



REPUBLIC OF NAURU

# Interpretation Bill 2011

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Serial No. 5 of 2011

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REPUBLIC OF NAURU

# Interpretation Bill 2011

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Serial No. 5 of 2011

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A Bill for:

An Act about the interpretation and operation of legislation

*Certified on [ ]*

Enacted by the Parliament of Nauru as follows:

## PART 1 – PRELIMINARY MATTERS

**1 Short title**

This Act may be cited as the *Interpretation Act 2011*.

**2 Commencement**

This Act commences on 1 September 2011.

**3 Application**

This Act applies, subject to a contrary intention, to all written laws (including this Act) except the Constitution.

## **PART 2 – NUMBERING AND NOTIFICATION OF ACTS**

### **4 Numbering of Acts**

Each Nauru Act must be numbered in the order in which it was passed by Parliament.

### **5 Notification of Acts**

The certification of each Nauru Act must be notified in the Gazette by:

- (a) publishing a notice in the Gazette:
  - (i) stating that the Act has been passed by Parliament and certified; and
  - (ii) specifying the place where the Act can be inspected; or
- (b) publishing the text of the Act in the Gazette.

## **PART 3 – MAKING, NUMBERING AND NOTIFICATION OF SUBSIDIARY LEGISLATION**

### **Division 1 – Power to make subsidiary legislation**

### **6 Who may make subsidiary legislation**

If an Act authorises or requires the making of subsidiary legislation under the Act and does not specify who may make the subsidiary legislation, the subsidiary legislation may only be made by Cabinet.

### **7 General power to make subsidiary legislation**

- (1) This section applies if an Act authorises or requires the making of subsidiary legislation under the Act.
- (2) Subsidiary legislation may be made in relation to any matter that:
  - (a) is required or permitted to be prescribed by the Act; or



- (b) is necessary or convenient to be prescribed to carry out or give effect to the Act.
- (3) Subsection (2) applies even though the Act also authorises the making of subsidiary legislation for a particular purpose.
- (4) Subsidiary legislation made under the Act must not be inconsistent with the Act.

**8 Subsidiary legislation may prohibit**

If an Act authorises or requires a matter to be regulated by subsidiary legislation, the subsidiary legislation may prohibit the matter or any aspect of the matter.

**9 Subsidiary legislation may provide for review or appeal**

- (1) If an Act authorises or requires the making of subsidiary legislation under the Act, the subsidiary legislation may provide for the review of, or appeal against, a decision made under the subsidiary legislation.
- (2) For subsection (1), the subsidiary legislation may give jurisdiction to a court, tribunal, person or other body.

**10 General power to prescribe fees**

- (1) This section applies:
  - (a) if an Act authorises or requires fees to be prescribed generally for the Act by subsidiary legislation; and
  - (b) even if the Act also authorises or requires fees to be prescribed for a particular matter.
- (2) A fee may be prescribed:
  - (a) in relation to any matter under or related to the Act; or
  - (b) for a provision of the Act even if the provision does not mention a fee.

**11 Method of prescribing fees**

- (1) This section applies if an Act authorises or requires fees to be prescribed for the Act (either generally or in relation to a specific matter) by subsidiary legislation.
- (2) A fee may be prescribed by:
  - (a) stating the fee; or
  - (b) setting a rate, or providing a formula or other method, by which the fee must be worked out; or
  - (c) a combination of a stated fee and a rate, formula or other method.
- (3) The subsidiary legislation may provide for:
  - (a) the exemption from payment of a prescribed fee; or
  - (b) the waiver (wholly or partly) of a prescribed fee; or
  - (c) the refund (wholly or partly) of a prescribed fee.

**12 Subsidiary legislation may provide for infringement notice offences**

If an Act authorises or requires the making of subsidiary legislation under the Act, the subsidiary legislation may provide for:

- (a) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against the Act or the subsidiary legislation; and
- (b) the service of a notice relating to payment of the amount on a person alleged to have committed the offence; and
- (c) the details that must be included in the notice.

**13        Subsidiary legislation may apply other instrument**

If an Act authorises or requires the making of subsidiary legislation under the Act, the subsidiary legislation may apply, adopt or incorporate, with or without changes:

- (a) a matter contained in another instrument as in force or existing at a particular time or from time to time; or
- (b) another instrument as in force or existing at a particular time or from time to time.

**Division 2 – Numbering and notification of subsidiary legislation**

**14        Definitions for Division 2**

In this Division:

*'made'*, for subsidiary legislation, includes adopted under a Nauru Act.

**15        Numbering of subsidiary legislation**

Subsidiary legislation must be numbered in the order in which it is made.

**16        Notification of subsidiary legislation**

The making of subsidiary legislation must be notified in the Gazette by:

- (a) publishing a notice in the Gazette:
  - (i) stating that the subsidiary legislation has been made; and
  - (ii) specifying the place where the subsidiary legislation can be inspected; or
- (b) publishing the text of the subsidiary legislation in the Gazette.

*Note for section 16*

*Sections 20 and 22 deal with the commencement of subsidiary legislation before notification.*

**17            Tabling and disallowance of subsidiary legislation**

- (1) In this section:
- '**disallowed legislation**' means Nauru subsidiary legislation, or a provision of Nauru subsidiary legislation, disallowed under subsection (3).
- (2) Nauru subsidiary legislation must be tabled in Parliament within 6 sitting days after it is notified in the Gazette.
- (3) Parliament may, by resolution, disallow the subsidiary legislation or a provision of the subsidiary legislation if notice of the motion of disallowance is given within 6 sitting days after the subsidiary legislation is tabled.
- (4) The 6 sitting days mentioned in subsection (3) may occur during:
- (a) one session of Parliament or over the course of more than one session of Parliament; or
  - (b) one term of Parliament or over the course of more than one term of Parliament.
- (5) Notice of the disallowance must be published in the Gazette within 21 days after it occurs.
- (6) The disallowance has the same effect as repeal of the disallowed legislation.
- (7) However, despite section 29, if the disallowed legislation amended or repealed a provision of other subsidiary legislation in force immediately before the commencement of the disallowed legislation, the disallowance revives the other provision from the date of the disallowance as if the disallowed legislation had not been made.
- (8) Subsidiary legislation or a provision of subsidiary legislation that is the same in substance or effect as the disallowed legislation must not be made within 6 months after the disallowance.
- (9) Subsidiary legislation has no effect if it is:
- (a) not tabled under subsection (2); or
  - (b) made in contravention of subsection (8).

**18 Procedure for making rules and by-laws**

- (1) This section applies if an Act contains a power for a person, other than the President or a Minister, to make rules or by-laws.
- (2) All rules or by-laws made under the power must be:
  - (a) signed by the person making them, or, if that person is a body, by a person authorised by it to sign them; and
  - (b) given to the Minister administering the provision containing the power for notification in the Gazette.
- (3) The Minister may return the rules or by-laws to the person who made them with recommended changes.
- (4) If the Minister returns the rules or by-laws to the person with recommended changes, the person must:
  - (a) consider the recommended changes; and
  - (b) return the rules or by-laws to the Minister for notification in the Gazette, whether or not the recommended changes are made.
- (5) To avoid doubt, sections 15, 16 and 17 apply to the rules or by-laws.

