

Parliament of Nauru

18th Parliament

**Select Committee on
Constitutional Amendment Bills**

Report to Parliament

10th March 2009

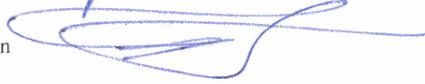
Parliament Secretariat
Parliament of Nauru

The members of the Select Committee on Constitutional Amendment Bills hereby adopt this Report, to be presented to Parliament:

Hon Aloysius Amwano MP, Chairman



Hon Baron Waqa MP, Deputy Chairman



Hon Dr Kieren Keke MP



Hon Freddie Pitcher MP



Hon Roland Kun MP



Hon Mathew Batsiua MP



Hon Godfrey Thoma MP



Hon Dominic Tabuna MP



Hon Landon Deireragea MP



At the 30th meeting of the Select Committee on Constitutional Amendment Bills
Parliament House
Nauru
Monday, 9th March 2009

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Introduction

It gives me great pleasure as Chairman of the Select Committee on Constitutional Amendment Bills to present the Committee's Report to Parliament.

The Committee has held 30 meetings to consider and debate the matters referred to it, and has worked more intensively than any other Committee in Nauru's parliamentary history. It is apt that this should be so, as this Committee was charged with the great responsibility of considering two bills to amend the supreme law of Nauru, the 1968 Constitution. All members of the Committee have shown the appropriate dedication to this important task, and after lengthy debate have agreed on the recommendations contained in this Report.

After the initial administrative meetings of the Committee that were devoted to producing a work schedule and agenda, all subsequent meetings of the Committee at which proposed constitutional amendments were debated were held in the Parliamentary Chamber and aired live on the radio. The gallery was open to the public during these Committee meetings, and the meetings were also recorded so that verbatim transcripts could be produced for the historical record.

Because of the significance of the proposed amendments to the Constitution that formed the subject matter of this Committee's work, the Committee hopes that this Report will reach a wide audience, and we have therefore tried to draft this Report with a readership of both Parliament and the public in mind. For this reason, section A of Part 1 of the Report explains the constitutional review process and how the work of this Committee fits into that process.

The Committee has also included appendices to this Report which we hope will not only assist members of Parliament during the debates of the Committee of the Whole on the constitutional amendment Bills, but will also serve as a useful reference guide for members of the public who wish to have an overview of this Committee's recommendations, and how they compare to public opinion, the recommendations of the Constitutional Review Commission and the resolutions of the Constitutional Convention. Thus, Appendix 1 to this Report is a comparative table which shows the history of each proposed amendment, and Appendix 2 shows the existing Constitution of Nauru with the recommended amendments of this Committee marked in the text. This enables readers to see what the Constitution would look like if all of the recommendations of this Committee were ultimately adopted.

This Report and its appendices reflect the resolutions that were passed by the Committee. Whilst most resolutions were passed unanimously, sometimes the members of the Committee held different opinions on particular proposed amendments. The healthy debate between members of the Committee has been seen as a positive thing by members of the Committee and the public alike. But it must be noted that this Report therefore differs in one important respect from ordinary Committee Reports: and that is, that whilst all nine members of this Committee have agreed to adopt this Report and to put their name to it, each member reserves the right to express a view that may differ from a resolution of the Committee contained in this Report when Parliament forms itself into the Committee of the Whole later this year. In signing this Report, members are acknowledging that the Report accurately reflects the resolutions that were passed by the majority of the Committee, but they are not committing themselves to agree with every resolution contained in the Report when they come to debate in the Committee of the Whole.

One other aspect of this Report deserves mention, and that is that the minutes of the Committee's meetings and the verbatim transcripts of the meetings are not appended to this Report, because they are too voluminous. However, the minutes and the transcripts are public documents and will be made available to any interested member of the public upon request. Members of the public may read a hard copy of the minutes and the transcripts within the Parliament building, or may obtain an electronic copy of the minutes and the transcripts on disk, by requesting them from Katy Le Roy or Jennie Reiyetsi from Friday 13th March onwards.

This Committee was ably assisted in its work by two legal advisors: Mr Gerard Winter of New Zealand, who served the Committee as UNDP legal consultant, and Ms Katy Le Roy, Nauru's Parliamentary Counsel and also Secretary and legal advisor to the Committee. The Committee is grateful to the UNDP and the UNDEF for its generous financial assistance to the constitutional review process in Nauru, and in particular for providing this Committee with the services of the UNDP legal consultant. The Committee also gratefully acknowledges the assistance of all those who, at the request of the Committee, provided input and feedback to the Committee on particular provisions of the Constitution, and whose assistance is detailed in section A of Part 2 of this Report.

The Secretariat staff within Parliament have worked extremely long hours during the term of this Committee, and have produced outstanding work. On behalf of the Committee I wish to express our gratitude for the hard work and dedication of the Parliament staff in providing support to this Committee, especially to the Clerk of Parliament Frederick Cain, Jennie Reiyetsi, Sukie Adeang, Charity Kamtaura, Magra Garoa, Lucy Detabouw, Nissa Peo and Francilia Akubor. The Committee is also grateful to the staff of the Nauru Media Bureau, who have worked long hours alongside the Committee in order to ensure that the meetings could be aired on radio and that all proceedings were recorded, and we extend our thanks to them for their hard work.

I also wish to thank the members of the Committee for the manner in which they have approached their task: with thorough preparation, careful thought, a generous commitment of time and energy and a constructive and cooperative spirit.



Hon. Aloysius Amwano, MP

Chairman, Select Committee on Constitutional Amendment Bills

Nauru
9 March 2009

Composition of the Committee and Secretariat

Members of the Committee

Hon Aloysius Amwano MP, Chairman
Hon Baron Waqa MP, Deputy Chairman
Hon Dr Kieren Keke MP
Hon Freddie Pitcher MP
Hon Roland Kun MP
Hon Mathew Batsiua MP
Hon Godfrey Thoma MP
Hon Dominic Tabuna MP
Hon Landon Deireragea MP

Committee Secretariat

Frederick Cain, Clerk of Parliament
Gerard Winter, UNDP legal consultant advisor
Katy Le Roy, Parliamentary Counsel, Secretary and legal advisor to the Committee
Magra Garoa, Deputy Secretary to the Committee
Jennie Reiyetsi, Executive Secretary
Sukie Adeang, transcript production
Lucy Detabouw, transcript production
Charity Kamtaura, transcript production
Nissa Peo, transcript production
Francilia Akubor, transcript production

Part 1 – Background

A. Constitutional review process

Overview of the process

The constitutional review process was started by the Scotty government in 2006, because the government believed that there were some inadequacies in the Constitution which had contributed in part to some of Nauru's political and financial problems over recent decades, and that the system of government and government accountability might be improved by making certain amendments to the Constitution. The constitutional review process in Nauru was designed to include six steps:

The first step involved raising public awareness about the Constitution and about the existence of the review, and took place in July and August 2006.

In step two, there was a series of forty public consultation meetings around the island over about five weeks, to provide people with more detailed information on the Constitution and some options for amendment, and to get people's opinions on whether or not they think the Constitution should be changed, and what sort of changes they would like to see. Over 700 people participated in those meetings, and 40 written submissions were received from the public during that step. The second step was completed in November 2006.

The third step in the process involved the establishment of an independent Constitutional Review Commission which took account of all the views of the public and made a series of recommendations for amendment to the Constitution. The Constitutional Review Commission submitted its report at the end of February 2007.

Following the Commission, a Constitutional Convention was held over six weeks in April and May 2007 to debate the recommendations of the Commission. The Convention comprised 36 members, 18 of whom were directly elected by the public, and 18 of whom were appointed by the Standing Committee on Constitutional Review (CRC) – including the 9 members of the CRC and 9 representatives of youth, women, churches, disabled persons, and the 1968 Constitutional Convention. The Convention was the fourth step.

The constitutional review process has now reached step 5, which is the consideration of constitutional amendment bills by Parliament.

Step 6 will be a referendum, to ask the public whether they approve of some of the proposed amendments.

To summarise the process:

- Step 1 was public awareness
- Step 2 was public consultation
- Step 3 was the Constitutional Review Commission
- Step 4 was the Constitutional Convention

Step 5 is consideration by Parliament, which includes the work of this Committee;
and
Step 6 will be a referendum

Step 5 – Parliament considers constitutional amendments

During step 5, Parliament is considering two draft bills to amend the Constitution. In accordance with the *Constitutional Convention Act 2007*, the constitutional amendment bills that have been introduced to Parliament for its consideration have to reflect the motions passed by the Convention. The two bills for constitutional amendment that came out of the Convention were originally introduced to Parliament in June 2007, but then the bills lapsed when Parliament was dissolved in August 2007. Those bills were later reintroduced to Parliament, on 25 November 2008.

Bills to amend the Constitution are different to ordinary bills or ordinary legislation, and they must therefore be passed in accordance with a special procedure which is spelled out in Article 84 of the Constitution. Under Article 84 of the Constitution of Nauru, a bill to amend the Constitution not only needs to be passed by at least twelve of the eighteen members of Parliament instead of just a simple majority, but it must also sit in Parliament for at least 90 days between the day it is first introduced and the day it is passed. The reason Article 84 requires more than a simple majority and also requires the 90 day waiting period is to make sure that any suggested changes to the Constitution are widely supported, and that they cannot be passed in a rush without proper consideration.

In December 2008, approximately three weeks after the bills were reintroduced, Parliament passed a motion to establish this Select Committee. Parliament decided to establish the Select Committee, instead of going straight into the Committee of the Whole, because of the importance and complexity of these bills, and because Parliament wanted a special committee to consider all of the relevant material from the constitutional review process so far, and whether in view of all of the relevant material it would be a good idea to make any amendments to the bills. The terms of reference of this Committee are set out in section C of Part 1 of this Report.

Parliament created this Select Committee, notwithstanding that Parliament already had a Standing Committee on Constitutional Review, known as the CRC, because under the Standing Orders of Parliament, bills cannot be referred to a *Standing Committee*, like the CRC, but only to a *Select Committee*. The members of this Select Committee are the same nine people that are members of the CRC, but are sitting under a new title because of the particular task that has been referred to the Select Committee and because of the rules contained in the Standing Orders.

The two bills for proposed constitutional amendment have been referred by Parliament to this Select Committee, and the task of this Committee has been to look in detail at the bills and consider whether to recommend any amendments to the bills in this Report to Parliament.

It is important to emphasise that Parliament is not bound by the decisions of the Convention. Of course, Parliament will have to have regard to what the Convention decided, but Parliament also has the authority to make changes to the bills if it decides that it is necessary. This is because Parliament is the authority ultimately responsible for representing the people and for law-making, and because Article 84 of the Constitution provides that Parliament may,

via a special procedure, pass amendments to the Constitution. That is why it is possible for this Committee to make recommendations to Parliament that are sometimes different to what the Convention resolved. People who have been following the debates of this Select Committee on the radio will know that in many instances, this Committee has endorsed the resolutions of the Convention. But on some issues, after thoughtful consideration and debate, and having stated its reasons in a public forum, this Committee has made recommendations that differ from what the Convention resolved. Appendix 1 to this Report contains a comparative table which shows for each Article or proposed new Article of the Constitution what was recommended by the Commission, what was resolved by the Convention, and what was resolved by this Committee.

It is important to clarify that this Select Committee cannot make decisions on behalf of the whole Parliament. The resolutions in relation to proposed constitutional amendments that have been adopted by this Committee are by no means final decisions of Parliament, but rather they are decisions to make particular *recommendations* to Parliament in this Report.

Parliament will sit later this year, probably in June, as a ‘Committee of the Whole’ to consider this Report and to consider the bills clause by clause. The Committee of the Whole includes every member of Parliament, all sitting together as a Committee to consider the details of proposed legislation. Once the Committee of the Whole has gone through this Select Committee Report and through every clause of the bills, and decided on the final content of the bills, Parliament will be ready to vote on passing the bills. If the bills are passed by Parliament, by at least 12 members, that will be the end of step 5 of the constitutional review process.

Step 6 – Referendum

Article 84 of the Constitution, in addition to creating a special procedure for Parliament to pass any changes to the Constitution, also says that some of the most important Articles of the Constitution cannot be changed by Parliament alone, but also require the approval of two thirds of the votes cast in a referendum. A referendum is a special vote on questions about the Constitution and whether it should be changed, and anyone who is entitled to vote in a general election can also vote in a referendum

If the constitutional amendment bills are passed by Parliament in 2009, a referendum will be held to ask the people of Nauru whether they approve of some of the proposed constitutional amendments. People will be given the information they need to make an informed choice as to whether or not they approve of those of the proposed changes that require approval by a referendum.

People will be asked to vote only on some of the constitutional amendments, not all of them, because Article 84 only requires a referendum for any changes that are proposed to specific Articles of the Constitution. The Articles that require the approval of a referendum before they can be changed are those Articles which are listed in Schedule 5 of the Constitution, and which are regarded as the most important Articles of the Constitution, such as the way the President is elected, some of the finance Articles, human rights provisions and others.

If the changes submitted to a referendum do not win the support of at least two thirds of all the votes cast in that referendum, then those changes will not be passed and will not take effect. Even if Parliament has passed them by two thirds of Parliament, without the additional

support of the public in the referendum, any changes to the important Articles listed in schedule 5 will not be passed into law.

B. Constitutional amendment Bills

History of the bills

The two constitutional amendment bills that were introduced to Parliament on 25 November 2008 are the *Constitution of Nauru (Parliamentary Amendments) Bill 2008* and the *Constitution of Nauru (Referendum Amendments) Bills 2008*. The constitutional amendment bills in their current form contain *only* the proposed amendments endorsed by the Constitutional Convention. The job of this Select Committee was to consider in detail the bills and other material that was referred to it, and to make recommendations about whether anything in the bills should be changed or added.

These bills are not government bills, and they are not bills that were put together or endorsed by the Standing Committee on Constitutional Review, the CRC, but rather they are bills that were introduced to Parliament pursuant to section 15 of the *Constitutional Convention Act 2007*. Section 15 of that Act required the Convention to produce a Report, with a draft bill to amend the Constitution in accordance with the resolutions of the Convention, as an appendix to the Report. The Chairman of the Constitutional Convention duly submitted the Report of the Convention and a draft bill to the Speaker and to the former Chairman of CRC, Hon Mathew Batsiua, on Friday 1 June 2007.

Why are there two separate bills?

Since that Report was tabled in Parliament, the title and format of the bill that was appended to the Report have been changed to reflect the *procedural requirements* that relate to specific proposals for amendment that came out of the Convention, but the *substance and wording* of the constitutional amendments proposed by the resolutions of the Convention have not been changed in any way. They have been divided into two separate and interrelated bills, to be considered together, merely to reflect the fact that the various proposals fall into two different procedural categories. Some proposals relate to Articles of the Constitution that can be amended by Parliament alone, other proposals relate to Articles of the Constitution that can only be amended by Parliament *and* a referendum.

Proposed amendments to constitutional provisions that are not listed in Schedule 5 to the Constitution can be amended by Parliament alone, complying with the requirements of Article 84, are contained the first of the two bills, called the *Constitution of Nauru (Parliamentary Amendments) Bill 2008*. The second category of proposed amendments are those to change Articles listed in Schedule 5 to the Constitution, which require the approval of Parliament *and* a referendum, in accordance with Article 84 of the Constitution. These proposed amendments are contained in the second of the two bills, the *Constitution of Nauru (Referendum Amendments) Bill 2008*.

Amendment of the bills by Parliament

As highlighted in section A, above, before taking a final vote on the bills, Parliament has the authority to make changes to the bills if it decides that it is necessary. This is because Parliament is the authority ultimately responsible for representing the people and for law-making, and because Article 84 of the Constitution provides that Parliament may, via a special procedure, pass amendments to the Constitution. This Committee was required by its terms of reference, which are detailed in section C of this Part, below, to consider whether it is necessary or desirable to make any amendments to the constitutional amendment bills, and whether the constitutional amendment bills, including any amendments and insertions proposed by this Select Committee, are legally sound and what the likely impact of each of the proposed amendments to the Constitution will be. After lengthy consideration and debate, this Committee found that it is desirable, and in some cases necessary, to make amendments to the bills, and the Committee's findings and recommendations in this regard are set out in Part 3 of this Report.

Transitional provisions

The two bills that were introduced to Parliament and referred to this Committee do not yet contain the transitional provisions that would be necessary to regulate the manner in which the proposed amendments would come into effect. This Committee was also tasked with examining the question of what needs to be inserted in the constitutional amendment bills by way of transitional provisions, based on the proposed final form of the bills as recommended by the Select Committee. This Report contains some observations about the type of transitional provisions that would be required if the recommendations of this Select Committee were to be adopted, but the Committee recommends that the precise wording of the proposed transitional provisions be drafted during the Committee of the Whole stage, when it becomes apparent what the final content of the constitutional amendment bills will be.

C. Committee's terms of reference

This Committee was established by a resolution of Parliament on 18 December 2008. The motion to establish the Select Committee prescribed the Committee's terms of reference, and some of the procedural rules governing the Select Committee. The motion that was passed to establish the Select Committee, read as follows:

“Motion to establish a Select Committee on Constitutional Amendment Bills:

- (1) That pursuant to Standing Order 163, the House resolves to refer the *Constitution of Nauru (Parliamentary Amendments) Bill 2008* and the *Constitution of Nauru (Referendum Amendments) Bill 2008* (“the constitutional amendment bills”) to a Select Committee, to be known as the Select Committee on Constitutional Amendment Bills, and that such Committee be established to inquire into and report to the House, on or before 16 February 2009, on the provisions of the constitutional amendment bills and other matters referred to the Committee in paragraph (5) of this motion.
- (2) That the Committee consist of nine Members, namely:

Hon Kieren Keke,
Hon Roland Kun,
Hon Freddie Pitcher,
Hon Mathew Batsiua,
Hon Godfrey Thoma
Hon Baron Waqa,
Hon Dominic Tabuna,
Hon Aloysius Amwano, and
Hon Landon Deireragea;

- (3) That the quorum of the Committee be five Members;
- (4) That the Committee have the power to send for and examine persons, papers and records;
- (5) That, in conducting its inquiry, the Committee examine the following matters:
 - a) Whether it is necessary or desirable to make any amendments to the constitutional amendment bills;
 - b) Whether any of the recommendations of the Constitutional Review Commission that were rejected by the Constitutional Convention of 2007 were so soundly based and/or so strongly supported by public opinion that they ought to be inserted into the constitutional amendment bills;
 - c) Whether the constitutional amendment bills, including any amendments and insertions proposed by the Select Committee, are legally sound and what the likely impact of each of the proposed amendments to the Constitution will be;
 - d) What needs to be inserted in the constitutional amendment bills by way of transitional provisions, based on the proposed final form of the bills as recommended by the Select Committee;
 - e) Any other matter that the Committee deems necessary or relevant to enable it to complete its Report on the constitutional amendment bills.
- (6) That, in inquiring into and reporting on the matters referred to in paragraph (5), the Committee have regard to:
 - a) The Report of the Nauru Constitutional Review Commission, 28 February 2007;
 - b) The Report of the Nauru Constitutional Convention, May 2007;
 - c) The table of public views on proposed constitutional amendments that was prepared for the use of the Constitutional Review Commission;
 - d) The advice of any legal advisor/s whose services may be made available to the Committee;
 - e) Any material of the Standing Committee on Constitutional Review that the Committee deems useful to its inquiry;
 - f) Any other material that the Committee deems relevant to its inquiry.
- (7) That the House resolves that notwithstanding Standing Order 165, when the constitutional amendment bills as reported by the Select Committee are considered by the Committee of the Whole, the Committee of the Whole may follow the order of clauses proposed in the Report of the Select Committee, and that the Committee of

the Whole shall not be confined to considering the clauses of the constitutional amendment bills but may also consider any matters or proposed clauses contained in the Report or arising therefrom.

- (8) That the Committee may hold closed meetings from which all strangers are excluded, but that wherever practicable the Committee shall hold its meetings in public
- (9) That the first meeting of the Committee shall be held on Monday 5 January 2009 at 10:00am.”

On 5 February 2009, a further motion was passed by Parliament to extend the reporting date of the Select Committee to 27 March 2009.

Part 2 – Deliberations of the Committee

A. Materials before the Committee

The Select Committee was required by its terms of reference to have regard to certain materials that were relevant to its inquiry. The materials specifically referred to the Committee, as set out in section C of Part 1, above, were:

- a) The Report of the Nauru Constitutional Review Commission, 28 February 2007;
- b) The Report of the Nauru Constitutional Convention, May 2007;
- c) The table of public views on proposed constitutional amendments that was prepared for the use of the Constitutional Review Commission;
- d) The advice of any legal advisor/s whose services may be made available to the Committee;
- e) Any material of the Standing Committee on Constitutional Review that the Committee deems useful to its inquiry;
- f) Any other material that the Committee deems relevant to its inquiry.

The Secretary to the Committee provided all members of the Committee with a copy of the Commission Report ('Naero Ituga' Report, 28 February 2007), the Convention Report and the table of public views (these being the documents listed at a), b), and c), above), as well as with the two constitutional amendment bills and the second reading speeches for each bill, during the first week of the Committee's meetings in January 2009.

Other material of the Standing Committee on Constitutional Review (CRC) which was deemed to be useful to this Committee's inquiry (see paragraph e), above) and which was provided to all members was the Report on Public Consultations prepared by the two UNDP consultants who conducted the public consultation meetings (Report dated 22 November 2006).

The Committee also consulted with persons outside the Committee in relation to particular Articles of the Constitution. Charmaine Rodrigues of the UNDP Pacific Centre provided input on proposed Article 13B relating to the right to information prior to that proposed Article being debated and adopted by the Committee. Adrian Chippindale, Belinda Robilliard and Winston Rodrigues of the Department of Finance provided input on the draft finance provisions, prior to those provisions being debated by the Committee. The Chairman of the Nauru Phosphate Royalties Trust, Leo Keke, and the trust's legal advisor Anne MacNamara of HDY lawyers provided feedback on the proposed amendment to Article 63 after it had been adopted. And Professor Christina Murray of the University of Capetown and Professor Philip Stenning of Keele University in England provided input on Article 70A relating to the Director of Public Prosecutions prior to that Article being adopted by the Committee.

At the request of members of the Committee, the Secretary to the Committee prepared a comparative table, showing in columns side-by-side the existing provisions of the Constitution of Nauru, the public opinion on various provisions as gathered during step 2 of the constitutional review process, the recommendations of the Constitutional Review Commission on each Article, the resolutions of the Constitutional Convention on each Article, and notes highlighting the interrelationship between various Articles of the

Constitution (material provided by virtue of paragraph f), above). This comparative table was used by members as a quick reference guide to ascertain the history of each proposed amendment, and to ascertain how different provisions of the Constitution are linked – which is important for understanding the ramifications of proposing changes to particular provisions in terms of the effect that will have on other provisions and the potential need to make consequential amendments to other provisions as a result of amending one particular Article.

The advice of the two legal advisors to the Committee generally took the form of verbal advice during meetings of the Committee, although some additional written material was provided to members by the legal advisors, including comparative material from other jurisdictions in instances where members had requested information on how particular questions are dealt with in other places, and documents prepared by the legal advisors in relation to particular Articles, such as documents that showed a side-by-side comparison of an existing provision of the Constitution, the amendment to that provision recommended by the Commission, and the resolution on that provision made by the Convention and reflected in one of the constitutional amendment bills.

Some of the material used by the Committee was projected onto a screen during Committee meetings so that on any particular point of discussion members could readily see the relevant parts of each document in quick succession.

Members were also provided by the legal advisors with a daily briefing sheet, which usually included the relevant sections of the comparative table relating to the day's agenda items, and sometimes additional material relevant to the day's agenda items.

When the Committee had made resolutions in respect of each provision and proposed new provision of the Constitution, the legal advisors prepared version 1 of Appendix 2 to this Report, which reflected all the resolutions of the Committee, and which made recommendations for minor consequential amendments in order to ensure that the recommendations sat cohesively together and that the language used throughout the draft amended Constitution was consistent. Members considered and voted on each of the proposed consequential amendments, and by doing so produced the document that is now Appendix 2 to this Report.

The members of the Committee familiarised themselves thoroughly with all of the materials detailed above in preparation for the Committee's debates on the proposed constitutional amendments.

B. Legal advice to the Committee

During the first four meetings of the Committee, which were held in camera to deal with administrative matters such as planning the Committee's timetable of work and determining the Committee's agenda, the Committee was assisted by Parliamentary Counsel who is also Secretary to the Committee.

From the fifth meeting of the Committee on Monday 19th January to the fourteenth meeting of the Committee held on Friday 30th January, the Committee was advised by the UNDP consultant legal advisor Mr Gerard Winter.

From the fifteenth meeting of the Committee on Tuesday 17th February to the twenty-seventh meeting of the Committee held on Thursday 5th March, the Committee was advised by both Parliamentary Counsel and the UNDP consultant legal advisor Gerard Winter.

From the twenty-eighth meeting of the Committee on Friday 6th March to the thirtieth meeting of the Committee on Monday 9th March, the Committee was advised by Parliamentary Counsel.

The approach taken by the two legal advisors to the Committee was to provide a short daily briefing sheet to all members, which noted in respect of each Article on the agenda whether the amendments proposed in the bills were legally sound and whether it was necessary to consider the interconnectedness of any Article on the daily agenda with other Articles. The legal advisors generally provided a short verbal introduction to the debate on each agenda item, restricting the introduction to a brief history of each proposed amendment, and on occasion to the rationale behind certain proposed amendments where such rationale was evident from the Commission Report of from the debates of the Constitutional Convention. The Chairman then opened the floor for debate by members of the Committee.

The primary task of the legal advisors was to respond to legal questions posed by members of the Committee, and to draft any amendments proposed by members of the Committee.

C. Meetings of the Committee

The Select Committee on Constitutional Amendment Bills held thirty meetings to consider the matters referred to it and to prepare its report. The first meeting of the Committee was held on Monday 5th January 2009 in accordance with the directive contained in the motion that established the Committee. The Committee met further on the 8th, 13th and 16th January in the Committee Room, Parliament House, to deal with administrative matters such as planning the Committee's timetable of meetings and setting the Committee's agenda.

The Committee resolved during the course of its first four meetings that it would be necessary to hold intensive daily sittings for a period of several weeks in order to complete its inquiry on the matters referred to it within the prescribed timeframe, and also in order to maximise the use of the consultant legal counsel during his two visits to Nauru. The Committee therefore decided that for the two week period from 19th January to 30th January it would meet every week day from 2:00pm to 6:00pm, and that for the three week period from 17th February to 9th March it would also meet every week day from 2:00pm to 6:00pm.

Meetings were scheduled for the afternoons rather than for full days in part so that there was sufficient time for the legal advisors to prepare briefings and to attend to any matters referred to them by members at previous meetings, and in part because four members of the Committee are Cabinet Ministers with workloads that preclude them from attending daily meetings that take up the whole day. In the event, meetings seldom finished at the scheduled finishing time of 6:00pm, but routinely concluded somewhere between 8:00pm and 10:00pm.

The Committee also resolved to make its meetings open to the public from the 5th meeting onwards, which is when the Committee began the task of debating proposed constitutional amendments. Committee meetings were therefore held in the Parliamentary Chamber, and the public gallery was open to the public. Meetings were aired live on radio, and were also recorded so that verbatim transcripts could be prepared for the historical record.

The Committee resolved at its third meeting to divide the items on its agenda (all constitutional provisions and all proposed amendments to the Constitution) into different categories, which were dealt with in the following order:

1. Articles to which no amendment is proposed, and Articles on which the amendment recommended by the Commission was approved by the Convention without amendment (easy category);
2. Articles on which the amendment recommended by the Commission was approved by the Convention with further amendments (medium category);
3. Articles on which the amendment recommended by the Commission was rejected by the Convention, and Articles where the Convention initiated their own proposed amendment not contemplated by the Commission (hard category); and
4. Transitional provisions: which can only be considered and reported on when it is clear what the complete package of proposed amendments will be (last category)

It is for this reason that the Committee did not consider the provisions of the Constitution in sequential order. Some revisions were made to the agenda during the course of the Committee's meetings, either because the time allocated for each item on the original agenda proved to be inadequate or because some items were deferred to be considered together with related Articles that appeared at a later date on the agenda.

All meetings were presided over by the Chairman or the Deputy Chairman, and all debate and discussion was moderated through the Chair. All meetings were commenced and concluded with prayers. The Committee adhered to the standard procedures of Select Committees. This means that the Chairman had only a casting vote, and that the records of proceedings included every motion moved and the names of the mover and seconder, and, where a vote was not unanimous, the names of those voting in the affirmative and the negative were recorded.

Minutes of the meetings of the Committee were taken by the Clerk of Parliament and by the Deputy Secretary to the Committee. The Committee also had the assistance of two legal advisors, as detailed in section B of this Part of the Report, above. The staff of the Parliament Secretariat prepared verbatim transcripts of the meetings of the Committee from the tape recordings of the Committee Meetings.

One copy of the minutes of the meetings of the Select Committee is to be presented to Parliament together with this Report in accordance with Standing Order 217. Yet, as noted in the Introduction to this Report, the minutes of the Committee's meetings and the verbatim transcripts of the meetings are not appended to this Report, because they are too voluminous. However, the minutes and the transcripts are public documents and will be made available to any interested member of the public upon request. Members of the public may read a hard copy of the minutes and the transcripts within the Parliament building, or may obtain an electronic copy of the minutes and the transcripts on disk, by requesting them from Katy Le Roy or Jennie Reiyetsi from Friday 13th March onwards.

Part 3 – Findings and recommendations

A. Summary of inquiry and findings

Taking its terms of reference into account, the Committee resolved to conduct its inquiry by considering every Article of the existing Constitution, every recommendation of the Constitutional Review Commission, and every provision of the draft bills (which contain the resolutions of the Constitutional Convention). In considering these items, the Committee had to take into account all of the materials referred to it.

The manner in which the Committee devised its agenda is detailed in section C of Part 2, above. When considering each item, the Committee had regard to the existing provision (if any) in the Constitution, the reasoning behind any proposed amendments (if any) to the existing provision, and the likely impact of each of the proposed amendments. In considering the likely impact of proposed amendments, members of the Committee attempted to foresee how each of the proposed amendments would work in practice, and whether each proposed amendment would be likely to improve the existing system, as well as whether there might be any negative consequences attached to proposed amendments, or any unintended scope for abusing, twisting or escaping certain constitutional rules.

