

Republic of Nauru – 20th Parliament

Development Fund Bill 2011

EXPLANATORY MEMORANDUM

Background

Article 58 of the Constitution provides:

“All revenues and other moneys raised or received by Nauru, not being revenues or other moneys payable by law into another fund established for a specific purpose, shall be paid into and form a Treasury Fund.”

Withdrawals from the Treasury Fund are made in accordance with the annual appropriation law, which authorises the withdrawal for specified heads of expenditure. The annual appropriation law expires at the end the financial year, which means money not withdrawn and spent in accordance with the law must be appropriated again for the next financial year.

A substantial amount of the money currently paid into the Treasury Fund and appropriated each year is received from development partners for development projects implemented by the Government of Nauru. Many of these projects are conducted over the course of more than one financial year, requiring repeated appropriation of funds. Sometimes the receipt of these amounts is not anticipated when the annual appropriation law is prepared, because a new development project is designed and commenced during the financial year. In such cases, a supplementary appropriation law is required to allow the relevant project to commence.

However, Article 58 provides for payment of money received by Nauru into one of two funds – the Treasury Fund or “another fund established for a specific purpose” into which money is “payable by law”. If enacted, the Development Fund Act 2011 will establish such a fund, specify that amounts received for development projects are payable into the fund, and provide for withdrawals from the fund. Unlike annual appropriation laws, the Development Fund Act 2011 does not expire at the end of the financial year, so there is no need to authorise withdrawals each financial year. Once an amount has been paid into the fund, it can be withdrawn in accordance with the Act at any time. By operating outside of the annual cycle, the Development Fund will facilitate the smooth implementation of projects. However, the requirements to report income and expenditure of the fund to Parliament will be even more stringent than those that apply to the Treasury Fund to ensure transparency is not compromised.

Explanation of clauses

PART 1 – PRELIMINARY MATTERS

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

Clause 3 defines terms used in the Act. The most important definitions are:

- **‘development amount’** which is an amount received by the Republic for the purpose of funding a development project. It does not include an amount received as revenue from fees, the sale of a product or a similar revenue-raising activity, and it does not include an amount received for the purpose of budget support or by way of loan.
- **‘development project’** means a project designed to assist the Republic to meet its development goals.
- **‘reportable deviation’** means a deviation from the reported annual projections of income and expenditure of the Fund that consists of an item of income or expenditure that is at least 10% or \$1000 over or under the amount in the projections, whichever is greater, or an entirely new item not specified in the projections. A reportable deviation might occur if a project is not implemented as quickly as projected, which would mean the amount of expenditure would be less than projected, or if an additional amount is paid into the Fund for an existing project, in which case the income (and possibly the expenditure) for the project would be higher than projected. Also, if an amount is paid into the Fund for a new project that was not anticipated when the annual projections are prepared, the additional item of income and expenditure would be a reportable deviation.

Clause 4 establishes the Development Fund for the purpose of facilitating the funding of development projects by enabling the payment of development (and other) amounts into and out of the Fund. Clause 4 also specifies that all development amounts must be paid directly into the Fund without being first paid into the Treasury Fund. This satisfies the requirement of Article 58 that the amount is “payable by law into another fund established for a specific purpose”. In addition to development amounts, clause 4 provides that the Fund consists of amounts appropriated from the Treasury Fund for the Fund. This might occur if the Republic is required, under an agreement with a development partner, to make a contribution to a project. Such amounts would need to be appropriated in accordance with law under Article 59.

Clause 5 creates a criminal offence for withdrawing, or authorising or permitting the withdrawal of, an amount from the Fund unless Cabinet has approved the purpose of the withdrawal and the prescribed procedures for withdrawal have been followed. Cabinet does not need to approve every item of expenditure – in the same way as Parliament authorises withdrawal for the purpose of broad government functions, Cabinet can authorise withdrawal for the purpose of implementing a specified project. Small items of expenditure within that project will need to be undertaken in accordance with the procedures for withdrawal that will be prescribed by regulation. However, failure to follow the procedures does not constitute a disciplinary offence for the public officer involved – it constitutes a criminal offence.

Clause 5 also contains an avoidance of doubt provision specifying that Cabinet may approve a withdrawal of an amount for the purpose of paying the amount in the Treasury Fund. Cabinet has this power without this provision, as clause 5 does not limit the purposes for which Cabinet can approve withdrawal. Withdrawal for payment into the Treasury Fund is most likely to occur if a project is completed under-budget and the development partner does not require the return of the surplus amount.

Clause 6 requires the Minister to table in Parliament the annual projections of income and expenditure for the Fund for each financial year. The projections must be itemised by project, showing the source of each item of income.

Clause 7 requires the Minister to table in Parliament an annual report of the actual income and expenditure of the Fund at the end of each financial year. The report must show actual income and expenditure by project, showing the source of each item of income. All reportable deviations that occurred during the year, whether reported in a previous quarterly report or not, must also be reported. The Minister is also required to provide an update on project implementation activities during the year.

Clause 8 requires the Minister to table in Parliament at the end of the first, second and third quarters of each financial year a quarterly report of the income and expenditure of the Fund for the year to date. The report must show actual income and expenditure by project, showing the source of each item of income. All reportable deviations that have not been reported in a previous quarterly report, must also be reported. A quarterly report is not required for the fourth quarter because the annual report serves both as a fourth quarter report and a report for the entire year.

Clause 9 gives Cabinet power to make regulations under the Act. The power includes the powers to make regulations prescribing the procedures that must be followed before withdrawing an amount from the Fund (for clause 5).

PART 4 – TRANSITIONAL MATTERS

Clause 10 defines terms used in the Part.

Clause 11 creates a charge on the Treasury Fund for each development amount in the Treasury Fund immediately before commencement of the Act. These amounts must be paid into the Development Fund on the commencement date. Any development amount received after the commencement date is payable directly into the Development Fund under clause 4.

Clause 12 allows the annual projections for the first year of operation of the Fund to be tabled by 1 October 2011.