

# NAURU (RPC) CORPORATION

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# Nauru (RPC) Corporation Act 2017

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# Nauru (RPC) Corporation Act 2017

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## TABLE OF AMENDMENTS

The Nauru (RPC) Corporation Act 2017 No 15 was certified and commenced on 1 August 2017 (GN No 525/2017; Gaz 112/2017).

| <b>Amending Legislation</b>                        | <b>Certified</b>  | <b>Date of Commencement</b>  |
|--|-------------------|------------------------------|
| Nauru (RPC) Corporation (Amendment) Act 2017 No 21 | 14 September 2017 | 14 September 2017            |
| Public Enterprises Act 2019 No 11                  | 11 June 2019      | Sch 2 clause 6: 11 June 2019 |
| Revised Written Laws Act 2021 No 7                 | 1 June 2021       | 1 June 2021                  |

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An Act to establish the Nauru (RPC) Corporation, to provide for its powers and functions and for related purposes.

Enacted by the Parliament of Nauru as follows:

## **PART 1 — PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Nauru (RPC) Corporation Act 2017*.

### **2 Commencement**

This Act commences upon certification by the Speaker and came into effect on 1 August 2017.

### **3 Application**

This Act binds the Republic.

### **4 Objectives**

The objectives of this Act are to:

- (a) promote the commercial spirit and intent of the:
  - (i) “*Memorandum of Understanding between the Republic and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru and other related Issues*” executed by the Governments of both the sovereign Nations;
  - (ii) “*Administrative Arrangements for Regional Processing and Settlement Arrangements in Nauru: supporting the Memorandum of Understanding between the Republic and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru and other related Issues*”; and
  - (iii) *Asylum Seekers (Regional Processing Centre) Act 2012*;
- (b) establish the Nauru (RPC) Corporation;
- (c) empower and authorise the Corporation to administer, manage and facilitate all commercial operations to the regional processing centres and settlements in the Republic;
- (d) promote efficient, competitive and reliable services to the regional processing centres;
- (e) promote a fair and sustainable competitive environment for all service providers;
- (f) provide for ethical, economical, accountable and transparent procurement operations; and
- (g) provide value for money.

### **5 Definitions**

In this Act:

‘*Administrative Arrangements*’ means the *Administrative Arrangements for Regional Processing and Settlement Arrangements in Nauru: supporting the*

*Memorandum of Understanding between the Republic and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru and other related Issues 2015;*

**‘auditor’** means the Auditor General appointed under the *Audit Act 1973* or an independent auditor appointed for the purposes of this Act;

**‘authorised contract’** means an agreement for provision of services to the *regional processing centre and settlements in Nauru* and in accordance with the provisions of this Act;

**‘Board’** means the Board of directors referred to in Section 10;

[def subst Act 11 of 2019 Sch 2 cl 6, opn 11 June 2019]

**‘Chief Executive Officer’**

[def rep Act 11 of 2019 Sch 2 cl 6, opn 11 June 2019. Section 3 of the Public Enterprises Act 2019 applies.]

**‘Corporation’** means the Nauru (RPC) Corporation established under Section 6;

**‘Court’** unless otherwise stated means the Supreme Court;

**‘Director’** means a member of the Board of Directors;

**‘Memorandum of Understanding’** means the *Memorandum of Understanding between the Republic and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru and other related Issues 2013;*

**‘Minister’** means the Minister appointed as the Responsible Minister for the Corporation under the *Public Enterprises Act 2019;*

[def subst Act 11 of 2019 Sch 2 cl 6, opn 11 June 2019]

**‘officer’** means an employee or staff of the Corporation;

**‘person’** includes corporations;

**‘prescribed’** means prescribed by regulations;

**‘procurement’** includes procurement of services;

**‘regional processing centre’** includes:

- (a) any land or premises operating wholly or predominantly as a place where protected persons reside;
- (b) a prison, a police station, a remand centre, a holding cell, an isolation room, a hospital, a school, a court room, an airport and anywhere in transit between these places; and
- (c) any other place that is approved by the Minister in writing;

