

REPUBLIC OF NAURU

(Act No.7 of 2009)

AN ACT

To amend the Constitution of Nauru 1968

(Certified: 28 August 2009)

Note from Nauru Parliamentary Counsel: This Act, whilst it has been passed and certified, does not commence until the day of the next general election, which, if Parliament completes its full three year term, will be no later than June 2011. The Act is closely interrelated with the Constitution of Nauru (Referendum Amendments) Bill, which has also been passed by Parliament but which cannot be certified unless and until it receives the approval of not less than two thirds of the votes validly cast in the referendum that is scheduled for 27 February 2010. If the Referendum fails, then the Constitution of Nauru (Parliamentary Amendments) Act will have to be amended before it commences.

Republic of Nauru

Constitution of Nauru (Parliamentary Amendments) Act 2009

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REPUBLIC OF NAURU

AN ACT

(No.7 of 2009)

To amend *The Constitution of Nauru 1968*

[Certified: 28 August 2009]

Enacted by the Parliament of Nauru as follows—

1. Short Title

This Act may be cited as the *Constitution of Nauru (Parliamentary Amendments) Act 2009*.

2. Commencement

(1) Subject to subsection (2), this Act shall come into force on the day of the general election next following the certification by the Speaker that this Act has been passed in accordance with Article 84.

(2) If the *Constitution of Nauru (Referendum Amendments) Act* is not approved at referendum in its entirety, pursuant to Article 84, then this Act shall not come into force until amended.

3. Constitution

In this Act the *Constitution of Nauru 1968* is referred to as the Constitution.

4. Amendment of the Preamble

The Preamble to the Constitution, which begins with the words ‘Whereas we the people of Nauru’ and ends with the words ‘this Constitution to come into force on the thirty-first day of January, One thousand nine hundred and sixty-eight’ is deleted and replaced with the following words –

‘PREAMBLE

WHEREAS Nauru became a sovereign independent Republic on the thirty-first day of January, 1968 under a Constitution adopted by a Constitutional Convention which held its final meeting on the seventeenth day of May 1968;

And WHEREAS after forty years, we have reviewed our independence Constitution, and a Constitutional Convention and Parliament representing us have prepared a revised Constitution for Nauru, we hereby introduce the Constitution as revised:

WE, THE PEOPLE OF NAURU, acknowledge God the almighty as the Creator and everlasting Lord and the giver of all good things. We humbly place ourselves under the protection of His good providence and pray for His blessing upon our beloved nation, ourselves, our lives and upon our land. We honour our history and declare our aspirations in this document, and acknowledge that our national motto is “God’s Will First”.

We proudly acknowledge and honour our ancestors, who made this beautiful and isolated island their home and built a friendly society based on amicable agreements. Nauru, our beloved Pacific island home, is the living link between all generations of Nauruans. On this island we have built our own unique society, and we pledge to safeguard and maintain our rightful home, history and future on this island.

Nauru has faced and survived many challenges, including foreign rule and the impact of foreign cultures, the devastation of war, and the destruction of much of the natural beauty of our island. We have been blessed with vast phosphate resources, which we as a people have used with mixed outcomes. In the face of these challenges, our people have proven themselves to be resilient and adaptable.

We deeply respect and acknowledge the great leadership and achievements of our founding forefathers, who struggled for and won our independence, and enabled us to take our place, on equal terms, in the modern family of nations. We extend to other peoples and nations what we seek from them: peace, friendship, mutual understanding and respect for our common humanity and human dignity.

The Nauruan people expect honest and accountable government. We have reviewed our Constitution, striving to ensure that Nauru’s future will be bright and that public institutions will serve the people with integrity.

The people of Nauru set out for themselves and for their governing institutions the following principles:

We strive for peace, justice, stability, welfare, progress and prosperity of the people;
Our institutions shall serve the people accountably and transparently and observe high ethical standards;

We affirm our commitment to democratic values and affirm that all power belongs to the people acting through their elected representatives and exercised through the institutions

established in this Constitution, and that the people shall participate in the governance of their affairs;

We uphold respect for human dignity and the human rights of all people and affirm the protection of fundamental and inalienable rights under Part II of this Constitution;

We seek to preserve the value of resolving matters of importance by consensus or compromise and recognise the need for courtesy and respect;

We recognise the importance of communities, respect for elders, and the strength and support of the family;

We uphold the importance of sharing within the extended family and the community;

We acknowledge and affirm the pride Nauruans have in their role as custodians of the land, and the importance of land and sea to the Nauruan people. We acknowledge the importance of kinship and oral history in matters concerning land;

We value highly the knowledge and history handed down over generations;

We affirm the matrilineal basis of our society and take pride in our traditions, culture, heritage, aspirations, respect for family life, our 12 tribes, kinship, and the preservation and unity of the people;

We acknowledge the need to be open to adapt to changing circumstances in the modern world and to be open to the gradual development of changing values and priorities;

These principles, under the guidance of God, are solemnly adopted and affirmed as the basis of this Constitution, and as the guiding principles to be observed in its interpretation and application at all levels of government and organised life,

AND WE DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS AMENDED CONSTITUTION.

Demoniba enim ogeidawianaw eben bwieta Naoero.
(May God bless our homeland Nauru)

Demoniba enim ogeidawianaw ata ngame.
(May God bless our people)'

5. Insertion of Part IA

The Constitution is amended by inserting immediately after Part I, the following new Part IA on Custom and Language, which comprises new Articles 2B and 2C, as follows –

**‘PART IA
CUSTOM AND LANGUAGE**

Customary Law

2B(1.) Customary law shall continue to have effect as part of the law of Nauru, to the extent that such law is not repugnant to the Constitution or to any Act of Parliament.

(2.) Parliament may make provision for the proof and pleading of custom.

Nauruan language

2C. The government shall take positive and practical measures to preserve and advance the use of the Nauruan language.’

6. Amendment of Article 19

Article 19 of the Constitution is amended by –

- (a) deleting from clause (1.) the words ‘four or five’ and inserting in their place the words ‘a member of Parliament to be Deputy President and Minister, and four or five further’;
- (b) substituting in clause (2.) for the word ‘four’ the word ‘five’;
- (c) substituting in clause (3.) for the words ‘four but not five’ the words ‘five but not six’; and
- (d) inserting new clause (4.) as follows –

‘(4.) Whenever the office of Deputy President is vacant, the President shall appoint a Minister to be Deputy President.’

7. Repeal and replacement of Article 21

The Constitution is amended by repealing Article 21 and replacing it with a new Article 21 as follows –

‘Discharge of functions of President during absence, illness, etc.

21.(1.) Whenever the President is absent or considers it desirable to do so by reason of illness, accident or other cause, he may, by directions in writing, authorise the Deputy President to discharge such of the functions of the office of President as he may specify and the Deputy President shall discharge those functions until his authority is revoked by the President.

(2.) If the President is unable by reason of illness, accident or other cause of discharging the functions of his office and the infirmity or other cause is of such a nature that the President is unable to authorise another person under this Article to

discharge those functions, the Deputy President shall discharge the functions of the office of President.

(3.) Whenever the Deputy President is discharging the functions of the office of President by virtue of the preceding clause, he shall cease to discharge those functions if he is notified by the President that the President is about to resume those functions.'

8. Insertion of Article 21A

The Constitution is amended by inserting immediately after Article 21, a new Article 21A as follows –

'The Deputy President

21A.(1.) There shall be a Deputy President of Nauru appointed by the President under Article 19.

(2.) The Deputy President shall, before entering upon the duties of his office, take and subscribe before the Chief Justice or the Speaker an oath in the form set out in the Eighth Schedule to this Constitution.

(3.) The Deputy President shall vacate his office as Deputy President-

- (a) if he resigns his office, by writing under his hand delivered to the President;
- (b) if he ceases to be a member of Parliament otherwise than by reason only of its dissolution;
- (c) if his appointment is revoked by the President;
- (d) when he assumes the office of President under clause (2) of Article 16D;
- (e) if he ceases to be a member of Cabinet; or
- (f) if a new President is elected.

(4.) If the Deputy President is absent from Nauru or is unable by reason of illness or any other cause to discharge the functions of his office, the President shall appoint one of the other Ministers to perform the functions of the office of Deputy President and any person so appointed shall discharge those functions accordingly until-

- (a) his appointment is revoked by the President;
- (b) he ceases to be a Minister;
- (c) a new President is elected; or
- (d) the Deputy President returns to Nauru or resumes the discharge of the functions of his office;

provided that any person who as a result of his appointment under this clause and the operation of Article 21 is performing the functions of the office of President

shall not exercise the power of the President to revoke the appointment of the Deputy President.

(5.) Where the Deputy President is performing the functions of the office of President in accordance with Article 21 of this Constitution he may appoint one of the other Ministers to perform the functions of the office of Deputy President and any person so appointed may discharge those functions accordingly until-

- (a) his appointment is revoked by the Deputy President;
- (b) he ceases to be a Minister; or
- (c) the Deputy-President ceases to perform the functions of the office of President.

(6.) During any period when, while the functions of the office of President are required under Article 21 of this Constitution to be discharged by the Deputy President, there is no Deputy President or the Deputy President is absent from Nauru or is unable by reason of illness, accident or other cause of discharging the functions of his office and there is no subsisting appointment under the preceding clause, the functions of the office of President shall be performed by such Minister as the Cabinet shall appoint; provided that any person performing the functions of the office of President under this clause shall not exercise the power of the President to revoke the appointment of the Deputy President.'

