



REPUBLIC OF NAURU

Nauru Rehabilitation Corporation Act 1997

As in force from 15 April 2011

This compilation comprises Act No. 10 of 1997 as amended and in force from 15 April 2011 (being, at the time the compilation was prepared on 22 May 2011, the date of commencement of the most recent amendment).

The notes section at the end of the compilation includes a reference to the law by which each amendment was made. The Table of Amendments in the notes section sets out the legislative history of individual provisions.

The operation of amendments that have been incorporated in the text of the compilation may be affected by application provisions that are set out in the notes section at the end of the compilation.

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REPUBLIC OF NAURU

Nauru Rehabilitation Corporation Act 1997

An Act to establish a Corporation charged with responsibility for coordinating, promoting, carrying out, managing, and participating in, rehabilitation works in Nauru and other matters connected therewith or material thereto

PART I – PRELIMINARY

1 Citation

This Act may be cited as the *Nauru Rehabilitation Corporation Act 1997* and shall come into force on a date notified by the Minister in the Gazette provided that such notification may exempt from commencement any section or part of a section until a later date to be similarly notified.

2 Definitions

In this Act, unless the context otherwise requires:

‘Board’ means the Board of Directors of the Corporation;

‘Chief Executive Officer’ means the Chief Executive Officer of the Corporation;

‘Development Co-operation Agreement’ means the Rehabilitation and Development Co-operation Agreement between the Government of Australia and the Government of the Republic of Nauru made at Bridgetown (Barbados) on 5 May 1994 and published in the Australian Treaty Series as 1994 No. 15;

‘Financial year’ in relation to the Corporation means 12 months ending 30 June;

‘Nacos Agreement’ means the documents comprising the Compact of Settlement made between the Republic of Nauru and the Commonwealth of Australia on 10 August 1993 and published in the Australian Treaty Series as 1993 No. 26;

'Settlement Moneys' means the moneys paid or to be paid by Australia to Nauru in settlement of the proceedings brought against Australia by Nauru in the International Court of Justice pursuant to the Nacos Agreement.

PART II – ESTABLISHMENT OF THE CORPORATION, PURPOSES, FUNCTIONS AND POWERS

3 Establishment of the Corporation

- (1) There is hereby established for the purposes of this Act, a body known as the Nauru Rehabilitation Corporation (hereinafter referred to as **'the Corporation'**) which is to be a body corporate, having perpetual succession and a common seal.
- (2) The provisions of the First Schedule shall have effect as to the constitution of the Corporation and otherwise in relation thereto.

4 Functions of the Corporation

The functions of the Corporation shall be:

- (a) to co-ordinate, promote, partake in, identify, initiate and carry out projects for the rehabilitation and development of worked out phosphate lands and unworked phosphate lands as directed by the Minister;
- (b) to implement government policy with regard to the rehabilitation and development of the worked out phosphate lands of Nauru;
- (c) to perform and promote such other activities in relation to rehabilitation and development as the Minister may direct either alone or in conjunction with Australia in the furtherance of the policies and objects of the Nacos Agreement and the Development Co-operation Agreement; and
- (d) to manage and administer the moneys and assets of the Corporation.

5 Powers of the Corporation

- (1) Subject to the restrictions of subsection (3), the Corporation shall have powers to do anything which is calculated to facilitate the discharge of its functions, or is incidental or conducive to their discharge.
- (2) In particular, and without prejudice to the generality of the provisions of subsection (1), the Corporation may:
 - (a) enter into agreements or arrangements with any person or institution, whether national or international, providing participation, assistance or cooperation with its activities;
 - (b) assist or provide advisory, consultancy, managerial, secretarial, financial, accountancy or other related services;
 - (c) carry on any business conducive to the furtherance of its objectives;
 - (d) act as agent for other persons or appoint agents on its behalf;
 - (e) invest monies on call or for fixed or limited periods;
 - (f) acquire and dispose of moveable or immovable property;
 - (g) acquire, hold and dispose of stocks shares and securities issued by corporations, units and other interests in or issued by trusts, and securities issued by governments or their instrumentalities; and
 - (h) establish and maintain reserve funds to meet contingencies and for such other purposes as it may think fit.
- (3) Subject to the provisions of this Act and to the approval of the Minister, the Corporation may:
 - (a) form subsidiary corporations to carry on any activities which the Corporation has power under this Act to carry on; and
 - (b) borrow monies and issue securities, including guarantees, debentures, stock, bonds, bills of exchange or promissory notes; and

- (c) act as a trustee or shareholder on behalf of corporations, statutory authorities, agencies or other organisations.

