

REPUBLIC OF NAURU
ELECTORAL BILL 2016
EXPLANATORY MEMORANDUM

The *Electoral Bill 2016* is a Bill for the *Electoral Act 2016*.

EXPLANATION OF CLAUSES

Part 1 - Preliminary

Clause 1 provides that, once enacted, the short title of the Bill will be the *Electoral Act 2016*.

Clause 2 sets out when the Bills provisions will commence.

Clause 3 is the interpretation clause that defines certain terms and phrases used in the Act. This is an important clause because in the event that there is ambiguity in the provisions of the Act, the interpretation clause would be the first place that people will look for an interpretation.

Part 2 – The Electoral Commission

Clause 4 establishes the Electoral Commission. The Commission consists of 3 members including the Electoral Commissioner as Chairperson and two Deputy Electoral Commissioners. Members of the Electoral Commission must swear an oath of office upon taking up their membership of the Commission and the oath must be sworn before a Judge of the Supreme Court of Nauru.

Clause 5 provides for the status of the Electoral Commission and states that the Commission is a body corporate that may sue and be sued as well as enter into contracts and perform any other functions conferred on it by the Act.

Clause 6 outlines the functions of the Electoral Commission which is a general duty, responsibility and authority to formulate policy, register and transfer voters, receipt and return a writ of election, monitor and ensure compliance with this Act, make Regulations and perform any other functions that may be conferred by any other written law.

The Commission also has a general duty to ensure that voter information and education programmes are implemented so to assist voters in exercising their rights and for the effective conduct of elections.

The Commission has the authority to appoint, remove and take disciplinary action against its employees and in making appointments it must ensure that the independence,

impartiality and integrity of the Commission is maintained. In disciplining its employees the Commission must act in accordance with its Code of Conduct.

Clause 7 is clear in stating the protection of the Electoral Commission and its members, including officers, staff or agent, from any civil or criminal proceedings for any act done or omitted to be done in good faith in the execution of any powers, functions and duties conferred by this Act.

Clause 8 deals with the meetings of the Commission and states that all meetings must be presided over by the Electoral Commissioner and minutes must be kept of all meetings held and these will form a permanent record for the Commission. All other procedures will be determined by the Electoral Commission.

Clause 9 provides for the independence of the Electoral Commission and this clause states that the Commission will perform its functions and duties free of interference. The Electoral Commissioner is subject only to the decision of a Court of law.

The Electoral Commissioner may consult with the Minister or any other person on any matter at his or her initiative or discretion.

Clause 10 states that the Electoral Commission and its members must be impartial in the conduct of their duties and functions and they must refrain from participating in any decision in the course of their work that would cause any conflict of interest. This provision is essential in ensuring that members of the Commission are not swayed by political influence or anything that could compromise their position and ultimately the election process in Nauru.

Clause 11 provides for transparency in election administration. This clause ensures that the work of the Electoral Commission is transparent and open for public scrutiny. The Commission must within 3 months of any election, submit a report to the Parliament of Nauru on issues of concern to the Commission and on any other matter concerning the effective operation of the Commission.

The Clause also requires that the Commission provide a report on the Commission's financial affairs and this is to be submitted with the annual report.

Clause 12 places a requirement on Parliament to adequately allocate funding to the Electoral Commission to allow the Commission to perform its duties and functions. This also ensures the independence of the Commission as they will be in control of their own funding.

Clause 13 provides for an expedited and simplified means of procurement to allow the Electoral Commission to carry out his or her functions for the purpose of effective conduct of elections.

Clause 14 provides for the appointment of the Electoral Commissioner who is appointed by the President and must be a person with the following qualifications:

(a) is a person qualified to be a Judge of the Supreme Court of Nauru and who possesses knowledge and experience relevant to electoral laws, policy and systems and the conduct or administration of national elections; or

(b) has held senior leadership and management positions in Nauru or elsewhere and who is competent and has a proven record in the positions that he or she has held or has extensive knowledge of electoral laws, policy and systems, and experience relevant in the management, conduct or administration of national elections.