9. Amendment of Article 23

Article 23 of the Constitution is amended by

- a) inserting immediately before the words 'The President may assign' the number 1 in brackets; and
- b) by inserting immediately after the words 'made under this Article', the following new clauses (2) and (3) –

'(2) Where any Minister has been charged with responsibility for the administration of any department of government, he shall exercise direction and control over that department and, subject to such direction and control, the department shall be under the supervision of the head of the department, whose office shall be a public office.

(3) Subject to any law made by Parliament, the Cabinet may exercise elements of its executive authority directly, or through its individual members, and through other officers responsible to the Cabinet; but neither the provisions of any such law, nor any delegation of elements of the Cabinet's executive authority shall have the effect of diminishing the responsibility of the Cabinet and of each of its members to Parliament for the direction and implementation of executive policies.'

10. Amendment of Article 24

The Constitution is amended by repealing Article 24 and replacing it with a new Article 24 as follows, if and only if the people, voting at referendum, approve the amendment to Article 16(1) of the Constitution contained in the Constitution of Nauru (Referendum Amendments) Act 2009 –

‘Motion of no confidence

24. (1.) Subject to the provisions of this Article, and notwithstanding clause (2.) of Article 46, where a resolution on a motion of no confidence in the President and Cabinet is approved by at least one-half of the total number of members of Parliament, the President and Ministers shall be removed from office and Parliament shall stand dissolved.

(2.) Notice of a motion of no confidence in the President and Cabinet shall be given to the Speaker at least five clear days before a vote on such motion is taken but no earlier than 120 days after the commencement of a Parliamentary term, and shall include in express terms a summary of the grounds for the loss of confidence in the President and Cabinet.

(3.) Where Parliament votes on a motion of no confidence and such motion is not approved by a resolution in accordance with clause (1) of this Article, no such motion shall again be placed on notice until the expiration of 120 days after the date on which the motion failed to be approved.’

11. Alternative amendment of Article 24

The Constitution of Nauru is amended by repealing Article 24 and replacing it with a new Article 24 as follows, if and only if the people, voting at referendum, do not approve the amendment to Article 16(1) of the Constitution contained in the Constitution of Nauru (Referendum Amendments) Act 2009 –

‘Motion of no confidence

24.(1.) Subject to the provisions of this Article, where a resolution on a motion of no confidence in the President and Cabinet is approved by at least one-half of the total number of members of Parliament, an election of a President shall be held.

(2.) Where a President has not been elected before the expiration of a period of seven days after the day on which a resolution under clause (1.) of this Article is approved Parliament shall stand dissolved.

(3.) Notice of a motion of no confidence in the President and Cabinet shall be given to the Speaker at least five clear days before a vote on such motion is taken,

and shall include in express terms a summary of the grounds for the loss of confidence in the President and Cabinet.

(4.) Where Parliament for the second time during one term of Parliament approves a resolution on a motion of no confidence in the President and Cabinet, Parliament shall stand dissolved.

(5.) Where Parliament votes on a motion of no confidence and such motion is not approved by a resolution in accordance with clause (1) of this Article, no such motion shall again be placed on notice until the expiration of 120 days after the date on which the motion failed to be approved.’

12. Repeal of Article 25

The Constitution is amended by repealing Article 25.

13. Insertion of Article 27A

The Constitution is amended by inserting immediately after Article 27, a new Article 27A as follows –

‘The role and functions of Parliament

27A. (1.) Parliament is elected to represent the people of Nauru and to ensure government by the people under the Constitution. It does this by providing a forum for public consideration of issues, by passing laws and by scrutinising and overseeing executive action.

(2.) When exercising its legislative authority, Parliament is bound only by the Constitution of Nauru, and shall act in accordance with, and within the limits of, the Constitution.

(3.) Parliament shall provide for mechanisms –

- (a) to ensure that all executive organs of the government of Nauru are accountable to it; and
- (b) to maintain oversight of the exercise of executive authority, including the implementation of laws enacted by Parliament.

(4.) Parliament shall facilitate public involvement in its legislative and other processes such as its committees; conduct its business in an open manner; and hold its sittings in public; provided that reasonable measures may be taken to regulate public access, including access of the media, to Parliament.’

14. Amendment of Article 29

Article 29 of the Constitution is amended by inserting immediately after the final word in the provision the additional words ‘or such younger age, being an age not younger than eighteen years, as may be prescribed by law’.

15. Amendment of Article 31

Article 31 of the Constitution is amended by

- a) deleting paragraph (c) and inserting in its place new paragraph (c) as follows – ‘(c) is serving a sentence of imprisonment imposed by a court in Nauru or in any other part of the Commonwealth’;
- b) deleting from paragraph (e) the comma after ‘corporation’ and the words ‘being an office prescribed by law for the purposes of this paragraph’ and inserting in their place the words ‘and a person who holds such an office of profit is deemed to have vacated that office immediately before the time at which he is declared elected to Parliament; and
- c) inserting immediately after paragraph (e) the following new paragraph (f) – ‘(f) has been prohibited by order of any court or tribunal lawfully authorised to make such order, from holding a position of Leadership and
 - (i) if such order applies for a finite period, the period for which such order applies has not yet expired; and
 - (ii) if such order was made by a tribunal or court other than the Supreme Court, such order has been upheld by the Supreme Court pursuant to Article 36 and clause (7) of Article 57A.’.

16. Amendment of Article 32

Article 32 of the Constitution is amended by:

- a) inserting in paragraph (b) of clause (1), immediately before the word ‘upon’ the words ‘subject to clauses (1A) and (1B) of this Article,’;
- b) deleting from paragraph (c) of clause (1) immediately after the word ‘delivered’ the comma and the words ‘in the case of a member other than the Speaker,’ and deleting immediately after the words ‘to the Speaker’ the words ‘and, in the case of the Speaker, to the Clerk of Parliament’;
- c) in paragraph (d) of clause (1), substituting for the words ‘day on which a meeting of Parliament is held during a period of two months’, the words ‘sitting day over three consecutive sessions within the same term of Parliament’; and
- d) by inserting immediately after clause (1) new clauses (1A) and (1B) as follows –

‘(1A.) Subject to the provisions of this Article, if a member of Parliament is sentenced by a court in Nauru or in any other part of the Commonwealth to imprisonment, and serves any part of such a sentence of imprisonment, he shall forthwith cease to discharge his functions as a member of Parliament, and his seat

in Parliament shall become vacant at the expiration of a period of 30 days thereafter: Provided that the Speaker may, at the request of the member, extend that period of 30 days to enable the member to pursue any review or appeal in respect of his conviction or sentence, so, however, that extensions of time exceeding in the aggregate 150 days shall not be granted without the approval of Parliament signified by resolution.

(1B.) If at any time before the member vacates his seat his conviction is set aside or a punishment other than imprisonment is substituted, his seat in Parliament shall not become vacant under the preceding clause and he may again discharge his functions as a member of Parliament.’

17. Amendment of Article 33

Article 33 of the Constitution is amended by:

- a) inserting in clause (1) immediately after the words ‘There shall be’, the words ‘an Office of Parliament under the administration of’;
- b) inserting immediately after clause (2) a new clause (2A) as follows –

‘(2A.) The Clerk of Parliament shall not hold or perform the functions of any other public office.’;

and

- c) inserting immediately after clause (4) new clauses (5) and (6) as follows –
‘(5.) Subject to paragraph (c) of clause (6) of this Article, in the exercise of his duties and functions, the Clerk of Parliament shall not receive any direction from Cabinet or from any other person or authority except the Speaker or Parliament by resolution.

(6.) The Clerk of Parliament shall be responsible for –

- (a) arranging the business and keeping the records of the proceedings of Parliament;
- (b) arranging for the signing of documents and issuing of certificates by the Speaker, whenever any signature or certification by the Speaker is required pursuant to this Constitution or any law, and keeping the records of all documents and certificates so signed or issued;
- (c) performing with respect to the Speaker, members of Parliament and Parliamentary committees such secretarial and other administrative functions as may reasonably be required; and

(d) performing such other duties and functions as the Speaker or Parliament by resolution may direct.’

18. Amendment of Article 34

Article 34 of the Constitution is amended by:

- a) repealing clauses (1) and (2) and inserting new clauses (1) and (1A) as follows –

‘(1.) Subject to clause (1) of Article 43 and clause (8) of Article 41, during the first session of Parliament next following a general election and whenever the office of Speaker is vacant, Parliament shall, before it proceeds to transact any other business, elect as Speaker a person who is not a member of Parliament but who is qualified to be a member of Parliament.

(1A.) Parliament shall enact a law to provide for the manner in which nominations for and election of Speaker shall be conducted, and for related matters necessary or desirable to give effect to clause (1.) of this Article.’;

- b) in paragraph (b) of clause (3) immediately after the words ‘ceasing to be’ inserting the words ‘qualified to be’ and deleting the words ‘otherwise than by reason only of its dissolution’;
- c) in paragraph (c) of clause (3) substituting for the word ‘becoming’ the words ‘nominating for election as’ and deleting the words ‘the Cabinet’ and replacing them with the word ‘Parliament’;
- d) in paragraph (d) of clause (3) inserting immediately after the word ‘resolution’ the words ‘supported by at least two thirds of the total number of members’; and
- e) inserting immediately after clause (3) new clauses (4) and (5) as follows –

‘(4.) Notwithstanding paragraph (a) of clause (3) of this Article, if at the time when Parliament first meets after a dissolution the Council of State is performing the functions of the President and the other executive functions of government, the Speaker shall continue to be a member of the Council of State until Parliament has elected a Speaker.

