



REPUBLIC OF NAURU

NAURU (RPC) CORPORATION BILL 2017

No. of 2017

A Bill for an Act to establish the Nauru (RPC) Corporation to provide for its powers and functions and for related purposes

Certified: []

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Enacted by the Parliament of Nauru as follows:

PART 1 - PRELIMINARY

1 Short title

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

2 Commencement

This Act commences upon certification by the Speaker.

3 Application

This Act binds the Republic.

4 General objectives of the Act

The general objectives of the 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 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 centres and settlements in Nauru* and in accordance with the provisions of this Act;

'Board' means the Board of Directors established under section 10;

'Chief Executive Officer' means the person from time to time holding the office of Chief Executive Officer of the Corporation as appointed in section 20;

'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 for Multicultural Affairs;

'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 for Multicultural Affairs;

‘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;
- (b) director, secretary, manager, officer, partner, employee of the service provider;

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

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 in consultation with the Minister may from time to time determine.
- (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 centres 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 the Act, memorandum of understanding or administrative arrangement, 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 Arrangement, the Constitution and the domestic laws of the Republic;
 - (e) manage contracts for regional processing centres 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 regional processing centres; 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 centres 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 objects.
- (2) Without limiting the generality of subsection (1), the powers of the Corporation include the power to:
 - (a) procure or otherwise acquire services connected with its functions;
 - (b) to 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) The Minister may give directions to the Corporation as to the performance of its functions and powers to which the Corporation must give effect to.
- (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 Board shall consist of 3 members who shall be appointed by the Cabinet on the recommendation of the Minister.
- (2) The Cabinet on the recommendation of the Minister shall appoint a member to be the Chairperson of the Board.
- (3) The Directors shall be appointed for a term not exceeding 2 years and may be eligible for reappointment.
- (4) The Directors shall be appointed on such terms and conditions as approved by the Cabinet.

11 Qualification of Directors

- (1) The Cabinet in appointing Directors must have regard to whether the Directors of the Board will collectively possess the appropriate knowledge, skills, and experience to assist the Corporation to perform its functions effectively.
- (2) A person is disqualified to be or from being a Director if he or she is:
 - (a) an undischarged bankrupt or an individual who has an arrangement with any of his or her creditors;
 - (b) an individual who has been sentenced to imprisonment for a term of 12 months or more by a Court of the Republic or any other country and has not received a pardon in or outside of the Republic;
 - (c) an individual who lacks capacity in respect of his or her duties as a Director within the meaning of the Mentally-disordered Persons Act 1963; or
 - (d) a holder of an elected office.

12 Meetings of the Board

- (1) Subject to this Act the Board shall regulate its own procedure for meetings.
- (2) The Board is to hold such meetings as are necessary for performing its functions.
- (3) The Chairperson must appoint the times and places of the meetings of the Board and the secretary may serve written notice of such meetings to all the Directors.
- (4) A meeting of the Board may be held by a quorum of two Directors, being assembled together at the time and place appointed for the meeting.

- (5) The Chairperson, and in his absence any Director appointed by the Minister, shall preside at the meeting of the Board.
- (6) Each Director has one vote and the decision of the Board shall be by majority votes.
- (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

- (1) The Directors shall severally and jointly at all times:
 - (a) act bona fide in the best interests of the Corporation;
 - (b) exercise reasonable care and diligence in the performance of his or her responsibilities, duties and functions;
 - (c) take reasonable steps through the processes of the Board to obtain sufficient information and advice about all matters to be decided by the Board to enable him or her to make conscientious and informed decisions; and
 - (d) exercise discretion with respect to all matters to be decided by the Board.
- (2) A Director does not commit a breach of the responsibilities and duties under this section by acting in accordance with a direction or requirement of the Minister under this Act.

14 Vacation of office

- (1) The Cabinet on the recommendation of the Minister may revoke the appointment of a Director.
- (2) The Minister shall by notice in the Gazette declare the office of a Director vacant if the Director:
 - (a) becomes bankrupt, applies to take the benefits of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors to assign his or her remuneration for their benefit;
 - (b) resigns from office in writing to the Minister;
 - (c) is elected to public office;

- (d) is absent from 2 successive meetings of the Board except on leave granted by the Minister;
- (e) fails to comply with his or her duties under the Act;
- (f) is considered by a Board of not less than 2 health practitioners, appointed by the Minister, to be incapable of performing his or her duties efficiently; or
- (g) is convicted of any offence involving fraud or dishonesty punishable on conviction with imprisonment for a term of 12 months or more.

15 Remuneration of the Board

A Director is not entitled to fixed remuneration but shall be paid a reasonable allowance determined by the Cabinet to enable the Director to perform his or her responsibilities, duties and functions under this Act.

