

**REPUBLIC OF NAURU**  
**NAOERO POSTAL SERVICES CORPORATION BILL 2018**

**EXPLANATORY MEMORANDUM**

The *Naoero Postal Services Corporation Bill* is a Bill for the *Naoero Postal Services Corporation Act 2018*.

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 Bill will be the *Naoero Postal Services Corporation Act 2018*.

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

**Clause 3** is the definition section which provides and defines the key terms used in the Bill. These definitions are important because they suggest the intention of the legislature for these key terms to have a specific meaning that differs from its common usage.

**PART 2 – NAOERO POSTAL SERVICES CORPORATION**

**Clause 4** provides for the establishment of the Naoero Postal Services Corporation. The Corporation is a body corporate that can sue and be sued, enter into contracts and other legal obligations, acquire, hold and dispose of real or personal properties and perform all powers, functions, duties and responsibilities of a corporation.

**Clause 5** provides for the functions of the Corporation which are to:

- provide postal services for the Republic;
- provide commercial postal services as it considers appropriate; and
- make recommendations and advise the Minister on matters connected with its functions.

**Clause 6** provides for the powers of the Corporation which includes supplying the following in relation for or in connection with the performance of its functions:

- packet and parcel carrying services;

- philatelic and associated services which includes the sale of merchandise related to postal services;
- courier services;
- electronic mail services; and
- funds transfer services.

**Clause 7** provides for the Board of Directors who shall consist of 3 members appointed by Cabinet on the recommendation of the Minister. The Directors appointed shall be for a term of not more than 2 years and can be eligible for reappointment.

**Clause 8** provides for the qualification of the Directors. The Cabinet in appointing Directors must have regard to whether the Board will collectively possess the appropriate knowledge, skills and experience to assist the Corporation in effectively performing its functions.

**Clause 9** outlines the role of the Board where they shall:

- in consultation with the Cabinet, decide the objectives, strategies and policies to be followed by the Corporation; and
- ensure that the Corporation performs its functions in a manner that is proper, efficient and as far as practicable with sound commercial practice.

**Clause 10** provides for the meetings of the Board whereby a quorum is the meeting of 2 Directors. The Board will regulate its own procedures for meetings. Each Director has one vote each and the decision of the Board has to be majority votes. The Secretary shall maintain records of all minutes, records and proceedings of the Board meetings.

**Clause 11** provides for the responsibilities and duties of the Directors. The Directors shall severally and jointly at all times act in the best interest of the Corporation and exercise reasonable care and diligence in the performance of their duties and functions, take reasonable steps through the processes of the Board to obtain sufficient information and advice about all matters to be decided by the Board and exercise discretion with respect to all matters to be decided by the Board.

This clause further provides that a Director does not breach any of his or her responsibilities and duties if he or she acted in accordance with a direction or requirement from the Minister under the Act.

**Clause 12** provides for the vacation of office by a Director. The Minister shall by notice in the Gazette declare the office of the Director vacant based on the following:

- becomes bankrupt, applies to take the benefits of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors to assign his or her remuneration for their benefit;

- resigns from office in writing to the Minister;
- is elected to public office;
- is absent from 2 successive meetings of the Board except on leave granted by the Minister;
- fails to comply with his or her duties under the Act;
- is considered by a Board of not less than 2 health practitioners, appointed by the Minister, to be incapable of performing his or her duties efficiently; or
- is convicted of any offence involving fraud or dishonesty punishable on conviction with imprisonment for a term of 12 months or more.

**Clause 13** provides for the remuneration of a Board Director which is not a fixed amount but rather a reasonable allowance determined by the Cabinet.

**Clause 14** indemnifies a Director for any act or omission done or made in his or her capacity as a Director in good faith and in the exercise of reasonable care and diligence in the course of operations of the Corporation.

### **PART 3 – ACCOUNTS AND AUDIT**

**Clause 15** requires the Corporation to:

- keep proper accounts and other records in relation to its operations;
- prepare monthly statements of account and reports which shall be provided to the Minister and to the Secretary; and
- prepare annual statements of account and reports.