Clause 15 states that the Electoral Commissioner is appointed for a period of 4 years on terms and conditions approved by the Cabinet. The appointment must be gazetted within 7 days of being made and the Commissioner must take an oath of office before taking up office.

Clause 16 maintains the integrity of persons appointed as Electoral Commissioner. It states that no person is qualified to be appointed as Electoral Commissioner if he or she:

(a) is an undischarged bankrupt or insolvent and who has been declared bankrupt or insolvent according to law;

(b) is a person certified or otherwise adjudged according to law to be intellectually impaired;

(c) has been convicted and is under sentence or is subject to be sentenced for an offence punishable according to law by death or by imprisonment for one year or longer; or

(d) he or she holds an office of profit in the service of Nauru or of a statutory corporation, being an office prescribed by law for the purposes of this section.

Clause 17 covers the remuneration of the Electoral Commission which includes salaries, allowances and benefits equivalent to that of the Chief Secretary but if above that of the Chief Secretary then they are subject to the determination of Cabinet. These salaries, allowances and benefits must not be reduced during the term of office of the Electoral Commissioner.

Clause 18 states that the Electoral Commissioner and his or her office is an independent office and not subject to any person or authority and this clause is again to ensure that elections and any related matter are conducted with the highest level of integrity. Although

the Commissioner may consult with any person, including the Minister, he or she is independent and such consultation is at the initiative or discretion of the Electoral Commissioner.

Clause 19 provides the functions of the Electoral Commissioner. Apart from a general duty and responsibility to administer the registration of voters, the conduct of election of members of Parliament and provide leadership and direction to the Commission, the Commissioner has the following functions:

- (a) to conduct and manage elections and ensure efficient delivery of polling services including the conduct of voting, counting, tabulation, declaration and publication of election results ensuring the highest degree of integrity and transparency;
- (b) to advise the President, the Parliament and any Committee of Parliament (through the Speaker), and the Government concerning Nauru's electoral system, policies and laws;
- (c) to provide reasonable and appropriate assistance and advise to the Speaker, Members of Parliament, the Clerk of Parliament, and candidates;
- (d) to undertake the long term planning for the proper conduct of elections and the establishment and maintenance of proper and accurate records and rolls;
- (e) to establish and maintain an impartial and independent electoral system for voters;
- (f) to consider and determine applications by voters for transfer between districts;
- (g) to devise, undertake and review programmes of education for voters, candidates and others involved in elections;
- (h) to publish for general information, such data and reports on elections as the Electoral Commissioner thinks fit;
- (i) to oversee, manage and implement electoral boundary redistributions;
- (j) to make proposals for electoral law reform designed to strengthen and improve the process of voting and related matters;
- (k) to promote fairness and equal opportunities for all candidates and to prevent abuse, to regulate the use of radio, television, internet and other political notices, reports, appeals and advertising during the election period;
- (l) to perform any other functions as conferred by this Act or any other law.

The Electoral Commissioner is also the Returning Officer and has the duty to carry out the functions above.

Clause 20 outlines the exercise of powers of the Electoral Commissioner and the need for him or her to exercise these powers in an impartial manner in accordance with this Act. The Electoral Commissioner has the power under this Clause to delegate any of his or her functions (b to k) listed in clause 19 and issue any such directions in writing and this includes the power to correct any error, omission or duplication or any application relating to the Roll of voters.

Clause 21 provides that the Electoral Commissioner may make a request to any government department or instrumentality for assistance to facilitate the effective organisation and implementation of an election. Government departments and instrumentalities must do all it reasonable can to comply with the request for assistance which may include the provision of any information, material, personnel, staff, vehicles or any other relevant form of assistance.

Clause 22 is a resignation clause and provides the steps that the Electoral Commissioner may take in the event that he or she resigns from office.

Clause 23 states that the Electoral Commissioner may not be removed from office except by a resolution of Parliament approved by not less than two thirds of the total number of members of Parliament. This strengthens the independence of the Electoral Commissioner and provides security of tenure of office to enable him or her to effectively carry out his or her functions.

