

REPUBLIC OF NAURU
NAURU EDUCATION ASSISTANCE TRUST BILL 2016
EXPLANATORY MEMORANDUM

The *Nauru Education Assistance Trust Bill 2016* is a Bill for the *Nauru Education Assistance Trust Act 2016*.

EXPLANATION OF CLAUSES

Part 1 - Preliminary

Clause 1 provides that, once enacted, the short title of the Bill will be the *Nauru Education Assistance Trust Act 2016*.

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

Clause 3 is an interpretation clause that defines terms within the Act that need to be defined. It is necessary to define terms to void any ambiguity in the application of the terms and the provisions.

Part 2 – Establishment of Nauru Education Assistance Trust Fund

Clause 4 establishes the Nauru Education Assistance Trust Fund to be administered by the Trustee of the Trust who are appointed under the Act

Clause 5 provides the source of funds for the Fund which will be derived from initial funds (included in the Act), such other money that may be paid into the Fund by the Settlor (Republic of Nauru as represented by the Department of Finance and Economic Planning) and any other money that become lawfully payable to the Trust.

Clause 6 states that any funds paid into the Fund must be paid into a bank account opened by the Trustee in its capacity as trustee of the Trust.

Part 3 – Board of Trustees and Management of Funds

Clause 7 provides for the appointment of a Trustee of the Fund and the persons to be included on the Board are:

- (a) the Secretary for Education;
- (b) the Secretary for the Department of Finance; and
- (c) the Chairperson of the Teacher Registration and Curriculum Board.

It is important to note that the board may compose of no more than 4 persons and any person appointed (as stated above) will remain appointed under such time they cease to hold office. The position of a Trustee is a very important one and central to the proper administration of the Trust. Therefore a Trustee who is convicted of any offence in Nauru or other country may be removed from the board by the Minister. Other reasons for removal are if a Trustee is an undischarged bankrupt under the laws of Nauru or another country or if a Trustee is not adequately dealing with the Fund or is not properly attending to the affairs of the Trust in accordance with this Act.

A Trustee who falls into any of stated categories may be removed by the Minister but only with the written consent of Cabinet.

Clause 8 states that the settlor (as defined earlier), the Principal (Minister for Education) or any Unitholder (a person registered as the holder of a unit) can be a Trustee of the Trust.

Clause 9 provides that the settlor, Principal or any unit holder have no liability when it concerns the Trust, the Fund or any Unitholder with respect to the Trust and the Fund. They also do not have any liability to make any contribution to the Trust Fund or to indemnify any of the parties in subclause (c) of this clause.

Clause 10 outlines the functions of the board which is mainly to:

- (a) oversee the administration of the Fund;
- (b) monitor compliance of the Scheme and authorise payments of entitlements; and

An important function of the board is also to provide to the Principal (Minister for Education) an annual summary report that is due before April 30 of each fiscal year.

Clause 11 references the Trust Deed and the duties of the Trustee which must be set out in the Trust Deed. These duties are essential when the Trustee is administering the Trust.

Clause 12 provides that any person holding an office and appointed to the board is not entitled to any payment, allowance or remuneration for any duty performed in their capacity as a director or otherwise in connection with the Act.

Clause 13 provides for the accounts to be kept by the Trustee and also for any auditing of accounts.

Clause 14 states that any investment made on behalf of the Trust must be with an Australian authorised Deposit-taking institution or cash management trust that is reinvested in investment grade securities making up more than 80% of the portfolio.

Clause 15 states that any interest on the Fund must be applied first to reasonable expenses of the Fund where those expenses have been unanimously agreed by the Trustees and after approval by the Minister following consultation with the Cabinet.

Clause 16 protects the financial interest of the Trust by prohibiting a Trustee from:

- (a) raising or accepting any type of financial accommodation, including without limitation by borrowing, whether with or without security;
- (b) giving any security over all or any of the present or future assets of the Fund; or
- (c) giving any guarantee or indemnity for the payment of money or for the performance of any contract or obligation by any person or otherwise to assist any person.

Clause 17 provides for the termination or winding up of the Trust. In order to protect the unitholders, a decision to cease contributing to the Fund may only be made where the Fund has sufficient funds to meet all future payments required to be made to those students enrolled at a school at the time. The Trust will be wound up in accordance with its terms and any remaining funds that have not been paid out to students, will be distributed to the Republic (Government of Nauru) and utilised for educational purposes.

Part 4 – The School Age Allowance Scheme

Clause 18 establishes the School Age Allowance Scheme (the Scheme) and the objectives of the Scheme are to:

- (a) provide an incentive for students to attend school; and
- (b) raise the national rate of school attendance; and
- (c) improve the education experience of students through fuller participation in classes and co-curricular activities; and
- (d) celebrate the value of young people to the Nauruan community once they successfully complete their schooling; and
- (e) create public recognition of the achievement of students who complete their final year of schooling.

