



REPUBLIC OF NAURU

ELECTORAL (AMENDMENT) BILL 2019

No. of 2019

A Bill for an Act to amend the *Electoral Act 2016*

Certified: []

Table of Contents

1	Short title.....	3
2	Commencement.....	3
3	Amendment of the Electoral Act 2016.....	3
4	Amendment of section 3.....	3
5	Amendment of section 39.....	3
6	Amendment of section 42.....	3
7	Amendment of section 56.....	4
8	Amendment of section 58.....	4
9	Amendment of section 59.....	4
10	Repeal and replace section 60.....	5
11	Amendment of section 62.....	6
12	Amendment of section 67.....	6
13	Amendment of section 69.....	7
14	Amendment of section 70.....	7
15	Amendment of section 78.....	7

16	Insert new section 78A	7
17	Amendment of section 85	8
18	Amendment of section 96	8
19	Amendment of section 97	9
20	Amendment of section 98	9
21	Repeal and replace section 99	9
22	Amendment of section 102	10
23	Amendment of section 136	10

Enacted by the Parliament of Nauru as follows:

1 Short title

This Act may be cited as the *Electoral (Amendment) Act 2019*.

2 Commencement

This Act commences upon certification by the Speaker.

3 Amendment of the Electoral Act 2016

The *Electoral Act 2016* is amended by the provisions of this Act.

4 Amendment of section 3

Section 3 is amended by inserting the following in alphabetical order:

'early voting' refers to the provision of facilities to allow those voters who, due to specific circumstances prescribed by the Commission, cannot attend a polling station on polling day to vote prior to polling day;

5 Amendment of section 39

Section 39(2) is repealed and replaced as follows:

'(2) Every person is entitled to have his or her name in the Roll for the District for which he or she is registered under section 9 of the *Births Deaths and Marriages Registration Act 2017*.'

6 Amendment of section 42

Section 42 is amended:

(a) in subsection (1) (c) by deleting 'section 6(1) of the Births, Deaths and Marriages Act 1957' and substituting 'section 9 of the *Births Deaths and Marriages Registration Act 2017*;

(b) in subsection (1) (d) by deleting 'section 6(3) of the Births, Deaths and Marriages Act 1957' and substituting 'section 8 of the *Births Deaths and Marriages Registration Act 2017*;

(c) in subsection (2) (b)(ii) by deleting 'section 6(3) of the Births, Deaths and Marriages Act 1957' and substituting 'section 8 of the *Births Deaths and Marriages Registration Act 2017*;

(d) insert new subsection (3):

'(3) For the purposes of this section, a reference to '*Nauruan custom or customary links and affiliation*' refers to *customary adoptions, de facto relations or land ownership*.'

7 Amendment of section 56

A new subsection (3) is inserted:

‘(3) The Speaker shall issue a writ of election for the purposes of this Act and where required by the Constitution.’

8 Amendment of section 58

Section 58 is amended by:

(a) deleting the words ‘no later than 12:00pm 8 days before polling day’ where they appear and substituting ‘within 72 hours after the close of nominations’;

(b) renumbering the clause into 2 subclauses; and

(c) inserting a new subclause (2) as follows:

‘(2) A candidate for election as a member may have his or her nomination withdrawn if it is determined by the Electoral Commissioner that the candidate is not qualified to be a Member of Parliament under Articles 30 and 31 of the Constitution.’

The clause now reads:

58 Withdrawal of candidature from election

(1) A person who has been nominated as a candidate for election as a member may, by notice in writing given to the Electoral Commissioner within 72 hours after the close of nominations, withdraw his or her candidature for that election.

(2) A candidate for election as a member may have his or her nomination withdrawn if it is determined by the Electoral Commissioner that the candidate is not qualified to be a Member of Parliament under Articles 30 and 31 of the Constitution.

9 Amendment of section 59

Section 59(3) is repealed and replaced as follows:

‘(3) The holder of an office of profit in the service of Nauru as prescribed under subsection (1), shall:

(a) in the case of a by-election;

(b) in the case of a supplementary election; or

- (c) where Parliament is dissolved less than 3 years from the date of its first sitting under Article 41(7) of the Constitution and elections are held following that dissolution, -

resign within 5 days from the date the writ of election is published under section 56.'

10 Repeal and replace section 60

Section 60 is repealed and replaced as follows:

'60 Failure of election

- (1) For the purposes of this section, an election for a constituency fails if:
 - (a) the required number of candidates for the constituency is not nominated or is not returned as elected; or
 - (b) after the day on which the names of candidates are published in accordance with section 62 and within 72 hours after the close of nominations, a candidate dies.
- (2) Where an election for one or more of the constituencies fails, a new writ must be issued immediately by the Speaker to the Electoral Commissioner in accordance with Form C of Schedule 8 for a supplementary election for the respective constituency or constituencies.
- (3) Where an election for a constituency fails in consequence of the death of a candidate, the supplementary election must be held on the Roll prepared for the purpose of the failed election.
- (4) For the purpose of issuing a new writ under subsection (2), the Speaker continues to hold the authority to issue the new writ until such time a new Speaker is elected.
- (5) For the avoidance of any doubt, where a new Speaker is elected, he or she shall issue the new writ for the purposes of subsection (2).
- (6) In the absence of the Speaker or where the Speaker is unable to perform the function under subsection (4), the Deputy Speaker shall perform such function.'

11 Amendment of section 62

Section 62 (a) is amended by inserting the following words 'names of the first 2' after the words 'and the' where they appear and before the word 'voters'.