**Clause 16** provides that all monies payable to and received by the Corporation are to be paid into the consolidated funds.

**Clause 17** allows the audit of the Corporation accounts which is to be conducted by the Auditor General. The Auditor General shall audit the accounts and report to the Corporation within 3 months after receiving the accounts or another period determined by the Parliament.

**Clause 18** requires the Corporation to prepare an annual report of its activities during the financial year. The Corporation shall forward a copy of the report to the Minister and table to Parliament. The Minister is to lay the annual accounts and reports before Parliament. The annual report shall include an audited account. This will ensure that the Government is aware of the activities and financial performance of the Corporation in each financial year.

## **PART 4 – CHIEF EXECUTIVE OFFICER AND OFFICERS**

**Clause 19** allows the Cabinet upon the recommendation to the Minister by the Board to appoint a Chief Executive Officer of the Corporation. The Chief Executive Officer shall be responsible for the administration and management of the operations and business of the Corporation.

**Clause 20** provides that the Corporation may employ persons to assist the Corporation in the performance and functions on terms and conditions as determined by the Chief Executive Officer. The officers appointed under this clause will assist the Chief Executive Officer in any work necessary for administration and operation of the Corporation.

## **PART 5 – POSTAL SERVICE**

**Clause 21** provides that the Corporation shall have the exclusive right for printing and issuing postage stamps in the Republic. This clause also allows the Corporation to cancel and destroy any stamps that are no longer required.

**Clause 22** provides that the terms and conditions of postal service supplied to a person by the Corporation are:

- so far as the Corporation and the person agrees to the terms and conditions of the supply of the service, the agreed terms and conditions; and
- so far as the Corporation and the person do not agree on terms and conditions determined by the Corporation that are applicable to the supply of the service.

The terms and conditions determined by the Corporation may make provision in relation to:

- the kind of articles that may be carried by post and the means by which different kinds of articles may be carried;
- the carriage of letters and other postal articles;
- rates of postage;
- the payment of postage, including the issue and sale of postage stamps, the pre-stamping of postal articles and the use of franking machines; and
- undelivered letters and other articles including the forfeiture and destruction of such articles.

**Clause 23** provides that the Board shall in consultation with the Minister determine the pricing policy for universal postal services to be provided by the Corporation. For the rates of postal services, the Corporation shall act consistently with the pricing policy.

**Clause 24** provides that the Board shall prepare guidelines for the operating procedures of the Corporation. The guidelines relate to the destruction of postage stamps that are damaged or

are excessive in numbers as opposed to what is needed; opening and destruction of undeliverable mail; opening and destruction of mail suspected of carrying illegal or dangerous material; and, any other prescribed matter.

The guidelines setting out the operating procedures of the Corporation require Cabinet approval.

## **PART 6 – DETENTION AND EXAMINATION OF POSTAL ARTICLES**

**Clause 25** provides that if the employee has reasonable cause to believe that any postal article has been posted in contravention or has been posted in contravention of any provision of the Illicit Drugs Act 2014, the Agricultural Quarantine Act 1999 or the Customs Act 2014, the employee may detain the postal article for opening and examination.

This clause requires a postal article to be opened and examined by:

- 2 or more persons specially authorised for the purpose of the Corporation;
- such authorised person in the presence of another employee of the Corporation or a Customs officer.

**Clause 26** provides that if a postal article is detained by the Corporation and examined under this Act, the Corporation may retain the postal article if found in contravention of the Act. This clause allows an employee to dispose or destroy postal articles that are:

- likely to die, rot, spoil or otherwise perish; or
- is or is about to become dangerous.

Information of postal articles shall be recorded before they are destroyed detailing:

- the sender's name and address;
- the intended recipient's name and address; and
- what the article contains.

The article may be returned to a person if proceedings against the person is completed or abandoned. However, if a person is convicted, the article is forfeited to the Republic.

In instances where no proceedings have been taken against a person within 6 months after seizure, the article can be returned to the person who appears to be entitled to the postal article.

In instances where the person who appears to be entitled to the article is not found or there is no such person, the postal article is forfeited to the Corporation and may be dealt with as the Corporation think fit.

