

REPUBLIC OF NAURU
BUSINESS LICENCES BILL 2017
EXPLANATORY MEMORANDUM

The *Business Licences Bill 2017* is a Bill for the *Business Licences 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 Bill will be the *Business Licences Act 2017*.

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

Clause 3 is the definitional section which provides for the meaning of certain words used in the Bill. It defines '*business*' as well as a '*person*' as follows:

- '*business*' is defined as any activity aimed at generating revenue in trade, commerce or industry, and includes any trade or profession;
- '*person*' includes a partnership and any body of persons corporate or incorporate;

PART 2- REGISTRAR AND REGISTER OF BUSINESS LICENCES

Clause 4 provides that the Secretary for Justice is the Registrar of Business Licences.

The Registrar has the powers expressly conferred to him or her by this Act or any other Act to perform his or her functions and powers.

This clause also allows the Minister to appoint a Deputy Registrar of businesses on the recommendation of the Secretary. The Deputy Registrar may perform any functions and powers of the Registrar as directed by the Registrar.

Clause 5 gives the Registrar the responsibility for establishing and maintaining a register of Business Licences in accordance with the Act.

The register shall be available for inspection by the applicant during business hours and if any person requires copies of entries, these will be provided upon payment of the prescribed fee.

PART 3- BUSINESS LICENCES

Clause 6 emphatically provides that any business must have a licence in order to commence or to operate.

Clause 7 requires the Registrar to accept for consideration an application for a licence only if the applicant has already registered a business name; a firm or partnership or corporation under the relevant legislation. The additional requirement is to have a tax identification number issued under the Revenue Administration Act 2014.

Clause 8 provides that any application for a licence shall be made in the prescribed form and the applicant must pay the prescribed fee before the licence is granted.

Clause 9 states that a licence shall not be granted to a person under the age of 18 years.

Clause 10 provides for the Registrar to consider each application made and for the Registrar to inform the applicant of the decision within 7 days of the date when the application was lodged. The Registrar shall grant the licence if he or she is satisfied that the application complies with the Act.

Clause 11 requires that any licence granted under the Act must be for the business activity specified in the licence and is subject to either special conditions or to general conditions.

Clause 12 provides for a situation where a person to whom the licence was granted does not want to operate the business on the conditions specified in the licence.

The person may return the licence and apply for the reimbursement of the licence fee within 7 days after the licence was granted. The Registrar must cancel the licence and arrange for the reimbursement of the licence fee.

Clause 13 provides for the validity of a business licence. A business licence is valid for a period of 12 months from the date the licence was granted.

Clause 14 allows for short term or occasional licences to be granted by the Registrar on the receipt of application from any person.

An occasional licence may be granted subject to any necessary modifications to give effect to this section. A person can apply for an occasional licence only 3 times in a given year on the payment of the prescribed fee. This would capture people wanting to sell food items during festivals in the Republic.

It is an offence for an occasional licence holder to continue with the business activity after the expiry of the occasional licence.

Clause 15 authorises the Cabinet to make Regulations allowing for the establishment of special categories of businesses; prescribing fees for the same; prescribing special conditions for these categories of licences and prescribing penalties for the breach of any licence conditions.

The licences granted for special categories of businesses are subject to the provisions of the Act.

Clause 16 provides for applications for renewal of licences to be made in the prescribed form at least 1 month prior to the expiration of the licences. A licensee shall not be liable for prosecution if he or she lodged an application for renewal of licence within 30 days of the expiration of his or her licence and has paid the late application fee.

However, if the business owner applied for a renewal 30 days after the expiry of his or her business licence, he or she will therefore pay on renewal:

\$200 – late application fee;

\$300 - licence fee; and

\$1000 – penalty.

Clause 17 provides for situations where business people operate their businesses without current business licences. On an application for renewal of business, the business or business owner who was operating without a current licence shall pay a penalty. The penalties are as follows:

- (a) 1 month without a business licence - \$1,000;
- (b) 2 months without a business licence - \$3,000; or
- (c) 3 or more months without a business licence - \$10,000.

This clause is incorporated to allow businesses to operate without fear of prosecution for failing to renew their licences and operating businesses on expired licences. This scheme allows the business operator to pay a pecuniary penalty.

The current Act has a fixed penalty of \$10,000 which will result in a number of businesses closing and not paying the fine and, abusing the system by opening new businesses under different names.

Clause 18 allows the Registrar to cancel a licence under one of the following conditions:

- (a) the licensee applies to have his or her licence cancelled;
- (b) the application contains any material misrepresentation or false statement;
- (c) one or more licence conditions is breached;

(d) the licensee fails to comply with any directions given by the Registrar; and
(e) where the licensee assigns or transfers the business licence in contravention of section 20.

