

REPUBLIC OF NAURU

(No. 9 of 2008)

AN ACT

To make provision for the regulation and monitoring of prices of essential goods and services and to protect consumers and users from certain restrictive practices that adversely affect the prices and availability of those goods and services and for related purposes.

(Certified: 8th September 2008)

PRICES REGULATION ACT 2008

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(Certified: 8th September 2008)

Be it enacted by the Parliament of Nauru as follows:

SHORT TITLE & COMMENCEMENT

1. (1) This Act may be cited as the Prices Regulation Act-2008 and shall come into force on a date to be notified by the Minister in the gazette.

REPEAL

2. This Price Control Act is repealed and the Price Control Board is abolished.

INTERPRETATION

3. (1) In this act, unless the context otherwise requires:

“business” includes any trade, profession or vocation and the expression “in the course of business” shall be construed accordingly;

“declared goods” means specified goods which have been declared by the Minister pursuant to section 4;

“declared services” means specified services which have been declared by the Minister pursuant to section 4;

"maximum margin" means the maximum wholesale or retail margin;

"maximum price" means the maximum wholesale or retail price;

"maximum retail price", as determined under this Act in relation to declared goods or services, means the maximum price payable on the sale of such goods, or the supply of such services, by retail;

"maximum wholesale price", as determined under this Act in relation to declared goods or services, means the maximum price payable on the sale of such goods, or the supply of such services, by wholesale;

"Minister" means the Minister for Finance, or the Minister responsible for treasury matters if there is no Minister for Finance;

"person" includes a corporation, a body of persons whether incorporated or otherwise as well as individuals;

"price" includes any valuable consideration, direct or indirect;

"regulated goods" means declared goods which are the subject of a prices order under section 6;

"regulated services" means declared services which are the subject of a prices order under section 6;

"retail margin", in relation to declared goods or services, means an amount that is equal to the difference between the delivered or supplied purchase price paid or to be paid by a trader for specified goods or services and the price at which that trader sells or offers for sale those goods or services to retail customers;

"Secretary" means the Secretary for the Department of Finance;

"specified goods" means goods that are generally accepted as being necessary or essential for everyday living of members of the community including staple food and household commodities and goods of a kind specified in any guidelines made by the Minister and published in the Gazette;

"specified services" means services that are generally accepted as being necessary or essential for everyday living of members of the community including services of a kind specified in any guidelines made by the Minister and published in the Gazette;

"trader" means any person who in connection with any business carried on by him sells, has sold, or proposes to sell any goods, or who supplies or carries out any service; and

"wholesale margin", in relation to declared goods or services, means an amount that is equal to the difference between the delivered purchase price paid or to be paid by a trader for specified goods or services and the price at which that trader sells or offers for sale those goods or services to wholesale customers including other traders for subsequent resale or conversion.

(2) For the purposes of this Act, hoarding or profiteering occurs where a trader -

- (a) is buying up, storing or retaining in his possession or under his control any specified goods; or
- (b) has purchased or acquired, or agreed to purchase or acquire, any specified goods in quantities substantially greater than is usual in his normal course of trading; or
- (c) has in his possession or under his control any specified goods, and has failed, on demand and tender of the maximum price, to supply any particular person or persons with those goods;

with the purpose or effect, or likely effect, of cornering the market in, or profiteering from, such goods, where the trader intends to sell, or would be likely to seek to sell, those goods at a price substantially greater than the prevailing price at the time the goods were acquired by the trader, whether or not a maximum price or margin has been fixed for those goods under this Act.

(3) A trader is not taken to be hoarding or profiteering where the trader establishes that the specified goods referred to in subsection (2) were purchased by the trader solely for his personal household consumption or for converting into a product normally sold by that trader.

DECLARED GOODS AND SERVICES.

4. (1) The Minister, acting with the advice of the Secretary, may, by notice in the Gazette, declare -
- (a) any specified goods to be declared goods; or
 - (b) any specified services to be declared services,
- for the purposes of this Act.

(2) Where the Minister intends to make a declaration under subsection (1), the Minister shall, at least 21 days before making the proposed declaration, publish a notice in the Gazette-

- (a) stating that the Minister intends to make a declaration under section 4 of this Act;
- (b) specifying in reasonable detail the goods or services to be declared for the purposes of this Act; and
- (c) indicating that interested persons may make submissions to the Secretary in relation to the proposed declaration.

(3) The Minister shall have regard to any representations made by interested persons in respect of a proposed declaration before making the declaration.

(4) Notwithstanding subsections (2) and (3), where the Minister, acting with the advice of the Secretary, is satisfied that it is necessary or expedient to act without delay in order to ensure the fair distribution of certain specified goods or the supply of certain specified services amongst all members of the community, he may proceed forthwith to make a declaration under subsection (1).

