

REPUBLIC OF NAURU
FISHERIES (AMENDMENT) BILL 2017
EXPLANATORY MEMORANDUM

The *Fisheries (Amendment) Bill* is a Bill for the *Fisheries (Amendment) 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 *Fisheries (Amendment) Act 2017*.

Clause 2 sets out when the Bill's provisions will commence.

Clause 3 is the enabling provision for the amendment of the *Fisheries Act 1997*.

Clause 4 is the definition clause and provides for definitions of specific words used in the Act. The clause also harmonises the definition of certain words used throughout the Bill.

Clause 5 amends the Act by omitting the words that have been amended in clause 4 and substituting with the new terms used in the amendment. This is to ensure that the Fisheries Act 1997 and the Fisheries (Amendment) Act 2017 are read together using the same terms and meaning.

Clause 6 amends section 12 of the Act by inserting several clauses to clarify the power of the Chief Executive Officer in granting permits, licence and authorisations for fishing or related fishing activities in and beyond the Nauru fisheries waters. Before the permits, licence or authorisations are issued there has to be

- (a) pre fishing inspection;
- (b) conditions imposed under the Act;
- (c) conditions shown in the regulations;
- (d) fisheries management plan and strategy.

Clause 7 inserts a new section 12A which provides for the terms of licences or authorisation. A foreign fishing licence, national fishing licence or game fishing licence is valid for one year.

A licence cannot be transferred from one vessel to another without the written authority of the Chief Executive Officer.

Clause 8 inserts a new section 12B which provides for instances where the Chief

Executive Officer may refuse to issue a licence or authorisation. Such instances include:

- (a) when an application is not in accordance with the requirements of either the Act or any applicable access agreement;
- (b) the required fees have not been paid;
- (c) the vessel or person associated with the vessel had breached the Act or any applicable access agreement; or,
- (d) any prescribed conditions have not been met or are likely not to be met.

The clause also provides for instances where the Chief Executive Officer may exercise his or her discretion and issue a licence or authorisation initially denied provided the applicant pays an appropriate performance bond.

Clause 9 inserts a new section 12C which provides for instances where the Chief Executive Officer may suspend or cancel a licence or authorisation.

The Chief Executive Officer may suspend or cancel a licence or authorisation:

- (i) when a person provides to the Chief Executive Officer false, incomplete, incorrect, misleading or information not given when required;
- (ii) when it is necessary to do so in order to give effect to any policy changes specified in a fishery management plan or strategy;
- (iii) the operator is undergoing a bankruptcy proceeding in any jurisdiction and no satisfactory financial assurance has been provided;
- (iv) the vessel has been used in contravention of the Act; and
- (v) payment has not been made in relation to any fees, charges, royalties and other payment required under any other Act or for any penalty or fine in relation to a breach of any other Act ; or,
- (vi) the vessel operator has breached any applicable access agreement or any obligation or requirement imposed by international law, or has committed an offence against the laws of Nauru.

Written notification of the cancellation of the licence or authorisation must be given to the holder of either document.

Clause 10 inserts a new section 12D which provides that the licence or the authorisation holder must observe other relevant laws.

Clause 11 inserts a new section 12E which provides for request of reconsideration of denied, suspended or cancelled licence or authorisation by the Chief Executive Officer. The applicant, within 30 days after being notified of the decision to deny, suspend or cancel the licence resubmit to the Chief Executive Officer to reconsider.

Clause 12 inserts a new section 12F to ensure that the Chief Executive Officer maintains a national fisheries register of licences and authorisations to be able to monitor how many fishing vessels are licensed or authorised. The register must have:

- (a) the nature of the activity licensed or authorised;
- (b) particulars of the vessel or the person licensed or authorised;
- (c) terms of the licence or authorisation;
- (d) result of any appeal affecting the licence or authorisation,
- (e) and any other prescribed matter.

Clause 13 inserts a new section 12G which provides that a person who is required to provide information should make sure the information being provided is true otherwise failure to do so would amount to an offence punishable with a fine not to exceed \$150,000 dollars.