(5.) Upon being elected, and before entering upon the duties of his office, the Speaker shall take and subscribe before Parliament the oath set out in the Ninth Schedule.’

19. Amendment of Article 35

Article 35 of the Constitution is amended by deleting from clause (1) the words ‘the despatch of’ and replacing them with the word ‘transact’.

20. Amendment of Article 37

Article 37 of the Constitution is amended by inserting immediately after the words ‘committees are’ a comma and the words ‘subject to this Constitution,’.

21. Amendment of Article 39

Article 39 of the Constitution is amended by replacing the words ‘two months’ with the words ‘fifty days’ and by inserting immediately after the word ‘appoints’ a comma and the words ‘provided that it shall be held on a Saturday’.

22. Amendment of Article 40

Article 40 of the Constitution is amended by

- a) deleting from Clause (1) the words ‘if Parliament has been prorogued’; and
- b) substituting in clause (1) for the words ‘twenty-one days after the last day on which a candidate at a general election is declared elected’ the words ‘subject to clause (1A) of this Article, not later than the second Tuesday after the day on which a general election is held’;
- c) inserting immediately after clause (1) a new clause (1A) as follows –

‘(1A.) If the first session of a new Parliament begins earlier than the second Tuesday after the day on which a general election is held, regular sittings of that session shall continue until Parliament has elected a Speaker, a Deputy Speaker and nominated candidates for an election of President, or until Parliament is dissolved under clause (8) of Article 41, whichever occurs sooner.’;

and

- d) inserting immediately after clause (2), new clauses (3) and (4) as follows –

‘(3.) A session of Parliament ends when Parliament is prorogued in accordance with clause (1.) of Article 41 or on the expiry of seven clear days during which Parliament has not held sittings.

(4.) Unless Parliament is prorogued, the ending of a session does not have the effect of causing the business of Parliament pending at the end of the session to lapse.’

23. Amendment of Article 41

Article 41 of the Constitution is amended by –

- (a) deleting from clause (4) the words ‘and no resolution for the removal from office of the President and Ministers under Article 24 is approved after the date on which the advice was so referred’;

(b) inserting in clause (5) immediately after the words ‘so withdraws his advice’ a comma and the words ‘subject to clause (1) of Article 24 and to clause (1) of Article 61A,’;

(c) repealing clause (6); and

(d) inserting immediately after clause (7) new clauses (8) and (9) as follows:

‘(8.) If at the conclusion of the tenth day after the day on which a general election is held Parliament has failed to elect a Speaker, failed to elect a Deputy Speaker, or failed to nominate candidates for election to the office of President, Parliament shall stand dissolved.

(9.) If at the conclusion of seven days after the day on which a session of Parliament called pursuant to clause (4) of Article 16D has commenced, Parliament has failed to nominate candidates for election to the office of President, Parliament shall stand dissolved.’

24. Amendment of Article 42

Article 42 of the Constitution is amended by substituting at the beginning of paragraph (a) of clause (1) for the words ‘Parliament is not’, the words ‘twenty-eight days have elapsed since Parliament was’.

25. Amendment of Article 43

Article 43 of the Constitution is amended by –

(a) deleting from clause (1) the comma that appears after ‘Third Schedule’ and deleting the words ‘but a member may before taking and subscribing that oath take part in electing the Speaker’; and

(b) repealing clause (2).

26. Amendment of Article 44

Article 44 of the Constitution is amended by inserting immediately after the word ‘Parliament’ the words ‘and, as presiding officer, the Speaker shall be responsible for ensuring that the business of Parliament is conducted in compliance with this Constitution and the Standing Orders of Parliament and shall exercise his functions impartially and fairly’.

27. Insertion of Article 44A

The Constitution is amended by inserting immediately after Article 44 a new Article 44A as follows –

‘Duties of Speaker

44A. The duties of the Speaker include, in accordance with this Constitution:

- (a) presiding over the proceedings of Parliament – Article 44;
- (b) convening sessions or sittings of Parliament as required under the Constitution – Articles 40, 42;
- (c) proroguing or dissolving Parliament – Article 41;
- (d) issuing writs for elections – Article 39;
- (e) appointing, disciplining or removing the Clerk of Parliament – Article 33;
- (f) managing and controlling Parliament and its precincts including all staff and other employees in the service of the Office of Parliament; and
- (g) such other duties as prescribed by this Constitution, by law or Standing Orders of Parliament.’

28. Amendment of Article 45

Article 45 of the Constitution is amended by inserting immediately after the words ‘presiding at the sitting’ the words ‘if a member is presiding,’.

29. Amendment of Article 46

Article 46 of the Constitution is amended

- a) by substituting for the words in clause (2) the following words - ‘If there is an equality of votes, the person presiding does not have a casting vote and the question is deemed to be lost.’; and
- b) by inserting immediately after clause (2) new clauses (3) and (4) as follows –

‘(3.) If a member is performing the functions of Speaker, he shall continue to have a deliberative vote as a member of Parliament but shall not in addition have a casting vote.

(4.) The Speaker shall not be entitled to vote on any question.’

30. Amendment of Article 48

Article 48 of the Constitution is amended by

- a) substituting for the words in clause (1) the following words - ‘The judicial power of Nauru shall vest in the Supreme Court, and in such other courts as Parliament may establish by law.’;
- b) substituting in clause (2) for the word ‘has’, the following words – ‘shall be a superior court of record and shall have’; and
- c) inserting immediately after clause (2) the following new clauses (3), (4), (5), (6), (7), (8) and (9) –

‘(3.) The Supreme Court consists of a Trial Division, a Constitutional Division and an Appellate Division.

(4.) The Chief Justice may make and publish and may amend rules governing the Supreme Court and its Divisions and other courts established by law, including rules regarding the conduct of proceedings at a distance and the taking of evidence from a distance by any appropriate means in any court.

(5.) An order or decision issued by a court binds all persons to whom it applies including the Republic.

(6.) The Supreme Court and other courts are independent and subject only to the Constitution and the law.

(7.) Neither the Republic nor any person shall interfere with the functioning of the courts.

(8.) The Republic, through legislative and other measures, shall assist and protect the Supreme Court and other courts to ensure their independence, impartiality, dignity, accessibility and effectiveness.

(9.) The Supreme Court and such other courts as Parliament may establish by law, shall have the power to punish natural or legal persons for contempt in accordance with law.’

31. Amendment of Article 49

Article 49 of the Constitution is amended by

- a) deleting in clause (1) the word ‘such’ and replacing it with the words ‘two other judges or such greater’ and deleting the words ‘if any’ and the commas that appear immediately before and after those words;
- b) inserting in clause (2) immediately after the words ‘Supreme Court’ the words ‘appointed under this Article and under Article 53’;
- c) inserting in clause (2) immediately after the word ‘President’ the words ‘after consultation with Cabinet’;
- d) substituting for the words in clause (3) the following words – ‘A person shall not be qualified for appointment as a judge of the Supreme Court under this Article unless that person is qualified by education, experience and character to discharge judicial office, and
 - a) is entitled as prescribed by law to practise as a barrister or solicitor in Nauru and has been so entitled for not less than five years; or
 - b) holds or has held high judicial office in any common law country in the Pacific region or in any designated country; or
 - c) is entitled as prescribed by law to practise as a barrister and solicitor in any common law country in the Pacific region or in any designated

country and has been so entitled for a period amounting in the aggregate to not less than seven years.’;

and

e) inserting immediately after clause (3) a new clause (4) as follows –

‘(4.) The Minister responsible for justice acting in consultation with the Chief Justice may from time to time declare to be a designated country for the purposes of this Article and notify in the Gazette any country that in his opinion has a legal system sufficiently similar to that existing in Nauru as to render qualified persons from that country competent to exercise judicial functions in Nauru.’

32. Amendment of Article 50

Article 50 of the Constitution is amended by substituting for the word ‘sixty-five’ the word ‘seventy-five’.

33. Amendment of Article 53

Article 53 of the Constitution is amended by substituting for the word ‘sixty-five’ in clause (2) the word ‘seventy-five’.

34. Amendment of Article 54

Article 54 of the Constitution is amended by:

- (a) inserting in clause (1) immediately before the words ‘The Supreme Court shall’ the words ‘Subject to clauses (4) and (5) of this Article,’; and
- (b) inserting immediately after clause (2) the following new clauses (3), (4), and (5) –

‘(3.) The Supreme Court shall interpret and apply the Constitution in a manner that takes into account the principles set out in the Preamble.

(4.) The Constitution is enforceable at the suit of:

- (a) a person whose interests are or are likely to be affected by an alleged contravention of the Constitution; or
- (b) a person acting on behalf of another person who would be entitled to bring a suit under paragraph (a) of this clause but who cannot act in their own name; or
- (c) an association whose members’ interests are or are likely to be affected by an alleged contravention of the Constitution.

(5) A person referred to in clause (4) of this Article may, without prejudice to any other action with respect to the same matter which is lawfully available, apply to the

Supreme Court for relief in relation to the alleged contravention of the Constitution and the Supreme Court shall have jurisdiction to determine whether any provision of the Constitution has been or is likely to be contravened and to make such orders and declarations as are necessary and appropriate, including compensation, and the Supreme Court shall not grant relief at the suit of any other person.’