**Clause 27** provides for postal articles believed to be in contravention of other laws, including the Illicit Drugs Control Act 2004, Agricultural Quarantine Act 1999 and the Customs Act 2014.

**Clause 28** provides that if the Corporation opens and examines a postal article and finds it contains anything valuable, the postal article shall be kept safe unless subject to disposal.

**Clause 29** provides that the Corporation shall make and keep records of each postal article detained, opened or examined under this Act. The record shall include the following:

- the reason why the postal article was detained;
- the contents of the postal article;
- how the postal article and its contents were dealt with by the employee after the postal article was opened or examined.

**Clause 30** allows the Corporation to open postal articles if the Corporation is unable to deliver to the addressee because the postal article bears no address or bears a wrong or an incomplete or an illegible address; or the addressee cannot be located and does not bear a return address, or that bears a return address that is wrong, incomplete, or illegible.

## **PART 7 – UNDELIVERABLE POSTAL ARTICLES**

**Clause 31** provides for how the Corporation is to deal with postal articles that are unable to be delivered to the address because it bears no address, or bears a wrong or incomplete address or the addressee cannot be located.

The Corporation shall return the postal article to the sender if the Corporation does not know the sender of the postal article, the Corporation shall keep the postal article in safe custody for at least 3 months or until it is claimed.

**Clause 32** provides for the disposal of unclaimed postal articles. The employee shall destroy or dispose of the postal article as the employee thinks fit.

## **PART 8 – OFFENCES RELATING TO POSTAL ARTICLES**

**Clause 33** provides that an employee shall not without sufficient cause disclose to any person any information as to the contents of a postal article in the course of his or her duties. This clause also provides that a Customs, Police or Quarantine officer shall not disclose without reasonable and sufficient cause any information from or as to the contents of a postal article obtained in the course of the officer's duties.

Penalty – upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 12 months or to both.

**Clause 34** makes it an offence for a person to post or cause to post any postal article containing any noxious substance or thing or any dead animal.

Penalty – upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 12 months or to both.

**Clause 35** makes it an offence for a person to post or cause to post any postal article containing indecent articles.

Penalty – upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 12 months or to both.

**Clause 36** makes it an offence for a person to post or cause to post any dangerous postal articles.

Penalty – upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 12 months or to both.

**Clause 37** provides that a person who wilfully without reasonable excuse opens or cause to open any postal article that is not addressed to that person commits an offence.

Penalty – upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 12 months or to both.

**Clause 38** makes it an offence for a person to dishonestly appropriate a postal article including an article that appears to have been lost or wrongly delivered or which was lost during delivery.

Penalty – upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 12 months or to both.

**Clause 39** makes it an offence for a person to open or tamper with a post box.

Penalty – upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 12 months or to both.

**Clause 40** provides that a person who obstructs the employee of the Corporation in the proper execution of his or her duty commits an offence.

Penalty – upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 12 months or to both.

## **PART 9 – MISCELLANEOUS**

**Clause 41** provides for the protection of the Corporation and its employees from liability for anything done or omitted to be done in the bona fide exercise or purported exercise of a power or function under the Act.

**Clause 42** vests jurisdiction in the District Court to hear and determine offences under the Act and to impose the full penalties in respect of the said offences.

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 43** provides that a Director commits an offence if he or she purposely or knowingly discloses any information or contents of the documents that he or she becomes aware through his or her connection to the Corporation unless the information is to the extent:

- that the use or disclosure is authorised or required under this Act or any other law;
- that the person providing the information authorised its disclosure at the time of providing the information;
- necessary to enable the Minister, the Board or the Chief Executive Officer to publish statistical information concerning the subject matter of the functions of the Corporation; or
- necessary to enable the Board to give advice to the Minister.

**Clause 44** provides that a Board of Director including the Chairperson and Chief Executive Officer who intends to submit a nomination to stand in the general election shall submit a 3 months nomination and resign from being a member of the Board or Chief Executive Officer.

**Clause 45** empowers the Cabinet to make regulations to prescribe all matters to give effect to the Act.

**Clause 46** repeals the Post and Telegraph Act 1901.