**‘secretary’** means the secretary of the Corporation appointed under Section 12;

**‘services’** includes goods and services but excludes land leases;

**‘service provider’** includes:

- (a) a person, partnership or corporation that has an authorised contract issued under the provisions of this Act to provide commercial services at a regional processing centre, settlement or in relation to protected persons; and
- (b) director, secretary, manager, officer, partner, employee of the service provider; and

**‘settlements’** refers to temporary settlement of refugees in the community.

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## PART 2 — NAURU (RPC) CORPORATION

### 6 Establishment of Corporation

- (1) There shall be established a corporation to be known as the Nauru (RPC) Corporation consisting of a Board, Chief Executive Officer and such number of staff as the Board may from time to time determine.

[subs (1) am Act 11 of 2019 Sch 2 cl 6, opn 11 June 2019]

- (2) The Corporation is a body corporate with perpetual succession and shall have a common seal.
- (3) The Corporation may:
  - (a) sue and be sued;
  - (b) enter into contracts and other legal obligations;
  - (c) acquire, hold, manage and dispose of real or personal properties; and
  - (d) perform all powers, functions, duties and responsibilities of a corporation under the *Corporations Act 1972*.
- (4) The affixing of the seal of the Corporation shall be authenticated by the signature of the Chief Executive Officer or in his or her absence, an authorised officer.

### 7 Functions of the Corporation

- (1) The functions of the Corporation shall be to:
  - (a) carry out and give effect to any policy directions of the Minister and the Cabinet in relation to the procurement of commercial services for the regional processing centre and settlements;
  - (b) promote and assist the Republic in the facilitation of the commercial spirit and intent of the:
    - (i) “*Memorandum of Understanding between the Republic and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru and other related Issues*” executed by the Governments of both the sovereign Nations;
    - (ii) “*Administrative Arrangements for Regional Processing and Settlement Arrangements in Nauru: supporting the Memorandum of Understanding between the Republic and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru and other related Issues*”; and
    - (iii) *Asylum Seekers (Regional Processing Centre) Act 2012*;
  - (c) undertaking the tendering, processing and recommending to the Minister for Cabinet consideration the contracting or recruitment of service providers under this Act, Memorandum of Understanding or Administrative Arrangements, who will exclusively be rendering services within the Republic;
  - (d) review the provisions in all instruments intended to recruit or contract a person of or for service so that they meet the basic minimum requirements of the Memorandum, Administrative Arrangements, the *Constitution* and the written laws of the Republic;

- (e) manage contracts for the regional processing centre and settlements signed between service providers and the Secretary on behalf of the Republic;
  - (f) make recommendations and give advice to the Minister on commercial operations within the regional processing centre; and
  - (g) make recommendations and give advice to the Minister and the Secretary on matters connected with its functions.
- (2) The Corporation has no power or function in relation to the provision of medical services at the regional processing centre or settlements.

## 8 Powers of the Corporation

- (1) Subject to this Act, the Corporation has the power to do all things necessary, convenient or appropriate to be done, whether in the Republic or elsewhere, for the fulfilment of its objectives.
- (2) Without limiting the generality of subsection (1), the powers of the Corporation include the powers to:
- (a) procure or otherwise acquire services connected with its functions;
  - (b) call for tenders locally and internationally for the procuring of services connected to its functions;
  - (c) processing, selecting and recommending to the Minister for Cabinet consideration the contracting or recruitment of service providers;
  - (d) require service providers to use local subcontractors where such services can be provided within the Republic;
  - (e) prescribe standards for the provision of services by service providers;
  - (f) monitor and enforce the terms and conditions of all contracts between the Secretary and service providers;
  - (g) institute any proceedings against service providers in relation to the matters contained in this Act; and
  - (h) lodge a complaint to the Police where it has reasonable suspicion that any criminal offence or any offence under this Act is or likely to be committed.