Clause 24 provides for the appointment of the Deputy Electoral Commissioners. There must be two Commissioners appointed by the President acting on the advice of Cabinet. This is similar to the appointment process of the Electoral Commissioner. Persons who are appointed to the position of Deputy Electoral Commissioner must be persons who have held senior management and administration positions and have knowledge and experience in electoral laws, policy and systems and also experience in the management, conduct or administration of national elections. Deputy Electoral Commissioners must also swear an oath of office before taking up their position.

Clause 25 provides for the term of appointment of Deputy Electoral Commissioners. Deputy Electoral Commissioners must also swear an oath of office before they take up their positions.

In making the appointment, the President must ensure the continuity of the operations of the Commission and at no time the Commission is left without a Chairperson or with less than 2 members.

Clause 26 states that a Deputy Electoral Commissioner may resign by notice in writing to the President and copied to the Speaker of Parliament. This is similar to the resignation provision of the Electoral Commissioner.

Clause 27 provides for the removal of a Deputy Electoral Commissioner who may be removed by the Minister on the written recommendation of the Electoral Commissioner and after consultation with the President. The grounds on which he or she may be removed are:

- (a) for proven misconduct in the performance of his or her functions and duties under this Act;
- (b) incompetence, persistent failure or negligence;
- (c) if convicted of a criminal offence, the maximum punishment for which is one year or longer; or
- (d) if declared a bankrupt or becomes insolvent.

It is important to note that the President and the Minister may not be the same person as the Minister in charge of the administration of this law isn't necessarily going to always be the President.

Clause 28 provides for the appointment of presiding officers and other election officials to assist in carrying out the functions of the Electoral Commission. They are appointed by the Electoral Commissioner and must have qualifications, knowledge and experience of electoral systems. These officers and officials must also take an oath before taking office.

The Electoral Commissioner may consult with the Minister but only if views it as desirable.

Clause 29 outlines the duties of a presiding officer appointed under clause 28. Generally, presiding officers are appointed for each polling station and they are responsible for the conduct of the polling at the polling station to which he or she is assigned. The presiding officers must be present at the relevant polling station for the duration of the poll and must receive the votes of all persons whose names are on the Roll for that polling station. They are also responsible for the orderly conduct of the voting process and must keep the peace and remove any person who obstructs the entry to a polling station, obstructs the procedures at a polling station, is disorderly or causes a disturbance as well as any person who acts in defiance of directions issued by the Electoral Commissioner, presiding officer or other election officials.

Clause 30 places a requirement on the Commissioner of Police to assist the Commission if the Electoral Commissioner makes a request to him or her and all police officers must

assist the members of the Commission, presiding officers and election officials in maintaining order and security at polling stations and at the scrutiny and count.

Clause 31 provides for the resignation of a presiding officer. He or she may resign by notice in writing to the Electoral Commissioner and copied to the Minister.

Clause 32 states that presiding officers and other election officials may be removed from office by the Electoral Commissioner, for the following reasons:

- (a) for proven misconduct in the performance of his or her functions and duties under this Act;
- (b) incompetence, persistent failure or negligence;
- (c) if convicted of a criminal offence, the maximum punishment for which is one year; or
- (d) if declared a bankrupt or becomes insolvent.

Consultation with the Minister may be done but it isn't compulsory.

Clause 33 makes provision for observers to be invited by the Electoral Commissioner as Chairperson of the Commission to observe any election held in Nauru.

Part 3 – Constituencies and Electoral Roll

Clause 34 provides the list of constituencies and number of members that are to be elected for each constituency. There is a provision also that states that any change to the number of members to be elected does not take effect until the day of the next election after the commencement of the relevant amendment.

Clause 35 states that the President of Nauru is deemed to be residing in that District where he or she would ordinarily be residing were he or she not the President and occupying the State House.

Clause 36 is a clause similar to Clause 35 and provides that the Speaker of the Parliament of Nauru is deemed to be residing in the District where he or she would ordinarily be residing were he or she not the Speaker of Parliament and occupying the Speaker's residence.

Clause 37 provides for a Roll of voters that is to be kept by the Electoral Commissioner. This Roll contains the names of all persons in Nauru who are eligible to vote in any election. The Roll is classified into Districts with each voter's name entered into the District the voter has registered in. The Register for Births, Deaths and Marriages is important in terms of providing records of persons born in Nauru and eligible to vote and this is why there is a

provision included here regarding consultation between the Electoral Commissioner and the Registrar of Births, Deaths and Marriages.

