

REPUBLIC OF NAURU
OZONE LAYER PROTECTION BILL 2017
EXPLANATORY MEMORANDUM

The *Ozone Layer Protection Bill* is a Bill for the *Ozone Layer Protection Act 2017*.

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 *Ozone Layer Protection Act 2017*.

Clause 2 sets out when the Bill's provisions will commence.

Clause 3 outlines the general objectives of the Act which are to:

- prevent and minimise the release of ozone depleting substances into the environment;
- control and reduce the importation, exportation, use, sale and storage of ozone depleting substances;
- manage and control the phasing out of ozone depleting substances as soon as possible except for essential uses; and
- fulfil the obligations of the Republic under the Vienna Convention for the Protection of the Ozone Layer and Montreal Protocol on Substances that Deplete the Ozone Layer.

Clause 4 is the definitional section of the Bill. It provides the meaning of key words that are used consistently throughout the Bill.

Clause 5 provides for the exercise of a key tenet in the Montreal Protocol which is the precautionary principle. This is to be applied where a person who has responsibilities, functions and powers under the Act involving the manufacture, import, export, use, sale, handling, movement and storage of ozone depleting substances within the Republic discharges such responsibilities, functions and exercise of such powers.

The precautionary principle applies in the event that there is a threat or damage to the environment or risk to human health in the Republic, a lack of scientific certainty regarding the adverse effects from the importation, use, storage, handling or movement of ozone depleting substances within the Republic is not used as an excuse to not make a decision.

PART 2 – ADMINISTRATION

Clause 6 outlines the functions of the Department for the purposes of this Act which are to:

- advise the Minister and Cabinet on policies for the reduction in emission of ozone depleting substances;
- formulate and implement strategies and action plans for the Republic in relation to the phasing out of any controlled substances or refrigerants;
- survey, access and analyse the consumption and use of any controlled substances or refrigerants;
- analyse any future demands for any controlled substances or refrigerants;
- impose a quota scheme on the importation of controlled substances and any other matter relating to the application of a quota scheme to such imports as prescribed by Regulations;
- establish a monitoring process and data collection which relates to the use of controlled substances or refrigerants;
- promote and implement public and industry awareness and training programmes which relate to the management of any controlled substances or refrigerants;
- establish codes of practices, standards, guidelines or procedures to manage the use of controlled substances or refrigerants;
- administer the licence requirements or conditions under the provisions of the Act; and
- implement and review the Republic's programme and action plan formulated under the Convention and the Montreal Protocol.

Clause 7 outlines the powers of the Secretary for the purposes of the Act which are to:

- grant licences in accordance with this Act and the regulations;
- monitor and enforce compliance by licensees of the terms and conditions of their licences;
- approve guidelines and codes of good practice;
- vary the conditions of the licences; and
- revoke licences.

Clause 8 allows the Secretary to delegate his or her powers or functions under the Act with or without conditions to any person.

PART 3 – QUOTA AND LICENCES

Clause 9 requires any application for a licence applied under this Act to be made in the prescribed form to the Secretary. The applicant needs to pay the prescribed fee before the Secretary grants the licence.

The applicant needs to state the type of licence the applicant is seeking - whether it is to import, export, for premises, sale and purchase or handling.

The Secretary may grant licences subject to conditions that the Secretary deems necessary. Where the Secretary decides not to grant a licence in a particular case, the Secretary shall give reasons for not granting the licence.

Clause 10 outlines the criteria available to the Secretary to consider in issuing licences:

- whether the applicant meets the criteria for the relevant licence;
- the applicant has adequate resources, equipment, systems and mechanisms to comply with this Act and any applicable codes of practice;
- the application of any import quota indicating the maximum quantity of controlled substances that an import licensee is allowed to import into the Republic within any calendar year in accordance with any regulations made under this Act;
- the need to phase out ozone depleting substances except for essential use; and
- any amount of controlled substances in bulk or prescribed goods or refrigeration equipment that uses refrigerants will only be stored and used at approved ozone depleting substance premises.

For a handling licence, the applicant shall have:

- more than 2 years of practical experience in servicing and maintenance of refrigeration and air conditioning equipment;
- adequate knowledge of the environmental implications of controlled substances or refrigeration equipment that uses refrigerants;
- adequate knowledge of this Act and applicable codes of practice;
- adequate resources, equipment, systems and mechanisms to comply with this Act and any applicable codes of practice.

For a premises licence, the applicant shall have adequate knowledge of the environmental implications of controlled substances or refrigeration equipment that uses refrigerants; adequate knowledge of this Act and applicable codes of practice; and adequate resources, equipment, systems and mechanisms to comply with this Act and any applicable codes of practice.

For an import or export licence, the applicant shall have a current premises licence; and sufficient approved HCFC quota.

For a sale or purchase of refrigerant licence, the applicant shall have a current premises licence; and relevant knowledge on the environmental implications of refrigerants.

Clause 11 provides that a licence granted shall be for the specified activity in the licence and subject to special or general conditions.

