

## **Business Licences Bill 2011**

### **EXPLANATORY MEMORANDUM**

#### **Background**

The licensing of businesses in Nauru is currently regulated under the Licences Act 1922, which comprises the Licences Ordinance of 1922 as amended by 12 amending Acts between 1924 and 1997. The existing Act requires stores to have a trading licence, and requires a person importing explosives to obtain a licence.

It is desirable to broaden the category of businesses that require a licence, so that a wider range of businesses can be effectively regulated through licence conditions.

Rather than broadening the category of businesses that require a licence by amending the Licences Act 1922, it is proposed to repeal and replace the existing Licences Act with a new Business Licences Act that is more suitable to the present needs of Nauru and which is drafted in plain language.

In order to provide for flexibility in relation to the classes of business that require a licence, licence conditions, fees and other matters, the Business Licences Bill provides only for the basic structure of the licensing system, and enables the details to be prescribed by regulation. This will enable Cabinet to respond to changing circumstances by making and amending regulations, rather than having to amend the Act each time a new class of business is to be added or a fee is to be changed.

#### **Explanation of clauses**

##### **PART 1 – PRELIMINARY MATTERS**

**Clauses 1 and 2** provide for the short title and commencement of the Act. The Act would commence on 1 August, which provides time for Cabinet to make regulations to give effect to the Act, and also provides time for businesses that will require a licence to be made aware of the new licensing system.

**Clause 3** sets out the purposes of the Act, which are to repeal the existing Licences Act 1922, and to establish a new system of business licensing.

**Clause 4** defines terms used in the Act. It is important to note that the Act does not specify which classes of business require a licence, but enables Cabinet to make such specification by regulation, which is why '*prescribed business*' is defined as a business of a class prescribed by regulations as requiring a business licence.

##### **PART 2 – BUSINESS LICENCES**

**Clause 5** creates a requirement for a person operating a prescribed business to hold a business licence. A person who operates a prescribed business without a business licence commits an offence, for which the maximum penalty is a fine of \$10,000.

**Clause 6** sets out the basic procedure and requirements for applying for a business licence. A person requiring a business licence must apply to the Secretary. The applicant must show that they have paid the licence fee prescribed by the regulations, and must make the application in the form prescribed by the regulations.

**Clause 7** requires the Secretary to issue a business licence to a person who has made a valid application and who satisfies any preconditions that have been prescribed in the regulations.

**Clause 8** requires the Secretary to explain to an applicant the reasons for rejection of an application of a business licence, and, if the person applies for a refund of the licence fee, to arrange for the person to be reimbursed.

Reimbursement is not automatic on the rejection of an application, as there may be circumstances where the Secretary informs the person of the reason for rejection, and the person submits a new application in which the reason for the initial rejection has been remedied or addressed. In those circumstances, the person can satisfy the requirements of the second application by showing evidence of payment of the fee in respect of the first application. A lot of administrative inconvenience will be avoided by enabling the applicant and the department to pay and receive the fee only once, rather than having automatically to reimburse the fee upon rejection of the first application, only to have the same fee paid again in respect of the second application.

**Clause 9** provides that the conditions of a business licence are any conditions that have been prescribed in the regulations, and any reasonable conditions that are specified in the licence. This provision enables Cabinet to prescribe general licence conditions in the regulations, and enables the Secretary to prescribe specific conditions in an individual business licence provided those conditions are reasonable.

**Clause 10** enables a person who has received a licence in which the Secretary has specified conditions to return the licence to the Secretary if they do not wish to operate the business on the conditions specified. The person must do so within 14 days of the licence being issued. Where a person returns a licence within 14 days of issue, the Secretary must cancel the licence and reimburse the licence fee to the person.

**Clause 11** requires a person operating a prescribed business to ensure that the business is operated in compliance with all conditions of the business licence. This means the person operating the business is responsible for any failure to comply, whether that failure was directly on their own part or was the result of an act or omission of an employee or another person. If the person fails to ensure that the business is operated in compliance with the licence conditions, the person commits an offence for which the maximum penalty is a fine of \$10,000.

**Clause 12** enables authorised officers to inspect a business to ensure the person operating the business is complying with the Act. Authorised officers are police officers and officers of the department who have been authorised by the Minister. An authorised officer may, among other things, require the person to produce their business licence. It is an offence to obstruct an authorised officer in the performance of their functions under the Act, punishable by a fine of \$1,000 or 1 month imprisonment.

**Clause 13** enables the Secretary to order the closure of a prescribed business that is operating without a licence, if the Secretary has received a report from an authorised officer that a prescribed business is operating without a licence. The order for closure would require the person to stop operating the business until they have obtained a business licence. The Secretary's order must be in writing, directed to the person operating the business. If a person fails to comply with such an order, they commit an offence. The offence is a continuing offence, punishable by a fine of \$1,000 for each day of failure to comply.

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

**Clause 14** enables the Minister, by Gazette notice, to authorise officers of the department to be authorised officers for the purposes of the Act.

**Clause 15** enables Cabinet to make regulations under the Act, and in particular, envisages the making of regulations in relation to the classes of business that require a business licence, the preconditions for the issue of a business licence, licence periods, fees, forms and licence conditions.

**Clause 16** repeals the *Licences Act 1922* as amended.

### **PART 4 – TRANSITIONAL MATTERS**

**Clause 17** defines certain terms used in Part 4.

**Clause 18** is a transitional provision dealing with existing licences issued under the Licences Act 1922. The clause provides that until Cabinet has made regulations prescribing the classes of business that require a business licence under the new Act, a business that required a licence under the old Act is taken to be a 'prescribed business' under the new Act, which means that their existing obligation to be licensed will continue. The clause also provides that a licence issued under the old Act is taken to be a licence issued under the new Act (and therefore to fulfil the person's obligation to have a licence) until the end of the period for which the licence was issued.

**Clause 19** enables Cabinet to make transitional regulations to deal with any transitional issues not adequately covered by the Act.