

REPUBLIC OF NAURU

NAOERO NATIONAL ANTHEM EMBLEM AND FLAG PROTECTION BILL 2018

EXPLANATORY MEMORANDUM

The *Naoero National Anthem Emblem and Flag Protection Bill* is a Bill for the *Naoero National Anthem Emblem and Flag Protection Act 2018*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

EXPLANATION OF CLAUSES

PART 1- PRELIMINARY

Clause 1 provides that, once enacted, the short title of the Bill will be the *Naoero National Anthem Emblem and Flag Protection Act 2018*.

Clause 2 sets out when the Bill's provisions will commence which is upon certification by the Speaker.

Clause 3 is the definition section which provides and defines the key terms used in the Bill. These definitions are important because they suggest the intention of the legislature for these key terms to have a specific meaning that differs from its common usage.

PART 2 – NATIONAL ANTHEM

Clause 4 provides that there shall be a National Anthem of the Republic which is described and specified in Schedule 1 of the Act.

Clause 5 requires a person who is within or comes upon a public place or an area at which the National Anthem is being sung or played to come to a standstill position and remain in the position until the playing or singing of the National Anthem is completed.

This clause also applies to drivers of vehicles. Drivers of vehicles are required to refrain from driving their vehicles within a public area or place or coming upon a public area or place where the National Anthem is being sung or played. The vehicle needs to be motionless during this time.

PART 3 – PROHIBITED USE OF THE NATIONAL ANTHEM

Clause 6 prevents a person, without the prior approval of the Minister, from using the National Anthem or any lyrics of the National Anthem:

- in any trademark, slogan or logo;
- for any advertising purpose; or
- for any commercial purpose.

Penalty - a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 5 years or to both.

Clause 7 provides that a person shall not:

- disrespect or insult the National Anthem by any word, conduct, action or in writing; or
- be disrespectful by any word, conduct or action while the National Anthem is being sung or played in a public place.

Penalty - a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 5 years or to both.

PART 4 – NATIONAL EMBLEM

Clause 8 provides that there shall be a National Emblem of the Republic.

Clause 9 provides that a person must not use the Emblem for any purpose whatsoever without the prior written approval of the Minister.

Penalty - a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 5 years or to both.

PART 5 – UNAUTHORISED USE OF NATIONAL EMBLEM

Clause 10 provides that a person shall not use or associate the Emblem with any action, speech, writing or any other means for the purposes of demeaning, disrespecting and insulting the Republic. The Emblem must not be used as a political party or a candidate logo during a national election campaign.

This clause also prevents any person from using any design which in any way resembles the Emblem in any manner likely to deceive another person.

Penalty - a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 5 years or to both.

Clause 11 provides that a person shall not without the prior written approval of the Minister use the Emblem or any part of the Emblem:

- in any trademark or logo;
- for any advertising purpose;
- in any form whatsoever that involves depiction, engraving or embossing on merchandise; or
- for any commercial purpose.

Penalty - a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 5 years or to both.

Clause 12 provides that a person shall not:

- modify the Emblem by placing any emblem, letters, slogan, words or representation on it; or
- use, display, destroy, burn, mutilate, tear or damage any image bearing the Emblem.

Penalty - a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 5 years or to both.

PART 6 – THE FLAG OF THE REPUBLIC

Clause 13 provides that there shall be an official Flag of the Republic of Nauru which is described in Schedule 3.

Clause 14 requires all persons in the Republic to respect the Flag.

Clause 15 provides that person who is within or comes upon a public place or area where the Flag of the Republic is being raised or lowered shall go into a standstill position and remain in that position until the raising or lowering of the flag has been completed.

This clause also applies to drivers of vehicles. Drivers of vehicles are required to refrain from driving their vehicles within a public area or place or coming upon a public area or place where the flag is being raised or lowered. The vehicle needs to be motionless during this time.

Clause 16 provides that the Flag may be hoisted or displayed on any premises including any school, home, institution, building or event.

This clause allows the Flag to be used or worn as part of any attire or costume at any national sporting or entertainment event.

The Flag whether displayed on a public or private premises shall be displayed in a place of prominence.

The Flag may be used or displayed for any other purposes in the media.

Clause 17 provides that the Flag shall be lowered to half-mast as a token of mourning and to commemorate the funerals of:

- the President;
- a Cabinet Minister; and
- such other persons as may be approved by the Minister from time to time.

PART 7 – PROHIBITED USE OF THE FLAG

Clause 18 provides that a person shall not:

- modify the Flag by placing any emblem, letters, slogan, words or representation on it; or
- use, display, destroy, burn, mutilate, insult, damage, injure or tear the Flag in any manner.

Penalty - a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 5 years or to both.

Clause 19 provides that a person shall not display, destroy, burn, mutilate, insult, damage, injure or tear the Flag:

- with the intent to incite violence or any breach of peace; or
- under circumstances in which that person knows it is reasonably likely to incite or promote violence or a breach of peace.

Penalty - a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 5 years or to both.

Clause 20 provides that a person shall not without the prior written approval of the Minister use the Flag or any part of the Flag:

- in any trademark or logo;
- for any advertising purpose; or
- for any commercial purpose.

Penalty - a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 5 years or to both.

Clause 21 provides that a person shall not without the prior written approval of the Minister produce, depict, engrave or emboss the Flag or any part of the Flag onto any commercial medium or merchandise, uniform, attire or any other item.

Penalty - a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 5 years or to both.

Clause 22 provides that a person shall not use the Flag as a political party logo or a candidate logo for any campaigning for national elections.

Penalty - a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 5 years or to both.

Clause 23 provides that where the Flag is in such condition rendering it no longer fit for display or use, the Flag shall be disposed of in a dignified way by burning in private after being granted approval by the Cabinet.

PART 8 – MISCELLANEOUS

Clause 24 provides that where an offence has been committed under this Act by 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.

Upon conviction, the court may impose:

- (a) in case of a corporation, firm, society or other body of persons a fine not exceeding \$100,000; 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 \$20,000 or a term of imprisonment not exceeding 12 months or both.

Clause 25 vests jurisdiction in the District Court to hear and determine offences under the Act and to impose the full penalties in respect of the said offences.

This is necessary given that the proposed penalties under the Act are beyond the jurisdiction of the District Court. Under section 18 of the Courts Act 1972, the District Court may be vested jurisdiction by any other written law and this clause accordingly vests that jurisdiction in the District Court.

Clause 26 provides that all Police officers are authorised officers and may exercise all such powers as may be necessary for the enforcement of this Act.

Clause 27 provides that Cabinet shall make regulations to prescribe all matters to give effect to the Act.