Clause 14 inserts a new Part IIA which deals with the registration of fishing vessels on the register book established under the Shipping Registration Act 1968. This whole new Part IIA introduces clauses setting out Nauru's duties to exercise due diligence as a flag State to ensure fishing vessels flying its flag are compliant with national laws and international obligations. Part IIA is divided into 4 divisions.

Clause 15 provides for Division 1 deals with registration requirements and has 3 clauses - 12H, 12I and 12J

Clause 16 inserts a new section 12H which provides for conditions which a fishing vessel has to adhere to before it can be registered as a Nauru flagged vessel. The registration of a fishing vessel must be consistent with International and regional arrangements Nauru is a party to. There is also verification to ensure that no fishing vessel is involved in any illegal, unreported and unregulated fishing or related fishing activity.

Clause 17 inserts a new section 12I which provides for the obligations imposed upon an operator in order to have their fishing vessel registered as a Nauru flagged vessel. In order for the fishing vessel to be registered they must:

- (a) show that their vessels was not removed from a previous registry and have no outstanding penalties from the previous registry;
- (b) show that they have a good record from other registers or fisheries organisations which Nauru is a member of;
- (c) provide a statutory declaration that the fishing vessel was not involved in driftnet fishing; and
- (d) show that their vessel or the owner does not have a matter in any court or judicial issue in any coastal state or regional fisheries management organization to which Nauru is a party to.

Clause 18 inserts a new section 12J which provides further obligations imposed upon an operator in order to have their fishing vessel registered as a Nauru flagged vessel. The operator must:

- (a) follow all reporting, monitoring, control, surveillance and enforcement as legally

- required under the Act or other laws in Nauru;
- (b) follow the terms and conditions of the licence;
- (c) make sure that the fishing vessel installs the approved automatic location communicator at all times;
- (d) pay the fee required;
- (e) make sure that the fishing vessel comply with all applicable international conservation and management measures and resolutions;
- (f) agree to remain under the Nauru flag for a minimum period of 5 years.

Clause 19 inserts a new Division 2 which establishes the Nauruan record of fishing vessels in line with Nauru's obligations as a flag state and has 3 clauses, 12K, 12L and 12M.

Clause 20 inserts a new section 12K which establishes the Nauru record of fishing vessels. The Nauru Fisheries and Marine Resources Authority has to have a record of all fishing vessels allowed to fish outside the fisheries water of Nauru. The record will contain the vessels name, address of the owners, type of vessel, fishing methods used by the vessel, weight of the vessel, navigational system, an equipment of the vessel and the area in which the vessel is to operate. These fishing vessels are allowed to fly the flag of Nauru.

Clause 21 inserts a new section 12L which provides that in line with its international obligations, Nauru can disclose information on the Nauru record of fishing vessels to any foreign government, international, regional or subregional fisheries management organization, including any changes to this record.

Clause 22 inserts a new section 12M which imposes a penalty of \$500,000 in the event where a Nauru flagged fishing vessel engages in fishing after providing false information to go into the Nauru record of fishing vessel. This penalty of \$500,000 is set at this level to signify the seriousness of providing false information which may affect Nauru's reputation as a flag State.

Clause 23 inserts a new Division 3 which sets out the procedures and requirements for national fishing vessels to fish beyond Nauru fisheries waters. This division includes 7 clauses, 12N, 12O, 12P, 12Q, 12R, 12S and 12T which sets out the procedures and requirements in detail.

Clause 24 inserts a new section 12N which provides for when an authorisation may be issued. The clause also prescribes the details of the application form.

Upon receipt of the application form by the Chief Executive Officer he or she must notify the applicant within 30 days of the result of his or her application. It is an offence to give false or reckless information to the Chief Executive Officer.

Clause 25 inserts a new section 12O which provides for the power of the Chief Executive Officer to grant an authorisation. In order for the Chief Executive Officer not to grant such authorisation, he or she must be satisfied that the:

- (a) vessel owner, charterer or operator is not of good standing;
- (b) vessel is listed on the regional fisheries management organisation believed to be involved in illegal, unreported or unregulated fisheries;
- (c) vessel is not involved in any violation of an international conservation and management measure;
- (d) vessel is involved in illegal activities such as trafficking of human, firearms or drugs.

