



REPUBLIC OF NAURU

NAOERO POSTAL SERVICES CORPORATION BILL 2018

No. of 2018

A Bill for an Act to establish the Naoero Postal Services Corporation 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 *Naoero Postal Services Corporation Act 2018*.

2 Commencement

This Act commences upon certification by the Speaker.

3 Definitions

In this Act:

‘Corporation’ means the Corporation established under section 4;

‘employee’ means an officer of the Corporation;

‘indecent article’ means any book, newspaper, picture, film, video, DVD, electronic device, photograph, print or writing and, any paper or other thing of any description whatsoever, which has printed or impressed upon it, or otherwise attached thereto or appearing, shown or exhibited in any manner whatsoever thereon, any indecent word, statement, significant sign, or any indecent picture, illustration, or representation, or which unduly emphasises matters of sex, horror, crime, cruelty or violence;

‘Minister’ means the President of the Republic;

‘postage’ in relation to a postal article, means the amount payable for the carrying of the article by post;

‘postage stamp’ includes an imprinted or printed mark, label or design authorised by the Corporation for the purpose of paying postage for a postal article and any other purpose as required by the Corporation and bearing the words “Republic of Nauru”;

‘postal article’ means an article of a kind that under the terms and conditions on which the Corporation supplies postal services, may be carried by post;

‘post box’ means any receptacle established by the Corporation for the lodgement, receipt or handling of postal articles;

PART 2 – NAOERO POSTAL SERVICES CORPORATION

4 Establishment of Corporation

(1) There shall be established a Corporation to be known as the Naoero Postal Services 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.

5 Functions of the Corporation

The functions of the Corporation are to:

- (a) provide postal services for the Republic;
- (b) provide commercial postal services as it considers appropriate; and
- (c) make recommendations and advise the Minister on matters connected with its functions.

6 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 Corporation has the power for or in connection with the performance of its functions to supply:
 - (a) packet and parcel carrying services;
 - (b) philatelic and associated services;
 - (c) courier services;
 - (d) electronic mail services; and
 - (e) funds transfer services.

7 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.

8 Qualification of Directors

- (1) The Cabinet in appointing Directors shall 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.

9 Role of the Board

The Board shall:

- (a) in consultation with the Cabinet, decide the objectives, strategies and policies to be followed by the Corporation; and
- (b) ensure that the Corporation performs its functions in a manner that is proper, efficient and, as far as practicable, consistent with sound commercial practice.

10 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 shall 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 or her 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.

11 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.

12 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.

13 Remuneration of the Board of Directors

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.

14 Liability of Directors

(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.

PART 3 – ACCOUNTS AND AUDIT

15 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.

16 Funds of the Corporation

All monies payable to and received by the Corporation shall be paid into the consolidated funds.

17 Audit of accounts

(1) The accounts of the Corporation are subject to inspection and audit by the Auditor General.

(2) The Corporation shall provide to the Auditor General 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 General shall:
 - (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.

18 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 shall 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 4 – CHIEF EXECUTIVE OFFICER AND OFFICERS

19 Chief Executive Officer

- (1) The Cabinet shall upon the recommendation to the Minister by the Board 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.

20 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 5 – POSTAL SERVICE

21 Postage stamps

- (1) The Corporation shall have the exclusive right to print and issue postage stamps in the Republic.
- (2) The Corporation may cancel and destroy any stamps that are no longer required.

22 Terms and conditions of postal service

- (1) Subject to any express provision of this Act or any other Act, the terms and conditions of a postal service supplied to a person by the Corporation are:
 - (a) so far as the Corporation and the person agree on terms and conditions for the supply of the service, the agreed terms and conditions; and
 - (b) so far as the Corporation and the person do not agree on terms and conditions, the terms and conditions determined by the Corporation that are applicable to the supply of the service.
- (2) Without limiting subsection (1), the terms and conditions determined by the Corporation may make provision in relation to:
 - (a) the kind of articles that may be carried by post and the means by which different kinds of articles may be carried;
 - (b) the carriage of letters and other postal articles;
 - (c) rates of postage;
 - (d) the payment of postage, including the issue and sale of postage stamps, the pre-stamping of postal articles and the use of franking machines; and
 - (e) undelivered letters and other articles including the forfeiture and destruction of such articles.