6 Exercise of functions and powers

In the exercise of its functions and powers, the Corporation shall have regard to the highest principles of prudence and probity in its stewardship of its moneys and properties.

7 Board of the Corporation

- (1) There shall be established for the purposes of this Act, a Board of Directors of the Corporation which shall, subject to the provisions of this Act, be responsible for the policy and general administration of the affairs of the Corporation.
- (2) The provisions of the Second Schedule shall have effect as to the constitution of the Board and otherwise in relation thereto.

8 Cabinet may give directions to the Board

The Cabinet may, after consultation with the Chairman, give to the Board such directions of a general character as to the policy to be followed by the Board in the performance of its functions as appear to the Cabinet to be necessary and the Board must give effect thereto.

9 Chief Executive Officer

The Board must appoint a Chief Executive Officer who shall be responsible for the day to day management and control of the corporation and for the implementation of Board policy and directives.

PART III – FINANCIAL

10 Corporation to have no share capital

The Corporation shall not have any share capital.

11 Distribution of operating surplus

- (1) Subject to the provisions of subsection (2), the Board may, unless the Minister otherwise directs, distribute to the Republic

not more than half the Corporation's operating surplus from any financial year, so however, that the Board must not distribute surpluses whilst losses from previous years remain unrecouped.

- (2) Where the Board is satisfied that it could, prudently, distribute profits in excess of half the previous year's surplus, it shall submit a proposal to the Minister for his approval and any such distribution shall be in such a manner and on conditions as the Minister thinks fit.

12 Revenue and expenditure estimates

- (1) The Corporation must in each financial year no later than one month (or earlier than 3 months) before the commencement of the next financial year submit to the Minister for the approval of Cabinet its estimates of revenue and expenditure for the ensuing financial year.
- (2) The estimates submitted to the Minister pursuant to subsection (1) must as far as practicable include details of any domestic or overseas borrowing requirements in relation to all activities of the Corporation for the ensuing financial year.
- (3) The Cabinet may either approve such estimates subject to such reservations, if any, as it may consider necessary, or reject such estimates.
- (4) Where the Cabinet rejects or does not approve the estimates submitted before the commencement of the next financial year, the Corporation may continue its recurrent operations at the same level as the previous year and continue on-going borrowing and investment programmes, so however, that it must not increase levels of recurrent expenditure, or undertake any new investments or borrowings until such time as the estimates are approved.

13 Chief Executive to Report annually to Minister

- (1) The Chief Executive Officer must in each year, but no later than 6 months after the end of the financial year, submit to the Minister an annual report of the Corporation's activities during the previous year.
- (2) The Minister must lay before Parliament a copy of the annual report.

14 Corporation to keep accounts

- (1) The Corporation must keep proper accounts and other records in relation to its business and must prepare annually a statement of accounts in a form satisfactory to the Minister, being a form which conforms with internationally accepted accounting principles consistently applied.
- (2) The accounts of the Corporation must be audited annually by the Director of Audit or, if so directed by Cabinet, an auditor having internationally recognised qualifications, appointed by the Corporation and approved by the Minister.
- (3) The Corporation must on receipt of the audited statement of accounts submit to the Minister a copy of such statement together with any report made by the auditor.
- (4) The Minister must cause a copy of the annual statement of accounts together with the auditor's report to be laid before the Parliament.