Clause 12 provides for the validity of the licence issued under this Act to be for a term of 2 months from the date licence was granted and not later than 31st December of the same year.

Clause 13 provides for licence renewal. The Secretary may deny a renewal. If:

- (a) the licensee has breached
 - (i) 1 or more licence conditions; or
 - (ii) any provision of the Act or regulation, rule or order made under the Act.

- (b) there are changes to the any of the following before or after the commencement of the licence, requires a renewal of new conditions or denial of a renewal as the case requires:
 - (i) any international treaty to which the Republic is a party;
 - (ii) any commitment or standards applicable to the Republic; or
- (c) the Secretary decides that a renewal on a new conditions or denial is consistent with the manner specified under the Act and regulations for licensing.

Written reasons for the new conditions or denial of a licence shall be provided by the Secretary at the request of the licensee.

Clause 14 is the appeal provision which allows a person to appeal any decision of the Secretary under the Act to the Minister. Such appeals may only be made within 21 days of the decision by the Secretary.

PART 4 – REGISTER OF LICENCES

Clause 15 gives the Secretary the responsibility for establishing and maintaining a register of licenses granted under the Act. The register shall be available for inspection by the applicant during business hours and if any person requires copies of entries, these will be provided upon payment of the prescribed fee.

The Secretary shall within seven days record in the Register any variations or changes made to any licences under section 13.

PART 5 – PROHIBITIONS

Clause 16 makes it an offence for people to import or export controlled substances, prescribed goods or refrigeration equipment that uses refrigerants without a licence as required under the Act.

Any person who imports or exports without a licence commits an offence and is liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 24 months or to both.

Clause 17 makes it an offence for a person to manufacture any controlled substance, prescribed good, or refrigeration or air conditioning equipment that uses a refrigerant in the Republic.

Any person who manufactures these items commits an offence and is liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 24 months or to both.

Clause 18 makes an offence for any sale and purchase of any prescribed goods or refrigeration equipment.

Any person who sells or buys these controlled substances in bulk or refrigerants commits an offence and is liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 24 months to both.

Clause 19 is the offence provision which prevents a person from handling a controlled substance, a prescribed good or refrigeration or air-conditioning equipment that uses refrigerants if such person is not a licensed handler.

A licensed handler is someone who has undergone a training approved by the Secretary and is aware of the environmental implications of a controlled substance, a prescribed good or refrigeration or air-conditioning equipment that uses refrigerants.

Clause 20 provides that a person must not have in their premises a controlled substance, a prescribed good or refrigeration or air-conditioning equipment that uses refrigerants - for sale, manufacture or purchase for resale.

PART 6 - AUTHORISED OFFICERS

Clause 21 allows the Minister to authorise an officer of the Department or a Police officer or a Customs officer to be an authorised officer for the implementation of the Act. The authorisation of authorised officers shall be by notice in the Gazette.

Clause 22 requires authorised officers to be issued with identification cards with the exception of police officers.

Identification cards shall be produced by the authorised officers at the request of a person in relation to whom the authorised officers intend to exercise their powers. Police officers shall produce their Police identification card.

Identification cards shall contain the following information:

- name and a recent photograph of the authorised officers;
- state that the persons are authorised officers for the purposes of this Act;
- the period of validity of the identification card; and
- any conditions in the instrument of appointment that limits his or her powers as an authorised officer.

Clause 23 outlines the powers of authorised officers for the purpose of monitoring compliance with the law or for investigating actual or suspected breaches having regard to the objectives of the Act.

Powers include:

- (a) powers of entry and inspection of any aircraft, vessel or premises; and, powers of confiscation, examination of documents and taking of photographs and recordings, if there is reasonable suspicion that:
 - (i) controlled substance are or have been stored in bulk;
 - (ii) refrigerants are or have been stored, sold or supplied; or
 - (iii) handling of a controlled substance or prescribed goods are or have been carried out; and

- (b) confiscation of any controlled substances, prescribed goods or refrigeration equipment that uses a refrigerant suspected of being handled contravention to the Act;
- (c) requiring a person to provide any document reasonably required as proof in relation to the enforcement of this Act;
- (d) examining, copying or taking extracts of a document produced under paragraph (c) or require a person to provide a copy; and
- (e) taking photographs, films, audio, video or other recordings reasonably required in relation to the enforcement of this Act.

It is an offence for any person to refuse to comply with any of the authorised officer's requirements and such person is liable upon conviction to a fine not exceeding \$10,000.

Clause 24 allows Customs officers to assist with verifying the goods which are crossing the Republic's borders. The purpose of verification is to check whether the goods contain or are made with or designed for controlled substances or is a prescribed good or refrigeration equipment that contains refrigerants.

An authorised officer or customs officer in this instance may seize and detain any goods that have not been granted approval by the Secretary for entry into or exit out of the Republic.

Clause 25 enables authorised officers to seize and detain controlled substances or prescribed which the authorised officers have reasonable cause to believe are being imported, exported, manufactured, sold or purchased and handled in breach of the Act.