Another aspect of considering the impact of proposed amendments and whether they were legally sound was the consideration of how each of the Articles in the Constitution (and proposed new Articles) is interrelated with others. Thus for example, if Article 34(1) is amended to provide that the Speaker is someone who is not a member of Parliament, this change alone would necessitate consequential amendments to Articles 16(3), 32(1)(c), 34(2) and 34(3)(b) and (c), 43(2) and 46(2). The Committee has therefore endeavoured in its recommendations to ensure that all recommendations fit together, and that all necessary interrelated amendments have been taken into account.

In summary, the Select Committee found that the recommendations of the Commission and the resolutions of the Convention were mostly sound, and in many cases, particularly in cases where the Convention adopted the recommendation of the Commission in respect of a particular proposed amendment, the Committee has resolved to adopt the same resolution as the Convention. In some cases however, after careful consideration and detailed debate, the Select Committee has passed resolutions that differ from the recommendations of the Commission and/or the resolutions of the Convention. The reasoning behind each of the Committee's resolutions is summarised in section B of this Part of the Report, below, and in Appendix 1 to this Report, and is detailed in the transcripts of the Committee's deliberations, which are publicly accessible.

The Committee found that in a handful of cases, amendments to the Commission recommendations as passed by the Convention were not legally tenable, were drafted in a manner not consistent with the rest of the Constitution, or were unnecessary (in some cases being matters that would be non-justiciable, or that were more properly left to policy and legislation rather than being suitable for inclusion in the Constitution). In a handful of cases also the Committee has recommended proposed amendments to the Constitution that are derived neither from the Commission recommendations nor from the Convention resolutions, but were proposed by the Committee itself (see for example Art 58A in Appendix 2).

B. Recommendations of the Committee in relation to the Bills

The Committee recommends that certain amendments to the constitutional amendment bills should be made by the Committee of the Whole before the bills are voted on by Parliament. In addressing its terms of reference in accordance with paragraph (5) of the motion that established the Committee, the Committee's recommendations can be summarised as follows:

a) is it necessary or desirable to make any amendments to the constitutional amendment bills?

Yes. The Committee proposes a number of amendments to the constitutional amendment bills, which are detailed in Appendix 3 to this Report. The resolutions of the Committee in relation to each Article are outlined in Appendix 1, and the Constitution as it would appear if all of the Committee's recommendations were adopted is set out in Appendix 2.

b) are any of the recommendations of the Constitutional Review Commission that were rejected by the Constitutional Convention of 2007 so soundly based and/or so strongly supported by public opinion that they ought to be inserted into the constitutional amendment bills?

Yes. The Committee found that a number of the Commission recommendations that were rejected by the Convention were either so soundly based or so strongly supported by public opinion (or in some cases both) that they ought to be inserted into the constitutional amendment bills.

Of particular note in this respect are the recommendation of the Commission that the President should be popularly elected by the people, which the Committee felt was so strongly supported by the public and would be such a significant enhancement of Nauru's democratic system, that it ought to be included in the bills. The Committee notes that the popular election of the President is one of the proposed amendments that requires approval by popular referendum, so it would only be passed if the people vote overwhelmingly in favour of it.

Similarly, the Committee found that the Commission's recommendations that the Speaker be a non-member, and that Article 24 concerning motions of no confidence be amended to restrict the frequent and frivolous use of such motions, were very soundly based, were designed to address some of the constitutional problems that precipitated the constitutional review, and were supported by the public. Accordingly, the Committee recommended that these proposed amendments ought to be inserted into the bills, although the Committee also recommended some minor modifications to the wording proposed by the Commission.

There are other instances in which the Committee recommends that the Commission recommendations rejected by the Convention ought to be adopted, and these can be readily found (and compared alongside what the Commission recommended and what the Convention resolved) in Appendix 1 to this Report.

c) are the constitutional amendment bills, including any amendments and insertions proposed by the Select Committee, legally sound and what is the likely impact of the proposed amendments?

The Committee found that in their current form, the constitutional amendment bills contain a handful of clauses that are not legally sound or not in the public interest, and made recommendations for amendment of the bills accordingly.

The Committee believes that the bills in their proposed amended form as set out in Appendix 3 to this Report are legally sound, and that each of the proposed amendments contained in the bills in Appendix 3 would have a beneficial impact, as each of the proposed amendments is designed for the purpose of making the Constitution more Nauruan, enhancing transparency and accountability of public institutions, making the Constitution clearer and easier to understand, fixing some of the technical problems of the past, or enhancing democracy.

d) what needs to be inserted in the constitutional amendment bills by way of transitional provisions, based on the proposed final form of the bills as recommended by the Select Committee?

As stated in section B of Part 1 of this Report, the Committee recommends that the precise wording of the proposed transitional provisions be drafted during the Committee of the Whole stage, when it becomes apparent what the final content of the constitutional amendment bills will be. Nonetheless, it is possible for this Committee to make some observations about the type of transitional provisions that would be required if the recommendations of this Select Committee were to be adopted.

Transitional provisions will need to include the following:

- Providing for the survival of matters already listed in the Supreme Court, and for matters that have been filed in the Supreme Court but are still in the interlocutory phase, and for the authority of the Chief Justice to determine into which of the new Divisions of the Supreme Court such matters will be transferred;
- Providing for the continuation of the appointment of public officers who held office prior to the commencement of the constitutional amendments, notwithstanding that the provisions relating to their offices may have been amended, and providing that any change in the terms or functions of their appointment shall have prospective (not retrospective) effect;
- Provision to ensure that any person who acquires Nauruan citizenship on the commencement date of the constitutional amendments by virtue of the amendment of Article 72(1) may forfeit that citizenship if its acquisition would cause that person any disadvantage (for example, if the person is also a Fijian citizen and would automatically lose his Fijian citizenship upon acquiring another citizenship);
- Providing that any provision that vests new rights or entitlements in any person shall have prospective (not retrospective) effect, so for example, an

action in the Supreme Court for breach of a new right under Part II, such as children's rights, can only be brought if the cause of action arose after the date of commencement of the constitutional amendments;

- Providing for the effect of new provisions that require implementing legislation (such as the Right to information, the Leadership Code, etc) during any period between the commencement date of the constitutional amendments and the commencement date of implementing legislation, and possibly prescribing a time limit for the passage of implementing legislation;

- Providing for the first election that will be held under the new provisions, and for specific commencement dates of any Articles that cannot feasibly commence until after the first election has been held under the new provisions (such as Article 21B, Article 24, Article 34, Article 61A and others);

- Providing for the effect of the constitutional amendments on any existing laws, including express provision for the repeal or amendment of particular laws that may be invalid by virtue of inconsistency with new or amended constitutional provisions; at the same time as providing for *legal continuity* in most matters after the commencement date of the constitutional amendments;

- Prescribing a date for the first period review under Article 84A, which should probably be fifteen years after the commencement date of the constitutional amendments;

- Providing for the commencement of the new and amended financial provisions, and clarifying that the requirements of the new provisions are prospective (not retrospective); and making similar provision for any other provision that imposes new duties or obligations upon any person.

The foregoing provides a summary of the Committee's findings and recommendations, which as stated at the beginning of this section, are detailed more fully in Appendices 1, 2 and 3 to this Report.

Appendices

Appendix 1

comparative table summarising Committee recommendations

**PARLIAMENT OF NAURU
REPORT OF THE SELECT COMMITTEE ON CONSTITUTIONAL AMENDMENT BILLS**

APPENDIX 1

TABLE OF PROPOSED CONSTITUTIONAL AMENDMENTS

COMPARING:
EXISTING CONSTITUTIONAL PROVISIONS,
RECOMMENDATIONS OF THE NAURU CONSTITUTIONAL REVIEW COMMISSION,
EXPRESSIONS OF PUBLIC OPINION,
RESOLUTIONS OF THE NAURU CONSTITUTIONAL CONVENTION
AND RESOLUTIONS OF THE SELECT COMMITTEE ON CONSTITUTIONAL AMENDMENT BILLS

March 2009

PREFACE

The Table of proposed constitutional amendments provides an overview of the existing provisions of the Constitution of Nauru, the recommendations made by the Nauru Constitutional Review Commission in its Report of 28 February 2007, opinions expressed by members of the public during the public consultation meetings held in 2006, the resolutions of the Nauru Constitutional Convention of May 2007, and the resolutions of the Select Committee on Constitutional Amendment Bills from January-March 2009.

In the first column, proposed new Articles are shaded in grey so they can be easily distinguished from existing Articles of the Constitution. In the column containing the Commission recommendations, reference is made to the relevant page numbers of the Commission Report on which the reasoning behind the recommendation and the recommendation itself can be found. In the column containing the Convention resolutions, reference is made to the relevant clause within the respective constitutional amendment Bill which reflects that resolution.

NOTE: in the column containing SCCA resolutions, if the SCCA resolved to adopt a recommendation of the Commission or a resolution of the Convention, but for very minor amendments to the wording (such as changing 'must' to 'shall' for consistency) those minor changes are not noted in the column (but are reflected in the text of Appendix 2); only changes to the substance or effect of a provision are noted.

The table does not contain the complete text of the existing provisions of the Constitution, nor the complete text of the proposed amendments, and is therefore not a substitute for the original documents which it summarises. The table is intended to provide an accessible overview of the origin and progress of each of the proposed amendments, but must be read together with the complete text of the Constitution of Nauru, the Commission Report, and the two constitutional amendment Bills (the Constitution of Nauru (Parliamentary Amendments) Bill 2008 and the Constitution of Nauru (Referendum Amendments) Bill 2008).

Key to abbreviations:

| Amdmt - | Amendment | C Rep - | Commission Report | PIL - | Public international law |
|---------|--------------------------------------|-----------|--|-----------|---|
| C - | Clause | Educ - | educational | PrA - | Proposed amendment |
| CHRI - | C'wealth Human Rights Initiative | Empee - | Employee | RA Bill - | Const of Nauru (Referendum Amendments) Bill |
| Comm - | Constitutional Review Commission | Govt - | Government | Reas - | Reasonable |
| Const - | Constitution | ICRC - | Int'l Convention on Rights of the Child | Ref - | Reference |
| Conv - | Nauru Constitutional Convention 2007 | PA Bill - | Const of Nauru (Parliamentary Amendmts) Bill | RoN - | Republic of Nauru |

Table of proposed constitutional amendments for Select Committee on Constitutional Amendment Bills, March 2009