Clause 38 states that a person who has reached the age of 20 and is a Nauruan citizen is automatically registered as a voter and their name entered into the Roll of the District that is entered in the Register of Births maintained under section 6(1) of the *Births, Deaths and Marriages Act 1957*.

Clause 39 expands on Clause 38 by placing a duty on the Registrar for Births, Deaths and Marriages to advise and to provide for the benefit of the Electoral Commissioner any and all information to enable the updating of the Roll.

Clause 40 allows a voter whose name is not on any Roll to apply to have his or her name entered on a Roll of his or her choice provided he or she is able to satisfy the criteria for registration in the Act.

Clause 41 makes provision of a person to apply to transfer his or her registration from the Roll for one District to another Roll. There is criteria in Clause 42 that must be satisfied before the Electoral Commissioner can register a person in a different Roll from the one they are currently registered in.

Clause 42 is the criteria that a person must satisfy before they can register or transfer their registration. A person may only be registered on transferred to a Roll for a District if:

- (a) he or she is currently living in that District and for not less than one month;
- (b) he or she is living outside of Nauru, but when they did live in Nauru, the District in which they lived for not less than one month;
- (c) the Register of Births has that particular District entered as the Birth District of that person;
- (d) another register or record of birth lists a District as the District of Birth of that person;
- (e) the person can claim, and the Electoral Commissioner confirms, that he or she has connection to a District by reason of:
 - a. Nauruan custom, customary links and affiliation;
 - b. his or her parent was born in that District;
 - c. his or her parent is registered in that District; or
 - d. his or her spouse is born in that District.

Clause 43 creates a requirement that persons who are applying to either register or transfer their registration must fill out and sign the form as provided in Schedule 2 of the Act. The form filled by the applicant must be declared before a Commissioner for Oaths, a Pleader or a barrister or solicitor or any other person authorised by the Electoral Commissioner. This is a change from the old law where the lawyers or commissioners for oath were expected to make a statutory declaration to support a person's application to register or transfer registration.

Declarations may be supplied by others persons in support of an application but it isn't compulsory.

Clause 44 allows the Electoral Commissioner to make enquiries on an application for registration or transfer of registration that he or she receives. This enquiry is essential to ensure that an applicant is in fact entitled to be transferred or registered in the District to which he or she is applying to be registered in.

Clause 45 is the clause that determines what happens to a voter whose application is submitted for registration or transfer of registration. If the Commissioner determines it in the positive then he or she will enter it on that Roll but if there is a negative decision then the Electoral Commissioner will reject the application and send the applicant a notice under Clause 48 outlining the reasons why the application was rejected.

Clause 46 provides for the gazettal of any registration or transfer of registration. Within 5 days of making a positive decision under Clause 45, the Electoral Commissioner must notify the public through the Government Gazette, of the person's name, the name of the District and the grounds of the person's entitlement to be registered in that District.

Clause 47 states that transfers cannot be made within 6 months of the last transfer that was made and after 5:00pm 21 days before polling day.

Clause 48 provides for the notice that the Electoral Commissioner must issue a person whose application for transfer has been rejected.

Clause 49 relates to the appeal of a person whose application for registration was initially rejected and a person whose name was struck of a Roll because they no longer qualified to be registered in that District. A person who receives a notice that their name has been struck off the Roll or had their application rejected may within 7 days after receiving the notice, appeal to the Supreme Court. The Court will hear and make a decision whether to uphold the decision of the Electoral Commissioner or to make its own order substituting that original decision.

No appeal may be made less than 10 days before polling day.

Clause 50 places a duty on the Electoral Commissioner to maintain the Roll. If a writ for election is issued then the Roll closes 21 days before the polling day. The Roll remains closed after elections and if there is not petition filed in the Court within the specified time, the Roll opens 31 days after the declaration of results in Clause 88.

If petitions are filed, then the Roll for that particular District remains closed until the petitions are heard and a decision is made by the Court of Disputed Returns.