## 9 Directions of Minister

- (1) The Corporation is responsible to the Minister.
- (2) [subs (2) rep Public Enterprises Act 2019 (Act 11 of 2019) Sch 2 cl 6, opn 11 June 2019]
- (3) The Minister may require the Corporation to provide information in the custody, power or control of the Corporation.
- (4) The Corporation shall comply with the request under subsection (3).
- (5) In this Section, '*information*' includes digital records, any tape, disk, drive or other device or means of recording or storing information.

## 10 Board of Directors

- (1) The Corporation shall have a Board of directors appointed and holding office in accordance with the *Public Enterprises Act 2019*.
- (2) The business, operations and affairs of the Corporation shall be managed by, or under the direction or supervision of, the Board.

[s 10 subst Act 11 of 2019 Sch 2 cl 6, opn 11 June 2019]

## **11 Qualification of Directors**

[s 11 rep Act 11 of 2019 Sch 2 cl 6(e), opn 11 June 2019. Part 6, Div 1 of the Public Enterprises Act 2019 applies.]

## **12 Meetings of the Board**

(1) [subs (1) rep Act 11 of 2019 Sch 2 cl 6(f), opn 11 June 2019. Part 6, Div 3 of the Public Enterprises Act 2019 applies.]

(2) [subs (2) rep Act 11 of 2019 Sch 2 cl 6(f), opn 11 June 2019. Part 6, Div 3 of the Public Enterprises Act 2019 applies.]

(3) [subs (3) rep Act 11 of 2019 Sch 2 cl 6(f), opn 11 June 2019. Part 6, Div 3 of the Public Enterprises Act 2019 applies.]

(4) [subs (4) rep Act 11 of 2019 Sch 2 cl 6(f), opn 11 June 2019. Part 6, Div 3 of the Public Enterprises Act 2019 applies.]

(5) [subs (5) rep Act 11 of 2019 Sch 2 cl 6(f), opn 11 June 2019. Part 6, Div 3 of the Public Enterprises Act 2019 applies.]

(6) [subs (6) rep Act 11 of 2019 Sch 2 cl 6(f), opn 11 June 2019. Part 6, Div 3 of the Public Enterprises Act 2019 applies.]

(7) The Chief Executive Officer or in his or her absence an authorised officer of the Corporation shall be required to attend meetings of the Board.

(8) The Board shall appoint an officer to be the secretary of the Corporation.

(9) The secretary shall maintain records of all minutes, records and proceedings of Board meetings.

## **13 Responsibilities and duties of Directors**

[s 13 rep Act 11 of 2019 Sch 2 cl 6(g), opn 11 June 2019. Part 6, Division 2 of the Public Enterprises Act 2019 applies.]

## **14 Vacation of office**

[s 14 rep Act 11 of 2019 Sch 2 cl 6(g), opn 11 June 2019. Part 6 Div 1 of the Public Enterprises Act 2019 applies.]

## **15 Remuneration of the Board**

[s 15 rep Act 11 of 2019 Sch 2 cl 6(g), opn 11 June 2019. Section 46 of the Public Enterprises Act 2019 applies.]

## **16 Disclosure of interest**

[s 16 rep Act 11 of 2019 Sch 2 cl 6(g), opn 11 June 2019. Section 53 of the Public Enterprises Act 2019 applies.]

## **17 Liability of Directors of this Corporation**

[s 17 rep Act 11 of 2019 Sch 2 cl 6(g), opn 11 June 2019. Part 6, Division 2 of the Public Enterprises Act 2019 applies.]

## **18 Account keeping**

[s 18 rep Act 11 of 2019 Sch 2 cl 6(g), opn 11 June 2019. Part 7 of the Public Enterprises Act 2019 applies.]

## **19 Funds of the Corporation**

(1) The Corporation shall charge management and service fees as prescribed by Regulations for performing its functions and exercising its powers.