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--|---|--|---|--|--|
| Preamble | Preamble (introductory statement to the constitution with symbolic significance; currently does not legally form part of the Constitution, but it is proposed to amend this, and to enable preamble to be used as aid to interpretation) | Whereas we the people of Nauru... (very brief, referring to God, republic and new Constitution) | Majority of those who expressed a view on preamble said preamble should be amended (318), diverse views on what to include but reference to tribes, custom and culture were common | A new preamble be inserted to replace the existing preamble (considerably longer, incl ref to Nauruan history and culture) (see p 5-12 C Rep) | Some amendments made to the wording of new preamble proposed by Commission, and insertion of new preamble passed by Convention (see clause 3 of PA Bill) | The Committee endorsed the ideas behind the Convention amendments to the Commission preamble, but made some further changes to the wording; SCCA adopted the preamble as amended (see Appendix 2) |
| 1 | The Republic of Nauru | Nauru is an Independent Republic | n/a | No change recommended | n/a | SCCA resolved to leave Article 1 as it is |
| 2 | Supreme law of Nauru | This constitution is the Supreme law; a law inconsistent with the Constitution is, to the extent of the inconsistency, void | n/a | No change recommended | n/a | SCCA resolved to leave Article 2 as it is |
| 2A | Customary Law | None | Many people suggested greater recognition and protection of custom be included in Const; some suggested add new provision | Insert new Art which acknowledges the place of customary law as a source of law; Part may make prov for proof and pleading of customary law (see p 12-14 C Rep) | Commission recommendation passed with amendments (requiring Parliament to submit any bill re proof and pleading of customary law to public consultation) (see clause 4 of PA Bill) | SCCA resolved to adopt proposed Art 2A as recommended by the Commission and proposed its own minor change to the wording, also to create new Part 1A 'custom and language' + incl Art 2A in Part 1A (now 2B) |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--|--------------------|--|---|--|--|
| 2B | Promotion of Awareness of the Constitution | None | Constitution be available in English & Nauruan and to be included in the School Curriculum | New Art: govt to make available in Engl and Nauruan material to promote public awareness of const; govt provide for teaching of const in all educ institutions and police training (see p 14-16 C Rep) | Passed (see clause 5 PA Bill) | SCCA resolved to adopt proposed Art 2B, with some minor change to wording, and to include in Part I, and re-number to Art 2A accordingly |
| 2C | Nauruan Language | None | Many people expressed views that the use of Nauruan language should be advanced and protected, some that Nauruan should be official language | New Art: govt must take positive and practical measures to preserve and advance the use of the Nauruan language (see p 14-16 C Rep) | Passed (see clause 6 PA Bill) | SCCA resolved to adopt proposed 2C as recommended by Commission and adopted by Convention and to include in new Part 1A |
| 2D | Plain Language | None | None | None | Convention proposed new Art 2D re plain language (see clause 7 PA Bill) | SCCA rejected proposed 2D; because should be a matter of govt policy but not const provision |
| 2E | Application | None | Many people expressed the view that their rights need to be more directly enforceable and that people need clear mechanisms by which to hold government to account | New Art re application of Bill of Rights: Part II applies to all laws and binds all three branches of govt; also binds natural and legal persons to the extent practicable (see p 39 C Rep) | Passed (see clause 8 PA Bill) NOTE: must be moved to RA Bill | Proposed Art 2E adopted by SCCA; noted that this proposed amendment should be moved to the RA Bill as it is an amendment to Part II of the Constitution; |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--------------------------------|--|---|---|---|---|
| 3 | Preamble | First provision in the Bill of Rights which introduces Bill of Rights, lists rights contained in subsequent Arts and provides that all persons shall enjoy such rights equally | Majority of participants favoured changing heading in order to remedy confusion and inapplicability of provision as experienced in the past; some favoured stronger anti-discrimination | Change heading to "Right to Equality" and amend to allow equal rights and freedoms and freedom from discrimination (see p 18-21 C Rep) | Recommendation of Commission amended to remove 'sexual orientation' from list of grounds on which person cannot be discriminated against, and to remove from exceptions in proposed clause (4) 'appropriates revenues or other moneys for particular purposes', and passed as amended (see clause 3 of RA Bill) | SCCA resolved to adopt proposed amendments to Art 3 as recommended by the Commission and rejected changes to Commission wording proposed by Convention |
| 4 | Protection of right to Life | Protects the right to life by providing that no person shall be deliberately killed (and lists exceptions) | Delete reference to death penalty | Amend to include positive right to life, to delete ref to death penalty, and to remove defence of public property from list of exceptions (see p 21-22 C Rep) | Passed (see clause 4 RA Bill) | SCCA resolved to adopt proposed amendments to Art 4 as recommended by Commission and passed by Convention |
| 5 | Protection of personal liberty | No person shall be deprived of his personal liberty, subject to list of exceptions; Art includes ancient right of habeus corpus | None | Amend exception of order for education from 18 to 16 years and order for welfare from 20 to 16 years; amend clause (4) to include 'any subordinate court' (see p 22-23 C Rep) | Amended to delete para (d) from clause (1), and passed as amended (see clause 5 RA Bill) | SCCA resolved to retain para (d); rejected Commission rec that 18 be reduced to 16 in para (d); accepted Commission rec that 20 be reduced to 16 in para (e) and accepted amdmt to clause (4) |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|---|--|--|---|----------------------------------|---|
| 6 | Protection from forced labour | No person shall be required to perform forced labour (with list of exceptions that do not constitute forced labour) | n/a | None | n/a | SCCA resolved to leave Art 6 as it is |
| 7 | Protection from inhuman treatment | No person shall be subjected to torture or treatment/punishment that is inhuman or degrading | n/a | None | n/a | SCCA resolved to leave Art 7 as it is |
| 8 | Protection from deprivation of property | No person shall be compulsorily deprived of his property except by law for public purpose and on just terms (with exceptions /permissible laws) | Around 20 participants suggested that govt should be obliged to consult with landowners re any lease or acquisition for public purpose – see public opinion on Art 8 | New clause (1A) be inserted to make provision for how 'just terms' are to be determined by court (see p 24-25 C Rep) | Rejected | SCCA resolved to adopt proposed amendment as recommended by Commission |
| 9 | Protection of person and property | No person shall without his consent be subject to the search of his person or property or the entry on his premises by other persons (with list of permissible legislative exceptions) | n/a | Add new provision to Article 9(1) re privacy of communications and insert new clause 9(1A) re evidence obtained in contravention of Art 9 cannot be used to support criminal conviction (see p 26-27 C Rep) | Passed (see clause 6 of RA Bill) | SCCA resolved to adopt the amendments that were proposed by the Commission and passed by the Convention |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|---|---|--|--|----------------------------------|---|
| 10 | Provision to secure protection of law | Article 10 provides protections for persons accused/charged with criminal offences and also provides fair determination for civil matters by an independent and impartial court | Over 450 people wanted amendment as recommended by Commission; note that effect of proposed amendment would be to invalidate section 3 of the Republic Proceedings Act 1972 and would remedy injustice | Insert new clause to provide that no law shall prevent a citizen bringing civil action against the Republic or its instrumentalities (see p 27-28 C Rep) | Passed (see clause 7 of RA Bill) | SCCA resolved to adopt the proposed amendment that was recommended by the Commission and passed by the Convention |
| 11 | Freedom of conscience | A person has the right to freedom of thought, conscience and religion including freedom to change his religion/beliefs and freedom to manifest or propagate his religion of beliefs | n/a | None | n/a | SCCA resolved to leave Art 11 as it is |
| 12 | Protection of freedom of expression | A person has the right to freedom of expression; right may be limited by consent or by law (list of permissible legislative exceptions) | n/a | None | n/a | SCCA resolved to leave Art 12 as it is |
| 13 | Protection of freedom of assembly and association | People have the right to assemble and associate peaceably; right may be restricted by consent or by laws in the interest of public safety/order etc | 30 people suggested Art 13 should state no exercise of this freedom should be used by RoN against employee (ie public servants not be prohibited from protesting) | None | n/a | SCCA resolved to leave Art 13 as it is |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--|--------------------|--|--|--|--|
| 13A | Protection of right to privacy and personal autonomy | None | In discussion on Art 3 many people expressed the view that freedom of private and family life should be more clearly protected | All persons shall be free from unreasonable interference in personal choices that do not injure others and from unreasonable intrusions into their privacy (see p 31, 34-35 C Rep) | Passed (see clause 8 of RA Bill) | SCCA resolved to adopt proposed Art 13A as recommended by the Commission and passed by the Convention |
| 13B | Right to information | None | A number of written submissions suggested inclusion of right to information | Insert right of access to information held by Govt and instrumentalities; Parit must enact law to give effect to this right and may impose reasonable limits (see p 34-35 C Rep) | Commission recommendation amended by Convention to include in proposed clause (2) the words 'including provision for the retention and secure storage of information'; passed as amended (see clause 9 of RA Bill) | SCCA resolved to adopt proposed Art 13B, including new words passed by Convention, and made its own further changes to the proposed wording in order to reduce the scope of exceptions to the right |
| 13C | Right to health services | None | A number of participants wanted inclusion of social and economic rights, see public opinion on Protection of Rights – Part II under 'other views raised' | Everyone has right to basic health services; govt must take reasonable legislative and other measures, w/i avail resources, to achieve progressive realisation of this right (see p 31-33, 35 C Rep) | Amended Commission recommendation to add to clause (2) 'including provision of rehabilitation services for persons with drug and alcohol-related illness, and treatment for persons with contagious diseases'; passed as amended (see clause 10 RA Bill) | SCCA resolved to adopt proposed Art 13C as recommended by the Commission, but did not adopt the amendments proposed by the Convention because it was thought unnecessary to refer to particular types of illness in the context of a broad right |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--------------------------|--------------------|---|---|--|---|
| 13D | Right to education | None | As above | Every person has right to primary and secondary education; govt must take reasonable measures to improve standard of public education and may provide support to private education services (see p 31-33, 35 C Rep) | Passed (see clause 11 RA Bill) | SCCA resolved to adopt proposed Art 13D as recommended by the Commission and passed by the Convention |
| 13E | Environmental protection | None | As above; environmental protection received particular emphasis at certain meetings | Everyone has right to environment that is not harmful to health or well-being and to have environment protected for the benefit of present and future generations... (see p 31-33, 36 C Rep) | Passed (see clause 12 RA Bill) | SCCA resolved to adopt proposed Art 13E as recommended by the Commission and passed by the Convention |
| 13F | Employment rights | None | As above | Every person has right to fair labour practices and every citizen has right to freely choose their trade, occupation or profession (see p 31-33, 36 C Rep) | Amended Commission recommendation by adding new clause (4): 'No law or policy shall permanently deprive a person of wages or salary earned or superannuation accrued'; Passed as amended (see clause 13 RA Bill) | SCCA resolved to adopt proposed 13F and proposed its own addition to the wording (new (4)), to enable prohibition of any trade for public health, safety etc; rejected Convent'n amendment because superfluous: Art 8 and 13F(1) provide protectn against such action |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--|--|--|--|--|---|
| 13G | Women's rights | None | As above | Every woman has the right to a reasonable period of maternity leave (see p 31-33, 36 C Rep) | Passed (see clause 14 RA Bill) | SCCA resolved to adopt proposed Art 13G as recommended by Commission and passed by Convention |
| 13H | Children's rights | None | As above; and some noted that Proposed Article accords with international law on rights of children (ICRC to which Nauru is a state party) | Every child has right to be protected from maltreatment, neglect, abuse, exploitative labour practices (and other rights incl in ICRC) (see p 31-33, 36 C Rep) | Passed (see clause 15 RA Bill) | SCCA resolved to adopt proposed Art 13H as recommended by Commission and passed by Convention; also to insert definition of "child" in Art 15(4) as anyone under 18 |
| 13I | Rights of person with disabilities | None | As above; rights of disabled persons received particular emphasis | None | Convention proposed new Article 31I re rights of disabled persons (drafted at Convention and based upon draft international treaty (which has since come into effect); (see clause 16 RA Bill) | SCCA resolved to adopt proposed Art 13I as drafted and passed by the Convention |
| 14 | Enforcement of fundamental rights and freedoms | Article 14 enables people to seek enforcement of their rights and freedoms in the Supreme Court and empowers Court to grant any appropriate remedy | n/a | Amend to broaden standing to include person acting on behalf of another or association acting on behalf of members (see p 37-38 C Rep) | Passed (see clause 17 RA Bill) | SCCA resolved to adopt proposed amendments to Art 14 as recommended by the Commission and passed by the Convention |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--|--|--|---|-----------------------------------|---|
| 15 | Interpretation | Article 15 defines certain terms used in Part II of the Constitution | n/a; but note that Proposed clause (3) would enhance protection of rights generally by limiting scope of exceptions (and therefore consistent with public demand for better rights protection) | Insert new provision to require Court to promote the values that underlie a democratic society based on freedom and equality incl have regard to PIL, and insert proportionality test for laws that limit rights; delete definition of 'public property' (bc of proposed amendment to Art 4) (see p 29-30, 40-41 C Rep) | Passed (see clause 18 RA Bill) | SCCA resolved to adopt proposed amendments to Art 15 as recommended by Commission and passed by the Convention, and to further insert a definition of "child" for the purposes of Art 13H (so that children's rights cover anyone up to 18, not just anyone up to 14 as would otherwise be the case under the Interpretation Act) |
| 16 | The President <u>NOTE</u> : there were a number of proposed amendments to Art 16, and they are dealt with separately in diff cells] | There shall be a President who shall be elected by Parliament.. | n/a | Amend to expressly provide that the President shall be the Head of State and Head of Govt (in proposed new clause (1A)) (see p 44-45 C Rep) | Passed (see clause 19 RA Bill) | SCCA resolved to adopt amendment as proposed by Commission and passed by Convention |
| 16 | The President | There shall be a President who shall be elected by Parliament.. | Majority of participants favoured direct popular election of President | Amend clause (1) of Article 16 to provide that the President shall be elected by the people of Nauru and insert new Article 16A to prescribe method for popular election of President (plus consequent amdmnts to clause (4) and deletion of cl (5) of existing Art 16); (see p46-52 C Rep) | Rejected | SCCA resolved to adopt the amendments proposed by Commission to give effect to direct popular election of President and made some minor changes to clause (3) (as a consequence of resolution on Art 34) |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|-----------------------|---|------------------|--|--------------------------------|--|
| 16 | The President | There shall be a President who shall be elected by Parliament.. | n/a | Insert new clause (3A) listing the functions and powers of the President (see p 45 C Rep) | Passed (see clause 19 RA Bill) | SCCA resolved to adopt proposed clause (3A) with some minor changes to improve accuracy |
| | | | n/a | Insert new clause (3B) requiring President to subscribe a specific Presidential oath of office (see p 46 C Rep) | Passed (see clause 19 RA Bill) | SCCA resolved to adopt proposed clause (3B) and drafted a proposed oath which appears in Appendix 2 as Schedule 7 |
| | | | n/a | Amend clause (4) to insert 'except as otherwise provided in the Constitution' (see p 52 and 65-74 C Rep) | Passed (see clause 19 RA Bill) | SCCA resolved to adopt; note: This proposed amendment is related to the proposed new provision for a Council of State – see Article 21B, below (see also Art 24 and 61A below) |
| 16A | Election of President | None | Majority support | Insert new clause providing for method of electing President: 3 candidates chosen by Parlt, popular election, limit of 3 consecutive terms of office (see p 46-52 C Rep) | Rejected | SCCA resolved to adopt proposed new Art 16A as recommended by the Commission, but made some proposed amendments of its own to provide that the nomination of candidates is subject to a time limit (see Art 41(8) below) and that election of President shall be held 28 days after a general election |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--|--------------------|---|--|---|---|
| 16B | Tenure of Office | None | Majority support (inferred by interrelation with proposed amendments to Art 24 and 61A which have majority support) | Insert new Art 16B to clarify circumstances in which President shall vacate his office, taking into account all other proposed amendments (esp to Arts 16C, 24, 61A) (see p 68-71 C Rep) | Rejected | SCCA resolved to adopt proposed Art 16B as rec'd by Commission, except para (d) of clause (2), and with some minor changes to wording; note that modified version of 16B could still be usefully included even without pop election of President |
| 16C | Removal from office on grounds of incapacity | None | n/a | Insert new Art 16C empowering Parliament to remove President on grounds of incapacity (see p 68-71 C Rep) | Rejected | SCCA resolved to adopt a proposed new Art 16C, but made its own substantial amendments to the Commission wording, so that decision re removal is made by Chief Justice not by Parliament (see Appendix 2) |
| 16D | Vacancy in the office of President | None | n/a | Insert new Art 16D providing for Council of State or Deputy President to act in case of vacancy in office (see p 71-72 C Rep) | Convention resolved to adopt a new provision re vacancy in the office of President, but substantially amended the wording proposed by Commission (because of rejection of Deputy President) and renumbered to Art 16A (see clause 9, PA Bill) | SCCA resolved to adopt Art 16D but made its own substantial amendment to the Commission wording, so that Dep Pres only assumes office of Pres temporarily (see Appendix 2); Note that 16D is interrelated with 16A, 16B, 21A, 21B, 24, 61A, which must be considered together at COTW |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--|--|--|---|---|--|
| 17 | Executive authority vests in the Cabinet | Cabinet has the power to govern and is responsible to Parliament | n/a (note: proposed amendments effectively state expressly existing situation re Cabinet and treaties; beneficial for providing clear goals and enhancing public understanding of role of govt) | Insert new clauses (3) and (4) in Article 17 providing statement of powers and duties of Cabinet and for treaties not to have automatic force of domestic law (see p 53-57 C Rep) | Passed (see clause 20 RA Bill) | SCCA resolved to adopt proposed amendments to Art 17 as recommended by the Commission and passed by the Convention, and made some small changes to the proposed wording of the amendments (to enhance clarity) |
| 18 | The Cabinet | Cabinet consists of the President and Ministers appointed by the President; Cabinet members to subscribe oath; Cabinet member shall not hold office of profit... | n/a | None | n/a | The SCCA resolved to leave Art 18 as it is, but to repeal and replace Schedule 1 (oath of Cabinet Ministers) which is referred to in Art 18 - notwithstanding proposed new Schedule 1, no change is required to 18 |
| 19 | Appointment of Ministers | President to appoint 4 or 5 members of Parliament to be Ministers | Public support for creation of Deputy President | Amend to provide Deputy President and 3 or 4 other members as Ministers (see p 68-72 C Rep) | Rejected (because of rejection of 21A) | SCCA resolved to adopt the recommendation of the Commission to amend Art 19, and also proposed its own further amendment, new clause (4) |
| 20 | Vacation of office | Article lists the circumstances under which a Minister will cease to hold office | n/a | Insert new para (e) Minister ceases to hold office upon commencing to hold an office of profit in the service of Nauru or a statutory corporation (see p 67-68 C Rep) | Passed (see clause 10 PA Bill) | SCCA resolved to reject the amendment proposed by the Commission and passed by the Convention because it is superfluous in light of amendt to 31(e) and 32(1)(b) and 20(d) |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--|---|---|--|---|--|
| 21 | Provision for Minister to act as President | Cabinet to appoint a Minister to perform the duties and exercise the functions of the President during his illness, absence etc | Public support for creation of Deputy President | Repeal and replace with new Article 21 to provide functions of President to be discharged by Deputy President in case of illness, absence etc (see p 68-72 C Rep) | Rejected (because of rejection of 21A) | SCCA resolved to adopt the recommendation of the Commission to repeal and replace Art 21, and made some minor changes to the wording proposed by the Commission |
| 21A | The Deputy President | None | Public support for creation of Deputy President | There be a Deputy President appointed from among the Ministers (see p 68-72 C Rep) | Rejected | SCCA resolved to adopt the recommendation of the Commission for the insertion of new Art 21A, and made some changes to the wording proposed by the Commission (see also Schedule 8 by SCCA) |
| 21B | Council of State | None | n/a | The Council of State consists of head of public service, Speaker, CJ and shall in case of dissolution of Parit in specified circumstances perform functions of President and executive | Passed (but renumbered 21A because of rejection of above) (see clause 11 PA Bill) | SCCA resolved to adopt the Commission rec for insertion of new Art 21B, but made substantial amendments to the wording proposed by Commission, to ensure that all members of COS will be Nauruan citizens, and to limit the authority of the COS by providing that it does not have the power to exercise certain executive functions, and can only exercise some by unanimous agreement |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|---|---|---|--|--------------------------------|---|
| 22 | Meetings of the Cabinet | President to preside at Cabinet meetings and Cabinet may regulate its own procedure | n/a | Insert a new clause (3) to this Article to provide for the position of Clerk of Cabinet (see p 57-58 C Rep) | Passed (see clause 12 PA Bill) | SCCA resolved to reject the amendment that was proposed by Commission and passed by Convention |
| 23 | Appointment of Ministers to Departments | President may assign govt responsibilities to Ministers and to himself and revoke or change these assignments as he pleases | Some concern expressed over delegation of Ministerial authority and lack of accountability | Insert new clauses (2) and (3) re Ministers' direction and control of dept and dept supervision by HoD, and no delegations can absolve Cabinet of responsibility for govt (see p 53-54 C Rep) | Passed (see clause 13 PA Bill) | SCCA resolved to adopt the amendments that were recommended by the Commission and passed by the Convention |
| 24 | Vote of no confidence | Parliament may remove a President and Cabinet by a vote of no confidence passed by one-half of total number of members of Parliament. | Majority of participants wanted amendment of Art 24 to prevent instability, various degrees of support for different proposed amendments aimed towards achieving this end | Amend to require an absolute majority, to dissolve part upon passage of motion, to include grounds for motion, to restrict movement of fresh motion within 120 days of failure of motion (see p 58-66 C Rep) | Rejected | SCCA resolved to adopt the Commission's rec that the effect of a motion of no confidence being passed should be dissolution, that there be a bar on moving another motion w/i 4 months of failed motions, and also requirement to state grounds, but rejected recommendation that number required should be increased from half to a majority, and also made its own proposed amendments to provide a new govt with four month grace period |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--------------------------------------|--|---|--|--|---|
| 25 | Chief Secretary | The Chief Secretary is the head of Public service and has such powers and functions as the Cabinet directs. | Many people wanted powers of Chief Sec to be vested in a board or commission; see 68, 68A, 68B, 68C, 68D, below | Amend to provide Chief Sec appointed by Pub Serv Commission with concurrence of Cabinet; Chief Sec is manager of Pub Serv and Chief admin and advisory officer of govt, responsible for general direction of work of all Depts and offices (see p 139-145 C Rep) | Amended recommendation to remove ref to Pub Serv Commission; accepted description of role of Chief Sec; amended to insert (1A) Chief Sec must be Nauruan Citizen (see clause 14 PA Bill) | SCCA resolved to move Art 25 to Part VII and renumber to Art 67B, and accepted some of the Commission's amendments but also made its own amendments to the wording proposed by the Commission |
| 26 | Establishment of legislature | There shall be a Parliament of Nauru | n/a | None | n/a | SCCA resolved to leave Article 26 as it is |
| 27 | Legislative powers of legislature | Parliament may make laws for peace, order and good govt of Nauru | n/a | None | n/a | SCCA resolved to leave Article 27 as it is |
| 27A | The role and functions of Parliament | None | n/a | Insert new provision which lists the role and functions of Parliament (see p 75-77 C Rep) | Rejected | SCCA resolved to adopt the recommendation of the Commission re new Art 27A, with some changes to the recommended wording |
| 28 | The Parliament | This Article provides the composition of Parliament, presently 18, and gives Parliament the power to increase but not to reduce the number | Support for an increase in number of members to an odd number, tied with support for amendment to Art 34 | Parliament should increase the number of seats for Meneng by one (without changing Article 28) (see p 77-79 C Rep) | Passed (not included in const amendment Bills because <u>does not require const change</u>) | SCCA resolved to adopt the recommendation of the Commission and Convention re increasing number of MPs to 19; note: incr in numbers effects meaning of Arts 24 and 84 etc; also interrel'd with amndt to Art 34 |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--|---|---|---|--|---|
| 29 | Electors of Parliament | This Article provides that the Parliament shall be elected by citizens over 20 years, but leaves the electoral system to Parliament | Some support for lowering the voting age to 18 | Article 29 be amended to give Parliament flexibility to change the voting age (see p 82 C Rep) | Rejected | SCCA resolved to adopt Commission recommendation, but changed wording to reduce scope of power (voting age can't be reduced by Parliament any lower than 18) |
| 30 | Qualification for membership of Parliament | This Article sets out the qualifications of members of Parliament | n/a | None | n/a | SCCA resolved to leave Article 30 as it is |
| 31 | Disqualification of membership of Parliament | This Article sets out the disqualifications of members of Parliament | minority wanted dual citizens to be disqualified. Comm rec against this. Convention debated it, and voted against disqualification on grounds of dual citizenship | Amend para (c) provide that a person is disqualified if he is serving any sentence of imprisonment (see p 85 – 87 C Rep); Amend para (e) to delete 'prescribed by law...' (p 67-68 C Rep) | Amended Comm re para (c) and passed as amended; passed rec amndmt to para (e); Conv proposed new para (f) (see clause 15 PA Bill) | SCCA resolved to adopt Commission recommendation re amendment of paras (c) and (e) and to adopt Convention recommendation re new para (f) |
| 32 | Vacation of seats by members of Parliament | This Article lists the circumstances upon which a member vacates his seat | n/a | Amend to clarify vacation for absence, and insert detailed provisions re vacation for imprisonment (see p 85-90 C Rep) | Rejected proposed amendments re vacation for imprisonment; passed proposed amendment re clarifying absence (see clause 16 PA Bill) | SCCA resolved to adopt the proposed amendments as recommended by the Commission (but changed new clause numbers, and also made its own proposed amendment to para (c) of clause (1) as a result of proposed amendment to Art 34 |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|-----------------------|---|---|---|--|---|
| 33 | Clerk of Parliament | Clerk of Parliament who is appointed by the Speaker and may be removed from office by the Speaker | Some participants suggested that the Clerk should be appointed and removed by Parit | Amend to create Office of Parliament, administered by Clerk, appointed and removed by Parliament, prov for independence and list of duties and functions (see p 90-93 C Rep) | Rejected recommended amendments; Conv proposed own amendment to chg 'Clerk' to 'Secretary General' (see clause 17 PA Bill) (see also clause 47 PA Bill and clause 25 RA Bill re terminology in Arts 32, 34, 35, 65, 81 and 84) | SCCA resolved to reject change of title to 'Secretary General' as proposed by Convention; to adopt recommendations of Commission except for recommendation re appointment and removal and to keep provisions re appointment and removal by Speaker as they are |
| 34 | Speaker of Parliament | Parliament must elect one of its members to be Speaker before transacting any other business | Large majority of participants support amendment to make Speaker non-MP | Amend to provide for election of a person who is not MP but is qualified to be MP, to be Speaker and for Parit to be dissolved if fail to elect a Speaker w/i 21 days (see p 93-97 C Rep) | Rejected proposal for Speaker to be non-MP; passed recommended amendment re dissolution of Parit w/ 21 days if fail to elect Speaker, and removal by 2/3 Parit (see clause 18 PA Bill) | SCCA resolved to adopt the Commission recommendation that Speaker should be a non-Member elected by Parit and removed only by 2/3 Parit; rejected recommendation re dissolution within 21 days if fail to elect and instead proposed its own amendment to provide that within 10 days of general election, Parliament must have elected Speaker, Deputy Speaker and nominated candidates for President, otherwise Parit will be dissolved (see 41(8)) |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|---|--|----------------|------------------------------|-----------------------|--|
| 35 | Deputy Speaker of Parliament | Parliament shall elect one of its members as Deputy Speaker straight after the election of Speaker | n/a | None | n/a | SCCA resolved to adopt a minor change to the wording of Art 35, for consistency of language with proposed amendment to Art 34 (no change in effect of the provision) |
| 36 | Determinations on questions of membership of Parliament | Any question that arises concerning the right of a person to be or to remain a member of Parliament shall be referred to and determined by the Supreme Court | n/a | None | n/a | SCCA resolved to leave Art 36 as it is |
| 37 | Powers, privileges and immunities of Parliament | The powers, privileges and immunities of Parliament and of its members and ctees are such as declared by Parliament | n/a | None | n/a | SCCA resolved to make minor amendment to Art 37 to clarify that Parliament's powers are subject to the Constitution |
| 38 | Procedure in Parliament | Parl may make rules and orders re powers, privileges and immunities, and conduct of business and proceedings, and may act notw' standing vacancy | n/a | None | n/a | SCCA resolved to leave Art 38 as it is |
| 39 | General Elections of Parliament | General election shall be held w/i 2 months of dissolution of Parl | n/a | None | n/a | SCCA resolved to adopt a proposed amendment to Art 39 to change the max period btw dissolution and gen election to 50 days |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|---|--|----------------|---|-----------------------------------|---|
| 40 | Sessions of Parliament | Session of Parlt shall be held w/ 21 days of results of general election and at least every 12 months, at time appointed by Speaker on advice of President | See 42 below | Amend to provide session ends when prorogued or after 7 days of no sittings; and unless prorogued, end of session does not cause business to lapse (see p 99-103 C Rep) | Passed (see clause 19 PA Bill) | SCCA resolved to adopt proposed amendment that was recommended by the Commission and passed by the Convention, and also made its own proposed amendment to clause (1) to provide that first session of new Parlt must begin no later than the second Tues after a general election, and also new clause (1A) (note: linked with Arts 16A, 34, 35, 39, 41 and 42 and PrA to Art 81) |
| 41 | Prorogation and dissolution of Parliament | Speaker may prorogue or dissolve Parlt under certain conditions; Parlt term of 3 years unless sooner dissolved | n/a | None | n/a | SCCA resolved to adopt amendments to Art 41, some as a consequence of amendments to Arts 16 and 24, some as a consequence of proposed new Art 61A, and most substantially: proposed new clause (8) to provide that if at the end of the second Tuesday after a general election Parlt has failed to elect Speaker, Deputy Speaker and nominate Presidential candidates, Parlt shall stand dissolved |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|---|--|--|---|--------------------------------|---|
| 42 | Sessions of Parliament at request of one-third of members | Provides for Members to call for a session by means of a written request signed by members from at least 3 constituencies and a total of one-third of Parliament | Wide support for amending definition of 'session' so that Article 42 can be used in the way it is intended | Amend to provide Members may request session where 28 days have elapsed since Parliament was in session (designed to remedy problem with ineffectiveness of Art) (see p 99-104 C Rep) | Passed (see clause 20 PA Bill) | SCCA resolved to adopt the amendment that was recommended by the Commission and passed by the Convention (note: proposed amendment interrelated with amendment to Arts 40 and 81) |
| 43 | Oath of members of Parliament | Members of Parliament shall take an oath | n/a | None | n/a | SCCA resolved to amend Art 43 as a consequence of proposed amendment to Art 34 (Speaker not a member) and to delete latter part of clause (1), so that members must take oath before electing Speaker |
| 44 | Speaker to preside | Speaker shall preside at a sitting of Parliament | Many people expressed view that Speaker should be more impartial | Amend to provide that Speaker responsible for ensuring business of Parit in compliance w Const and must exercise duties fairly and impartially (see p 98 C Rep) | Rejected | SCCA resolved to adopt the recommendation of the Commission, but to combine proposed addition with existing words, so that there are no clauses in Art 44 |
| 44A | Duties of Speaker | None | n/a | Insert a new Article to list the duties of the Speaker incl presiding over Parit, issuing writs for elections, etc (see p98 C Rep) | Rejected | SCCA resolved to adopt the Commission recommendation, with some minor changes to proposed wording |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|------------------------|---|--|---|--|--|
| 45 | Quorum | Quorum for Parlt is one half total number plus person presiding, and Parlt cannot transact any business at a sitting which does not have quorum | n/a | None | n/a | SCCA resolved to make a minor amendment to Art 45 (insert 'if a member is presiding') as a consequence of proposed amendment to Art 34 |
| 46 | Voting | Question before Parlt decided by majority of those present and voting except as otherwise provided in Const; Speaker shall exercise casting vote only | Majority support for Speaker who is a non-member and who therefore cannot vote | Amend clause 2 and insert new clause 3 to provide person presiding does not have casting vote and if Deputy Speaker presiding retains deliberative vote (see p 93-96 C Rep) | Rejected amendments proposed by Comm; Conv proposed its own amendment to provide that Speaker shall on qu of motion of no confidence have a deliberative vote but not a casting vote (see clause 21 PA Bill) | SCCA resolved to adopt the amendments recommended by the Commission, and also proposed its own additional amendment, new clause (4), to clarify that the Speaker shall not vote on any question (see also Art 34) |
| 47 | Enactment of laws | Laws to be certified by Speaker | n/a | None | n/a | SCCA resolved to leave Article 47 as it is |
| 48 | Supreme Court of Nauru | Article 48 establishes the Supreme Court of Nauru and provides that it shall be a superior court of record and shall have such jurisdiction as conferred by Const/law | Some concern expressed for the status and independence of the judiciary | Add new provision to provide judicial power vested in the Supreme Court and other courts estab by law, and that Supreme Court has 3 divisions (trial division, constitutional division and appellate division) and new provs re independence (see p 109-111, and 121-123 C Rep) | Passed (see clause 22 PA Bill) | SCCA resolved to adopt the proposed amendments that were recommended by the Commission and passed by the Convention, and further resolved to propose its own amendments to the wording of clause (4) and inserting new clause (9) re contempt of court (interrelated with PrA to Arts 54 and 57) |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|---|---|--|--|--------------------------------|---|
| 49 | Chief Justice and Judges of Supreme Court | Supreme Court shall consist of the Chief Justice and other judges in such number if any, as prescribed by law; judges appointed by President | Some members of the public suggested that judicial appointments should involve Cabinet or Speaker or judicial appointments board | Amend to require President to consult Cabinet on judicial appointments, including appointments of Acting Judges under Art 53 (see p 111-114 C Rep) | Passed (see clause 23 PA Bill) | SCCA resolved to adopt the amendments recommended by the Commission and passed by the Convention, and also proposed its own amendments to the qualification of judges (see 49(3) and (4) in Appendix 2) and a consequential amendment to clause (1) |
| 50 | Vacation of office | Judge of SC ceases to hold office on reaching 65 years or such greater age as may be prescribed by law | Varied opinions, ranging from reduce to 60 years, keep at 65, increase to 70 or 75 | Amend to increase retirement age from sixty-five to seventy years (see p 112-113 C Rep) | Passed (see clause 24 PA Bill) | SCCA resolved to adopt the recommendation of the Commission and Convention that the retirement age should be increased, but resolved that the new age should be 75 (rather than 70) |
| 51 | Removal from office and resignation | Judge of SC cannot be removed from office except by a resolution of Parit approved by 2/3 on grounds of incapacity/misconduct; judge may resign | n/a | None | n/a | SCCA resolved to leave Article 51 as it is |
| 52 | Oath of office | Judge of Supreme Court must take and subscribe an oath of office | n/a | None | n/a | SCCA resolved to leave Article 52 as it is |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--|---|---|--|--|--|
| 53 | Acting Judges | Acting Judges may be appointed where an office is vacant or where a Judge, including the Chief Justice, is unable to perform their duties, and may be older than 65 | n/a | None | n/a | SCCA resolved to amend Art 53 to refer in clause (2) to the retirement age being 75 (consequential amendment as a result of proposed amendment to Art 50) |
| 54 | Matters concerning this Constitution | Supreme Court has original and exclusive jurisdiction to determine any question re the Constitution; const issue in any other court shall be removed to Supreme Court | Many people expressed concern about the enforceability of the Constitution and access to justice for breach of the Constitution | Amend to provide general standing for alleged infringement of Const to any person whose interests are affected, and jurisdiction to grant relief (see p 118-120 C Rep) | Passed (see clause 25 PA Bill) | SCCA resolved to adopt the recommendation of the Commission which was passed by the Convention (note: Interrelated with Proposed amendment to preamble and Art 82) |
| 55 | The Cabinet may refer questions on Constitution to Supreme Court | President or Minister with approval of Cab may refer question re the Constitution to Supreme Court for its opinion | n/a | None | n/a | SCCA resolved to leave Article 55 as it is |
| 56 | Subordinate courts | There shall be such subordinate courts as are established by law | n/a | None | n/a | SCCA resolved to leave Article 56 as it is |
| 57 | Appeals | Parit may provide for appeals from the Supreme Court constituted by one Judge to the Supreme Court constituted by not less than two Judges and from the Supreme Court to a court of another country | Some written submissions suggested abolition of appeals to High Court of Australia | Repeal and replace with provision for appellate division of the Supreme Court and stipulate whether appeals by right or by leave (effectively abolishing appeal to Aust) (see p 121-123 C Rep) | Amended (2) of rec amendment to provide appellate div constituted by 3 Judges rather than 2; passed as amended (see clause 26 PA Bill) | SCCA resolved to adopt repeal and replacement of Art 57 as rec'd by Comm and passed by Conv; except that SCCA made its own proposed change to recommended clause (2) (see 57(2) in Appendix 2) |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|---|--------------------|--|---|---|---|
| 57A | Jurisdiction concerning the Constitution | None | See Art 54, above | Constitutional Division and Appellate Div of SC shall have jurisdiction to determine qus re const under Arts 14(1), 36, 54(1) and (2) and 55 etc (see p 121-122 C Rep) | Passed (see clause 27 PA Bill) | SCCA resolved to reject the recommendation of the Commission which was passed by the Convention re insertion of new Art 57A, because 57A(1) is superfluous in view of Arts 48(2), and 14(1), 36, 54(1) and (2), 55 and 57, and 57A(2) superfluous in view of proposed 57(3) |
| 57B | Director of Public Prosecutions | None | n/a | Add new Article to provide for a DPP, app'ted by President incl define role/indep (see p 123-124 C Rep) | Passed (see clause 28 PA Bill) | SCCA resolved to adopt the recommendation of the Commission which was passed by the Convention that there should be a new Art 57B re DPP, but SCCA made some changes to the recommended wording to improve clarity (placed in Part VII and renumd 70A) |
| 57C | Leadership Code | None | Broad public support for Leadership Code to be included in the Constitution which will apply to govt | Insert new Article on Leadership Code which will apply to the President, Ministers, MPs, judicial officers, HoDs etc, proscribing conflict of interest, demeaning office etc and Parlt must make further provision (see p 176-184 C Rep) | Convention proposed additional clause (7) to recommended Art 57C (taking into account Art 36 and security of tenure of judges and others); Passed as amended (see clause 29 PA Bill) | SCCA resolved to adopt the recommendation of the Commission which was passed by the Convention, and also to adopt clause (7) as proposed by the Convention (renumbered 57A) (note: interrelated with Arts 31, 32, 36, 51, 57C and proposed new 66) |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|-------------------------------------|--------------------|--|--|---|--|
| 57D | Ombudsman | None | Broad public support for Const to provide for an Ombudsman (although varied understandings of role of Ombudsman) | Insert new Article to create Ombudsman appointed by President in consultation with the Speaker and the Chair of the Public Service Commission, 5 yr appt, independent, security of tenure (see p 176 and 185-187 C Rep) | Convention proposed new clause be added requiring Ombudsman to take an oath of office; Passed as amended (see clause 30 PA Bill) [note: error in bill – bill does not reflect Conv admnt re oath of office; Clause also needs to be reworded to take account of Conv rejection of 68A (eg replacing Chairman PSC with Chief Sec)] | SCCA resolved to adopt the recommendation of the Commission which was passed by the Convention, but to reject the proposed requirement for Ombudsman to take an oath of office; SCCA also made some minor changes to the proposed wording; proposed new Article renumbered to 57B in Appendix 2 (because of rejection of 57A and removal of DPP article to a different Part) |
| 57E | Functions of Ombudsman | None | See 57D | Insert new Article to provide for the functions of the Ombudsman: inquire into conduct of public authorities, improve PS (see p 176 and 185-187 C Rep) | Passed (see clause 30 PA Bill) | SCCA resolved to adopt the recommendation of the Commission that was passed by the Convention, and renumbered this Article to 57C in Appendix 2 |
| 57F | Discharge of functions of Ombudsman | None | See 57D | Insert new Article to provide for the discharge of functions of the Ombudsman: independence, fair procedure, reporting (see p 176 and 185-187 C Rep) | Passed (see clause 30 PA Bill) | SCCA resolved to adopt the proposed Article as recommended by Comm and passed by Convention, with some changes to the proposed wording, and renumbered to 57D |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|---|---|--|---|---|--|
| 57G | Further provisions | None | See 57D | Insert new Article 57G to provide that Parit may make provision to give effect to provisions of this new Part of the Const | Passed (See clause 30 PA Bill) | SCCA resolved to adopt rec of Comm that was passed by Conv, and renumbered to Art 57E |
| 58 | Treasury Fund | All revenues and other moneys raised or received by Nauru not being revenues or other moneys payable by law into another fund established for a specific purpose, shall be paid into and form a Treasury Fund | Many people suggested that all moneys paid to individual members of Parliament must be paid through the Treasury fund for accountability (ie "Grassroots Dev Fund" paid in cash by Taiwan) | None (see p 126-127 C Rep) | Convention proposed its own amendment to Art 58 to insert "or by a public officer or Member of Parliament for or on behalf of, or for the benefit of, Nauru" (see clause 21 RA Bill) | SCCA resolved to adopt the proposed amendment as passed by the Convention |
| 58A | Annual Budget and Appropriation | None | Strong demand to greater accountability re public finance | None | None | SCCA resolved to adopt a proposed new Article 58A, which would require Cabinet to present an annual budget and an annual appropriation bill to Parliament before the end of the financial year |
| 59 | Withdrawals from treasury fund and public funds | Withdrawal of moneys from the T Fund or any other fund only in acc with law; law must be recommended to Parit by Cab; Cab to provide budget estimates to Parit | Strong call for greater financial accountability | Insert new clauses re requirements for annual preparation and audit of public accounts and annual tabling in Parit (see p 131-132 C Rep) | Passed (see clause 22 RA Bill) | SCCA resolved to adopt the proposed amendments recommended by the Comm and passed by the Conv, but to locate them elsewhere: see 59A and 66A(2) and (3) in Appendix 2 (no change to Art 59) |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--|--|---|--|---|---|
| 59A | Statement of Accounts | None | See 59 | See 59 | See 59 | SCCA resolved to adopt the Commission recommendation that was passed by the Convention re proposed new clause (3A) of Article 59, but to locate the proposed change in a new Article 59A, with some minor changes to the proposed wording |
| 60 | Taxation | No tax shall be raised except as prescribed by law, and only if such law has been recommended to Parliament by Cabinet | n/a | None | n/a | SCCA resolved to leave Article 60 as it is |
| 61 | Withdrawal of moneys in advance of appropriation law | This Article enables Cabinet to seek short term supply from Parliament, and to withdraw money from Treasury Fund if supply has not come into effect before start FYr | Public support for limit on the use of short term supply and Cabinet withdrawal | Insert new provisions limiting short term supply bills and Cabinet withdrawals to one per financial year (see p 128-130 C Rep) | Passed (see clause 31 PA Bill) note, provision in Bill needs to be corrected: PrA to clause 61(1) should refer to (1A) not (2) | SCCA resolved to adopt recommendation of Commission and Convention re limiting use of supply and withdrawal, and also made its own proposed amendments to change time period for recommending supply law and to make necessary provision for interrelated amendments that the SCCA proposed to Art 61A; note: integrally interrelated with Art 61A |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--|--|--|--|--|--|
| 61A | Dissolution upon failure to pass appropriation law | None | The proposed amendment that was ultimately recommended by the Commission was discussed at public consultation meetings and received wide support | Insert new Article to provide for dissolution of Parliament upon failure to pass appropriation law (see p 128-130 C Rep) | Passed (see clause 32 PA Bill but NOTE error in Bill; should be insertion of new 61A as recommended by Comm) | SCCA resolved to adopt recommendation of Comm and Conv that Part be dissolved on failure to pass appropriation law, and also made its own substantial amendments to the recommended wording, mostly to provide for situations not adequately covered by Commission recommendation; Note: Interrelated with proposed 21B; see C Rep p 129 re manner in which interrelated with Comm rec on Art 16, 24 |
| 62 | Long term investment fund | Estab LTF and no money to be withdrawn until phosphate has ceased to provide adequately | Some suggested new prov: no \$ withdrawn from LTF for any other reason other than the purpose intended | None | n/a | SCCA resolved to leave Art 62 as it is; note: when in future govt creates new fund for same purpose as old LTF, may propose amendment to Art 62 at that time |
| 63 | Phosphate royalties | Parliament may establish funds for the benefit of persons from whose land phosphate has been mined and for payment out of those funds to those persons | Some suggested that future earnings from phosphate mining be paid directly to landowners; see also 62 | Insert new clause (3) to prevent NPRT funds or assets being lent or used as security for loans etc (see p 137-138 C Rep) | Amended by Convention to insert exception re bank deposits; Passed as amended (see clause 33 PA Bill) | SCCA resolved to adopt recom'd amndt but without Conv amndt, and reworded by SCCA (same effect as Comm rec); note: may need to further amend later for new Trust |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|----------------------------------|---|---|---|--------------------------------|--|
| 64 | Contingencies fund | This Article provides that Parliament may establish a Contingencies Fund | n/a | None | n/a | SCCA resolved to leave Art 64 as it is |
| 65 | Remuneration of certain officers | Salaries and allowances of Judges, Clerk of Parliament and the Director of Audit shall be prescribed by law, charged on the Treasury fund and may not be diminished | n/a | None | n/a | SCCA resolved to amend Art 65 to include Speaker, DPP and Ombudsman |
| 66 | Director of Audit | There shall be Director of Audit... shall not be removed except upon a resolution of Parit approved by two-thirds of the total members | Some expressed desire to strengthen powers and independence of Dir of Audit; general concern for greater financial accountability in govt | Repeal and replace existing provision w new Art re appointment, tenure, independence of Director of Audit (see p 131-137 C Rep) | Passed (see clause 34 PA Bill) | SCCA resolved to adopt the repeal and replacement recommended by Comm and passed by Conv with some minor changes to wording and addition of new clause (6) taken from existing clause (3) |
| 66A | Audit of accounts | None | See 66 | Insert a new Article to list the duties and powers of the Director of Audit re accounts | Passed (see clause 35 PA Bill) | SCCA resolved to adopt new Art 66A as recommended by Commission and passed by Conv, with some changes to wording (note that clauses (2) and (3) as adopted by SCCA are clauses (3B) and (3C) of 59 as proposed by Comm |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|---|--|---|--|--|---|
| 67 | Public debt | All debts for which Nauru is liable are a charge on the Treasury Fund | n/a | None | n/a | SCCA resolved to add new clause (3) to Art 67 to require Parit approval for mortgages or charges over property of Republic |
| 68 | Appointments etc... in the Public Service | Chief Sec has power to appoint, dismiss and discipline officer in the Public Service | Significant public support for reducing or removing unilateral powers of Chief Sec and establishment of PS Commission | Repeal and replace with new Article 68 re basic values and principles of the public service (ethics, fairness, efficiency, accountability, etc) (see p 139-148 C Rep, esp Section 3 p 144) | Convention rejected repeal of 68 (because of rejection of 68A) but passed "basic values and principles of PS" (renumbered 67A) (see clause 36 PA Bill) | SCCA resolved to adopt rec of Comm and Conv to insert new Article on basic values and principles (67A) and to reject Commission rec for repeal of existing Art 68, and to make its own proposed minor amendments to 68(4) |
| 68A | Public Service Commission | None | See 68 | Insert new Article to establish Public Service Commission which will consist of a Chairperson and 2 other members, 3 yr terms, sec of tenure (see p 141-146 C Rep) | Rejected | SCCA resolved to endorse Convention resolution and to reject Commission recommendation (see also SCCA proposed amendments to Art 69) |
| 68B | Procedure of the Public Service Commission | None | See 68 | Insert new Article to provide for certain procedures of the Public Service Commission (see p 143 + 147 C Rep) | Rejected (see 68A) | SCCA resolved to endorse Convention resolution and to reject Commission recommendation |
| 68C | Functions and Powers of the Public Service Commission | None | See 68 | Insert new Article to provide functions and powers of the Public Service Commission | Rejected (see 68A) | SCCA resolved to endorse Convention resolution and to reject Commission recommendation |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|---|---|----------------|---|--|--|
| 68D | Appointments within the Public Service | None | See 68 | Insert new Art to provide authority of the Public Service Commission to appoint employees of the Public Service, except members of the NPF | Rejected (see 68A) | SCCA resolved to endorse Convention resolution and to reject Commission recommendation |
| 68E | Nauru Police Force | None (currently Const makes no mention of police except in 69 to officer in charge of Nauru Police Force and to Police Service Board) | n/a | Insert new Article to provide that there shall be a Nauru Police Force and list functions and responsibilities (see p 144 + 148 C Rep) | Passed (see clause 37 PA Bill) (NOTE: renumbered 68A because of rejection of proposed 68A-68D) | SCCA resolved to adopt the new Art 68E as recommended by Commission and passed by Conv; renumbered 68A in Appendix 2 and SCCA added new clause (3) |
| 69 | Power of Parliament to establish Public Service Board and to make special provisions regarding Police | Parliament may make provision for a Public Service Board and/or a Police Service Board and may vest powers of Chief Sec in officer in charge of NPF in so far as they apply to NPF | n/a | Change heading to 'Police Service Board' and amend to provide that the Chair of the Public Service Commission shall sit on the Police Service Board; delete provisions for public service board (because of renumbering Public Service Commission) (see p 144-150 C Rep) | Commission recommended by Convention bc of rejection of proposed 68A-68D, but retained amendments that would make Police Service Board mandatory and vest powers in head of NPF; Passed as amended (see clause 38 PA Bill) | SCCA resolved to reject the amendments recommended by the Commission and to reject the amendments passed by the Convention, and made its own proposed amendments to Art 69 to provide Parliament may create a public service commission |
| 70 | Public Service Appeals Board | There shall be a Public Service Appeals Board which consists of the Chief Justice, who shall be Chair, one person appointed by Cabinet and one person elected by public officers as prescribed by law | n/a | The Commission recommended Art 70 be renamed 'Appeals' and that all clauses except (6) be repealed (abolishing the Public Service Appeals Board) and amend (6) to provide for appeals to the District Court (see p 145, 149-150 C Rep) | Rejected (because of rejection of 68A-68E) | SCCA rejected recommendation of Commission, and made its own proposed amendments to Art 70, inserting new line in clause (1) and also a new clause (9) to provide for appeals to District Court if Parliament ever creates a Public Service Commission |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|---|---|--|-------------------------------|-----------------------|---|
| 71 | Members of Nauruan Community to be Nauruan citizens | A person born before independence who is member of Nauruan Community is a Nauruan citizen | n/a (but see public opinion on 31 re dual citizenship) | None (see p 151-154 C Rep) | n/a | SCCA resolved to leave Article 71 as it is |
| 72 | Persons born on or after 31 January 1968 | A person born after independence is a Nauruan citizen if his parents are Nauruan citizens or if he is born of a marriage between a Nauruan and a Pacific Islander | n/a | None (see p 151-154 C Rep) | n/a | SCCA resolved to amend Art 72(1) to provide if one parent is Nauruan then child is Nauruan and to repeal clause (2) because it is superfluous if (1) is amended as proposed; and to make provision in transitional provisions to ensure amendment does not cause disadvantage |
| 73 | Persons born in Nauru on or after 31 January 1968 | A person born in Nauru after independence is a citizen if he would not, but for this provision, have the nationality of any country | n/a | None (see p 151-154 C Rep) | n/a | SCCA resolved to leave Article 73 as it is |
| 74 | Women married to Nauruan Citizens | A non-Nauruan woman married to a man who is a Nauruan citizen is entitled to become a Nauruan citizen | Some people suggested that this should be amended to apply equally to men and women who marry Nauruans | None (see p 151-154 C Rep) | n/a | SCCA resolved to amend Art 74 so that it applies equally to men and to women who marry Nauruan citizens, and to insert that entitlement to citizenship is "subject to such conditions as prescribed by law" |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--|--|--|---|--|--|
| 75 | Powers of Parliament regarding citizenship | Parliament can enact certain laws in relation to citizenship | n/a | None (see p 151-154 C Rep) | n/a | SCCA resolved to leave Article 75 as it is |
| 76 | Interpretation | This Article provides interpretations of terms under Citizenship Part of Const | n/a | None (see p 151-154 C Rep) | n/a | SCCA resolved to delete clause (1) of Article 76 as a consequential amendment related to deletion of 72(2) |
| 77 | Declaration of Emergency | President may declare a state of emergency where he is satisfied that a grave emergency exists whereby the security or economy of Nauru is threatened; lapses after 7 or 21 days unless approved by Parl and max time emergency can remain in force is 12 months | Broad support for reducing extent of President's unilateral powers; variety of suggestions as to how this could be achieved, incl requirement for Cabinet to declare emergency rather than President alone | Amend to require President to consult Cabinet, reduce period that declaration can stand w/o Parl approval from 21 to 14 days, and emergency may last no more than 3 months at a time; successive declarations require special Parliamentary majority (see p 159-166 C Rep) | Convention added new para (c) to clause (4) of Art 77 and approved all other Comm rec re Art 77; Passed as amended (see clause 39 PA Bill) | SCCA resolved to adopt the recommendation of the Commission (with one correction to wording) and to reject the proposed new para (4)(c) proposed by the Convention because it is superfluous in light of proposed para (b) of Clause (4) |
| 78 | Emergency Powers | During a period of emergency the President can make any orders he believes are reasonably necessary for the public's safety etc, incl orders that contravene rights in Part II or which are inconsistent w existing laws | Many people suggested amendment to protect rights during emergency | Amend Article 78 to provide certain non-derogable rights are protected during emergency and to prohibit amendment of const, dissolution of parl, suspension or dismissal of judiciary etc during emergency (see p 166-170 C Rep) | Passed (see clause 40 PA Bill) | SCCA resolved to adopt the recommendation of the Commission which was passed by the Convention, and made some minor amendments to the proposed wording (without changing the effect of the proposed amendments) |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--------------------------|---|--|---|--|---|
| 79 | Restriction on detention | Advisory Board to hear representations and make determinations in relation to persons who are detained during the time of emergency | n/a | None (see p 168-169 C Rep re reason no amendment proposed) | n/a | SCCA resolved to adopt some minor amendments to Article 79 to provide that a person must be heard by the Advisory Board in person or by any practicable means |
| 80 | Grant of Pardon | President may grant pardon, respite, substitution or commutation of sentence etc | Many people expressed the view that the power is too wide and has been abused in the past; suggestions varied from abolishing the right to grant pardon, to requiring President to act on advice and grant only on valid grounds | Change heading to ‘Prerogative of Mercy’ and amend to require President to act in accordance with the advice of a Committee on the Prerogative of Mercy, provisions re grounds and report etc (see p 171-175 C Rep) | Convention amended Comm Rec to remove (3) [members of the Ctee shall not be remunerated] and change President “shall act in accordance with advice” to “shall take advice into account” and related amdmnts; Passed as amended (see clause 41 PA Bill) | SCCA resolved to adopt the Commission recommendation that there should be a Committee on the prerogative of mercy, but to also adopt Convention proposal in relation to retaining discretion of President, and SCCA further resolved to make its own proposed amendments to parts of wording of the proposed amendments to Art 80 |
| 81 | Interpretation | Defines various terms used in Const and other rules re interpretation | Support for proposed amendments (see also Art 42) | Amend def of property, session, sitting (see p 99-104, 156 CR) | Passed (see clause 42 PA Bill) | SCCA resolved to adopt the recommendations of the Comm which were passed by the Conv, and also to make its own minor consequential amendments to Art 81 (see “chief sec”, “Minister”, 81(2)(a)(ia) and (6)) |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|----------------------------------|---|--|---|--|--|
| 82 | Parts, etc., of the Constitution | Headings of Parts and Schedules are part of the Constitution; preamble and marginal notes do not form part of the Constitution | Some support for making preamble part of Const; wide support for amending marginal note to Art 3 to clarify that it is not Preamble and does form part of the Constitution | Insert new clause to provide that the Preamble forms part of the Constitution and establishes principles upon which Const based (see p 10-12 C Rep) | Convention amended Comm rec to add the words "provided that the Preamble is not justiciable"; Passed as amended (see clause 43 PA Bill) NOTE: error in Bill, amendment to clause (4) to delete "preamble and the" has been omitted | SCCA resolved to adopt the Commission recommendation and the Convention resolution in relation to the proposed amendments to Art 82; note: Interrelated with proposed amendments to the Preamble and 54(3) |
| 83 | Right to mine phosphate | The right to mine phosphate vested in the Republic of Nauru except as otherwise provided by law; GoN not responsible for rehab of land mined before 1 July 1967 | Much discussion of mining rights, land rights and phosphate royalties; various suggestions for amendment, none supported by a majority | None (see p 155-158 C Rep) | Convention introduced own proposed amendment to insert in (1) "all lands in Nauru including phosphate deposits and other mineral deposits belong to the landowners" and to vest responsibility for rehab in RoN (see clause 44 PA Bill) | SCCA resolved to leave Article 83 as it is, and noted its endorsement of the Commission recommendation that there should be a thorough inquiry into land matters |
| 84 | Amendment of the Constitution | Const may be amended by law passed by two thirds of total number of members after bill has sat in Part for 90 days; Amendment to clauses listed in Sched 5 require approval by two thirds of votes cast at referendum | Two written submissions suggested all amendments should be subject to referendum | None (see p 188-192 C Rep) | Amend 'Clerk' to Secretary General' in accordance with amendt to Art 33 proposed by Convention; amend Schedule 5 to include Arts 63, 78 and 83 (see clauses 24 and 25 RA Bill) | SCCA resolved to leave Art 84 as it is (rejected name change of Clerk, see 33 above) and further resolved to propose that Articles 16A, 57A (Leadership Code), 58A, 59A, 78 and 84A be added to Schedule 5 of the Constitution |