Clause 51 provides that the Roll must be published by the Electoral Commissioner once a year. If a writ has been issued then the Commissioner must publish the Roll at least 5 days after the issuing of the writ. Any person may obtain a copy of the Roll from the office of the Electoral Commissioner for a fee.

Clause 52 places a duty on the Registrar for Births, Deaths and Marriages to provide to the Electoral Commissioner any information regarding the death of a voter. This is to assist the Commissioner in updating the Roll.

Clause 53 allows the Electoral Commissioner to revise the Roll. The Commissioner does this in order to correct any mistake or omission, to remove from the Roll any person who is dead or has ceased to be a citizen of Nauru, or change the particulars of a person on the Roll.

A person whose name has been struck off a Roll, the Electoral Commissioner must give the person 24 hours' notice. The Roll must never be altered by the Electoral Commissioner, if it is closed in accordance with the issuing of a writ for election. The only way that the Roll may be altered is if it is to correct an error, or to remove the name of a person under subsection (1) or because the Court has made an order under clause 49 that requires the name of a person to be entered on a Roll.

Part 4 – Voters

Clause 54 deals with voters and which constituency they are eligible to vote in. A person is a voter for a constituency only if his or her name appears on the Roll for a District that comprises or is part of the constituency. Voting is compulsory and a voter will be penalised for not voting unless he or she didn't vote because he or she:

- (a) is absent from Nauru on polling day; or
- (b) is unable to vote because he or she is seriously ill or infirm; or
- (c) has another valid and sufficient reason for not voting.

After polling day, the Electoral Commissioner prepares and certifies a list of the names of all persons who did not vote and sends out a notice under clause 55 to all persons whose name appears on the list.

Clause 55 makes provision for the Electoral Commissioner to send out a notice to all persons who failed to vote and who were not covered by any exceptions under Clause 54. A voter who receives a notice must within 14 days of receiving it, complete the form, sign it, have it witnessed by another voter and send it back to the Electoral Commissioner.

If a voter cannot for certain physical incapacity or absence from his or her residence, another voter who has personal knowledge of the circumstances may fill out the form and return it to the Electoral Commissioner. It is an offence not to complete the form and return it to the Electoral Commissioner within the specified time.

Part 5 – The Writ and Nominations

Clause 56 provides for the issuance of a writ for elections. There are different circumstances in which a writ for elections may be issued. The first and the most common is where the Speaker has dissolved Parliament. The other scenario is either where a member has died or a member has vacated his seat in accordance with Article 32 (b) to (e).

The Speaker will issue a writ for elections to the Electoral Commissioner within 14 days after he or she dissolves Parliament but not later than 4 weeks from polling day as stated in the writ.

Once the Electoral Commissioner receives the writ, he or she must publish in the Government Gazette the particulars of the writ, the dates of the nomination day and the day when the Rolls will be closed for the election.

Clause 57 is an important clause in the timeline toward election. It is the clause that provides the manner in which a candidate may be nominated for election. A person cannot be nominated as a candidate unless the Roll for the constituency he or she is being nominated for has closed and his or her name is entered in the Roll for that District. Nominations must be delivered to the Electoral Commissioner not later than 5:00pm 14 days before the polling day specified by the Speaker in the writ. A written nomination must be made in accordance with the form prescribed in Schedule 9 of the Act, it must be signed by a minimum of two voters from the same constituency as the candidate, signed by the candidate and accompanied by a fee of \$2000. The fee is not refundable despite a candidate withdrawing their nomination.

Clause 58 deals with the withdrawal of a candidature from election. Any withdrawal must be made in writing to the Electoral Commissioner by 12:00pm 17 days before the polling day specified in the writ from the Speaker.

The fee paid in clause 57 is not refundable despite a candidate withdrawing their nomination.

Clause 59 makes provision for certain office holders. This clause classifies the office as an office of profit for the purpose of the Constitution and of the Act. It is also stated that if another law requires officers or employees to resign before submitting their nominations under this Act, then that law does not apply in the case of a by-election, a supplementary election or a snap election. The latter is where Parliament is dissolved less than 3 years after the date of its first sitting and elections are held for new members of Parliament.

