



REPUBLIC OF NAURU

NAURU EDUCATION ASSISTANCE TRUST ACT 2016

No. 24 of 2016

An Act to establish the Nauru Education Assistance Scheme to be funded by way of the Nauru Educational Assistance Trust Fund to be held in trust for school age children and entitlements paid out upon the earlier of completion of Year 12 or the child attaining the age of 18 years and for other related purposes

Certified: 12th May 2016

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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 Education Assistance Trust Act 2016*.

2 Commencement

This Act commences upon certification by the Speaker.

3 Interpretation

In this Act, unless the context other provides:

'accrued entitlement' means the attendance sum that a child has accrued and is entitled to be paid subject to meeting the eligibility requirements set out in this Act;

'attendance sum' is the sum described in section 20;

'authorised deposit-taking institution' has the same meaning as in the *Banking Act 1959*;

'Banking Act 1959' means the *Banking Act 1959* of the Commonwealth of Australia;

'Board' means the board of directors of the Trustee;

'child' means a person who has not yet attained the age of 18;

'completion' and 'complete' means that the student has satisfied all requirements set by the school to complete a year level;

'director' means a person appointed to the Board in accordance with section 7;

'eligible student' means a child who is eligible to accrue an attendance sum in accordance with section 19;

'exempt student' means a child who has been granted a certificate of exemption by the Secretary for Education in accordance with section 9 of the *Education Act 2011*;

'expelled' means a child who has been ejected from a school and cannot re-enrol at that same school;

'Fund' means any fund established in accordance with this Act;

'Government school' means a school established under section 74(1) of the *Education Act 2011*, and includes a centre for special education;

'initial fund' means the amount of \$1,000,000 AUD to be paid by the Settlor into the Fund upon commencement of this Act;

'Minister' means the Minister for Education;

'Nauru' means the Republic of Nauru;

'Office' means each of the following positions:

(a) Secretary for the Department of Education;

(b) Secretary for the Department of Finance; and

(c) Chairperson of the Teacher Registration and Curriculum Board;

'parent' means the registered parent of a child and who is also the primary caregiver for that child;

'Principal' means:

(a) the Minister for Education; or

(b) if no person holds office as Minister for Education, the person holding office as Minister for Finance until such time as there is a person appointed to the position of Minister for Education;

'play centre' means a place approved by the Secretary for Education as a play centre;

'principle of inclusive education' has the meaning given in section 93 of the *Education Act 2011*;

'qualifying period' is as described in section 23;

'registered non-Government school' means a facility, other than a government school, for teaching school-age children during school hours;

'Scheme' means the School Age Allowance Scheme described in Part 4;

'scholarship' includes a Nauru Government scholarship or a scholarship offered through aid by a foreign government;

'school' includes a Government school, a non-Government school registered under a law of Nauru and a play centre;

'settlor' means the Republic of Nauru as represented by the Department of Finance and Economic Planning;

'Trust' means the Trust to be established in accordance with this Act to facilitate the Fund;

'Trustee' means the special purpose vehicle established to be trustee of the Trust;

'Trust Deed' means the trust deed to be entered into to establish the Trust in accordance with the Act between:

(a) the Republic; and

(b) the Principal;

'Unit' has the same meaning as in the Trust Deed; and

'Unit holder' means a person registered as the holder of a unit in the Trust;

PART 2 – ESTABLISHMENT OF THE FUND

4 Nauru Education Assistance Trust Fund

There shall be a fund to be known as the Nauru Education Assistance Trust Fund which shall be administered by the Trustee of the Trust.

5 Sources of income for the Fund

Income for the Fund will be derived from:

(a) the initial funds; and

(b) such other money as may be paid into the Fund by the settlor; and

(c) other money that may in any manner become lawfully payable to the Trust.

6 Bank account for the Trust

Any money paid into the Fund must be paid into a bank account opened by the Trustee in its capacity as trustee of the Trust.

PART 3 – BOARD OF DIRECTORS AND MANAGEMENT OF FUNDS

7 Appointment and term of board of directors of the Trustee

(1) The following persons are to be included on the Board:

(a) the Secretary for the Department of Education;

(b) the Secretary for the Department of Finance; and

(c) the Chairperson of the Teacher Registration and Curriculum Board.

- (2) No more than 4 persons shall comprise the Board.
- (3) The Secretary for the Department of Education is to be appointed as the chairperson of the Board.
- (4) Any person appointed to the Board in accordance with subsection (1) will remain appointed until such time they cease to hold Office.
- (5) Upon a person's resignation or removal from an Office or if an office becomes vacant for any other reason, the Principal must appoint the subsequent person holding that same Office to the Board.
- (6) A person may be removed from the Board by the Principal if the person:
- (a) is convicted on indictment of an offence under any law of Nauru or against the law of a foreign country;
 - (b) is an undischarged bankrupt under the laws of Nauru or another country;
 - (c) is not dealing adequately with the Fund or is not properly attending to the affairs of the Trust in accordance with the Act.
- (7) A person may not be removed from the Board by the Principal on the grounds in subsection 6(c) without the written consent of Cabinet.

