

Nauru Trust Fund Bill 2012

EXPLANATORY MEMORANDUM

BACKGROUND AND OBJECTIVES

The Nauru Trust Fund (the Fund or NTF) is a key component of the Government's National Sustainable Development Strategy (NSDS). It provides a vehicle to put aside and invest a proportion of Government royalties from the new phase of secondary mining of phosphate, together with contributions from foreign states and international institutions.

The Fund will ensure future generations of Nauruans will benefit from the short term exhaustible phosphate resource, which is only expected to last a further 20 years.

Nauru's history of incredible wealth generated from marine phosphate deposits, the subsequent environmental devastation to the island and squandering of that wealth through mismanagement, bad investments, misappropriation and high living are well known. The proposed international governance structure of the Fund will ensure that no Nauruan Government can take unilateral action in respect of the Fund's resources.

The purpose of the Fund is to contribute to the long-term viability of Nauru by providing an additional source of revenue for recurrent expenses of the Government of Nauru with a number of objectives:

- To assist the Government to achieve greater financial autonomy in the management of its recurrent budget
- To enable the Government to maintain and if possible, improve existing levels of social infrastructure and services
- To enable the capacity of the Government to receive and effectively utilise external capital development and technical assistance
- To enable the Government to meet the long-term maintenance and operating costs of social and economic infrastructure and services
- To assist the Government to develop the economy of Nauru.

In particular, the Fund is designed to set aside resources now so as to provide financial security for future generations of Nauruans who have not had the advantage of the wealth of previous generations.

The Nauru Trust Fund is a completely separate entity to the NPRT and will have no relationship to it.

The Nauru Trust Fund will be for the benefit of all Nauruans through the national budget in a way that is consistent with the highest standards of performance and accountability. The goal of the governance structure will be to provide direct oversight of the Fund itself and offer advice on the development of Nauru's economy. Through practices that embrace

prudence and transparency, the Fund will be required to stringently safeguard its assets to ensure the misuse of trust monies cannot happen again.

In order to alleviate or reduce the Government's budget shortfalls the Fund must, at a minimum, provide revenue on a sustainable basis that will replace revenue from phosphate royalties.

The beneficiaries of the Fund are the people of Nauru through distributions to the Government's consolidated revenue account. The Government undertakes to treat any distributions as public monies and be subject to full budgeting and appropriation processes.

Preparation of the Fund began in June 2009. Since then ADB consultants have worked with the Government of Nauru and potential donor Governments to prepare the documentation and undertake the consultation necessary prior to the formal presentation of the Prospectus to the Donor Round Table meeting in Nauru in mid-November 2009. At that time the proposed fund was known as the Intergenerational Trust Fund. A preliminary electronic copy of the Prospectus was sent to the Australia and New Zealand Governments in October 2009.

The Government's intention is that it will contribute the major portion of funds over the long term, supplemented by contributions from donor governments and possibly international organisations. The Government has already made provision for its own initial contribution to the Fund, by projecting the withdrawal of \$2 million from the Development Fund within this financial year. The amount of \$2 million is expected to be provided to Government from the ADB, probably in two separate tranches of \$1 million each.

After the initial contributions to establish the Fund, there is provision for additional contributions that can be made on a regular basis. The Nauru Government intends to make regular annual payments into the Fund and these may or may not be matched by donor contributions.

The Fund is not a trading corporation. There are no shareholders. The entity is a Trust Fund. A Trust Fund holds property for the benefit of others. Its role is to profit the beneficiaries and not the holders of the Fund.

The Nauru Trust Fund Bill 2012 does not establish the Fund, but provides the necessary and unambiguous indication to potential donors to the Fund of the Government's commitment to the Fund. The Fund will be established either by an international agreement between Nauru and one or more other countries (a treaty) or by a trust deed in a jurisdiction outside Nauru. The Bill facilitates the legal recognition of the Trust Fund in Nauru, and clarifies the status of the capital and income of the Fund. The Bill also requires the Minister to provide important economic information about Nauru to the Fund, to enable the Board and the Advisory Committee of the Fund to make appropriate decisions in relation to the application of the income of the Fund.

NOTES ON CLAUSES

Clause 1 is a standard provision, providing the short title by which the Act may be cited: the *Nauru Trust Fund Act 2012*.

Clause 2 provides that the Act will commence on a day to be notified by the Minister in the Gazette. The reason for the delayed commencement of the Act is that the Act should commence at the same time as the Trust is established by international agreement or by trust deed, and that date is not yet known.

Clause 3 is a standard provision which provides that the Act binds the Republic.

Clause 4 provides definitions for a number of the terms used in the Act, and also provides that the Act must be interpreted in a manner consistent with the Agreement establishing the Nauru Trust Fund.

Clause 5 provides that the Fund is a body corporate with perpetual succession and a common seal. This means that the legal personality of the fund will be recognised under the law of Nauru, regardless of the jurisdiction in which the Fund is established – in other words, the Fund will have all the powers of a legal person (such as the right to sue and to be sued) independent of the trustees.

Clause 6 clarifies the status of the Fund, by providing that the capital and income of the Fund are not public money of Nauru and are not subject to Government control and accounting, except as provided by the Agreement. However, this provision does not apply to money distributed to the Government from the Fund by the Board (see further clause 7). This provision facilitates the independence of the Board of the Fund, and ensures that the assets of the Fund cannot be misused by Government.

Clause 7 provides that money received by the Government from the Fund must be paid into the Treasury Fund in accordance with Article 58 of the Constitution. This provision is intended to put beyond doubt the fact that any interest paid out of the Fund to the Government is government revenue for the benefit of all Nauruans, and can only be spent in accordance with an appropriation law.

Clause 8 provides that the Minister must, on request, give the Board, the Advisory Committee or another person authorised by them any information or document to which the director of audit would be lawfully entitled, documents or information relating to the annual budget for a specified year, the annual statement of accounts for a specified year, and the annual report of the Director of Audit for a specified year. This clause is designed to ensure that the Board and the Advisory Committee are able to access sufficient information to enable them to assess Nauru's revenue needs, and also to offer informed advice on economic and financial matters.

Clause 9 requires the Minister, for each financial year, to table in Parliament the annual report of the Board, the annual accounts of the Fund, and the report on the annual accounts of the Fund by the auditor of the Fund. These documents must be tabled within 3 sitting days after the Minister receives them. This provision is designed to ensure that the activities of

the Fund are transparent and that information about the operation of the Fund is publicly available.

Clause 10 provides that no tax may be levied on any contribution to the capital of the Fund nor on any income of the Fund. This provision is designed to ensure that the Fund is able to grow its capital and that the resources of the Fund are not claimed by Nauru through taxation, but rather, Nauru receives revenue from the Fund in accordance with the terms of the Agreement when the Fund makes a distribution of income from the Fund to the Government.

Clause 11 is a standard provision enabling Cabinet to make regulations under the Act.