35. Amendment of Article 55

Article 55 of the Constitution is amended by inserting:

- (a) immediately before the words ‘The President or a Minister’ the characters ‘(1.)’; and
- (b) immediately after the words ‘opinion on the question’ a comma and the words ‘and such opinion shall be binding and determinative, subject to any appeal’; and
- (c) immediately after new clause (1), the following new clauses (2) and (3):

‘(2.) The Supreme Court shall, before pronouncing its opinion on the question, give any person whose interests would be affected by its opinion the right to be heard on the question.

(3.) In a constitutional reference brought under this Article, the Supreme Court may make such orders and declarations as are necessary and appropriate.’

36. Repeal and replacement of Article 57

Article 57 of the Constitution is hereby repealed and replaced with the following

—

‘Appellate Division of the Supreme Court

57. (1.) The Appellate Division of the Supreme Court shall have jurisdiction and powers, subject to such regulation as Parliament may prescribe, to hear and determine appeals from –

- (a) the Trial and Constitutional Divisions of the Supreme Court;
- (b) the Appellate Division of the Supreme Court constituted by one judge; and
- (c) subordinate courts

provided that no regulation prescribed by Parliament shall prevent the Appellate Division of the Supreme Court from hearing and determining any appeal from a subordinate court.

(2.) Where the Appellate Division of the Supreme Court is hearing an appeal from a Division of the Supreme Court, it shall be constituted by two or more judges.

(3.)(a) Appeals in criminal matters lie as of right, save for appeals from the Appellate Division of the Supreme Court constituted by one judge.

b) Appeals in civil matters and other causes shall be by leave.’

37. Insertion of Article 57A and creation of new Part VA

The Constitution is amended by inserting between Parts V and VI a new Part with the heading ‘Part VA – Leadership Code’ and by inserting in Part VA Article 57A as follows –

‘Leadership Code

57A(1.) This Part applies to:

- (a) the President;
- (b) a Minister;
- (c) a Member of Parliament;
- (d) a judicial officer;
- (e) the holder of any constitutional or statutory office;
- (f) the head of a department in the Public Service; and
- (g) such other persons or offices as may be prescribed by Parliament.

(2.) A person to whom this Part applies has a duty to conduct himself in such a way, both in his public or official life and his private life, and in his associations with other persons, as not-

- (a) to place himself in a position in which he has a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
- (b) to demean his office or position or compromise his integrity; or
- (c) to diminish respect for and confidence in the integrity of the government of Nauru,

provided that the duty imposed in paragraph (a) of this clause is to be interpreted in a manner that takes account of the circumstances of Nauru and its small population.

(3.) A person to whom this Part applies shall not use his office for personal gain.

(4.) A person to whom this Part applies who-

- (a) is convicted of an offence in respect of his office or position or in relation to the performance of his functions or duties; or
- (b) fails to carry out the obligations imposed by the preceding clauses of this Article;

is guilty of misconduct in office.

(5.) Subject to the provisions of this Constitution, for the purposes of this Part, Parliament shall, as soon as practicable after the commencement of this Part:

(a) make provision for the disclosure of the personal and business incomes and financial affairs of persons to whom this Part applies;

(b) make provision for the investigation of cases of alleged or suspected misconduct in office; and

(c) provide for the reference of cases of alleged or suspected misconduct in office to such independent courts or tribunals as may be prescribed, and for the determination by such courts or tribunals of any such cases that may be referred to them in the manner prescribed.

(6.) Subject to the provisions of this Constitution, for the purposes of this Part, Parliament may:

(a) prescribe specific acts or omissions constituting misconduct in office;

(b) create offences (including offences by persons to whom this Part applies and offences by other persons) and prescribe penalties for such offences; and

(c) make other provision as may appear necessary or expedient for attaining the objects of this Part.

(7.) If Parliament has by law empowered any tribunal or court in relation to breach of the provisions of this Article or breach of any legislation made pursuant to clauses (5) or (6) of this Article, to make orders prohibiting a person from holding a position of Leadership, such orders:

a) If made by a court or Tribunal other than the Supreme Court, shall not take effect until the order has been referred to the Supreme Court and upheld by that Court; and

b) if the order is made in respect of a person currently occupying the office of a judge of the Supreme Court, Director of Audit or Ombudsman, such order shall not take effect in relation to the position currently held by that person until referred to Parliament and endorsed by a vote of not less than two thirds of the total number of members of Parliament praying for his removal on the ground of proved incapacity or misconduct.

(8.) Notwithstanding the other provisions of this Article, nothing done by a judge in the independent exercise of his judicial functions shall be regarded as a breach by that judge of paragraph (c) of clause (2) of this Article.'

38. Insertion Articles 57B, 57C, 57D and 57E, and creation of new Part VB

The Constitution is amended by inserting between Parts VA and VI of the Constitution a new Part with the heading ‘Part VB – Ombudsman’ and by inserting the following Articles –

‘Ombudsman

57B.(1) There shall be an Ombudsman, whose office shall be a public and independent office.

(2.) The Ombudsman shall be appointed by the President, in consultation with the Speaker and the Chief Secretary.

(3.) Subject to clause (2) of Article 57C, the Ombudsman shall not perform the functions of any other public office, and shall not, without the approval of the President in each particular case, hold any other office of emolument than the office of the Ombudsman or engage in any occupation for reward outside the duties of his office.

(4.) Subject to clause (5.) of this Article, the Ombudsman shall hold office for a term of five years from the date of his appointment, and shall be eligible for reappointment on no more than one subsequent occasion.

(5.) The Ombudsman ceases to hold office-

- (a) at the expiry of his term;
- (b) upon being removed from office by a resolution of Parliament approved by not less than two thirds of the total number of members of Parliament praying for his removal on the ground of proved incapacity, misconduct or professional incompetence; or
- (c) upon resigning his office by writing under his hand delivered to the President.

Functions of Ombudsman

57C.(1.) The functions of the Ombudsman shall be:-

- (a) upon receipt of a complaint from a member of the public or at his own initiative, to enquire into the conduct of any person to whom this Article applies in the exercise of his office or authority, or abuse thereof;
- (b) to assist in the improvement of the practices and procedures of public bodies; and
- (c) to ensure the elimination of arbitrary and unfair decisions.

(2.) Parliament may confer additional functions on the Ombudsman.

(3.) This Article applies to members of the public service, the Nauru Police Force, and such other offices, government instrumentalities or public agencies as may be prescribed by Parliament.

(4.) Nothing in this Article or in any Act of Parliament enacted for the purposes of this Part shall confer on the Ombudsman any power to question or review any decision of any judge, magistrate or registrar in the exercise of his judicial functions or to investigate action taken by the President or a Minister.

Discharge of functions of Ombudsman

57D.(1.) Subject to clause (3.) of this Article, in the discharge of his functions the Ombudsman shall not be subject to the direction or control of any other person or authority, but shall act independently.

(2.) No proceedings of the Ombudsman shall be called in question in any court of law, save that, where any question arises as to whether the Ombudsman has jurisdiction, the Ombudsman or a person affected by the conduct or proposed conduct of the Ombudsman may apply to the Supreme Court for a determination of that question and the Supreme Court shall have jurisdiction to determine the question and to make such orders as it considers necessary and appropriate.

(3.) The Ombudsman shall not conduct an investigation in respect of any matter if he has been given notice in writing by Cabinet that the investigation of that matter would not be in the interests of the security of Nauru.

(4.) The Ombudsman shall grant any person or body that is the subject of a complaint pursuant to paragraph 57C(1)(a) an opportunity to reply to the complaints made against them.

(5.) The Ombudsman may in his discretion decide not to entertain a complaint where, in his opinion:-

- (a) the subject matter of the complaint is trivial; or
- (b) the complaint is frivolous or vexatious or is not made in good faith; or
- (c) the complainant has had knowledge for more than 12 months of the administrative action complained about, and fails to give a satisfactory explanation for the delay in making the complaint.

(6.) Wherever, after due enquiry, the Ombudsman concludes that a complaint is unjustified, he shall so inform the complainant and the President and the head of the public department or authority concerned.

(7.) Wherever, after due enquiry, the Ombudsman concludes that conduct was contrary to the law, based on error of law or of fact, delayed for unjustified reasons, or unjust or blatantly unreasonable and that, consequently, any decision taken should be annulled or changed or that any practice followed should be

revised, he shall forward his findings in writing to the President and to the head of the public authority or department directly concerned.

(8.) The findings of the Ombudsman pursuant to clause (7.) of this Article shall be public unless he decides to keep such findings, or parts thereof, confidential to the President and the person in charge of the relevant public department or authority, on the grounds of public security or public interest. The complainant shall in any case be told of the findings of the Ombudsman.

(9.) The Ombudsman shall make an annual report to Parliament and may make such additional reports to Parliament as he deems appropriate concerning the discharge of his functions, and may draw attention to any defects which appear to him to exist in the administration or any law, and the Speaker shall cause each report of the Ombudsman to be laid on the table of Parliament as soon as practicable.

Further provisions

57E. Parliament may make provision for such supplementary and ancillary matters as may appear necessary or expedient to give effect to the provisions of this Part.’

