



REPUBLIC OF NAURU

**Nauru Utilities Corporation Act 2011**

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**Act No. 13 of 2011**

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**Nauru Utilities Corporation Act 2011**

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**Act No. 13 of 2011**

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An Act to establish the Nauru Utilities Corporation and for related purposes

*Certified on 24 June 2011*

Enacted by the Parliament of Nauru as follows:

**PART 1 – PRELIMINARY MATTERS**

**1 Short title**

This Act may be cited as the *Nauru Utilities Corporation Act 2011*.

**2 Commencement**

This Act commences on 1 August 2011.

**3 Purposes**

The purposes of this Act are to:

- (a) ensure essential utilities services are provided by the Nauru Utilities Corporation; and
- (b) enable the Corporation to operate efficiently and independently while allowing for necessary oversight by the Minister to ensure the Corporation is financially viable and performs its functions fully and in a way that is not detrimental to customers; and
- (c) ensure the powers and functions of the Corporation are exercised and performed in a safe way.

#### 4 Definitions

In this Act:

**'approved auditor'**, see section 18(1);

**'CEO'** means the person from time to time holding or occupying the office of chief executive officer of the Corporation mentioned in section 6(1);

**'Corporation'** means the Nauru Utilities Corporation established by section 5(1);

**'customer'** means a person to whom the Corporation supplies a product or provides a service under an agreement between the person and the Corporation;

**'estimates'**, see section 15(1);

**'fee'** means a fee determined under section 13(1)(a);

**'fuel'** means petrol, diesel or aviation fuel;

**'post-paid customer'** means a customer who receives a product or service before the customer pays fees for the product or service;

**'prescribed'** means prescribed by regulation;

**'product'** means electricity, water or fuel;

**'staff member'** means a person engaged under section 21;

## PART 2 – NAURU UTILITIES CORPORATION

### Division 1 – General matters

#### 5 Establishment of Corporation

- (1) The Nauru Utilities Corporation is established.
- (2) The Corporation:
  - (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and

(c) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property and of suing and being sued.

(3) All courts, judges and persons acting judicially must:

(a) take judicial notice of the common seal of the Corporation affixed to a document; and

(b) presume the seal was duly affixed.

## **6 Chief executive officer**

(1) The Minister, with the consent of Cabinet, must appoint a person to be the chief executive officer of the Corporation.

(2) The CEO holds office for the period and on the terms and conditions determined by the Minister.

(3) The CEO is responsible for the operation of the Corporation.

(4) The CEO must exercise the powers and perform the functions of the Corporation.

## **7 Advisory committee**

(1) An advisory committee is established to advise the Minister about matters related to the operations of the Corporation, including whether, in the opinion of the committee, the powers and functions of the Corporation are being carried out adequately.

(2) The advisory committee consists of 5 members, appointed by Cabinet, of whom:

(a) 2 must be appointed to represent the interests of residential customers; and

(b) one must be appointed to represent the interests of customers that are private sector businesses; and

(c) one must be appointed to represent the interests of customers that are state-owned enterprises; and

(d) one must be appointed to represent any other interests determined by Cabinet.

- (3) A member of the advisory committee is not entitled to remuneration of any kind.
- (4) However, the member may be paid reasonable allowances determined by Cabinet to enable the member to attend a meeting of the committee.
- (5) The advisory committee does not have the power to:
  - (a) make any decision about the operation of the Corporation or the regulation of the utilities sector; or
  - (b) give directions to the CEO or a staff member.
- (6) To perform its functions, the advisory committee may request from the Corporation any information about the operations of the Corporation, including the accounts of the Corporation, at any time.
- (7) The Corporation must comply with a request for information under subsection (6), unless complying with the request would:
  - (a) unreasonably interfere with the operations of the Corporation; or
  - (b) require the Corporation to disclose information that it is prevented from disclosing under a contract or law; or
  - (c) require the Corporation to disclose information that is subject to legal professional privilege; or
  - (d) require the Corporation to disclose confidential information about the decisions, proceedings or deliberations of Cabinet or a committee of Parliament; or
  - (e) require the Corporation to reveal personal information about a staff member.
- (8) The procedures of the advisory committee, including the frequency of meetings of the committee, are:
  - (a) those prescribed by regulation; or
  - (b) if no procedures are prescribed – those decided by the committee.

## **Division 2 – Powers and functions of Corporation**

### **8 Functions of Corporation – electricity**

The functions of the Corporation in relation to electricity are the following:

- (a) to generate, acquire, exchange, transport, distribute, market and otherwise supply electricity;
- (b) to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any function mentioned in paragraph (a);
- (c) to do anything that the Corporation determines to be conducive or incidental to the performance of a function mentioned in paragraph (a) or (b).

### **9 Functions of Corporation – water**

The functions of the Corporation in relation to water are the following:

- (a) to acquire, store, treat, distribute, market and otherwise supply water for any purpose;
- (b) to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose mentioned in paragraph (a);
- (c) to do anything that the Corporation determines to be conducive or incidental to the performance of a function mentioned in paragraph (a) or (b).