16 Disclosure of interest

- (1) A Director who has any interest relating to the objectives, functions and powers of Corporation must disclose the details of his or her interest in accordance with this section as soon as practicable after the Director becomes aware that he or she has an interest.
- (2) A Director who has an interest in a relevant matter relating to the objectives, functions and powers of Corporation must disclose details of the interest:
 - (a) in the case of the Chairperson, to the Chief Executive Officer, Board and the Minister; or
 - (b) in the case of any other Directors, to the Chief Executive Officer and the Chairperson.
- (3) The Chief Executive Officer shall ensure that every disclosure under this section is:
 - (a) recorded in a register of interests kept by the Corporation; and
 - (b) brought to the attention of the Chairperson presiding at a meeting of the Corporation that relates to the relevant matter.
- (4) A disclosure under subsection (1) shall be recorded in the minutes of the Board meeting and the Director shall:
 - (a) not take part after the disclosure in any deliberation or decision of the Board in respect of that authorised contract; and
 - (b) be disregarded for the purposes of constituting a quorum of the Board in that deliberation or decision.

17 Liability of Directors of this Corporation

- (1) A Director shall not be personally liable for any act or omission done or made in his or her capacity as Director in good faith and in the exercise of reasonable care and diligence in the course of the operations of the Corporation.
- (2) In respect of any liability incurred in connection with any act or omission referred to in subsection (1), the Director shall be indemnified by the Republic.

18 Account keeping

The Corporation shall:

- (a) keep proper accounts and other records in relation to its operations;
- (b) prepare monthly statements of account and reports which shall be provided to the Minister and to the Secretary; and
- (c) prepare annual statements of account and reports.

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 monies 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

- (1) The accounts of the Corporation are subject to inspection and audit by the Auditor.
- (2) The Corporation must provide to the Auditor the accounts of the Corporation for a financial year within:
 - (a) 2 months after the end of the year; or
 - (b) another period determined by Parliament.
- (3) The Auditor must:
 - (a) audit the accounts; and
 - (b) report to the Corporation on the accounts within:

- (i) 3 months after receiving the accounts; or
- (ii) another period determined by Parliament.

21 Annual report and accounts

- (1) The Corporation shall, in accordance with the prescribed procedures, cause to be prepared an annual report of its activities during the previous financial year.
- (2) The Corporation shall forward a copy of its annual report to the Minister who must table it in Parliament.
- (3) The Minister shall lay the annual accounts and reports before Parliament.
- (4) The annual report of the Corporation shall incorporate its audited accounts.

PART 3 – CHIEF EXECUTIVE OFFICER AND OFFICERS

22 Chief Executive Officer

- (1) The Cabinet shall upon the recommendation of the Board to the Minister appoint a person to be the Chief Executive Officer of the Corporation.
- (2) The Chief Executive Officer shall hold office on the terms and conditions determined by the Cabinet at the time of the appointment.
- (3) The Chief Executive Officer shall be responsible for the administration and management of the operations and business of the Corporation and the administrative control of its officers.

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.

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 centres and settlements unless:
 - (a) there is in place a contract approved by the Cabinet;
 - (b) the approved contract has been executed by the Republic under section 16(1) of the Asylum Seekers (Regional Processing Centre) Act 2012;

- (c) a current business licence is produced; and
 - (d) a tax identification number issued under the Revenue Administration Act 2014 is produced.
- (2) A person commits an offence under subsection (1) if:
- (a) the person enters into an arrangement or understanding with 1 or more other people;
 - (b) the person and at least 1 other party to the arrangement or understanding intend to commit an offence under the arrangement and understanding; and
 - (c) at least 1 party to the arrangement or understanding commits an overt act under the arrangement or understanding.
- (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.

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 regional processing centres, 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 both.

28 Specific offences by Directors etc.

- (1) Any 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;
 - (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 person 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 settlement.
- (4) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$500,000 or to a term of imprisonment not exceeding 5 years or both.

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

- (1) A Director commits an offence when he or she for any purpose uses or knowingly discloses any information or the contents of any document or communication of which he or she becomes aware through his or her connection with the Corporation, except to the extent:
 - (a) that the use or disclosure is authorised or required under this Act or any other law;
 - (b) that the person providing the information authorised its disclosure at the time of providing the information;

- (c) 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 Corporation; or
 - (d) necessary to enable the Board to give advice to the Minister.
- (2) A person who commits an offence under subsection (1) is liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 5 years or both.
- (3) A person who is convicted of an offence under subsection (1) is liable to the Corporation for any profit made in consequence of any damage suffered by the Corporation as a result of the commission of the offence, in addition to the satisfaction of any criminal penalty that may be imposed.

32 Election candidates – Board of Directors

Any Board Director, including the Chairperson and Chief Executive Officer, who intends to submit a nomination as a candidate in the country's general elections, must at least three months before he or she submits their nomination, resign from their position as a member of the Board.

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

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, must comply with the provisions of the Act.