INTENTION TO MAKE PRICES ORDER

5. (1) Where the Minister intends to make an order under subsection 6(1), the Minister shall, at least 21 days before making the proposed order, publish a notice in the Gazette-

- (a) stating that the Minister intends to make an order under subsection 6(1) of this Act;
- (b) specifying in reasonable detail the declared goods or declared services to which the order is intended to apply; and
- (c) indicating that interested persons may make representations to the Minister in relation to the proposed order.

(2) The Minister shall have regard to any representations made by interested persons in respect of a proposed order before making and publishing the order.

- (3) Notwithstanding subsections (1) and (2), where the Minister, acting with the advice of the Secretary, is satisfied that it is necessary or expedient to act without delay in order to ensure the fair distribution of certain declared goods or the supply of certain declared services amongst all members of the community, he may proceed forthwith to make an order under subsection 6(1).

PRICES ORDER

6. (1) With respect to any specified declared goods or services, the Minister, acting with the advice of the Secretary and with the approval of Cabinet, may by order published in the Gazette, determine—
- (a) the maximum wholesale and retail prices at which such goods may be sold or any such services may be supplied; and
 - (b) the maximum wholesale and retail margins which a trader may apply when determining the wholesale or retail prices, as the case may be, for such goods or services.
- (2) An order under subsection (1) may direct that a maximum price or maximum margin shall not exceed a specified sum or may prescribe the manner in which the maximum price or maximum margin shall be ascertained and may -
- (a) fix different maximum prices and maximum margins for the same class of goods or services having regard to the terms upon which and the conditions and circumstances in which the goods are produced, imported or sold or the services are provided; and
 - (b) prescribe alternative methods or principles by which the maximum price or maximum margin may be ascertained for the same or different classes of goods or services including, but not limited to, determining maximum margins or prices by percentage or by some other mathematical formula.
- (3) When making an order under subsection (1), the Minister shall have regard to—
- (a) the need to allow consumers to have ready access to the declared goods and services at reasonable market prices;
 - (b) the cost of importing, making, producing or supplying the declared goods or services;
 - (c) the desirability of encouraging greater efficiency in relation to importing, making, producing or supplying the declared goods or services;

- (d) the need to ensure an appropriate rate of return on any investment made by the trader or supplier in relation to the declared goods or services;
 - (e) the borrowing, capital and cash flow requirements of persons making, producing, selling or supplying the declared goods or services;
 - (f) the effect of any proposed order on general price inflation over the medium term;
 - (g) the economic and social impact of any proposed order; and
 - (h) any other matters the Minister considers relevant.
- (4) An order under subsection (1) may contain such incidental and supplementary provisions as are necessary or expedient for the purposes of the order including provisions requiring the keeping of records, by traders or other persons, of matters relevant to the operation of the order.
- (5) An order made under subsection (1) takes effect on the date specified in the order or, if no date is specified on the date of the publication of the Gazette containing it.
- (6) An order made under subsection (1) ceases to have effect –
- (a) on a date specified in the order;
 - (b) at the end of a specified period commencing on the date on which the order takes effect; or
 - (c) on the occurrence of a specified act, thing or event, but otherwise continues in operation until suspension or revocation of the order by the Minister in accordance with the Act.

EXTENSION OF PRICES ORDER

7. Where the Minister, acting with the advice of the Secretary and with the approval of Cabinet, is satisfied that it is necessary or expedient to continue the operation of an order made under subsection 6(1) for the purpose of continuing to ensure the fair distribution of the relevant goods or the supply of the relevant services amongst all members of the community, he may, before the order ceases to have effect, by notice published in the Gazette extend the operation of the order.

SUSPENSION OR REVOCATION OF PRICES ORDERS

8. (1) Where the Minister, acting with the advice of the Secretary and the approval of Cabinet, is satisfied that there are reasonable grounds for suspending or revoking an order made under subsection 6(1), he may, by notice in the Gazette, suspend the order, or any part of the order, for a stated reason or he may revoke the order, as the case requires.

(2) The suspension or revocation of an order takes effect from a date specified in the notice or, if no date is specified, from the date of publication of the Gazette containing the notice.

MONITORING PRICES

9. Where the Minister is satisfied that it is desirable, in the interests of consumers, to monitor the prices of certain declared goods or services, the Secretary shall, as required from time to time, monitor the prices at which those goods are sold or those services are supplied and report to the Minister.