8 Settlor, Principal or Unitholder may not be Trustee

Neither the Settlor, the Principal nor any Unitholder can be a Trustee of the Trust or a member of the Board.

9 No liability of Settlor, Principal or Unitholder

Subject to any other provision in this Act, neither the Settlor, the Principal nor any Unitholder has any liability:

- (a) in relation to the Trust, the Fund or any Unitholder with respect to the Trust and the Fund;
- (b) to make any contribution to the Trust Fund; or
- (c) to indemnify, or make payment to, on behalf of, the Trustee, any creditor of the Trustee, any person claiming through the Trustee, or any Unitholder.

10 Functions of the Trustee

- (1) The principal functions of the Trustee is to:

(a) oversee the administration of the Fund; and

(b) monitor compliance of the Scheme and authorise payment of entitlements to eligible students in accordance with this Act.

(2) The Trustee has a responsibility to provide an annual summary report of the fund to the Principal before 30 April of each fiscal year.

11 Duty of Trustee

The Trust Deed must set out the duties of the Trustee when administering the Trust.

12 Allowances and remuneration for members of the Board

No person holding an Office is entitled to any payment, allowance or remuneration for any duty performed in their capacity as a director on the Board or otherwise in connection with this Act.

13 Accounts and audit

The Trustee must keep in respect of the Fund, accounts and proper records that:

(a) set out fully the assets of the Fund and the income derived from it;

(b) correctly record and explain its transactions as Trustee and the financial position of the Trust;

(c) allow true and fair accounts of the Trust to be prepared from time to time; and

(d) adopt applicable accounting standards to the extent that they are consistent with the applicable principles in the Trust Deed.

14 Investments of the Trust

Any investment made on behalf of the Trust must be with an Australian authorised Deposit-taking Institution or cash management trust that is reinvested in investment grade securities making up more than 80% of the portfolio.

15 Income of the Fund

(1) Any income of the Fund is to be credited to the Fund and must be first applied to reasonable expenses of the Fund where the expenses are unanimously agreed by the Trustees and approved by the Principal in consultation with Cabinet.

(2) The Trustee may, at its sole discretion, approve the allocation of any excess income of the Fund, beyond that required to meet the Fund's expenses, to Unitholders in any manner they decide, which

amounts, if any, Unitholders will not become entitled to until their accrued entitlements become payable.

16 Borrowing, security or guarantees

The Trustee may not, whether alone or jointly or jointly and severally with others, in any manner or on any terms and conditions:

- (a) raise or accept any type of financial accommodation, including without limitation by borrowing, whether with or without security;
- (b) give any security over all or any of the present or future assets of the Fund; or
- (c) give any guarantee or indemnity for the payment of money or for the performance of any contract or obligation by any person or otherwise to assist any person.

17 Termination or winding up of Trust

- (1) A decision to cease contributing to the Fund may only be made where the Fund has sufficient funds to meet all future payments required to be made to those students enrolled at a school at the time.
- (2) The Trust may only be wound-up or terminated in accordance with its terms or where there are no current or future payments required to be made to those students enrolled at a school at the time.
- (3) Upon winding-up of the Trust, any and all remaining funds are to be distributed to the Republic of Nauru, which funds are to be utilised for educational purposes.

PART 4 – THE SCHOOL AGE ALLOWANCE SCHEME

18 The School Age Allowance Scheme

- (1) This section establishes the School Age Allowance Scheme.
- (2) The objectives of the Scheme are to:
 - (a) provide an incentive for students to attend school; and
 - (b) raise the national rate of school attendance; and
 - (c) improve the education experience of students through fuller participation in classes and co-curricular activities; and
 - (d) celebrate the value of young people to the Nauruan community once they complete their schooling; and

- (e) create public recognition of the achievement of students who complete their final year of schooling.

19 Students eligible to participate in the Scheme

The Scheme applies to a child who is required to attend school in Nauru under Part 4 of the Education Act 2011 and where:

- (a) the child is on January 1 of any year at least 4 years old and under 18 years old; and
- (b) is enrolled at either a Government school or a registered non-Government school; and
- (c) is a citizen of Nauru or a child who has been accorded refugee status under the *Refugee Convention Act 2012*.

20 Attendance sum

- (1) The attendance sum that an eligible student may be entitled to accrue in accordance with this Act is provided in the Schedule to this Act.
- (2) The Minister may by Regulation amend the Schedule.
- (3) Any amendment to the Schedule must be published in the Government Gazette.

21 Accrual of attendance sum

A child will accrue an attendance sum for school days attended by the child in accordance with the Act.

22 Eligible school days

- (1) The attendance sum is accrued only for school days attended that have been published by the Minister in the Government Gazette as the official school days and terms for Nauru.
- (2) In this section, '**school days**' does not include public holidays as provided in the *Public Service Act 2016* or as published by the President as an official public holiday to be observed by all employees of the public service.