**PART 4 – COMMENCEMENT OF WRITTEN LAWS**

**19 Commencement of Acts**

- (1) An Act commences:
  - (a) on certification; or
  - (b) if the Act provides for another date of commencement – on the other date.
- (2) However, the provisions of the Act providing for its name and commencement automatically commence:
  - (a) on certification; or

- (b) if a provision of the Act commences at a point in time before the Act is certified – at that point in time; or
  - (c) if 2 or more provisions of the Act commence at different point in time before the Act is certified – at the earliest of the points in time.
- (3) Unless it commences retrospectively under section 22, a Nauru Act cannot commence before it is certified.

## **20 Commencement of subsidiary legislation**

- (1) Subsidiary legislation commences:
- (a) on notification; or
  - (b) if the subsidiary legislation or an Act provides for another date of commencement – on the other date.
- (2) However, the provisions of the subsidiary legislation providing for its name and commencement automatically commence:
- (a) on notification; or
  - (b) if a provision of the subsidiary legislation commences at a point in time before the legislation is notified – on the commencement of the point in time; or
  - (c) if 2 or more provisions of the subsidiary legislation commence at different points in time before the legislation is notified – at the earliest of the points in time.
- (3) Unless it commences retrospectively under section 22, subsidiary legislation cannot commence before it is notified.

## **21 Time of commencement**

If a provision of a written law commences on a particular day, it commences at the beginning of the day.

## **22 Retrospective commencement**

- (1) An Act commences '*retrospectively*' if it commences before it is certified.

- (2) Subsidiary legislation commences **'retrospectively'** if it commences before it is notified.
- (3) A written law must not be taken to provide for the law (or another law) to commence retrospectively unless the law clearly indicates that it commences retrospectively.

*Example for section 22(3)*

*The ABC Act 2011 was notified on 1 August 2011. It contains the following commencement provision:*

*"This Act is taken to have commenced on 1 July 2007."*

*The commencement provision clearly indicates that the Act commences retrospectively.*

- (4) Also, a written law must not be taken to provide for a provision of subsidiary legislation to commence retrospectively unless:
  - (a) the date of commencement is not earlier than the date of commencement of the Act under which the subsidiary legislation is made; and
  - (b) the provision of the subsidiary legislation does not operate to make a person liable to a penalty of any kind for anything done (or omitted to be done) before the subsidiary legislation is notified.

## **23 Commencement by commencement notice**

- (1) If an Act is expressed to commence on a day fixed a person by Gazette notice:
  - (a) the person may fix a single day or time; or
  - (b) the person may fix different days or times for different provisions of the Act.
- (2) The person must not fix a day before the Act was certified unless the Act clearly indicates that the notice may do so.

**24 Amendment before commencement**

- (1) This section applies if a written law (the **'amending law'**) amends another written law that has not commenced (the **'uncommenced law'**).
- (2) The amendment of the uncommenced law does not of itself commence the law.
- (3) The amendment made by the amending law commences on the commencement of the uncommenced law and the uncommenced law commences as amended by the amending law.

**25 Exercise of powers before commencement**

- (1) If a power is given by a provision of a written law (the **'empowering provision'**) that has not commenced, the power may be exercised at any time before the empowering provision commences, but the exercise of the power does not take effect until the later of the following:
  - (a) the commencement of the empowering provision;
  - (b) the day it would have taken effect if the power were not exercised under this section.
- (2) If a power is given by a provision of a written law (the **'empowering provision'**) as amended by a provision of another law (the **'amending provision'**) and either the empowering or amending provision has not commenced, the power may be exercised at any time before the empowering or amending provision commences, but the exercise of the power does not take effect until the latest of the following:
  - (a) the commencement of the empowering provision;
  - (b) the commencement of the amending provision;
  - (c) the day it would have taken effect if the power were not exercised under this section.



**26 Reference to commencement**

A reference in a written law to the commencement of the law, another written law or a foreign law (the '**relevant law**') means:

- (a) if the relevant law commences on a single day or at a single time – the day or time; or
- (b) if different parts of the relevant law commence on different days or at different times – the last of those days or times.

**PART 5 – REPEAL AND AMENDMENT OF WRITTEN LAWS**

**27 Definitions for Part 5**

In this Part:

**'amend'** includes modify;

**'repeal'** includes:

- (a) expiry; and
- (b) repeal of an adopted law in its application to Nauru.

**28 Affect of repeal or amendment on previous operation of law**

- (1) The repeal or amendment of a written law does not:
  - (a) revive anything not in force or existing at the time the repeal or amendment takes effect; or
  - (b) affect the previous operation of the repealed or amended law, or anything done, begun or suffered under the repealed or amended law; or
  - (c) affect an existing right, privilege, obligation or liability acquired, accrued or incurred under the repealed or amended law; or
  - (d) affect a penalty, forfeiture or punishment incurred under the repealed or amended law.

- (2) An investigation, proceeding or remedy in relation to anything mentioned in subsection (1)(c) or (d) may be started, continued or enforced as if the repealed or amended law had not been repealed or amended.

**29 Repeal does not revive previous law**

- (1) If a written law (the **'first law'**) is repealed by another law (the **'repealing law'**), the first law is not revived only because the repealing law is itself repealed.
- (2) If a written law (the **'first law'**) is amended by another law (the **'amending law'**), the continuing operation of the amendments made by the amending law to the first law is not affected only because the amending law is repealed.

**30 Continuance of repealed provisions**

If a provision of a written law repeals and substitutes a provision of another law, the repealed provision continues in force until the substituted provision commences.

**31 References to repealed provisions**

If a written law repeals and substitutes, with or without modification, a provision of another written law, a reference in any other written law to the provision is a reference to the substituted provision.

**32 Confirmation of exercise of powers not required**

- (1) This section applies if:
- (a) a written law gives a person a power or function; and
  - (b) the law is amended; and
  - (c) under the amended law, a person has the same power or function, whether or not it is the same person.
- (2) The exercise of the power or the performance of the function under the law before it was amended does not cease to have effect or need to be confirmed only because the law was amended.

**33 Law and amending laws read as one**

A written law and all written laws amending it must be read as one.

**34 Status of modifications**

If a written law is modified by another law, the written law operates as modified but the modification does not amend the text of the law.

**PART 6 – REFERENCES TO LAWS**

**35 Definitions applicable to all written laws**

In a written law:

**'Act'** means:

- (a) a Nauru Act; or
- (b) an adopted Act;

**'adopted Act'** means an Act or Ordinance of a foreign country that is or has been in force in Nauru;

**'adopted law'** means:

- (a) an adopted Act; or
- (b) adopted subsidiary legislation;

**'adopted subsidiary legislation'** means regulations, rules or by-laws of a foreign country that:

- (a) are made under an adopted Act; and
- (b) are or have been in force in Nauru;

**'foreign law'** means a written law of a foreign country;

**'Nauru Act'** means:

- (a) an Act passed by Parliament and certified; or

- (b) an Ordinance made by the Administrator of the Territory of Nauru before 31 January 1968;

**'Nauru statutory instrument'** means:

- (a) an instrument of a legislative or administrative character made under:
  - (i) a Nauru Act; or
  - (ii) another statutory instrument; or
  - (iii) a power given by a Nauru Act or statutory instrument; and
- (b) includes Nauru subsidiary legislation;

*Examples for definition of 'Nauru statutory instrument', paragraph (a)*

1. *An instrument appointing a person to an office under a power of appointment given by an Act is an instrument of a legislative or administrative character made under the Act.*
2. *An instrument declaring an area to be a quarantine area under a power to declare a quarantine area given by an Act is an instrument of a legislative or administrative character made under the Act.*

**'Nauru subsidiary legislation'** means regulations, rules or by-laws made under an Act;

**'Nauru written law'** means:

- (a) a Nauru Act; or
- (b) a Nauru statutory instrument.