23 Pricing policy

- (1) The Board shall in consultation with the Minister determine the pricing policy for universal postal services to be provided by the Corporation.
- (2) In determining rates of postage for postal services, the Corporation shall act consistently with the pricing policy made under subsection (1).

24 Operating procedures

- (1) The Board shall prepare guidelines setting out the operating procedures of the Corporation in relation to:
 - (a) the destruction of postage stamps that are damaged or excess to requirements;
 - (b) the opening and destruction of undeliverable mail;
 - (c) the opening and destruction of mail suspected of carrying illegal or dangerous material; and
 - (d) any other prescribed matter.
- (2) The Guidelines prepared under subsection (1) shall be submitted to the Cabinet for approval.

PART 6 – DETENTION AND EXAMINATION OF POSTAL ARTICLES

25 Detention of postal articles

(1) Where any employee has reasonable cause to believe that any postal article is in contravention or has been posted in contravention of:

- (a) the Illicit Drugs Control Act 2004;
- (b) the Agricultural Quarantine Act 1999;
- (c) the Customs 2014, -

that employee may detain the postal article for opening and examination in accordance with subsection (2).

(2) Every postal article detained under subsection (1) may be opened and examined by:

- (a) 2 or more persons specially authorised for the purpose by the Corporation; or
- (b) such authorised person in the presence of:
 - (i) another employee of the Corporation; or
 - (ii) a Customs officer,—

and except as provided in any other enactment, shall not be opened or examined otherwise.

(3) Where a postal article has been opened under subsection (2), before the article is returned to the normal course of carriage, the Corporation shall cause to be endorsed on the cover of the article or on a label affixed to its cover, a notification that the article has been opened by the Corporation and explains the purpose for which the article was opened.

26 Postal articles found to be in contravention of this Act

(1) Where any postal article:

- (a) is detained by the Corporation; and
- (b) on being opened or examined under this Act, is found to have been posted in contravention of the Act, -

the Corporation may seize the postal article and in any such case, the provisions of subsections (2) to (6) apply.

(2) Subject to subsections (3) and (5), the postal article shall be retained by the Corporation pending the outcome of any proceedings against any person for the offence in respect of which the postal article was seized.

(3) If the employee believes on reasonable grounds:

- (a) that the postal article is likely to die, rot, spoil, or otherwise perish; or
 - (b) that the postal article is or is about to become dangerous and that it is necessary in order to avoid the threat of harm to any persons or property, to destroy or otherwise dispose of the postal article immediately, -

the employee may destroy or otherwise dispose of the postal article as the employee thinks fit.
- (4) The Corporation shall ensure that before the article is destroyed, the following information is recorded to the extent to which it is evident without unfastening or physically interfering with the article's cover:
- (a) the sender's name and address;
 - (b) the intended recipient's name and address; and
 - (c) what the article contains.
- (5) Where proceedings are taken against any person for the offence in respect of which the postal article was seized, and, when the proceedings are completed or abandoned, the Corporation shall deliver to the person who is entitled to the postal article, unless, where the court enters a conviction, the postal article is forfeited to the Republic.
- (6) Where no such proceedings are taken within 6 months after seizure under subsection (5), the Corporation shall cause the article to be delivered to the person who appears to be entitled to the postal article.
- (7) Where in any case to which subsection (5) or (6) applies, the person who appears to the Corporation to be entitled to the postal article cannot be found or there is no such person, the postal article is forfeited to the Corporation and may be destroyed or otherwise disposed of as the Corporation thinks fit.