PART IV – MISCELLANEOUS

15 Cabinet may make regulations

The Cabinet may, after consultation with the Board, make regulations generally for the proper carrying out of the provisions and purposes of this Act, and in particular, but without prejudice to the generality of the foregoing, may make regulations:

- (a) for the guidance of directors appointed by the Corporation to enterprises in which the Corporation holds a commercial interest; and
- (b) for the procedure to be followed and the form and manner in which information relating to the Corporation's affairs is to be reported

16 Transfer of assets to the Corporation

From and after the date of coming into operation of this Act or of this section or any part hereof whichever shall last occur:

- (a) all assets and liabilities of the Republic listed in the third schedule shall be transferred to and vest in the

Corporation without further assurance, and the Corporation shall have all the powers necessary to take possession of, recover and deal with such assets and discharge such liabilities; and

- (b) every agreement in writing and every deed, bond or other instrument listed in the fifth schedule to which the Republic was party immediately before that date shall have effect as if the Corporation were a party; and
- (c) any asset listed in the Third Schedule administered by the Nauru Phosphate Royalties Trust may at the direction of Cabinet continue to be so administered but shall be administered by the said Trust on behalf of the Corporation and subject to the direction of the Corporation. Upon a direction of Cabinet so to do the Trust must transfer any asset of the Corporation administered by it, to the Corporation; and
- (d) Cabinet may at any time before 30 June 1998 by notice in the Gazette make such additions to the Third Schedule as it considers necessary and upon such publication the Third Schedule shall for all purposes be deemed amended.

FIRST SCHEDULE – THE NAURU REHABILITATION CORPORATION

Section 3

The corporate seal

- 1(1) The seal of the Corporation shall be authenticated by the signature of the Chairman or the Deputy Chairman or a member of the Board authorised to act in that behalf and an officer of the Corporation so authorised.
- (2) All documents, other than those required by law to be under seal, made by, and all decisions of the Corporation may be signified under the hand of the Chairman or the Deputy Chairman or the Chief Executive Officer or any member of the Board authorised by the Board to act in that behalf or an officer of the Corporation so authorised.

Employment and control of employees

- 2(1) Subject to the Act, the Corporation may appoint and employ at such remuneration and on such terms and conditions as it thinks fit, such officers, agents, servants and consultants as it thinks necessary for the proper carrying out of its functions.
- (2) The Chief Executive Officer's duties shall include the appointment and dismissal of employees and the fixing of their remuneration and conditions of employment.

Expenses of the Corporation

- 3.(1) The expenses of the Corporation (including remuneration of the staff thereof, members of the Board, the Chairman, and directors and chairmen appointed to subsidiary companies) shall be defrayed out of the income of the Corporation.
- (2) In this paragraph '*income*' includes interest dividends or profits earned or obtained on loans or investments made by the Corporation.

Keeping accounts

4. The Corporation must keep proper accounts and other records in relation to its business and prepare annual statements of account and reports as set out in Part III of this Act.

Corporation to provide information

5. The Corporation must furnish the Minister with such returns, accounts and other information as he requires with respect to its activities, and must afford to him the facilities for verifying such information in such manner and at such times as he may reasonably require.

Annual review of operations

6. At the end of each financial year, the Minister shall review the operations of the Corporation with a view to determining:
 - (a) whether the Corporation has operated in accordance with the annual estimates and any approved operating plan; and
 - (b) whether the assets of the Corporation are sufficient to meet the liabilities of the Corporation having regard to any claims or liabilities which may arise during the next ensuing year.

SECOND SCHEDULE – THE BOARD OF DIRECTORS OF THE CORPORATION

Section 7

Members of the Board

- 1.(1) The Board shall consist of not more than 7 members as follows:
 - (a) three directors appointed by Cabinet for their expertise in finance, business, corporate or finance law, investment, or mining;
 - (b) the head of the department for the time being responsible for financial matters or a representative nominated by him with the approval of the Minister, as an *ex officio* member;
 - (c) a director appointed by Cabinet with experience in mining and the rehabilitation of mined out land; and
 - (d) such other directors as Cabinet may appoint.
- (2) The Chief Executive Officer of the Corporation shall be *ex officio* a member of the Board but shall not have any voting rights.

Appointment of Chairman and deputy chairman

- 2.(1) The Minister shall appoint one of the members of the Board to be Chairman and another to be Deputy Chairman thereof.
- (2) In the case of the absence or inability to act of the Chairman and the Deputy Chairman, the Minister may appoint any other person to perform the functions of the Chairman.
- (3) The chairman or in his absence the deputy chairman shall preside at meetings of the Board.
- (4) The chairman shall have such powers as the Board shall determine but such powers must not conflict with the powers of the Chief Executive Officer under the Act.

