

Nauru Utilities Corporation Bill 2011

EXPLANATORY MEMORANDUM

The *Nauru Utilities Corporation Bill 2011* is a Bill for an Act to establish the Nauru Utilities Corporation. The Corporation will have the functions of providing the same utilities services currently provided by the Nauru Utilities Authority.

Explanation of clauses

PART 1 – PRELIMINARY MATTERS

Clauses 1 and 2 provide for the short title and commencement of the Act.

Clause 3 specifies the purposes of the Act. The Act is designed to ensure essential services are provided by the Corporation, that the Corporation operates efficiently and independently under the oversight of the Minister and to ensure the operations of the Corporation are safe.

Clause 4 defines terms used in the Act.

PART 2 – NAURU UTILITIES CORPORATION

Division 1 – General matters

Clause 5 establishes the Nauru Utilities Corporation as a body corporate.

Clause 6 provides for the appointment of the Chief Executive Officer of the Corporation. The Minister determines the period of appointment and the terms and conditions of the CEO's appointment, including salary. The CEO exercises the powers and performs the functions of the Corporation.

Clause 7 provides for the establishment of an advisory committee consisting of representatives of residential customers, private-sector business customers and state-owned enterprise customers. This committee will 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. The committee will have the ability to access records of the Corporation's operations and accounts to enable it to make informed recommendations. The committee will serve as a platform for the interests of customers to be heard.

Division 2 – Powers and functions of Corporation

Clause 8 specifies the Corporation's functions in relation to electricity – to generate, acquire, exchange, transport, distribute, market and otherwise supply electricity, and to do anything necessary to enable those functions to be performed.

Clause 9 specifies the Corporation’s functions in relation to water – to acquire, store, treat, distribute, market and otherwise supply water, and to do anything necessary to enable those functions to be performed.

Clause 10 specifies the Corporation’s functions in relation to fuel – to buy, sell, store and transport fuel, and to do anything necessary to enable those functions to be performed.

Clause 11 specifies the Corporation’s general powers and functions. The Corporation has any function specified in the Act or in any other written law, including regulations made under the Act. This means the regulations, or another written law, could prescribe additional functions, such as sewerage treatment. The Corporation has the power to do anything it needs to do to perform its functions, and any power specified in the Act or another written law, including regulations made under the Act.

Clause 12 allows to Corporation to outsource any of its powers or functions to another person with the consent of Cabinet. Under the *Interpretation Act 1971*, ‘person’ includes a body corporate or an individual.

Clause 13 allows to Corporation to determine fees for the services and products it supplies. This power is subject to any prices order made under the *Prices Regulation Act 2008*, which allows for regulation of the price of essential products. The Corporation also has the power to determine when fees must be paid – i.e. it can require payment before supply of the product or service in the case of pre-paid customers, and can determine the period within which post-paid customers must pay for a product or service already received. The Corporation can also determine how to calculate the amount of a product supplied to a customer (for example, electricity) if there is no meter to measure supply or if the meter cannot be read. The method must be reasonable and consistently applied – that is, an arbitrary method cannot be used and each customer must be treated equally.

Division 3 – Financial management

Clause 14 specifies that the money of the Corporation consists of anything appropriated for it from the Treasury Fund, and anything else received by it directly, including fees. It also requires the money of the Corporation to be paid into an account approved by the Minister.

Clause 15 requires the Corporation to submit its annual budget to Cabinet for approval. Cabinet can request changes before it approves the budget. Approval of the budget constitutes approval, for clause 16, of a transaction required to receive an item of revenue, or meet an item of expenditure, specified in the estimates. If Cabinet does not approve the budget for a year, the Corporation can continue its operations and recurrent expenditure at a level that does not exceed the level for the previous year.

Clause 16 requires the Corporation to obtain Cabinet approval to conduct any transactions not already approved through approval of the budget. Approval of estimates under section 15 constitutes approval for this provision of a transaction for an item of income or expenditure mentioned in the estimates.

Clause 17 requires the Corporation to keep proper accounts, and to give the Minister access to any information reasonably required to assess the Corporation’s financial position.

Clause 18 requires the Corporation to submit its accounts for audit to an auditor approved by the Minister (who must be the Director of Audit or an auditor registered in another country) each financial year.

Division 4 – Reporting requirements

Clause 19 requires the Corporation to give an annual report to the Minister each year, which must be tabled in Parliament.

Clause 20 allows the Minister to give written directions to the Corporation about the exercise of its powers and the performance of its functions. The purpose of this provision is to allow the Minister the necessary control over the provision of essential services.

Clause 21 allows the Corporation to engage staff.

Clause 22 gives staff members of the Corporation the power to enter property to exercise a power or perform a function of the Corporation. The entry may be made by giving 24 hours notice or obtaining the consent of the occupier unless there is an emergency, in which case entry may be made without notice or consent. The purpose of this provision is to ensure that the provision of essential services, and the prevention of or response to emergencies, is not hampered by occupiers of property refusing entry to Corporation workers. Because of the serious consequences of obstructing a staff member attempting to carry out work for the provision of essential services, or to deal with an emergency, it is a criminal offence to obstruct a staff member operating under the power of entry.

Clause 23 allows the Corporation to delegate powers or functions to staff members.

Clause 24 protects staff members from liability for things done in good faith in the exercise of powers or the performance of functions under the Act.

Clause 25 prevents the Corporation from indemnifying the CEO against civil liability for things done in bad faith, or against criminal liability.

PART 3 – MISCELLANEOUS MATTERS

Clause 26 allows Cabinet to prescribe safety standards, which must be followed by the Corporation or anyone operating under an outsourcing arrangement with the Corporation. Failure to comply with safety standards can endanger lives, so it is a criminal offence to do so.

Clause 27 allows Cabinet to make regulations for, among other things, billing periods for post-paid customers and action to enforce payment of fees.

PART 4 – TRANSITIONAL PROVISIONS

Clause 28 defines terms used in the Part, including ‘NUA’, which is the administrative unit with equivalent functions to the Corporation immediately before commencement of the Act.

Clause 29 provides for the transfer of assets, liabilities and contracts to the Corporation.

Clause 30 specifies that references to the NUA in documents are taken to be references to the Corporation from the commencement date.

Clause 31 continues the appointment of the CEO of the NUA as the CEO of the Corporation.

Clause 32 provides for the transfer of staff from the NUA to the Corporation, and for the transfer of accrued leave entitlements.

Clause 33 allows Cabinet to make regulations for the transition to the operation of the Act for a period of 12 months after commencement.