HOARDING AND PROFITEERING

10. (1) Where the Minister, acting with the advice of the Secretary and with the approval of Cabinet, is satisfied that hoarding or profiteering of certain specified goods is occurring or is likely to occur in the near future, whether or not a maximum price or maximum margin has been fixed for those goods, the Minister may, by order published in the Gazette, direct any trader who, whether as owner or otherwise, has in his possession or under his control any specified goods that are normally available for resale-

- (a) to make the specified goods available for sale to consumers at or below a specified price or specified, wholesale or retail margin for the term of the order, in quantities reasonably required for domestic use or consumption, whether or not a maximum price or maximum margin has been fixed for those goods under this Act; and
- (b) to ensure that, for the term of the order, such goods remain available to consumers until the trader's supplies of those goods are exhausted or until fresh supplies of those goods are readily available to consumers at reasonable prices.

(2) The Minister, acting with the advice of the Secretary and with the approval of Cabinet, may, generally in an order under subsection (1) or specifically by subsequent order in the Gazette, exempt from an order under subsection (1) -

- (a) any trader or class of traders from the whole or part of an order under subsection (1); and
 - (b) any specified goods, or any quantity of any specified goods, in the possession of a trader which were purchased by the trader for his personal household consumption or for converting into a product normally sold by that trader.
- (3) The onus of establishing eligibility for exemption lies with the person, or persons, concerned.
- (4) An order under subsection (1) or subsection (2), may contain such incidental and supplementary provisions as are necessary or expedient for the purposes of the notice or the order.
- (5) An order under subsection (1) or subsection (2) takes effect on the date specified in the order or, if no date is specified, on the date of the publication of the Gazette containing it.
- (6) An order under subsection (1) or subsection (2) ceases to have effect -
- (a) on a specified date that is not later than 6 months commencing immediately after the date that the order takes effect;
 - (b) on the occurrence of a specified act, thing or event that occurs not later than 6 months commencing immediately after the date that the order takes effect; or
 - (c) after 6 months from the date that the order takes effect.

TEMPORARY RATIONING

11. (1) Where the Minister, acting with the advice of the Secretary and with the approval of Cabinet, is satisfied that it is necessary or expedient, in order to ensure the fair distribution amongst all members of the community of specified goods that are, or are likely to be, in short supply, he may take such temporary measures as he considers appropriate, including the making of orders and other instruments in relation to rationing of particular specified goods.

- (2) Without limiting the generality of subsection (1), the Minister may:
- (a) restrict the maximum quantity and maximum sized package of the specified goods which a trader may sell to a customer, or to another person acting on that customer's behalf, on any one day or during a specified period;
 - (b) restrict the persons or classes of persons, or persons acting on their behalf, to whom a trader may sell or supply the specified goods; or

(c) limit or prohibit a trader from selling or supplying the specified goods to another trader or to a class of traders.

(3) Any order, notice, direction, requirement or other instrument made or given by the Minister under this section may contain such incidental and supplementary provisions as are necessary or expedient for the purposes of the instrument.

(4) Any order or other instrument made under subsection (1) rationing particular specified goods shall cease to have effect after 6 months from the date the order or instrument was made, unless earlier revoked by the Minister upon a report by the Secretary that such order or instrument is no longer necessary.

FORFEITURE BY ORDER OF MINISTER

12. If the Minister, acting with the advice of the Secretary, is satisfied that a person is hoarding or profiteering, the Minister may make an order that the goods, or any specified quantity of the goods, be forfeited and, on publication of the order in the Gazette, the goods, or the specified quantity of the goods, are or is forfeited to the Republic.

SEIZURE AND DISPOSAL OF FORFEITED GOODS

13. (1) Where goods have been forfeited under section 12, a police officer may—

- (a) seize any goods that he has reasonable cause to believe are forfeited;
- (b) store any such goods in a place approved for the purpose by the Minister; and
- (c) sell or otherwise dispose of the goods to such persons or bodies, at such times, in such manner and on such terms and conditions as the Minister directs.

(2) Where forfeited goods have been sold under paragraph (1)(c), the proceeds of the sale of the goods, less any expenses incurred in connexion with their seizure, storage and sale, and less any unpaid penalties imposed by the Court in respect of the forfeited goods, shall be returned to the person who was the owner of the goods before their forfeiture, up to a maximum amount equal to the cost of those goods to that person when first acquiring the goods.

OBTAINING INFORMATION

14. (1) The Secretary, or an authorised officer, may require a person -

- (a) to furnish such information as the Secretary or the authorised officer, as the case may be, requires; or
 - (b) to answer any question put to him, in relation to any specified goods or specified services or to any other matter arising under this Act.
- (2) The Secretary, or an authorised officer, may require the information to be given, or the question to be answered, on oath, and orally or in writing, and for that purpose may administer an oath.
 - (3) The Secretary, or an authorised officer, may by written notice require the information to be given, or the question to be answered, in writing and at the place specified in the notice.
 - (4) A person is not obliged to answer orally any question unless he has first been informed by the Secretary or by the authorised officer asking the question that he is required to answer by virtue of this section.
 - (5) A reference in a provision of this section to an "authorised officer" is a reference to an officer authorised in writing by the Secretary for the purpose of the relevant provision.

