

REPUBLIC OF NAURU
CENPAC CORPORATION BILL 2018
EXPLANATORY MEMORANDUM

The *Cenpac Corporation Bill* is a Bill for the *Cenpac Corporation 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 Act will be the *Cenpac Corporation Act 2018*.

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

Clause 3 defines certain terms used in the Bill.

PART 2 – CENPAC CORPORATION

Clause 4 provides for the continuation of the current Cenpac Inc Corporation as a corporation under this Act under the transitional provision. The name of the corporation is changed from Cenpac Inc Corporation to Cenpac Corporation. This is to regularise the statutory corporation under this Bill as opposed to a corporation which has to be incorporated (reference to 'Inc') under the Corporations Act 1972.

The Corporation may be:

- (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.

The Corporation shall have a seal and the Chief Executive Officer shall be the only person whose signature authenticates the seal.

Clause 5 provides for the functions of the Corporation which is to:

- (a) establish, operate, manage and invest in communication services including internet services;

- (b) establish, operate and manage a link for accessing the world wide web and international gateway for communication to and from the Republic;
- (c) establish, operate and maintain host internet service provider for wholesale and retail purposes;
- (d) register, assign and allocate domain names under Nauru's internet country code to – level- domain (ccTLD).nr;
- (e) establish, and operate commercial business associated with the communication and broadcasting sector or such other activities as the corporation deems appropriate;
- (f) make prudent and secured investments to ensure the viability of the corporation;
- (g) perform such other functions or exercises such other powers conferred on the Minister under the Act; and
- (h) make recommendations and advise the Minister on matters connected with its functions.

Clause 6 provides for the powers of the Corporation which is to do all that is necessary, convenient or appropriate to be done whether in the Republic or elsewhere to fulfil its functions.

Clause 7 provides that the Board of Directors shall consist of 3 members who are appointed by Cabinet based on the Minister's recommendation. The Cabinet based on the recommendation of the Minister shall appoint a member to be the Chairperson of the Board. The Directors' term of appointment shall not exceed 2 years and they may be eligible for reappointment. The terms and conditions of the Board's appointment are to be approved by the Cabinet.

Clause 8 provides that in appointing Directors, the Cabinet shall have regard as to whether the potential Directors have collective possession of the proper knowledge and skills to assist the Corporation in performing its functions. A person who is not qualified to be appointed as a Director 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.

Clause 9 provides that the role of the Board is to consult the Cabinet to decide the objectives, strategies and policies to be followed by the Corporation and ensure that the

Corporation performs its functions in a manner that is proper, efficient and as far as practicable consistent with sound commercial practice.

Clause 10 provides for the meetings of the Board. The Board shall regulate its own procedures for its meetings. The Chairperson shall appoint the times and places of the meeting of the Board and the Secretary may serve written notices of such meetings to the Directors. The quorum of the meeting is 2 directors assembled in a time and place so appointed.

The Chairperson shall preside over the meetings of the Board but in his or her absence a Director shall preside. Each director has one vote and the decision of the Board shall be that of the majority.

The Chief Executive Officer or authorised officer in the absence of the Chief Executive Officer shall be required to attend the meetings of the Board. The Board will appoint a Secretary to the Board, who shall maintain records of all minutes, records and proceedings of the Board meetings.

Clause 11 outlines the responsibilities and duties of Directors which are severally and jointly at all times to:

- (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.

No breach is committed by a Director if he or she is carrying out the responsibilities and duties in accordance with the directions of the Minister or Cabinet under the Act.

Clause 12 provides for the vacation of office of a Director. The Cabinet may based on the recommendation of the Minister revoke the appointment of a Director.

The Minister shall by notice in the Gazette declare the office of the Director vacant if:

- (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.

Clause 13 provides that the Directors are not entitled to fixed remuneration but will be paid a reasonable allowance as determined by the Cabinet.

Clause 14 provides for the liabilities of Directors. The Directors shall not be personally liable for any act or made in his or her official capacity in good faith and in exercise of reasonable care and diligence in the course of the operations of the Corporation. The Republic shall indemnify and keep the Directors indemnified for any liability incurred in connection with any act or omission

PART 3 – ACCOUNTS AND AUDIT

Clause 15 provides for the keeping of accounts. 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.

Clause 16 provides that all monies payable to and received by the Corporation are to be paid into a bank account approved by the Cabinet for that purpose.

Clause 17 provides that the accounts of the Corporation are subject to the inspection and audit by the Auditor General. The Corporation shall provide 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.

The Auditor General shall:

- (a) audit the accounts; and
- (b) report to the Corporation on the accounts within:
 - (i) 2 months after receiving the accounts; or
 - (ii) another period determined by Parliament.

Clause 18 provides that the Corporation shall in accordance with the prescribed procedures cause to prepare an annual report for its activities in the previous financial

year. The Corporation shall forward a copy of its annual report to the Minister who shall table it in Parliament. The Minister shall lay the annual accounts and reports before Parliament. The annual report of the Corporation shall incorporate its annual accounts.

PART 4 – CHIEF EXECUTIVE OFFICER AND OFFICERS

Clause 19 provides that the Cabinet based on the recommendation of the Board may appoint a Chief Executive Officer of the Corporation. The Chief Executive Officer shall hold office subject to the terms and conditions as determined by the Cabinet at the time of appointment. The Chief Executive Officer shall be responsible for the administration and management of the operations and business of the Corporation and administrative control of its officers.

Clause 20 provides that the Corporation may employ any person to assist the Corporation in the exercise of its powers and performance of its function. The terms and conditions of employment may be as determined by the Chief Executive Officer.

Clause 21 provides for the Board to establish an operational manual for the conduct of the business of the Corporation. This operational manual needs Cabinet approval.

PART 5 – ASSETS AND LIABILITIES

Clause 22 clarifies that the Corporation is incorporated under the Corporations Act 1972. The Corporation is reconstituted as a statutory corporation under the Bill with the following consequences:

- (a) all funds previously vested to Cenpac Inc Corporation now vest to the Corporation established under this Bill;
- (b) all property, assets, charges and interest of Cenpac Inc Corporation whether within or outside the Republic now vest to the Corporation established under this Bill;
- (c) all liability for payment of loans and funds borrowed from creditors by Cenpac Inc Corporation whether within or outside the Republic shall be the debts of and be paid by the Corporation under this Bill;
- (d) all contracts and agreements with Cenpac Inc Corporation which are in force shall be deemed to have been replaced and made under the Corporation established under this Bill;
- (e) all obligations of Cenpac Inc Corporation under any written law of the Republic is transferred to the Corporation established under this Bill; and
- (f) subject to paragraph (c), the Corporation shall not be liable or responsible for any debt or liability of the Cenpac Inc Corporation other than such debt or liability duly approved by the Cabinet.

PART 6 - MISCELLANEOUS

Clause 23 provides that a Director shall not for any purpose use or knowingly disclose information or the contents of any communication which he or she becomes aware of in connection to the Corporation, except to the extent as:

- (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.

If a Director does contravene this clause, he or she is liable upon conviction to a fine of not more than \$50,000 or term of imprisonment of not more than 5 years or both. A Director who is convicted is liable to the Corporation for any profit made in consequence of any damage suffered by the Corporation as a result of the offence.

Clause 24 provides that any Board Director and Chief Executive Officer who intends to submit a nomination as a candidate in the general election must at least 3 months prior to the nomination, submit their resignation from their position on the Board.

Clause 25 provides that Cabinet can make regulations to give effect to the Act.