



REPUBLIC OF NAURU

NAURU FISHERIES AND MARINE RESOURCES AUTHORITY ACT 1997

(No. of 1997)

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A BILL FOR AN ACT

To establish a Nauru Fisheries and Marine Resources Authority; to provide for its powers and functions; and for related purposes.

Be it enacted by the Parliament of Nauru as follows:

PART I — PRELIMINARY

SHORT TITLE AND COMMENCEMENT

1. This Act may be cited as the Nauru Fisheries and Marine Resources Authority Act 1997 and shall come into force on a date to be notified by the Minister by notice in the Gazette.

INTERPRETATION

2. In this Act, unless the context otherwise requires —

“annual accounts” means the balance sheet, the profit and loss account and any other relevant financial accounts and records of the Authority for a financial year;

“Authority” means the Nauru Fisheries and Marine Resources Authority established by section 3;

“Board” means the Board of Directors of the Authority established by section 6;

“Chairman” means the Chairman appointed under section 7;

“Chief Executive Officer” means the Chief Executive Officer appointed under section 14;

“Director” means a Director of the Board, and includes the Chairman, the Vice-Chairman, and any alternate of a Director;

“document” includes a piece of information which is electronically stored, transmitted and reproduced;

“fisheries” means the living aquatic resources of the internal waters, the territorial sea, the exclusive economic zone and any other waters over which the Republic claims jurisdiction;

“marine resources” means the living and non-living resources and the environment of the sea;

“officer” means a person appointed as an officer in the service of the Authority, and includes the Chief Executive Officer;

“Vice-Chairman” means the Vice-Chairman appointed under section 7.

PART II — ESTABLISHMENT OF THE AUTHORITY

THE NAURU FISHERIES AND MARINE RESOURCES AUTHORITY

3. (1) The Nauru Fisheries and Marine Resources Authority is hereby established.
- (2) The Authority —
- (a) is a body corporate with perpetual succession; and

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- (b) shall have a common seal; and
 - (c) is capable of acquiring, holding and disposing of real and personal property; and
 - (d) may sue or be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Authority affixed to a document, and shall presume that it was duly affixed.

(4) The functions and powers of the Authority shall be performed and exercised on behalf of the Republic.

OBJECTS OF THE AUTHORITY

4. The objects of the Authority are —

- (a) to manage, develop, conserve and protect the fisheries and marine resources of Nauru in such a way as to conserve and replenish them as a sustainable asset for future generations; and
- (b) to promote the sustainable utilisation of the fisheries and marine resources of Nauru to achieve economic growth, improved social standards, improved nutritional standards, human resource development, increased employment and a sound ecological balance; and
- (c) to pursue effective strategies for managing the fisheries and marine resources of Nauru so as to maintain the integrity of marine ecosystems, to preserve biodiversity, to avoid adverse impacts on the marine environment, and to minimise the risk of long-term or irreversible effects of resource extraction operations
- (d) to enhance the administrative, legal, surveillance and enforcement capacities of the Republic for the management, development, conservation and protection of the fisheries and marine resources of Nauru,

in accordance with any law relating to fisheries or marine resources.

FUNCTIONS OF THE AUTHORITY

5. The functions of the Authority are —

- (a) to carry out and give effect to any policy directions of the Minister and the Cabinet on the utilisation, management, development, conservation and protection of fisheries and marine resources; and
- (b) to make recommendations and give advice to the Minister on matters connected with its objects; and
- (c) to administer and enforce this Act and any other law relating to fisheries or marine resources, to the extent required or permitted by that law, and any related policy approved by the Cabinet; and
- (d) to advise and make recommendations to the Minister on the operation of this Act and of any other law which relates to its objects, and on changes and amendments it considers necessary or desirable to be made to any law in order to promote and further its objects; and
- (e) to the greatest extent possible consistent with the performance of its functions under this Act or any other law, to consult and cooperate with other government departments, branches and agencies, with non-governmental bodies and with international, regional and sub-regional organisations on matters connected with its objects; and