**'Ordinance'** means an Ordinance continued in force under Article 85;

**'provision'**, of a written law, means any words or anything else that forms part of the written law;

**'statutory instrument'** means:

- (a) a Nauru statutory instrument; or
- (b) adopted subsidiary legislation;

**'subsidiary legislation'** means:

- (a) Nauru subsidiary legislation; or
- (b) adopted subsidiary legislation;

**'written law'** means:

- (a) the Constitution; or
- (b) an Act; or
- (c) a statutory instrument.

**36 How written laws may be referred to**

- (1) A Nauru Act may be referred to by:
  - (a) its short title; or
  - (b) its number and the year in which it was certified, together with a reference (if necessary) to indicate that it is an Act; or
  - (c) if the Act (the **'amended Act'**) is amended by another Act (the **'amending Act'**) and the amending Act specifies that the amended Act may be cited by a new short title – the new short title.
- (2) Nauru subsidiary legislation may be referred to by:
  - (a) the name by which the subsidiary legislation provides it may be cited; or
  - (b) its number and the year in which it was made, together with a reference (if necessary) to indicate that it is subsidiary legislation; or
  - (c) if the subsidiary legislation (the **'amended subsidiary legislation'**) is amended by other subsidiary legislation (the **'amending subsidiary legislation'**) and the amending subsidiary legislation specifies that the amended subsidiary legislation may be cited by a new name – the new name.

**37 How foreign laws may be referred to**

- (1) A foreign law may be referred to by reference to the jurisdiction of the law (or an abbreviation of the jurisdiction), together with:
  - (a) the name the law gives itself; or
  - (b) any other citation sufficient in the jurisdiction of the law for referring to the law.
- (2) The reference to the foreign law is a reference to the law as in force from time to time.

**38 Reference to written law includes law containing reference**

In a written law, a reference in general terms to a written law of the same kind includes a reference to the law itself.

*Example for section 38*

*The XYZ Act 2011 protects an office-holder from liability for 'anything done in the performance of functions under an Act'. The protection applies to things done in the performance of functions under the XYZ Act 2011 as well as under other Acts, because the reference to 'an Act' includes a reference to the XYZ Act 2011.*

**39 Reference to law includes law as in force from time to time**

A reference in a written law to another written law is a reference to the other law as in force from time to time.

**40 Reference to law includes statutory instruments under law**

In a written law, a reference (either generally or specifically) to the law, another written law or a foreign law includes a reference to a statutory instrument made under the law, including an instrument applied, adopted or incorporated (with or without modification) under the law.

**41 Reference to Act in statutory instrument**

A reference in a statutory instrument to '**the Act**' or '**the Ordinance**' is a reference to the Act or Ordinance under which the instrument is made or in force.

**42 Reference to law includes part of the law**

A reference in a written law to a written law or foreign law includes a reference to part of the law.

**43 Reference to adopted law**

A reference in a written law to an adopted law is a reference to the adopted law in its application to Nauru.

**44 By, under or pursuant to Act**

In a written law, **'by'**, **'under'**, **'pursuant to'**, **'in pursuance of'** or **'in accordance with'** the law or another written law or a foreign law (the **'relevant law'**) means by, under, pursuant to, in pursuance of or in accordance with:

- (a) the relevant law; or
- (b) a statutory instrument made under the relevant law.

**PART 7 – STRUCTURE OF WRITTEN LAWS**

**45 Material that is part of a written law**

- (1) A Schedule to a written law is part of the written law.
- (2) A table in the text of a written law is part of the written law.
- (3) A preamble or other recital to a written law and punctuation in a written law is part of the written law if:
  - (a) the law is certified or made after 1 September 2011; or
  - (b) the preamble or other recital or punctuation is amended or inserted after 1 September 2011.
- (4) An example, note or diagram in the text of a written law is part of the provision to which the example, note or diagram relates if:
  - (a) the law is certified or made after 1 September 2011; or
  - (b) the example, note or diagram is amended or inserted after 1 September 2011.

**46 Material that is not part of a written law**

- (1) A marginal note, footnote, endnote or any other note to a written law that is not part of the text of the written law is not part of the written law.
- (2) A provision number or heading in a written law is not part of the written law.
- (3) A table of contents (however described) or index of a written law is not part of the written law.

**47 Each section a substantive enactment**

Each section of an Act is a substantive enactment.

## **PART 8 – CONSTRUCTION OF LAWS**

### **Division 1 – Key principles**

**48 Statutory instrument to be interpreted subject to power**

- (1) A statutory instrument must be interpreted as operating to the full extent of, but not to exceed, the power to make the instrument given by the written law under which it is made.
- (2) If a provision of a statutory instrument would, apart from this section, be interpreted as exceeding the power:
  - (a) the provision is valid to the extent to which it does not exceed the power; and
  - (b) the remainder of the instrument is not affected.
- (3) If the application of a provision of a statutory instrument to a matter would, apart from this section, be interpreted as exceeding power, the provision's application to other matters is not affected.

*Note for section 48*

*Part 3, Division 1 deals with the power to make subsidiary legislation.*



**49 Interpretation to achieve purpose of law**

- (1) In interpreting a written law, the interpretation that would best achieve the purpose of the written law must be preferred to any other interpretation.
- (2) This section applies whether or not the purpose of the written law is expressly stated in the written law.

**50 Legislative context**

In interpreting a written law, the provisions of the law must be read in the context of the law as a whole.

**51 Non-legislative context – when extrinsic material may be considered**

- (1) In interpreting a written law, material not forming part of the written law may be considered in order to:
  - (a) resolve an ambiguous or obscure provision of the law; or
  - (b) confirm or displace the apparent meaning of the law; or
  - (c) find the meaning of the law when its apparent meaning leads to a result that is clearly absurd or is unreasonable.
- (2) In deciding whether material not forming part of the written law should be considered, the following matters must be taken into account:
  - (a) the desirability of being able to rely on the ordinary meaning of the law, having regard to the purpose of the law and the provisions of the law in the context of the law as a whole;
  - (b) the undesirability of prolonging proceedings without compensating advantage;
  - (c) the accessibility of the material to the public.

