

## Passports Bill 2010

### EXPLANATORY MEMORANDUM

#### **Part 1 – Preliminary matters**

**Clauses 1 to 3** provide for the short title, commencement and interpretation of the Act.

#### **Clause 4:**

- gives the Act extra-territorial application – this is necessary because a number of provisions must apply outside Nauru. For example, it must be possible to prosecute a person in Nauru for an offence committed outside Nauru, such as selling a Nauruan passport;
- specifies that the Act applies to all persons, regardless of their citizenship. Clause 4 does not apply if a contrary intention appears, so certain provisions of the Act only apply to Nauruans (for example, the entitlement to be issued a passport). However, the general provisions of the Act, such as the offence provisions, apply to everyone.

**Clause 5** provides that the Act binds the Republic.

#### **Part 2 – Nauruan passports**

##### **Division 1 – Issue of Nauruan passports**

**Clause 6** creates the basic entitlement for a Nauruan citizen to be issued with an ordinary Nauruan passport. The entitlement is subject to Clause 7 and Part 4, which provide for the reasons a Nauruan citizen may be refused a passport.

**Clause 7** specifies the minimum requirements for the issue of a passport – the Minister must be satisfied of the identity of the applicant and that the applicant is a Nauruan citizen.

##### **Division 2 – Diplomatic and other official passports**

**Clause 8** allows the Minister to issue a diplomatic passport to a Nauruan citizen who is:

- a member of Parliament;
- if the Speaker of Parliament is not a member of Parliament – the Speaker;
- a member of the diplomatic staff of a Nauruan mission; or
- a consular officer of a Nauruan consulate;
- the spouse of a person mentioned above;

- with the written approval of Cabinet – another person.

**Clause 9** allows the Minister to issue an official passport to a Nauruan citizen to whom the issue of the passport is appropriate to facilitate travel on official government business.

**Clause 10** allows the Minister to issue a Presidential passport to the President.

### **Part 3 – Travel-related documents**

#### **Division 1 – Issue of travel-related document**

A travel-related document is a document (either a refugee travel document or a certificate of identity) that enables a person to travel, but is not a passport. This Part specifies the types of travel-related documents that can be issued, and the requirements for the issue of these documents.

**Clause 11** gives the Minister the power to issue a travel-related document.

**Clause 12** specifies the minimum requirements for the issue of travel-related documents – the Minister must be satisfied of the applicant’s identity that the person is qualified for the issue of the document.

**Clause 13** allows the Minister to issue a refugee travel document to a refugee who:

- is lawfully in Nauru; or
- is not lawfully in Nauru but cannot obtain a travel document from the country of the person’s lawful residence.

**Clause 14** allows the Minister to issue a certificate of identity to a person who:

- is not a Nauruan citizen, is about to leave Nauru and is either stateless or is unable to obtain a travel document from the person’s country of citizenship; or
- is a Nauruan citizen who does not hold a passport but who needs to travel urgently because of a medical or family crisis; or
- is a Nauruan citizen who cannot obtain a passport because the person is not in a country in which an application for a Nauruan passport can be processed.

### **Part 4 – Refusal to issue Nauruan travel document**

Although there are a number of circumstances a travel document can be refused, the Minister is not always given discretion to decide whether or not to refuse to issue a travel document. In many circumstances specified in this Division, the Minister is required to refuse to issue a travel document if he or she has formed a belief that the circumstances for refusal exist.

## **Division 1 – Children**

**Clause 15** requires the Minister to refuse to issue a travel document to a child unless:

- the child’s parents or guardians agree to the issue of the travel document; or
- the child is allowed to travel internationally under a court order; or
- one of a number of special circumstances apply (for example, the child must travel internationally because of a family crisis).

This provision protects the right of parents and guardians to ensure their child does not leave the country without their consent, but it also allows the Minister to exercise discretion to allow the child to leave the country if extenuating circumstances exist. The Minister’s power to exercise discretion is extremely limited if there are court proceedings underway (such as custody proceedings) that may affect the ability of the child to travel.

## **Division 2 – Law enforcement and security**

**Clause 16** requires the Minister to refuse to issue a travel document to a person who is subject to an arrest warrant issued in Nauru or otherwise prevented from travelling under the law of Nauru.

**Clause 17** allows the Minister to refuse to issue a travel document to a person if the person is subject to a foreign arrest warrant for a serious foreign offence, is prevented from travelling internationally under the law of another country in relation to a serious foreign offence or if issuing the travel document would compromise proceedings for serious foreign offence.

**Clause 18** allows the Minister to refuse to issue a travel document if the Minister believes that refusing to issue the travel document might prevent the person from engaging in harmful conduct, such as conduct that threatens the security of Nauru or another country.

## **Division 3 – Other reasons**

**Clause 19** allows the Minister to refuse to issue a travel document if the applicant has lost or reported stolen 3 or more travel documents in the previous 5 years.

**Clause 20** allows the Minister to refuse to issue a travel document if the person owes money to Nauru for:

- expenses incurred by Nauru on behalf of the person in a foreign country; or
- money lent to the person by Nauru when the person was outside Nauru; or
- expenses incurred by Nauru to enable the person to depart from a foreign country.

**Clause 21** requires the Minister to refuse to issue a travel document to a person if the person already holds another Nauruan travel document, unless:

- the person intends to travel to a country that will not accept a travel document showing evidence of travel to another country, and the travel document shows evidence of travel to the other country; or
- the travel document to be issued is a diplomatic or official passport. Diplomatic and official passports should be used only for diplomatic and official travel. As such, holders of diplomatic and official passports may hold an ordinary passport in addition to the diplomatic or official passport for private travel.

