

REPUBLIC OF NAURU
NAOERO CITIZENSHIP BILL 2017
EXPLANATORY MEMORANDUM

The *Naoero Citizenship Bill* is a Bill for the *Naoero Citizenship 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 Act will be the *Naoero Citizenship Act 2017*.

Clause 2 sets out when the Bill's provisions will commence which is upon certification by the Speaker.

Clause 3 defines key terms used in the Bill.

PART 2 – CITIZENS OF THE REPUBLIC

Clause 4 provides a list of persons who are considered Nauruan citizens for the purposes of citizenship laws in Nauru. Citizens are those whom are:

- (a) persons who on 31 January 1968 were included in one of the classes of persons who constituted the Nauruan community as prescribed in Article 71 of the Constitution;
- (b) persons born on or after 31 January 1968 whose one or both parents were members of the:
 - (i) Nauruan community; or
 - (ii) citizens;
- (c) persons born on or after 31 January 1968 of a marriage between a citizen and a Pacific Islander and neither parent had exercised any rights within 7 days after the birth of that person to determine that such person is not a citizen;
- (d) persons born in the Republic on or after 31 January 1968 are a citizen if, at the date of their birth, they would not but for the provisions of Article 73 of the Constitution, have the nationality of any country;
- (e) persons who were admitted as members of the Nauruan community after 31 January 1968;
- (f) persons granted citizenship under any former laws of the Republic; and

(g) persons granted citizenship under this Act.

PART 3 - CITIZENSHIP REGISTER

Clause 5 gives the Secretary the responsibility for establishing and maintaining the Register of citizenships in accordance with the Act. The contents of the Register shall contain details of the granting, deprivation and renunciation of citizenships under the Act.

The details in the Register shall include:

- the name, age, gender and address of a person;
- date of granting, deprivation or renunciation of citizenship;
- in the case of granting of citizenship - the date when the oath of allegiance or affirmation was taken or made.
- in the case of children, the details of the legal guardian shall also be provided.

PART 4 – APPLICATION AND REGISTRATION OF CITIZENSHIP

Clause 6 gives the Minister in consultation with the Cabinet the discretion to grant citizenship to a person who applies pursuant to the Act.

Clause 7 outlines the process for applying for citizenship. Any citizenship application has to be made in the prescribed form to the Secretary for Justice.

The prescribed fee shall be paid by the applicant when making his or her application.

The applicant needs to be over the age of 20 years or in the case of applications for minors, the principal applicant needs to be over the age of 20 years.

The Secretary will be responsible for vetting applications and ensuring that the applications are compliant with the provisions of the Act before submitting a report to the Minister. The Minister shall provide the report to the Cabinet for its decision on whether or not to grant citizenship.

Where the Minister or the Minister in consultation with the Cabinet does not accept the recommendations of the Secretary, the application shall be returned to the Secretary for any necessary action to be carried out.

Clause 8 mandates that a decision of the Minister or the Minister in consultation with the Cabinet shall be final and conclusive and not subject to any appeals or reviews by the Court.

PART 5 - ACQUISITION OF CITIZENSHIP

Clause 9 relates to citizenship by birth. If a person is born in the Republic, he or she is a citizen if at least one of the parents is a citizen at the time of the person's birth.

Clause 10 provides that a person born on an aircraft or vessel from or to the Republic is not automatically regarded as having been born in the Republic.

This provision gives the Minister in consultation with the Cabinet the discretion to grant a person citizenship if the person is:

- stateless or does not have citizenship of another country;
- unable to acquire citizenship of another country.

This provision does not apply to a person where one or both parents are citizens.

Clause 11 provides for the eligibility of a person to apply for citizenship if the person is born in the Republic to parents who are not citizens and if the person has been resident in the Republic for a continuous period of 20 years. Any temporary absences from the Republic shall not affect the requirement for the continuous period of residency of 20 years.

Clause 12 allows a person born outside of the Republic to acquire citizenship if at least:

- one parent is a citizen; or
- one grandparent is a citizen by birth.

The reference to grandparent refers to both maternal and paternal grandparents. The reason is that a person may claim citizenship through either his or her mother or father.

Clause 13 requires that the married couple live in the Republic for a continuous period of 7 years before the foreign spouse can qualify to apply for citizenship.