If a licence was cancelled under subsection (1)(b) to (e) then the Registrar must provide reasons for the cancellation of a licence within 5 days of the cancellation.

The business is treated as operating unless the business licence is cancelled under this section.

The purpose of this clause is to eliminate any excuse by a business operator that the business was not in operation and that was the reason for the non-renewal of licence.

Clause 19 gives a person whose licence was cancelled the right to appeal to the Minister the Registrar's decision to cancel the licence. Any appeal must be filed within 14 days of the decision to cancel a licence was made. Any person appealing a decision of the Registrar shall have the right to be heard orally or in writing by the Minister.

The Minister's decision on the appeal shall be provided in writing within 14 days of the appeal being lodged.

Clause 20 states that a licence is not to be assigned or transferred to any other person by the licensee without the prior approval of the Registrar.

Where the licence is assigned or transferred without the prior approval of the Registrar, the licensee commits an offence and is liable on conviction to a maximum fine of \$10,000 or to a term of imprisonment of not more than 6 months or to both.

Clause 21 allows for variations particulars of a licence. A licensee may apply in the prescribed form to the Registrar and on the payment of the prescribed fee to vary the particulars of his or her licence.

Any variations shall be recorded by the Registrar in the register within 7 days of any variations being made.

Clause 22 requires business owners to display licences in visible places in or at the place of business. This requirement carries a fixed penalty of \$1,000 against a person who does not display his or her licence. If the person fails to pay the fixed penalty within 7 days of receipt of the notice of this breach, he or she will be prosecuted.

Clause 23 permits an authorised officer to inspect a business at a reasonable time. This inspection is to ensure that the business not only has a licence, but is operating in compliance with the licence conditions and with the provisions of the Act.

A business owner may be required by an authorised officer to produce the licence for inspection. It is an offence to fail to produce a licence and the business owner shall be liable to prosecution and upon conviction is liable to a fine of not more than \$1,000 and a term of imprisonment of not more than 6 months or to both.

Clause 24 allows the Registrar to order the closure of a business if the Registrar has received a report from an authorised officer that a business is operating without a licence.

The Registrar's order must be in writing, directed to the person operating the business. A person who fails or wilfully refuses to comply with the order commits an offence and shall upon conviction be liable to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 6 months or both.

PART 4 - OFFENCES

Clause 25 is the offence provision and sets out situations where a person commits an offence under the Act. Offences include:

- (a) the business operating without a licence;
- (b) the business operating with a licence that has been cancelled by the Registrar;
- (c) the business is operating in contravention of any special or general conditions;
- (d) if he or she is operating a business other than a business activity specified in the licence;
- (e) he or she is operating a business on expiry of his or her occasional licence;
- (f) if a person obstructs an authorised officer from carrying out his or her duties under this Act.

A person convicted of any of the offences listed is liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 12 months. However, where a person pays a pecuniary penalty under section 17, he or she shall not be liable for prosecution.

Clause 26 provides for offences committed by corporations and where at the time of the commission of an offence a person who was a Director, manager, secretary or officer or a partner of the company, firm, society or other body of persons who acted in that capacity shall be guilty of an offence unless it is proven that the offence was committed without the consent of or collusion by the person and that the person did his or her best to prevent the commission of the offence having regard to the nature of the person's functions and to all circumstances.

The court may on conviction fine a corporation, firm, society or other body of persons an amount not exceeding \$100,000. In the case of a Director, manager, secretary or officer or a

partner of the company, firm, society or other body of persons, a fine not exceeding \$20,000 or a term of imprisonment not exceeding 12 months or both.

PART - MISCELLANEOUS

Clause 27 allows the Minister to authorise an officer of the Department or a police officer to be an authorised officer for the implementation of the Act. The authorisation of authorised officers shall be by notice in the Gazette.

Clause 28 exempts the Registrar and authorised officers from civil or criminal liability in the exercise or purported exercise of a power only if the exercise or purported exercise of a power was done in good faith on reasonable grounds.

Clause 29 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 30 empowers the Cabinet to make regulations prescribing all matters necessary or convenient to be prescribed to give effect to the Act.

Clause 31 repeals the Business Licences Act 2011.

Clause 32 creates transitional and savings provisions related to licences granted or applications made under the repealed Act. All business licences granted and all applications submitted to the Registrar under the repealed Act remain valid.

All proceedings, fines or decisions made under the repealed Act remain enforceable.