**52 Non-legislative context – extrinsic material that may be considered**

- (1) For section 51, the following material may be considered in interpreting an Act:
- (a) material, not forming part of the Act, contained in an authorised version of the Act;
  - (b) any relevant report of a commission, committee (including a committee of Parliament) or other similar body that was tabled in Parliament before the Act was passed;
  - (c) any relevant treaty or other international agreement to which Nauru is a party;
  - (d) the explanatory memorandum for the Bill that became the Act, or any other relevant document, that was tabled in Parliament before the Bill was passed;
  - (e) the second reading speech made to Parliament during the passage of the Bill that became the Act;
  - (f) official reports of proceedings in Parliament in relation to the Bill that became the Act.
- (2) For section 51, the following material may be considered in interpreting a statutory instrument:
- (a) material, not forming part of the instrument, contained in an authorised version of the instrument;
  - (b) any relevant report of a commission, committee (including a committee of Parliament) or other similar body that was tabled in Parliament:
    - (i) if the instrument was tabled in Parliament – with the instrument or before the instrument was tabled; or
    - (ii) otherwise – before the instrument was made;
  - (c) any relevant treaty or other international agreement to which Nauru is a party;

- (d) if the instrument was tabled in Parliament:
  - (i) the explanatory memorandum for the instrument, or any other relevant document, that was tabled with the instrument; and
  - (ii) the tabling statement made to Parliament in relation to the instrument;
  - (iii) official reports of proceedings in Parliament in relation to the instrument.
- (3) This section does not limit the material that may be considered in interpreting a written law.

**53 Changes in drafting practice do not affect meaning**

- (1) The purpose of this section is to encourage the making of progressive improvements in drafting practice without inadvertently changing the substantive effect of written laws.
- (2) Subsection (3) applies if:
  - (a) a provision of a written law expresses an idea in particular words; and
  - (b) either:
    - (i) a provision of the law or another written law enacted later appears to express the same idea in different words; or
    - (ii) the provision is replaced by another provision (whether or not in the same location) that appears to express the same idea in different words.
- (3) The ideas in the 2 provisions must not be taken to be different only because different words are used or the provisions are structured in different ways.

**54 Construction of amending laws**

Words and expressions contained in a written law that amends another written law have the same interpretation, application and effect as in the law being amended.

**55 Construction of adopted laws**

- (1) An adopted law must, subject to the written law giving it force or application in Nauru, be read with the modifications necessary for its application in Nauru.

*Example for subsection (1)*

*A reference in an adopted law to a named office must be read as a reference to the equivalent office (whether or not it is known by the same name) in Nauru.*

- (2) The modifications must not change the substance or effect of the law.

**Division 2 – Aids to interpretation**

***Subdivision 1 – General matters***

**56 Gender and number**

In a written law:

- (a) words indicating a gender include each other gender; and
- (b) words in the singular include the plural and words in the plural include the singular.

**57 Meaning of ‘may’ and ‘must’**

- (1) In a written law, the word ‘**may**’, used in relation to a power or function, indicates that the power or function may be exercised or performed, or not exercised or performed, at discretion.
- (2) In a written law, the word ‘**must**’, used in relation to a power or function, indicates that the power or function is required to be exercised or performed.

**58 Statutory instruments to be interpreted with parent Act**

Terms used in a statutory instrument have the same meanings as they have in the written law under which the instrument is made or in force.

**59 Determining a person's age**

- (1) In determining the age of a person for a written law, the person is taken to have attained a particular age at the beginning of the relevant anniversary of the person's birth.
- (2) If a person is born on 29 February in any year, the anniversary of the person's birth in any later year that is not a leap year is taken to be 28 February.

**60 Range of numbers, words or other things**

If a written law refers to a range of numbers, words or other things, the numbers, words or things indicating the beginning and end of the range are included in the range.

*Examples for section 60*

1. A reference to sections 3 to 19 includes sections 3 and 19.
2. A reference to all the words from 'aircraft' to 'contravention' includes 'aircraft' and 'contravention'.
3. A reference to Monday to Friday includes Monday and Friday.

**61 Measurement of distance**

The measurement of a distance for a written law must be made in a straight line on a horizontal plane.

**62 References to time generally**

- (1) A reference in a written law to a thing existing or having effect from time to time is a reference to the thing existing or having effect at any time.
- (2) A reference in a written law to a thing existing or having effect for the time being is a reference to the thing existing or having effect at that time.
- (3) A reference in a written law in general terms to a person holding, occupying or appointed to a particular designation, office or position is a reference to a person from time to time holding, occupying or appointed to the designation, office or position.

**63            Determining periods of time**

- (1) This section applies to:
  - (a) a period of time mentioned in a written law; and
  - (b) things required or allowed to be done on a particular day or within a particular period of time under a written law.
- (2) A period of time described as beginning at, on or with a stated day, act or event includes the stated day or the day of the stated act or event.
- (3) A period of time described as beginning from or after a stated day, act or event does not include the stated day or the day of the stated act or event.
- (4) A period of time described as ending at, by, on or with, or as continuing to or until, a stated day, act or event includes the stated day or the day of the stated act or event.
- (5) A period of time described as ending before a stated day, act or event does not include the stated day or the day of the stated act or event.
- (6) A reference to a number of days between 2 events does not include the days when the events happen.
- (7) If something must or may be done on a particular day or within a particular period of time and the day, or the last day of the period, is not a working day, the thing must or may be done on the next day that is a working day.
- (8) If something must or may be done and no time is provided for doing the thing, the thing must or may be done as soon as possible and as often as needed.
- (9) If something is required to be done, the obligation to do the thing continues until the thing is done even if:
  - (a) the thing is required to be done within a particular period or before a particular time, and the period has ended or the time has passed; or
  - (b) a person has been convicted of an offence for failing to do the thing.

**64 Examples**

If a provision of a written law includes an example:

- (a) the example is not exhaustive; and
- (b) the example does not limit or extend the meaning of the provision; and
- (c) if the example is inconsistent with the provision – the provision prevails to the extent of the inconsistency.

**Subdivision 2 – Definitions**

**65 Definitions applicable to all written laws**

In a written law:

**‘Act’**, see section 35;

**‘administrative arrangements order’**, see section 3 of the *Administrative Arrangements Act 2011*;

**‘adult’** means an individual who is at least 18 years old;

**‘adopted Act’**, see section 35;

**‘adopted law’**, see section 35;

**‘adopted subsidiary legislation’**, see section 35;

**‘aircraft’**, see section 6 of the *Civil Aviation Act 2011*;

**‘Angam Day’** means 26 October in any year;

**‘Article’** means an Article of the Constitution;

**‘authorised version’**, of a written law, means a version of the law published on a legislation database kept under the *Legislation Publication Act 2011*;

**‘barrister and solicitor’**, see section 75;

**'body'** includes any group of persons joined together for a common purpose, whether or not incorporated;

*Examples for definition of 'body'*

*Each of the following is a body:*

- (a) a company;
- (b) a statutory corporation, whether or not it has members;
- (c) an association, club or society;
- (d) a partnership;
- (e) a joint venture;
- (f) a corporation sole.