The clause will now read:

'(a) the names of the candidates and the names of the first 2 voters by whom they have been nominated;'

12 Amendment of section 67

Section 67 is amended by:

(a) repealing and replacing subsection (1) as follows:

'(1) The Electoral Commissioner may adjourn polling for the scheduled polling day or if polling has not commenced at a polling station:

(a) in case of force majeure; or

(b) for any other reason.

(b) inserting a new subsection (4) as follows:

'(3) For the avoidance of doubt, an adjourned election shall be held on the same Roll and candidates as if the adjournment was not made.'

The clause will now read:

67 Adjournment of polling

(1) The Electoral Commissioner may adjourn polling for the scheduled polling day or if polling has not commenced at a polling station:

(a) in case of force majeure; or

(b) for any other reason.

(2) If a decision is made by the Electoral Commissioner under subsection (1) to adjourn polling, presiding officers must post a public notice at the polling station to that effect, publish the notice immediately in the Government Gazette and broadcast the same on the radio and television.

(3) If the Electoral Commissioner adjourns the entire election, the Electoral Commissioner must determine another date, no later than seven days after the adjournment in

subsection (1), and notify the public immediately by notice in the Government Gazette and broadcast the same on the radio and television.

(4) For the avoidance of doubt, an adjourned election shall be held on the same Roll and candidates as if the adjournment was not made.

13 Amendment of section 69

A new subsection (3) is inserted as follows:

‘(3) The Electoral Commissioner shall display whatever information in a polling booth he or she deems to be useful in assisting all voters which may include pictures and names of all candidates in ballot paper order.’

14 Amendment of section 70

Section 70(2) is amended by deleting the words ‘an opaque’ where they appear and substituting ‘a translucent’.

The clause will now read:

(2) The presiding officer must be provided with a translucent ballot box, on the top of which there should be an opening sufficiently large to permit a folded ballot paper to be placed in the ballot box.

15 Amendment of section 78

Section 78(7) is amended by deleting the figure ‘5’ and substituting ‘2’.

The clause will now read:

(7) The Electoral Commissioner must not grant to a voter more than 2 proxy voting authorisations.

16 Insert new section 78A

78A Authorisation for early voting

(1) A voter may vote before polling day by applying to the Electoral Commissioner if he or she cannot attend the polling station during the hours of polling due to:

(a) absence from Nauru;

(b) his or her religious beliefs preventing him or her from voting on polling day; or

(c) any other basis as regulated by the Electoral Commissioner.

- (2) Early voting may take place outside the constituency, in a secure location designated by the Electoral Commissioner.
- (3) Where a voter casts his or her vote early, he or she must do so in accordance with the requirements specified in sections 71, 72, 73, and 74 of this Act.
- (4) An application made under subsection (1) must be made in accordance with the Regulations to be made by the Electoral Commissioner under section 136(f) of this Act.
- (5) The Electoral Commissioner, or his or her delegate, must consider the application and make a decision either to approve or deny the application.
- (6) The Electoral Commissioner will advise and provide public notice in the Government Gazette the location(s), the date(s) and the hours that early voting will take place.
- (7) The Electoral Commission may make Regulations for the effective conduct of early voting, pursuant to the authority granted under section 136(f) of this Act, including:
 - (a) the manner and form of application under subsection (1);
 - (b) the duties and obligations of the Electoral Commissioner and voters in relation to early voting; and
 - (c) any other related matters.

17 Amendment of section 85

A new subsection (5) is inserted as follows:

- ‘(5) An automatic manual recount of votes shall occur if it is indicated that a candidate for any office was defeated or excluded by one-quarter of 1 percent or less of the valid votes cast for such office.’

18 Amendment of section 96

Section 96 is amended as follows:

- (a) repeal subparagraph (d) and replace as follows:

‘(d) be verified by an affidavit;’

(b) delete the word 'filed' where it appears and substitute 'presented' in subparagraph (e).

The clause will now read:

'(e) be presented to the registry of the Supreme Court within 21 days after the publication in the Government Gazette of the notice in relation to the election in accordance with section 88'.

19 Amendment of section 97

Section 97 is amended by deleting the word 'filing' where it appears and substituting 'presentation of'.

The clause will now read:

'At the time of presentation of the petition, the petitioner must provide to the Registrar evidence of the payment of \$500 as security for costs.'

20 Amendment of section 98

Section 98 is repealed and replaced as follows:

'98 Proceedings may be stayed unless requirements complied with

(1) The Court of Disputed Returns may, on the application of a respondent to a petition, order a stay of proceedings where the petitioner has failed to comply with section 96.

(2) The Court shall not accept a petition which is presented:

(a) after the expiry of 21 days from the publication in the Government Gazette of the results of the election;

(b) without evidence of payment of the security for costs; or

(c) where the security for costs was paid after the expiry of the time for the presentation of the petition.'

21 Repeal and replace section 99

Section 99 is repealed and replaced as follows:

'99 Electoral Commissioner party to petition

(1) The Electoral Commissioner shall be joined as a respondent or interested party in every election petition.

(2) The Electoral Commissioner shall be served with the election petition as may be provided in the Rules.'

22 Amendment of section 102

Section 102 is repealed and replaced as follows:

'102 Decisions to be final

(1) The Court of Disputed Returns shall hear and determine any petition presented under this Part by no later than 90 days from the presentation of the petition.

(2) The decision of the Court of Disputed Returns is final and conclusive and is not reviewable or appealable.'

23 Amendment of section 136

Section 136 (f) is amended by inserting the words 'including early voting provisions'.

The clause will now read:

'(f) voting by people who are unable to attend a polling station, including early voting provisions;'