Clause 19 creates a category of eligible children in Nauru who may participate in the Scheme. They are:

- (a) children who on January 1 of any year are at least 4 years old and under 18 years old; and

(b) children who are enrolled at either a Government school or a registered non-Government school; and

(c) children who are a citizen of Nauru or who have been accorded refugee status under the *Refugee Convention Act 2012*.

Clause 20 states the attendance sum that each eligible child will receive from being part of the Scheme. As stated in the Schedule, the sum is \$5.00 a day for every day the child attends school and is not exempted under any provision of the Act.

Clause 21 provides for the accrual of the attendance sum. A child can only accrue an attendance sum by attending school on the days that have been gazetted as official school days.

Clause 22 states that eligible school days are those that have been gazetted by the Minister for Education as official school days and terms for the Republic of Nauru.

Important to note that '*school days*' does not include public holidays as provided in the *Public Service Act 2016* or as published by the President as an official public holiday to be observed by all employees of the public service.

Clause 23 provides for qualifying periods. These qualifying periods are those that a child must complete in order to receive payment of any accrued entitlement. Participation in the Scheme does not mean that every child will receive payment. Only children who complete Year 9 will be eligible to receive their accrued entitlement. Accrued entitlements may be frozen where:

(a) a child enrolls in Year 9 but fails to enrol in Year 10 or to enrol for any subsequent year; or

(b) a child departs from the Nauru education system by enrolment overseas.

Clause 24 states that payments to a child of their accrued entitlement will be paid out upon the earlier of:

(a) completion of Year 12; or

(b) if not enrolled at a school after Year 9 then upon attaining the age of 18.

Clause 25 makes provision for early payments of accrued entitlement. Early payments may only be made in the following cases:

(a) the death of a child, in this case the payment may be made to their parent or guardian; or

- (b) a child being granted a scholarship to complete secondary schooling outside of Nauru; or
- (c) the Board receiving medical advice that a student has become incapacitated and unable to complete their education; or
- (d) an inclusive student, the Board arrives at the opinion that the student has nothing to gain by continuing to be enrolled at a school.

This clause is an exception to the clause requiring a child to have served the qualifying periods in order to receive payment of their accrued entitlement. A trustee is also not bound to make an early payment. The trustee has the discretion as to whether early payment should be made.

Clause 26 provides for students who have been granted a scholarship to study at a School outside of Nauru. These students will have their entitlements frozen until they complete Year 9 at the institution they have enrolled in outside of Nauru, after which they may apply for early payment.

Clause 27 makes provision for those students who leave Nauru to attend school overseas (apart from scholarship holders). These students will have their entitlements frozen on the date they transfer out of Nauru but will become eligible to receive their accrued entitlement upon turning 18 and upon their return to Nauru. This clause is subject to clause 24.

Clause 28 states that students absent from school for consecutive 5 days on account of illness and be marked present on the attendance records as long as they can provide a medical certificate to their teacher upon their return to school.

Any absence 4 days of less will be marked absent regardless of a medical certificate being presented.

Clause 29 creates a category of exempt students who are eligible and credited as attending school. These students are those that have been granted a certificate by the Secretary for Education under the Education Act 2011. They are exempt only for the duration of the certificate that has been issued.

Clause 30 creates a requirement that records of attendance must be kept by each school and provided to the Secretary for Education under section 19 of the Education Act 2011. These records of attendance will serve as the official records for qualification and payment of the attendance sum.

Clause 31 allows a parent or guardian to challenge any record of attendance provided in accordance with Clause 30. Any challenge to the record must be made in writing addressed

to the Secretary for Education who will then convene a meeting of the Board and submit the said challenge. A decision made by the Board in relation to any challenge submitted in accordance with this Clause, is final and may not be appealed any further.

Clause 32 creates an inclusive environment for education and allows a child who attends a special school due to disability to be eligible under the Act.

Clause 33 provides for children who are registered for home education under the Education Act 2011. These students also qualify under the NEAT Act for payment of the attendance sum and any child whose registration for home education is cancelled is no longer an eligible student under the Act.

Clause 34 provides that a child will be marked absent from school if that child is judged under the Education Act 2011 to have displayed unacceptable behaviour and as a result is suspended from attending school under that Act.

Clause 35 states that an expelled student does not qualify for payment of the attendance sum unless they re-enrol at another school.

Clause 36 gives the Secretary for Education or other authorised person the power to approve forms to be used in the administration of the Act.

Clause 37 creates a power for the Secretary for Education to appoint officers of the Department of Education to be authorised persons for the purpose of the Act.

Clause 38 allows the appointment of managers to assist with the administration of the Scheme and management of the Fund.

Part 5 - Miscellaneous

Clause 39 concerns the relationship between the NEAT Act and the Education Act 2011. If there is a conflict between the provisions of the two laws, then the Education Act 2011 would prevail over the NEAT Act.

Clause 40 gives the Minister the power to make regulations on any matter necessary or convenient to give effect to the Act.

Schedule – this contains the Table of Attendance Sum that will be allocated to each child according to the record of attendance.