**'breach'** includes contravene;

**'calendar month'** means a period beginning on any day of a named month and ending:

- (a) at the end of the day before the corresponding day of the next named month; or
- (b) if there is no corresponding day – at the end of the next named month;

**'calendar year'** means a period of 12 months beginning on 1 January;

**'certified'**, for an Act, means certified by the Speaker under Article 47;

**'Chairman of the Family Court'** means the Chairman of the Family Court within the meaning of the *Family Court Act 1973*;

**'child'** means an individual who is not an adult;

**'Clerk of Parliament'** means the person holding or occupying the office of Clerk of Parliament mentioned in Article 33(1);

**'Commonwealth country'** means a country that forms part of the Commonwealth of Nations, and, if a Commonwealth country is responsible for the international relations of a territory, includes the territory;



**'Commissioner for Oaths'**, see section 2 of the *Oaths, Affirmations and Statutory Declarations Act 1976*;

**'Constitution'** means the Constitution of Nauru;

**'Constitution Day'** means 17 May in any year;

**'consular officer'** means a person who, within the meaning of the Vienna Convention on Consular Relations, is a consular officer of a Nauruan consular post;

**'contiguous zone'**, of Nauru, means the contiguous zone mentioned in section 5(1) of the *Sea Boundaries Act 1997*;

**'continental shelf'**, of Nauru, means the continental shelf mentioned in section 7(1) of the *Sea Boundaries Act 1997*;

**'contravene'** includes fail to comply with;

**'conviction'** means a finding of guilt by a court, whether or not the conviction is recorded;

**'corporation'** means a corporation incorporated under the *Corporations Act 1972* or a corresponding foreign law;

**'correctional centre'** means a place declared to be a correctional centre under section 6 of the *Correctional Service Act 2009*;

**'court of competent jurisdiction'**, for a legal proceeding, means a court with jurisdiction to hear and determine the proceeding;

**'Criminal Code 1899'** means the First Schedule to the *Criminal Code Act 1899* (Qld), as in force from time to time in Nauru;

**'de facto partner'**, see section 74(4);

**'de facto relationship'**, see section 74(5);

**'department'**, see section 3 of the *Administrative Arrangements Act 2011*;

**'diplomatic officer'** means a person who, within the meaning of the Vienna Convention on Diplomatic Relations, is a member of the diplomatic staff of a Nauruan mission;

**'Director of Audit'** means the person holding or occupying the office of Director of Audit mentioned in Article 66(1);

**'Director of Police'** means the person holding or occupying the office of Director of Police mentioned in section 6(1) of the *Nauru Police Force Act 1972*;

**'Director of Public Prosecutions'**, see section 2 of the *Criminal Procedure Act 1972*;

**'District'** means an area of Nauru known by one of the following names:

- (a) Aiwo;
- (b) Anabar;
- (c) Anetan;
- (d) Anibare;
- (e) Baiti;
- (f) Boe;
- (g) Buada;
- (h) Denigmodu;
- (i) Ewa;
- (j) Meneng;
- (k) Nibok;
- (l) Uaboe;
- (m) Yaren;

**'District Court'**, see section 2 of the *Courts Act 1972*;

**'document'** means a record of information, including the following:

- (a) anything on which there is writing;

- (b) anything on which there are figures, marks, numbers, perforations, symbols or anything else having meaning for people qualified to interpret them;
- (c) anything from which images, sounds, messages or writing can be produced or reproduced, whether with or without the aid of anything else;
- (d) a drawing, map, photograph or plan;

**'exclusive economic zone'**, of Nauru, means the exclusive economic zone mentioned in section 6(1) of the *Sea Boundaries Act 1997*;

**'Family Court'** means the court established by section 3 of the *Family Court Act 1973*;

**'financial year'** means a period of 12 months ending on 30 June;

**'foreign country'** means a country other than Nauru, and includes:

- (a) a state, province or part of the other country; and
- (b) a territory of, or area administered by, the other country;

**'foreign law'**, see section 35;

**'foreign lawyer'**, see section 75;

**'function'** includes a power or duty;

**'Gazette'** means the Government Gazette;

**'Gazette notice'** means a notice published in the Gazette;

**'Government'** means the Government of Nauru;

**'head of department'**, see section 3 of the *Administrative Arrangements Act 2011*;

**'health practitioner'** means a health practitioner registered in any class under section 8 of the *Health Practitioners Act 1999*;

**'home address'**, of an individual, means the address of the place where the individual usually lives;

**'husband'**, see section 74(2);

**'Independence Day'** means 31 January in any year;

**'individual'** means a natural person;

**'instrumentality'**, of the Republic, means a body established by a written law that expressly provides that the body is subject in some respect to the directions of Cabinet or a Minister;

**'internal waters'**, of Nauru, means the waters mentioned in section 3 of the *Sea Boundaries Act 1997*;

**'Island'** means the island of Nauru;

**'judge'** means:

- (a) a judge of the Supreme Court appointed under Article 49(2); or
- (b) a person appointed to act as Chief Justice or as a judge of the Supreme Court under Article 53;

**'land'** includes messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure or description and whatever is the estate in the land;

**'lawyer'**, see section 75;

**'legal practitioner'**, see section 75;

**'magistrate'**, see section 2 of the *Courts Act 1972*;

**'marriage'**, see section 74(2);

**'medical officer'** means a medical practitioner who holds a public office as a medical practitioner;

**'medical practitioner'** means a health practitioner registered in the class of medical practitioner;

**'member of the Family Court'** means a person appointed to be a member under section 4(1) of the *Family Court Act 1973*;

**'member of the police force'** means a police officer;

**'Nauru'** means the Island together with:

- (a) the internal waters and the territorial sea of Nauru; and
- (b) the bed and subsoil beneath the internal waters and the territorial sea of Nauru; and
- (c) the airspace above the Island, the internal waters and the territorial sea of Nauru;

**'Nauru Act'**, see section 35;

**'Nauru Lands Committee'** means the committee established by section 3(1) of the *Nauru Lands Committee Act 1956*;

**'Nauru Phosphate Corporation'** means the Nauru Phosphate Corporation established by the *Nauru Phosphate Corporation Act 1969*;

**'Nauru Phosphate Royalties Trust'** means the body corporate established by section 4(1) of the *Nauru Phosphate Royalties Trust Act 1968*;

**'Nauru statutory instrument'**, see section 35;

**'Nauru subsidiary legislation'**, see section 35;

**'Nauru written law'**, see section 35;

**'Nauruan'** means a person included in one of the classes of persons who constituted the Nauruan community under the *Nauruan Community Act 1956-1997*;

*Note for definition of 'Nauruan'*

*The Nauruan Community Act 1956-1997 was repealed on 30 December 2005 by the Naoero Citizenship Act 2005. However, the Interpretation Act 1971 continued to define Nauruan as a person included in one of the classes of persons who constitute the Nauruan community under the Nauruan Community Act 1956-1997.*

Section 4 of the Nauruan Community Act 1956-1997 provided:

*“For the purposes of the laws in force in the Island of Nauru, the following persons constitute the Nauruan community:*

