



REPUBLIC OF NAURU

NAURU FIBRE CABLE CORPORATION ACT 2017

No. 8 of 2017

An Act to establish the Nauru Fibre Cable Corporation and for related purposes

Certified: 5th May 2017

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Enacted by the Parliament of Nauru as follows:

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the Nauru Fibre Cable Corporation Act 2017.

2 Commencement

This Act commences upon certification by the Speaker.

3 Purpose

The purposes of this Act are to:

- (a) ensure efficient international internet services are provided by the Nauru Fibre Cable Corporation;
- (b) enable the Corporation to operate efficiently and independently while allowing for necessary oversight by the Cabinet to ensure the Corporation is financially viable and performs its functions fully and effectively to maximise the benefits to its customers; and
- (c) ensure the powers and functions of the Corporation are exercised and performed according to best practices and industry standards.

4 Definitions

In this Act, unless the context otherwise requires:

'auditor' means the Auditor General appointed under the Audit Act 1974;

'Board' means the Board of directors established under section 7;

'Chief Executive Officer' means the person from time to time holding or occupying the office of Chief Executive Officer of the Corporation as appointed in section 6(1);

'Corporation' means the Nauru Fibre Cable Corporation established under section 5;

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

'director' means a member of the Board of directors;

'estimates' means the budget estimates referred to in section 17;

'fee' means a fee determined under section 16(1)(e);

'Minister' means the Minister responsible for the administration of this Act;

'prescribed' means prescribed by regulations;

'product' means internet services provided by the Corporation;

'staff member' means a person engaged under section 22.

PART 2 – NAURU FIBRE CABLE CORPORATION

Division 1 – General matters

5 Establishment of Corporation

- (1) The Nauru Fibre Cable Corporation is hereby established.
- (2) The Corporation:
 - (a) is a body corporate with perpetual succession;
 - (b) has a common seal;
 - (c) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property; and
 - (d) may sue or be sued in its corporate name.
- (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 Cabinet shall appoint a person to be the Chief Executive Officer of the Corporation.
- (2) The Chief Executive Officer holds office for the period and on the terms and conditions determined by the Cabinet at the time of the appointment.
- (3) The Chief Executive Officer is responsible:
 - (a) for the day to day management and control of the Corporation and for the implementation of Board policies; and
 - (b) to the Board for the efficient carrying out of the functions of the Corporation.

7 Board of directors

- (1) A Board of Directors is established as the governing body of the Corporation.
- (2) The Board is to consist of 3 directors appointed by the Cabinet and 2 *ex officio* members.
- (3) The Cabinet will appoint one director to be Chairman of the Board.
- (4) The *ex officio* members of the Board must be:
 - (a) a senior officer currently employed with the Department of Finance; and
 - (b) a senior officer currently employed with the Department of Justice and Border Control.
- (5) A director shall be appointed for a term not exceeding three years and shall be eligible for reappointment.
- (6) Subject to this section, a director shall be appointed on such terms and conditions approved by the Cabinet.
- (7) The Cabinet shall appoint a member to be the Chairman of the Board and who shall exercise such powers and functions as are prescribed.

8 Vacation of office

- (1) The Cabinet may at any time revoke the appointment of any member of the Board appointed by it.
- (2) The Cabinet shall, by notice in the Gazette, declare the office of a member vacant, where the member:
 - (a) becomes bankrupt, applies to take the benefits of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or make an assignment of his or her remuneration for their benefit;
 - (b) resigns from office by writing to the Minister;
 - (c) is absent, except on leave granted by the Minister, from three successive meetings of the Board;
 - (d) fails to comply with obligations under the Act;
 - (e) is considered by a Board of not less than two legally qualified medical practitioners, appointed by the Minister, to be incapable of performing his or her duties efficiently; or

- (f) is convicted of any offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more.

9 Remuneration of the Board

- (1) A member of the Board is not entitled to remuneration of any kind but he or she may be paid reasonable allowances determined by Cabinet to enable the member to attend a meeting of the Board.
- (2) The *ex officio* members of the Board are not entitled to any allowances.

10 Disclosure of interest

- (1) A member of the Board who is directly or indirectly interested in a contract made or proposed to be made by the Corporation, otherwise than as a member of a statutory corporation, trust or other statutory body of the Republic, must disclose the nature of his or her interest at a meeting of the Board as soon as possible after the relevant facts have come to his or her knowledge.
- (2) A disclosure under subsection (1) must be recorded in the minutes of the Board and the member:
 - (a) must not take part after the disclosure in any deliberation or decision of the Board in respect of that contract; and
 - (b) must be disregarded for the purposes of constituting a quorum of the Board in that deliberation or decision.

11 Procedures of Board Meetings

The Board may determine its own procedures for the conduct of its meetings.