- (2) All moneys payable to and received by the Corporation shall be paid in to the consolidated funds.
- (3) The Corporation shall at the end of each calendar month submit its management and service fees for payment to the Minister.

## **20 Audit of accounts**

[s 20 rep Act 11 of 2019 Sch 2 cl 6(h), opn 11 June 2019. Part 7 of the Public Enterprises Act 2019 applies.]

## **21 Annual report and accounts**

[s 21 rep Act 11 of 2019 Sch 2 cl 6(h), opn 11 June 2019. Part 7 of the Public Enterprises Act 2019 applies.]

[The next page is 361,001]

**PART 3 — CHIEF EXECUTIVE OFFICER AND OFFICERS**

**22 Chief Executive Officer**

[s 22 rep Act 11 of 2019 Sch 2 cl 6, opn 11 June 2019]

**23 Officers**

The Corporation may employ persons to assist the Corporation in the exercise of its powers and the performance of its functions on terms and conditions determined by the Chief Executive Officer.

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**PART 4 — ADMINISTRATION AND MANAGEMENT OF COMMERCIAL  
CONTRACTS**

**24 Prohibition on the provision of commercial services**

- (1) No person shall provide or render any commercial services at the regional processing centre and settlements unless:
  - (a) there is in place a contract authorised by the Cabinet;
  - (b) the authorised contract has either been executed by the Republic under Section 16(1) of the *Asylum Seekers (Regional Processing Centre) Act 2012*, or where the Republic is not a party, it has been endorsed by the Secretary under this Act;
  - (c) the authorised contract has been endorsed by the Secretary under paragraph (b) and executed by a representative or nominee or agent authorised by the Commonwealth of Australia;
  - (d) a current business licence is produced; and
  - (e) a tax identification number issued under the *Revenue Administration Act 2014* is produced.
- (2) A person commits an offence under subsection (1), if he or she attempts, induces, colludes, conspires or enters into an arrangement or understanding with another person or persons to provide or render commercial services at the regional processing centre and settlements.
- (3) Any person who contravenes this Section, commits an offence and shall be liable upon conviction to a fine not exceeding \$500,000 or to a term of imprisonment not exceeding 5 years or to both.
- (4) The Secretary may issue a certificate declaring that the services are pursuant to an authorised contract under this Act and which shall be:
  - (a) conclusive evidence of the contract being in compliance with this Act; and
  - (b) admissible as evidence in any court.
- (5) Where the Cabinet proposes to withdraw or revoke its authorisation of a contract under subsection (1)(a) or, the Secretary proposes to withdraw or revoke the endorsement of a contract under subsection (1)(c), 3 months' written notice shall be given to each affected party of the proposal to withdraw or revoke authorisation or endorsement.
- (6) Where a service provider appointed under subsection (1)(c), breaches or fails to comply with the terms and conditions of an authorised contract endorsed by the Secretary under subsection (1)(b), the Corporation may issue a notice under Section 25(2) or initiate proceedings under Section 26(1), if it receives a written request from the Commonwealth of Australia.
- (7) Save for subsection (1)(c), the Cabinet may make such regulations for the purposes of this Section as necessary including specifically authorising other persons to execute or endorse such contracts.

[s 24 subst Act 21 of 2017 s 4, opn 14 Sep 2017]

**25 Breach of contract**

- (1) A contract is breached if the service provider fails to perform its obligations provided for in the authorised contract.

- (2) In case of breach of an authorised contract, the Corporation may issue a notice to:
  - (a) prohibit any conduct; and
  - (b) require the service provider to rectify any breaches of the contract within the terms of the contract or sooner in case of exigencies of the service.