- (a) persons who, immediately before the commencement of this Ordinance, were, or were deemed to be, aboriginal natives of the Island of Nauru by virtue of the institutions, customs and usages of the aboriginal natives of the Island of Nauru;*
- (b) except as provided in section six of this Ordinance, Pacific Islanders married, before the first day of January, One thousand nine hundred and fifty-four, to persons who were, or were deemed to be, aboriginal natives of the Island of Nauru by virtue of the institutions, customs and usages of the aboriginal natives of the Island of Nauru;*
- (c) Pacific Islanders who are admitted to the Nauruan community in pursuance of the next succeeding section;*
- (d) children born after the commencement of this Ordinance whose parents are included in any of the classes of persons who constitute the Nauruan community; and*
- (e) except as provided in section seven of this Ordinance, children born in the Island of Nauru after the commencement of this Ordinance of a marriage between a person included in one of the classes of persons who constitute the Nauruan community and a Pacific Islander.”*

Section 2(1) provided:

*““Pacific Islander” means a person ordinarily resident in the Island of Nauru who is a descendant of the aboriginal natives of an island or archipelago in the Pacific Ocean other than:*

- (a) the Island of Nauru;*
- (b) an island or archipelago which appertains geographically to Asia, the Americas, Australia, New Zealand, Indonesia or Japan,*

*and includes a person partly descended from those aboriginal natives who, before residing in the Island of Nauru, followed adhered to, or adopted the customs, or lived after the manner, of those aboriginal natives, but does not include a Nauruan;”*

*Sections 6 and 7 (mentioned in section 4) provided for the exclusion of a person from a class of persons mentioned in section 4(b) and (e).*

**'Nauruan citizen'** means a person who is a citizen of Nauru under:

- (a) Article 71, 72, 73 or 74; or
- (b) a law made under Article 75;

**'notification'** means:

- (a) for an Act certified after 1 September 2011 – notification in the Gazette under section 5(2); or
- (b) for an Act certified before 1 September 2011 – publication in the Gazette; or
- (c) for subsidiary legislation made after 1 September 2011 – notification in the Gazette under section 16(2); or
- (d) for subsidiary legislation made before 1 September 2011 – publication in the Gazette;

**'oath'** includes affirmation;

**'Ordinance'**, see section 35;

**'parent'**, see section 74(1);

**'person'**, includes a body;

*Note for definition of 'person'*

*Section 70 also deals with references to persons generally.*

**'pleader'**, see section 75;

**'police officer'** means a person appointed under section 6 or 7 of the *Nauru Police Force Act 1972*, and includes:

- (a) the Director of Police; and
- (b) a person taken to have been appointed under section 6(6) of that Act;

**'power'** includes a privilege, authority or discretion;

**'prescribed'** means prescribed by the Act, or by subsidiary legislation made under the Act, in which the expression appears;

**'property'** includes a right, title or interest to or over property, whether it is vested or contingent;

**'provision'**, see section 35;

**'public holiday'** means a holiday in the public service under section 37 of the *Public Service Act 1998*;

**'public prosecutor'** see section 2 of the *Criminal Procedure Act 1972*;

**'Republic'** means the Republic of Nauru;

**'resident magistrate'**, see section 2 of the *Courts Act 1972*;

**'rules of court'**, see section 2 of the *Courts Act 1972*;

**'see'**, when used to define a term, means the term has the same meaning as in the law or provision mentioned in that definition;

**'sign'** includes attach a seal or make a mark;

**'sitting day'** means a day on which Parliament meets;

**'spouse'**, see section 74(1);

**'statutory corporation'** means a body incorporated by name by a written law;

**'statutory declaration'** means a statutory declaration made in accordance with the *Oaths, Affirmations and Statutory Declarations Act 1976*;

**'statutory instrument'**, see section 35;

**'statutory office'** means an office established by or under a written law;

**'stepchild'**, see section 74(1);

**'step-relative'**, see section 74(3);



**'subsidiary legislation'**, see section 35;

**'swear'**, an oath, includes make an affirmation;

**'table'**, in Parliament, means to lay before Parliament under the Standing Orders of Parliament;

**'take'**, an oath, includes make an affirmation;

**'term'**, of Parliament, means the time from the beginning of the first session of Parliament after it is dissolved until it is next dissolved;

**'territorial sea'**, of Nauru, means the area mentioned in section 4(1) of the *Sea Boundaries Act 1997*;

**'the head of department'**, see section 73;

**'the Department'**, see section 72;

**'the Minister'**, see section 71;

**'the Regulations'** means regulations made under the Act in which the expression occurs;

**'Treasury Fund'** means the Treasury Fund mentioned in Article 58;

**'widow'**, see section 74(2);

**'widower'**, see section 74(2);

**'wife'**, see section 74(2);

**'working day'** means a day that is not Saturday, Sunday or a public holiday;

**'written law'**, see section 35;

**'writing'** includes any way of representing or reproducing words in visible form.

## 66 **Meaning of terms not defined**

In any written law, a term that is not defined in this Act has the meaning given to it by the Constitution.

**67 References related to Nauru Local Government Council**

A reference in a written law to:

- (a) the Council or the Nauru Local Government Council is a reference to Cabinet; and
- (b) the Head Chief of the Nauru Local Government Council is a reference to the President; and
- (c) a Councillor of the Nauru Local Government Council is a reference to a Minister.

**68 Definitions to be read in context**

A definition in a written law applies except so far as the context or subject matter otherwise indicates or requires.

**69 Parts of speech and grammatical forms**

If a written law defines a term, other parts of speech and grammatical forms of the term have corresponding meanings.

***Subdivision 3 – References to various persons and things***

**70 References to persons generally**

- (1) In a written law, a reference to a person generally includes a reference to a body as well as an individual.

*Examples for subsection (1)*

*Each of the following is a reference to a person generally:*

- (a) 'another person';
- (b) 'anyone';
- (c) 'party';
- (d) 'someone';
- (e) 'employer'.

- (2) Subsection (1) is not displaced only because there is an express reference to either an individual or a body elsewhere in the written law.

**71 References to Minister**

In a provision of a written law:

- (a) a reference to ***'the Minister'***:
- (i) is a reference to the Minister responsible for administering the provision in which the expression occurs; and
  - (ii) includes a Minister acting for the Minister; and
- (b) a reference to the Minister responsible for administering a written law or part of a written law is a reference to the Minister to which the administration of the law or part of the law is assigned under an administrative arrangements order or an assignment made under Article 23.

**72 References to department**

In a provision of a written law:

- (a) a reference to ***'the Department'*** is a reference to the department responsible for administering the provision in which the expression occurs; and
- (b) a reference to the department responsible for administering a written law, part of a written law or part of the subject matter of a written law is a reference to the department to which the responsibility to a Minister for the administration of the law, part of the law or subject matter is allocated under an administrative arrangements order.

**73 References to the Head of Department**

In a provision of a written law, a reference to ***'the Head of Department'***, is a reference to the head of the department responsible for administering the provision in which the expression occurs.

**74 Reference to family relationships**

(1) In a written law:

**'parent'**, of a person, means the person's father or mother, and:

- (a) includes the person's adoptive parent, as defined in the *Adoption of Children Act 1965*; and
- (b) excludes a person whose parental rights have been extinguished under that Act;

**'spouse'**, of a person, means:

- (a) a person to whom the person is validly married under the *Births, Deaths and Marriages Act 1957* or a corresponding foreign law; or
- (b) the person's de facto partner;

**'stepchild'**, of a person, means a child of the person's spouse.

(2) In a written law, **'marriage'**, **'husband'**, **'wife'**, **'widow'** and **'widower'** have the meanings that correspond with the meaning of **'spouse'**.