23 Qualifying periods

Subject to sections 25 and 26:

- (a) a child who does not complete Year 9 at a school forfeits any accrued entitlement;

- (b) a child who completes Year 9 at a school and advances to Year 10 at a school but fails to complete Year 10 or to enrol for any subsequent year of schooling will have their accrued entitlement frozen as at the date that the child completed Year 9; and
- (c) a child who is no longer enrolled at a school in Nauru will have their accrued entitlement frozen.

24 Payment upon completion

- (1) A child is eligible to be paid their accrued entitlement upon the earlier of:
 - (a) completion of Year 12 at a school; or
 - (b) if not enrolled at a school after Year 9 then upon attaining the age of 18.
- (2) Payments made in accordance with this Act must be paid into a bank account in the name of the Unitholder.

25 Early payment

- (1) Upon application by the payment or guardian, the Trustee may, but is not bound, to make an early payment of an accrued entitlement in the event of:
 - (a) the death of a child, in this case the payment may be made to their parent or guardian; or
 - (b) a child being granted a scholarship to complete secondary schooling outside of Nauru; or
 - (c) the Board receiving medical advice that a student has become incapacitated and unable to complete their education; or
 - (d) an inclusive student, the Board arrives at the opinion that the student has nothing to gain by continuing to be enrolled at a school.
- (2) An early payment under this section does not require the child to have served the qualifying periods.

26 Scholarship students

Students who have been awarded a scholarship to study at an overseas institution and commence their studies at such institutions in Year 9 or earlier, will have their entitlement frozen until completion of Year 9 at which time they may apply to the Minister for early payment in accordance with section 25.

27 Students ceasing to attend school in Nauru

- (1) Subject to section 24, a child who receives assistance, other than a scholarship, to attend school outside of Nauru will have their entitlement frozen on the date they transfer.
- (2) A child to whom subsection (1) applies remains eligible to receive their entitlement on attaining the age of 18 and upon returning to reside in Nauru.

28 Students absent on account of illness

- (1) Students who are absent from school on account of illness for periods of five consecutive days or more, will, on presentation of a medical certificate be marked as present for the purposes of attendance records.
- (2) Students who are absent from school on account of illness for periods of four days or less will be marked as absent for the purposes of attendance records irrespective of the presentation of a medical certificate.

29 Exempt students

Exempt students are eligible students and credited as attending school for the duration of the certificate issued by the Secretary for Education under the *Education Act 2011*.

30 Record of attendance

The records of attendance collected by each school and provided to the Secretary for Education under section 19 of the *Education Act 2011* will serve as the official records for qualification and payment of the attendance sum.

31 Challenging a record of attendance

- (1) A parent or guardian may challenge a record of attendance.
- (2) Any challenge made under this section must be made in writing, signed by the parent or guardian and addressed to the Secretary for Education.
- (3) Upon receipt of a challenge made in accordance with subsection (2), the Secretary for Education must convene a meeting of the Board and submit to the Board a copy of such challenge.
- (4) The Board will make a decision on the challenge and any decision made is final and may not be appealed further.

32 Special education students

- (1) The principle of inclusive education applies to this Act and to the Scheme.
- (2) Any child who attends a special school due to disability are included in the Scheme and are covered by the provisions of this Act.

33 Students registered for home education

- (1) Subject to subsection (2), this Act applies to a child whose parent or guardian has applied and has been granted registration for home registration in accordance with the *Education Act 2011* are eligible students under this Act and qualify for the payment of the attendance sum.
- (2) A child whose registration for home education is cancelled by the Secretary for Education is no longer an eligible student under this Act.

34 Disciplined students

A child will be marked absent from school if that child is judged under the *Education Act 2011* to have displayed unacceptable behaviour and as a result is suspended from attending any school days under that Act.

35 Expelled students

An expelled student does not qualify for payment of the attendance sum unless they re-enrol at another school.

36 Approved forms

The Secretary for Education or an authorised person may approve any forms for the administration of this Act and the administration and operation of the Scheme.

37 Authorised persons

The Secretary for Education may appoint officers of the Department of Education to be authorised persons for the purpose of this Act.

38 Appointment of managers

- (1) The Trustee, with the consent of the Minister, may appoint a manager to assist with the administration of the Scheme and management of the Fund on terms determined by the Board.
- (2) The terms of any appointment of a manager must include a power of the Trust to remove the manager.

(3) The terms of appointment of a manager must also include removal provisions.

PART 5 - MISCELLANEOUS

39 Relationship between this Act and the Education Act 2011

In the event that there is a conflict between this Act and the Education Act 2011, the Education Act 2011 will prevail over this Act.

40 Regulations

The Minister may make regulations on any matter necessary or convenient to give effect to this Act.

SCHEDULE

Section 20

ATTENDANCE SUM

The attendance sum entitlement and payable subject to performance conditions contained in the Act shall be \$5.00 for each school day attended by a student.