Clause 26 inserts a new section 12P which provides for the power of the Chief Executive Officer not to issue an authorisation, in situations where –

- (a) the foreign state suspended the authorisation of the vessel and such suspension has not expired;
- (b) the foreign state, within the 3 years before the application was made, had withdrawn the authorisation because the vessel breached the international conservation and management measures;
- (c) the vessel was involved in illegal, unregulated or unreported fishing.

Clause 27 inserts a new section 12Q which sets out the conditions to be reflected in the authorisation.

The conditions include: the vessel has to be marked, a vessel cannot engage in any activity that undermines the international conservation and management measures and, there must be reports sent to the Chief Executive Officer including the areas of fishing.

The Chief Executive Officer can attach other required conditions necessary and proper to implement the treaties, conventions and international agreements which Nauru is a party to.

Clause 28 inserts a new section 12R which provides for the validity of an authorisation which is valid for a 1 year period. The authorisation is void if the vessel is no longer allowed to fly the flag of Nauru.

Clause 29 inserts a new section 12S which provides for when an authorisation may be cancelled or suspended. The authorisation will be cancelled or suspended, if:

- (a) it is necessary in order to conserve the marine life or resources in the high seas;
- (b) the vessel is involved in illegal, unreported or unregulated fishing;
- (c) vessel was in serious breach of the conservation and management measure;
- (d) vessel is involved in tracking of humans, fireworks and observers are on board are treated in cruel manner,

Clause 30 inserts a new section 12T which makes it an offence for a flagged fishing vessel to fish without an authorisation, the penalty for committing such offence is a fine not exceeding \$250,000.

Clause 31 inserts a new Division 4 which provides for the use of other flagged fishing vessels by Nauru citizens or corporations or companies on the high seas. In order for Nauru citizens or corporations or companies to engage as operators of fishing or fisheries related activities using other flagged fishing vessels on the high seas, they would need a qualifying authorisation to do so by the flag State. This division has six sections namely 12U, 12V, 12W, 12X, 12Y and 12Z.

Clause 32 inserts a new section 12U which provides for the use of other flagged fishing vessels by Nauru citizens or corporations or companies on the high seas. In order for Nauru citizens or corporations or companies to engage as operators of fishing or fisheries related activities using other flagged fishing vessels on the high seas, they would need a qualifying authorisation to do so by the flag State.

Clause 33 inserts a new section 12V which provides for the use of a national vessel in the jurisdiction of another state, where the Nauru flagged vessel will have to comply with the laws of that other state.

Clause 34 inserts a new section 12W which provides for the Chief Executive Officer to investigate breaches and non-compliance by fishing vessels flying the Nauru flag and any other fishing vessel. The effect of non-compliance or commission of an offence is punishment on conviction by a fine not exceeding \$500,000.

Clause 35 inserts a new section 12X which provides for penalties for breaches of conditions of an authorisation to fish.

Clause 36 inserts a new section 12Y which allows the Chief Executive Officer to obtain information from the Registrar of Foreign Vessels regarding any fishing vessel.

Clause 37 inserts a new section 12Z which allows the Chief Executive Officer to obtain information from an operator regarding fisheries data and catch information.

Clause 38 inserts a new Division 5 which deals with the International Fisheries Unit. The division only has 1 section.

Clause 39 inserts a new section 12AA which establishes the International Fisheries Unit to oversee national fishing vessels which ensures that Nauru monitors fishing vessels flying its flag in addition to licensed or authorized fishing vessels.

Clause 40 inserts a new Part IIIA which provides a new chapter on the requirements for the charter of fishing vessels.

Clause 41 inserts a new section 13A which sets out the requirements for the charter of fishing vessels by Nauruan citizens to operate either within the exclusive economic zone

or beyond national fisheries waters.

This clause sets out the procedure in applying for a charter, and provides that the Chief Executive Officer must not grant a national licence or an authorisation in respect of an applicant who would be operating under a charter agreement unless the applicant met certain requirements.