39. Insertion of Article 58A

The Constitution is amended by inserting immediately after Article 58 a new Article 58A as follows:

‘Annual Budget and Appropriation

58A. (1.) Before the end of each financial year Cabinet shall present to Parliament an annual budget setting out the estimates of revenues and expenditures for the next financial year, in accordance with clause (4) of Article 59, and an annual appropriation bill that complies with clause (3) of Article 59 and which reflects the estimates of expenditures.

(2.) The annual budget and budgetary processes shall promote transparency, accountability and the effective financial management of the economy, debt and the public sector.

(3.) The budget shall contain –

(a) estimates of revenue and expenditure, differentiating between capital and current expenditure;

(b) sources of revenue;

(c) proposals for financing any anticipated deficit for the period to which it applies; and

(d) an indication of Cabinet's intentions regarding borrowing and other forms of public liability that will increase public debt during the ensuing year.'

40. Insertion of Article 59A

The Constitution is amended by inserting immediately after Article 59 a new Article 59A as follows –

‘Statement of Accounts

59A. The Minister responsible for finance shall, as soon as practicable after the end of the financial year and not later than three months after that date or such longer period thereafter as Parliament may by resolution appoint, submit to the Director of Audit a statement of accounts of the moneys and assets of the Republic of Nauru for that year.’

41. Amendment of Article 61

Article 61 of the Constitution is amended by

- a) substituting at the beginning of clause (1) the words ‘If the appropriation law in respect of a financial year has not received’ for the words ‘Subject to clause (1A) of this Article, if Cabinet anticipates that the annual appropriation law will not receive,’;
- b) deleting from clause (1) immediately after the words ‘Article 47’ the words ‘on or before the twenty-first day’;
- c) substituting in clause (1) immediately after the words ‘before the commencement of’ for the word ‘that’ the word ‘the’;
- d) inserting in clause (1) immediately after the words ‘or the coming into operation of the’ the word ‘annual’;
- e) inserting immediately after clause (1) the following new clause (1A) –
‘(1A) Subject to clause (4) of Article 61A, there shall be no more than one proposed law under clause (1) of this Article in any financial year.’;
- f) deleting from clause (2) the words ‘not later than the fourteenth day’;
- g) inserting at the beginning of clause (4) the words ‘Subject to clause (5) of this Article,’; and
- h) inserting immediately after clause (4) the following new clause (5) –
‘(5) Subject to clauses (4) and (7) of Article 61A, there shall be no more than one Cabinet authorised withdrawal of moneys under clause (4) in any financial year.’

42. Insertion of Article 61A

The Constitution is amended by inserting immediately after Article 61 the following new Article 61A –

Dissolution upon failure to pass appropriation law

61A. (1.) Subject to clause (4) of this Article, where neither the annual appropriation law under Article 58A nor a proposed law under clause (1.) of Article 61 has come into operation within 90 days of the commencement of any financial year, or where a law passed under clause (1) of Article 61 has expired and the annual appropriation law has not been approved, the Parliament shall be dissolved by the Speaker and the President and Ministers shall cease to hold office.

(2.) When Parliament is dissolved pursuant to clause (1.) or clause (6.) of this Article or clause (1.) of Article 24, the Council of State may, if moneys withdrawn by the previous Cabinet have expired, authorise the withdrawal of moneys from the Treasury Fund for the purpose of meeting expenditure necessary to carry on the services of the Republic of Nauru until the new Cabinet is formed following the general election and that Cabinet has passed its appropriation or supply law or authorised the withdrawal of moneys from the Treasury Fund in accordance with clause (4) of this Article, but the amount withdrawn shall not exceed one quarter of the amount withdrawn under the authority of the appropriation law or laws in respect of the preceding financial year.

(3.) When the Council of State authorises the withdrawal of moneys from the Treasury Fund pursuant to clause (2) or clause (7) of this Article, a statement of the sums so authorised shall be laid before Parliament when it first meets following the general election and the aggregate sums shall be included, under the appropriate heads, in the next appropriation bill.

(4.) When, following a dissolution of Parliament under clause (1) or clause (6) of this Article a new Cabinet is formed following a general election and the moneys withdrawn by the Council of State under clause (2) of this Article have expired, the provisions of clauses (1), (2), (3) and (4) of Article 61 shall apply to the new Cabinet notwithstanding that the financial year has already commenced.

(5.) When, following a dissolution of Parliament under clause (1) or clause (6) of this Article a new Cabinet is formed following a general election, and in any other circumstances where an annual appropriation law is not in place, the Cabinet shall as soon as practicable present to Parliament an annual budget and an annual appropriation bill that comply with the applicable requirements of Article 58A.

(6.) If, following a dissolution of Parliament under this Article and the formation of a new Cabinet following a general election or following the formation of a new

Cabinet in any other circumstances where an annual appropriation law is not in place, the annual appropriation law has not been approved by Parliament within three months after the formation of the new Cabinet, Parliament shall be dissolved by the Speaker and the President and Ministers shall cease to hold office.

(7.) When a caretaker government or the Council of State is required to exercise the executive functions of government for a period exceeding three months by reason of a newly formed Parliament being dissolved under clause (8) of Article 41, the caretaker government or the Council of State may, if moneys previously appropriated or withdrawn have expired, authorise the withdrawal of moneys from the Treasury Fund for the purpose of meeting expenditure necessary to carry on the services of the Republic of Nauru until a new Cabinet is formed following the general election and that Cabinet has passed its appropriation law, but the amount withdrawn shall not exceed one quarter of the amount withdrawn under the authority of the appropriation law or laws in respect of the preceding financial year.

43. Amendment of Article 63

Article 63 of the Constitution is amended by inserting immediately after clause (2) the following new clause (3) –

‘(3.) No moneys or assets held in the Nauruan Landowners Royalty Trust Fund established under the Nauruan Royalty Trust (Payment and Investment) Act 1968 as amended, or held in any trust established for the same purpose, shall be lent, mortgaged or charged as security for any borrowing for any purpose whatsoever.’

44. [deleted]

45. Repeal and replacement of Article 66

Article 66 of the Constitution is hereby repealed and replaced with the following new Article 66 –

‘Director of Audit

66.-(1.) The Speaker shall nominate and, with the approval of Parliament, signified by resolution, the President shall appoint, a person with appropriate expertise to be Director of Audit of Nauru whose office shall be a public and independent office.

(2.) The Director of Audit shall hold office for a term of three years and shall be eligible for reappointment on no more than one subsequent occasion.

(3.) The Director of Audit ceases to hold office-

- (a) at the expiry of his term;
- (b) upon being removed from office by a resolution of Parliament approved by not less than two thirds of the total number of members of Parliament praying for his removal on the ground of proved incapacity or misconduct; or
- (c) upon resigning his office by writing under his hand delivered to the Speaker.

(4.) If the office of Director of Audit is vacant, or it appears that the Director of Audit is for any reason unable to perform the functions of his office, the Speaker shall nominate and the President shall appoint an Acting Director of Audit; who shall perform the functions of the Director of Audit until the Director of Audit resumes the performance of the functions of his office or until a new Director of Audit is appointed and assumes office.

(5.) In the exercise of his functions, the Director of Audit shall act independently and shall not receive any direction from the Cabinet or from any other authority or person.

(6.) The Director of Audit shall not hold or perform the functions of any other public office during his term of office and a person who has held the office of Director of Audit shall not hold or perform the functions of any public office during the period of three years after he ceases to be Director of Audit.’

46. Insertion of Article 66A

The Constitution is amended by inserting immediately after Article 66 the following new Article 66A –

‘Audit of Accounts

66A.-(1.) For the purposes of Article 59A and of this Article –

“accounts of the moneys and assets of the Republic of Nauru” includes the accounts of the revenues, expenditure, assets and liabilities of all departments or offices of the legislative, executive and judicial branches of government and of all statutory corporations and other instrumentalities directly or indirectly controlled by the Republic; and

“the moneys and assets of the Republic of Nauru” includes all revenue, loan, trust, and other moneys and all stamps, bonds, debentures and other securities whatsoever raised, received or held, whether temporarily or otherwise, by or on account of the Republic of Nauru and of all statutory corporations and other instrumentalities directly or indirectly controlled by the Republic.

(2.) The Director of Audit shall, within two months after receiving from the Minister responsible for finance the statements of accounts for the financial year

as provided for in Article 59A, or within such longer period as Parliament may by resolution appoint, submit to the Speaker a report on his examination and audit of all accounts relating to the moneys and assets of the Republic of Nauru for that year, together with certified copies of the statements of accounts.

(3.) The Speaker shall cause the report and statements submitted in accordance with the preceding clause to be laid on the table of Parliament as soon as practicable and shall send copies thereof to the President and the Minister responsible for finance.

(4.) If provision is made by law for audit by any other person of the accounts of a statutory corporation, such person shall report to the Director, who shall have access to such accounts, and such person shall provide to the Director the audited accounts of the statutory corporation no later than two months after the end of the financial year, or within such longer period as Parliament may by resolution appoint.

(5.) The Director of Audit may exercise his responsibilities under clause (2) of this Article either in person or through appropriately qualified officers who are subordinate to him, acting in accordance with his general or special instructions.

(6.) For the purpose of carrying out his functions under this Article, the Director of Audit or any person authorised by him shall have full access to all public records, including electronic records, books, vouchers, documents, cash, stamps, securities, stores or other government property in the possession of any officer.