- (f) to secure, authorise and provide attendance and representation of the Republic at international, regional and sub-regional meetings, conferences, workshops and similar gatherings concerned with the development, management, conservation and protection of fisheries or marine resources; and
- (g) to the extent provided by this Act and any other law and with the approval of the Minister, to represent the Republic in the conduct of negotiations in respect of any international convention, treaty, agreement or similar arrangement, or any agreement with a foreign state or a body representative of the interests of a foreign state, relating to fisheries or marine resources; and
- (h) to establish, initiate, maintain and engage in such other activities pertaining to its objects as are determined by the Board from time to time, in accordance with any policy directions of the Minister; and
- (i) to carry out such other functions as are necessary to achieve its objects or as are given to it under this Act or any other law.

BOARD OF DIRECTORS

6. (1) There shall be a Board of Directors of the Authority which shall carry out the functions, manage the affairs and exercise the powers of the Authority.
- (2) The Board shall consist of five Directors appointed by the Cabinet.
- (3) A member of Parliament shall not be appointed as a Director.
- (4) A Director shall be appointed for a term not exceeding three years, and is eligible for reappointment.
- (5) Subject to this section, a Director shall be appointed on such terms and conditions as are approved by the Cabinet.
- (6) A Director shall be paid for service as a Director such reasonable fees and allowances as are determined by the Cabinet.

CHAIRMAN AND VICE CHAIRMAN

7. (1) The Cabinet shall appoint a Director to be Chairman, and another Director to be Vice-Chairman, of the Board.
- (2) The Chairman shall exercise such powers and perform such functions as are determined by the Board.
- (3) Where —
- (a) the office of the Chairman is vacant; or
 - (b) the Chairman is for any reason unable to exercise those powers or perform those functions,
- the powers and functions of the Chairman shall be exercised and performed by the Vice-Chairman.

LEAVE OF ABSENCE

8. The Minister may, upon such terms and conditions as he determines, grant leave of absence to a Director.

VACATION OF OFFICE

9. (1) Where a Director —

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- (a) becomes bankrupt, or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment for their benefit; or
 - (b) dies; or
 - (c) resigns his office in writing signed by him and delivered to the Minister; or
 - (d) is absent, except on leave granted by the Minister, from three consecutive meetings of the Board; or
 - (e) fails to comply with the obligations under section 13; or
 - (f) is convicted of —
 - (i) an offence involving fraud or dishonesty punishable on conviction with imprisonment; or
 - (ii) an offence punishable on conviction with imprisonment for one year or longer; or
 - (iii) an offence under section 27,

the Cabinet shall terminate his appointment.

(2) The Cabinet may, by written notice, terminate the appointment of a Director for inability, inefficiency, incapacity or misbehaviour.

MEETINGS OF THE BOARD

10. (1) The Board shall meet as often as is necessary for the efficient conduct of its business, and at such times and places as the Board determines, or as the Chairman, or in his absence the Vice-Chairman, directs, but in any event shall meet at least once in every two months.

(2) For the purposes of subsection (1), the Chairman or Vice-Chairman shall give to every Director at least seven days' notice in writing of the meeting.

(3) Where the Chairman receives a direction from the Minister or a written request signed by not less than two Directors, he shall call a meeting of the Board within seven days.

(4) At a meeting of the Board —

- (a) three Directors, one of whom is the Chairman or Vice-Chairman, shall constitute a quorum; and
- (b) the Chairman, or in his absence the Vice-Chairman, shall preside; and
- (c) matters arising shall be decided by a majority of the votes of the members present and voting; and
- (d) the person presiding has a deliberative, and in the event of an equality of votes on any matter, also a casting vote.

(5) The Board shall cause minutes of its meetings to be recorded and kept.

(6) The Board may invite any person to attend a meeting of the Board, and that person may take part in any discussion at the meeting but shall not have any voting rights.

(7) Subject to this Act, the Board may determine its own procedures.