### **Part 5 – Validity of Nauruan Travel Documents**

**Clause 22** specifies that a Nauruan travel document ceases to be valid on the earliest of a list of events happening. Most travel documents will cease to be valid on the date of expiry. However, there are a number of other circumstances in which a travel document will cease to be valid, such when it is cancelled or when the holder of a diplomatic passport vacates the office under which they hold the passport.

**Clause 23** specifies that a Nauruan travel document is not renewable. This does not mean that when a person's document expires they will not be able to apply for another – simply that the document is not renewable as of right, and a person will need to apply for a new document and be subject to the same scrutiny as if the person were applying for the document for the first time.

**Clause 24** gives the Minister power to cancel a Nauruan travel document. The power of cancellation is not limited to specified circumstances, but certain circumstances are listed for clarity (for example, if the passport is lost or stolen or if the Minister becomes aware of a circumstance that would have allowed the Minister to refuse to issue the passport). In addition, the Minister is required to cancel a passport if the Minister becomes aware of a circumstance that would have required the Minister to refuse to issue the passport.

### **Part 6 – Offences**

**Clause 25** creates an offence for giving false or misleading information in relation to an application for a Nauruan travel document.

**Clause 26** creates an offence for improper use or possession of a Nauruan travel document.

**Clause 27** creates an offence for selling a Nauruan travel document.

**Clause 28** creates an offence for intentionally damaging or destroying a Nauruan travel document.

**Clause 29** creates an offence for obstructing an official exercising powers under the Act.

**Clause 30** creates an offence for possessing a false Nauruan travel document.

**Clause 31** creates an offence for a person to take or send a Nauruan travel document that is false or does not belong to the person across an international border.

**Clause 32** creates an offence for a delegate of the Minister to issue a Nauruan travel document knowing that the issue of the document is contrary to the Act.

**Clause 33** creates an offence for failure to notify the loss or theft of a Nauruan travel document.

**Clause 34** creates an offence for an authorised officer appointed under the Act to use their office to obtain a benefit for the officer or another person or cause detriment to another person.

**Clause 35** makes it an offence for a person to disclose information obtained by the person in the course of carrying out functions under the Act.

### **Part 7 – Seizure of documents**

**Clause 36** gives an authorised officer the power to seize a document in a number of circumstances, for example, if the officer suspects the document has been used to commit an offence against the Act or if the document is a travel document has been cancelled and not surrendered.

**Clause 37** gives a customs officer the power to seize a document the officer suspects has been used to commit an offence against the Act.

### **Part 8 – Reviews and appeals**

This Part provides for review and appeal of a decision made under the Act. If the decision was made by the Minister's delegate, an affected person can apply to the Minister for review of the decision. If the affected person is unhappy with the Minister's decision on review, the person can appeal against the decision to the Supreme Court. If the decision was made by the Minister in the first instance (rather than by a delegate), the person can appeal to the Supreme Court against the decision.

**Clause 38** sets out the decisions under the Act that are subject to review or appeal, and who has a right to seek review or appeal.

**Clause 39** provides for notification of a reviewable decision to the affected person for the decision, including notifying the person of the right of review or appeal.

**Clause 40** provides for the conduct of a review.

**Clause 41** provides for the conduct of an appeal.

### **Part 9 – Criminal liability**

This Part deals with the principles of criminal liability. This Division states the common law position in relation to criminal liability and is an interpretive aid to the offence provisions of the Act.

### **Part 10 – Administrative matters**

**Clause 47** provides for the appointment of authorised officers.

**Clause 48** provides for the disclosure of personal information about another person to the Minister, and includes a protection against civil or criminal liability for a person who does so.

**Clause 49** provides for the disclosure of information by the Minister, for example, to facilitate information sharing between international law enforcement agencies.

**Clause 50** allows the Minister to delegate the following powers:

- the power to issue a Nauruan travel document (other than a diplomatic, official or Presidential passport), unless the exercise of the power requires the exercise of discretion under Clause 15;
- the power to request information;
- the power to disclose information;
- the power to endorse or make observations on a Nauruan travel document.

**Clause 51** provides for a parent to apply for a travel document on behalf of their child.

**Clause 52** provides for the form of travel documents.

**Clause 53** provides for the name that must appear on a Nauruan travel document.

**Clause 54** provides that a Nauruan travel document remains the property of the Republic.

**Clause 55** allows the Minister to endorse Nauruan travel documents.

**Clause 56** requires the Head of the Department responsible for administering the Act to keep a register of all Nauruan travel documents issued.

**Clause 57** is the main regulation-making power. It includes the power to make regulations about the issue, use and possession of diplomatic and official passports.

### **Part 11 – Repeal and transitional matters**

This Part provides for the transition from the current *Passports Act 1997* to the new *Passports Act 2011*.

**Clause 59** repeals the *Passports Act 1997*.

**Clause 60** provides that a passport that is current at the time of the repeal of the old Act remains valid until it expires or is cancelled, but cannot be renewed under the old Act.

**Clause 61** provides that an application for a passport that is pending at the time the old Act is repealed will be dealt with as an application under the new Act.

**Clause 62** gives Cabinet power to make regulations dealing with the transition from the old Act to the new Act.