(7.) Nothing in this Article or in clause (6) of Article 66 shall prevent the Director of Audit from –

(a). offering technical advice and assistance to any person or authority having a responsibility in relation to the public revenues and expenditure of Nauru or having other auditing responsibilities within the Pacific region that are not in conflict with the interests of Nauru; and

(b). performing other functions in relation to the supervision of expenditure from public funds.

(8.) In performing the audit referred to in clause (2), the Director shall satisfy himself –

(a) that all reasonable precautions have been taken to safeguard the collection of the moneys of the Republic of Nauru and that laws, directions or instructions relating thereto have been duly observed; and

(b) that all moneys of the Republic of Nauru appropriated or otherwise disbursed have been expended and applied for the purpose or purposes for

which the grants made by Parliament were intended to provide and that expenditure conforms to the authority which governs it.

(9.) The Director's report to Parliament referred to in clauses (2.) and (3.) of this Article shall –

- (a) draw attention to any irregularities in the accounts audited by him;
- (b) give consideration to the audit test prescribed in the preceding clause; and
- (c) report on the performance of the functions of the Office of Director of Audit for the relevant financial year.

(10.) The Director may, at any time, submit to the Speaker a special report on the performance of the functions of the Office of Director of Audit or on any matter of concern relating to the accounts of the Republic of Nauru, and the Speaker shall cause the special report to be laid on the table of Parliament as soon as practicable and send copies thereof to the President and Minister responsible for finance.

47. Amendment of Article 67

Article 67 of the Constitution is amended by inserting immediately after clause (2) a new clause (3) as follows –

‘(3.) No mortgage or other charge over the property of the Republic or of an instrumentality of the Republic and no public guarantee shall have effect in law or equity unless and until it is approved by Parliament.’

48. Insertion of Articles 67A and 67B

The Constitution is amended by inserting at the beginning of Part VII, immediately before Article 68, the following new Articles 67A and 67B –

‘Basic values and principles governing public administration

67A. (1) Public administration shall be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

- (a) A high standard of professional ethics shall be promoted and maintained;
- (b) Efficient, economic and effective use of resources shall be promoted;
- (c) Public administration shall be development oriented;
- (d) Services shall be provided impartially, fairly, equitably and without bias;
- (e) People's needs shall be responded to, and the public must be encouraged to participate in policy-making;

- (f) Public administration shall be accountable;
- (g) Transparency shall be fostered by providing the public with timely, accessible and accurate information;
- (h) Good human-resource management and career-development practices, to maximise human potential, shall be cultivated;
- (i) Public administration shall be broadly representative of the Nauruan people, with employment and personnel management practices based on ability, objectivity and fairness.

(2) The above principles shall apply to –

- (a) the public service;
- (b) statutory corporations;
- (c) government instrumentalities; and
- (d) the Nauru Police Force.

Chief Secretary

67B.-(1.) There shall be a Chief Secretary of Nauru, who shall be appointed by and responsible to the Cabinet.

(2.) A member of Parliament is not qualified to be appointed Chief Secretary.

(3.) The Chief Secretary may resign his office by writing under his hand delivered to the President and may be removed from office by the Cabinet.

(4.) Subject to clause (1)(a) of Article 69, the Chief Secretary has such powers and functions as are conferred on him by this Constitution or by law.

(5.) The powers and functions of the Chief Secretary include:

- (a) managing all departments and offices of government in accordance with the values and principles in Article 67A;
- (b) advising Cabinet in relation to the administration of government; and
- (c) ensuring that the written policies of Cabinet are implemented by the public service;

(6.) The head of any department or office shall account for the work of that department or office to the Chief Secretary, as well as to the Minister primarily responsible for that department or office.'

49. Amendment of Article 68

Article 68 of the Constitution is amended by deleting from clause (4) the words ‘such matters relating to’ and deleting from clause (4) the words ‘as are prescribed by law’.

50. Insertion of Article 68A

The Constitution is amended by inserting immediately after Article 68 a new Article 68A as follows –

‘Nauru Police Force

68A.-(1.) There shall be a Nauru Police Force.

(2.) The functions and responsibilities of the Nauru Police Force include to prevent, combat and investigate crime, to maintain public order, to protect and secure the people of Nauru and their property, and to uphold and enforce the law.

(3.) The powers of the Nauru Police Force shall be prescribed by law.’

51. Amendment of Article 69

Article 69 of the Constitution is amended by

- a) substituting the in the heading of Article 69 for the word ‘Board’ the word ‘Commission’;
- b) inserting in paragraph (a) of clause (1) immediately after the words ‘Article 68’ a comma and the words ‘and any other powers and functions in relation to the public service other than those referred to in clause (5.) Article 67B’ and substituting in paragraph (a) of clause (1) for the words ‘Board consisting of the Chief Secretary, who shall be Chairman, and not less than two other persons who are not members of Parliament’ the word ‘Commission’; and
- c) substituting in paragraph (c) of clause (2) in both places in which it appears for the word ‘Board’ the word ‘Commission’.

52. Amendment of Article 70

Article 70 of the Constitution is amended by –

- a) inserting at the beginning of clause (1) the words ‘Subject to clause (9) of this Article.’; and
- b) inserting immediately after clause (8) a new clause (9) as follows –

‘(9.) If Parliament exercises its power under clause (1)(a) of Article 69 to create a Public Service Commission, the Public Service Appeals Board shall become defunct, and appeal of decisions of the Public Service Commission shall lie to the Supreme Court until Parliament provides for appeal to such other court as it may prescribe.’

53. Insertion of Article 70A

The Constitution is amended by inserting immediately after Article 70 a new Article 70A as follows –

‘Director of Public Prosecutions

70A.-(1.) There shall be a Director of Public Prosecutions, who shall be appointed by the President after consultation with Cabinet.

(2.) The Director of Public Prosecutions shall be a person who is qualified to be appointed as a judge of the Supreme Court and shall not hold or perform the functions of any other public office.

(3.) The Director of Public Prosecutions may:

- (a) institute and conduct criminal proceedings;
- (b) take over criminal proceedings that have been instituted by another person or authority;
- (c) discontinue, at any stage before judgment is delivered, criminal proceedings instituted or conducted by himself or another person or authority; and
- (d) do anything that he is authorised or required to do by any law in force in Nauru.

(4.) The powers conferred on the Director of Public Prosecutions by paragraphs (b) and (c) of clause (3) of this Article shall be vested in him to the exclusion of any other person or authority; Provided that where any other person or authority has instituted criminal proceedings, that person or authority may discontinue those proceedings with the leave of the Director of Public Prosecutions.

(5) In exercising his responsibilities under this Article the Director of Public Prosecutions:

- (a) shall act independently and shall not accept any direction from the Cabinet or any other person or authority other than a lawful order of a court of competent jurisdiction; and
- (b) may exercise his responsibilities either in person or through subordinates or other suitably qualified persons acting under and in accordance with his general or special instructions.

(6.) During any period when the office of Director of Public Prosecutions is vacant or the holder of that office is for any reason unable to perform the functions of his office those functions shall be performed by a suitably qualified public officer appointed by the Minister responsible for justice.

(7.) The Director of Public Prosecutions ceases to hold office-

- (a) at the expiry of his contract;

- (b) upon being removed from office by Cabinet on the ground of incapacity, gross misconduct or professional incompetence; or
- (c) upon resigning his office by writing under his hand delivered to the President.

(8.) In this Article, “proceedings” include any appeal from any judgment in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings to the Trial or Appellate Division of the Supreme Court.’

54. Amendment of Article 72

Article 72 of the Constitution is amended by repealing clause (2) and by inserting a new clause (3) as follows: ‘(3.) A person born on or after the thirty-first day of January One thousand nine hundred and sixty-eight is entitled to become a Nauruan citizen if one of his parents was a Nauruan citizen at the date of his birth.’

55. Amendment of Article 74

Article 74 of the Constitution is amended by

- a) substituting in the heading of Article 74 for the word ‘Women’ the word ‘Persons’;
- b) substituting at the beginning of Article 74 for the words ‘A woman’ the words ‘Any person’;
- c) substituting for the word ‘man’ the word ‘person’; and
- d) substituting for the words ‘upon making application in such manner as is prescribed by law’ the words ‘subject to such reasonable conditions as may be prescribed by law’.

56. Amendment of Article 76

Article 76 of the Constitution is amended by repealing clause (1).

57. Amendment of Article 77

Article 77 of the Constitution is amended by

- a) inserting in clause (1) immediately after the words ‘if the President is satisfied,’ the words ‘after consulting Cabinet,’;
- b) substituting in paragraph (a) of clause (2) for the word ‘sitting’ the words ‘in session’;
- c) substituting in clause (2) for the words ‘In any other case’ the words ‘If the declaration made when Parliament is not in session’;
- d) substituting in clause (2) for the word ‘twenty-one’ the word ‘fourteen’;
- e) inserting immediately after clause (2) new clauses (2A) and (2B) as follows –

‘(2A.) The Parliament may approve a declaration of a state of emergency for no more than three months at a time by a resolution approved by a majority of the members of the Parliament present and voting, save that, subject to clause (2B.) of this Article, any successive continuation of a declaration of a state of emergency and any declaration of a state of emergency made within 21 days of the expiration of a declaration of a state of emergency shall be by further resolution approved by a vote of no fewer than two thirds of the members of the Parliament present and voting.