This clause further empowers the Minister to make regulations prescribing the procedure for the seizure and detention of the controlled substances and prescribed goods.

Clause 26 requires authorised officers to issue a notice of seizure when an offending related good has been seized and is liable for forfeiture. The notice of seizure will set out the reason for the seizure of the offending related good or substances. This is consistent with powers accorded to Customs officers under the Customs Act 2014.

Clause 27 outlines the process for the return or forfeiture of offending related goods.

The court may grant an order on the application of the prosecution for the disposal of controlled substances, prescribed goods or refrigeration or air conditioning equipment that uses refrigerants. The convicted person shall bear the cost of the disposal of controlled substances, prescribed goods or refrigeration or air conditioning equipment that uses refrigerants.

Clause 28 provides that if the authorised officer considers on reasonable grounds that there has been a contravention of the Act by any person, the authorised officer may request the Secretary to prevent the importation of such goods until the importer or the owner or the purchaser of the goods, as the case may be, can show that there has not been any breach of the Act.

Re-export of such goods is at the expense of the importer.

PART 7 – DISPOSAL AND HANDLING

Clause 29 relates to the disposal of controlled substances, prescribed goods or refrigeration or air conditioning equipment. Disposal of ozone depleting controlled substances, prescribed goods or refrigeration or air conditioning equipment shall be at the expense of the responsible person.

This clause makes it an offence for any person to knowingly, negligently or recklessly dispose into the atmosphere any ozone depleting substance from any prescribed goods or refrigeration or air conditioning equipment.

The person who knowingly, negligently or recklessly disposes or cause to be disposed into the atmosphere an ozone depleting substance commits an offence and upon conviction is liable to a fine of not more than \$100,000.

Clause 30 outlines the process for the handling of controlled substances, prescribed goods or refrigeration or air conditioning equipment that uses refrigerants, which can cause serious risks to health if they are not handled, stored or used properly.

This clause requires persons who handle prescribed goods or refrigeration or air conditioning equipment to successfully complete environmental awareness trainings approved by the Secretary in consultation with the Minister on ozone depleting substances. A person who completes this training shall be awarded a certificate certifying that the person is a duly licenced person. The certificate is non-transferable.

PART 8 – TESTING OF PRESCRIBED GOODS, REFRIGERATION OR AIR CONDITIONING EQUIPMENT

Clause 31 ensures that a person who conducts the servicing or testing of any prescribed goods or refrigeration or air conditioning equipment that uses refrigerants is properly certified under this Act or regulations or, the person has access to refrigerant identifier equipment that is capable of collecting and capturing the refrigerant.

The testing equipment used by the handler shall be internationally accredited or is according to international standards.

This provision places the responsibility on a person that conducts any testing or servicing of any such goods or equipment and the requirements they must meet.

PART 9 – RECORD KEEPING

Clause 32 outlines the record keeping requirements for licensees. This is one of the Republic's obligations under the Montreal Protocol and which will ensure proper record keeping and reporting systems.

Licensees are required to keep the records containing the quantify and identity of all controlled substances, prescribed goods or refrigeration equipment that uses

refrigerants, date of import, export, sale or purchase and if applicable the certificate number of the licensed depleting substance handler. The licensee is to make the records available to the Department on request from a period of 5 years from the date of the performance of the work.

PART 10 – OFFENCES

Clause 33 makes it an offence for any person to fail to comply with the terms and conditions of a licence granted under this Act. Any person who fails to comply with the terms and conditions of a licence commits an offence and is liable upon conviction to a fine not exceeding \$50,000 000 or to a term of imprisonment not exceeding 12 months or to both.

Clause 34 makes it an offence to obstruct, hinder or in any way interfere with any authorised officers in the performance of their duties. Upon conviction such person is liable to a fine not exceeding \$50,000 or to a term of imprisonment of not more than 12 months or to both.

Clause 35 makes it an offence for any person to make or provide false or misleading information in any application made to the Secretary or Department. Any person who makes or provides false or misleading information commits an offence and is liable upon conviction to a fine not exceeding \$50,000.

PART 11 – MISCELLANEOUS

Clause 36 protects authorised officers from liability for an act done or deemed to be done or omitted to be done in good faith in the exercise of a power or performance or purported performance of a function under the Act.

Clause 37 is the provision which allows any amendments to the Convention or Montreal Protocol to which Nauru is a signatory to have force of law in Nauru.

Clause 38 vests jurisdiction in the District Court to hear and determine offences under the Act and to impose the 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 39 empowers the Cabinet to make regulations prescribing all matters necessary or convenient to be prescribed to give effect to the Act. The regulations may provide for the following:

- any forms that are required under this Act;
- the fees for any applications or services that are required to be paid under this Act; and

- the amendment of the Schedules.

Schedule 1 lists the chemicals that contain ozone depleting substances.

Schedule 2 lists the prescribed goods – as used throughout the Bill.