MEETINGS BY TELECOMMUNICATIONS FACILITIES

11. (1) Where Directors are unable, through absence overseas of one or more of them, to meet in one place, they may agree to conduct a meeting by use of a system of communication in which each of the Directors participating in the meeting can hear and can be heard by the others.

- (2) Where a meeting is being held in accordance with subsection (1) —
- (a) the participating Directors shall, for the purpose of the provisions of this Act concerning meetings of the Directors, be taken to be assembled together at a meeting and to be present at that meeting; and
 - (b) the meeting shall be taken to be held at the place agreed to by the participating Directors provided that at least one participating Director is physically present at that place; and
 - (c) all proceedings of a meeting conducted in accordance with this section shall be as valid and effective as if the participating Directors had been present in person at the meeting.

(3) Where the Directors are unable to, or agree not to, conduct a meeting by the means set out in subsection (1), the meeting may be held with the participation of the alternate of the Director who is unable to attend the meeting.

DELEGATION OF POWERS

12. (1) The Board may by instrument delegate to the Chief Executive Officer all or any powers, duties or functions of the Board other than this power of delegation.

(2) A delegation under this section is revocable and does not prevent the exercise of any power, duty or function by the Board.

(3) The Chief Executive Officer shall keep a register of delegations under this section.

DISCLOSURE OF INTEREST

13. (1) A Director who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Authority shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of the interest —

- (a) at a meeting of the Board; or
- (b) by giving prior notice in writing to the Board.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Board and the Director —

- (a) unless the Board otherwise determines, shall not attend the meeting of the Board in respect of the matter and take part in discussions; and
- (b) shall not vote in any decision on the matter or be taken into account for the purposes of constituting a quorum of the Board for that meeting or decision.

CHIEF EXECUTIVE OFFICER

14. (1) The Board shall, with the approval of the Minister, appoint a person to be the Chief Executive Officer of the Authority.

(2) The Chief Executive Officer —

- (a) is the head of the service of the Authority, and is responsible to the Board for the efficient carrying out of the functions of the Authority and
- (b) shall attend meetings of the Board, and may take part in any discussion but shall not have any voting rights; and
- (c) has any other powers and functions given to him by or under any law.

(3) The Chief Executive Officer shall not engage, or continue to engage, in any other paid remuneration or office except with the approval of the Board.

DELEGATION OF POWERS OF CHIEF EXECUTIVE OFFICER

15. (1) The Chief Executive Officer may by written instrument of delegation delegate to an officer any power, duty or function of his office other than this power of delegation.

(2) A delegation under this section is revocable and does not prevent the exercise of a power, duty or function by the Chief Executive Officer.

SERVICE OF THE AUTHORITY

16. (1) The Chief Executive Officer may, subject to any directions given to him by the Board, appoint to be officers or employees of the Authority such other persons as he considers necessary or appropriate for the efficient conduct of the business of the Authority.

(2) The terms and conditions of employment of officers and employees of the Authority are as determined by the Board.

(3) Until the Board has made a determination under subsection (2), the terms and conditions of employment of officers shall resemble, as nearly as may be, the terms and conditions of employment at an equivalent level in the public service.

(4) Where a person appointed as an officer of the Authority was a public officer immediately before being appointed, any benefits, entitlements and rights he has accrued as a public officer shall be recognised and applied in his employment with the Authority.

(5) The Chief Executive Officer may appoint such other support staff, whether temporary or permanent, as he thinks necessary for the purposes of the Authority, on such terms and conditions as he thinks proper.

(6) The Chief Executive Officer and the other officers, employees and support staff appointed under this section constitute the service of the Authority.

PART III — FINANCIAL**FUNDS OF THE AUTHORITY**

17. (1) All revenues and other moneys raised or received by the Authority shall be paid into and form a fund of the Authority.