## 26 Power to institute proceedings

- (1) The Corporation may institute such proceedings as may be necessary to:
  - (a) compel the service provider to specifically perform the obligations under the authorised contract for provision of such services;
  - (b) restrain a service provider whose authorised contract has expired, terminated or lapsed from providing any services; and
  - (c) restrain any person without an authorised contract from the provision of services to the regional processing centre, settlements or in relation to protected persons.
- (2) The Court in considering the application made under subsection (1), may consider making such orders *ex-parte* as appropriate including an order for:
  - (a) Mareva Injunction; or
  - (b) *Writ ne Exeat Republica*.
- (3) Any legal costs incurred by the Corporation shall be included in the management and service fees.

## 27 Offences by corporation

- (1) Where an offence has been committed under this Act by a service provider which is a corporation, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or officer or a partner of the company, firm, society or other body of persons or was purporting to act in such capacity shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly, unless he or she proves that:
  - (a) the offence was committed without his or her consent or collusion; and
  - (b) he or she exercised all such diligence to prevent the commission of the offence as he or she ought to have exercised, having regard to the nature of his or her functions in that capacity and to all circumstances.
- (2) Upon conviction, the Court may impose:
  - (a) in the case of a corporation, firm, society or other body of persons a fine not exceeding \$500,000; and
  - (b) in the case of a director, manager, secretary or officer or a partner of the company, firm, society or other body of persons, a fine not exceeding \$50,000 or a term of imprisonment not exceeding 3 years or to both.

## 28 Specific offences by directors, etc

- (1) A person who at the time of the commission of the offence was a director, manager, secretary, officer, a partner or employee of the service provider commits an offence if:
  - (a) he or she exercises any influence that he or she has in his or her capacity; and



- (b) engages in any conduct in the exercise of his or her functions as or uses any information he or she has obtained:
  - (i) with the intention of dishonestly obtaining a benefit for himself or herself or another person; or
  - (ii) dishonestly causing a detriment to another person.
- (2) A person commits an offence, if he or she:
  - (a) has ceased to be a director;
  - (b) uses any information obtained in that capacity as a director; and
  - (c) does so with the intention of:
    - (i) dishonestly obtaining a benefit for himself or herself or for another person; or
    - (ii) dishonestly causing a detriment to another person.
- (3) A service provider whose authorised contract has expired or has been terminated, commits an offence if it continues to access the regional processing centre or settlements.
- (4) A person who commits an offence under this Section, upon conviction is liable to a fine not exceeding \$500,000 or to a term of imprisonment not exceeding 5 years or to both.

[The next page is 361,401]

## PART 5 — MISCELLANEOUS

### **29 Delegation of powers**

The Minister may in writing delegate his or her functions under this Act to the Secretary.

### **30 Decisions of Cabinet**

A decision made by the Cabinet is final and binding and is not justiciable in the public interest.

### **31 Breach of confidentiality**

[s 31 rep Act 11 of 2019 Sch 2 cl 6(j), opn 11 June 2019. Section 52 of the Public Enterprises Act 2019 applies.]

### **32 Election candidates – Board of Directors**

[s 32 rep Act 11 of 2019 Sch 2 cl 6(j), opn 11 June 2019. Section 43 of the Public Enterprises Act 2019 applies.]

### **33 Jurisdiction of court**

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

### **34 Regulations**

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

### **35 Savings and transitional**

- (1) All contracts executed prior to 9 May 2017 shall remain valid until the expiry of the contract term.
- (2) Any extensions, renewal or rolling over of existing service provider contracts at the commencement of this Act, shall comply with the provisions of this Act.

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# Nauru (RPC) Corporation (Management and Service Fees) Regulations 2022

## TABLE OF PROVISIONS

| <i>Regulation</i> | <i>Title</i>  |
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# Nauru (RPC) Corporation (Management and Service Fees) Regulations 2022

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## TABLE OF AMENDMENTS

The Nauru (RPC) Corporation (Management and Service Fees) Regulations 2022 SL 9 were notified and commenced on 30 June 2022.

| <b>Amending Legislation</b> | <b>Notified</b> | <b>Date of Commencement</b> |
|-----------------------------|-----------------|-----------------------------|
|-----------------------------|-----------------|-----------------------------|

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The Cabinet makes the following Regulations under Sections 19(1) and 34 of the *Nauru (RPC) Corporation Act 2017*:

## **1 Citation**

These Regulations may be cited as the *Nauru (RPC) Corporation (Management and Service Fees) Regulations 2022*.