| Article/ proposed Article | Subject matter | Existing provision | Public opinion | Commission recommendation | Convention resolution | SCCA resolution |
|---------------------------------|--|--|----------------------------------|---|--|--|
| 84A | Opportunity for periodic review and inclusive review process | None | Some support for periodic review | Insert new Art 84A to provide for referendum every 15 years on qu whether Const Conv should consider amdt to Const and if yes, incl process of review shall proceed (see p 191-192 C Rep) | Passed (see clause 45 PA Bill) | SCCA resolved to adopt the recommendation of the Commission that was passed by the Convention for the insertion of new Art 84A |
| 85 | Existing laws | Provides for the continuation of laws that existed prior to independence, subject to the Const and the authority of Parlt to repeal or amend | n/a | Repeal clauses (3), (4) and (6) (see p 193-194 C Rep) | Passed (see clause 23 RA Bill and clause 46 PA Bill) NOTE: error in clause 23 RA Bill – should refer only to clause (3) of Art 85 (see Sched 5) | SCCA resolved to repeal only clauses (4) and (6) of Article 85 |
| 86 | Adaptation of existing laws | Provides for the adaptation of existing laws | n/a | Retain (see p 194 C Rep) | n/a | SCCA resolved to leave Article 86 as it is |
| 87-100 | Transitional provisions | Various spent transitional provisions to provide for the shift from Administration to Independence | n/a | Repeal Articles 87 to 100 and the sixth schedule, and include Appendix to Const which notes repeal (see p 193-196 C Rep) | Passed (see clause 46 PA Bill and clause 23 RA Bill) | SCCA resolved to adopt the recommendation of the Commission which was passed by the Convention for the repeal of Arts 87-100 |
| new | Transitional provisions | n/a | n/a | n/a | n/a | SCCA resolved to adopt draft transitional provisions as set out in Appendix 2 |

Appendix 2

***proposed amended Constitution per Committee
recommendations with proposed changes marked***

Parliament of Nauru

Select Committee on Constitutional Amendment Bills

APPENDIX 2

DRAFT CONSTITUTION VERSION 2

Sunday 8th March 2009

Text showing the existing Constitution of Nauru
with all proposed amendments endorsed by the SCCA marked in the text
(proposed additions to the existing text are underlined; proposed deletions are struck out)

[Note: where the SCCA has endorsed the proposed repeal or deletion of existing paragraphs, clauses or Articles, any subsequent existing paragraph, clause or Article has not been renumbered, but would retain its existing number and its repeal would be noted in the margin of the amended Constitution, in accordance with standard amendment practice]

[Note: for ease of reference, the following text notes in a marginal comment every Part, Article and clause of the Constitution that would be subject to referendum if amendments were proposed, even where no amendment is currently proposed in relation to any particular Article or clause]

THE CONSTITUTION OF NAURU

~~WHEREAS we the people of Nauru acknowledge God as the almighty and everlasting Lord and the giver of all good things:~~

~~And Whereas we humbly place ourselves under the protection of His good providence and seek His blessing upon ourselves and upon our lives:~~

~~And Whereas we have declared that Nauru shall be a republic:~~

~~And Whereas a Constitutional Convention representing us has prepared a constitution for Nauru:~~

~~Now Therefore we the people of Nauru in our Constitutional Convention this twenty-ninth day of January, One thousand nine hundred and sixty-eight, do hereby adopt, enact and give to ourselves this Constitution to come into force on the thirty-first day of January, One thousand nine hundred and sixty-eight.~~

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 island home, is the living link between all generations of Nauruans. On this island we have built our own unique society.

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 to the right of people to participate in their government;

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 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 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.

ARRANGEMENT OF PARTS

- Part I. The Republic of Nauru and the Supreme Law of Nauru (Articles 1 ~~and 2~~ – 2A).
- Part IA. Custom and Language (Articles 2B-2C)
- Part II. Protection of Fundamental Rights and Freedoms (Articles 3 ~~2D~~-15).
- Part III. The President and the Executive (Articles 16-~~25~~ 24).
- Part IV. The Legislature (Articles 26-47).
- Part V. The Judicature (Articles 48-57).
- Part V(A). Leadership Code (Article 57A)
- Part V(B). Ombudsman (Articles 57B-57E)
- Part VI. Finance (Articles 58-67).
- Part VII. The Public Service (Articles ~~68-70~~ 67A-70A).
- Part VIII. Citizenship (Articles 71-76).
- Part IX. Emergency Powers (Articles 77-79).
- Part X. General (Articles 80-~~84~~ 84A).
- Part XI. Transitional Provisions (Articles 85-100 [new Arts to be inserted]).

PART I.

THE REPUBLIC OF NAURU AND THE SUPREME LAW OF NAURU

Comment [P1]: Note: BECAUSE Part I is listed in Schedule 5, all proposed changes and additions to Part I are subject to referendum

The Republic of Nauru

1. Nauru is an independent republic.

Supreme Law of Nauru

2. (1.) This Constitution is the supreme law of Nauru.
- (2.) A law inconsistent with this Constitution is, to the extent of the inconsistency, void.

Promotion of awareness of the Constitution

2A. (1.) The government shall promote public awareness of the Constitution in the Nauruan and English languages.

(2.) The government shall provide for the teaching of the Constitution in schools, government institutions and disciplined services.

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 shall 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.

PART II.

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

Comment [P2]: NOTE: because Part II is listed in Schedule 5, all proposed amendments and additions to Part II are subject to referendum.

Application

2D. (1.) The provisions of this Part apply to all laws and bind the legislature, the executive, the judiciary and all public officers.

(2.) A provision in this Part binds natural and legal persons if, and to the extent that, it is applicable, taking into account the nature of the right and the duty imposed by the right.

Preamble Right to Equality

3. (1.) All persons are equal under the law and are entitled to the equal protection of the law.

~~3. Whereas every person in Nauru is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following freedoms, namely:-~~

~~(a) life, liberty, security of the person, the enjoyment of property and the protection of the law;~~

~~(b) freedom of conscience, of expression and of peaceful assembly and association; and~~

~~(c) respect for his private and family life,~~

~~the subsequent provisions of this Part have effect for the purpose of affording protection to those rights and freedoms;~~

(2.) Every person in Nauru is entitled to the protection of fundamental rights and freedoms set out in this Part, subject to such limitations of that protection as are contained in those provisions not inconsistent with the provisions of this Part, being

limitations designed to ensure that the enjoyment of those rights and freedoms by a person does not prejudice the rights and freedoms of other persons or the public interest.

(3) No law and no executive or judicial action shall, either expressly, or in its practical application, discriminate against any person on the basis of gender, race, colour, language, religion, political or other opinion, national or social origin, place of birth, age, disability, economic status, sexual orientation, family status or descent.

(4) A law is not inconsistent with clause (1), (2) or (3) on the ground that it:

(a) appropriates revenues or other moneys for particular purposes;

(b) imposes a retirement age on a person who is the holder of a public office;

(c) imposes on persons who are not citizens a disability or restriction, not imposed on citizens;

(d) imposes a restriction on a person on the grounds of their opinions or beliefs if those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others;

(e) provides protection of indigenous land ownership to the exclusion of others;
or

(f) provides for the protection or advancement of a class of persons who are disadvantaged;
but only to the extent that the law is reasonable and justifiable in a free and democratic society.

Protection of right to life

4.-(1.) ~~Everyone has the right to life. No person shall be deprived of his life intentionally, except in execution of a sentence of a court following his conviction of an offence for which the penalty of deprivation of life is prescribed by law.~~

(2.) Deprivation of the life of a person is not a contravention of the provisions of clause (1.) of this Article where it results from the use, to such an extent and in such circumstances as is permitted by law, of such force as is reasonably justifiable in the circumstances of the case-

(a) for the defence of a person from violence;

~~(b) for the defence of public property;~~

(c) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(d) for the purpose of suppressing a riot, insurrection or mutiny.

Protection of personal liberty

5.-(1.) No person shall be deprived of his personal liberty, except as authorised by law in any of the following cases:-

- (a) in execution of the sentence or order of a court in respect of an offence of which he has been convicted;
- (b) for the purpose of bringing him before a court in execution of the order of a court;
- (c) upon reasonable suspicion of his having committed, or being about to commit, an offence;
- (d) under the order of a court, for his education during any period ending not later than the thirty-first day of December after he attains the age of eighteen years;
- (e) under the order of a court, for his welfare during any period ending not later than the date on which he attains the age of ~~twenty~~ sixteen years;
- (f) for the purpose of preventing the spread of disease;
- (g) in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of his care or treatment or the protection of the community; and
- (h) for the purpose of preventing his unlawful entry into Nauru, or for the purpose of effecting his expulsion, extradition or other lawful removal from Nauru.

(2.) A person who is arrested or detained shall be informed promptly of the reasons for the arrest or detention and shall be permitted to consult in the place in which he is detained a legal representative of his own choice.

(3.) A person who has been arrested or detained in the circumstances referred to in paragraph (c) of clause (1.) of this Article and has not been released shall be brought before a judge or some other person holding judicial office within a period of twenty-four hours after the arrest or detention and shall not be further held in custody in connexion with that offence except by order of a judge or some other person holding judicial office.

(4.) Where a complaint is made to the Supreme Court or any subordinate court that a person is unlawfully detained, the Supreme Court or the subordinate court shall enquire into the complaint and, unless satisfied that the detention is lawful, shall order that person to be brought before it and shall release him.

Protection from forced labour

6.-(1.) No person shall be required to perform forced labour.

(2.) For the purposes of this Article, "forced labour" does not include-

- (a) labour required by the sentence or order of a court;

(b) labour required of a person while he is lawfully detained, being labour that, though not required by the sentence or order of a court, is reasonably necessary for the purposes of hygiene or for the maintenance of the place at which he is detained;

(c) labour required of a member of a disciplined force in pursuance of his duties as such a member; or

(d) labour reasonably required as part of reasonable and normal communal or other civic obligations.

Protection from inhuman treatment

7. No person shall be subjected to torture or to treatment or punishment that is inhuman or degrading.

Protection from deprivation of property

8.-(1.) No person shall be deprived compulsorily of his property except in accordance with law for a public purpose and on just terms.

(1A.) The just terms of compulsory acquisition of property shall be agreed between the relevant parties, or, if no agreement can be reached, shall be decided by a Court, having regard to all relevant factors, including:

(a) the current use of the property;

(b) the history of the acquisition and use of the property;

(c) the importance of the public purpose for which the property is being acquired;

(d) the interests of those affected; and

(e) any hardship to the owner/s.

(2.) Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of the provisions of clause (1.) of this Article to the extent that that law makes provision-

(a) for the taking of possession or acquisition of any property-

(i) in satisfaction of a tax;

(ii) by way of penalty for breach of the law or forfeiture in consequence of breach of the law;

(iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

- (iv) in the execution of a judgment or order of a court in proceedings for the determination of civil rights or obligations;
 - (v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or is injurious to the health of human beings, animals or plants; or
 - (vi) in consequence of any law with respect to the limitation of actions; or
- (b) for the taking of possession or acquisition of any of the following property:-
- (i) property of a deceased person, a person of unsound mind or a person who has not attained the age of twenty years, for the purpose of administering it for the benefit of the person entitled to the beneficial interest in that property;
 - (ii) property of a person adjudged bankrupt or insolvent or of a body corporate in liquidation, for the purpose of administering it for the benefit of the creditors of the bankrupt or insolvent or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property;
 - (iii) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust; and
 - (iv) property held by a body corporate established by law for public purposes.

Protection of person and property

9.-(1.) No person shall without his consent be subject to the search of his person or property or the entry on his premises by other persons, and nor shall the privacy of communications be infringed.

(1A.) Evidence obtained pursuant to an invalid warrant, or obtained in a manner that in any other way contravenes this Article, cannot be used to support a criminal conviction.

(2.) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the provisions of clause (1.) of this Article to the extent that that law makes provision-

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, the development or utilisation of natural resources or the development or utilisation of any property for a purpose beneficial to the community;
- (b) that is reasonably required for protecting the rights or freedoms of other persons;

(c) that authorises an officer or agent of the Republic of Nauru or of a body corporate established by law for public purposes to enter, where reasonably necessary, on the premises of a person in order to inspect those premises or anything in or on them in relation to any tax or in order to carry out work connected with any property that is lawfully in or on those premises and belongs to the Republic or body corporate as the case may be; or

(d) that authorises, for the purpose of enforcing the judgment or order of a court, the search of a person or property by order of a court or entry upon any premises under such an order.

Provision to secure protection of law

10. (1.) No person shall be convicted of an offence which is not defined by law.

(2.) A person charged with an offence shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court.

(3.) A person charged with an offence-

(a) shall be presumed innocent until proved guilty according to law;

(b) shall be informed promptly in a language that he understands and in detail of the nature of the offence with which he is charged;

(c) shall be given adequate time and facilities for the preparation of his defence;

(d) shall be permitted to have without payment the assistance of an interpreter if he cannot understand or speak the language used at the trial of the charge;

(e) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice or to have a legal representative assigned to him in a case where the interests of justice so require and without payment by him in any such case if he does not, in the opinion of the court, have sufficient means to pay the costs incurred; and

(f) shall be afforded facilities to examine in person or by his legal representative the witnesses called before the court by the prosecution, and to obtain the attendance and carry out the examination of witnesses and to testify before the court on his own behalf, on the same conditions as those applying to witnesses called by the prosecution,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(4.) No person shall be convicted of an offence on account of any act or omission that did not, at the time it took place, constitute such an offence and no penalty shall be imposed for an offence that is more severe in degree or description than the maximum

penalty that might have been imposed for that offence at the time when it was committed.

(5.) No person who shows that he has been tried by a competent court for an offence and either convicted or acquitted shall again be tried for that offence, except upon the order of a superior court made in the course of appeal or review proceedings relating to the conviction or acquittal.

(6.) No person shall be tried for an offence for which he has been pardoned.

(7.) No person who is tried for an offence shall be compelled to give evidence at the trial.

(8.) No person shall be compelled in the trial of an offence to be a witness against himself.

(9.) A determination of the existence or extent of a civil right or obligation shall not be made except by an independent and impartial court or other authority prescribed by law and proceedings for such a determination shall be fairly heard and within a reasonable time.

(9A.) No law shall prevent a citizen bringing civil action against the Republic or its instrumentalities.

(10.) Except with the agreement of the parties thereto, proceedings of a court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11.) Nothing in clause (10.) of this Article shall prevent the court or other authority from excluding from the hearing of the proceedings persons, other than the parties thereto and their legal representatives, to such extent as the court or other authority-

(a) is by law empowered to do and considers necessary or expedient in the interests of public morality or in circumstances where publicity would prejudice the interests of justice, the welfare of persons under the age of twenty years or the protection of the private lives of persons concerned in the proceedings; or

(b) is by law empowered or required to do in the interests of defence, public safety or public order.

(12.) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the provisions of -

(a) paragraph (a) of clause (3.) of this Article by reason that that law places upon a person charged with an offence the burden of proving particular matters; or

(b) paragraph (f) of clause (3.) of this Article by reason that that law imposes reasonable conditions which must be satisfied if witnesses called to testify on behalf of a person charged with an offence are to be paid their expenses out of public funds.

Freedom of conscience

11.-(1.) A person has the right to freedom of conscience, thought and religion, including freedom to change his religion or beliefs and freedom, either alone or in community with others and in public or private, to manifest and propagate his religion or beliefs in worship, teaching, practice and observance.

(2.) Except with his consent, no person shall be hindered in the enjoyment of a right or freedom referred to in clause (1.) of this Article.

(3.) Except with his consent or, if he is under the age of twenty years, the consent of his parent or guardian, no person attending a place of education is required to receive religious instruction or to take part in or attend a religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own religion or belief.

(4.) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the provisions of this Article to the extent that that law makes provision which is reasonably required-

(a) in the interests of defence, public safety, public order, public morality or public health;

(b) for protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of some other religion; or

(c) for regulating the secular education provided in any place of education in the interests of the persons receiving instruction in that place.

Protection of freedom of expression

12.-(1.) A person has the right to freedom of expression.

(2.) Except with his consent, no person shall be hindered in the enjoyment of his right to freedom of expression.

(3.) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, the provisions of this Article to the extent that that law makes provision-

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence or maintaining the authority and independence of the courts;

(c) that is reasonably required for the purpose of regulating the technical administration or technical operation of telephony, telegraphy, posts, wireless

broadcasting or television or restricting the establishment or use of telephonic, telegraphic, wireless broadcasting or television equipment or of postal services; or

(d) that regulates the use of information obtained by public officers in the course of their employment.

Protection of freedom of assembly and association

13.-(1.) Persons have the right to assemble and associate peaceably and to form or belong to trade unions or other associations.

(2.) Except with his consent, no person shall be hindered in the enjoyment of a right referred to in clause (1.) of this Article.

(3.) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, the provisions of this Article to the extent that that law makes provision that is reasonably required-

(a) in the interests of defence, public safety, public order, public morality or public health; or

(b) for protecting the rights and freedoms of other persons.

Protection of right to privacy and personal autonomy

13A. All persons shall be free from unreasonable interference in personal choices that do not injure others and from unreasonable intrusions into their privacy.

Right to information

13B. (1.) Everyone has the right of access to information held by the government and its instrumentalities.

(2.) As soon as practicable after the commencement of this Article, Parliament shall enact a law to give effect to this right, including provision for the retention and secure storage of information.

(3.) Nothing contained in or done under the authority of a law passed in accordance with clause (2) of this Article, or any other law, shall be held to be inconsistent with or in contravention of clause (1) of this Article to the extent that that law makes provision:

(a) for fair and reasonable measures to alleviate the administrative and financial burden of the right to information on the government; or

(b) for the denial of public access to sensitive Cabinet information and sensitive information the disclosure of which could harm Nauru's foreign relations or national security or would be contrary to the public interest.

Right to health services

13C.(1.) Everyone has the right to access basic health services, including maternity and related care for every woman.

(2.) The government shall take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right, and to progressively improve the standard of health services.

Right to education

13D.(1.) Every person has the right to primary and secondary education.

(2.) The government shall take reasonable measures to make education accessible and to progressively improve the standard of public education services and may provide support to private education services.

Environmental protection

13E. Everyone has the right:

(a) to an environment that is not harmful to their health or well-being; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –

(i) minimise pollution and environmental degradation;

(ii) promote rehabilitation and conservation; and

(iii) secure ecologically sustainable development and use of natural resources including marine resources while promoting justifiable economic and social development.

Employment rights

13F. (1.) Every person has the right to fair labour practices.

(2.) Every citizen has the right to choose their trade, occupation or profession freely.

(3.) The practice of a trade, occupation or profession may be regulated by law.

(4.) Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of the provisions of clauses (1) or (2) of this Article to the extent that that law makes provision for the prohibition of the practice of any trade or profession in the interests of public safety, public order, public morality or public health.

Women's rights

13G. Every woman has the right to a reasonable period of maternity leave.

Children's rights

13H. Every child has the right:

- (a) to a name and nationality from birth;
- (b) to be cared for by parents, family or appropriate alternative care if removed from the family environment;
- (c) to basic nutrition, shelter, and basic health care services;
- (d) to be protected from maltreatment, neglect, abuse or degradation;
- (e) to be protected from exploitative labour practices;
- (f) not to be required or permitted to perform work or provide services that are inappropriate for a person of that child's age, or that place at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development;
- (g) not to be detained except as a measure of last resort, in which case, in addition to the rights the child enjoys under Articles 5 and 10, the child may be detained only for the shortest appropriate period of time, and has the right to be:
 - i.) kept separately from detained persons over the age of 18 years; and
 - ii.) treated in a manner, and kept in conditions, that take account of the child's age;
- (h) to have a legal practitioner assigned to the child by the government, and at government expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
- (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.

Rights of Persons with Disabilities

13 I. (1.) All persons with disabilities have the right to the full realisation of all human rights and fundamental freedoms without discrimination of any kind on the basis of disability.

(2.) The government shall take reasonable legislative and other measures, within its available resources, to facilitate the full and effective participation and inclusion in society of persons with disability, to make mobility aids and other assistive technologies accessible to persons with disability, and to improve the accessibility of all public facilities and services to persons with disability.

(3.) For the purposes of this Article, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Enforcement of fundamental rights and freedoms

14.-(1.) A right or freedom conferred by this Part is enforceable by the Supreme Court at the suit of:

(a) a person having an interest in the enforcement of that right or freedom;

(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 acting in the interests of its members.

(2.) The Supreme Court may make all such orders and declarations as are necessary and appropriate for the purposes of clause (1.) of this Article.

Interpretation

15. (1.) When interpreting this Part, a court shall promote the values that underlie a democratic society based on freedom and equality and shall, if relevant, have regard to public international law applicable to the protection of the rights and freedoms set out in this Part.

(2.) The provisions of this Part are not to be construed as denying or limiting other rights and freedoms that are not specified in this Part but that are recognised or conferred by common law, customary law or laws enacted by Parliament to the extent that they are not inconsistent with this Part.

(3.) The rights and freedoms protected in this Part may only be limited in accordance with the exceptions provided for in this Part. In determining whether a law that limits rights is reasonably required for a prescribed purpose, the Court shall take into account the relation between the limitation and its purpose, and any less restrictive means to achieve the purpose.

(4.) In this Part, unless the context otherwise requires-

“child” means a person under the age of eighteen years;

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"disciplined force" means-

(a) the Police Force; or

(b) any other body established by law for the purposes of defence or maintaining public safety or public order;

"legal representative" means a person entitled to be in or to enter Nauru and entitled by law to appear in proceedings before a court on behalf of a party to those proceedings;

"member", in relation to a disciplined force, includes a person who, under the law regulating the discipline of that force, is subject to that discipline;

~~"public property" includes property of a body corporate established by law for public purposes.~~

PART III.¹

THE PRESIDENT AND THE EXECUTIVE

The **President**

16. (1.) There shall be a President of Nauru, who shall be elected by ~~Parliament~~ the people of Nauru in accordance with Article 16A.

(1A.) The President shall be the Head of State and Head of Government.

(2.) A person is not qualified to be elected President unless he is a member of Parliament.

(3.) ~~The Speaker and the Deputy Speaker~~ are is not qualified to be elected President.

(3A.) The functions and powers vested in the President are vested in him by this Constitution, and include the following:

- to appoint Ministers to Cabinet – Art 19
- to preside at meetings of Cabinet – Art 22
- to assign to Ministers responsibility for government business – Art 23
- to advise the Speaker on the appointment of a date of election after dissolution – Art 40
- to advise the Speaker on the time for the beginning of Parliamentary sessions – Art 40
- to advise the Speaker on the prorogation of Parliament – Art 41(1)
- to initiate the process of dissolution of Parliament – Art 41(2)
- to appoint judges and acting judges – Arts 49(2) and 53
- to appoint the Ombudsman – Art 57B
- to appoint the Director of Audit – Art 66(1)
- to appoint the Director of Public Prosecutions – Art 70A
- to declare and revoke a state of emergency – Art 77
- to make emergency orders during a state of emergency – Art 78; and
- to exercise the prerogative of mercy – Art 80

(3B.) A person assuming the office of President shall, before entering upon the duties of that office, take and subscribe before the Chief Justice or the Speaker an oath in the form set out in the Seventh Schedule to this Constitution.

Comment [P3]: NOTE: proposed amendments to Article 16 are subject to REFERENDUM (and whilst proposed insertion of new Articles 16A, 16B, 16C and 16D technically does not require referendum, they are all largely contingent on the successful approval of proposed amendments to Art 16)

(4.) Except as otherwise provided in the Constitution, the President holds office until the election of another person as President.

