

**REPUBLIC OF NAURU**  
**NAURU FIBRE CABLE CORPORATION BILL 2017**  
**EXPLANATORY MEMORANDUM**

The *Nauru Fibre Cable Corporation Bill* is a Bill for the *Nauru Fibre Cable Corporation Act 2017*.

**EXPLANATION OF CLAUSES**

**PART 1 - PRELIMINARY**

**Clause 1** provides that, once enacted, the short title of the Bill will be the *Nauru Fibre Cable Corporation Act 2017*.

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

**Clause 3** is the purpose clause that sets out the purposes of the Act which are to ensure:

- a. efficient international internet services are provided by the Corporation;
- b. that the Corporation is financially viable and performs efficiently to the benefit of the customers;
- c. that powers and functions of the Corporation are exercised and performed according to best practices and industry standards.

**Clause 4** is the definition clause and provides for definitions of specific words used in the Act.

**PART 2 – NAURU FIBRE CABLE CORPORATION**

**Clause 5** provides for the establishment of the Corporation as a body corporate with perpetual succession, a common seal, and is able under its own name to own and dispose of property and to sue and be sued.

Courts, judges and persons acting judicially will take judicial notice of the common seal of the Corporation on a document and presume that the seal was duly affixed.

**Clause 6** provides for the appointment of a Chief Executive Officer by the Cabinet. The terms and conditions of the employment of the Chief Executive Officer are determined by the Cabinet and he or she is responsible for the operation of the Corporation.

The Chief Executive Officer must exercise the powers and perform the functions of the Corporation.

**Clause 7** provides for the establishment of a Board of Directors. The Board consists of 3 members appointed by Cabinet and 2 ex officio members

The Chairman of the Board of Directors shall be appointed by the Cabinet and he or she shall exercise such powers as are prescribed.

**Clause 8** provides for the event where a board member's appointment is revoked when he or she is bankrupt or resigns from office or is absent except on special leave granted by the Minister from 3 successive meetings of the board.

**Clause 9** provides for reasonable allowances determined by the Cabinet to be paid to a member to allow the member to attend a meeting of the Board. The ex officio members of the board are not entitled to any allowances. Board members are not entitled to any kind of remuneration except for the reasonable allowances.

**Clause 10** provides for the disclosure of interest of board members when they are directly or indirectly interested in a contract made or proposed to be made by the Corporation. A disclosure must be recorded in the minutes and the member must not take part in any deliberation or decision of board in respect of that contract.

**Clause 11** provides for the procedures of board meetings which may be determined by the board.

**Clause 12** provides that ex officio members shall not have voting rights at meetings of the board.

### ***Division 2 – Powers & Functions of the Corporation***

**Clause 13** provides the specific functions of the Corporation in relation to the supply of international internet services for Nauru which are to:

- i. to acquire, own and operate the Nauru portion of the East Micronesian Cable, including the Nauru spur the Nauru Beach Manhole, the Nauru Cable Landing Station and the Nauru land cable connecting the Nauru Beach Manhole and the Nauru Cable Landing Station, services such as technical services may be outsourced;
- ii. represent Nauru on the East Micronesian Cable Consortium
- iii. manage the international internet capacity supply via the East Micronesian Cable to Nauru.
- iv. undertake, maintain, operate and repair any works system, facilities, apparatus or equipment required for the East Micronesian Cable.
- v. to provide open access to the Nauru Cable Landing Station to duly licensed telecommunications operators in Nauru and sell international internet capacity on a fair, non-discriminatory, transparent and equal price basis to duly licensed telecommunications operators in Nauru, despite normal volume discount.

**Clause 14** provides for the general functions of the Corporation which are any other functions that are conferred on it by this Act or any other written law. The Corporation can also do anything necessary or expedient for the performance of its functions.

**Clause 15** provides for outsourcing arrangements in that the Corporation may with the consent of Cabinet make an arrangement with another person for the performance of a function of the Corporation

### ***Division 3 – Financial Management***

**Clause 16** sets out the monies for the Corporation as follows:

- i. monies appropriated from the Treasury Fund.
- ii. amounts received directly by the Corporation
- iii. income from investments by the Corporation
- iv. proceeds from the disposal of the Corporations property
- v. fees for the supply of services
- vi. any other amounts payable to the Corporation under any other written law.

The monies of the Corporation are paid into an account in a financial institution approved by the Minister.

**Clause 17** provides for approval of budget estimates for the Corporation in that it must be submitted to Cabinet by 30<sup>th</sup> April each year a report on its planned operations for the next financial year and estimates of revenue and expenditure for the next financial year.

Cabinet may approve the estimates or return the estimates to the Corporation with a direction to amend them after which it is returned to Cabinet for consideration.

**Clause 18** provides for approval required for certain contracts and transactions. The Corporation cannot enter into a contract of the following nature without the approval of Cabinet:

- i. borrow or raise an amount;
- ii. lend an amount;
- iii. invest an amount; or
- iv. acquire or dispose of property or an interest in a property.

**Clause 19** provides that the Corporation must keep proper accounts and records of its financial transactions.

**Clause 20** provides that the accounts of the Corporation are subject to audit by the Auditor General of Nauru. The Corporation has to provide the accounts for auditing within 2 months after the end of the year and any other period required by Parliament. The auditor must audit the accounts and report back to the Corporations within 3 months or any other period determined by Parliament.

#### ***Division 4 – Reporting Requirements***

**Clause 21** requires the Corporation to prepare an annual report on its operations during the year which must be given to the Minister either within 6 months after the end of the financial year or any other period determined by Parliament. The Minister must table the annual report in Parliament within 3 sitting days after receiving it.

#### ***Division 5 – Administrative and legal matters***

**Clause 22** provides the power to the Corporation to hire employees.

**Clause 23** provides for the power of entry to authorised staff members of the Corporation to enter land or a building and remain there for as long as necessary to exercise a power or perform a function of the Corporation. This can only be done during daylight hours and with the consent of the occupier of the land or building. Without the consent of the occupier the Chief Executive Officer must provide a written notice of at least 24 hours.

If it is an emergency situation so as to prevent injury to a person or damage to property the staff member may enter at any time and without consent.

This clause also creates obstruction of staff member from exercising his or her powers of entry as an offence which attracts a fine of \$10,000 and a term of imprisonment not exceeding 12 months.

**Clause 24** provides that the Board can delegate any of its powers or functions to the Chief Executive Officer.

**Clause 25** provides for protection from liability of any person who is or has been a staff member from civil or criminal liability for any act or omission done in exercise of a power or performance of any functions under the Act.

The person is also not liable for an act or omission of the Corporation.

#### **PART 3 – MISCELLANEOUS**

**Clause 26** makes it an offence to breach confidentiality where a director uses or knowingly discloses any information or the contents of any document or communication he or she became aware of through his or her connection to the corporation. The penalty for this offence is a fine not exceeding \$5,000 upon conviction.

**Clause 27** provides for the liability of directors. The director shall be indemnified by the Republic for any act or omission made in good faith and in the exercise of reasonable care and diligence.

**Clause 28** provides that any employee who wishes to become a candidate in the general elections must resign at least 3 months before submitting his or her nomination.

**Clause 29** provides that any board director including the Chairman who wishes to become a candidate in the general elections must resign at least 3 months before submitting his or her nomination.

**Clause 30** provides an exemption for public service employees who are ex officio members of the board to be subject only to the provisions of the Public Service Act 2016.

**Clause 31** is the regulation making power allowing Cabinet to make regulations in order to give effect to the provisions of the Act.