## **2 Commencement**

These Regulations come into effect on the day they are notified in the Gazette.

## **3 Definitions**

In these Regulations:

*‘authorised contract’* for the purposes of these Regulations, refers to the contract between the Commonwealth of Australia represented by the Department of Home Affairs and Canstruct International Pty Ltd authorised by the Cabinet under Section 24 of the Act:

- (a) on 29 October 2017 and endorsed by the Secretary for Multicultural Affairs on 31 October 2017; and
- (b) which contract:
  - (i) was extended to 30 April 2019 by a Deed of Variation, authorised by Cabinet on 12 October 2018 and endorsed by the Secretary for Multicultural Affairs on 23 October 2018;
  - (ii) was further extended to 31 July 2019 by the Cabinet on 30 April 2019 and endorsed by the Secretary for Multicultural Affairs on 30 April 2019;
  - (iii) was extended to 30 June 2020, which was subsequently extended to 31 December 2020;
  - (iv) was extended to 30 June 2021;
  - (v) was extended to 31 December 2021;
  - (vi) was extended to 30 June 2022; and
  - (vii) is further extended to 30 September 2022;

*‘authorised service provider’* means Canstruct International Pty Ltd or any successor commercial service provider appointed by the Commonwealth of Australia; and

*‘management and services fees’* have the same meaning given to it under the Act and shall be paid into the Treasury Fund in accordance with Section 19(2) of the Act.

## **4 Management and service fees**

For the period commencing from 1 July 2022 to 31 December 2022, the total management and service fees payable under these Regulations shall be \$10,000,000, which sum shall be paid in accordance with Regulations 5 and 6.

## **5 Payment of management and service fees by Canstruct International Pty Ltd**

- (1) For the purposes of Section 19(1) of the Act, Canstruct International Pty Ltd, as the authorised service provider, shall pay management and service

fees for the facilitation and administration of services at the Regional Processing Centres and Settlements or in relation to protected persons for the period commencing from 1 July 2022 until 30 September 2022 in the sum of \$5,000,000.

- (2) The fee referred to in subregulation (1), shall be charged once only for the period commencing from 1 July 2022 and continues until 30 September 2022.
- (3) The Corporation shall charge and recover its management and service fees from the authorised service provider which shall be:
  - (a) \$1,666,667 on or before 1 July 2022; and
  - (b) \$1,666,667 per month with effect from 1 July 2022 until the total sum of \$5,000,000 is paid and payable on the 1<sup>st</sup> day of each successive month.

## **6 Payment of management and service fees of a successor commercial service provider**

- (1) In the event, on or after 1 October 2022, another service provider is appointed by the Commonwealth of Australia in place of Canstruct International Pty Ltd and is duly authorised under the Act, the new service provider shall comply with the requirements of the Act.
- (2) During the period from 1 October 2022 to 31 December 2022, the Commonwealth of Australia shall facilitate the payment of management and service fees for and on behalf of the newly appointed authorised service provider in the sum of \$5,000,000.
- (3) The sum of \$5,000,000 under subregulation (2), shall be paid as follows:
  - (a) \$1,666,667 on or before 1 October 2022; and
  - (b) \$1,666,667 per month with effect from 1 October 2022 until the total sum of \$5,000,000 is paid and payable on the 1<sup>st</sup> day of each successive month.

## **7 Regulations not to apply**

These Regulations shall not apply to Eigigu Solutions Corporation.

## **8 Regulations repealed**

The *Nauru (RPC) Corporation (Canstruct International Pty Ltd Engagement) Regulations No 2 2021* SL No 36 notified on 30 December 2021 are hereby repealed.

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