~~(5.) Parliament shall elect a President~~

~~(a) whenever the office of President is vacant;~~

~~(b) at the first sitting of Parliament next following its dissolution; and~~

~~(c) whenever~~

~~(i) the President tenders the resignation of his office by writing under his hand delivered to the Speaker;~~

~~(ii) a resolution for the removal from office of the President and Ministers is approved under Article 24; or~~

~~(iii) the President ceases to be a member of Parliament otherwise than by reason only of its dissolution.~~

Election of President

16A. (1) Nomination for and an election to the office of President shall be held in such manner as is prescribed by this Article and, subject thereto, by an Act of Parliament and Standing Orders of Parliament –

(a) within the timeframe prescribed in clause (8) of Article 41 following a general election and before proceeding on any Bill; and

(b) subject to clause (1) of Article 16D and to clause (2) of Article 21B, whenever the office of President is vacant.

(2.) After the election of the Speaker and of the Deputy Speaker, Parliament shall nominate, from among members of Parliament, not fewer than two nor more than three candidates for election as President, and no other person may be a candidate.

(3.) An election for President shall be held twenty-eight days after the day on which a general election is held.

(4.) Every person who is entitled to vote in a general election is entitled to vote in an election of President.

(5.) A person elected to the office of President under this Article assumes that office on the day upon which he is declared elected.

(6.) A person may assume office as President after election on not more than three consecutive occasions.

Tenure of office

16B.(1.) The President, unless he ceases to be President by virtue of this Article, shall continue in office until the person elected at the next election of President after a general election assumes office.

(2.) The President shall vacate his office as President –

(a) if he resigns his office, by writing under his hand addressed to the Speaker;

(b) if a motion of no confidence in the President and Cabinet is passed in accordance with Article 24;

(c) if Parliament is dissolved pursuant to Article 61A;

(d) if he ceases to be a member of Parliament otherwise than by reason only of its dissolution; or

(e) if he is removed in accordance with Article 16C.

Removal from office on the grounds of incapacity

16C.(1.) Subject to clause (3) of this Article, where there is delivered to the Speaker a request that complies with clause (2) of this Article, for the question of the mental or physical capacity of the President to discharge the functions of his office to be investigated, the Speaker shall notify the Chief Justice who shall appoint a Medical Board consisting of not less than two persons who are qualified as medical practitioners under the law of Nauru or under the law of any other country in the Commonwealth, and the Board shall inquire into the matter and shall report to the Chief Justice stating the opinion of the Board whether or not the President is, by virtue of any infirmity of body or mind, incapable of discharging the functions of his office.

(2.) A request referred to in clause (1) of this Article –

(a) shall be in writing;

(b) shall be signed by a member of Parliament for each of at least three constituencies and by a number of members of Parliament which is at least one third of the total number of members of Parliament; and

(c) shall set out the reasons for the request;

and if the Speaker is satisfied that the request satisfies the requirements of this clause and that the reasons provided under paragraph (c) of this clause are valid, he shall notify the Chief Justice in accordance with clause (1) of this Article.

(3.) Where there is delivered to the Speaker a request for the question of the mental or physical capacity of the President to discharge the functions of his office to be investigated which complies with clause (2) of this Article except for the fact the Speaker is not satisfied that the stated reasons for the request are valid, he shall inform Parliament of the receipt of the request and shall put to Parliament the question of whether the Chief Justice ought to be notified in accordance with clause (1) of this Article, and if Parliament so resolves by a majority of the total number of members of

Parliament other than the President, the Speaker shall notify the Chief Justice accordingly.

(4.) Upon receiving the report of the Medical Board the Chief Justice shall give the President or his representative the right to be heard, and shall then make a determination as to whether the President is, by reason of infirmity of body or mind, incapable of discharging the functions of his office.

(5.) If the Chief Justice determines under clause (4) of this Article that the President is, by reason of infirmity of body or mind, incapable of discharging the functions of his office the President shall cease to hold office forthwith.

Vacancy in the office of President

16D. (1.) If the office of President becomes vacant by reason of the President ceasing to hold office by virtue of Article 24(1) or Article 61A of this Constitution, the Council of State shall perform the functions of President in accordance with Article 21B.

(2.) If the office of President becomes vacant for any other reason, the Deputy President shall assume the office of President.

(3.) If the office of President becomes vacant during any period when the office of Deputy President is also vacant, the Cabinet shall elect one of the Ministers to assume the office of President.

(4.) A person assuming the office of President under this Article shall advise the Speaker to call a session of Parliament to be held no later than two weeks after his assumption of the office of President, and a nomination for election to the office of President shall be held in the manner prescribed in Article 16A at the first sitting of that session and before proceeding on any Bill.

Executive Authority vests in the Cabinet

17.-(1.) The executive authority of Nauru is vested in a Cabinet constituted as provided by this Part and ~~the Cabinet has the general direction and control of the government of Nauru.~~

(2.) The Cabinet is collectively responsible to Parliament.

(3.) The executive authority so vested in the Cabinet shall include but shall not be limited to the following powers, functions, duties and responsibilities:

(a) the Cabinet shall have the general direction and control of the government of Nauru;

(b) the Cabinet shall recommend to Parliament such legislative proposals as it considers necessary or desirable to implement its policies and decisions; and, in particular, shall recommend to Parliament proposals for the raising of revenue and for the expenditure of public money in accordance with the provisions of Part VI;

Comment [P4]: NOTE: proposed amendments to Article 17 are SUBJECT TO REFERENDUM

(c) the Cabinet shall be accountable to Parliament for all public expenditure and for relating such expenditure to the appropriations made by Parliament or to other authority conferred by this Constitution or by law;

(d) the Cabinet shall be responsible for conducting the foreign affairs of Nauru, whether by treaty or otherwise; provided that Cabinet shall, upon ratifying any treaty, table the treaty in Parliament;

(e) the Cabinet shall be responsible for making such provision as may be reasonable and necessary for the security of Nauru;

(f) the Cabinet shall be responsible for establishing and maintaining such hospitals and other institutions and for providing such other services as may be reasonable and necessary for the public health;

(g) the Cabinet shall be responsible for making such provision as may be reasonable and necessary to provide educational opportunities for the people of Nauru;

(h) the Cabinet shall be responsible for establishing and maintaining such other institutions and services and for making such other provision as may be reasonable and necessary to achieve an adequate standard of living for the people of Nauru, to enable them to enjoy their legal rights, and to serve their economic, social and cultural welfare;

(i) subject to this Constitution and to any other law, in the exercise of its responsibilities, the Cabinet may make such contracts and other instruments on behalf of the Government of Nauru as it considers necessary.

(4.) No treaty or other international agreement which is finally accepted by or on behalf of the Republic of Nauru shall, of itself, have the force of law in the Republic.

The Cabinet

18.-(1.) The Cabinet consists of the President and the Ministers appointed under Article 19.

(2.) A member of the Cabinet shall, before entering upon the duties of his office, take and subscribe the oath set out in the First Schedule.

(3.) A member of the Cabinet shall not hold an office of profit in the service of Nauru or of a statutory corporation.

Appointment of Ministers

19.-(1.) Whenever a President is elected, he shall as soon as practicable appoint ~~four or five~~ a member of Parliament to be Deputy President and Minister, and three or four further members of Parliament to be Ministers of the Cabinet.

(2.) Whenever there are less than four Ministers the President shall appoint a member of Parliament to be a Minister but if Parliament is dissolved the President shall appoint a person who was a member immediately before the dissolution of Parliament.

(3.) Whenever there are four but not five Ministers the President may appoint a member of Parliament to be a Minister.

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

Vacation of office

20. A Minister ceases to hold office-

- (a) upon the election of a President;
- (b) upon resigning his office by writing under his hand delivered to the President;
- (c) upon being removed from office by the President; or
- (d) upon ceasing to be a member of Parliament otherwise than by reason only of its dissolution.

Provision for Minister to act as President

~~21. The Cabinet may appoint a Minister to perform the duties and exercise the functions of the President during any period during which the President is unable to act owing to illness, absence from Nauru or any other cause.~~

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.) Any person discharging the functions of the office of President by virtue of the preceding clause shall cease to discharge those functions if he is notified by the President that the President is about to resume those functions.

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; or
- (c) a new President is elected.

(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 incapable by reason of illness or accident 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 remove the Deputy President from office.

Council of State

21B(1.) In the circumstances described in clause (2) of this Article, a Council of State shall be formed which shall, subject to clauses (6) and (7) of this Article, consist of the persons for the time being holding or acting in the offices of Chief Secretary, who shall be Chairman, Chief Justice and Speaker.

(2.) In the event of the dissolution of Parliament in the circumstances specified in clause (1) of Article 24 or the circumstances specified in clause (1) of Article 61A of this

Constitution, the Council of State shall, subject to clauses (3), (4) and (5) of this Article and to clauses (2) and (3) of Article 61A, perform the functions of the President and the other executive functions of the government until the person elected at the next election of President following a general election assumes office.

(3.) During any period in which the Council of State is performing the functions of the President and the other executive functions of government, such functions shall be performed in a manner consistent with the conventional limitations on a caretaker government, and in particular the Council of State shall not be empowered to exercise:

(a) the power to appoint judges (but may appoint acting judges for a term of no more than three months);

(b) the power to appoint the Director of Public Prosecutions, the Ombudsman or the Director of Audit;

(c) the power to exercise the prerogative of mercy;

(d) the power to ratify treaties; or

(e) the power to enter contracts for the disposal or acquisition of major public assets.

(4.) If the Council of State assumes the functions of the President and the other executive functions of government under clause (2) of this Article, the Council of State shall as soon as practicable after assuming such functions, collectively exercise the functions of the President and Speaker under Article 39.

(5.) The Council of State may only exercise the emergency powers under Part IX of this Constitution by the unanimous agreement of all members.

(6.) If, at any time when it is necessary for the Council of State to be formed, the Chief Secretary is not a Nauruan citizen or is a citizen but is unavailable, the place of the Chief Secretary on the Council of State shall be filled by a person who is a Nauruan citizen and is deemed by the Chief Secretary to be a fit and proper person for the purpose, designated by the Chief Secretary, and, if Parliament has provided for a Public Service Commission, the provisions of clause (1) and of this clause shall apply to the Chairperson of the Public Service Commission as if that person was Chief Secretary.

(7.) If, at any time when it is necessary for the Council of State to be formed, the Chief Justice is not a Nauruan citizen or is a citizen but is unavailable, the place of the Chief Justice on the Council of State shall be filled by a person who is a Nauruan citizen and is deemed by the Chief Justice to be a fit and proper person for the purpose, designated by the Chief Justice.

(8.) If, during any period in which the Council of State is performing the functions of the President and the other executive functions of government there is a vacancy in a position on the Council of State by virtue of the unavailability or vacancy in the office of any of the members specified in clause (1), the remaining members of the Council of State shall appoint to fill that vacancy a person who is a Nauruan citizen and who is deemed by those remaining members to be a fit and proper person for the purpose.

Meetings of Cabinet

22.-(1.) The President shall preside at meetings of the Cabinet.

(2.) Subject to this Constitution, the Cabinet may regulate its own procedure.

Appointment of Ministers to Departments

23. (1.) The President may assign to himself or to a Minister responsibility for any business of the government of Nauru and may revoke or vary an assignment made under this Article.

(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.

~~Vote Motion of no confidence~~

~~24.-(1.) Where Parliament on a resolution approved by at least one half of the total number of members of Parliament resolves that the President and Ministers be removed from office on the grounds that it has no confidence in the Cabinet, 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.~~

(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.

Chief Secretary

Comment [P5]: Article 25 has been moved to Part VII as resolved by SCCA, and renumbered Art 67B (and amended as shown in 67B);

~~25. (1.) There shall be a Chief Secretary of Nauru, who shall be appointed by 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.) The Chief Secretary has such powers and functions as the Cabinet directs and as are conferred on him by this Constitution or by law.~~

PART IV.

THE LEGISLATURE**

** The name of the Legislature was changed from "the Legislative Assembly" to "Parliament" on 17 May 1968.

Establishment of legislature

Comment [P6]: Note: the Committee has resolved to leave Article 26 and 27 unchanged. Any amendment would require referendum.

26. There shall be a Parliament of Nauru.

Legislative powers of legislature

27. Subject to this Constitution, Parliament may make laws for the peace, order and good government of Nauru; laws so made may have effect outside as well as within Nauru.

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.

The Parliament

28.-(1.) Parliament shall consist of eighteen members or such greater number as is prescribed by law.

(2.) For the purpose of the election of members of Parliament, Nauru shall be divided into constituencies.

(3.) Unless otherwise prescribed by law, the constituencies and the number of members of Parliament to be returned by each of the constituencies are those described in the Second Schedule.

(4.) A person shall not be at the same time a member of Parliament for more than one constituency.

Comment [P7]: The Committee has resolved to adopt the Commission's recommendation that the number of members of Parliament be increased to 19, by providing for an extra member for Meneng, but this change will be effected by ordinary legislation and does not require constitutional amendment.

Electors for Parliament

29. Members of Parliament shall be elected in such manner as is prescribed by law, by Nauruan citizens who have attained the age of twenty years, or such younger age being an age not younger than eighteen years as may be prescribed by law.

Qualification for membership of Parliament

30. A person is qualified to be elected a member of Parliament if, and is not so qualified unless, he-

- (a) is a Nauruan citizen and has attained the age of twenty years; and
- (b) is not disqualified under this Constitution.

Disqualifications for membership of Parliament

31. No person is qualified to be elected a member of Parliament if he-

- (a) is an undischarged bankrupt or insolvent who has been declared bankrupt or insolvent according to law;
- (b) is a person certified to be insane or otherwise adjudged according to law to be mentally disordered;
- (c) ~~has been convicted and is under sentence or is subject to be sentenced for an offence punishable according to law by death or by imprisonment for one year or~~

~~longer is serving a sentence of imprisonment imposed by a court in Nauru or in any other part of the Commonwealth;~~

(d) does not possess such qualifications relating to residence or domicile in Nauru as are prescribed by law; ~~or~~

(e) holds an office of profit in the service of Nauru or of a statutory corporation; ~~being an office prescribed by law for the purposes of this paragraph; or~~

(f) has been prohibited by order of the Leadership Tribunal or any other court or Tribunal lawfully authorised to make such order, from holding a position of Leadership and if such order applies for a finite period, the period for which such order applies has not yet expired, and provided that 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.

Vacation of seats by members of Parliament

32.-(1.) A member of Parliament vacates his seat-

(a) upon the dissolution of Parliament next after his election;

(b) subject to clauses (1A) and (1B) of this Article, upon becoming disqualified under Article 31 to be elected a member of Parliament;

(c) upon resigning his seat by writing under his hand delivered, ~~in the case of a member other than the Speaker, to the Speaker and, in the case of the Speaker, to the Clerk of Parliament;~~

(d) if he is absent without leave of Parliament on every ~~day on which a meeting of Parliament is held during a period of two months~~ sitting day over three consecutive sessions of Parliament; or

(e) upon ceasing to be a Nauruan citizen.

(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.

(2.) In the event of the occurrence of a vacancy in the office of a member of Parliament, an election shall be held in the manner prescribed by law of a member to fill the vacant office.

Clerk of Parliament

33.-(1.) There shall be an Office of Parliament under the administration of a Clerk of Parliament, who shall be appointed by the Speaker.

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

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

(3.) The Clerk of Parliament may at any time resign his office by writing under his hand delivered to the Speaker and may be removed from office by the Speaker at any time.

(4.) Before or during the absence of the Clerk of Parliament, the Speaker may appoint a person who is not a member of Parliament to perform the functions of the Clerk during his absence.

(5.) 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 functions as may be required; and

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

Speaker of Parliament

34.-(1.) ~~Parliament shall, before it proceeds to the despatch of any other business, elect one of its members to be Speaker and, whenever the office of Speaker is vacant, shall not transact any business other than the election of one of its members to fill that office.~~ 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

~~(2.) A member of the Cabinet is not qualified to be elected Speaker.~~²

(3.) The Speaker ceases to hold office-³

(a) when Parliament first meets after a dissolution;

(b) upon ceasing to be qualified to be a member of Parliament ~~otherwise than by reason only of its dissolution;~~

(c) upon becoming a member of Parliament ~~the Cabinet;~~

(d) upon being removed from office by a resolution supported by at least two thirds of Parliament; or

(e) upon resigning his office by writing under his hand delivered to the Clerk of Parliament.

(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.

Deputy Speaker of Parliament

35.-(1.) Parliament shall, after the election of the Speaker and before it proceeds to ~~the despatch of~~ transact any other business, elect one of its members to be Deputy Speaker and, whenever the office of Deputy Speaker is vacant, shall, as soon as possible, elect one of its members to fill that office.

(2.) A member of the Cabinet is not qualified to be elected Deputy Speaker.⁴

(3.) The Deputy Speaker ceases to hold office⁵-

(a) when Parliament first meets after a dissolution;

(b) upon ceasing to be a member of Parliament otherwise than by reason only of its dissolution;

(c) upon becoming a member of the Cabinet;

(d) upon being removed from office by a resolution of Parliament; or

(e) upon resigning his office by writing under his hand delivered to the Clerk of Parliament.

(4.) The powers and functions conferred by this Constitution upon the Speaker shall, if there is no person holding the office of Speaker or if the Speaker is absent from a sitting of Parliament or is otherwise unable to exercise those powers and perform those functions, be exercised and performed by the Deputy Speaker and, if he is also absent or unable to exercise those powers and perform those functions, Parliament may elect one of its members to exercise those powers and perform those functions.

Determination on questions of membership of Parliament

36. Any question that arises concerning the right of a person to be or to remain a member of Parliament shall be referred to and determined by the Supreme Court.

Powers privileges and immunities of Parliament

37. The powers, privileges and immunities of Parliament and of its members and committees are, subject to this Constitution, such as are declared by Parliament.

Procedure in Parliament

38.-(1.) Parliament may make, amend or repeal rules and orders with respect to-

- (a) the mode in which its powers, privileges and immunities may be exercised and upheld; and
- (b) the conduct of its business and proceedings.

(2.) Parliament may act notwithstanding a vacancy in its membership and the presence or participation of a person not entitled to be present at, or to participate in, the proceedings of Parliament does not invalidate those proceedings.

General Elections for Parliament⁶

39. A general election of members of Parliament shall be held at such time within ~~two months~~ fifty days after a dissolution of Parliament as the Speaker in accordance with the advice of the President appoints, provided that it shall be held on a Saturday.

Sessions of Parliament⁷

40.-(1.) Each session of Parliament shall be held at such place and shall begin at such time, not being later than twelve months after the end of the preceding session ~~if Parliament has been prorogued, or twenty-one days after the last day on which a candidate at a general election is declared elected~~ subject to clause (1A) of this Article, not later than the second Tuesday after the day on which a general election is held if Parliament has been dissolved, as the Speaker in accordance with the advice of the President appoints.

(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 earlier.

(2.) Subject to the provisions of clause (1.) of this Article, the sittings of Parliament shall be held at such times and places as it, by its rules of procedure or otherwise, determines.

(3.) A session of Parliament ends when it is prorogued in accordance with Article 41 (1) 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.

Prorogation and dissolution of Parliament

Comment [P8]: Note: the proposed amendments to Article 41 are not subject to referendum, because only clause (7) of Article 41 is listed in Schedule 5

41.-(1.) The Speaker, in accordance with the advice of the President, may at any time prorogue Parliament.

(2.) The Speaker shall, if he is advised by the President to dissolve Parliament, refer the advice of the President to Parliament as soon as practicable and in any case before the expiration of fourteen days after his receipt of the advice.⁸

(3.) For the purposes of clause (2.) of this Article, and notwithstanding Article 40, the Speaker shall, if necessary, appoint a time for the beginning of a session, or for a sitting, of Parliament.

(4.) Where the Speaker has, under clause (2.) of this Article, referred the advice of the President to Parliament, ~~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,~~ he shall dissolve Parliament on the seventh day after that date.

(5.) The President may withdraw his advice at any time before the Speaker has dissolved Parliament and where the President so withdraws his advice, subject to clause (1) of Article 24 and to clause (1) of Article 61A, the Speaker shall not dissolve Parliament.

~~(6.) Notwithstanding the preceding provisions of this Article, where a resolution for the removal from office of the President and Ministers is approved under Article 24, the Speaker shall not~~

~~(a) prorogue Parliament; or~~

~~(b) dissolve Parliament,~~

~~during the period of seven days after the day on which the resolution is approved.~~

(7.) Parliament shall, unless sooner dissolved, continue for a period of three years from and including the date of the first sitting of Parliament after any dissolution and shall then stand dissolved.

(8.) If at the conclusion of the second Tuesday 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 an election of President, Parliament shall stand dissolved.

Sessions of Parliament at request of one-third of members

42.-(1.) Where-

(a) ~~Parliament is not~~ Twenty-eight days have elapsed since Parliament was in session; and

(b) there is delivered to the Speaker a request that complies with clause (2.) of this Article for the holding of a session,⁹

the Speaker shall appoint a time for the holding of a session of Parliament, being a time before the expiration of fourteen days after the request is delivered.

(2.) A request referred to in clause (1.) of this Article¹⁰-

(a) shall be in writing;

(b) shall be signed by a member of Parliament for each of at least three constituencies and by a number of members of Parliament which is at least one-third of the total number of members of Parliament; and

(c) shall set out particulars of the business proposed to be dealt with at the session of Parliament.

Oath of members of Parliament

43.-(1.) A member of Parliament shall, before taking his seat, take and subscribe before Parliament the oath set out in the Third Schedule, ~~but a member may before taking and subscribing that oath take part in electing the Speaker.~~

~~(2.) The Speaker shall, if he has not taken and subscribed the oath set out in the Third Schedule, take and subscribe that oath before entering upon the duties of his office.~~

Speaker to preside

44. The Speaker shall preside at a sitting of Parliament 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.

Duties of Speaker

44A. The duties of the Speaker include:

- (a) presiding over the proceedings of Parliament;
- (b) convening sessions or sittings of Parliament as required under the Constitution;
- (c) proroguing or dissolving Parliament;
- (d) issuing writs for elections;
- (e) appointing, disciplining or removing the Clerk of Parliament;
- (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 law or Standing Orders of Parliament.

Quorum

45. No business shall be transacted at a sitting of Parliament if the number of its members present, other than the person presiding at the sitting if a member is presiding, is less than one-half of the total number of members of Parliament.

Voting

46.-(1.) Except as otherwise provided by this Constitution, a question before Parliament shall be decided by a majority of the votes of its members present and voting.

~~(2.) The Speaker or other member presiding in Parliament shall not vote unless on a question the votes are equally divided in which case he has and shall exercise a casting vote~~ If there is an equality of votes, the person presiding does not have a casting vote and the question concerned is deemed to be lost.

~~(3.) If the Deputy Speaker 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.~~

Enactment of laws

47. A proposed law becomes law on the date when the Speaker certifies that it has been passed by Parliament.

PART V.

THE JUDICATURE

Supreme Court of Nauru

48.-(1.) ~~There shall be a Supreme Court of Nauru, which shall be a superior court of record.~~ The judicial power of Nauru shall vest in the Supreme Court, and in such other courts as Parliament may establish by law.

(2.) The Supreme Court ~~has~~ shall be a superior court of record and shall have, in addition to the jurisdiction conferred on it by this Constitution, such jurisdiction as is prescribed by law.

(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 the law.

Chief Justice and Judges of Supreme Court

49.-(1.) The Supreme Court consists of a Chief Justice and, subject to the requirements of clause (2) of Article 57, such number, ~~if any~~, of other judges as is prescribed by law.

(2.) The judges of the Supreme Court appointed under this Article and under Article 53 shall be appointed by the President after consultation with Cabinet.¹¹

~~(3.) A person is not qualified to be appointed a judge of the Supreme Court unless he 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. A person shall not be qualified for appointment as a judge of the Supreme Court under this Article unless-~~

(a) that person is qualified by education, experience and character to discharge judicial office, and

(i) 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

(ii) that person holds or has held high judicial office in any common law country in the Pacific region or in any designated country; or

(iii) that person 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.

(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.

Vacation of office

50.-(1.) A judge of the Supreme Court ceases to hold office on attaining the age of ~~sixty-five~~ seventy-five years or, if a greater age is prescribed by law for the purposes of this Article, on attaining that greater age.

(2.) A law that prescribes a greater age for the purposes of this Article may provide that that law applies only to specified judges.

Removal from office and resignation

51.-(1.) A judge of the Supreme Court may not be removed from office except on a resolution of Parliament approved by not less than two-thirds of the total number of members of Parliament praying for his removal from office on the ground of proved incapacity or misconduct.

(2.) A judge of the Supreme Court may resign his office by writing under his hand delivered to the President.¹²

Oath of office

52. A judge of the Supreme Court shall not enter upon the duties of his office unless he has taken and subscribed the oath set out in the Fourth Schedule.

Acting judges

53.-(1.) If the office of Chief Justice is vacant or if the Chief Justice is for any reason unable to perform the duties of his office then until a person has been appointed to and has assumed the duties of that office or until the person holding that office has resumed those duties, as the case may be, those duties shall be discharged by such one of the other judges of the Supreme Court as is designated by the President or, if there is no other judge of the Supreme Court, by a person designated by the President, being a person who is qualified to be appointed a judge of the Supreme Court.¹³

(2.) If the office of a judge of the Supreme Court other than the office of the Chief Justice is vacant or if the person holding that office is for any reason unable to perform the duties of his office or if the state of business in the Supreme Court so requires, the

President may appoint a person qualified to be appointed a judge of the Supreme Court to act as a judge of the Supreme Court and a person so appointed may act as a judge of the Supreme Court notwithstanding that he has attained the age of ~~sixty-five~~ seventy-five years or, if a greater age is prescribed by law for the purposes of Article 50, has attained that greater age.¹⁴

(3.) The provisions of clause (2.) of this Article apply in respect of the office of Chief Justice if at a time when the office of the Chief Justice is vacant no other person holds office as a judge of the Supreme Court.

(4.) A person appointed under clause (2.) of this Article to act as a judge of the Supreme Court shall continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the President.¹⁵

Matters concerning the Constitution

54.-(1.) The Supreme Court shall, to the exclusion of any other court, have original jurisdiction to determine any question arising under or involving the interpretation or effect of any provision of this Constitution.

(2.) Without prejudice to any appellate jurisdiction of the Supreme Court, where in any proceedings before another court a question arises involving the interpretation or effect of any provision of this Constitution, the cause shall be removed into the Supreme Court, which shall determine that question and either dispose of the case or remit it to that other court to be disposed of in accordance with the determination.

(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.) Subject to this Constitution, if any person alleges that any provision of this Constitution has been contravened and that his interests are being or are likely to be affected by such contravention, that person may apply to the Supreme Court for a declaration and for relief under this section. An application under this clause is without prejudice to any other action with respect to the same matter which is lawfully available.

(5.) The Supreme Court shall have jurisdiction, in any application made by any person in pursuance of clause (4) or in any other proceedings lawfully brought before the Court, to determine whether any provision of this Constitution has been contravened and to make a declaration accordingly;

Provided that the Supreme Court shall not make a declaration in pursuance of the jurisdiction conferred by this clause unless it is satisfied that the interests of the person by whom the application under clause (4) is made or, in the case of other proceedings before the Court, a party to those proceedings, are being or are likely to be affected.

(6.) Where the Supreme Court makes a declaration in pursuance of clause (4) that any provision of the Constitution has been contravened and the person by whom the application under clause (4) was made or, in the case of other proceedings before the Court, the party in those proceedings in respect of whom the declaration is made, seeks relief, the Supreme Court may grant to that person such remedy including compensation, being a remedy available against any person in any proceedings in the Supreme Court under any law in force in Nauru as the Court considers appropriate.

The Cabinet may refer questions on Constitution to the Supreme Court¹⁶

55. The President or a Minister may, in accordance with the approval of the Cabinet, refer to the Supreme Court for its opinion any question concerning the interpretation or effect of any provision of this Constitution which has arisen or appears to the Cabinet likely to arise, and the Supreme Court shall pronounce in open court its opinion on the question.

Subordinate courts

56. There shall be such subordinate courts as are established by law and those courts possess such jurisdiction and powers as are prescribed by law.

Appeals

~~57. (1.) Parliament may provide that an appeal lies as prescribed by law from a judgment, decree, order or sentence of the Supreme Court constituted by one judge to the Supreme Court constituted by not less than two judges.~~

~~(2.) Parliament may provide that an appeal lies as prescribed by law from a judgment, decree, order or sentence of the Supreme Court to a court of another country.~~

Appellate Division of the Supreme Court

57. (1) The Appellate Division of the Supreme Court has such jurisdiction and powers to hear and determine appeals from the Trial and Constitutional Divisions of the Supreme Court and from subordinate courts as may be conferred on it by this Constitution and as prescribed by law.

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

(3) (a) Appeals in criminal matters lie as of right.

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

PART V(A)

LEADERSHIP CODE

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;
- (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 law 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, 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.

PART V(B)

OMBUDSMAN

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.) 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 vacate his office at the expiration of five years from the date of his appointment.

(5.) The Ombudsman may be removed from office only on 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.

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 law 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.) 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, and no proceedings of the Ombudsman shall be called in question in any court of law.

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

(3.) 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.

(4.) 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.

(5.) 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 to the President and to the head of the public authority or department directly concerned.

(6.) The report of the Ombudsman shall be public unless he decides to keep the report, or

parts of it, 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.

(7.) 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.

PART VI.

FINANCE

Treasury Fund

Comment [P9]: NOTE: the proposed change to Art 58 is subject to approval by referendum.

58. All revenues and other moneys raised or received by Nauru, or by a public officer or member of Parliament for or on behalf of, or for the benefit of, Nauru, not being revenues or other moneys payable by law into another fund established for a specific purpose, shall be paid into and form a Treasury Fund.¹⁷

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.

Withdrawals from Treasury Fund and public funds

Comment [P10]: NOTE: amendment of Art 59 would require referendum, but no change has been adopted by SCCA.

59.-(1.) No moneys shall be withdrawn from the Treasury Fund except to meet expenditure that is charged upon the Treasury Fund by this Constitution or in accordance with law.

(2.) No moneys shall be withdrawn from any fund referred to in Article 58 other than the Treasury Fund except in accordance with law.

(3.) A proposed law for the withdrawal of moneys from the Treasury Fund or any other fund referred to in Article 58 shall not receive the certificate of the Speaker under Article 47 unless the purpose of the withdrawal has been recommended to Parliament by the Cabinet.¹⁸

(4.) The Cabinet shall cause to be prepared and laid before Parliament before the date of commencement of each financial year (or if, in respect of a particular financial year, Parliament, by resolution, determines a later date, before that later date), estimates of the revenues and expenditure of Nauru for that year.¹⁹

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.

Taxation

Comment [P11]: Note: no change is proposed to Art 60. Any change would require referendum.