Clause 60 provides for the procedures to be followed in the event of a failed election. An election fails for a constituency only if the required number of candidates for that constituency is not nominated or returned as elected or after the day the names of candidates have been publicised and before polling day, a candidate dies. In this case, a new writ must be issued by the electoral Commissioner and a supplementary election must be held. The Rolls will not be reopened in this case, rather the elections will be held based on the Roll that was prepared for the election that has failed.

Clause 61 states that candidates who are unopposed are to be declared as elected. This occurs when the number of candidates for a constituency is not greater than the number of candidates to be elected for that constituency.

Clause 62 provides the duty of the Electoral Commissioner to publicise the names of the candidates, the date of polling and the designated polling stations on polling day.

Clause 63 provides for mobile polling stations that are to be set up around the country in addition to normal polling stations publicised in Clause 62. Mobile polling stations may be set up in hospitals, care facilities, detention centres, correctional centres or anywhere else in Nauru deemed appropriate for the effective conduct of elections.

Clause 64 provides for the process of determining the order of candidates on the ballot paper. The Electoral Commissioner will, 24 hours after the close of withdrawal of nomination, invite all candidates, their agents or nominees to a specified place and time to draw from an opaque container a number that will determine their order on the ballot paper for their constituency. The Electoral Commissioner will draw a number for any candidate that is not present. Candidates will be listed on a ballot paper in the order that corresponds to the number drawn on that day.

Clause 65 makes provision for the printing of names on ballot papers. If the Electoral Commissioner considers that a similarity in the ballot paper names of two or more candidates is likely to occur then the Commissioner may add a description or addition to each name to enable them to be distinguished from each other.

Part 6 – The Poll

Clause 66 states that the poll commences at 9:00am on polling day and closes immediately after the last voter in the queue at 6:00pm has voted. Exceptions are made where the Electoral Commissioner may close a polling station earlier if all voters registered to vote at that polling station have voted.

Clause 67 provides circumstances where the Electoral Commissioner may adjourn polling due to force majeure as defined in Clause 3. Force majeure as defined in Clause 3 includes storm, tempest, flood or any other natural disaster whether actual or imminent and other circumstances such as structural damage to polling stations, loss of electricity, insufficient material or staff to conduct polling.

Clause 68 makes provision for a polling station record book. There is a record book provided for each polling station and each book is under the control of the relevant presiding officer. This record book may be accessed in the course of adjudication under Part 6 and Part 8 of the Act. The presiding officer must record:

- (a) the names of all election officials and observers present during the polling;
- (b) the number of ballot papers received and a note of any missing election materials;
- (c) key events including the opening and closing times of the poll at the relevant polling station;
- (d) serious numbers of seal or seals used to secure ballot boxes;
- (e) names of assisted voters;
- (f) any disturbance or incidents that take place in or around the polling station and any requests made to the police; and
- (g) any complaints filed and decisions on complaints.

Clause 69 provides for polling stations that are to be provided for each constituency. Polling booths must be set up in a way that ensures the anonymity of the voter and the secrecy of the vote cast. There is a requirement on the presiding officer to ensure that the booths are equipped with a pen.

Clause 70 prescribes for ballot papers and ballot boxes. In order to ensure that elections are run effectively, the presiding officer must be provided with a sufficient number of ballot papers which he or she must initial before delivering them to voters who arrive to vote at a polling station on polling day. The presiding officer must also be provided with an opaque ballot box which must have an opening large enough to allow a folded ballot paper to be

placed inside. That ballot paper must be locked before and during polling and can only be opened in accordance with Clause 82 which deals with the scrutiny of ballot papers.

He or she must also be issued with the electoral roll for that constituency.

Clause 71 goes towards ensuring that the poll cannot be abused by individuals. It is a requirement under this Clause that voters present a form of identification and satisfy the presiding officer that they are the person whose name is in that particular Roll to vote at that polling station. It is not uncommon for a voter not to have identification with them and if this happens, the presiding officer may take necessary measures to verify the identification of that person and this includes asking the voter questions provided in Clause 72. An incorrect spelling in the voters name or a change of name through marriage or deed poll does not invalidate the voter's name in that Roll.