27 Postal articles believed to be in contravention of other enactments

- (1) This section applies to any postal article that:
- (a) is detained under section 25 by the Corporation; and
 - (b) on being opened or examined under this Act, is believed, on reasonable grounds, to be in contravention or to have been posted in contravention, of any other enactment other than this Act.
- (2) Where this section applies to any postal article, the following provisions apply:
- (a) where the postal article is believed to be in contravention or to have been posted in contravention of the Illicit Drugs Control Act 2004, the Corporation shall deliver the postal article to the Commissioner of Police or to such other person as the Commissioner directs and the postal article shall be dealt with in accordance with that Act;

- (b) where the postal article is believed to be in contravention or to have been posted in contravention of the Agricultural Quarantine Act 1999, the Corporation shall deliver the postal article to the Director of Quarantine as if the postal article were unauthorised goods that had been seized pursuant to that Act on the date of that delivery;
- (c) where the postal article is believed to be in contravention of or to have been posted in contravention of the Customs Act 2014, the Corporation shall deliver the postal article to the Controller of Customs and the postal article shall be dealt with in accordance with that Act;
- (d) where the postal article is believed to be in contravention or to have been posted in contravention of any other enactment other than this Act:
 - (i) the Corporation shall notify the appropriate Department and shall comply with any lawful direction given by that Department with respect to the postal article; and
 - (ii) the Corporation may continue to detain the postal article for not more than 2 working days.

28 Valuable postal articles to be kept safely

- (1) Where a postal article is detained by the Corporation and on being opened or examined under this Act is found to contain any valuable or saleable enclosure, the postal article shall be kept safe unless subject to disposal under section 26.
- (2) An employee shall keep and maintain:
 - (a) a list of all postal articles that are detained; and
 - (b) in relation to each such postal article, a memorandum of its contents.

29 Record of postal articles detained and opened

- (1) The Corporation shall make and keep a record of each occasion on which a postal article is detained and is opened or examined under this Act.
- (2) The record shall include brief details of:
 - (a) the reason why the postal article was detained;
 - (b) the contents of the postal article; and
 - (c) how the postal article and its contents were dealt with by the employee after the postal article was opened or examined.
- (3) The records required by this section shall be kept either in written form or in a form that enables the records to be readily accessible and readily converted into written form.

Opening of postal articles to effect delivery

- (1) This section applies to any postal article:
 - (a) that a Corporation is unable to deliver to the addressee because:
 - (i) the postal article bears no address, or bears a wrong or an incomplete or an illegible address; or
 - (ii) the addressee cannot be located; and
 - (b) that does not bear a return address, or that bears a return address that is wrong, incomplete or illegible.
- (2) An authorised employee may open a postal article to which this section applies for the purpose of identifying the addressee or sender of the postal article.
- (3) A postal article may be opened under this section only at the Corporation outlet by:
 - (a) 2 or more persons specially authorised for the purpose by the Corporation; or
 - (b) one such authorised person in the presence of:
 - (i) another employee of that Corporation; or
 - (ii) a Customs officer.
- (4) Subject to subsection (5), if a postal article is opened under this section, the employee shall give notice to that effect and of the reason for opening the postal article to the person to whom the postal article is delivered.
- (5) Where any postal article on being opened under this section:
 - (a) is found to have been posted in contravention of section 27; or
 - (b) is believed, on reasonable grounds, to be in contravention or to have been posted in contravention of any other enactment other than this Act, -

the provisions of this Act apply as if the postal article had been detained.

PART 7 – UNDELIVERABLE POSTAL ARTICLES**Undeliverable postal articles**

- (1) This section applies to any postal article that the Corporation is unable to deliver to the intended recipient by reason of:
 - (a) the postal article bears no address, or bears a wrong or an incomplete or an illegible address; or
 - (b) the intended recipient cannot be located.