The clause provides that a person who is married to a citizen may apply for citizenship if such person:

- was at the time of the application lawfully married and residing with his or her spouse in the Republic for a continuous period of 7 years;
- is committed to residing permanently in the Republic;
- is of good health and character;
- is willing to fulfil the duties, responsibilities and privileges of being a citizen; and
- has no criminal convictions.

The applicant shall pay the prescribed fee when making an application.

The Cabinet has the discretion when considering an application to waive the 7 year requirement for the person to be lawfully married and residing with his or her spouse in the Republic.

Clause 14 imposes a restriction on the eligibility for citizenship on any children from a previous marriage or relationship of the person applying for citizenship.

Any children from a previous marriage or relationship will not be automatically registered as a citizen on the basis of the parent's marriage to a citizen.

Any child from a previous marriage or relationship may qualify to apply for citizenship if the child is adopted lawfully under the Adoption of Children Act 1965 as a child of the marriage.

Clause 15 relates to citizenship by adoption. A child can become a citizen by adoption if the child is:

- adopted by one or more citizens;
- present in the Republic; and
- prior approval for the adoption was given by the Minister in consultation with the Cabinet.

Clause 16 allows a Nauruan to hold dual citizenship. This provision ensures that a person who obtains citizenship from another country shall not lose his or her Nauruan citizenship.

This clause allows 2 things. Firstly, a Nauruan can have the citizenship of any other country without losing his or her citizenship. Equally, a person who acquires Nauruan citizenship does not lose the citizenship of his or her country. This applies for example, to persons who acquire citizenship by marriage or adoption.

Clause 17 ensures that former citizens who lost their citizenship by renunciation may apply to resume their Nauruan citizenship. This does not apply to persons who were lawfully deprived of citizenship.

Applications for citizenship under this provision shall be made and determined in accordance with section 7.

Clause 18 is a one off clause for the special grant of citizenship for the Republic's fiftieth anniversary celebrations.

It provides discretion to the President in consultation with the Cabinet to grant citizenship to persons who:

- did not qualify or were not eligible to apply for citizenship on 31 January 1968 or any other subsequent laws;
- have demonstrated long term commitment, service, dedication and adapted to the culture, tradition, community and development of the Republic;
- desire to be citizens of the Republic;
- have resided in the Republic for a cumulative period of not less than 30 years.

The proposed date for the grant of citizenships under this section shall not be made before 31 January 2018 or after 30 June 2018.

This clause is a sunset clause and will lapse after 30 June 2018. The children of any person granted citizenship under this clause shall not be entitled to Nauruan citizenship by virtue of the parent's citizenship.

Clause 19 allows the Cabinet to grant an honorary citizenship to a non-Nauruan.

Honorary citizenship is generally a status granted by a country on a foreign individual whom it considers to be especially admirable or otherwise worthy of distinction.

Honorary citizenship does not carry with it the rights and privileges of ordinary citizenship, and such status does not confer any special entry, travel or immigration benefits upon the honouree or his or her family. It also does not impose additional duties and obligations on the honouree or his or her family.

PART 6 - OATH OF CITIZENSHIP

Clause 20 requires any successful applicant for citizenship to take an oath of allegiance or make an affirmation which as contained in the Schedule.

Unless an exemption is given by the Minister, the oath or affirmation shall be taken or made before the Chief Justice or a Judge of the Supreme Court in the absence of the Chief Justice at a public ceremony.

Clause 21 provides that where the Minister grants citizenship to any person, a certificate of citizenship shall be conferred under the hand of the President. The certificate shall be in the prescribed form.

The certificate shall be conferred to a person only after the person has taken the oath of allegiance or has made an affirmation.

A certificate conferred is conclusive evidence of the person's citizenship unless the citizenship or certificate or both were obtained by fraud, bribery, misrepresentation or concealment of any material fact.

PART 7 – RENUNCIATION OR LOSS OF CITIZENSHIP

Clause 22 allows a person of full age and capacity to renounce his or her citizenship by providing a written declaration to the Minister.

The Minister however may decline to register a declaration unless the person has citizenship from another country. This provision will ensure that no person becomes stateless upon renouncing his or her citizenship.

The declarations are to be registered in the Register of citizenships and the declarant shall cease to be a citizen from the date of the registration of his or her declaration.