60. No tax shall be raised except as prescribed by law and a proposed law for the imposition of a tax shall not receive the certificate of the Speaker under Article 47 unless the imposition of the tax has been recommended to Parliament by the Cabinet.²⁰

Withdrawal of moneys in advance of appropriation law

61.-(1.) ~~If the appropriation law in respect of a financial year has not received~~ Subject to clause (1A) of this Article, if Cabinet anticipates that the annual appropriation law will not receive the certificate of the Speaker under Article 47 ~~on or before the twenty first day before the commencement of that the financial year,~~ the Cabinet may, in accordance with clause (2.) of this Article, recommend to Parliament a proposed law authorising 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 after the commencement of that financial year until the expiration of three months or the coming into operation of the annual appropriation law, whichever is the earlier.²¹

(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.

(2.) A recommendation by the Cabinet referred to in clause (1.) of this Article shall be in writing delivered to the Speaker ~~not later than the fourteenth day~~ before the commencement of the financial year and the Speaker shall, on receiving the recommendation, lay it before Parliament as soon as practicable.²²

(3.) For the purposes of clause (2.) of this Article, and notwithstanding Article 40, the Speaker shall, if necessary, appoint a time for the beginning of a session, or for a sitting, of Parliament.²³

(4.) Subject to clause (5) of this Article, where the Cabinet has recommended a proposed law under clause (1.) of this Article and neither the appropriation law nor that proposed law has come into operation on or before the commencement of that financial year, the Cabinet may authorise the withdrawal of moneys in accordance with that proposed law but the amount of moneys so 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.²⁴

(5.) Subject to clauses (4) and (7) of Article 61A, there shall be no more than one authorised withdrawal of moneys under clause (4) of this Article in any financial year.

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 Article 61(1) 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.

Long Term Investment Fund

62.-(1.) There shall be a Long Term Investment Fund constituted by the moneys that immediately before the commencement of this Constitution constituted a fund called the Nauruan Community Long Term Investment Fund and by such other moneys as are appropriated by law for payment into the fund or are paid into the fund as provided by clause (2.) of this Article.

(2.) Moneys constituting the Long Term Investment Fund may be invested as prescribed by law and income derived from moneys so invested shall be paid into the fund.

(3.) Notwithstanding the provisions of Article 59, no moneys shall be withdrawn from the Long Term Investment Fund (otherwise than for investment under clause (2.) of this Article) until the recovery of the phosphate deposits in Nauru has, by reason of the depletion of those deposits, ceased to provide adequately for the economic needs of the citizens of Nauru.

Phosphate royalties

63.-(1.) Parliament may provide for the establishment of a fund for the benefit of persons from whose land phosphate deposits have been recovered and for the payment into that fund of amounts from the Treasury Fund and for the payment of moneys out of that fund to those persons.

Comment [P12]: Article 62 is an Article that requires the approval of referendum to be amended. No amendment is proposed.

(2.) Parliament may provide for the payment from the Treasury Fund to persons from whose land phosphate deposits have been recovered of such royalties as are prescribed by law.

(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.

Comment [P13]: Note: this proposed amendment will provide additional protection for residual trust funds held by NPRT; when new trust is established, may be necessary to further amend Art 63 to ensure that it covers the new funds

Contingencies Fund

64.-(1.) Parliament may provide for the establishment of a Contingencies Fund and for authorising the Cabinet, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that fund for the purposes of that expenditure.²⁵

(2.) Where an advance is made from the Contingencies Fund, provision may be made by law for replacing the amount so advanced.

Remuneration of certain officers

Comment [P14]: Note: the proposed amendment of Article 65 is subject to referendum

65.-(1.) There shall be paid to the holders of the offices to which this Article applies such salary and such allowances as are prescribed by law.²⁶

(2.) The salaries and allowances payable to the holders of the offices to which this Article applies are a charge on the Treasury Fund.

(3.) The salary and allowances payable to the holder of an office to which this Article applies and his other conditions of service shall not be altered to his disadvantage during the term of his appointment.

(4.) This Article applies to the office of judge of the Supreme Court, Speaker of Parliament, Clerk of Parliament, Director of Public Prosecutions, Ombudsman and Director of Audit.

Director of Audit

~~66.-(1.) There shall be a Director of Audit, whose office is a public office.~~

~~(2.) The powers and functions and the conditions of service of the Director of Audit are, subject to this Constitution, as prescribed by law.~~

~~(3.) The Director of Audit shall not hold or act in any other public office during his period of service and a person who has held the office of Director of Audit shall not hold or act in any public office during the period of three years after he ceases to be Director of Audit.~~

~~(4.) The Director of Audit may resign his office at any time by writing under his hand~~

~~delivered to the Speaker.~~

~~(5.) The Director of Audit may not be removed from office except on a resolution of Parliament approved by not less than two thirds of the total number of members of Parliament praying for his removal from office on the ground of proved incapacity or misconduct.~~

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 may at any time resign his office by writing under his hand delivered to the Speaker, but he shall not be removed from office except on a resolution of Parliament approved by not less than two thirds of the total number of members of Parliament praying for his removal from office on the ground of proved incapacity or misconduct.

(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 act in 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 act in any public office during the period of three years after he ceases to be Director of Audit.

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 the year, together with certified copies of the statements and 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.

(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.

Public debt

67.-(1.) All debt charges for which Nauru is liable are a charge on the Treasury Fund.

(2.) For the purposes of this Article, debt charges include interest, sinking fund charges, repayment or amortisation of debt and all expenditure in connexion with the raising of loans and the service and redemption of the debt thereby created.

(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.

PART VII.***

*** Part VII., Articles 68-70 substituted 17.5.68

THE PUBLIC SERVICE

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 shall 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

~~25~~ 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 ~~the Cabinet directs and 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.

Appointments etc., in the Public Service

68.-(1.) Except as otherwise provided by law under Article 69, there is vested in the Chief Secretary the power -

- (a) to appoint, subject to clause (3.) of this Article, persons to hold or act in offices in the Public Service;
 - (b) to exercise disciplinary control over persons holding or acting in such offices;
- and

(c) to remove such persons from office.

(2.) The Chief Secretary may, by instrument in writing under his hand, delegate to a public officer power to exercise disciplinary control over persons holding or acting in such public offices, other than offices referred to in clause (3.) of this Article, as the Chief Secretary specifies in the instrument and such delegation is subject to such conditions, if any, as the Chief Secretary specifies in the instrument.

(3.) The Chief Secretary may not exercise his power under paragraph (a) of clause (1.) of this Article in relation to the office of a person in charge of a department of government and such other offices as are prescribed by law except in accordance with the approval of the Cabinet.

(4.) The Chief Secretary shall report to the Cabinet on ~~such matters relating to the exercise of the powers under this Article as are prescribed by law~~ at least once a year and the Cabinet shall cause a copy of the report to be laid before Parliament.

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.

Power of Parliament to establish Public Service Commission Board and to make special provisions regarding police

69.-(1.) Parliament may make provision for either or both of the following:-

(a) vesting the powers and functions of the Chief Secretary under clauses (1.) and (2.) of Article 68, and such other powers in relation to the public service as are not inconsistent with Article 67B, in a Public Service Commission Board consisting of the Chief Secretary, who shall be Chairman, and not less than two other persons who are not members of Parliament; and

(b) subject to clause (2.) of this Article, vesting in the public officer in charge of the Nauru Police Force the powers and functions of the Chief Secretary under clause (1.) of Article 68, in so far as they apply to or in respect of public officers in the Nauru Police Force.

(2.) Where Parliament makes provision under paragraph (b) of clause (1.) of this Article

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(a) it shall also make provision for establishing a Police Service Board consisting of not less than three persons, who are not members of Parliament, of whom one shall be the Chief Justice, who shall be Chairman, one shall be the Chief

Secretary, and one shall be a person elected by members of the Nauru Police Force in such manner and for such term as are prescribed by law;

(b) the power of the public officer in charge of the Nauru Police Force to appoint persons to hold or act in offices in the Nauru Police Force shall be subject to such consent, if any, of the Police Service Board as is required by law; and

(c) the Chief Secretary or, where Parliament has made provision for a Public Service Commission Board, the Public Service Commission Board, shall not exercise the powers or perform the functions under clauses (1.) and (2.) of Article 68 in so far as they apply to or in respect of public officers in the Nauru Police Force.

(3.) An appeal lies to the Police Service Board from a decision of the public officer in charge of the Nauru Police Force under this Article to remove a public officer from office or to exercise disciplinary control over a public officer at the instance of the public officer in respect of whom the decision is made.

(4.) The Police Service Board shall exercise such other powers and functions as are conferred on it by law and shall, subject to this Article and any law, regulate its own procedure.

(5.) Except as otherwise provided by law, no appeal lies from a decision of the Police Service Board.

Public Service Appeals Board

70.-(1.) Subject to clause (9) of this Article, there shall be a Public Service Appeals Board which shall consist of the Chief Justice, who shall be Chairman, one person appointed by the Cabinet and one person elected by public officers as prescribed by law.

(2.) A member of Parliament is not qualified to be a member of the Public Service Appeals Board.

(3.) A member of the Public Service Appeals Board ceases to hold office-

(a) upon being elected a member of Parliament;

(b) if he was appointed by the Cabinet, upon being removed from office by the Cabinet or upon resigning his office by writing under his hand delivered to the President; or

(c) if he was elected by public officers, upon the expiration of the term for which he was elected, upon being removed from office in the manner prescribed by law or upon resigning his office by writing under his hand delivered to the Chief Secretary.

(4.) Whenever a member of the Public Service Appeals Board, other than the Chief Justice, is unable for any reason or ineligible under clause (5.) of this Article to perform the duties of his office, the Cabinet may-

(a) if the member was appointed by it, appoint a person who is not a member of Parliament; or

(b) if the member was elected by public officers, appoint, subject to such conditions, if any, as are prescribed by law, a person,

to act as a member of the Public Service Appeals Board during the period of the inability or ineligibility of the member.

(5.) Parliament may provide that a member of the Public Service Appeals Board, other than the Chief Justice, is ineligible to act in relation to such matters as are prescribed by law.

(6.) Except where an appeal lies to the Police Service Board under Article 69, an appeal lies to the Public Service Appeals Board from a decision to remove a public officer or to exercise disciplinary control over a public officer at the instance of the public officer in respect of whom the decision is made.

(7.) The Public Service Appeals Board shall exercise and perform such other powers and functions as are conferred on it by law and shall, subject to this Constitution and any law, regulate its own procedure.

(8.) Except as otherwise provided by law, no appeal lies from a decision of the Public Service Appeals Board.

(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 Parliament shall provide for the appeal of decisions of the Public Service Commission to the District Court or such other subordinate court as it may prescribe.

Director of Public Prosecutions

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

(2.) The Director of Public Prosecutions shall be a person who is qualified to be appointed as a judge of the Supreme Court.

(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

Comment [P15]: This proposed new Article was formerly Art 57B, but has been renumbered as a result of being moved into Part VII (in Appendix 1 refer to 57B in first column)

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 may be removed from office by Cabinet, provided that he shall not be removed from office except for gross misconduct, incapacity or professional incompetence, and may at any time resign 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.

PART VIII.

CITIZENSHIP

Members of Nauruan community to be Nauruan citizens

71. A person who on the thirtieth day of January One thousand nine hundred and sixty-eight was included in one of the classes of persons who constituted the Nauruan Community within the meaning of the *Nauruan Community Ordinance* 1956-1966 of Nauru is a Nauruan citizen.

Persons born on or after 31 January 1968

72.-(1.) A person born on or after the thirty-first day of January One thousand nine hundred and sixty-eight is a Nauruan citizen if ~~his parents were~~ either of his parents was a Nauruan citizens at the date of his birth.

~~(2.) A person born on or after the thirty first day of January One thousand nine hundred and sixty eight is a Nauruan citizen if he is born of a marriage between a Nauruan citizen and a Pacific Islander and neither parent has within seven days after the birth of that person exercised a right prescribed by law in the manner prescribed by law to determine that that person is not a Nauruan citizen.~~

Comment [P16]: NOTE: this amendment proposed by SCCA is SUBJECT TO REFERENDUM

Persons born in Nauru on or after 31 January 1968

73. A person born in Nauru on or after the thirty-first day of January One thousand nine hundred and sixty-eight is a Nauruan citizen if, at the date of his birth he would not, but for the provisions of this Article, have the nationality of any country.

~~Women~~ Persons married to Nauruan Citizens

74. ~~A woman~~ Any person, not being a Nauruan citizen, who is married to a Nauruan citizen or has been married to a ~~man~~ person who was, throughout the subsistence of the marriage, a Nauruan citizen, is entitled, ~~upon making application in such manner as is prescribed by law, subject to such conditions as prescribed by law,~~ to become a Nauruan citizen.²⁷

Powers of Parliament regarding citizenship

75.-(1.) Parliament may make provision for the acquisition of Nauruan citizenship by persons who are not otherwise eligible to become Nauruan citizens under the provisions of this Part.

(2.) Parliament may make provision for depriving a person of his Nauruan citizenship being a person who has acquired the nationality of another country otherwise than by marriage.

(3.) Parliament may make provision for depriving a person of his Nauruan citizenship being a person who is a Nauruan citizen otherwise than by reason of Article 71 or Article 72.

(4.) Parliament may make provision for the renunciation by a person of his Nauruan citizenship.

Interpretation

76.-(1.) In this Part, "~~Pacific Islander~~" has, except as otherwise prescribed by law, the same meaning as in the ~~Nauruan Community Ordinance 1956-1966~~ of Nauru.

(2.) A reference in this Part to the citizenship of the parent of a person at the date of that person's birth shall, in relation to a person one of whose parents died before the birth of that person, be construed as a reference to the citizenship of the parent at the time of the parent's death.

PART IX.

EMERGENCY POWERS

Declaration of an emergency

77.-(1.) If the President is satisfied, after consulting Cabinet, that a grave emergency exists whereby the security or economy of Nauru is threatened he may, by public proclamation, declare that a state of emergency exists.²⁸

(2.) A declaration of emergency lapses-

(a) if the declaration is made when Parliament is sitting, at the expiration of seven days after the date of publication of the declaration; or

(b) ~~in any other case~~ when Parliament is not sitting, at the expiration of ~~twenty-one~~ fourteen days after the date of publication of the declaration,

unless it has in the meantime been approved by a resolution of Parliament approved by a majority of the members of Parliament present and voting.

(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. Any successive continuation 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.

(3.) The President may at any time revoke a declaration of emergency by public proclamation.

(4.) (a) Where a declaration of a state of emergency is made and Parliament is not sitting, 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 because the term of Parliament has ended, the members of the dissolved Parliament shall be called by the President to a special session and remain in session during the entire period of the state of emergency or until the election of a new Parliament.

(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.

~~(4.) A declaration of emergency that has been approved by a resolution of Parliament under clause (2.) of this Article remains, subject to the provisions of clause (3.) of this Article, in force for twelve months or such shorter period as is specified in the resolution.~~

~~(5.) A provision of this Article that a declaration of emergency lapses or ceases to be in force at a particular time does not prevent the making of a further such declaration whether before or after that time.~~

Emergency powers

78. (1.) During the period during which a declaration of emergency is in force, the President may make such Emergency Orders as appear to him to be reasonably required for securing public safety, maintaining public order or safeguarding the interests or maintaining the welfare of the community.²⁹

(2.) Subject to the provisions of this Part, an order made by the President under clause (1.) of this Article:³⁰

~~(a) has effect notwithstanding anything in Part II of this Constitution or in Article 94;~~

(b) is not invalid in whole or in part by reason only that it provides for any matter for which provision is made under any law or because of inconsistency with any law; and

(c) lapses when the declaration of emergency lapses unless in the meantime the order is revoked by a resolution of Parliament approved by a majority of the members of Parliament present and voting.

(3.) Subject to clauses (4) and (5) of this Article, the revocation or lapsing of an order made by the President under clause (1.) of this Article does not affect the previous operation of that order, the validity of anything done or omitted to be done under it or any offence committed or penalty or punishment incurred.³¹

(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' |

(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.

Restriction on detention

79.-(1.) For the purposes of this Article there shall be an advisory board consisting of the Chief Justice, one person nominated by the Chief Justice and one person nominated by the Cabinet.³²

(2.) A person detained under an Order under Article 78 shall, as soon as practicable, be informed of the reasons for his detention and be ~~brought before~~ heard by the advisory board in person or by any other practicable means and permitted to make representations against his detention.

(3.) No person shall be detained under an Order under Article 78 for a period exceeding three months unless that person has been brought before the advisory board and any

representations made by him have been considered by it and it has within that period determined that there is sufficient cause for the detention.

PART X.

GENERAL

Grant of pardon Prerogative of Mercy

80. (1.) The President may-

- (a) grant a pardon, either free or subject to lawful conditions, to a person convicted of an offence;³³
- (b) grant to a person a respite, either indefinite or for a specified period, of the execution of a punishment imposed on that person for an offence;
- (c) substitute a less severe form of punishment for any punishment imposed on a person for an offence; or
- (d) remit the whole or a part of a punishment imposed on a person for an offence or of a penalty or forfeiture on account of an offence.

(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.

Interpretation

81.-(1.) In this Constitution, unless the context otherwise requires:-

"Article"

"Article" means Article of this Constitution;

"Cabinet"³⁴

"Cabinet" means the Cabinet established under Article 17;

"Chief Justice"

"Chief Justice" means the Chief Justice of the Supreme Court;

"Chief Secretary"³⁵

"Chief Secretary" means the Chief Secretary of Nauru appointed under Article ~~25~~ 67B;

"Court"

"Court" means a court of law having jurisdiction in Nauru;

"Existing law"

"Existing law" means a law in force in Nauru immediately before Independence Day;

"Government Gazette"³⁶

"Government Gazette" means the Nauru Government Gazette;

"Independence Day"

"Independence Day" means the thirty-first day of January, One thousand nine hundred and sixty-eight;

"Law"

"Law" includes an instrument having the force of law and an unwritten rule of law and "lawful" and "lawfully" shall be construed accordingly;

"Minister"³⁷

"Minister" means a Minister of the Cabinet; or, in a provision in which a Minister with a particular responsibility is specified, means the particular Minister specified;

"Month"

"Month" means calendar month;

"Parliament"³⁸

"Parliament" means the Parliament of Nauru established under Article 26;

"Person"

"Person" includes a body corporate or politic;

"President"³⁹

"President" means the President of Nauru;

"Property"

"Property" includes land and a right, title or interest in or over land or any other property;

"Public office"

"Public office" means an office of emolument in the public service;

"Public officer"

"Public officer" means a person holding or acting in a public office;

"Public service"

"Public service" means, subject to the provisions of this Article, the service of the Republic of Nauru;

"Schedule"

"Schedule" means Schedule to this Constitution;

"Session"⁴⁰

"Session" means ~~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~~ a series of sitting days held in accordance with Article 40;

"Sitting"

"Sitting" means ~~a period during which Parliament is sitting without adjournment~~ the daily meeting of Parliament from the time of commencement of business until the adjournment of Parliament;

"Speaker"

"Speaker" means the Speaker of Parliament;

"Supreme Court"

"Supreme Court" means the Supreme Court of Nauru established under Article 48;

"Writing"

"Writing" includes any mode of representing or reproducing words in a visible form.

(2.) In this Constitution-⁴¹

(a) a reference to an office in the public service does not include-

(i) a reference to the office of President, Minister, Speaker, Deputy Speaker, member of Parliament or Clerk of Parliament;

(ii) a reference to the office of a Judge of the Supreme Court;

(iia) a reference to the offices of Ombudsman, Director of Audit or Director of Public Prosecutions; or

(iii) except in so far as is prescribed by law, a reference to the office of a member of a council, board, panel, committee or other similar body, whether incorporated or not, established by law; and

(b) a reference to an office of profit in the service of Nauru does not include a reference to the office of President, Minister, Speaker, Deputy Speaker, or member of Parliament.

(3.) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by an expression designating his office shall be construed as including, to the extent of his authority, a reference to a person for the time being authorised to exercise the powers or perform the functions of that office.

(4.) In this Constitution, a reference to the total number of members of Parliament is a reference to the number of members of which Parliament consists in accordance with Article 28.

(5.) In this Constitution, unless the context otherwise requires-

- (a) words importing the masculine gender shall be taken to include females; and
- (b) words in the singular include the plural and words in the plural include the singular.

(6.) Where a law is repealed, or is deemed to have been repealed, by, under or by reason of this Constitution, the repeal does not-

- (a) revive anything not in force or existing at the time at which the repeal takes effect;
- (b) affect the previous operation of the law or anything only done or suffered under the law;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law;
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

And, in respect of acts or events occurring prior to such repeal, any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the law had not been repealed.

(7.) Where a person is required by this Constitution to take and subscribe an oath, he shall be permitted, if he so desires, to comply with that requirement by making and subscribing an affirmation.

Parts, etc. of Constitution

82.-(1A.) The Preamble forms part of this Constitution, and establishes principles upon which this Constitution, and the conduct of public affairs in Nauru, are to be based, provided that the Preamble is not justiciable.

(1.) The headings of the Parts into which this Constitution is divided are part of this Constitution.

(2.) A Schedule to this Constitution is part of this Constitution.

(3.) ~~The preamble and the~~ marginal notes to this Constitution do not form part of this Constitution.

Right to mine phosphate

83.-(1.) Except as otherwise provided by law, the right to mine phosphate is vested in the Republic of Nauru.⁴²

(2.) Nothing in this Constitution makes the Government of Nauru responsible for the rehabilitation of land from which phosphate was mined before the first day of July, One thousand nine hundred and sixty-seven.

Amendment of the Constitution⁴³

84.-(1.) This Constitution shall not be altered except in accordance with this Article.

(2.) This Constitution may be altered by law but a proposed law for that purpose shall not be passed by Parliament unless-

(a) there has been an interval of not less than ninety days between the introduction of the proposed law in Parliament and the passing of the proposed law by Parliament; and

(b) it is approved by not less than two-thirds of the total number of members of Parliament.

(3.) A proposed law to alter or having the effect of altering the **Fifth Schedule** or any of the provisions of this Constitution specified in the Fifth Schedule shall not be submitted for the certificate of the Speaker under Article 47 unless, after it has been passed by Parliament, it has been approved by not less than two-thirds of all the votes validly cast on a referendum held, subject to clause (4.) of this Article, as prescribed by law.

Comment [P17]: The SCCA proposed no amendment to Art 84, but it did propose the addition of a number of Articles to Schedule 5, and the amendment of Schedule 5 to include those additional Articles will be subject to referendum

(4.) A person who, at the time the referendum is held, is qualified to vote at an election of members of Parliament, is entitled to vote at a referendum held for the purposes of this Article and no other person is so entitled.

(5.) A proposed law to alter this Constitution shall not receive the certificate of the Speaker under Article 47 unless it is accompanied by a certificate under the hand of the Clerk of Parliament that the provisions of clause (2.) of this Article have been complied with and, if it is a proposed law to which clause (3.) of this Article applies, by a certificate under the hand of a person prescribed by law stating that it has been approved as provided by that clause.

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.

PART XI.

TRANSITIONAL PROVISIONS

Existing laws

85.-(1.) A law in force in Nauru immediately before Independence Day continues in force, subject to this Constitution and to any amendment of that law made by a law enacted under this Constitution or by order under clause (6.) of this Article, until repealed by a law enacted under this Constitution.

(2.) A law which has not been brought into force in Nauru before Independence Day may, subject to this Constitution and to any amendment of that law made by law, be brought into force on or after Independence Day and a law brought into force under this clause continues in force subject as aforesaid, until repealed by a law enacted under this Constitution.

(3.) Clause (1.) of this Article does not apply to the *Nauru Act* 1965 of the Commonwealth of Australia, other than sections 4 and 53 of that Act, or to an Act of the Commonwealth of Australia that immediately before Independence Day extended to Nauru as a Territory of that Commonwealth.

~~(4.) The *Constitutional Convention Ordinance* 1967 of Nauru shall not be amended so as to affect the membership of the Constitutional Convention established under that Ordinance.~~

(5.) Where a matter that, under this Constitution, is to be prescribed or otherwise provided for by law, is prescribed or otherwise provided for by a law continued in force by clause (1.) or (2.) of this Article, that matter has, on and after Independence Day, effect as if it had also been prescribed or provided for by a law enacted under this Constitution.

~~(6.) For the purposes of bringing the provisions of an existing law into accord with the provisions of this Constitution (other than Part II. of this Constitution) the President may, except as otherwise prescribed by law, within a period of two years after Independence Day, make, by order published in the Government Gazette, such adaptations, whether by way of modification of, addition to or omission from those provisions, as he deems necessary or expedient and an order so made has effect, or shall be deemed to have effect, from and including such date, not being a date before Independence Day, as is specified in the order.⁴⁴~~

Adaptation of existing laws

86.-(1) Subject to this Constitution, a reference in a law continued in force by clause (1.) or (2.) of Article 85 to⁴⁵ -

- (a) the Governor-General of the Commonwealth of Australia; or

(b) the Minister of State for Territories of the Commonwealth of Australia, shall, unless the context otherwise requires, be read as a reference to the President.

(2.) Subject to this Constitution, a reference in a law continued in force by clause (1.) or (2.) of Article 85 to the Administrator of the Territory of Nauru shall, unless the context otherwise requires, be read as a reference to the President or where responsibility for the administration of that law is assigned to a Minister under Article 23, to that Minister.

(3.) Subject to this Constitution, a reference in a law continued in force by clause (1.) or (2.) of Article 85 to the Administrator of the Territory of Nauru acting in accordance with the advice of the Executive Council of the Territory of Nauru shall, unless the context otherwise requires, be read as a reference to the Cabinet.

Existing public officers

~~87. (1.) Subject to this Constitution and any law, a person who immediately before Independence Day hold; or is acting in a public office shall, on and after Independence Day, hold or act in that office or the corresponding office established by this Constitution on the same terms and conditions as those on which he holds or is acting in the public office immediately before Independence Day.~~

~~(2.) Nothing in this Article shall be construed as applying to a person who immediately before Independence Day holds or is acting in the office of Administrator, Public Service Commissioner or Official Secretary.~~

Existing legal proceedings

~~88. All legal proceedings pending or incomplete in the Central Court of the Island of Nauru immediately before Independence Day shall stand removed to the Supreme Court, which shall have jurisdiction to hear and determine the proceedings and the judgments and orders of the Central Court of the Island of Nauru given or made before Independence Day shall have the same force and effect as if they had been delivered or made by the Supreme Court.~~

The first Parliament⁴⁶

~~89. (1.) The persons who were elected at the election conducted during January, One thousand nine hundred and sixty eight at the instance of the Constitutional Convention to become members of the Legislative Assembly of Nauru on Independence Day are members of the first Parliament and shall be deemed to have been elected in accordance with this Constitution.~~

~~(2.) The first Parliament came into existence on Independence Day under the name of the Legislative Assembly of Nauru and continues under the name of Parliament from and including the date on which this clause comes into operation.~~

~~(3.) The first Parliament shall, unless sooner dissolved, continue for a period of three years from and including Independence Day and shall then stand dissolved.~~

(4.) In this Article, "Constitutional Convention" means the Constitutional Convention established under the *Constitutional Convention Ordinance 1967* of Nauru.

~~Powers, privileges and immunities of Parliament~~

~~90. Until otherwise declared by Parliament, the powers, privileges and immunities of Parliament and of its members and committees shall be those of the House of Commons of the Parliament of the United Kingdom of Great Britain and Northern Ireland and of its members and committees as at the commencement of this Constitution.~~

~~Vesting of property, etc.~~

~~91. (1.) All property and assets which, immediately before Independence Day, were vested in the Administrator of the Territory of Nauru or in the Administration of the Territory of Nauru, vest in the Republic of Nauru.~~

~~(2.) All rights, liabilities and obligations of the Administrator of the Territory of Nauru or of the Administration of the Territory of Nauru, whether arising out of contract or otherwise, are rights, liabilities and obligations of the Republic of Nauru.~~

~~Constitutional Convention to continue in existence~~

~~92. (1.) Notwithstanding the coming into force of this Constitution, the Constitutional Convention established under the *Constitutional Convention Ordinance 1967* of Nauru shall, subject to this Article, continue in existence during the period of five months after Independence Day or, if the Constitutional Convention approves by resolution a shorter period, during that shorter period.~~

~~(2.) The Constitutional Convention shall, in lieu of the powers held by it before Independence Day, have the powers conferred on it by clause (3.) of this Article.~~

~~(3.) The Constitutional Convention may, during the period referred to in clause (1.) of this Article, by resolution approved by a majority of the members of the Constitutional Convention, alter any of the provisions of this Constitution other than this Article and clause (4.) of Article 85.~~

~~(4.) In this Article, a reference to the members of the Constitutional Convention is a reference to the number of members of which it consists on the day on which the question arises.~~

~~Agreement of 14 November 1967 relating to Phosphate Industry~~

~~93. (1.) The Agreement made on the fourteenth day of November, One thousand nine hundred and sixty seven between the Nauru Local Government Council of the one part and the Partner Governments of the other part shall, on and after Independence Day, be construed as an agreement between the Government of the Republic of Nauru of the one part and the Partner Governments of the other part and all rights, liabilities, obligations and interest of the Nauru Local Government Council in or under that Agreement are, on and after Independence Day, rights, liabilities, obligations and interest of the Government of the Republic of Nauru.~~

Comment [P18]: NOTE: proposed repeal of Art 93 is SUBJECT TO REFERENDUM

(2.) In clause (1.) of this Article, "Partner Governments" means the Government of the Commonwealth of Australia, the Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland.

Financial provisions to 30 June 1968

94. Notwithstanding the provisions of Part VI. of this Constitution, no moneys shall be withdrawn from the Treasury Fund or any other fund referred to in Article 58 before the first day of July, One thousand nine hundred and sixty eight, except-

(a) in accordance with the appropriations authorized under the *Supply Ordinance* 1967-68 of Nauru or the *Appropriation Ordinance* 1967-68 of Nauru;

(b) for the purpose of allocating, in respect of each ton of phosphate shipped from Nauru before the first day of July, One thousand nine hundred and sixty eight, to the funds or for the purposes specified in the Sixth Schedule the amounts so specified;⁴⁷ or

(c) under a law enacted in accordance with Part VI of this Constitution.

Transitional provision relating to judges of the Supreme Court

95. Notwithstanding clause (3.) of Article 49, until otherwise provided by law, a person is qualified to be appointed a judge of the Supreme Court if -

(a) he is or has been a judge of a court having jurisdiction in some part of the Commonwealth of Australia or in such other place as is approved by Parliament by resolution for the purposes of this Article or

(b) he is entitled to practise as an advocate in or solicitor of such a court and has been so entitled for not less than five years.