(2B.) If, following the making of a declaration of a state of emergency or within 21 days of the expiration of a declaration of a state of emergency, Parliament is by reason of the nature or extent of the emergency unable to meet, the President may make a further declaration of a state of emergency pursuant to clause (1) of this Article.’;

and

f) deleting all of clauses (4) and (5) and replacing them with the following –

(4.) (a) Where a declaration of a state of emergency is made and Parliament is not in session, it shall be convened by the Speaker immediately in special session and remain in session during the entire period of the state of emergency; provided that Parliament shall not remain in session beyond the end of the normal term of Parliament.

(b) Where a declaration of a state of emergency is made when Parliament has been dissolved, or when Parliament is dissolved during an emergency, the members of the dissolved Parliament shall be called by the Speaker to a special session and remain in session until the conclusion of the state of emergency or the election of a new Parliament, whichever occurs sooner.

‘(5.) Parliament may at any time revoke a declaration of a state of emergency or amend or revoke orders made under Article 78 by resolution of a majority of members present and voting and the President shall act accordingly and immediately carry out the resolutions of Parliament.’

58. Amendment of Article 78

Article 78 of the Constitution is amended by

- a) inserting in clause (1) immediately after the words ‘may make such’ the word ‘Emergency’;
- b) inserting at the beginning of clause (2) the words ‘Subject to the provisions of this Part,’;
- c) deleting from clause (2) all of paragraph (a);
- d) inserting at the beginning of clause (3) the words ‘Subject to clauses (4.) and (5.) of this Article,’; and

- e) inserting, immediately following clause (3.), the following new clauses (4), (5) and (6) –

‘(4.) Any law enacted in consequence of a declared state of emergency and any Emergency Order made under clause (1.) of this Article may derogate from the provisions of Part II of this Constitution (Protection of Fundamental Rights and Freedoms) only to the extent that –

(a) the derogation is strictly required by the emergency; and

(b) the law or Order –

- i.) is consistent with Nauru's obligations under international law applicable to states of emergency;
- ii) conforms to clause (5.); and
- iii) is published in the *Gazette* as soon as reasonably possible after being enacted or declared.

(5.) No Declaration of Emergency or Act of Parliament that authorises a declaration of a state of emergency, and no Emergency Order or law enacted or other action taken in consequence of a declaration, may permit or authorise –

- (a) indemnifying the government, or any person, in respect of any unlawful act;
- (b) any derogation from the Articles in this Part;
- (c) the dissolution of Parliament prior to the normal expiry of the legislative term;
- (d) the suspension or dismissal of the judiciary;
- (e) any amendments to the Constitution; or
- (f) any derogation from an Article listed in column 1 of the Table of Non-Derogable Rights, to the extent indicated opposite that Article in column 3 of that table.

Table of Non-Derogable Rights:

Article Number	Article Title	Extent to which the right is protected
3	Right to equality	Clause 3(3) with respect to gender, race and colour only
4	Right to life	Entirely
5	Protection of personal liberty	With respect to clauses 5(2) and (4) only
7	Protection from inhuman treatment	Entirely

10	Provision to secure protection of law	With respect to clauses 10(1), (2) (in respect of a fair hearing by an independent and impartial court), (3), (4), (5), (6), (7) and (8) only'
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(6.) The Supreme Court may determine the validity of:

- (a) a declaration of a state of emergency;
- (b) any extension of a declaration of a state of emergency; or
- (c) any Emergency Order made under this Article and any law enacted, or other action taken, in consequence of a declaration of a state of emergency.'

59. Amendment of Article 79

Article 79 of the Constitution is amended by substituting in clause (2) for the words 'brought before' the words 'heard by' and inserting in clause (2) immediately after the words 'advisory board' the words 'in person or by any other practicable means'.

60. Amendment of Article 80

Article 80 of the Constitution is amended by

- a) substituting the words 'Grant of Pardon' in the heading and marginal note for the words 'Prerogative of Mercy';
- b) inserting immediately before the words 'The President may' the words and punctuation '(1.) In exercising the prerogative of mercy'; and
- c) inserting immediately following the words 'forfeiture on account of an offence.' the following new clauses (2), (3), (4), (5), (6), (7) and (8) –

'(2.) There shall be a Committee on the Prerogative of Mercy (in this Article referred to as "the Committee") which shall consist of a qualified medical practitioner who shall be Chairperson and two other persons, one of whom shall be a senior officer of the public service and the other of whom shall be a community leader, appointed by Cabinet.

(3.) Members of the Committee shall not be remunerated or receive any allowance for their service on the Committee.

(4.) A member of the Committee appointed under clause (2) of this Article shall vacate his seat on the Committee-

- (a) at the expiration of the term of his appointment (if any) specified in the instrument of his appointment; or

(b) if his appointment is revoked by Cabinet.

(5.) Whenever the Committee advises the President on whether the Prerogative of Mercy should be exercised, the Committee shall provide to the President a report which details the reasons for the recommendation, and a statement which summarises the reasons but which does not disclose any confidential information.

(6.) In the exercise of the powers conferred upon him by clause (1) of this Article, the President shall take into account the advice of the Committee.

(7.) In any case in which the Prerogative of Mercy is exercised in accordance with clause (1), the President shall present to Parliament-

(a) if the power is exercised during a meeting of Parliament - during that session;
or

(b) if the power is exercised at any other time - during the next session of Parliament,

the statement referred to in clause (5) and a statement from the President giving details of the exercise of the power and a summary of the reasons for it.

(8.) Parliament may make provision for criteria or guidelines to be followed by the Committee in exercising its functions under this Article, and for any other matter necessary or expedient to give effect to the provisions of this Article.’

61. Amendment of Article 81

Article 81 of the Constitution is amended by

- a) substituting in clause (1) in the definition of “Chief Secretary” for the numerals “25” the numerals and letter “67B”;
- b) inserting in clause (1) in the definition of “Minister” immediately after the words ‘of the Cabinet’ a comma and the words ‘or, in a provision in which a Minister with a particular responsibility is specified, means the particular Minister specified’;
- c) inserting in clause (1) immediately after the words ‘ “Property” includes’, the words ‘land and’ and by inserting immediately after the words ‘title or interest in or over’ the words ‘land or any other’;
- d) in the definition of “session” in clause (1), substituting for the words ‘the period beginning when the Legislative Assembly of Nauru first met on Independence Day or after Parliament has at any time been prorogued or dissolved and ending when next Parliament is prorogued or dissolved’ the words ‘a series of sitting days held in accordance with Article 40’;
- e) in the definition of “sitting” in clause (1), substituting for the words ‘a period during which Parliament is sitting without adjournment’ the words ‘the daily meeting of Parliament from the time of commencement of business until the adjournment of Parliament’;

- f) inserting in paragraph (a) of clause (2) immediately after sub-paragraph (ii) a new sub-paragraph (iia) as follows –
‘(iia) a reference to the offices of Ombudsman, Director of Audit or Director of Public Prosecutions; or’;
- g) deleting from paragraph (b) of clause (2.) the word ‘Speaker,’; and
- h) inserting in clause (6) immediately before the words ‘any such investigation’ a comma and the words ‘in respect of acts or events occurring prior to such repeal’.

62. Amendment of Article 82

Article 82 of the Constitution is amended by

- a) inserting immediately before clause (1) a new clause (1A) as follows –

‘(1A) The Preamble forms part of this Constitution, and establishes principles upon which this Constitution, and the conduct of public affairs of Nauru, are to be based, provided that the Preamble is not justiciable.’; and

- b) deleting from clause (3) the words ‘preamble and the’.

63. Insertion of Article 84A

The Constitution is amended by inserting immediately after Article 84, the following –

‘Opportunity for periodic review and inclusive review process

84A.(1.) At least every 15 years, Parliament shall submit to a referendum the question ‘do you think there should be a Constitutional Convention, to consider whether or not there should be any amendments to the Constitution?’, and if the referendum is passed by a majority of the votes cast, Parliament shall establish a Constitutional Convention.

(2) Nothing in clause (1) shall prevent Parliament from initiating a review of the Constitution at any other time, and any such additional review shall not require a referendum prior to being commenced.

(3) If a Constitutional Convention is established pursuant to clause (1) or a process of constitutional review is initiated pursuant to clause (2) Parliament shall enact a law setting out an inclusive process for review of the Constitution which ensures that people are able to participate in the process prior to a proposed law being introduced to Parliament pursuant to Article 84, and in the case of Convention under clause (1), prior to the establishment of the Convention.’

64. Amendment and repeal of certain transitional provisions

The Constitution is amended by:

- (a) repealing clauses (4.) and (6.) of Article 85;
- (b) inserting in Article 85 two new clauses as follows –

‘(7.) All laws that were in force on the date of commencement of the 2010 amendments continue in force, subject to –

- (a) any amendment or repeal; and
- (b) consistency with the Constitution as amended.

(8.) Where, by virtue of any amendment to this Constitution, any matter is to be provided for by Parliament and such matter is prescribed or otherwise provided for by a law already in force prior to the amendments, that law has effect in respect of that matter, subject to any amendment or repeal and to consistency with the Constitution as amended, for the purpose of satisfying the requirement that legislative provision be made.’; and

- (c) repealing Articles 87, 88, 89, 90, 91, 92, 94 and the Sixth Schedule, 95, 96, 97, 98, 99 and 100.