The person only has to prove that they are in fact the same person despite the change in the name.

Clause 72 provides the questions that a presiding officer may ask a voter who does not have identification required under Clause 71. These questions are:

- (a) 'Are you the person whose name appears as (the name of the voter) on the Roll of persons entitled to vote at an election of members for (the name of the constituency or the names of the Districts included in the constituency)?'
- (b) 'Are you qualified to vote at this election of members for (the name of the constituency or the names of the Districts included in the Constituency)?'; and
- (c) 'Have you already voted at this election?'

It is an offence for any person to provide a false response to any question asked under this Clause. Clause 113 provides the offence and penalty.

Clause 73 provides for the method of voting that voters must employ when voting at a polling station. There are certain duties that a presiding officer must fulfil once a voter has been verified that they are the person to vote at a polling station. Prior to handing the voter their ballot paper the presiding officer or other election official must:

- (a) cross off the name of the voter from the voter list;
- (b) hand the voter one ballot paper initialled in accordance with Clause 70(1);
- (c) immediately have the voter sign next to his or her name on the voter list to confirm that the person has received a ballot paper.

A voter must upon receiving their ballot paper:

- (a) retire to a polling booth;
- (b) mark his or her vote on the ballot paper in the way prescribed in Clause 76;
- (c) fold the ballot paper so as to conceal his or her vote; and
- (d) place the ballot paper in a ballot box in the presence of the presiding officer or an election official.

Any voter who makes known or reveals the contents of his or her ballot paper will have their ballot confiscated and they will not receive another ballot paper.

Clause 74 contains instructions on how a voter must cast their vote.

Clause 75 provides the process for the removal of unmarked ballot papers from a polling station. If any person other than the presiding officer removes any unmarked ballot paper from a polling station, they will be prosecuted under Clause 115. Unmarked ballot papers may only be removed under the following circumstances:

- (a) if a voter, who has been assigned to that polling station is unable to appear and cast his or her vote due to any illness, physical disability or for any reason approved by the Electoral Commissioner and this would be where a mobile polling station comes into play; or
- (b) if another polling station has run out of ballot papers and the Electoral Commissioner expressly authorises that ballot papers be transferred by the presiding officer to that other polling station.

To ensure security of ballot papers, if it so happens that the presiding officer must remove unmarked ballot papers from a polling station, then he or she must be accompanied by another election official and must observe the procedures for assisted voting.

Clause 76 makes provision for spoiled ballot papers. A voter who inadvertently spoils their ballot paper in such a way that it cannot be used as a valid ballot paper may be given another ballot paper provided they hand the spoiled ballot paper back to the presiding officer. A voter may only receive one replacement ballot paper.

The presiding officer must in the presence of the voter, write or stamp the words “cancelled” across its face and his or her initials on it before sealing it in an envelope marked “spoiled ballot paper”.

Clause 77 provides for assisted voting. There are circumstances where a voter is illiterate or blind or has some other physical disability that makes them unable to vote on their own. In circumstances such as this, the voter may request any person or the presiding officer to

accompany them into the polling booth to assist them in marking the ballot paper or marked by the person assisting them in the polling booth. That person may also have a nominated person inspect the ballot paper before it is placed into the ballot box. It is an offence to have more than one person in a polling booth at one time and this is the only exception to that prohibition.

Clause 78 provides the right of voters to vote through a proxy upon application and authorisation by the Electoral Commissioner. A proxy may not hold more than 5 proxy voting authorisations and a voter casts his or her vote as a voter at the same time as he or she casts the proxy vote. The Electoral Commission is to make Regulations related to proxy voting and related matters.

Clause 79 caters for the method of voting for mobile polling stations. Mobile polling stations are notified in the Government Gazette under Clause 63. Mobile polling stations are set up to ensure that every voter is afforded the opportunity to vote and this includes those voters who are resident in hospitals, care facilities, detention centres, correctional centres or by reason of illness or infirmity, including a pregnant woman who is approaching maternity.

Voters who seek to vote at a mobile polling station must apply to the Electoral Commissioner at least 48 hours before 9:00am on polling day and they must include any information including documents that the Commissioner may require. Any application received less than 48 hours before polling day is at the discretion of the Commissioner.