Clause 42 inserts a new section 13B which provides for the obligations of an operator operating under a charter agreement. The operator has the obligation to comply with reporting and monitoring, comply with the terms and conditions of the authorisation to fish, make sure that an approved mobile transceiver is installed, pay the proper fee, make sure the vessel complies with applicable conservation and management measures, make sure the vessel complies with the Nauru laws and provide a copy of the charter agreement to the Chief Executive Officer.

Clause 43 inserts a new section 13C which provides for when a licence or authorisation in respect of fishing vessels operating under charter will be suspended and makes it an offence for an operator to contravene his or her obligations.

Clause 44 inserts a new Part IIIB which provides for authorisations granted to operators of fishing vessels operating under charter agreements who are non-citizens of Nauru.

Clause 45 inserts a new section 13D which provides for the requirements for applications by non-citizens for authorisation to charter a National fishing vessel beyond Nauru waters.

Clause 46 inserts a new section 13E which provides for the duty of a fishing vessel operator to comply with all requirements under the Act and all requirements under the Shipping Registration Act 1968.

Clause 47 inserts a new section 13F which provides for the conditions to be adhered to by these applicants and when their licences or authorisations can be suspended or cancelled.

Clause 48 inserts a new Part IIIC which imposes compliance with international obligations.

Clause 49 inserts a new section 13G which provides for this Part to apply to all vessels registered under the Shipping Registration Act 1968.

Clause 50 inserts a new section 13H which imposes obligations on fishing operators to comply with international obligations. This clause gives effect to international conservation and management measures established by global, regional or sub regional organisations or arrangements to which Nauru is a party or a cooperating non contracting party.

Clause 51 inserts a new Part IIIA to deal with pollution caused by fishing vessels.

Clause 52 inserts a new section 21A, inserts a new definition applicable to Part IIIA that deals with Pollution.

Clause 53 inserts a new section 21B that deals with the discharge or escape of oil or pollutants into Nauru waters. If the discharge or escape is from a fishing vessel, the owner or master of the fishing vessel commits an offence. If a discharge or escape is from an apparatus used for transferring oil or a pollutant, to or from a fishing vessel, the person in charge of the apparatus is liable.

The penalty upon conviction is a fine of not more than \$100,000 and, the Court may assess costs incurred or likely to be incurred to clean or remove the discharge which shall be paid for by the offender.

Clause 54 inserts a new section 21C that deals with the discharge of oil or pollutants into waters outside Nauru. If any oil or pollutant is discharged or escapes from a Nauru vessel into any part of the sea outside Nauru waters, the owner or master of the ship commits an offence and is liable to a fine not more than \$100,000 and any expense or cost incurred for cleaning up or removing such discharge as may be assessed by the Court.

Clause 55 inserts a new section 21D which deals with the discharge of garbage or sewage from fishing vessels. If any garbage or sewage is discharged or escape from any fishing vessel in Nauru waters, otherwise than the prescribed manner under the regulations, the following person commits an offence and liable to a fine of not more than \$100,000 and any expense or cost as assessed by the Court:

- (a) owner or master of the fishing vessel is liable, if the discharge or escape is from a ship;
- (b) owner or master of the fishing vessel is liable, if the discharge or escape occurs during the course of transferring the garbage or sewage to or from a fishing vessel;
- (c) owner or person in charge of the operation is liable, if the discharge or escape is from a fixed or floating apparatus.

Clause 56 inserts a new section 21E that deals with the need for fishing vessels to install such equipment to prevent pollution. The equipment that must be installed in a fishing vessel to prevent or reduce the discharge of oil, pollutants, garbage or sewage into the sea, must be tested by the surveyor approved by the Minister.

A surveyor appointed under the Shipping Registration Act 1968, must be deemed to be appointed by the Minister for the purposes of this section.

Clause 57 inserts a new section 21F to provide the need for equipment to deal with pollution to be installed in a fishing vessel. The Minister may appoint a surveyor to test

any equipment that must be installed in a fishing vessel, for the purpose of cleaning or removing any oil, pollutant, garbage or sewage, in or on the sea.