(2) The revenues of the Authority consist of —

- (a) all moneys appropriated by Act from time to time for the purposes of the Authority; and
- (b) all moneys received by the Authority for services provided by the Authority; and
- (c) all revenues and other moneys payable to the Republic by any other state, any international or regional organisation or body, or any other person in respect of the management, development, utilisation, conservation or protection of any fisheries or marine resources of the Republic; and
- (d) all grants, bequests, gifts or other similar subscriptions made payable to the Authority or the Republic in respect of the management, development, utilisation, conservation or protection of any fisheries or marine resources; and
- (e) any interest earned on loans or investments made by the Authority; and
- (f) moneys derived from the disposal of, or dealing with, real or personal property vested in or acquired by the Authority, in accordance with this Act or any other law; and
- (g) all moneys borrowed by the Authority; and

- (h) any other moneys received by or made payable to the Authority under any law and in the exercise and performance of its powers and functions.

BORROWINGS BY THE AUTHORITY

18. (1) Subject to this section, the Authority may borrow money on such terms and conditions, and in such amounts, as the Board, with the approval of the Cabinet, determines.

(2) The Authority shall not charge, pledge or grant a lien over any of its assets, or acquire any asset subject to a charge, pledge or lien, except with the approval of the Cabinet or except where the charge, pledge or lien arises by operation of law pursuant to a permitted activity under this Act in circumstances where the Authority is duly discharging its obligations giving rise to the charge, pledge or lien or is disputing those obligations in good faith.

APPLICATION OF FUNDS

19. The funds of the Authority shall be applied for —

- (a) the payment of remunerations and allowances payable under this Act; and
- (b) the payment or discharge of any other expenses, charges, fees, subscriptions and obligations incurred or undertaken by the Authority; and
- (c) the payment of interest and principal on borrowings of the Authority; and
- (d) any other payments which are required or permitted to be made under this Act or any other law.

(2) Any surplus at the end of any financial year of the Authority's revenues over the sums required by the Authority for that year for meeting its obligations and performing its functions under this Act or any other law may be applied by the Board to —

- (a) a reserve fund of the Authority; or
- (b) an investment as approved by the Cabinet under section 21(4); or
- (c) a payment to the Republic in accordance with subsection (3); or
- (d) any other purpose provided by or under this Act.

(3) Subject to subsection (4), the Authority shall pay to the Republic out of the profits of the Authority for a financial year, such amount in relation to that financial year as the Minister, with the approval of the Cabinet, determines.

(4) In making a determination under subsection (3), regard shall be had to any advice furnished by the Board to the Minister regarding the financial affairs of the Authority.

POWERS OF THE AUTHORITY

20. (1) The Authority has, in addition to the powers conferred on it by this Act and any other law, full powers to do all things that are necessary or convenient to be done, whether in Nauru or elsewhere, for or in connection with the performance of its functions and the attainment of its objects.

(2) Without limiting the generality of subsection (1), but subject to section 21, the powers of the Authority include the power —

- (a) to purchase, lease, hire or otherwise acquire any land, buildings, plant, machinery and other capital assets; and
- (b) to sell or otherwise dispose of any land, buildings, plant, machinery and other capital assets of the Authority; and

- (c) to purchase or otherwise acquire goods and services connected with its objects, whether for its own use or for resale or redistribution; and
- (d) to sell or otherwise provide goods and services connected with the fisheries and marine resources industries to persons in Nauru, in such manner and on such terms as the Board thinks fit; and
- (e) to exercise any powers conferred on it by this or any other Act; and
- (f) to do anything incidental to any of its objects.

