

# REPUBLIC OF NAURU

## DEPUTY MINISTERS BILL 2023

### EXPLANATORY MEMORANDUM

The *Deputy Ministers Bill 2023* is a Bill for an Act to repeal the *Deputy Ministers Act 2019*, to establish the office of Deputy Minister, to provide for the appointment of Deputy Ministers and the assignment of their functions and powers and for related purposes.

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

#### EXPLANATION OF CLAUSES

**Clause 1** provides the short title of the new legislation. Upon enactment, the new legislation may be cited as the *Deputy Ministers Act 2023*.

**Clause 2** provides for the commencement of the new legislation, which is the date certified by the Speaker of the Parliament.

**Clause 3** is the interpretation provision of the Act. This Clause defines the terms ‘function’, ‘instrument’ and ‘public enterprise’.

**Clause 4** provides for the establishment of the office of Deputy Minister. This Clause provides legal basis for the recognition of Deputy Ministers. This Clause also clarifies that the office of Deputy Minister is not an office of profit in the service of Nauru.

**Clause 5** provides for the appointment of a Deputy Minister. This Clause empowers the President to appoint a member of the Parliament to be a Deputy Minister. Any appointed under this Clause must be notified in the Gazette.

For the avoidance of doubt, the President, the Speaker and a Minister are not qualified to be appointed as a Deputy Minister.

**Clause 6** requires a Deputy Minister who has been appointed by the President to subscribe to the oath or affirmation of office. The oath and affirmation of office are as set out in Schedule 1.

**Clause 7** provides that the President may assign such functions and powers to a Deputy Minister to enable the Deputy Minister to assist a Minister in the administration of any government business that has been assigned to that Minister. This assignment will be made in the form as set out in Schedule 2 and will be given to a Deputy Minister once he or she is appointed and assigned such functions and powers. Any assignment of functions and powers under this Clause must be notified in the Gazette.

**Clause 8** sets out in detail the functions and powers of Deputy Ministers. This provision intends to clarify what Deputy Ministers can do, what powers they have, what they are accountable for and who they are accountable to.

In the performance of their assigned functions and the exercise of their assigned powers, Deputy Ministers shall:

- (a) make recommendations to the Minister responsible for the portfolio for any efficiency or enhancement in the delivery of any services or administration of any business of the Government that has been assigned to the Minister in relation to the portfolio;
- (b) upon the direction or approval of the Minister responsible for the portfolio, prepare and sign Cabinet submissions for Cabinet's consideration;
- (c) upon the direction or approval of the Minister responsible for the portfolio, deliver ministerial statements in the Parliament in relation to the portfolio;
- (d) upon the direction or approval of the Minister responsible for the portfolio, answer any questions raised in the Parliament in relation to the portfolio;
- (e) attend official meetings, whether locally or abroad, on behalf of, or together with, the Minister responsible for the portfolio;
- (f) attend official ceremonies and events, whether locally or abroad, on behalf of, or together with, the Minister responsible for the portfolio;
- (g) execute instruments in accordance with Section 14 of the Act;
- (h) give lawful directions to the Secretary responsible for the portfolio or any employee of the relevant department;
- (i) subject to any written law governing the instrumentality of the Republic that falls within his or her assignment, give lawful directions to any member or director of the Board or any employee of the instrumentality; and
- (j) subject to the *Public Enterprises Act 2019*, give lawful directions to any director or employee of a public enterprise that falls within his or her assignment.

This Clause also affords Deputy Ministers with all the powers necessary to enable them to perform their functions.

**Clause 9** states that the Minister responsible is not prohibited from personally performing a function or exercising a power by reason of the fact that the function or power is assigned to a Deputy Minister. In addition, the Minister may, in consultation with the President, alter the

decision of a Deputy Minister. This means that if a Minister disagrees with the decision of a Deputy Minister, the Minister may only reverse such decision after consulting with the President.

**Clause 10** provides that a Deputy Minister is responsible and accountable to his or her line Minister for any decision that he or she makes, any instrument that he or she executes, any direction that he or she gives to another official and for his or her performance of any other function or exercise of any other power.

**Clause 11** provides that a Deputy Minister is responsible and accountable to the Parliament for any ministerial statement that he or she delivers in the Parliament or for any answer to any question that is raised in the Parliament. A Deputy Minister is assigned functions in respect of the Parliament on the approval and direction of the Minister. It follows that the Deputy Minister must be responsible for what he or she says in the Parliament and what he or she presents in the Parliament. The reason for that responsibility is that the Deputy Minister is expected to be performing some of those functions for which he or she is compensated by the payment of monetary allowances.

**Clause 12** deals with attendance and participation of Deputy Ministers in Cabinet meetings. This Clause allows the President to issue a general invitation to a Deputy Minister to attend to and participate in Cabinet meetings with the Ministers. This invitation will be issued in writing in the form as set out in Schedule 3. The invitation gives discretion to the Deputy Minister to attend to and participate in the Cabinet meetings.

This Clause also provides that the President may give a specific direction, in the form as set out in Schedule 3, to a Deputy Minister to not attend to or participate in a Cabinet meeting. The President may also withdraw an invitation that he or she has already issued to a Deputy Minister. This will be in the form as set out in Schedule 4. This allows the President, who is the Chairperson of the Cabinet, to only meet with his or her Cabinet Ministers. This is important as it ensures that the President and the Cabinet will be able to discuss matters which may not necessarily require the involvement of Deputy Ministers. The reason for not inviting Deputy Ministers will remain with the President and he or she is not required to provide any reasons.

**Clause 13** sets out the grounds for a which a Deputy Minister ceases to hold office. These are:

- (a) upon the election of a President;
- (b) upon resigning from office under his or her hand and by delivering his or her written resignation to the President;
- (c) upon being removed from office by the President;
- (d) upon ceasing to be a member of the Parliament; or

(e) upon dissolution of the Parliament.

Any vacancy in the office of a Deputy Minister must be notified in the Gazette.

**Clause 14** deals with the execution of instruments. A Deputy Minister must execute an instrument as directed and approved in writing by the President or the responsible Minister. If a Deputy Minister executes an instrument without the prior written approval of the President or the Minister, the instrument is deemed to be void.

**Clause 15** sets out the obligations of secrecy and confidentiality. A Deputy Minister must maintain secrecy and confidentiality on all matters and information to his or her knowledge as obtained in the performance of his or her functions or the exercise of his or her powers.

**Clause 16** empowers the Cabinet to make regulations to give effect to the provisions of the Act. The Cabinet may also make regulations to amend any of the functions and powers of a Deputy Minister under the Act.

**Clause 17** repeals the *Deputy Ministers Act 2019*.

**Clause 18** is the savings and transition provision. This Clause ensures that any act done or decision made by a Deputy Minister under the repealed Act is saved and continues as though it were made under the Act.

This Act also ensures that the oaths and affirmations of office that were subscribed by Deputy Ministers under the repealed Act are deemed to have been under the Act.

**Schedules 1 to 4** set out the respective forms as required under the respective provisions.