

## REPUBLIC OF NAURU

### NATIONAL DISASTER RISK MANAGEMENT (AMENDMENT) BILL 2020

#### EXPLANATORY MEMORANDUM

The *National Disaster Risk Management (Amendment) Bill 2020* is a Bill for the *National Disaster Risk Management (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 *National Disaster Risk Management (Amendment) Act 2020*.

**Clause 2** sets out when the Bill's provisions will commence which is on 16 March 2020.

**Clause 3** is the enabling provision for the amendment of the *National Disaster Risk Management Act 2016*.

**Clause 4** amends Section 3 of the Act by deleting and substituting a couple of words and their definitions as well as including a new word and its definition.

The definition of '*authorised officer*' is amended to allow for authorised officers to be appointed. The appointment authority is the Minister. In addition, police officers are now also included as authorised officers, therefore, in any disaster, police will be able to carry out such duties as may be assigned to them without the need for any special appointment as authorised officers.

The definition of '*disaster*' is amended as the nature and scope of a disaster is unpredictable. The Republic has to manage a disaster under this Act. Therefore, the cause of a disaster is to be as wide as possible in the event of something unexpectedly occurring, which causes the disruption of the functioning of the society.

The word '*direction*' is included to describe the instructions or directions which may be given in many different forms.

**Clause 5** amends Section 7 of the Act by inserting a new Clause 7(d). This subclause is inserted to clarify the restrictions or limitations which may be placed on persons and the manner it is to be interpreted, to ensure the spirit and intent of the Act is aligned to the *Constitution*.

**Clause 6** amends Section 8 of the Act by deleting subsection (2). Section 8(2) exempts the Government from any offence. In law, the Government cannot be charged for an offence. This is a meaningless clause. In addition, civil and criminal protections are given for Government officials under Section 84.

**Clause 7** amends Section 20 of the Act by inserting a new subclause (9). This subclause is added to allow a better management of a disaster. The Act provides for all different forms of disasters. In certain cases, it may require specially trained or expert persons to manage the disaster. It is important that the Minister is given the discretion to appoint a National Controller other than the Secretary for National Emergency Services, for a specialised nature of disaster so that the Emergency Plans are implemented expeditiously, effectively and well-coordinated to ensure protection of public health and public safety. An example is the Coronavirus (COVID-19) pandemic.

**Clause 8** deletes and substitutes Section 33 of the Act. This clause is incorporated to meet the objective of the Act to manage and minimise any risk to human beings or any other life. The amendment now allows a broader scope consistent with the requirement of the Constitution.

**Clause 9** amends Section 34 of the Act. Subsection (4) is amended to correct a typographical error. The Clause is also expressed in mandatory terms. The words ‘ensure to’ is redundant.

**Clause 10** amends Section 81 of the Act to clarify the offences so that those who carry out duties and the members of the public are aware of the consequences of not following directions.

The additional offences of uttering, publishing or posting messages in social or mass media by means of any electronic device is also an offence. There is an additional offence where the publication is likely to mislead or cause fear to the people. This applies even if no person has suffered as a result of the misleading information by the accused. It may be sufficient to prove that the information is likely to mislead persons.

The Police are given powers to act without a warrant, as disasters may not permit time to act. This is to ensure urgent action is taken for public safety by the Police.

**Clause 11** deletes and substitutes Section 82 of the Act. This clause introduces fixed penalty notice provision. This is used as an expeditious means of punishment and deterrent purposes.

**Clause 12** deletes and substitutes Section 83 of the Act. This Clause allows for the enforcement of fixed penalties and where a person fails to pay a fixed penalty, he or she will be liable to prosecution. In order to ensure payment of fixed penalties, an additional mandatory court cost of \$100 is also added.

**Clause 13** amends Section 84 of the Act. The amendment of Section 84(1) now includes the exemption from liability of the Minister and Council who have extensive roles under the Act.

A new subclause (3) is inserted and the inclusion of this amendment is necessary for avoiding any criminal or other form of prosecution for any actions taken in good faith by a public service employee, authorised officer or person. It extends protection to the persons who are directing as well as those carrying out the duties.

**Clause 14** amends Section 86 of the Act. The new Clause 86 (i) allows the Cabinet to make regulations to control movement of people or property, under the doctrine of necessity. The disaster may be in such a form that Parliament may not be able to meet to make urgent laws. It gives an opportunity to the Cabinet to make subsidiary legislation to fill any gaps in the laws to regulate the management and control of damage or loss to the community or property until such time the disaster is over. The regulation making power is limited for a time and purpose.

The new Clause 86(j) allows the Cabinet to vest additional powers, functions or duties which is already provided in the Act, which may be necessary to manage a disaster. All actions taken by officials must be in conformity with and empowered by law.