### **10 Functions of Corporation – fuel**

The functions of the Corporation in relation to fuel are the following:

- (a) to buy, sell, store and transport fuel;
- (b) to do anything the Corporation determines to be conducive or incidental to the performance of a function mentioned in paragraph (a).

**11 Powers and functions of Corporation – general**

- (1) The Corporation has any other functions that are conferred on it by this Act or any other written law (including regulations made under this Act).
- (2) The Corporation may do anything:
  - (a) necessary or convenient for the performance of its functions; or
  - (b) specified in this Act or any other written law (including regulations made under this Act).

**12 Outsourcing arrangements**

The Corporation may, with the consent of Cabinet, make an arrangement with another person for the person to exercise a power or perform a function of the Corporation.

**13 Fees for products and services**

- (1) The Corporation may:
  - (a) subject to any prices order made under section 6(1) of the *Prices Regulation Act 2008*, determine the fees it will charge for supplying a product or providing a service; and
  - (b) determine when the fees must be paid; and
  - (c) determine a method to assess the supply of a product to a customer if:
    - (i) it is not possible to read a meter that measures the supply of the product at an appropriate time; or
    - (ii) there is no meter to measure the supply of the product.
- (2) The method of assessing supply determined under subsection (1)(c) must be reasonable and applied consistently.

### Division 3 – Financial management

#### 14 Money of Corporation

- (1) The money of the Corporation consists of the following:
  - (a) amounts appropriated for the Corporation from the Treasury Fund;
  - (b) amounts received directly by the Corporation;
  - (c) income from investments by the Corporation;
  - (d) proceeds from the disposal of the Corporation's property;
  - (e) amounts received by the Corporation in payment of fees;
  - (f) any other amounts that become payable to the Corporation under a written law.
- (2) The money of the Corporation must be paid into an account with a financial institution that has been approved for the purpose by the Minister.

#### 15 Approval of budget estimates

- (1) The Corporation must, by 30 April each year, submit to Cabinet:
  - (a) a report on its planned operations for the next financial year; and
  - (b) estimates of revenue and expenditure for the next financial year (the '*estimates*').
- (2) Cabinet may:
  - (a) approve the estimates; or
  - (b) return the estimates to the Corporation with a direction to amend them.
- (3) If the Corporation is directed to amend the estimates, the amended estimates must be submitted to Cabinet, who may deal with them in accordance with subsection (2).

- (4) If Cabinet approves the estimates, Cabinet is taken to have approved, for section 16, the Corporation:
  - (a) doing anything required to receive an item of revenue, or meet an item of expenditure, specified in the estimates; and
  - (b) entering into a contract to do anything required to receive an item of revenue, or meet an item of expenditure, specified in the estimates.
- (5) If Cabinet does not approve the estimates before the start of the financial year, the Corporation may continue its recurrent operations and expenditure at the same level as the previous year.

**16 Approval required for certain contracts and transactions**

The Corporation must not do any of the following, or enter into a contract to do any of the following, except in accordance with the approval of the Cabinet:

- (a) borrow or otherwise raise an amount;
- (b) lend an amount;
- (c) invest an amount;
- (d) acquire or dispose of property or an interest in property.

*Note for section 16*

*Under section 15(4), approval of estimates constitutes approval of a transaction for an item of income or expenditure mentioned in the estimates.*

**17 Account keeping**

- (1) The Corporation must ensure proper accounts and records of its transactions and financial affairs are kept.
- (2) The Minister may request the Corporation to give the Minister any information the Minister reasonably requires to accurately assess the Corporation's financial position and financial affairs.
- (3) The Corporation must comply with the request.

**18 Audit of accounts**

- (1) The Minister must approve a person (the '**approved auditor**') to audit the accounts of the Corporation, who must be:
  - (a) the Director of Audit; or
  - (b) a person who is a registered company auditor under the *Corporations Act 2001* (Cth) or is registered as an auditor under a corresponding law of another country.
- (2) The Corporation must give the approved auditor the accounts of the Corporation for a financial year within:
  - (a) 2 months after the end of the year; or
  - (b) another period determined by Parliament.
- (3) The approved auditor must:
  - (a) audit the accounts; and
  - (b) report to the Corporation on the accounts within:
    - (i) 3 months after receiving the accounts; or
    - (ii) another period determined by Parliament.

**Division 4 – Reporting requirements**

**19 Annual report**

- (1) For each financial year, the Corporation must prepare an annual report on its operations during the year.
- (2) The report must include:
  - (a) the record of each direction given under section 20 and approval given under section 16 during the year; and
  - (b) the approved estimates of the Corporation for the year; and
  - (c) the accounts of the Corporation for the year, together with the report on the accounts prepared by the approved auditor under section 18(3).

- (3) The Corporation must give the annual report to the Minister within:
  - (a) 6 months after the end of the financial year; or
  - (b) another period determined by Parliament.
- (4) The Minister must table a copy of the annual report in Parliament within 3 sitting days after receiving it.

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

### **20 Directions by Minister**

- (1) The Minister may give written directions to the CEO about the exercise of any of the powers or the performance of any of the functions of the Corporation.
- (2) The Corporation must comply with the directions.

