

## REPUBLIC OF NAURU

### COUNTER TERRORISM AND TRANSNATIONAL ORGANISED CRIME (AMENDMENT) ACT 2020

#### EXPLANATORY MEMORANDUM

The *Counter Terrorism and Transnational Organised Crime (Amendment) Act 2020* is a Bill for the *Counter Terrorism and Transnational Organised Crime (Amendment) Act 2020*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

#### EXPLANATION OF CLAUSES

**Clause 1** provides that once enacted, the short title of the Bill will be the *Counter Terrorism and Transnational Organised Crime (Amendment) Act 2020*.

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

**Clause 3** is the enabling provision for the amendment of the *Counter Terrorism and Transnational Organised Crime Act 2004*.

**Clause 4** amends Section 2 to ensure that definitions used in the Act comply with the revised Financial Action Task Force October 2020 requirements. The definition of property in paragraphs (a) and (b) remain as is in the current Act. The additions are in paragraphs (c) and (d). This includes the addition of dividends, interest and other income which is now generated from the properties referred to in paragraphs (a) and (b). Paragraph (d) adds the potential use of any of those assets, funds, goods or services acquired for the purposes of using them for a terrorist act. In a nutshell, the proposed amendment now looks at the potential generation of income from existing assets which are likely to be used for the purposes of a terrorist act.

The amendment to the definition for '*terrorist group*' is necessary to give effect to the removal of '*specified entity*'. The definition for '*terrorist group*' identifies all persons working together, who either commit or attempt to commit, a terrorist activity, participates, organises or directs another person or persons to commit a terrorist act. The definition is also broadened to include any contribution which may lead to the commission of a terrorist act. For example, scientific research to manufacture a weapon is now captured.

It also complements and aligns with the Financial Action Task Force definition of *'terrorist group'*, which is taken from Article 2 of the *International Convention for the Suppression of the Financing of Terrorism*.

The definition for *'terrorist property'* is deleted and substituted. Paragraphs (a) and (b) of the current definition has been retained. Paragraphs (c) and (d) are added to include the broadened definition now of *'property'* in the Bill. The amendment to the definition of *'terrorist property'* is complementary to the definition of *'terrorist group'*. A *'terrorist'* is an individual, a natural person, as such, his or her actions must complement or be part of the actions of the group. Therefore, the definition of an individual person acting must be same as those when he or she participates as a member in the *'terrorist group'*.

The term *'specified entity'* is removed because it is substituted with the term *'terrorist group'* later in the Bill. Currently, *'specified entity'* is an entity listed under Section 4 and declared under Section 5. *'Specified entity'* were a group of entities or bodies recognised by the Security Council of the United Nations, who were causing or sponsoring terrorism. The Security Council has collectively made further resolutions in which the term of *'specified entity'* is replaced by *'terrorist group'*. This is a result of changes in the composition and activities of terrorist groups and the Security Council's attempt to control such groups. The current definition of specified entity is quite narrow as it only applies to those under targeted financial sanctions.

**Clause 5** amends Section 3 by deleting and substituting the definition for *'terrorist act'*. For the avoidance of doubt, attempting, aiding and abetting, inciting and conspiring in an act mentioned in subclause (1) is also a terrorist act. The ancillary conduct is also captured under subclause (2) to clarify the issue.

The definition of the term *'terrorist act'* is revised to distinguish terrorist act from ordinary private or pressure group activities. The pressure group activities could be peaceful or violent but it is not designed to achieve the outcome of a terrorist act. The definition will now clear the requirements for *Anti-Money Laundering Act 2008*, *Bail Act 2018* and the *Crimes Act 2016*. This distinction is important as the respective offences, penalties and interlocutory reliefs are substantially different to that of a terrorist related activity and ordinary crime.

**Clause 6** repeals Part 2 of the Act for the purposes of targeted financial sanctions.

**Clause 7** amends Section 10 by clarifying the existing offence of terrorism financing. The current Section 10 in the Act although captioned as *'terrorism*

financing’, its contents do not reflect terrorism financing. This definition when read together with the definition of ‘property’, ‘terrorist act’, ‘terrorist group’ and ‘terrorist’ explains how a property becomes property for terrorism financing. The offence is explicit. The requirement for the offence still remains that the person offering any property has knowledge of its use for a terrorist act. It does not matter whether the person intended the property to be used for a terrorist act or not.

Section 10 currently only partially complies with the Financial Action Task Force Methodology criteria. The provision is linked to ‘*specified entities*’ under targeted financial sanctions, which is potentially narrower than the requirement in the *International Convention for the Suppression of the Financing of Terrorism*.

This amendment extends targeted financial offences to any person who has actual or constructive knowledge of the fact that the assets may be used to carry out any terrorist act, or by a terrorist group or other associated activities of terrorism.

Further, the addition of monetary fines to offer proportionate levels of penalties to be applied where appropriate.

**Clause 8** inserts a new Section 15A where it prohibits the departure or escaping of foreign terrorists. ‘Terrorists’ as defined under this Bill in normal terms are called ‘terrorist fighters’. Foreign terrorist fighters increase the intensity, duration, and complexity of conflicts and may constitute a serious danger to their country of origin, transit, and destination. This Clause prevents individuals from travelling to a foreign country other than their country of residence or nationality for the purposes of the perpetration, planning or preparation of or participation in terrorist acts or the provision or receiving of terrorist trainings. This provision discourages any person from travelling or considering travelling where their personal security would be at risk.

**Clause 9** inserts a new Section 15B which aims to discourage recruitment, organisation, facilitation or assisting of foreign terrorists. This provision prevents the recruitment, organisation, facilitation or assisting of foreign terrorists. This is a deterrent clause for terrorists to travel to the Republic with the fear that they may be held back in the Republic. In return, this allows a more secure border for the Republic as the presence of a terrorist in the Republic poses many threats.

**Clause 10** inserts a new Section 15C. Recommendation 5 of the Financial Action Task Force requires the criminalisation of terrorist financing on the basis of the *International Convention for the Suppression of the Financing of Terrorism*.

Terrorist financing offences extends to any person who wilfully provides or collects funds or other assets by any means, directly or indirectly, with the unlawful intention that they should be used, or in the knowledge that they are to be used, in full or in part.

**Clause 11** amends Part 4 of the Act. Paragraph (a) deletes the words '*property of specified entities*' and substitutes with the words '*terrorist properties*' where they appear under the title of 'Part 4' and the title for 'Section 20'. Paragraph (b) amends Section 18(5) of the Act by deleting and substituting the words '*property of a specified entity*' with the words '*terrorist property*'. Further, Section 18(5) removes the requirement that a direction under Section 16 expires if the entity ceases to be a specified entity. The only requirement in place now under Section 18(5) is that a direction under Section 16 expires if a forfeiture order is made under Section 24.

**Clause 12** is a general amendment which corrects the title for the Schedule. There is only one Schedule. Further, it deletes the words '*specified entity*' and substitutes with the words '*terrorist group*'.

**Clause 13** inserts 3 additional Conventions relating to counter terrorism, which are: *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation 2010*, adopted at Beijing on 10 September 2010; *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft 2010*, adopted at Beijing on 10 September 2010 and *Protocol to the Convention on Offences and Certain other Acts Committed on Board Aircraft 2014*, done at Montreal on 4 April 2014'.