Transitional provisions relating to Chief Justice

96. (1.) The powers and functions of the Chief Justice may, until the Chief Justice is first appointed, be exercised or performed by not less than three persons, being persons who, immediately before Independence Day, were magistrates of the Central Court within the meaning of the *Nauru Act* 1965 of the Commonwealth of Australia.

(2.) Notwithstanding clause (1.) of this Article, the powers and functions of the Chief Justice under Articles 69 and 70 may, until the Chief Justice is first appointed, be exercised or performed by a person who, immediately before Independence Day, was a magistrate of the Central Court referred to in clause (1.) of this Article.⁴⁸

Director of Audit

97. (1.) Notwithstanding Article 66, until the Director of Audit is first appointed the Cabinet shall cause to be audited at least once in every year the public accounts of Nauru and the accounts of such public bodies as Parliament by resolution determines.⁴⁹

(2.) The Cabinet shall cause a report on the results of an audit under clause (1.) of this Article to be laid before Parliament as soon as practicable after completion of the audit.⁵⁰

Transitional provisions relating to Superannuation Board

98. (1.) ~~Until otherwise provided by law, the Superannuation Board established under the *Superannuation Ordinance* 1966 of Nauru consists of three persons appointed by the Cabinet, of whom one shall be chairman, one shall be an actuary or a person experienced in respect of the investment of moneys and one shall be a person who is a contributor within the meaning of that Ordinance elected by contributors in the manner prescribed by or under law.~~⁵¹

(2.) ~~Notwithstanding clause (1.) of this Article and until otherwise provided by law, a person who, immediately before this clause comes into effect, is a member of the Superannuation Board referred to in clause (1.) of this Article, shall continue to be a member of the Superannuation Board.~~⁵²

Transitional provisions relating to the first President and Cabinet⁵³

99. (1.) ~~Notwithstanding anything in Part III of this Constitution, the first President shall be elected by Parliament at its first sitting held after this Article comes into effect.~~

(2.) ~~The powers and functions of the President and of the Cabinet may, until the first President is elected, be exercised or performed by the Council of State.~~

(3.) ~~In this Article, "Council of State" means the Council of State of Nauru in existence immediately before Part III of this Constitution relating to the President and the Executive comes into effect.~~

Transitional provisions relating to Chief Secretary⁵⁴

100. ~~Notwithstanding Article 25, the person who, immediately before this Article comes into effect, holds the office of Chief Secretary shall hold the office of Chief Secretary established by this Constitution.~~

THE SCHEDULES

First Schedule

Article 18.

Oath of member of Cabinet⁵⁵

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.

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!

Second Schedule

Article 28.

DIVISION OF NAURU INTO CONSTITUENCIES AND NUMBER OF MEMBERS TO BE RETURNED BY EACH CONSTITUENCY

| Constituency | District or Districts of Nauru comprised in constituency | Number of members to be returned by constituency |
|--------------|--|--|
| Aiwo | Aiwo | 2 |
| Anabar | Anabar, Anibare, Ijuw | 2 |
| Anetan | Anetan, Ewa | 2 |
| Boe | Boe | 2 |
| Buada | Buada | 2 |
| Meneng | Meneng | 2 |
| Ubenide | Baiti, Denigomodu, Nibok Uaboe | 4 |
| Yaren | Yaren | 2 |

Third Schedule

Article 43

Oath of member of Parliament⁵⁶

Oath

I, swear by Almighty God that I will be faithful and bear true allegiance to the Republic of Nauru and that I will justly and faithfully carry out my duties as a member of Parliament of Nauru. So help me God!

Fourth Schedule

Article 52.

Oath of Judge

I, swear by Almighty God that I will be faithful and bear true allegiance to the Republic of Nauru in the office of and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will. So help me God!

Fifth Schedule⁵⁷

- (i) Part I
- (ii) Part II.
- (iii) Articles 16, ~~16A~~, 17.
- (iv) Articles 26, 27, clause (7.) of Article 41.
- ~~(iv-a) Article 57A.~~
- (v) Articles 58, ~~58A~~, 59, ~~59A~~, 60, 62, 65.
- (vi) Article 71, clause (1.) of Article 72.
- ~~(vi-a) Article 78~~
- (vii) Articles ~~84~~, ~~84A~~.
- (viii) Clauses (1.), (2.), (3.) and (5.) of Article 85.
- ~~(ix) Article 93.~~

Comment [P19]: NOTE: any amendment or addition to the 5th Schedule is SUBJECT TO REFERENDUM

Sixth Schedule

Amount

Fund or Purpose

| | |
|------|---|
| 1.70 | Long Term Investment Fund established under Article 62. |
| 0.50 | Nauruan Landowners Royalty Trust Fund for the benefit of owners of phosphate bearing lands. |
| 0.60 | Nauru Development Fund for promoting the economic development of Nauru. |
| 0.60 | Nauru Development Fund for promoting the economic development of Nauru. |
| 0.80 | Nauru Housing Fund for erecting, repairing or maintaining houses in Nauru. |
| 0.20 | Nauru Rehabilitation Fund for the purpose of restoring or improving the parts of the Island of Nauru that have been affected by mining for phosphate. |
| 0.60 | For payment to the owners of phosphate bearing lands leased to the British Phosphate Commissioners. |
| 0.10 | Nauru Royalty Fund for any of the purposes for which the Nauru Local Government Council is authorised by the <i>Nauru Local Government Council Ordinance 1951-1967</i> of Nauru to expend moneys.⁵⁸ |

Seventh Schedule

Article 16

Oath of President

In full realisation of the great responsibility I assume as President in the service of the Republic of Nauru I, (name), do hereby swear by Almighty God to be faithful to the Republic of Nauru, and do solemnly and sincerely promise at all times to promote that which will advance the Republic and to oppose all that may harm the Republic; to obey, observe, uphold and maintain the Constitution and all other laws of the Republic; to discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice to all; and to devote myself to the well-being of the Republic and all its people. So help me God!

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!

END NOTES

- | | | |
|--|-----------------------------------|-----------------------------------|
| ¹ Part III Articles 16-25 substituted | ²¹ Amended 17.5.68 | ⁴¹ Substituted 17.5.68 |
| ² 17.5.68 [for provisions relating to Council of State] | ²² Substituted 17.5.68 | ⁴² Substituted 17.5.68 |
| ³ Inserted 17.5.68 | ²³ Inserted 17.5.68 | ⁴³ Substituted 17.5.68 |
| ⁴ Substituted 17.5.68 | ²⁴ Substituted 17.5.68 | ⁴⁴ Inserted 17.5.68 |
| ⁵ Inserted 17.5.68 | ²⁵ Amended 17.5.68 | ⁴⁵ Substituted 17.5.68 |
| ⁶ Amended 17.5.68 | ²⁶ Amended 17.5.68 | ⁴⁶ Substituted 17.5.68 |
| ⁷ Amended 17.5.68 | ²⁷ Amended 17.5.68 | ⁴⁷ Amended 17.5.68 |
| ⁸ Amended 17.5.68 | ²⁸ Amended 17.5.68 | ⁴⁸ Amended 17.5.68 |
| ⁹ Amended 17.5.68 | ²⁹ Amended 17.5.68 | ⁴⁹ Amended 17.5.68 |
| ¹⁰ Amended 17.5.68 | ³⁰ Amended 17.5.68 | ⁵⁰ Amended 17.5.68 |
| ¹¹ Amended 17.5.68 | ³¹ Amended 17.5.68 | ⁵¹ Amended 17.5.68 |
| ¹² Amended 17.5.68 | ³² Amended 17.5.68 | ⁵² Inserted 17.5.68 |
| ¹³ Amended 17.5.68 | ³³ Amended 17.5.68 | ⁵³ Inserted 17.5.68 |
| ¹⁴ Amended 17.5.68 | ³⁴ Inserted 17.5.68 | ⁵⁴ Inserted 17.5.68 |
| ¹⁵ Amended 17.5.68 | ³⁵ Inserted 17.5.68 | ⁵⁵ Inserted 17.5.68 |
| ¹⁶ Substituted 17.5.68 | ³⁶ Inserted 17.5.68 | ⁵⁶ Inserted 17.5.68 |
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| ¹⁸ Amended 17.5.68 | ³⁸ Inserted 17.5.68 | ⁵⁸ Inserted 17.5.68 |
| ¹⁹ Amended 17.5.68 | ³⁹ Inserted 17.5.68 | |
| ²⁰ Amended 17.5.68 | ⁴⁰ Amended 17.5.68 | |

Appendix 3

***Constitutional Amendment Bills incorporating all amendments
proposed by Committee, with changes marked***

Preface to Appendix 3

Appendix 3 to the Report of the Select Committee on Constitutional Amendment Bills contains the text of the *Constitution of Nauru (Parliamentary Amendments) Bill 2008* and the *Constitution of Nauru (Referendum Amendments Bill) 2008* as they were introduced to Parliament in November 2008 (with some minor errors that appeared in those Bills corrected without track changes – refer to errors noted in Appendix 1) and with the proposed amendments to the Bills as recommended by the Select Committee on Constitutional Amendment Bills marked in the text. Proposed deletions from the Bill are shown using strike-out (~~like this~~) and proposed additions to the Bills are underlined.

Please note:

- where entirely new clauses are proposed for the Bills, such clauses have been allocated a new number, in order that the clauses numbers of the original Bills are not changed in this document, and so that references to clause numbers that are made in Appendix 1 can still be used as a guide by anyone referring to particular clauses of the Bill in this Appendix.
- The proposed amendments shown in the Bills are not complete and the Bills would not be ready to pass in the form set out in this Appendix, as Parliament still needs to insert appropriate transitional provisions in the Bills and every detail contained in the Bills as amended needs to be thoroughly proof read before Parliament votes on the Bills in their final form.
- The changed highlighted reflect the recommended amendments in accordance with resolutions of the Select Committee on Constitutional Amendment Bills, but these proposals are yet to be debated and decided upon by the Committee of the Whole Parliament. This means that the proposed amendments that are highlighted have not yet been made, but are shown merely for the purpose of highlighting what would be changed in the Bills if the Committee of the Whole accepted all of the recommendations of the SCCA.



REPUBLIC OF NAURU
CONSTITUTION OF NAURU (PARLIAMENTARY AMENDMENTS)
BILL 2008

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REPUBLIC OF NAURU

CONSTITUTION OF NAURU (PARLIAMENTARY AMENDMENTS) BILL 2008

A Bill for

AN ACT

[No. of 2009]

To amend *The Constitution of Nauru 1968*

[Certified:]

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*.

1A. Commencement

This Act will come into force, subject to the commencement conditions prescribed in sections *[insert section numbers of transitional provisions]* on the date it is certified by the Speaker in accordance with Articles 47 and 84 of the Constitution.

2. Constitution

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

3. 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

~~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”.~~

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 ~~has~~ have prepared a revised Constitution for Nauru, ~~and~~ we hereby introduce 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 island home, is the living link between all generations of Nauruans. On this island we have built our own unique society.

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.

~~We acknowledge and affirm the pride of place Nauruans have in their own land, and the exclusive rights of indigenous land owners as custodians and beneficiaries of the land. We also acknowledge that we have been blessed with vast phosphate resources.~~

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 to the right of people to participate in their government;

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 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 to the Nauruan people. We affirm the matrilineal basis of our society and 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 TO COME INTO FORCE ON [date to be inserted when it is known].

4. Insertion of Article 2A

~~The Constitution is amended by inserting immediately after Article 2, the following new Article 2A —~~

Comment [P20]: Article 2A has become 'promotion of awareness of the Constitution' but appears in the referendum amendments bill because it is an amendment to Part I

~~‘Customary Law~~

~~2A(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 for any purpose, provided that Parliament shall submit any such proposed law to an open public consultation process prior to introducing such law to Parliament.’~~

5. Creation of Part IA and insertion of Articles 2B and 2C

The Constitution is amended by inserting immediately after Article 2A, the following new ~~Article 2B~~ Part IA –

‘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.’

~~‘Promotion of awareness of the Constitution~~

~~2B(1.) The government shall make available, in the Nauruan and English languages, material including publications and audio and television broadcasts to promote public awareness of the Constitution and shall disseminate such material as widely as possible.~~

~~(2.) The government shall provide for the teaching of the Constitution in all educational institutions and police training programs.’~~

6. ~~Insertion of Article 2C~~

~~The Constitution is amended by inserting immediately after Article 2B, the following new Article 2C—~~

~~‘Nauruan language~~

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

7. ~~Insertion of Article 2D~~

~~The Constitution is amended by inserting immediately after Article 2C, the following new Article 2D –~~

~~‘Plain Language~~

~~2D. In so far as practicable, all government information intended for the public, in whatever language, should be plainly worded, avoiding the use of technical terms.’~~

8. ~~Insertion of Article 2E~~

~~The Constitution is amended by inserting at the beginning of Part II immediately before Article 3, the following new Article 2E –~~

~~‘Application~~

~~2E. (1) The provisions of this Part apply to all laws and bind the legislature, the executive, the judiciary, and all public officers.~~

~~(2) A provision in this part binds natural and legal persons if, and to the extent that, it is applicable, taking into account the nature of the right and the duty imposed by the right.’~~

Comment [P21]: This proposed Article has been approved by SCCA, but was erroneously included in the Parliamentary Amendments Bill when introduced and has in this Appendix been moved to the Referendum Amendments Bill because it concerns an amendment to Part II

9. Insertion of Articles 16A, 16B, 16C and 16D

The Constitution is amended by inserting immediately after Article 16 the following new Articles 16A, 16B, 16C and 16D –

~~‘Vacancy in the office of President~~

~~16A. If the office of President becomes vacant by reason of the President ceasing to hold office by virtue of clause (2) of Article 24 or Article 61A of this Constitution, the council of State shall perform the functions of President until the person elected at the next election of President following a general election assumes office.’~~

~~‘Election of President~~

~~16A. (1) Nomination for and an election to the office of President shall be held in such manner as is prescribed by this Article and, subject thereto, by an Act of Parliament and Standing Orders of Parliament –~~

(a) within the timeframe prescribed in clause (8) of Article 41 following a general election and before proceeding on any Bill; and

(b) subject to clause (1) of Article 16D and to clause (2) of Article 21B, whenever the office of President is vacant.

(2.) After the election of the Speaker and of the Deputy Speaker, Parliament shall nominate, from among members of Parliament, not fewer than two nor more than three candidates for election as President, and no other person may be a candidate.

(3.) An election for President shall be held twenty-eight days after the day on which a general election is held.

(4.) Every person who is entitled to vote in a general election is entitled to vote in an election of President.

(5.) A person elected to the office of President under this Article assumes that office on the day upon which he is declared elected.

(6.) A person may assume office as President after election on not more than three consecutive occasions.

Tenure of office

16B.(1.) The President, unless he ceases to be President by virtue of this Article, shall continue in office until the person elected at the next election of President after a general election assumes office.

(2.) The President shall vacate his office as President –

(a) if he resigns his office, by writing under his hand addressed to the Speaker;

(b) if a motion of no confidence in the President and Cabinet is passed in accordance with Article 24;

(c) if Parliament is dissolved pursuant to Article 61A;

(d) if he ceases to be a member of Parliament otherwise than by reason only of its dissolution; or

(e) if he is removed in accordance with Article 16C.

Removal from office on the grounds of incapacity

16C.(1.) Subject to clause (3) of this Article, where there is delivered to the Speaker a request that complies with clause (2) of this Article, for the question of the mental or physical capacity of the President to discharge the functions of his office to be investigated, the Speaker shall notify the Chief Justice who shall appoint a Medical Board consisting of not less than two persons who are qualified as medical practitioners under the law of Nauru or under the law of any other country in the Commonwealth, and the Board shall inquire into the matter and shall report to the Chief Justice stating the opinion of the Board whether or not the President is, by virtue of any infirmity of body or mind, incapable of discharging the functions of his office.

(2.) A request referred to in clause (1) of this Article –

(a) shall be in writing;

(b) shall be signed by a member of Parliament for each of at least three constituencies and by a number of members of Parliament which is at least one third of the total number of members of Parliament; and

(c) shall set out the reasons for the request;

and if the Speaker is satisfied that the request satisfies the requirements of this clause and that the reasons provided under paragraph (c) of this clause are valid, he shall notify the Chief Justice in accordance with clause (1) of this Article.

(3.) Where there is delivered to the Speaker a request for the question of the mental or physical capacity of the President to discharge the functions of his office to be investigated which complies with clause (2) of this Article except for the fact the Speaker is not satisfied that the stated reasons for the request are valid, he shall inform Parliament of the receipt of the request and shall put to Parliament the question of whether the Chief Justice ought to be notified in accordance with clause (1) of this Article, and if Parliament so resolves by a majority of the total number of members of Parliament other than the President, the Speaker shall notify the Chief Justice accordingly.

(4.) Upon receiving the report of the Medical Board the Chief Justice shall give the President or his representative the right to be heard, and shall then make a determination as to whether the President is, by reason of infirmity of body or mind, incapable of discharging the functions of his office.

(5.) If the Chief Justice determines under clause (4) of this Article that the President is, by reason of infirmity of body or mind, incapable of discharging the functions of his office the President shall cease to hold office forthwith.

Vacancy in the office of President

16D. (1.) If the office of President becomes vacant by reason of the President ceasing to hold office by virtue of Article 24(1) or Article 61A of this Constitution, the Council of State shall perform the functions of President in accordance with Article 21B.

(2.) If the office of President becomes vacant for any other reason, the Deputy President shall assume the office of President.

(3.) If the office of President becomes vacant during any period when the office of Deputy President is also vacant, the Cabinet shall elect one of the Ministers to assume the office of President.

(4.) A person assuming the office of President under this Article shall advise the Speaker to call a session of Parliament to be held no later than two weeks after his assumption of the office of President, and an nomination for election to the office of President shall be held in the manner prescribed in Article 16A at the first sitting of that session and before proceeding on any Bill.'

9A. Amendment of Article 19

Article 19 of the Constitution is amended by 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 three or four further', and by 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.'

10. Amendment of Article 20

Article 20 of the Constitution is amended by inserting immediately after paragraph (d), a new paragraph (e) as follows:

'(e) upon commencing to hold an office of profit in the service of Nauru or of a statutory corporation.'

10A. 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.) Any person discharging the functions of the office of President by virtue of the preceding clause shall cease to discharge those functions if he is notified by the President that the President is about to resume those functions.’

10B. 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-

- (d) his appointment is revoked by the President;
- (e) he ceases to be a Minister; or

(f) a new President is elected.

(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-

(d) his appointment is revoked by the Deputy President;

(e) he ceases to be a Minister; or

(f) 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 incapable by reason of illness or accident 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 remove the Deputy President from office.'

11. **Insertion of Article 21A 21B**

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

‘Council of State

21A 21B(1.) There shall be In the circumstances specified in clause (2) of this Article, a Council of State shall be formed, which shall, subject to clauses (6) and (7) of this Article, consist of the persons for the time being holding or acting in the offices of Chief Secretary, who shall be Chairman, Chief Justice (or, if the Chief Justice is not available, the Resident Magistrate) and Speaker.

(2.) In the event of the dissolution of Parliament in the circumstances specified in clause (2) (1) of Article 24 or the circumstances specified in clause (1) of Article 61A of this Constitution, the Council of State shall, subject to clauses (3), (4) and (5) of this Article and to clauses (2) and (3) of Article 61A, perform the functions of the President and the other executive functions of the government until the person elected at the next election of President following a general election assumes office.

(3.) During any period in which the Council of State is performing the functions of the President and the other executive functions of government, such functions shall be performed in a manner consistent with the conventional limitations on a

caretaker government, and in particular the Council of State shall not be empowered to exercise:

(a) the power to appoint judges (but may appoint acting judges for a term of no more than three months);

(b) the power to appoint the Director of Public Prosecutions, the Ombudsman or the Director of Audit;

(c) the power to exercise the prerogative of mercy;

(d) the power to ratify treaties; or

(e) the power to enter contracts for the disposal or acquisition of major public assets.

(4.) If the Council of State assumes the functions of the President and the other executive functions of government under clause (2) of this Article, the Council of State shall as soon as practicable after assuming such functions, collectively exercise the functions of the President and Speaker under Article 39.

(5.) The Council of State may only exercise the emergency powers under Part IX of this Constitution by the unanimous agreement of all members.

(6.) If, at any time when it is necessary for the Council of State to be formed, the Chief Secretary is not a Nauruan citizen or is a citizen but is unavailable, the place of the Chief Secretary on the Council of State shall be filled by a person who is a Nauruan citizen and is deemed by the Chief Secretary to be a fit and proper person for the purpose, designated by the Chief Secretary, and, if Parliament has provided for a Public Service Commission, the provisions of clause (1) and of this clause shall apply to the Chairperson of the Public Service Commission as if that person was Chief Secretary.

(7.) If, at any time when it is necessary for the Council of State to be formed, the Chief Justice is not a Nauruan citizen or is a citizen but is unavailable, the place of the Chief Justice on the Council of State shall be filled by a person who is a Nauruan citizen and is deemed by the Chief Justice to be a fit and proper person for the purpose, designated by the Chief Justice.

(8.) If, during any period in which the Council of State is performing the functions of the President and the other executive functions of government there is a vacancy in a position on the Council of State by virtue of the unavailability or vacancy in the office of any of the members specified in clause (1), the remaining members of the Council of State shall appoint to fill that vacancy a person who is a Nauruan citizen and who is deemed by those remaining members to be a fit and proper person for the purpose.'

12. Amendment of Article 22

~~Article 22 of the Constitution is amended by inserting immediately after clause (2), a new clause (3) as follows –~~

~~‘(3.) There shall be a Clerk of Cabinet who is responsible, in accordance with such instructions as may be given to him by the Cabinet, for arranging the business for, and keeping the minutes of, the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority, and shall have such other functions as the Cabinet or the President may direct.’~~

13. 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.’

13A. Amendment of Article 24

The Constitution is amended by repealing Article 24 and replacing it with a new Article 24 as follows –

‘Motion of no confidence

(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.'

14. Amendment Repeal of Article 25

Article 25 of the Constitution is amended by

- a) ~~inserting in clause (1) immediately after the word 'Cabinet' the words 'and shall be the Chief Executive Officer of the Public Service and the chief administrative and advisory officer of the Government of Nauru.'~~;
- b) ~~inserting immediately after clause (1) a new clause (1A) as follows—~~

~~'(1A) The Chief Secretary and any person acting in that position must be a Nauruan citizen.'~~; and

- a) ~~inserting immediately after clause (4) a new clause (5) as follows—~~

~~'(5.) The Chief Secretary shall be responsible for the general direction of the work of all Departments and offices of government. The head of any such 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.'~~

The Constitution is amended by repealing Article 25.

14A. 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.

Comment [P22]: See new Article 67A, which is Article 25 as amended

(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.’

14B. 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 ~~from~~ 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’ ~~the words ‘by death or’;~~
- ~~b) inserting in paragraph (c) immediately after the word ‘longer’ the words ‘(imposed by a court in Nauru or in any other part of the Commonwealth)’;~~
- c) deleting from paragraph (e) the comma after ‘corporation’ and the words ‘being an office prescribed by law for the purposes of this paragraph’; and
- d) inserting immediately after paragraph (e) the following new paragraph (f) – ‘(f) has been prohibited by order of the Leadership Tribunal or any other court or tribunal lawfully authorised to make such order, from holding a position of Leadership and if such order applies for a finite period, the period for which such order applies has not yet expired, and provided that 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 ~~57C~~ 57A.’.

16. Amendment of Article 32

~~Paragraph (d) of clause (1) of 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 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: ~~substituting for the word ‘Clerk’ (in all instances in which that word appears in the Article including in the marginal note), the words ‘Secretary General’.~~

- (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.) 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 functions as may 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 a new clause (1) 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.’;

inserting immediately after clause (2) a new clause (2A) as follows—

‘(2A.) If Parliament has within 21 days following its first sitting after a general election or within 21 days following any vacancy in the office of Speaker failed to elect a Speaker in accordance with clause (1) of this Article, Parliament shall stand dissolved.’; and

- 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) 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.’

18A. 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’.

18B. 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.’.

18C. 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’.

19. 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 earlier.’;

and

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

‘(3.) A session of Parliament ends when it is prorogued in accordance with Article 41 (1) 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.’

19A. 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) a new clause (8) as follows:

‘(8.) If at the conclusion of the second Tuesday 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 an election of President, Parliament shall stand dissolved.’

20. 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’.

20A. 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).

20B. 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’.

20C. 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:

- (a) presiding over the proceedings of Parliament;
- (b) convening sessions or sittings of Parliament as required under the Constitution;
- (c) proroguing or dissolving Parliament;
- (d) issuing writs for elections;
- (e) appointing, disciplining or removing the Clerk of Parliament;
- (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 law or Standing Orders of Parliament.’

20D. 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.’

21. Amendment of Article 46

Article 46 of the Constitution is amended

- ~~a) by deleting from clause (2) the word ‘unless’ and substituting therefore the words, punctuation and figure: ‘except: (a)’;~~
- ~~b) by inserting in clause (2) immediately after the word ‘question’, the word ‘where’;~~
- ~~c) by inserting immediately before the full stop at the end of clause (2) the following: ‘; and~~
 - ~~(b) on a motion of no confidence moved in accordance with Article 24, in which case he has and shall exercise a deliberative vote but shall not in addition exercise a casting vote.’~~
- 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 the Deputy Speaker 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.’

22. 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 ~~from time to time~~ 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), ~~and~~ (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 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 ~~must~~ shall interfere with the functioning of the courts.

(8.) The Republic, through legislative and other measures, ~~must~~ 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 the law.’

23. Amendment of Article 49

Article 49 of the Constitution is amended by

- a) inserting in clause (1) immediately after the words ‘Chief Justice and’ a comma and the words ‘subject to the requirements of clause (2) of Article 57,’ and deleting the words ‘if any’;
- b) inserting in clause (2) immediately after the words ‘Supreme Court’ the words ‘appointed under this Article and under Article 53’; ~~and~~

c) inserting in clause (2) immediately after the word ‘President’ the words ‘after consultation with Cabinet’;
 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-

(a) that person is qualified by education, experience and character to discharge judicial office, and

(i) 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

(ii) that person holds or has held high judicial office in any common law country in the Pacific region or in any designated country; or

(iii) that person 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

d) 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.’

24. Amendment of Article 50

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

24A. 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’.

25. Amendment of Article 54

Article 54 of the Constitution is amended by inserting immediately after clause (2) the following new clauses (3), (4), (5) and (6) –

‘(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.) Subject to this Constitution, if any person alleges that any provision of this Constitution (~~other than Part II~~) has been contravened and that his interests are being or are likely to be affected by such contravention, that person may apply to the Supreme Court for a declaration and for relief under this section. An application under this clause is without prejudice to any other action with respect to the same matter which is lawfully available.

(5.) The Supreme Court shall have jurisdiction, in any application made by any person in pursuance of clause (4) or in any other proceedings lawfully brought before the Court, to determine whether any provision of this Constitution (other than Part II) has been contravened and to make a declaration accordingly;

Provided that the Supreme Court shall not make a declaration in pursuance of the jurisdiction conferred by this clause unless it is satisfied that the interests of the person by whom the application under clause (4) is made or, in the case of other proceedings before the Court, a party to those proceedings, are being or are likely to be affected.

(6.) Where the Supreme Court makes a declaration in pursuance of clause (4) that any provision of the Constitution has been contravened and the person by whom the application under clause (4) was made or, in the case of other proceedings before the Court, the party in those proceedings in respect of whom the declaration is made, seeks relief, the Supreme Court may grant to that person such remedy including compensation, being a remedy available against any person in any proceedings in the Supreme Court under any law in force in Nauru as the Court considers appropriate.’

26. 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 has such jurisdiction and powers to hear and determine appeals from the Trial and Constitutional Divisions of the Supreme Court and ~~other lower~~ from subordinate courts as may be conferred on it by this Constitution and as prescribed by law.

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

(3.)(a) Appeals in criminal matters lie as of right.

b) Appeals in civil matters and other causes shall be by leave ~~of the Trial or Constitutional Division, as the case may be, or by special leave of the Appellate Division.~~’

27. Insertion of Article 57A

—The Constitution is amended by inserting immediately after Article 57, the following new Article 57A—

‘Jurisdiction concerning the Constitution

57A. (1.) The Constitutional Division and, on appeal, the Appellate Division of the Supreme Court, shall have jurisdiction to determine constitutional matters under Articles 14(1), 36, 54(1) and (2) and 55 of the Constitution and under such other provision as may be made by this Constitution or by law.

(2.) Appeals to the Appellate Division of the Supreme Court to which this clause applies shall be by leave of the Constitutional Division or by special leave of the Appellate Division.²

28. Insertion of new Article 57B

—The Constitution is amended by inserting immediately after Article 57A, the following new Article 57B—

‘Director of Public Prosecutions

57B. (1.) There shall be a Director of Public Prosecutions, who is appointed by the President.

(2.) The Director of Public Prosecutions shall be a person who is qualified to be appointed as a judge.

(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; and
- (c) discontinue, at any stage before judgment is delivered, criminal proceedings instituted or conducted by himself or another person or authority.

(4.) The powers conferred on the Director of Public Prosecutions by paragraphs (a) and (b) of clause (3) of this section 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 withdraw those proceedings with the leave of the Director of Public Prosecutions.

(5)(a) In exercising his responsibilities under this Article or any law in force in Nauru, the Director of Public Prosecutions shall act independently and shall not receive any direction from the Cabinet or any other person or authority.

Comment [P23]: This has become Article 70A, see below

~~(b) He may exercise these 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.~~

~~(7.) The Director of Public Prosecutions shall not be removed from office except for gross misconduct, incapacity or professional incompetence.~~

~~(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.²~~

29. Insertion of Article 57C 57A and creation of new Part V(A)

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

‘Leadership Code

57C 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 or 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.) ~~In particular,~~ 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 ~~must~~ 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;

(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 ~~legislation~~ 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 ~~at least~~ 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.'

30. Insertion Articles 57B, 57C, 57D and 57E, ~~57F and 57G~~ and creation of new Part V(B)

The Constitution is amended by inserting between Parts V(A) and VI of the Constitution a new Part with the heading 'Part V(B) – Ombudsman' and by inserting the following Articles –

'Ombudsman

~~57D~~ 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.) 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 vacate his office at the expiration of five years from the date of his appointment.

(6) The Ombudsman may be removed from office only on 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 ~~the like grounds and in the like manner as a Judge of the Supreme Court.~~

Functions of Ombudsman

~~57E~~ 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

~~57F~~ 57D(1) 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, and no proceedings of the Ombudsman shall be called in question in any court of law.

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

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

(4) 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.

(5) 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 to the President and to the head of the public authority or department directly concerned.