Clause 23 allows the Cabinet to cancel the citizenship of a person where the Cabinet is satisfied that such person obtained his or her Nauruan citizenship by way of fraud, bribery, misrepresentation or concealed any material fact or mistake.

This provision does not apply to persons who are Nauru citizens by birth.

The provision requires the applicant in making an application under this Act to be transparent and honest. Where an application is made to defraud the system and obtain citizenship the power must be retained to cancel the citizenship. The Republic does not entertain foreigners applying for citizenship who are not honest.

Further, the Minister in consultation with the Cabinet may cancel the citizenship granted to a person if the person after being granted citizenship:

- engages in terrorism and international financing of terrorist related activities;
- fails to return to or reside in the Republic continuously for a period of 3 years;
- is convicted of an offence against the Anti-Money Laundering Act 2008;
- is convicted of an offence against the Counter Terrorism and Transnational Crime Act 2004; or
- is convicted of a sexual offence involving a child.

These grounds for the cancellation of citizenship are separated from the Act because the person may be living outside of the Republic and therefore may not be subject to the jurisdiction of the court in the Republic.

Aside from a conviction in the Republic, the grounds are left open because if the person is living abroad, the person will be subject to the jurisdiction of the overseas court.

This clause further requires the Secretary to serve a notice to the person concerned of the Cabinet's intention to cancel such person's Nauruan citizenship. This is necessary to grant the person concerned an opportunity to be heard.

The Cabinet however in considering the cancellation of a person's citizenship shall consider whether in cancelling a citizenship, the person would become stateless. A person whose citizenship is cancelled ceases to be a citizen on the date the Cabinet made its decision.

Clause 24 provides for the deprivation of citizenship of a person who was granted citizenship by virtue of marriage to a Nauruan if the person remarries a non-Nauruan person after divorcing his or her spouse or after the death of his or her Nauruan spouse.

Any children of the marriage shall not lose their citizenship as a result of the deprivation of citizenship of their parent who was granted citizenship by virtue of marriage to a Nauruan.

Clause 25 requires that a person who has been deprived of, has renounced, or has had citizenship cancelled, the person shall not be eligible to obtain or retain a Nauruan travel document issued under the Passports Act 2011. The Secretary shall immediately seize or cancel the travel document on the deprivation of, renunciation or cancellation of citizenship of a person.

PART 8 - OFFENCES AND PENALTIES

Clause 26 is the offences and penalties clause. The standard penalty for the offences upon conviction is a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years or both.

(1) A person commits an offence if he or she:

- (a) for the purposes of procuring anything to be done or not to be done under this Act, a person:
 - (i) makes any statement that he or she knows to be false in a material particular; or
 - (ii) recklessly makes a statement that is false in a material particular; or,

- (b) knowingly or recklessly submits false or forged documents to support a citizenship application; or
- (c) knowingly or recklessly alters, defaces or fails to deliver a document; or
- (d) knowingly resists, obstructs or deceives any person who is exercising or attempting to exercise any function or power imposed or conferred under this Act.

(2) A person commits an offence if or she knowingly or without reasonable cause:

- (a) records, deletes, alters any entry in the citizenship Register;
- (b) removes a citizenship document; or
- (c) issues a citizenship document to a person who has no entitlement to the document.

PART 9 – MISCELLANEOUS

Clause 27 outlines the process of serving of notices. Service can be by personal delivery, by leaving it at the applicant’s nominated address or by electronic means.

Clause 28 sets out the jurisdiction of the District Court which is extended to hear and determine all offences under this Act. The District Court shall have the power to impose the penalty or punishment in respect of the offences under this Act. 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 29 provides that an entry in the Register shall be received as sufficient evidence of the matters provided in the entry the absence of proof to the contrary.

Clause 30 is the transitional clause that allows all applications submitted to the Secretary under the Naoero Citizenship Act 2005 to be determined under the Naoero Citizenship Act 2005 as if this Act has not commenced, and all other matters will be dealt with under the new citizenship law once enacted.

Clause 31 is the repeal and savings clause where the Naoero Citizenship Act 2005 is repealed and all citizenships granted under the Naoero Citizenship Act 2005 remain valid.

Clause 32 allows the Cabinet to make regulations prescribing all matters which are necessary or convenient for giving effect to the Act. This includes any forms needed under the Act or any fees required to be paid under the Act or any other matters.