LIMITATIONS ON POWERS OF THE AUTHORITY

21. (1) Notwithstanding section 20, the Authority shall not —
- (a) purchase or acquire by way of lease or hire arrangement or otherwise, or sell or dispose of by way of lease or hire arrangement or otherwise, any asset having a price, value or annual rental cost exceeding ten thousand dollars, but not exceeding one hundred thousand dollars, or such other price, value or annual rental cost as may be prescribed, except with the approval of the Minister; or
 - (b) purchase or acquire by way of lease or hire arrangement or otherwise, or sell or dispose of by way of lease or hire arrangement or otherwise, any asset having a price, value or annual rental cost exceeding one hundred thousand dollars, or such other price, value or annual rental cost as may be prescribed, except with the approval of the Cabinet.
- (2) If more than one asset is purchased, acquired, sold or disposed of in a single transaction or as part of a series of related transactions, the dollar limitations prescribed in subsection (1) shall apply to that purchase, acquisition, sale or disposal of those assets as if those assets constituted one asset.
- (3) An approval for a sale under subsection (1) may include a direction that the sale shall be by way of public auction or by public tender.
- (4) The Authority shall not, except with the approval of the Cabinet —
- (a) lend moneys; or
 - (b) invest moneys, except in an interest-bearing bank account in accordance with section 23(2); or
 - (c) act as guarantor for other persons.

OPERATION OF CORPORATE VENTURES

22. (1) The Authority may, with the approval of the Cabinet —
- (a) incorporate or establish a corporation or corporations; or
 - (b) enter into an agreement with a person or organisation, including an international, regional or subregional organisation, for a cooperative arrangement,
- for the purpose of the management, development, utilisation, conservation or protection of fisheries or marine resources.
- (2) Without limiting the generality of the matters that may be dealt with in an agreement entered into in respect of a cooperative arrangement referred to in subsection (1), the agreement shall specify —
- (a) the objects of the arrangement; and
 - (b) the expected duration of the arrangement; and
 - (c) the nature and extent of any contribution to be made by the Authority and the other party towards the arrangement; and

- (d) the basis for the distribution of profits or other benefits derived from the arrangement.

ACCOUNTS OF THE AUTHORITY

23. (1) The Authority shall manage its finances and keep proper books of accounts and records in accordance with sound accounting principles consistently accepted and applied internationally and shall ensure as far as possible that its revenue is sufficient to meet its expenditures properly chargeable to revenue.

(2) The Authority shall open and maintain such bank accounts, with a bank or banks approved by the Minister for the purpose, as are necessary for the exercise and performance of its powers and functions, and shall pay into them all moneys received by the Authority in the exercise and performance of its powers and functions.

(3) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Authority shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Board determines by resolution from time to time.

ANNUAL BUDGET

24. (1) The Authority shall prepare and submit to the Minister not less than one month before the date of commencement of each financial year a budget of the estimates of revenues and expenditure and the planned operations of the Authority for that year.

(2) Within fourteen days of receiving a budget under subsection (1), the Minister shall lay it before the Cabinet for consideration.

(3) The Cabinet may approve or reject the budget.

(4) An approval under subsection (3) may be given with such directions as to variations as the Cabinet sees fit.

(5) Where the Cabinet has rejected a budget or directed a variation, the Board shall revise the budget in accordance with any directions of the Cabinet and resubmit it through the Minister to the Cabinet.

(6) Where during any financial year the Board considers that the budget or any part of it cannot be met or should not be undertaken or should be changed, the Authority shall submit to the Minister a revised budget.

(7) A revised budget under subsection (6) shall be subject to approval by the Cabinet, which may approve it either without variation or with such variations as the Cabinet may direct.

(8) Where the Cabinet has directed a variation under subsection (7), the Board shall revise the budget in accordance with any directions of the Cabinet and resubmit it through the Minister to the Cabinet.

AUDIT

25. The accounts of the Authority shall be subject to inspection and audit by the Director of Audit in accordance with the Audit Act 1973.

REPORT

26. (1) The Authority shall, as soon as possible after 1 July in each year, furnish to the Minister a report on the progress and the performance of the Authority in relation to its functions for the preceding financial year ending 30 June.

(2) A report under this section shall include financial statements comparing the results achieved by the Authority with the corresponding information in the budget and the

projected accounts for that financial year, and the corresponding results achieved for the previous financial year.

(3) As soon as practicable after receiving the report referred to in subsection (1), the Minister shall cause it to be laid before Parliament.