(6) The report of the Ombudsman shall be public unless he decides to keep the report, or parts of it, confidential to the President and the person in charge of the relevant public ~~service~~ 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.

(7) 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

57G 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.’

30A. 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.’

30B. 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.’

31. Amendment of Article 61

Article 61 of the Constitution is amended by

- a) ~~inserting~~ 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 (2) (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.’

32. 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 ~~59~~ 58A nor a proposed law under Article 61(1) 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 ~~under clause (4) of Article 61~~ 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.

33. 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 ~~to any entity (other than by way of deposit in a bank or banks of international standing) nor may any moneys or assets held in the same fund or funds be~~ mortgaged or charged as security for any borrowing for any purpose whatsoever.’

34. 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 ~~who shall be an Officer of Parliament~~ 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 ~~during good behaviour until he reaches the age of 70 years.~~

(3.) The Director of Audit may at any time resign his office by writing ~~signed by him, addressed under his hand delivered~~ to the Speaker; but he shall not be removed from office except on a resolution of Parliament approved by not less than two thirds of the total number of members of Parliament praying for his removal from office on the ground of proved incapacity or misconduct ~~the like grounds and in the like manner as a judge of the Supreme Court.~~

(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; ~~and the Acting Director of Audit shall continue to~~ who shall perform those 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, ~~or, as the case may be, until the Director of Audit is again able to perform the functions of his 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 act in 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 act in any public office during the period of three years after he ceases to be Director of Audit.

35. 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 ~~clauses (3A.), (3B.) and (3C.)~~ of Article ~~59~~ 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 the accounts of relating to the moneys and assets of the Republic of Nauru for that year, together with certified copies of the statements of accounts. ~~and, if provision is made by Act 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.~~

Comment [P24]: This now appears in clause (4)

(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.

~~(3-5.)~~ The Director of Audit may exercise his responsibilities under clause (2) of this Article either in person or through appropriately qualified officers ~~of the Public Service~~ who are subordinate to him, acting in accordance with his general or special instructions.

~~(4-6.)~~ 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.

~~(5-7.)~~ Nothing in this Article 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.

~~(6-8.)~~ 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.

~~(7-9.)~~ The Director's report to Parliament referred to in clauses ~~(3B-2.)~~ and ~~(3C-3.)~~ of this Article 59 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.

~~(8-10.)~~ 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 of Finance.

35A. 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.’

36. 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 ~~must~~ shall be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

- (a) A high standard of professional ethics ~~must~~ shall be promoted and maintained.
- (b) Efficient, economic and effective use of resources ~~must~~ shall be promoted.
- (c) Public administration ~~must~~ shall be development oriented.
- (d) Services ~~must~~ shall be provided impartially, fairly, equitably and without bias.
- (e) People’s needs ~~must~~ shall be responded to, and the public must be encouraged to participate in policy-making.
- (f) Public administration ~~must~~ shall be accountable.
- (g) Transparency ~~must~~ 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, ~~must~~ shall be cultivated.
- (i) Public administration ~~must~~ shall be broadly representative of the Nauruan people, with employment and personnel management practices based on ability, objectivity and fairness.

(2) The above principles ~~must~~ shall apply to –

- (a) the public service;
- (b) statutory corporations; ~~and~~
- (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.'

36A. 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'.

37. 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 ~~are~~ 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.'

38. Amendment of Article 69

Article 69 of the Constitution is amended by

- a) ~~deleting from clause (1) the words ‘either or both of the following: (a)’; deleting the semi colon and the word ‘and’ from the end of paragraph (a) and deleting paragraph (b) of clause (1) in its entirety; and~~
- b) ~~dividing clause (2) into three separate clauses by deleting from the beginning of clause (2) the following – ‘(2) Where Parliament makes provision under paragraph (b) of clause (1) of this Article (a) it shall also make provision for establishing a Police Service Board’, and inserting in place of the deleted words the following –~~
- ~~‘(1A) Parliament shall make provision for a Police Service Board’;~~
~~substituting for ‘(b)’; ‘(2)’ and deleting the semi colon and the word ‘and’ from the end of paragraph (b); and~~
~~substituting for ‘(c)’; ‘(2A)’ and inserting immediately after the words ‘in respect of public officers in the Nauru Police Force’ a comma and the words ‘but such powers shall be exercised by the public officer in charge of the Nauru Police Force.’~~
- a) substituting 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 such other powers in relation to the public service as are not inconsistent with 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’;
- c) substituting in paragraph (c) of clause (2) in both places in which it appears for the word ‘Board’ the word ‘Commission’.

38A. 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 Parliament shall provide for the appeal of decisions of the Public Service Commission to the District Court or such other subordinate court as it may prescribe.’

38B. Insertion of Article 70A

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

‘Director of Public Prosecutions’

Comment [P25]: This proposed new Article was formerly Art 57B, but has been renumbered as a result of being moved into Part VII (in Appendix 1 refer to 57B in first column) and SCCA has made some amendments to the wording that was approved by the Convention and appeared in clause 28 of PA Bill (above)

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

(2.) The Director of Public Prosecutions shall be a person who is qualified to be appointed as a judge of the Supreme Court.

(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 may be removed from office by Cabinet, provided that he shall not be removed from office except for gross misconduct, incapacity or professional incompetence, and may at any time resign 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.’

38C. Amendment of Article 72

Article 72 of the Constitution is amended by repealing clause (2).

38D. 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 conditions as prescribed by law’.

38E. Amendment of Article 76

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

39. 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 clause (2) the words ‘In any other case’ for the words ‘~~If the declaration made~~ when Parliament is not sitting’;
- c) substituting in clause (2) the word ‘twenty-one’ for the word ‘fourteen’;
- d) inserting immediately after clause (2) a new clause (2A) as follows –

‘~~(3~~ 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. Any successive continuation 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.’;

and

- e) substituting all of clauses ~~(3) and~~ (4) and (5) for the following –

~~(4.) The President may at any time revoke a declaration of emergency by public proclamation.~~

~~(5.4.)~~ (a) Where a declaration of a state of emergency is made and Parliament is not sitting, 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 because the term of Parliament has ended, the members of the dissolved Parliament shall be called by the President to a special session and remain in session during the entire period of the state of emergency or until the election of a new Parliament.

~~(c) Where a declaration of a state of emergency is made when the Council of State is performing the functions of the President and the other executive functions of government, the members of the dissolved Parliament shall be called to a special session and remain in session during the entire period of the state of emergency until the election of a new Parliament.’;~~

~~and by inserting a new clause (6.) as follows –~~

~~‘(6.5.) 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.’~~

40. 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 paragraphs (a) ~~and (b) and the letter ‘e’ in brackets~~;
- d) inserting in clause (3) immediately before the words ‘the revocation’, 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 ~~legislation~~ 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 ~~legislation~~ 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 ~~legislation 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 ~~the Legislature~~ 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 ~~mentioned~~ 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' |

40A. 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’.

41. 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 Department of Home Affairs or such other Government Department as Cabinet may prescribe 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.

~~(3-4.)~~ 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.

~~(4-5.)~~ Whenever the Committee advises the President ~~that~~ on whether the Prerogative of Mercy should be exercised, the Committee ~~must~~ 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.

~~(5-6.)~~ In the exercise of the powers conferred upon him by clause (1) of this Article, the President ~~must~~ shall take into account the advice of the Committee.

~~(6-7.)~~ 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 (4-5) and a statement from the President giving details of the exercise of the power and a summary of the reasons for it ~~giving particulars of the recommendation of the Committee and a summary of the reasons for the recommendation, regardless of whether the President exercised the power in accordance with the recommendation or against the recommendation.~~

(7) 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.’

42. Amendment of Article 81

Article 81 of the Constitution is amended by

- a) inserting in clause (1) in the definition of “Minister” immediately after the words ‘of the Cabinet’ the words ‘or, in a provision in which a Minister with a particular responsibility is specified, means the particular Minister specified’;
- b) 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’;
- c) in the definition of “session” in clause (1), substituting 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’ with the words ‘a series of sitting days held in accordance with Article 40’; and
- d) in the definition of “sitting” in clause (1), substituting the words ‘a period during which Parliament is sitting without adjournment’ with the words ‘the daily meeting of Parliament from the time of commencement of business until the adjournment of Parliament’;
- e) 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’; and
- f) 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’.

43. Amendment of Article 82

Article 82 of the Constitution is amended by ~~renumbering clauses (1), (2) and (3) as clauses (2), (3) and (4) respectively, and~~

- a) inserting immediately before clause (1) a new clause (1) (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’.

~~44. Amendment of Article 83~~

~~Article 83 of the Constitution is amended by~~

- a) ~~inserting in clause (1) immediately after the words ‘provided by law’, the words ‘all lands in Nauru including phosphate deposits and other mineral deposits belong to the landowners and’; and~~
- b) ~~inserting immediately after clause (1), new clause (1A) as follows –~~

~~‘(1A.) The responsibility for the rehabilitation of worked out phosphate lands is vested in the Republic of Nauru.’~~

45. 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 ~~pass legislation~~ 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.’

46. Repeal of certain transitional provisions

The Constitution is amended by repealing clauses (4) and (6) of Article 85, and all of Articles 87, 88, 89, 90, 91, 92, 94 and the Sixth Schedule, 95, 96, 97, 98, 99 and 100.

~~47. Change of terminology in Articles 32, 34, 35, 65, 81 and 84~~

~~Articles 32, 34, 35, 65, 81 and 84 are amended by substituting for the word~~

~~‘Clerk’ in each of those Articles the words ‘Secretary General’.~~

46A. 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!’

46B. Insertion of the Seventh, Eighth and Ninth Schedules

The Constitution is amended by inserting immediately after the place in which the repeal of the Sixth Schedule is noted new Seventh, Eighth and Ninth Schedules as follows –

‘Seventh Schedule

Article 16

Oath of President

In full realisation of the great responsibility I assume as President in the service of the Republic of Nauru I, (name), do hereby swear by Almighty God to be faithful to the Republic of Nauru, and do solemnly and sincerely promise at all times to promote that which will advance the Republic and to oppose all that may harm the Republic; to obey, observe, uphold and maintain the Constitution and all other laws of the Republic; to discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice to all; and to devote myself to the well-being of the Republic and all its people. So help me God!

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!



REPUBLIC OF NAURU
CONSTITUTION OF NAURU (REFERENDUM AMENDMENTS) BILL
2008

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REPUBLIC OF NAURU

CONSTITUTION OF NAURU (REFERENDUM AMENDMENTS) BILL 2008

A Bill for

AN ACT

[No. of 2009]

To amend *The Constitution of Nauru 1968*

[Certified:]

Enacted by the Parliament of Nauru as follows—

1. Short Title.

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

1A. Commencement

_____ This Act will come into force, subject to the commencement conditions prescribed in sections [insert section numbers of transitional provisions] on the date it is certified by the Speaker in accordance with Articles 47 and 84 of the Constitution.

2. Constitution

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

2A. Insertion of new Article 2A

The Constitution is amended by inserting immediately after Article 2, the following new Article 2A —

‘Promotion of awareness of the Constitution

2A(1.) The government shall make available, in the Nauruan and English languages, material including publications and audio and television broadcasts to promote public awareness of the Constitution and shall disseminate such material as widely as possible.

(2.) The government shall provide for the teaching of the Constitution in schools, government institutions and disciplined services.’

2B. Insertion of new Article 2D

The Constitution is amended by inserting at the beginning of Part II immediately before Article 3, the following new Article 2D –

‘Application

2D. (1) The provisions of this Part apply to all laws and bind the legislature, the executive, the judiciary, and all public officers.

(2) A provision in this part binds natural and legal persons if, and to the extent that, it is applicable, taking into account the nature of the right and the duty imposed by the right.’

Comment [P26]: This was previously proposed Art 2E, contained in clause 8 of the Parliamentary Amendments Bill; the content has not changed, but it has been moved into the Referendum Amendments Bill because it involves Part II of the Constitution (which is listed in Schedule 5 as being a Part that requires referendum for any amendment)

3. Amendment of Article 3

Article 3 of the Constitution is repealed and replaced with the following new Article 3: amended by

- a) ~~deleting from the marginal note the word ‘preamble’ and inserting the words ‘right to equality’;~~
 - b) ~~deleting the words ‘Whereas every person in Nauru is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following freedoms, namely:~~
 - ~~(a) life, liberty, security of the person, the enjoyment of property and the protection of the law;~~
 - ~~(b) freedom of conscience, of expression and of peaceful assembly and association; and~~
 - ~~(c) respect for his private and family life;~~
- ~~the subsequent provisions of this Part have effect for the purpose of affording protection to those rights and freedoms’, and inserting in their place the following words, figures and punctuation—~~

~~‘(1) All persons in Nauru are equal under the law and are entitled to the equal protection of the laws.~~

~~(2) Every person in Nauru is entitled to the protection of fundamental rights and freedoms set out in this Part’;~~

- e) ~~substituting for the words ‘contained in those provisions’ the words ‘not inconsistent with the provisions of this Part’; and~~
- d) ~~by inserting immediately after the words ‘or the public interest’, new clauses (3) and (4) as follows—~~

~~‘(3) No law and no executive or judicial action shall, either expressly, or in its practical application, discriminate against any person on the basis of gender, race, color, language, religion, political or other opinion, national or social origin, place of birth, age, disability, economic status, family status or descent.~~

~~(4) A law is not inconsistent with clause (1), (2) or (3) on the ground that it:~~

Comment [P27]: The content of the proposed amendment to Article 3 is almost identical to what appeared in clause 3 of this Bill, except that the few words of the Commission recommendation on Article 3 that were rejected by the Convention have been approved by SCCA and reinserted here, and the format of clause 3 of the Bill has been changed to repeal and replacement, rather than amendment, so that it is easier to understand the content of the Bill because it contains the whole of what new Article 3 would look like (see below)

~~(a) imposes a retirement age on a person who is the holder of a public office;~~

~~(b) imposes on persons who are not citizens a disability or restriction, not imposed on citizens;~~

~~(c) imposes a restriction on a person on the grounds of their opinions or beliefs if those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others;~~

~~(d) provides protection of indigenous land ownership to the exclusion of others;~~

~~or~~

~~(e) provides for the protection or advancement of a class of persons who are disadvantaged;~~

~~but only to the extent that the law is reasonable and justifiable in a free and democratic society.²~~

'Right to Equality

3. (1.) All persons are equal under the law and are entitled to the equal protection of the law.

(2.) Every person in Nauru is entitled to the protection of fundamental rights and freedoms set out in this Part, subject to such limitations of that protection as are not inconsistent with the provisions of this Part, being limitations designed to ensure that the enjoyment of those rights and freedoms by a person does not prejudice the rights and freedoms of other persons or the public interest.

(3) No law and no executive or judicial action shall, either expressly, or in its practical application, discriminate against any person on the basis of gender, race, colour, language, religion, political or other opinion, national or social origin, place of birth, age, disability, economic status, sexual orientation, family status or descent.

(4) A law is not inconsistent with clause (1), (2) or (3) on the ground that it:

(a) appropriates revenues or other moneys for particular purposes;

(b) imposes a retirement age on a person who is the holder of a public office;

(c) imposes on persons who are not citizens a disability or restriction, not imposed on citizens;

(d) imposes a restriction on a person on the grounds of their opinions or beliefs if those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others;

(e) provides protection of indigenous land ownership to the exclusion of others;
or

(f) provides for the protection or advancement of a class of persons who are disadvantaged;

but only to the extent that the law is reasonable and justifiable in a free and democratic society.’

4. Amendment of Article 4

Article 4 of the Constitution is amended by

- a) inserting in clause (1) immediately before the words ‘No person shall be deprived’ the words ‘Everyone has the right to life.’;
- b) deleting from clause (1) the words ‘except in execution of a sentence of a court following his conviction of an offence for which the penalty of deprivation of life is prescribed by law’; and
- c) deleting paragraph (b) from clause (2).

5. Amendment of Article 5

Article 5 of the Constitution is amended by

- ~~a) deleting paragraph (d) from clause (1);~~
- b) substituting in paragraph (e) of clause (1) for the word ‘twenty’, the word ‘~~eighteen~~’ ‘sixteen’; and
- c) inserting in clause (4) immediately after the words ‘complaint is made to the Supreme Court’ the words ‘or any subordinate court’ and by inserting immediately after the words ‘detained, the Supreme Court’ the words ‘or the subordinate court’.

5A. Amendment of Article 8

Article 8 of the Constitution is amended by inserting immediately after clause (1) a new clause (1A) as follows –

‘(1A.) The just terms of compulsory acquisition of property shall be agreed between the relevant parties, or, if no agreement can be reached, shall be decided by a Court, having regard to all relevant factors, including:

- (a) the current use of the property;
- (b) the history of the acquisition and use of the property;
- (c) the importance of the public purpose for which the property is being acquired;
- (d) the interests of those affected; and
- (e) any hardship to the owner/s.’

6. Amendment of Article 9

Article 9 of the Constitution is amended by

- a) inserting in clause (1) immediately after the words ‘other persons’ the words ‘and nor shall the privacy of his communications be infringed’; and
- b) inserting immediately after clause (1), a new clause (1A) as follows –

‘(1A) Evidence obtained pursuant to an invalid warrant, or obtained in a manner that in any other way contravenes this Article, cannot be used to support a criminal conviction.’

7. Amendment of Article 10

Article 10 of the Constitution is amended by inserting immediately after clause (9), a new clause (9A) as follows –

‘(9A) No law shall prevent a citizen bringing civil action against the Republic or its instrumentalities.’

8. Insertion of Article 13A

The Constitution is amended by inserting immediately after Article 13, the following new Article 13A –

‘Protection of right to privacy and personal autonomy

13A. All persons shall be free from unreasonable interference in personal choices that do not injure others and from unreasonable intrusions into their privacy.’

9. Insertion of Article 13B

The Constitution is amended by inserting immediately after Article 13A, the following new Article 13B –

‘Right to information

13B.(1) Everyone has the right of access to information held by the government and its instrumentalities.

(2) As soon as practicable after the commencement of this Article, Parliament ~~must shall~~ enact ~~legislation a law~~ to give effect to this right, including provision for the retention and secure storage of information, ~~and may provide for reasonable measures to alleviate the administrative and financial burden on the government and to protect Cabinet confidentiality and sensitive information relating to foreign affairs or national security.~~

(3.) Nothing contained in or done under the authority of a law passed in accordance with clause (2) of this Article, or any other law, shall be held to be inconsistent with or in contravention of clause (1) of this Article to the extent that that law makes provision:

(a) for fair and reasonable measures to alleviate the administrative and financial burden of the right to information on the government; or

(b) for the denial of public access to sensitive Cabinet information and sensitive information the disclosure of which could harm Nauru’s foreign relations or national security or would be contrary to the public interest.’

10. Insertion of Article 13C

The Constitution is amended by inserting immediately after Article 13B, the following new Article 13C –

‘Right to health services

13C.(1) Everyone has the right to access basic health services, including maternity and related care for every woman.

(2) The government ~~must~~ shall take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right, and to progressively improve the standard of health services ~~including provision of rehabilitation services for persons with drug and alcohol related illness, and treatment for persons with contagious diseases.~~

11. Insertion of Article 13D

The Constitution is amended by inserting immediately after Article 13C, the following new Article 13D –

‘Right to education

13D.(1) Every person has the right to primary and secondary education.

(2) The government ~~must~~ shall take reasonable measures to make education accessible and to progressively improve the standard of public education services and may provide support to private education services.’

12. Insertion of Article 13E

The Constitution is amended by inserting immediately after Article 13D, the following new Article 13E –

‘Environmental Protection

13E. Everyone has the right:

- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –
 - (i). minimise pollution and environmental degradation;
 - (ii). promote rehabilitation and conservation; and
 - (iii). secure ecologically sustainable development and use of natural resources including marine resources while promoting justifiable economic and social development.’

13. Insertion of Article 13F

The Constitution is amended by inserting immediately after Article 13E, the following new Article 13F –

‘Employment rights

13F. (1) Every person has the right to fair labour practices.

(2) Every citizen has the right to choose their trade, occupation or profession freely.

(3) The practice of a trade, occupation or profession may be regulated by law.

(4) ~~No law or policy shall permanently deprive a person of wages or salary earned or superannuation accrued.~~ Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of the provisions of clauses (1) or (2) of this Article to the extent that that law makes provision for the prohibition of the practice of any trade or profession in the interests of public safety, public order, public morality or public health.’

14. Insertion of Article 13G

The Constitution is amended by inserting immediately after Article 13F, the following new Article 13G –

‘Women’s rights

13G. Every woman has the right to a reasonable period of maternity leave.’

15. Insertion of Article 13H

The Constitution is amended by inserting immediately after Article 13G, the following new Article 13H –

‘Children’s rights

13H. Every child has the right:

(a) to a name and nationality from birth;

(b) to be cared for by parents, family or appropriate alternative care if removed from the family environment;

(c) to basic nutrition, shelter, and basic health care services;

(d) to be protected from maltreatment, neglect, abuse or degradation;

(e) to be protected from exploitative labour practices;

(f) not to be required or permitted to perform work or provide services that are inappropriate for a person of that child’s age, or that place at risk the child’s well-

being, education, physical or mental health, or spiritual, moral or social development;

(g) not to be detained except as a measure of last resort, in which case, in addition to the rights the child enjoys under Articles 5 and 10, the child may be detained only for the shortest appropriate period of time, and has the right to be:

i.) kept separately from detained persons over the age of 18 years; and

ii.) treated in a manner, and kept in conditions, that take account of the child's age;

(h) to have a legal practitioner assigned to the child by the government, and at government expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and

(i) not to be used directly in armed conflict, and to be protected in times of armed conflict.'

16. Insertion of Article 13I

The Constitution is amended by inserting immediately after Article 13H, the following new Article 13I –

‘Rights of Persons with Disabilities

13 I. (1.) All persons with disabilities have the right to the full realisation of all human rights and fundamental freedoms without discrimination of any kind on the basis of disability.

(2.) The government ~~must~~ shall take reasonable legislative and other measures, within its available resources, to facilitate the full and effective participation and inclusion in society of persons with disability, to make mobility aids and other assistive technologies accessible to persons with disability, and to improve the accessibility of all public facilities and services to persons with disability.

(3.) For the purposes of this Article, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.’

17. Amendment of Article 14

Article 14 of the Constitution is amended by

- a) inserting in clause (1) of the Article 14 immediately after the words ‘at the suit of’ a colon and the letter ‘a’ in brackets; and
- b) inserting immediately after the words ‘enforcement of that right or freedom’ a semi-colon and the following words –
 - ‘(b) a person acting on behalf of another person who would be entitled to bring a suit under (a) but who cannot act in their own name; or
 - (c) an association acting in the interest of its members.’

18. Amendment of Article 15

Article 15 of the Constitution is amended by

- a) inserting, immediately before the words ‘In this Part’, the following –

‘(1.) When interpreting this Part, a court ~~must~~ shall promote the values that underlie a democratic society based on freedom and equality and ~~must shall~~, if relevant, have regard to public international law applicable to the protection of the rights and freedoms set out in this Part.

(2.) The provisions of this Part are not to be construed as denying or limiting other rights and freedoms that are not specified in this Part but that are recognised or conferred by common law, customary law or ~~legislation~~ laws enacted by Parliament to the extent that they are not inconsistent with this Part.

(3) The rights and freedoms protected in this Part may only be limited in accordance with the exceptions provided for in this Part. In determining whether a law that limits rights is reasonably required for a prescribed purpose, the Court must take into account the relation between the limitation and its purpose, and any less restrictive means to achieve the purpose.

(4)’;

- b) inserting in clause (4) immediately after the word “requires-“ the words “”child” means a person under the age of eighteen years’; and
 c) deleting from clause (4) the words ‘“public property” includes property of a body corporate established by law for public purposes.’

19. Amendment of Article 16

Article 16 of the Constitution is amended by

- a) in clause (1) substituting for the word ‘Parliament’ the words ‘the people of Nauru in accordance with Article 16A’;
 b) inserting immediately after clause (1), the following –

‘(1A) The President shall be the Head of State and Head of Government’;

- c) deleting from clause (3) the words ‘Speaker and’ and substituting in clause (3) for the word ‘are’ the word ‘is’;
 d) inserting immediately after clause (3), the following new clauses (3A) and (3B) –

‘(3A.) The functions and powers of the President are vested in him by this Constitution, and include the following –

- to appoint Ministers to Cabinet – Art 19;
- to preside at meetings of Cabinet – Art 22;
- to assign to Ministers responsibility for government ~~departments~~ business – Art. 23;
- to ~~determine~~ advise the Speaker on the appointment of a date of election after dissolution – Art. 39;
- to ~~determine the date of~~ advise the Speaker on the time for the beginning of parliamentary sessions – Art. 40. (1);

- to ~~prorogue~~ advise the Speaker on the prorogation of Parliament – Arts. 41(1);
- to initiate the process of dissolution of Parliament – Art. 41(2);
- to appoint judges and acting judges – Arts 49(2) and 53;
- to appoint ~~the Director of Public Prosecutions and the Ombudsman~~ – Art 57B, ~~57D~~
- to appoint the Director of Audit – Art 66(1);
- to appoint the Director of Public Prosecutions – Art 70A;
- to declare and revoke a state of emergency – Art. 77;
- to make emergency orders during a state of emergency – Art. 78; and
- to exercise the prerogative of mercy – Art. 80.

(3B) A person assuming the office of President shall, before entering upon the duties of that office, take and subscribe before the Chief Justice or the Speaker an oath in the form set out in the Seventh Schedule [7] to this Constitution'; ~~and~~

- e) inserting in clause (4) immediately before the words 'The President holds office' the words 'Except as otherwise provided in the Constitution'; and
- f) repealing clause (5).

20. Amendment of Article 17

Article 17 of the Constitution is amended by

- a) deleting from clause (1) the words 'and the Cabinet has the general direction and control of the government of Nauru';
- b) inserting immediately after clause (2), new clauses (3) and (4) as follows:

'(3) The executive authority so vested in the Cabinet shall include but shall not be limited to the following powers, functions, duties and responsibilities:

(a) the Cabinet shall have the general direction and control of the government of Nauru;

(b) the Cabinet shall recommend to Parliament such legislative proposals as it considers necessary or desirable to implement its policies and decisions; and, in particular, ~~the Cabinet, taking into account the provisions of Part VI (Finance),~~ shall recommend to Parliament proposals for the raising of revenue and for the expenditure of public money in accordance with the provisions of Part VI;

(c) the Cabinet shall be accountable to Parliament for all public expenditure and for relating such expenditure to the appropriations made by Parliament or to other authority conferred by this Constitution or by ~~Aet~~ law;

(d) the Cabinet shall be responsible for conducting the foreign affairs of Nauru, whether by treaty or otherwise; provided that Cabinet shall, upon ratifying any treaty, table the treaty in Parliament:

(e) the Cabinet shall be responsible for making such provision as may be reasonable and necessary for the security of Nauru;

(f) the Cabinet shall be responsible for establishing and maintaining such hospitals and other institutions and for providing such other services as may be reasonable and necessary for the public health;

(g) the Cabinet shall be responsible for making such provision as may be reasonable and necessary to provide educational opportunities for the people of Nauru;

(h) the Cabinet shall be responsible for establishing and maintaining such other institutions and services and for making such other provision as may be reasonable and necessary to achieve an adequate standard of living for the people of Nauru, to enable them to enjoy their legal rights, and to serve their economic, social and cultural welfare;

(i) subject to this Constitution and to any other law, in the exercise of its responsibilities, the Cabinet may make such contracts and other instruments on behalf of the Government of Nauru as it considers necessary.

(4.) No treaty or other international agreement which is finally accepted by or on behalf of the Republic of Nauru shall, of itself, have the force of law in the Republic.’

21. Amendment of Article 58

Article 58 of the Constitution is amended by inserting immediately following the word ‘Nauru’ the words ‘or by a public officer or Member of Parliament for or on behalf of, or for the benefit of, Nauru’.

22. ~~Amendment of Article 59~~

~~Article 59 of the Constitution is amended by inserting immediately after clause (3) the following new clauses (3A), (3B) and (3C)—~~

~~‘(3A.) The Minister of 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, deliver or transmit to the Director of Audit the statements of accounts of the moneys of the Republic of Nauru comprising the revenues and expenditure for that year and the assets and liabilities at the end of that year.~~

~~(3B.) The Director of Audit shall, within two months after receiving from the Minister of Finance the statements of accounts for the financial year referred to in the preceding clause or such longer period thereafter 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 for the year, together with certified copies of the statements and accounts.~~

~~(3C.) The Speaker shall cause the report and statements to be laid on the table of Parliament as soon as practicable and send copies thereof to the President and Minister of Finance.’~~

Comment [P28]: The effect of these proposed amendments has been retained by SCCA, but the amendments are reflected in proposed new Article 59A and in proposed new Article 66A, contained in the Parliamentary Amendments Bill, above

22A. Amendment of Article 65

Article 65 of the Constitution is amended by inserting in clause (4) immediately after the words ‘judge of the Supreme Court,’ the words ‘Speaker of Parliament’ and by inserting in clause (4) immediately after the words ‘Clerk of Parliament,’ the words ‘Director of Public Prosecutions, Ombudsman’.

22B. Amendment of Article 72

Article 72 of the Constitution is amended by substituting in clause (1) for the words ‘his parents were’ the words ‘either of his parents was a’ and by substituting in clause (1) immediately before the words ‘at the date of his birth’ for the word ‘citizens’ the word ‘citizen’.

23. Repeal of certain transitional provisions

The Constitution is amended by repealing ~~clause (3) of Article 85, and~~ Article 93.

24. Amendment of Schedule 5

Schedule 5 of the Constitution is amended by

- a) inserting in paragraph (iii) immediately after ‘16,’ the number ‘16A’;
- b) inserting immediately after paragraph (iv) a new paragraph as follows – ‘(iv-a) Article 57A’;
- c) inserting in paragraph (v) immediately after the number ‘62 58,’ the number ‘63’ ‘58A’ and inserting immediately after the number ‘59’ the number ‘59A’;
- d) inserting immediately after paragraph (vi) a new paragraph (vi-a) as follows – ‘(vi-a) Article 78.’;
- e) substituting in paragraph (vii) for the word ‘Article’ the word ‘Articles’ and inserting in paragraph (vii) immediately after the number ‘84’ the number ‘84A’;
and
- f) deleting paragraph (ix). substituting in paragraph (vii) for the word ‘Article’, the word ‘Articles’ and inserting immediately after the word ‘Articles’ the number ‘83.’;

25. ~~Change of terminology in Articles 65 and 84~~

~~Articles 65 and 84 are amended by substituting for the word ‘Clerk’ in both of those Articles the words ‘Secretary General’.~~