



REPUBLIC OF NAURU

RONWAN CONSOLIDATION (AMENDMENT) BILL 2016

No. of 2016

A Bill for an Act to amend the *Ronwan Consolidation Act 2014* and in turn the *Nauru Phosphate Royalties Trust Act 1968* to ensure the orderly and timely completion of the liquidation and winding-up of the Nauru Phosphate Royalties Trust and the Nauruan Land Owners Royalty Trust Fund administered by it, which commenced under the *Ronwan Consolidation Act 2014*.

Certified: []

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Enacted by the Parliament of Nauru as follows:

1 Short title

This Act may be cited as the *Ronwan Consolidation (Amendment) Act 2016*.

2 Commencement

This Act commences upon certification by the Speaker.

3 Amendment of Ronwan Consolidation Act 2014

The Ronwan Consolidation Act 2014 ('the Act') is amended by the provisions of this Act.

4 Amendment of section 29

Section 29 of the Act is amended by inserting 'subject that in the event of an appointment of a Liquidator to Fund 2 under section 50 of this Act, the foregoing shall not apply and the provisions of section 209 of the Corporations Act 1972 shall apply mutatis mutandis to Fund 2' at the end of section 29.

5 Amendment of section 36

Section 36 of the Act is amended by inserting 'subject that in the event of an appointment of a Liquidator to the Trust under section 50 of this Act, the foregoing shall not apply and the provisions of section 209 of the Corporations Act 1972 shall apply mutatis mutandis to the Trust' at the end of section 36.

6 Insert new section 49

A new section is inserted in the Act as follows:

49 Amendments to the Nauru Phosphate Royalties Trust Act 1968

The *Nauru Phosphates Royalties Trust Act 1968* is amended as follows:

(1) Insert at the beginning of section 5, 'Prior to 31 July 2016:'.

(2) Section 5(1) of the Act is omitted and substituted with the following:

(a) The Trust shall consist of four members appointed by Cabinet from time to time.

(b) For the purposes of Part II of the Act:

(i) Any reference to 'the person by whom the member was appointed' and any like phrase shall be deemed to be a reference to the Cabinet.

(ii) Any reference to 'the person by whom the member or acting member was appointed' and any like phrase shall be deemed to be a reference to the Cabinet.

(iii) Any reference to 'Administrator' shall be deemed to be a reference to Cabinet.

(iv) Any reference to 'Administrator in Council' shall be deemed to be a reference to Cabinet.'

(3) Section 5(3) of the Act is amended by inserting 'Subject to section 13A' at the beginning of section 5(3).

(4) Section 6(1) of the Act is amended by the insertion of 'Until 31 July 2016' at the beginning of section 6(1).

(5) Section 12 is amended by the insertion of 'Until 31 July 2016' at the beginning of section 12.

(6) Section 13 is amended by the insertion of 'Until 31 July 2016' at the beginning of section 13.

(7) A new section 13A is inserted as follows:

13A On 31 July 2016 the office of all members and any acting members including the office of the Chairperson and any acting Chairperson shall cease and be at an end.

(8) A new section 13B is inserted as follows:

13B (1) From 31 July 2016, subject to the powers and functions of any liquidator appointed pursuant to s. 50 of the *Ronwan Consolidation Act 2014*, all of the functions, and powers of the Trust including without limitation the conducting of meetings, deliberations and decisions and the execution of documents, shall be directly discharged, executed and performed by Cabinet.

(2) No member of Cabinet shall receive or be entitled to receive any remuneration nor profit by virtue of

Cabinet discharging, executing and performing such functions and powers.

- (9) Section 15 of the Act is amended by inserting 'Until 31 July 2016' at the beginning of Section 15.
- (10) Section 16 of the Act is amended by inserting 'Until 31 July 2016' at the beginning of Section 16.
- (11) Section 17 of the Act is amended by inserting 'Until 31 July 2016' at the beginning of Section 17.
- (12) A new section 17A is inserted into the Act as follows-

17A From 31 July 2016 meetings of the Trust shall be held at the unfettered discretion of Cabinet and the procedures of such meetings including the keeping and any release of any records of such proceedings shall be determined by Cabinet in its unfettered discretion.

- (13) Sub-Section 27(1) of the Act is amended by inserting 'Until 31 July 2016' at the beginning of Sub-section 27(1).
- (14) Section 32A of the Act is omitted and substituted with the following:

32A Personal liability of members and Cabinet

- (1) The members of the Trust shall not be personally liable for any act or omission done or omitted to be done in the *bona fide* exercise or purported exercise of their powers and duties as members or directors or as other office-bearers of corporations with which the Trust is associated, and they shall be indemnified by the Republic in respect of any liability howsoever incurred in connection with any such act or omission.
- (2) The President and every other member of Cabinet shall not be liable howsoever for any act or omission done or omitted to be done in the *bona fide* exercise or purported exercise of any function or power in relation to the Trust or any Fund administered by the Trust.