SELLING ABOVE REGULATED PRICE

15. A trader shall not-

- (a) sell or offer to sell regulated goods at a greater price than the maximum price, or for a price which would give the trader a greater margin than the maximum margin determined for those goods by order made under subsection 6(1);
- (b) provide or agree to provide regulated services at a greater price than the maximum price determined for those services by order made under subsection 6(1); or
- (c) in the course of business, apply different methods of fixing or ascertaining the prices or margins for regulated goods or services by order made under subsection 6(1) with intent to evade the provisions of this Act.

REFUSING TO SELL AT OR BELOW REGULATED PRICE

- 16. (1) A trader or other person who-
 - (a) carries on the business of selling regulated goods and such goods are available for sale; or
 - (b) engages in supplying or carrying out any regulated

services
 shall not, without reasonable excuse—
 (c) refuse to sell any regulated goods; or
 (d) refuse to supply any regulated services;
 to any person tendering immediate payment at the maximum price
 determined for such goods or services by order made under
 subsection 6(1).

(2) For the purposes of subsection (1), the onus of proof for establishing a reasonable excuse lies with the person concerned.

PROFITEERING FROM HOARDING

17. (1) A person who engages in hoarding or profiteering is guilty of an offence whether or not the maximum price of the goods has been regulated under this Act.

(2) In addition to any penalty that may be imposed for a contravention of subsection (1), the court may order—

- (a) that the whole of the goods; or
 - (b) such quantity of the goods as the court orders,
- be forfeited to the Republic.

FAILING OR REFUSING TO PROVIDE INFORMATION

18. A person who, when required under section 14 to furnish information or answer a question -

- (a) refuses or fails to furnish the information or to answer the question; or
 - (b) gives information or makes an answer that is false in any particular,
- is guilty of an offence.

GENERAL OFFENCE

19. A person who contravenes, or fails to comply with—

- (a) any provision of this Act; or
 - (b) any order, notice, direction, requirement or other instrument made or given—
 - (i) under this Act; or
 - (ii) under any order made under this Act,
- is guilty of an offence.

GENERAL PENALTY

20. (1) Every person who commits an offence under this Act shall be liable on conviction to pay a fine not exceeding \$3,000 and or imprisonment for a period of not less than 1 month and not greater than 6 months.

(2) In addition to any other punishment that it may impose, the Court may, if it thinks fit:

- (a) order the forfeiture of any money or goods in respect of which an offence against this Act has been committed; and
- (b) cancel or suspend the business licence or revoke the business registration of a person or corporation convicted of an offence under this Act.

OFFENCES BY CORPORATIONS

21. Where a person convicted of an offence against this Act is a corporation, every person who, at the time of the commission of the offence, was a director or officer of the corporation shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his knowledge, or that he used all due diligence to prevent the commission of the offence.

DISTRICT COURT TO HAVE JURISDICTION

22. The District Court shall have jurisdiction to hear, try and determine any civil or criminal proceedings instituted in respect of any contravention, offence or other matter arising under this Act.

ACT TO BIND THE REPUBLIC

23. This Act, other than sections 10 and 12, binds the Republic, but not so as to make the Republic liable to a pecuniary penalty or to be prosecuted for an offence against this Act.

TRANSITIONAL PROVISIONS

24. Price orders currently in force under the *Price Control Act 2004* continue as if they were made under this Act.

REGULATIONS

25. The Cabinet may make regulations generally for the purpose of carrying out the provisions of this Act.

I hereby certify that the above is a fair print of a Bill for an Act entitled **Price Regulation Act 2008**, has been passed by Parliament of Nauru and is now presented to the Speaker for his Certification under Article 47 of the Constitution.



Clerk of Parliament
8th September 2008

Pursuant to Article 47 of the Constitution, **I, Riddell Akua**, Speaker of Parliament, hereby certify that the **Price Regulation Act 2008**, has been passed by Parliament of Nauru.



Speaker
8th September 2008



REPUBLIC OF NAURU
GOVERNMENT GAZETTE
PUBLISHED BY AUTHORITY
EXTRAORDINARY

No.97

11th September, 2008

Nauru

G.N.No. 341 / 2008

PRICE REGULATION ACT 2008

It is notified for general information that the Price Regulation Act 2008 shall come into force with effect from 10th September, 2008.

Dated this Tenth day of the month of September, Two Thousand and Eight

HON. DR. KIEREN KEKE M.P.
MINISTER FOR FINANCE