Method and period of appointment

- 3.(1) The appointment of every member (other than *ex officio* members) shall be evidenced by instrument in writing, and such instrument shall state the period of office of the member, which shall not exceed three years.

- (2) Every member of the Board shall be eligible for re-appointment.
- (3) The Cabinet may at any time revoke the appointment of any member of the Board appointed by it.

Resignation

- 4.(1) Any member of the Board other than the Chairman, may at any time resign his office by instrument in writing addressed to the Minister, and from the date of the receipt by the Minister of such instrument such member shall cease to be a member of the Board.
- (2) The Chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of receipt by the Minister of such instrument.

Names of Board members to be gazetted

- 5. The names of all members of the Board as first constituted and every change in the membership thereof shall be published in the Gazette.

Disqualification

- 6(1) Any member of the Board who:
 - (i) has within the preceding 2 years been, or is, declared a bankrupt under the law of any country; or
 - (ii) has been within the preceding 2 years been, or is, sentenced in any country to imprisonment for three months or more for a criminal offence; or
 - (iii) fails to attend three consecutive meetings of the Board;shall be ineligible to be appointed to the Board, or immediately upon such declaration, sentencing or failure cease to be a member of the Board, as the case may be.
- (2) The Minister shall publish notice in the Gazette of the removal of a person pursuant to the preceding subparagraph.
- (3) A person removed from the Board pursuant to subparagraph (1) shall not be eligible for re-appointment for a period of 2 years thereafter.

- (4) If a declaration of bankruptcy or sentence is set aside by a court then the preceding subparagraph shall not apply.

Meetings of the Board

- 7.(1) The Board shall meet at such times as may be necessary or expedient for the transaction of its business, so however, that it shall not be less than four meetings in any calendar year.
- (2) The Chairman or the Chief Executive Officer may at any time call a special meeting of the Board and the Chairman shall call a special meeting to be held within seven days of a written request for that purpose addressed to him by two or more members of the Board.
- (3) The Chairman or Deputy Chairman shall preside at all meetings of the Board and in the case of absence of both the Chairman and the Deputy Chairman from any meeting, subject to paragraph 2(2), the members present and forming a quorum shall elect one of their number to preside at the meeting.
- (4) The decision of the Board shall be by a majority of votes.
- (5) Such officers of or consultants to the Corporation as the Chairman decides, shall attend meetings.
- (6) The Chief Executive Officer shall cause minutes in proper form of each meeting of the Board to be kept.
- (7) The Board shall determine its quorum for any particular class of meeting.
- (8) The validity of any proceedings of the Board shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

Remuneration of Board members

8. There shall be paid to the Chairman and other members of the Board, such remuneration (whether by way of honorarium, salary or fees) and such allowances as Cabinet may determine.

No legal proceedings in respect of *bona fide* actions

9. No action, suit or prosecution or other proceedings shall be brought against any member of the Board or of the board of any subsidiary corporation in respect of any act done *bona fide* in pursuance or execution or intended execution of the provisions of this Act.

Board members not public servants

10. The office of the Chairman and that of member of the Board shall not be a public office for the purposes of the Constitution of Nauru or of the *Public Service Act*.

THIRD SCHEDULE – ASSETS OF THE CORPORATION

section 16

1. All of the assets of the Nauru Rehabilitation Fund administered by the Nauru Phosphate Royalties Trust.

Notes for Nauru Rehabilitation Corporation Act 1997

Table of Constituent Legislation

| Short title | Number | Certification | Commencement |
|--|---------|---------------|----------------------------|
| <i>Nauru Rehabilitation Corporation Act 1997</i> | 1997/10 | 13.06.1997 | 31.05.1999 (GN 94/1999) |
| <i>Statute Law Revision Act 2011</i> | 2011/08 | 15.04.2011 | 15.04.2011 |

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
om = omitted os = omitted and substituted

| Provision affected | How affected |
|--------------------|-------------------------------|
| Section 5 | Subs. (3) am. by Act 2011/08. |
| Section 16 | Am. by Act 2011/08. |
| Third Schedule | Am. by Act 2011/08. |