(4) The Authority shall furnish to the Minister such other or additional information relating to its performance and operations as the Board considers appropriate or as the Minister from time to time requires.

PART IV — MISCELLANEOUS

BREACH OF CONFIDENTIALITY

27. (1) A Director or officer who for any purpose uses or knowingly discloses any information or the contents of any document or communication of which he becomes aware through his connection with the Authority, except —

- (a) to the extent that the use or disclosure is authorised or required under this Act or any other law; or
- (b) to the extent that the person providing the information authorised its disclosure at the time of providing the information; or
- (c) to the extent necessary to enable the Minister, the Board or the Chief Executive Officer to publish statistical information concerning the subject matter of the functions of the Authority; or
- (d) to the extent necessary to enable the Board to give advice to the Minister,

is guilty of an offence, and is liable upon conviction to a penalty not exceeding \$5,000.

(2) A person who is convicted of an offence under subsection (1) is liable to the Authority for any profit made in consequence of any damage suffered by the Authority as a result of the commission of the offence, in addition to the satisfaction of any criminal penalty that may be imposed.

LIABILITY OF DIRECTORS

28. (1) No Director or officer shall be personally liable for any act or omission done or made in his capacity as Director or officer in good faith and in the exercise of reasonable care and diligence in the course of the operations of the Authority.

(2) In respect of any liability incurred in connection with any act or omission referred to in subsection (1), the Director or officer, as the case may be, shall be indemnified by the Republic.

REGULATIONS

29. The 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.

PART V — TRANSITIONAL AND SAVINGS

TRANSFER OF PROPERTY TO THE AUTHORITY

30. All property which was held or occupied by the Department of Fisheries and Marine Resources or by the Republic on behalf of or in favour of the Department of Fisheries and Marine Resources immediately before the commencement of this Act is, on that commencement, transferred to and becomes property of the Authority, without the need for any further conveyance, transfer, assignment or assurance.

CONTRACTS AND AGREEMENTS.

31. (1) All contracts and agreements entered into, made with or addressed to the Republic through the Department of Fisheries and Marine Resources, insofar as they relate to the functions of the Authority under this Act, are, to the extent that they were, immediately before the commencement of this Act, binding on and of full force and effect against or in favour of the Republic are, on that commencement, binding on and of full force and effect against or in favour of the Authority as fully and effectually as if, instead of the Republic, the Authority has been a party to them or bound by them or entitled to the benefit of them.

(2) Where the Republic continues to receive any proceeds under a contract or agreement of the kind referred to in subsection (1) following the commencement of this Act, the Republic shall pay to the Authority proceeds received by it under that contract, less any expenses incurred by the Republic in relation to or as a result of that contract.

SAVING OF ACTIONS, ACTS AND OMISSIONS

32. Where, immediately before the commencement of this Act, any action, arbitration or proceeding relating to any asset, right or liability referred to in this Part was pending or existing by or against the Republic, it does not, on that commencement, abate or discontinue, or be in any way affected by any provision of this Act but it may be prosecuted, continued and enforced by, against or in favour of the person or body as if this Act had not been made.

EXERCISE OF POWERS OF THE BOARD

33. The powers and functions of the Board may, until three Directors of the Board are first appointed, be exercised and performed by the Minister.

TRANSFER OF SERVICE OF THE AUTHORITY

34. A person who, immediately before the commencement of this Act, held an office in the Department of Fisheries and Marine Resources shall, on that commencement, be deemed to hold a similar office under this Act, on similar terms and conditions, until such time as appointments are made under this Act.

APPLICATION OF ACTS AND OTHER INSTRUMENTS

35. Where —

- (a) any written law other than this Act; or
- (b) any document or instrument wherever made or executed,

contains a reference, express or implied, to the Department of Fisheries and Marine Resources, or the Department responsible for fisheries and marine resources matters, that reference shall, on the coming into operation of this Act, except where the context otherwise requires, be read and construed and have effect as a reference to the Authority.