- (2) An authorised employee may open the postal article and examine its contents for the purpose of obtaining sufficient information to:
 - (a) deliver the postal article to the intended recipient; or
 - (b) return the postal article to the sender.
- (3) After an authorised employee has opened and examined the postal article, he or she shall:
 - (a) where sufficient information is found to deliver the postal article to the intended recipient, close up the postal article and return it to the normal course of carriage;
 - (b) where paragraph (a) does not apply but sufficient information is found to return the postal article to the sender, close up the postal article and return it to the sender; or
 - (c) otherwise deal with the article under subsection (4).
- (4) If the Corporation does not know who sent the postal article, the Corporation shall keep the postal article in safe custody for at least 3 months or until it is claimed, whichever happens first.

32 Disposal of unclaimed postal articles

Where the Corporation has kept a postal article to which section 30 applies in safe custody for at least 3 months but the postal article remains unclaimed, the employee may destroy or otherwise dispose of the postal article as the employee thinks fit.

PART 8 – OFFENCES RELATING TO POSTAL ARTICLES

33 Wrongful divulgence of information

- (1) Subject to subsection (3), an employee of the Corporation shall not without sufficient cause disclose to any person any information as to the contents of a postal article obtained in the course of the employee's duties.
- (2) Subject to subsection (3), a Customs, Police or Quarantine officer shall not disclose without reasonable and sufficient cause any information from or as to the contents of a postal article obtained in the course of the officer's duties.
- (3) Subsections (1) and (2) do not apply where the disclosure is:
 - (a) reasonably necessary for the enforcement of the criminal laws of the Republic;
 - (b) reasonably necessary for the protection of the public revenue; or
 - (c) required or authorised by any other law.

- (4) Any person who contravenes this section commits an offence and upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 12 months or to both.

34 Posting of objectionable items

- (1) A person shall not post or cause to be posted any postal article containing any noxious substance or thing or any dead animal.
- (2) Any person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 12 months or to both.

35 Posting of indecent articles

- (1) A person shall not post or cause to be posted any postal article containing any indecent article or representation of any kind.
- (2) Any person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 12 months or to both.

36 Posting of dangerous items

- (1) No person shall post or cause to be posted any postal article:
- (a) containing any explosive, dangerous, or destructive substance or fluid; or
 - (b) containing any matter or thing capable, as packed, of causing injury to any person.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 12 months.

37 Unlawful opening of postal articles

- (1) A person shall not open or cause to be opened any postal articles unless he or she is:
- (a) the addressee or authorised representative of the addressee;
 - (b) an employee of the Corporation authorised for that purpose and acting in accordance with the Corporation's operating procedures; or
 - (c) a Customs Officer, Police Officer or Quarantine Officer.
- (2) Any person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 12 months or to both.

38 Theft of postal articles

- (1) A person shall not dishonestly appropriate a postal article including a postal article that appears to have been lost or wrongly delivered by or on behalf of

the Corporation or lost in the course of the delivery to the Corporation with the intention of permanently depriving another person of that postal article.

- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 12 months or to both.

39 Tampering with post box

- (1) A person shall not, without lawful reason, open or tamper a post box.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 6 months or to both.

40 Obstruction of employee of Corporation

- (1) A person shall not intentionally obstruct an employee of the Corporation authorised to act for the Corporation in the execution of his or her duty.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 12 months or to both.

PART 9 – MISCELLANEOUS

41 Protection from liability

The Corporation and its employees shall not be liable in any suit, action or proceeding for anything done or omitted to be done in the bona fide exercise or the purported exercise of a power or function under this Act.

42 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 penalty or punishment in respect of the offences under this Act.

43 Breach of confidentiality

- (1) A Director shall not for any purpose use or knowingly disclose any information or the of any postal article, 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 Director who contravenes subsection (1) commits an offence and 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 Director 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.

44 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.

45 Regulations

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

46 Repeal

The Post and Telegraphy Act 1901 is repealed.