(3) In a written law, **'step-relative'** has the meaning that corresponds with the meaning of **'stepchild'**.

(4) A person is the **'de facto partner'** of another person if the person is in a de facto relationship with the other person.

(5) A person is in a **'de facto relationship'** with another person if the person:

- (a) lives with the other person as a part of a couple; and
- (b) is not married to the other person or related to the other person by family .

(6) In determining whether 2 persons live with one another as part of a couple for subsection (5)(a), all the circumstances of the relationship between the persons must be taken into account, including any of the following matters that are relevant in a particular case:

- (a) the duration of the relationship;

- (b) the nature and extent of the common residence of the persons;
  - (c) whether the relationship is a sexual relationship;
  - (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the persons;
  - (e) the ownership, use and acquisition of property by the persons;
  - (f) the degree of mutual commitment to a shared life by the persons;
  - (g) the care and support of children by the persons;
  - (h) the reputation and public aspects of the relationship.
- (7) For subsection (5)(b), 2 persons are related by family if:
- (a) one is the child or other descendant of the other; or
  - (b) they have a parent in common; or
  - (c) one has a parent in common with a parent of the other.

*Examples for subsection (7)*

1. *2 persons are related by family under paragraph (a) if one is the grandchild of the other.*
2. *2 persons are related by family under paragraph (b) if they are siblings.*
3. *2 persons are related by family under paragraph (c) if one is the aunt or uncle of the other.*

## 75 **References to legal practitioners**

In a written law:

**'barrister and solicitor'** means a person entitled to practice as a barrister and solicitor under the *Legal Practitioners Act 1973*;

**'foreign lawyer'** means a person admitted to practice as a barrister or solicitor (however described) under a foreign law that corresponds with the *Legal Practitioners Act 1973*;

**'lawyer'** means a person admitted to practice as a barrister and solicitor under section 3 of the *Legal Practitioners Act 1973*;

**'legal practitioner'** means:

- (a) a barrister and solicitor; or
- (b) a practising pleader;

**'pleader'** means a person entitled to practice as a pleader under section 10 of the *Legal Practitioners Act 1973*.

### **Division 3 – Offences and penalties**

#### **76 Definitions for Division 3**

In this Division:

**'written law'** means an Act or subsidiary legislation.

#### **77 Penalties at foot of provision**

- (1) A penalty specified at the foot of a provision of a written law indicates that a contravention of the provision is an offence against the written law punishable by a penalty not exceeding the penalty specified, regardless of whether the penalty is expressed as a maximum penalty.
- (2) A penalty is taken to be specified at the foot of a provision even if an example or note appears after the penalty.

#### **78 Penalties not at foot of provision**

If a provision of a written law specifies a penalty (otherwise than at the foot of the provision) for a contravention of the provision or another provision of the law, the contravention is an offence punishable by a penalty not exceeding the penalty specified, regardless of whether the penalty is expressed as a maximum penalty.

**79 Offences apply to bodies corporate and individuals**

An offence under a written law applies to bodies corporate as well as individuals.

**80 Fines for bodies corporate**

- (1) This section applies to a provision of a written law that:
  - (a) prescribes a fine for an offence; and
  - (b) does not expressly prescribe a fine for a body corporate different from the fine for an individual.
- (2) The fine is the fine for an individual.
- (3) If a body corporate is found guilty of the offence, the court may impose a fine of an amount equal to 5 times the fine for an individual.

**81 Fines for bodies corporate under subsidiary legislation**

- (1) This section applies to a provision of an Act that:
  - (a) authorises a maximum fine that may be imposed under subsidiary legislation for an offence; and
  - (b) does not expressly authorise a maximum fine for a body corporate different from the maximum fine for an individual.
- (2) The maximum fine is the maximum fine for an individual.
- (3) The maximum fine for a body corporate is taken to be 5 times the maximum fine for an individual.

**82 Penalties may be cumulative**

If the penalty for an offence under a written law is expressed to be both imprisonment and a fine, a person who is found guilty of the offence may be:

- (a) fined or imprisoned; or
- (b) fined and imprisoned.

**83 Penalties for breach of subsidiary legislation**

- (1) Subsidiary legislation may prescribe a penalty for an offence against the legislation consisting of:
  - (a) a fine or imprisonment; or
  - (b) a fine and imprisonment.
- (2) A fine prescribed must not exceed \$10,000.

*Note for subsection (2)*

*Because of section 81, the maximum fine for a body corporate that may be imposed under the subsidiary legislation is \$50,000.*

- (3) A term of imprisonment prescribed must not exceed 6 months.
- (4) This section has effect subject to the Act under which the legislation is made.

**84 Revenue from fines payable to Republic**

An amount paid in satisfaction of a fine must be paid to the Republic.

**PART 9 – ADMINISTRATIVE AND MACHINERY PROVISIONS**

**Division 1 – Exercise of powers and functions generally**

**85 Powers and functions may be exercised from time to time**

If a written law gives a power or function to a person, the power or function may be exercised or performed from time to time.

**86 Confirmation of exercise of powers not required**

The performance of a function or the exercise of a power under a written law does not cease to have effect or need to be confirmed only because the person who performed the function or exercised the power is no longer capable of performing the function or exercising the power.



**87            Conditions precedent**

It is presumed, unless the contrary is proved, that all conditions and steps required for the making, granting or issuing of a statutory instrument have been satisfied.

**88            How power may be exercised**

- (1) A power under a written law may be exercised:
  - (a) in whole or in part; or
  - (b) subject to any conditions, limitations and qualifications specified in the instrument evidencing the exercise of the power; or
  - (c) to make different provision in relation to different matters or classes of matter; or
  - (d) to apply differently by reference to exceptions or factors specified in the instrument evidencing the exercise of power.
- (2) A power under a written law includes the power to do anything that is:
  - (a) necessary or convenient to be done for the exercise of the power; and
  - (b) reasonable in the circumstances; and
  - (c) not a power given to another person under a written law.

**89            Power to make includes power to revoke or amend**

- (1) If a written law gives a person power to take an action or to make, grant or issue a statutory instrument, the power is taken to include the power to repeal, rescind, revoke, amend or vary the action or instrument.

- (2) The power to repeal, rescind, revoke, amend or vary the action or instrument must be exercised in the same way, and subject to the same conditions, as the power to take the action or to make, grant or issue the instrument.

*Example for subsection (2)*

*If the power to declare a matter may be exercised only by publishing the declaration in the Gazette, the power to revoke the declaration may also be exercised only by publishing the revocation of the declaration in the Gazette.*

**90 Affixing of common seal**

- (1) This section applies if:
- (a) a body is established under a written law; and
  - (b) the body has a common seal.
- (2) The common seal may be affixed only by a person authorised by the body to do so.