Clause 58 inserts a new section 21G and makes provision for a duty to report any discharge. If any oil, pollutant, sewage or garbage that is discharged or escapes into Nauru waters from a fishing vessel, the owner or master of the fishing vessel, or person in charge of the operation, as the case may be, must immediately report by radio, the incident to the harbour master of the port in the case of discharge or escape into Nauru waters. Once the harbour master has received such a report, he or she must immediately inform the Chief Executive Officer of such discharge or escape into Nauru waters. The report must contain the following information:

- (a) time or position of discharge or escape oil, pollutant, garbage or sewage;
- (b) event to which the discharge or escape of the oil, pollutant, garbage or sewage;
- (c) weather or sea conditions at the time of discharge or escape, and time when the report was made;
- (d) where the oil, pollutant, garbage or sewage has been discharged or escaped, the description, quantity of oil, pollutant, garbage or sewage carried, and concentration level;
- (e) the existence of any slick and movement in any direction and measures taken to stop or reduce such discharge or escape, remove the oil, pollutant, garbage or sewage and to minimise the damage or possibility of damage resulting from the discharge or escape.

The clause also includes a provision for any fishing vessel that becomes stranded or abandoned anywhere in Nauru waters or outside Nauru waters, the owner of the vessel, must immediately by the quickest means available, report to the Harbour master providing:

- (a) full details of the fishing vessel (name, description and location of where the fishing vessel is stranded or abandoned);
- (b) full details of the damage to the fishing vessel;
- (c) a complete list of all oil, pollutants, garbage or sewage including the description and quantity, as the case may be;
- (d) estimated quantity of oil, pollutant, garbage or sewage, discharged or escaped.

Clause 59 inserts a new section 21H to make provision for keeping records. The master of a Nauru fishing vessel is obliged to carry a separate record book, as part of the vessel official log book records. The record must be carried on board a fishing vessel and relates to:

- (i) loading of oil cargo;
- (ii) transfer of oil cargo during a voyage or to or from a foreign vessel and in between tanks in a vessel;

- (iii) discharge of oil cargo;
- (iv) mixture of containing oil;
- (v) ballasting and cleaning oil tanks and discharge of ballast or cleaning water or other substances from the such tank;
- (vi) discharge or other disposal of mixture containing oil.

Clause 60 inserts a new section 21I which provides for an enforcement of the prevention of pollution. There will be regulations made by Cabinet to ensure that an authorised officer shall board a vessel while it is within Nauru waters and require production of records kept by the vessel for inspection.

Clause 61 amends section 22(1)(a) to deter any person from engaging or using a foreign fishing vessel in breach of fishing prohibitions, to increase the fine from \$500,000 to \$1,000,000. The clause also amends section 22(2)(a) to deter any person from using a foreign fishing vessel to fish in an area that is prohibited, by increasing the fine from \$500,000 to \$1,000,000.

Clause 62 amends section 23(1) (a) to deter any person from using a foreign fishing vessel to engage in a fishing activity either without a licence or in breach of a licence, by increasing the fine from \$500,000 to \$1,000,000.

Clause 63 amends section 24(1) (a) to deter a corporation from using a foreign fishing vessel that does not have a licence, by increasing the fine from \$500,000 to \$1,000,000.

The clause also amends section 24(3)(a) by increasing the fine from \$50,000 to \$100,000 to encourage foreign vessels to stow and secure their fishing gear in fisheries waters they are not authorised to fish in.

Clause 64 amends section 25(4)(a) to deter any foreign fishing vessel from being used for driftnet fishing by a master, crew or charterer, by increasing the fine from \$500,000 to \$1,000,000.

Clause 65 amends section 26(1)(a) to deter any person from using a foreign fishing vessel to illegally transport any fish out from Nauru fisheries waters by increasing the fine from \$500,000 to \$1,000,000.

Clause 66 amends section 27(3)(a) to deter any person from assaulting, threatening or interfering with an authorised officer who is authorised to board and inspect a vessel by increasing the fine from \$500,000 to \$1,000,000.

Clause 67 amends section 42 to provide for regulations to give full effect to the amendments.