12 Voting by *ex officio* members

Ex officio members appointed under section 7(4) shall not have voting rights at meetings of the Board.

Division 2 – Powers and functions of the Corporation

13 Functions of the Corporation – internet

The functions of the Corporation in relation to the supply of international internet services for the Republic are to:

- (a) acquire, maintain, manage and provide telecommunication services;
- (b) represent the Republic as member of the East Micronesia Cable consortium agreement;

- (c) manage the international internet capacity supply via the East Micronesian Cable to the Republic;
- (d) undertake, maintain and operate and repair any works, system, facilities, apparatus or equipment required for any function mentioned in paragraphs (a) and (c);
- (e) provide open access to the Nauru Cable Landing Station to duly licence telecommunications operators in Nauru and sell international internet capacity on a fair, non-discriminatory, transparent and equal price basis to duly licenced telecommunications operators in Nauru, despite normal volume discount.
- (f) do anything that the Corporation determines to be conducive or incidental to the performance of its functions.

14 General functions of the Corporation

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

15 Outsourcing arrangements

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

Division 3 – Financial management

16 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 for the supply of its services;
 - (f) any other amounts that become payable to the Corporation under 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.

17 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.
- (2) The 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 the Cabinet approves the estimates, Cabinet is taken to have approved, for the purposes of section 18, 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 the 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.

18 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; or
- (d) acquire or dispose of property or an interest in property.

19 Account keeping

The Corporation must keep proper accounts and other records in relation to its business and prepare annual statements of account and reports as set out in section 20.

20 Audit of accounts

- (1) The accounts of the Corporation are subject to inspection and audit by the Auditor General in accordance with the Audit Act 1973.
- (2) The Corporation must provide to the Auditor General 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 Auditor General 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

21 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 approved estimates of the Corporation for the year; and
 - (b) accounts of the Corporation for the year, together with the report on the accounts prepared by the Auditor General under section 20.
- (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 three sitting days after receiving it.

Division 5 – Administrative and legal matters

22 Staff members

The Corporation may employ persons to assist the Corporation in the exercise of its powers and the performance of its functions on terms and conditions determined by the Chief Executive Officer.

23 Power of entry

- (1) An authorised 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 enter land or a building:
 - (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 Chief Executive Officer.
- (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.
- (5) Any person who contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding \$10,000 and to a term of imprisonment not exceeding 12 months.

24 Delegation

- (1) The Board may by instrument delegate to the Chief Executive Officer all or any powers, duties or functions of the Board other than this power of delegation.
- (2) A delegation under this section is revocable and does not prevent the exercise of any power, duty or function by the Board.
- (3) The Chief Executive Officer shall keep a register of delegations under this section.

25 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:
 - (a) person in good faith in the exercise of a power, or the performance or purported performance of a function, under this Act; or
 - (b) Corporation in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (3) Subsection (2) does not affect any liability the Corporation would, apart from that subsection, have for the act or omission.

PART 3 – MISCELLANEOUS

26 Breach of confidentiality

- (1) A Director commits an offence when he or she for any purpose uses or knowingly discloses any information or the contents of any document or communication of which he or she becomes aware through his or her connection with the Corporation, except to the extent:
 - (a) that the use or disclosure is authorised or required under this Act or any other law;
 - (b) that the person providing the information authorised its disclosure at the time of providing the information;
 - (c) necessary to enable the Minister, the Board or the Chief Executive Officer to publish statistical information concerning the subject matter of the functions of the Corporation; or
 - (d) necessary to enable the Board to give advice to the Minister.
- (2) A person who commits an offence under subsection (1) is liable upon conviction to a penalty not exceeding \$5,000.
- (3) A person who is convicted of an offence under subsection (1) is liable to the Corporation for any profit made in consequence of any damage suffered by the Corporation as a result of the commission of the offence, in addition to the satisfaction of any criminal penalty that may be imposed.

27 Liability of Directors

- (1) No Director shall be personally liable for any act or omission done or made in his or her capacity as Director in good faith and in the exercise of reasonable care and diligence in the course of the operations of the Corporation.
- (2) In respect of any liability incurred in connection with any act or omission referred to in subsection (1), the Director shall be indemnified by the Republic.

28 Election candidates – resignation

Any employee, including the Chief Executive Officer of the Corporation who intends to submit a nomination as a candidate in the country's general elections, must at least three months before he or she submits their nomination, resign from his or her employment in the Corporation.

29 Election candidates – Board of Directors

Any Board Director, including the Chairman, who intends to submit a nomination as a candidate in the country's general elections, must at least three months before he or she submits their nomination, resign from their position as a member of the Board.

30 Public service employees – exempt

Despite section 29, public service employees who are members of the Board are subject only to the provisions in the Public Service Act 2016.

31 Regulations

Cabinet may make regulations prescribing all matters necessary or convenient to be prescribed for giving effect to this Act.