7 Insert new section 50

A new section is inserted in the Act as follows:

50 Liquidation

- (1) The President may at any time prior to dissolution of the Trust name appoint a liquidator to aid in the liquidation of the Trust and the liquidation of the Nauruan Land Owners Royalty Trust Fund in accordance with this Act and thereafter the President may remove any liquidator appointed and may appoint another liquidator in place of any liquidator who has resigned or been removed.
- (2) The President shall have full discretion as to the appointment of a liquidator to the Trust and Nauruan Land Owners Royalty Trust Fund including regarding the selection of a liquidator, the fixing of the liquidators remuneration and the form and terms of appointment.
- (3) Upon the appointment by President of a liquidator to the Trust and the Nauruan Land Owners Royalty Trust Fund, the following provisions of Part IX of the *Corporations Act 1972* shall apply to the Trust and the Nauruan Land Owners Royalty Trust Fund mutatis mutandis and strictly for the purposes of such applicable provisions but for no other purpose, the Trust shall be deemed to be a corporation within the meaning of the *Corporations Act 1972*:

Applicable Provisions of the *Corporations Act 1972*:
ss. 164, 165, 166, 167, 168, 170, 175(1), 176, 177, 196, 197(1) & (3), 198, 200(1), 203, 204, 205 and 208.

- (4) Strictly for the purposes of the applicable provisions of the *Corporations Act 1972* enumerated under sub-section (3):
 - (a) the winding-up of NPRT and the Nauruan Land Owners Royalty Trust Fund shall be deemed to have commenced upon the appointment by President of a liquidator;
 - (b) the Trust and the Nauruan Land Owners Royalty Trust Fund shall be deemed to have had no members, shareholders or contributories however this subparagraph (b) shall be entirely without prejudice to the entitlements and rights of Beneficiaries;
 - (c) a reference in such applicable provisions enumerated under sub-section (3) to 'the

Registrar' shall be deemed to be a reference to the President.

- (5) The President shall have the power to direct the liquidator to provide such information and reports as the President shall consider fit.
- (6) The President shall have the power at any time to stay the winding up of the Trust and the Nauruan Land Owners Royalty Trust Fund on such terms and conditions as the President shall think fit.
- (7) For the purposes of the winding-up of the Trust and the Nauruan Land Owners Royalty Trust Fund, all Ronwan capital entitlements of Beneficiaries, remaining unpaid as at the date of the initial appointment of a liquidator under subsection (1), shall be deemed to be debts owed by the Trust to such Beneficiaries.
- (8) For the purposes of the winding-up of the Trust and the Nauruan Land Owners Royalty Trust Fund, any Ronwan Interest entitlements of Beneficiaries and Lifetime Interest Only Holders, remaining unpaid as at the date of the initial appointment of a liquidator under subsection (1), shall be deemed to be debts owed by the Trust to such Beneficiaries and Lifetime Interest Only Holders.
- (9) For the purposes of the winding-up of the Trust and the Nauruan Land Owners Royalty Trust Fund:
 - (a) the Trust shall be deemed to be jointly and severally liable with the Republic of Nauru for all debts assigned under or described in section 28 of the Ronwan Consolidation Act 2014 and for the purposes of the winding-up of the Trust, such debts shall be deemed to be debts owed by the Trust to the Beneficiaries of the Nauruan Land Owners Royalty Trust Fund; and
 - (b) nothing contained herein shall give rise to any right to indemnity or contribution or any other right or remedy on the part of the Trust or the Nauruan Land Owners Royalty Trust Fund against the Republic of Nauru.
- (10) For the purposes of the winding-up of the Trust and the Nauruan Land Owners Royalty Trust Fund, the liquidator is empowered to use and apply any moneys or proceeds held by the liquidator in respect of the Trust in payment of any net-debt or net-liability or net-obligation owed by either Fund 3 or Fund 4 to Fund 2.

- (11) For the purposes of the winding-up of the Trust and the Nauruan Land Owners Royalty Trust Fund, the debts deemed or described under subsections (7), (8) and (9) shall rank equally with any and all other debts due and owing to any creditors of the Trust which are either incurred or remain unpaid after the date of the initial appointment of a liquidator under subsection (1) and after payment of the costs, charges and expenses of the liquidator and the winding-up the remaining property and money of the Trust shall be applied in satisfaction of all such deemed debts and other debts in equal proportion.
- (12) For the purposes of the winding-up of the Trust and the Nauruan Land Owners Royalty Trust Fund the Liquidator shall have the power to sell or dispose of and liquidate any assets and property whatsoever and wheresoever situate owned or held by NPRT on behalf of Fund 2, Fund 3 and/or Fund 4.
- (13) For the purposes of the winding-up of the Trust and the Nauruan Land Owners Royalty Trust Fund the Liquidator shall have the power to exercise voting rights in respect of any company or body corporate controlled by the Trust to:
- (a) procure the sale or disposal of the winding up of any assets and property whatsoever and wheresoever situate owned or held by any such company or body corporate; and/or
 - (b) procure the winding up and/or liquidation and/or de-registration of any such company or body corporate.
- (14) For the purposes of the winding-up of the Trust and the Nauruan Land Owners Royalty Trust Fund the Liquidator shall have the powers specified under section 170 (c) (d) and (e) of the Corporations Act 1972 in the liquidators own right and not as an officer of the Court.