### **21 Staff members**

The Corporation may engage persons to assist it in the exercise of its powers and the performance of its functions on terms and conditions determined by the CEO.

### **22 Power of entry**

- (1) A staff member may enter land or a building and remain there for as long as is necessary to exercise a power or perform a function of the Corporation.
- (2) The staff member may only do so:
  - (a) during daylight hours; and
  - (b) except with the consent of the occupier of the land or building – at least 24 hours after written notice of the entry has been given to the occupier by the CEO.
- (3) However, if the entry is necessary to take action in an emergency to prevent injury to a person or damage to property, the staff member may enter the land or building:
  - (a) at any time; and

(b) without the consent of the occupier or giving notice to the occupier.

- (4) A person must not obstruct a staff member exercising a power of entry, or performing a power or function of the Corporation, under this section.

Maximum penalty: \$10,000 and 12 months imprisonment.

**23 Delegation**

The Corporation may delegate any of its powers or functions to a staff member.

**24 Protection from liability**

- (1) This section applies to a person who is or has been a staff member.
- (2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (3) In addition, the person is not civilly or criminally liable for an act done or omitted to be done by the Corporation in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (4) Subsections (2) and (3) do not affect any liability the Corporation would, apart from those subsections, have for the act or omission.

**25 Corporation must not indemnify CEO**

- (1) The Corporation must not:
- (a) indemnify a person who is or has been the CEO against a liability incurred as the CEO; or
- (b) exempt a person who is or has been the CEO from a liability incurred as the CEO.
- (2) An instrument is void to the extent that it provides for the Corporation to do something that subsection (1) prohibits.

- (3) Subsection (1) does not prevent the Corporation from indemnifying a person against civil liability (other than a liability to the Corporation) unless the liability arises out of conduct involving a lack of good faith.
- (4) Subsection (1) does not prevent the Corporation from indemnifying a person against a liability for costs and expenses incurred by the person:
  - (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
  - (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.

### **PART 3 – MISCELLANEOUS MATTERS**

#### **26 Safety standards**

- (1) Cabinet may prescribe safety standards for the exercise of powers and the performance of functions of the Corporation.
- (2) The Corporation must comply with the prescribed safety standards in exercising its powers and performing its functions.

Maximum penalty: \$100,000.

- (3) If the Corporation makes an arrangement under section 12 for another person to exercise a power or perform a function of the Corporation, the person must comply with the prescribed safety standards in exercising the power or performing the function.

Maximum penalty: \$100,000.

#### **27 Regulations**

- (1) Cabinet may make regulations under this Act.
- (2) Without limiting subsection (1), the regulations may provide for the following:
  - (a) the minimum period between the issue of an invoice for payment of fees to a post-paid customer and the time for payment of the fees;

- (b) the action the Corporation may take to enforce the payment of fees by a post-paid customer and the procedures that must be followed before the action is taken.
- (3) The regulations may:
  - (a) give a person discretion to decide a matter; and
  - (b) apply, adopt or incorporate (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time.

## **PART 4 –TRANSITIONAL PROVISIONS**

### **28 Definitions**

In this Part:

**'commencement date'** means the date of commencement of this Act;

**'NUA'** means the administrative unit:

- (a) with functions equivalent to the functions of the Corporation from 1 July 2005 until immediately before the commencement date; and
- (b) known immediately before the commencement date as the Nauru Utilities Authority.

### **29 Assets and liabilities of the Corporation**

- (1) An amount owed immediately before the commencement date for a service or product provided by the NUA becomes payable to the Corporation on the commencement date.
- (2) All assets used for the operations of the NUA immediately before the commencement date vest in the Corporation on the commencement date.
- (3) A contract entered into in the name of the NUA before the commencement date is taken to have been entered into by the Corporation.

**30 References to NUA**

A reference to the NUA in a written law or other document in force immediately before the commencement date is taken to be a reference to the Corporation on and from the commencement date.

**31 CEO of Corporation**

- (1) The person holding the office known as Chief Executive Officer of the NUA (the '**current CEO**') immediately before the commencement date is taken to be the CEO of the Corporation on and from the commencement date.
- (2) Subsection (1) does not affect the power of the Minister to terminate the appointment of the CEO.

**32 Staff of Corporation**

- (1) A person who, immediately before the commencement date, held an office in the NUA is taken, on and from the commencement date, to be a staff member of the Corporation.
- (2) If the person holds an accrued entitlement to leave of any kind immediately before the commencement date, the person continues to hold the entitlement as a staff member of the Corporation.

**33 Transitional regulations**

- (1) The regulations may make provision (a '**transitional regulation**') about a matter for which:
    - (a) it is necessary to make provision for the transition to the operation of this Act; and
    - (b) this Act does not make provision or sufficient provision.
  - (2) A transitional regulation may have retrospective operation to a date not earlier than the commencement date.
  - (3) However, to the extent a transitional regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Republic) by adversely affecting the person's rights or imposing liabilities on the person.
  - (4) This section expires 12 months after the commencement date.
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