;
  - (c) the business is operating in contravention of any special or general conditions;
  - (d) he or she is operating a business other than the business activity specified in the licence;
  - (e) he or she obstructs an authorised officer from carrying out his or her duties under this Act.
- (2) A person convicted of an offence under this section is liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 12 months.

- (3) If a person pays the penalty under section 17, he or she shall not be liable for prosecution for operating a business without a current licence.

**26 Offences by corporations**

- (1) Where an offence has been committed under this Act by a corporation, firm, society or other body of persons, any person who at the time of the commission of the offence was a Director, manager, secretary or officer or a partner of the company, firm, society or other body of persons or was purporting to act in such capacity shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly unless he or she proves that:
- (a) the offence was committed without his or her consent or collusion; and
  - (b) he or she exercised all such diligence to prevent the commission of the offence as he or she ought to have exercised, having regard to the nature of his or her functions in that capacity and to all circumstances.
- (2) Upon conviction, the court may impose:
- (a) in case of a corporation, firm, society or other body of persons a fine not exceeding \$100,000; and
  - (b) in the case of a Director, manager, secretary or officer or a partner of the company, firm, society or other body of persons, a fine not exceeding \$20,000 or a term of imprisonment not exceeding 12 months or both.

**PART 5 - MISCELLANEOUS**

**27 Minister may authorise officers**

The Minister may, by notice in the Gazette, authorise an officer of the Department or a police officer to be an authorised officer for the purposes of this Act.

**28 Liability of Registrar or authorised officer**

The Registrar or an authorised officer is not liable in any civil or criminal proceedings for anything done in the exercise or the purported exercise of a power under this Act if the thing was done in good faith or on reasonable grounds.

**29 Jurisdiction of Court**

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

**30 Regulations**

The Cabinet may make regulations prescribing any matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**31 Repeal**

The Business Licences Act 2011 is repealed.

**32 Transitional and savings**

- (1) Despite the repeal of the *Business Licences Act 2011*, all business licences granted under that Act remain valid until its expiry.
- (2) All applications submitted to the Registrar under the provisions of the Business Licences Act 2011 shall be determined in accordance with the provisions of that Act as if this Act had not commenced and all other matters shall be dealt with in accordance with the provisions of this Act.
- (3) All proceedings, fines or decisions made under that Act remain enforceable.