On visiting a voter who has applied to vote at a mobile polling station, a presiding officer must take with them the ballot box for the polling station and be accompanied by another election official and ensure that as far as practicable, the vote is recorded as if it were being recorded in a polling booth under usual circumstances.

If the visit is prohibited on medical grounds by a medical practitioner then no visit may be made.

Clause 80 lists the people or groups of people who may be present at polling stations. They include:

- (a) the Electoral Commissioner;
- (b) Deputy Electoral Commissioners;
- (c) the presiding officer for the polling station;
- (d) the deputy or assistant presiding officer (if appointed);
- (e) other appointed election officials;

- (f) police officers on duty, if requested by the presiding officer or his or her representative for the sole purpose of restoring peace and order and only for the time necessary to do so;
- (g) observers, not exceeding five in number or such other limit as the Electoral Commissioner may permit and who must remain in an area designated by the Electoral Commissioner; and
- (h) any other person authorised by the Electoral Commissioner.

Part 7 – The Count

Clause 81 provides for the scrutiny of ballot papers. The scrutiny takes place once the polls have closed and all locked ballot boxes have been brought from the polling station to the place where the Electoral Commissioner has designated. The Electoral Commissioner will then, in the presence of the presiding officer unlock and open the ballot box and:

- (a) identify and reject all invalid ballot papers;
- (b) record the number of invalid ballot papers and valid ballot papers respectively; and
- (c) place in a separate parcel all ballot papers that have been rejected as invalid.

The Electoral Commissioner may appoint persons who are deemed suitable to assist in the conduct of the scrutiny.

Clause 82 deals with the process of invalidating ballot papers. A ballot paper is invalid if:

- (a) it is not authenticated by the initials of the presiding officer in accordance with Clause 70(1);
- (b) it has no vote indicated on it or it does not indicate the voter’s first preference for one candidate and his contingent votes for all the remaining candidates; or
- (c) it has on it any mark or writing (not authorised by this Act to be put on it) by which, in the opinion of the Electoral Commissioner, the voter can be identified.

This clause also contains some instruction on certain types of ballot paper that does not invalidate them. One such example is where there are only two names on a ballot paper and a voter only marks one box with the number “1”. In this case, the other box will be taken as the voter’s second preference. The ballot paper is therefore not invalidated. The same applies to a ballot paper that marks all boxes except one. In this case, the remaining box will be taken to be the voter’s last preference and the ballot paper is not invalidated.

Clause 83 provides for persons authorised to be present during the scrutiny and count of ballot papers. These include:

- (a) the Electoral Commissioner or Deputy Electoral Commissioners;
- (b) the presiding officer or other election official for the polling station;
- (c) persons who are appointed under Clause 81(2) for the purpose of assisting in the scrutiny of ballot papers;
- (d) police officers who have been requested by the Electoral Commissioner or his or her representative for the sole purpose of restoring peace and order and only for the time necessary;
- (e) observers, not exceeding five in number or such other limit as the Electoral Commissioner may permit and who must remain in an area designated by the Electoral Commissioner; and
- (f) any other person authorised by the Electoral Commissioner.

Clause 84 is the first clause that relates to the counting of votes marked on valid ballot papers in an election but excludes ballot papers used in a by-election.

Clause 85 is the second clause relating to the determination of the results of an election. Constituencies are allocated a different number of members to be elected for Parliament as provided for in Clause 34 of the Act. This clause provides the procedure for determining which members from each Constituency are to be determined as elected after the count conducted in Clause 84.

Briefly, the members who receive the highest number of points as allocated in Clause 84 are to be declared as elected. So for a constituency that is returning 2 members, the 2 candidates that have received the highest value of votes are elected, for a constituency returning 3 members it is the 3 candidates that receive the highest value of votes that are declared elected and finally for a constituency that is returning 4 members, the 4 candidates receiving the highest values of votes are elected.

There may be cases where 2 or more candidates receive an equal number of votes. If cases such as this arise then the Electoral Commissioner must exclude candidates by using the system outlined in Clause 87 of the Act.

Clause 86 deals with the counting of votes in a by-election. