

REPUBLIC OF NAURU

(No. 17 of 2004)

AN ACT

To provide for a Parliamentary Standing Committee for the purpose of reviewing the Constitution of Nauru and proposing possible changes to the Constitution of Nauru and for establishing the procedure for conducting a referendum.

(Certified: 3rd November, 2004)

REPUBLIC OF NAURU

CONSTITUTIONAL REVIEW COMMITTEE ACT 2004

ARRANGEMENT OF SECTIONS

SECTION:

- 1. Short Title**
- 2. Interpretation**
- 3. Constitutional Review Committee**
- 4. Membership of Committee**
- 5. Chairman of the Committee**
- 6. Meetings of the Committee**
- 7. Resourcing of the Committee**
- 8. Procedure**
- 9. Sectional Committees**
- 10. Evidence**
- 11. Evidence before a Committee no longer existing**
- 12. Duties of the Committee**
- 13. Proposed amendments that require public consultation and referendum**
- 14. Result of the Deliberations of the Committee**
- 15. Conduct of Referendum**
- 16. Regulations**
- 17. Schedule - Conduct of a Referendum**
- 18. Appendix 1 - Application for enrollment**
- 19. Appendix 2 - Referendum paper**
- 20. Appendix 3 - Certificate of Returning Officer**

REPUBLIC OF NAURU

A BILL FOR

AN ACT

[No. 17 of 2004]

To provide for a Parliamentary Standing Committee for the purpose of reviewing the Constitution of Nauru and proposing possible changes to the Constitution of Nauru and for establishing the procedure for conducting a referendum

(Certified: 3/11/04.)

Enacted by the Parliament of Nauru as follows:--

Short Title

1. This Act may be cited as the *Constitutional Review Committee Act 2004*.

Interpretation

2. In this Act, unless the contrary intention appears-
"member" means a member of the Committee,
"the Chairman" means the person appointed under section 5 of this Act as Chairman of the Constitutional Review Committee and includes the person appointed under that section as Deputy Chairman of the Constitutional Review Committee and any other person who is for the time being authorised to preside at meetings of the Constitutional Review Committee,
"the Constitutional Review Committee", or "the Committee" means the Constitutional Review Committee established by section 3 of this Act.

Constitutional Review Committee

3. There shall be a Parliamentary Standing Committee which shall be known as the Constitutional Review Committee for the purpose of reviewing the Constitution of Nauru and proposing and considering proposals for amendments to the Constitution which agreed amendments shall be then put to the Parliament in accordance with the provisions of Article 84(2) and if passed in accordance therewith put to a Referendum in accordance with Article 84(3), (4) and (5) as necessary.

Membership of Committee

- 4(1.) As soon as practicable after the commencement of this Act and thereafter at or after the first session of each Parliament a committee consisting of nine members of the Parliament of Nauru who shall be appointed according to the practice of Parliament with reference to the appointment of members to serve on select committees of Parliament.
- (2.) Each member, shall hold office during the pleasure of the House.

(3.) Each member shall cease to hold office upon ceasing to be a Member of Parliament or when the Parliament expires by effluxion of time or is dissolved.

Chairman of the Committee

5(1.) There shall be a Chairman and a Deputy Chairman of the Committee who shall be elected by the members from time to time and shall hold office as Chairman and Deputy Chairman during the pleasure of the Committee.

(3.) The Chairman shall preside at all meetings of the Committee at which he is present.

(4.) In the event of the absence of the Chairman from a meeting of the Committee the Deputy Chairman shall if he is present at that meeting preside at that meeting.

(5.) In the event of the absence of both the Chairman and the Deputy Chairman from a meeting of the Committee the members present may appoint one of their number to preside at the meeting and the member so presiding shall in relation to the meeting have all the powers and functions of the Chairman.

Meetings of the Committee

6(1.) The first meeting of the Committee shall be held at a time and a place within Nauru fixed by the Speaker of Parliament and on a date not later than 30 days following the appointment of the Committee pursuant to section 4.

(2.) Subsequent meetings of the Committee shall be held at times and places as the Committee by resolution determines or subject to any resolution of the Committee as the Chairman determines but shall not meet at any place outside Nauru.

(3.) The Committee may meet and transact business notwithstanding any prerogation of the Parliament.

(4.) Unless the Committee otherwise resolves, the Committee shall take all evidence in public.

(5.) That the Parliamentary Counsel or other person acting in such capacity shall be a non-voting Secretary to the Committee (ex-officio).

Resourcing of the Committee

7(1.) The Committee shall be provided with all necessary staff, consultants, facilities and resources to achieve its objectives.

(2.) The Treasury Fund is appropriated to the extent necessary for the purposes of the last preceding sub-section.

Procedure

- 8(1.) At a meeting of the Committee five members constitute a quorum.
- (2.) All questions to be decided by the Committee shall be decided by a majority of the votes of the members present.
- (3.) The Chairman or other member presiding shall have a deliberative vote and in the event of an equality of votes shall also have a casting vote.
- (4.) The Committee shall have vote of dissent.
- (5.) Subject to this Act, the Committee shall otherwise determine its own procedure.

Sectional Committees

- 9(1.) The Committee may appoint a Sectional Committee or Sectional Committees of three or more of its members to inquire into and report to the Committee upon such matters with which the Committee is concerned as the Committee directs.
- (2.) The provisions of this Act (other than this section) apply in relation to a Sectional Committee in like manner as they apply in relation to the Committee and, for the purposes of these provisions as so applying a reference to the Chairman or the Deputy Chairman of the Committee shall be read as a reference to the Chairman or the Deputy Chairman of the Sectional Committee.

Evidence

- 10(1.) The Committee may call for oral and/or written submissions from the public at large or to any person or body directly within and outside of Nauru with respect to any proposal, matter or thing being inquired into or being considered by the Committee.
- (2.) The Committee may summon a person to appear before it to give evidence and produce documents, papers and records.
- (3.) Any person or body may make written submissions to the Committee with respect to any proposal, matter or thing being inquired into or being considered by the Committee.
- (4.) The Committee may commission any person or persons to investigate and report to the Committee on any aspect of a proposal, matter or thing being inquired into or being considered by the Committee.
- (5.) The Committee may, in lieu or in addition to Commissioning an investigation under subsection (4), with the consent of the Chief Secretary make use of the services of any of the officers of the public service and/or the entities and Corporations of the Republic with the consent of the respective Chairman.

Evidence before a Committee no longer existing

11(1.) Where the Committee as constituted at any time or a Sectional Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as next constituted may consider that evidence as if it had been given before it.

(2.) Evidence taken by the Parliamentary Select Committee known as the Constitutional Review Committee of the 15th Parliament may be considered by Committees constituted under this Act as if it had been given before it.

Duties of the Committee

12. The duties of the Committee are:-

- (a) To examine, inquire and report to Parliament by way of recommendations, proposed amendments to be carried out in the Constitution of Nauru as a whole including inter-alia Part I, Part II, and Parts III to XI vis-à-vis the Articles of the Constitution and the six Schedules thereto,
- (b) To inquire into any question in relation to proposed amendments to the Constitution of Nauru moved in Parliament or referred to it by Parliament and to report to the House upon that question,
- (c) To inquire into and recommend new provisions to be incorporated into the Constitution of Nauru as deemed fit,
- (d) To inquire into and report on all related and consequential matters that may arise subsequent to adoption of proposed amendments including but not limited to the impact on, relation to and/or required amendments in various statutes, rules and regulations,

and include such other duties as are assigned to the Committee by Standing Orders of Parliament.

Proposed amendments that require public consultation and referendum

13. The Committee shall undertake public consultation and a referendum shall be held prior to the Committee submitting its report and recommendations to Parliament in relation to the following matters:-

- (a) The freedoms and rights enumerated in Articles 3 to 14 but not so as to reduce or derogate from any such freedom or right;
- (b) The appointment of the President;
- (c) The appointment of a Vice President;
- (d) The relationship of the President and Cabinet to the Parliament;
- (e) The appointment of the Speaker and Deputy Speaker;
- (f) Votes of no-confidence;
- (g) The election of members of Parliament;

- (h) The issue of a fixed tenure for the Executive;
- (i) The Independence of the Parliament Secretariat;

and any other matters as it deems fit.

Result of the Deliberations of the Committee

14(1.) The Committee may at any time prior to making a final report to the Parliament:-

- (a) make one or more interim reports to the Parliament on the proposal, matter or thing; or
- (b) publish a document pertaining to the proposal, matter or thing.

(2.) Upon the conclusion of its deliberations the Committee shall submit its recommendations on proposed Constitutional amendments by means of a Final Report to the Parliament which shall include, as an appendix or appendices thereto, any dissenting report of a member and such Report shall upon being tabled in parliament be published and made available to any person upon payment of a sum of not more than \$20: PROVIDED that if Parliament does not meet within 30 days of the production of the Report it shall be published and made available to any person as aforesaid.

(3.) The Chairman of the Committee shall lay each report to the Parliament at the next sitting following the report being adopted by the Committee.

(4.) A Member of Parliament may at any time after the presentation of the Report of the Committee propose a Bill in accordance with Article 84 to amend the Constitution in accordance with a recommendation of the Convention.

(5.) No recommendation or Report shall be tabled that reduces or derogates from any freedom or right as provided in Articles 3 to 14 of the Constitution of Nauru.

Conduct of Referendum

15. If Parliament passes a proposed law for the amendment of the Constitution in conformity with Article 84(2) and the provisions of Article 84(3) apply to the proposed law then the referendum required to be held to comply with Article 84(3) shall be held in accordance with the provisions of the Schedule to this Act.

Regulations

16. The Cabinet may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

THE SCHEDULE

Conduct of a Referendum

If Parliament passes a proposed law to alter, or which has the effect of altering, any of the provisions of the Constitution specified in the Fifth Schedule to the Constitution (or the Fifth Schedule itself) then the Speaker shall certify that the proposed law has been passed by the Parliament but requires the approval of not less than two-thirds of the people casting valid votes at a referendum and in such event:

1. The Speaker shall send a certified copy of the proposed law to the President who shall cause a copy thereof to be published in the *Gazette* within the next 14 days and shall cause to be made available to any Nauruan Citizen requesting the same a copy of the proposed law or of the *Gazette* in which it is published.
2. Cabinet shall at the time of publication of the proposed law in the *Gazette*, and by notice in the same *Gazette*, fix a date being not less than 30 days or more than 60 days following the publication of the proposed law as the date upon which a referendum shall be held.
- 3(1.) The Cabinet may, by notice in the *Gazette*, appoint a person to be the Returning Officer for the referendum but if it does not do so the Chief Secretary shall be the Returning Officer.
 - (2.) The Returning Officer shall appoint a person to act as Presiding Officer at each polling place.
 - (3.) The Returning Officer shall determine at what places polling places shall be established and shall advertise by Notice in the *Gazette*.
 - (3.) A Returning Officer and a Presiding Officer respectively shall exercise such powers and shall perform such functions as may be prescribed.
4. All Nauruan Citizens of and over the age of 20 years who are entitled to vote at an election for Members of Parliament are entitled to vote at the Referendum.
5. All Nauruan Citizens of and over the age of 20 years who are not already enrolled to vote in elections for members of Parliament must enroll to vote in the referendum by completing an application for enrollment in the form in appendix 1.
Penalty \$100.00
6. On the polling day all enrolled persons present in Nauru are required to vote and shall do so at the polling place in the District upon which roll their name is entered.
7. Postal and/or proxy voting in a referendum shall be conducted in accordance with Regulations as provided for in accordance with the Electoral Act 1963-1991.
8. All persons however and wherever they may vote shall before being issued a

ballot paper state verbally, or in writing in the case of a postal vote, that they have not voted previously and will not vote again.

9. At the referendum the voters shall be asked in respect of each amendment proposed to be made to the Constitution if they approve or do not approve of it and against each proposed amendment (which may be described by reference to its heading or marginal note in the proposed law or by being set out in full as may be directed by the Speaker) there shall be placed two boxes one of which must be marked to indicate positively whether the voter approves or disapproves thereof and generally in the form of appendix 2.