**Division 2 – Powers of appointment**

**91 Exercise of power of appointment**

If a written law gives a person power to make an appointment to an office or position, the person may appoint a person:

- (a) by name; or
- (b) by reference to the office, position or designation held or occupied by the person; or
- (c) from time to time holding, acting in or performing the duties of a named office, designation or position.

**92 Power to appoint includes power to remove**

- (1) If a written law gives a person power to make an appointment to an office or position, the power is taken to include the power to terminate or suspend the appointment.

- (2) The power to terminate or suspend the appointment must be exercised in the same way, and subject to the same conditions, as the power to make the appointment.

*Example for subsection (2)*

*If the power to make the appointment may be exercised only with the consent of a person, the power to terminate the appointment may be exercised only with the consent of the person.*

**93 Power to make acting appointments**

- (1) If a written law gives a person the power to make an appointment to an office or position, the power is taken to include the power to appoint a person, or 2 or more people, to act in the office or position:
- (a) during a vacancy, or during all vacancies, in the office or position, whether or not an appointment has previously been made to the office or position; or
  - (b) during any period, or during all periods, when the holder of the office or position is unable to perform the duties of the office or position.
- (2) The power to appoint a person to act must be exercised in the same way, and subject to the same conditions, as the power to make the appointment.

*Example for subsection (2)*

*If the written law specifies that a person is eligible to be appointed to the position only if they hold a particular qualification, a person is eligible to be appointed to act in the position only if they hold the qualification.*

**94 Exercise of power by person appointed to act**

If a person has been appointed to act in an office or position:

- (a) the person has, subject to the instrument of appointment, all the powers and functions of the office or position; and
- (b) all written laws apply in relation to the person as if the person were the substantive holder of the office or position.

### **Division 3 – Powers of delegation**

#### **95 Definitions for Division 3**

In this Division:

**‘appointer’** means a person who is given the power to delegate a power or function to another person under an Act;

**‘delegate’** means a person to whom a power or function is delegated under an Act.

#### **96 Exercise of power of delegation**

- (1) An appointer may delegate the power or function to a person:
  - (a) by name; or
  - (b) by reference to the office, position or designation held or occupied by the person; or
  - (c) from time to time holding, acting in or performing the duties of a named office, designation or position.
- (2) The appointer may delegate the power or function to 2 or more persons.
- (3) The appointer may not delegate the appointer’s power to delegate the power or function.

#### **97 Appointer may exercise delegated power or function**

A power or function that has been delegated may, despite the delegation, be exercised or performed by the appointer.

#### **98 Exercise of power by delegate**

- (1) If a delegate exercises or performs a delegated power or function, the power or function is taken to be exercised or performed by the appointer.

- (2) If the exercise of a power or the performance of a function by the appointer is dependent on the appointer's state of mind and the power or function is delegated, the power may be exercised or the function performed by the delegate based on the delegate's state of mind.

**99 Appointer responsible for delegated power or function**

The delegation of the power or function does not relieve the appointer of the appointer's obligation to ensure the power or function is exercised or performed properly, even if the power or function is exercised or performed by a delegate.

**Division 4 – Service of documents**

**100 Application of Division 4**

This Division applies to:

- (a) a document that is authorised or required under a written law to be served, whether the word 'serve', 'give', 'notify', 'send', 'tell' or any other word is used; and
- (b) service of a document outside Nauru in the same way it applies to service of the document in Nauru.

**101 Service of documents on individuals**

A person may serve a document on an individual by:

- (a) giving it to:
  - (i) the individual; or
  - (ii) a person authorised by the individual to receive the document; or
- (b) sending it by prepaid post addressed to the individual to the individual's home or business address; or
- (c) faxing it to a fax number of the individual; or
- (d) emailing it to an email address of the individual; or

- (e) leaving it, addressed to the individual, at a home or business address of the individual with an individual who appears to be at least 16 years old and to live or be employed at the address.

**102 Service of documents on bodies corporate**

A person may serve a document on a body corporate by:

- (a) giving it to:
  - (i) an executive officer of the body corporate; or
  - (ii) a person authorised by the body corporate to receive the document; or
- (b) sending it by prepaid post addressed to the body corporate (or an executive officer of the body corporate) to the address of any of its registered offices or any other business address of the body corporate; or
- (c) faxing it to a fax number of the body corporate; or
- (d) emailing it to an email address of the body corporate; or
- (e) leaving it, addressed to the body corporate (or an executive officer of the body corporate) at the address of any of its registered offices or any other business address of the body corporate with an individual who appears to be at least 16 years old and to be employed at the address.

**103 When document taken to be served**

- (1) A document served by post under this Division is taken to be served when it would have been delivered in the ordinary course of post.
- (2) A document served by fax or email is presumed to be served when it is sent unless:
  - (a) on the day the document was sent or the next working day, the equipment used to send it indicates that:
    - (i) the equipment did not send the document when the equipment was used to send the document; or

- (ii) for a fax – the number to which the fax was sent was not a fax number of the intended recipient; or
  - (iii) for an email – the email address to which the email was sent was not an email address of the intended recipient; or
- (b) evidence sufficient to raise doubt about the presumption is given.
- (3) A document served by leaving it at an address or with a person under section 101(e) or 102(e) is taken to be served when it is left.

### **Division 5 – Other matters**

**104 Compliance with forms**

Substantial compliance with a form approved or prescribed under an Act is sufficient.

**105 Matters contained in Gazettes**

It is presumed, unless the contrary is proved, that a Gazette is evidence of the matters contained in it.

## **PART 10 – REPEALS AND TRANSITIONAL MATTERS**

### **Division 1 – Repeals**

**106 Repeal of Acts**

The Acts specified in the Schedule are repealed.

### **Division 2 – Transitional matters**

**107 Definitions for Division 3**

In this Division:

***‘commencement date’*** means the date on which section 106 commences;

**'repealed Act'** means the *Interpretation Act 1971* as in force immediately before the commencement date.

**108 Publication of Acts under repealed Act**

The requirement to publish an Act in the Gazette under section 7(1) of the repealed Act is taken to have been met if a notice was published in the Gazette stating that the Act had been certified.

**109 Fees prescribed before commencement date**

- (1) This section applies if:
  - (a) a provision of subsidiary legislation in force immediately before the commencement date prescribes a fee; and
  - (b) the fee is prescribed partly in reliance on section 35 of the repealed Act; and
  - (c) the fee is validly prescribed.
- (2) The fee is not invalid only because of the repeal of the repealed Act.

**110 Transitional regulations**

- (1) The regulations may make provision (a **'transitional regulation'**) about a matter for which:
  - (a) it is necessary to make provision for the transition from the operation of the repealed Act to the operation of this Act; and
  - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a date not earlier than the commencement date.
- (3) However, to the extent a transitional regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Republic) by adversely affecting the person's rights or imposing liabilities on the person.
- (4) This section expires 12 months after the commencement date.



**SCHEDULE – REPEALS**

section 106

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<i>Interpretation Act 1971</i>	Act No. 12 of 1971
<i>Interpretation (Amendment) Act 1975</i>	Act No. 12 of 1975
<i>Interpretation (Amendment) (No.2) Act 1975</i>	Act No. 13 of 1975
<i>Interpretation (Amendment) Act 1997</i>	Act No. 20 of 1997

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