64A. New transitional provisions

The Constitution is amended by –

- (a) inserting immediately after Article 86 a new Article 86A as follows-

‘Transitional provisions for the 2010 amendments

86A. The transitional provisions contained in the 10th Schedule apply to the implementation and application of the 2010 amendments to the Constitution.’; and

- (b) inserting immediately after the 9th Schedule a new 10th Schedule as follows-

‘TENTH SCHEDULE

Article 86A

TRANSITIONAL PROVISIONS FOR THE 2010 AMENDMENTS

Sections

1. 2010 Amendments
2. Enactment of laws required by amended Constitution
3. Transitional provisions relating to the President and Cabinet
4. Transitional provisions relating to the Speaker of Parliament

5. Existing office-holders
6. Existing legal proceedings
7. Transitional provisions relating to finance

2010 Amendments

1. (1.) ‘2010 amendments’ means the amendments to the Constitution effected by the *Constitution of Nauru (Referendum Amendments) Act 2010* and the *Constitution of Nauru (Parliamentary Amendments) Act 2009*.

(2.) The date of commencement of the 2010 amendments is [insert date of next general election when it is known].

(3.) The 2010 amendments shall take effect on the date of commencement and none of the amendments shall have any retrospective effect in relation to any decision, act or omission prior to the date of commencement.

(4.) Anything done before the commencement of the 2010 amendments is valid to the extent that it was valid when done.

(5.) For the avoidance of doubt, in any matter relating to, or involving the interpretation of, the Constitution as it stood prior to the 2010 Amendments:

(a) the Constitution is to be interpreted without regard to the 2010 amendments; and

(b) no implication shall be drawn from any of the 2010 amendments in relation to the meaning or operation of the Constitution prior to the 2010 amendments.

Enactment of laws required by amended Constitution

2.(1.) Where, by virtue of the amendments to this Constitution, any matter is to be provided for by Parliament, Parliament shall, if such matter has not already been provided for, make such provision as soon as practicable and within a reasonable period of the commencement date of the relevant constitutional amendment.

(2.) The law required by clause (2) of Article 13B must be enacted within six months of the commencement of that Article, but the absence of such law shall not affect the validity of clause (1) of Article 13B or prevent the enforcement of the right to information by the Supreme Court subject to such limitations of that right as the Court finds to be reasonable and justifiable in a democratic society.

(3.) If by the date of commencement of the 2010 amendments Parliament has not made provision for the manner in which nomination for and election to the office

of President shall be held, then, until Parliament otherwise provides and subject to the requirements specified in Article 16A –

(a) nominations for election to the office of President shall be conducted in such manner as the Speaker determines; and

(b) election to the office of President shall be conducted in accordance with the provisions of the Electoral Act, the application of such Act being adapted for this purpose and read as if the Republic of Nauru was a single constituency.

(4.) If by the date of commencement of the 2010 amendments Parliament has not enacted a law to provide for the manner in which nominations for and election of the Speaker shall be conducted pursuant to clause (1A) of Article 34, then, until Parliament otherwise provides and subject to the requirements specified in Article 34, nominations for and election of the Speaker shall be conducted in such manner as the Clerk of Parliament determines.

(5.) Clause (7.) of Article 57A may not be enforced until the law envisaged in clause (5)(c) of that Article has been enacted; and until such law is enacted, clauses (2.), (3.) and (4.) of Article 57A may be enforced by the Supreme Court at the suit of the Director of Public Prosecutions, save that the only the order the Supreme Court may make in such a proceeding is a declaration.

Transitional provisions relating to the President and Cabinet

3. (1.) The person who is President when the 2010 amendments commence shall continue to hold office as President until a new President is elected under clause (1) of Article 16 in the manner prescribed in Article 16A, unless he earlier vacates his office under clause (2) of Article 16B.

(2.) Notwithstanding the commencement of the 2010 amendments –

(a) a Deputy President shall not be appointed under clause (1) of Article 21 until after the first election of a President under clause (1) of Article 16 and Article 16A; and

(b) if, prior to the first election of a President under clause (1) of Article 16 and Article 16A the President is for any cause unable to perform the duties and exercise the functions of President, Cabinet may appoint a Minister to act as President for the period during which the President is unable to perform his duties and exercise his functions.

(3.) Between the date of commencement of the 2010 amendments and the first election of a President under Article 16A, the office of the Deputy President shall for the purposes of clause (3) of Article 16D be regarded as vacant.

(4.) Notwithstanding the commencement of the 2010 amendments, the President shall not exercise the power to appoint a sixth Minister to Cabinet until after the first election of a President under clause (1) of Article 16 and Article 16A.

Transitional provisions relating to the Speaker of Parliament

4. The person who is the Speaker of Parliament when the 2010 amendments commence shall continue to hold office as Speaker until the first sitting of the new Parliament next following the commencement date of the 2010 amendments, unless he earlier vacates his office under clause (3) of Article 34 as amended.

Existing Office-holders

5. (1.) Subject to this Constitution and any law, a person who immediately before the commencement of the 2010 amendments holds or is acting in the office of:

- (a) Clerk of the Parliament; or
- (b) Director of Public Prosecutions; or
- (c) Chief Secretary; or
- (d) Subject to clause (2.), Director of Audit

shall, on and after the commencement of the 2010 amendments, continue to hold or act in that office on the same terms and conditions as those on which he holds or is acting in the office immediately before the commencement of the 2010 amendments.

(2.) The person who immediately before the commencement of the 2010 amendments holds the office of Director of Audit shall continue to hold that office until the end of his contract and shall, upon the expiry of that contract, be eligible for reappointment in accordance with clause (2.) of Article 66.

Existing legal proceedings

6. (1.) Subject to clause (4.), the 2010 amendments do not affect any proceedings commenced or concluded before the commencement of the 2010 amendments.

(2.) All legal proceedings pending or incomplete in the High Court of Australia immediately before the commencement of the 2010 amendments shall remain in the High Court of Australia, which shall notwithstanding the 2010 amendments have jurisdiction to hear and determine those proceedings pursuant to the Appeals Act 1972 as amended.

(3.) The judgments and orders of the High Court of Australia given or made in exercise of the judicial power of Nauru before the commencement of the 2010 amendments shall have the same force and effect as if they had been delivered or made by the Appellate Division of the Supreme Court.

(4.) All legal proceedings pending or incomplete in the Supreme Court of Nauru shall continue in the Supreme Court of Nauru and the Chief Justice shall

determine the Division of the Supreme Court in which the proceedings shall be heard.

(5.) The Rules of procedure made by and applicable in the Supreme Court shall continue in force until repealed or amended by the Chief Justice pursuant to Article 48(4) and such Rules shall, until repealed or amended, apply to all proceedings in the Supreme Court, whether commenced before or after the 2010 amendments.

Transitional provisions relating to Finance

7. (1.) Where a provision in Part VI imposes upon a person a duty to report upon or provide information in relation to any matter, subsection (3) of section 1 of this Schedule does not operate to relieve the person of the duty to report on or provide information in relation to matters prior to the commencement of the 2010 amendments.

(2.) For the avoidance of doubt, the obligation imposed by Article 58 on public officers and members of Parliament in relation to moneys received for or on behalf of, or for the benefit of, Nauru applies to all such moneys in the possession of the public officer or member of Parliament on or after the date of commencement of the 2010 Amendments, regardless of when such moneys were received.'

65. Amendment of the First Schedule

The First Schedule to the Constitution is amended by deleting the words 'I, swear by Almighty God that I will faithfully carry out my duties as a member of the Cabinet and that I will not improperly reveal any matters of which I have become aware by reason of my membership of the Cabinet. So help me God.' and replacing them with the following words – 'I, (*name*), do hereby swear by Almighty God to be faithful to the Republic of Nauru and undertake to hold my office as Minister with honour and dignity; to respect and uphold the Constitution and all other laws of the Republic of Nauru; not to divulge directly or indirectly any matters which are entrusted to me under secrecy; and to perform the duties of my office honestly, conscientiously and to the best of my ability. So help me God!'

66. Insertion of the Eighth and Ninth Schedules

The Constitution is amended by inserting immediately after the new Seventh Schedule, new Eighth and Ninth Schedules as follows –

'Eighth Schedule

Article 21A

Oath of Deputy President

I, (*name*), swear by Almighty God that I will perform the duties of the Deputy President of the Republic of Nauru to the best of my ability. I will strictly obey and uphold the Constitution and all other laws of the Republic. I dedicate myself to the service of Nauru and the people and I promise to do Justice to all manner of persons. So help me God!

Ninth Schedule

Article 34

Oath of Speaker

I, (*name*), do hereby swear by Almighty God that I will be faithful and bear true allegiance to the Republic of Nauru, that I will perform the duties of the Speaker of Parliament to the best of my ability, that I will ensure that the business of Parliament is conducted in compliance with the Constitution of Nauru and the Standing Orders of Parliament, and that I shall at all times exercise my functions as Speaker impartially and fairly. So help me God!

Pursuant to clause (5.) of Article 84 of the Constitution, I hereby certify that the above is a fair print of a Bill for an Act entitled *Constitution of Nauru (Parliamentary Amendments) Act 2009* that has been passed by the Parliament of Nauru in compliance with the provisions of clause (2.) of Article 84 of the Constitution, and is now presented to the Speaker for his certificate under Article 47 of the Constitution.



Clerk of Parliament
28 August 2009

Pursuant to Articles 47 and 84 of the Constitution, I, Riddel Akua, Speaker of Parliament, hereby certify that the *Constitution of Nauru (Parliamentary Amendments) Act 2009* has been passed by the Parliament of Nauru



Speaker of Parliament
28 August 2009