10. At the conclusion of polling in Nauru the votes shall be taken to one place determined by the Returning Officer and shall be opened in the presence of the Returning Officer and the Clerk of Parliament and such other persons, not exceeding 6 appointed by the Speaker, who shall act as scrutineers. The votes shall be counted by the Returning Officer and the Presiding Officers in the presence of the scrutineers and such members of the general public as may be able to be present to witness the counting without being able to interfere with the counting or the business of the count or the scrutiny.

11. Upon the completion of the count the Returning Officer shall certify to the Speaker the result of the referendum in accordance with appendix 3 and shall cause a copy thereof to be published in the Gazette immediately.

12. Any person who wishes to dispute the validity of a result certified by the Returning Officer must within 5 days of their being Gazetted file with the Supreme Court as a Court of Disputed Returns a statement of such objection together with brief details sufficient to identify the nature and basis of such dispute together with a filing fee of \$100. The Court shall hear and determine the issues raised by the objection as soon as practicable after they have been filed. The Court in reaching its decision may dismiss some or all of the objections, set aside the results of the referendum in respect of an objection, allow or disallow votes rejected or allowed by the Returning Officer, or make such other order as in the circumstances appears fair and just. If the referendum is set aside in respect of any particular question the Court may direct that a new referendum be held in respect of that question. The Court may only award costs to an objecting party if it considers that the decisions of the Returning Officer were so unreasonable as to constitute negligent behaviour, or to the Returning Officer if it considers that the objections were wholly without merit.

13. Any provision of the proposed law that has received two-thirds or more of the votes validly cast in respect of that provision shall after the time for lodging objections pursuant to the previous paragraph has elapsed be certified by the Speaker as having been duly passed in accordance with Article 84(4) and shall have immediate effect but if an objection has been lodged shall not be so certified unless and until such time as the Court declares that the objection is disallowed.

14. The provisions of Chapter XIV of the Criminal Code of Queensland and in its application to Nauru apply to the holding of a referendum so that all monetary penalties provided therein shall be three times the amounts specified therein.

15. Substantial compliance with a form is sufficient.

Appendix 1 - Application for enrollment

Republic of Nauru
Application to enroll for the purpose of a referendum

To The Returning Officer

I hereby apply to be enrolled as an elector in respect of the forthcoming referendum and provide the following particulars:

My Name is:

I am a Nauruan Citizen

I reside in the District of

I am 20 years of age or greater having been born inon

I am not already enrolled as an elector for in respect of elections for members of Parliament.

I declare that this statement is true and correct.

Signed..... Date:

Appendix 2 - Referendum paper

Republic of Nauru
Referendum

This is a referendum to determine if the people of Nauru agree or not with various proposals which were placed before the Parliament as a result of the deliberations of the Constitutional Review Committee and which have been approved by the Parliament of Nauru for placing before the people of Nauru.

The proposals for changing the Constitution which require the approval of at least two thirds of the valid votes cast at this referendum to become law are set out below.

In order for you to cast a valid vote you must place a cross or other mark in a box to indicate that you approve or disapprove of each proposal. You do not have to mark each box but you should mark one box in respect of each question.

The proposals are:

1. Do you support the proposal that: YES NO

2. Do you support the proposal that: YES NO

[and so on according to the number of questions]

Appendix 3 - Certificate of Returning Officer

REPUBLIC OF NAURU
REFERENDUM CERTIFICATE

To the Speaker

I do hereby certify that the Referendum of the electors of Nauru has been completed and the results are as follows:

1. In respect of question 1 there were X valid votes cast of which Y were in favour and Z opposed there being less than/at least two thirds of the valid votes in favour of the question the question was disapproved/approved.

2. In respect of question 2 there were XX valid votes cast of which YY were in favour and ZZ opposed there being less than/at least two thirds of the valid votes in favour of the question the question was disapproved/approved.

[and so on in respect of each question]

.....
Returning Officer

Date:.....

I hereby certify that the above is a fair print of a Bill for an Act entitled **Constitutional Review Committee Act 2004** has been passed by Parliament of Nauru and is now presented to the Speaker for his certificate under Article 47 of the Constitution.



Clerk of Parliament
3rd November 2004

Pursuant to Article 47 of the Constitution, I, **VASSAL GADOENGIN**, Speaker of Parliament, hereby certify that **Constitutional Review Committee Act 2004** has been passed by Parliament of Nauru



Speaker
3rd November 2004

