

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 235, 2015**

Issued by the Authority of the Minister for Foreign Affairs

*International Organisations (Privileges and Immunities) Act 1963*

*International Organisations (Privileges and Immunities—Nauru Trust Fund)  
Regulation 2015*

Section 13 of the *International Organisations (Privileges and Immunities) Act 1963* (“the Act”) permits the Governor-General to make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 5(1) of the Act provides that the regulations may declare an organisation of which Australia and a country or countries other than Australia are members, or that is constituted by a person or persons representing Australia and a person or persons representing a country or countries other than Australia, to be an international organisation to which the Act applies.

The *International Organisations (Privileges and Immunities—Nauru Trust Fund) Regulation 2015* (“the Regulation”) declares the Intergenerational Trust Fund for the People of the Republic of Nauru (“the Fund”), established in accordance with the Memorandum of Understanding between the Government of the Republic of Nauru and the Government of Australia (“the MoU”), to be an international organisation to which the Act applies.

The Governments of the Republic of Nauru and Australia entered into the MoU on 6 November 2015. Under that MoU, the Government of Nauru will, in consultation with Australia, establish the Fund. The Fund will be governed by a Committee comprising one member representing Australia and one representing Nauru.

The purpose of the Fund is to provide a source of revenue to the Republic of Nauru post-2033, for investments in education, health, environment and infrastructure. The Fund will help to smooth out windfall income streams in the medium term and replace all or part or supplement questionable future revenue. The MoU provides for both governments to make annual contributions to the Fund.

Under the terms of the MoU, the Fund is to be provided with juridical personality and the capacity to take particular actions in respect of the assets of the Fund, and is to be exempt from ‘any exchange control regulations, restriction or moratoria’ and income tax in respect of the Fund, its property, and its assets. The Regulation confers the agreed status and immunities on the Fund.

No public consultation was undertaken in relation to the Regulation, as it implements Australia’s international legal obligations arising from the MoU. The Office of Best Practice Regulation (OBPR) has advised that a Regulation Impact Statement is not required as “there will be no regulatory impact”. The OBPR reference number is 19739.

Details of the proposed Regulation are set out in Attachment A.

The Regulation has been assessed to be compatible with human rights for the purposes of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility is set out in Attachment B.

The Regulation commenced on the day after registration and is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## ATTACHMENT A

### Details of the *International Organisations (Privileges and Immunities—Nauru Trust Fund) Regulation 2015*

#### Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *International Organisations (Privileges and Immunities—Nauru Trust Fund) Regulation 2015*.

#### Section 2 – Commencement

This section provides that the Regulation commences on the day after it is registered.

#### Section 3 – Authority

This section provides that the Regulation is made under the *International Organisations (Privileges and Immunities) Act 1963*.

#### Section 4 – Definitions

This section defines “Act” and “Fund” for the purposes of the Regulation.

#### Section 5 – Act applies to Fund

This section provides that the Fund is declared to be an international organisation to which the Act applies.

#### Section 6 – Legal personality and capacities of Fund

Section 6(1)(a)(i) of the Act provides that the regulations may confer upon an international organisation to which the Act applies ‘juridical personality and such legal capacities as are necessary for the exercise of the powers and the performance of the functions of the organisation’.

For this purpose, section 6 of the Regulation confers the legal personality and capacities necessary for the Fund to exercise its powers and perform its functions under the MoU. Specifically, it confers body corporate status on the Fund under Australian law, and enables it to enter into contracts, acquire and dispose of property, institute legal proceedings in its own name, and take any other action to protect the assets of the Fund.

This section gives effect to the terms of the MoU.

## Section 7 – Privileges and Immunities of Fund

Section 6(1)(a)(ii) of the Act provides that the regulations may confer upon an international organisation to which the Act applies ‘all or any of the privileges and immunities specified in the First Schedule’. The First Schedule relevantly permits the regulations to confer on such an organisation ‘[e]xemption from currency and exchange restrictions’ (item 5) and ‘[e]xemption of the organisation from the liability to pay or collect taxes other than duties on the importation or exportation of goods and of the income, property, assets and transactions of the organisation from such taxes’ (item 7).

For this purpose, section 7 of the Regulation confers on the Fund exemption from currency and exchange restrictions, and exemption from income tax in respect of the Fund and its property and assets.

This section gives effect to the terms of the MoU.

## **ATTACHMENT B**

### **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

#### **International Organisations (Privileges and Immunities—Nauru Trust Fund) Regulation 2015**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The Legislative Instrument declares the Intergenerational Trust Fund for the People of the Republic of Nauru (“the Fund”), established in accordance with the Memorandum of Understanding between the Government of the Republic of Nauru and the Government of Australia (“the MoU”), to be an international organisation to which the *International Organisations (Privileges and Immunities) Act 1963* applies, and confers it with the legal personality and privileges and immunities required by the MoU.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Julie Bishop MP**

**Minister for Foreign Affairs**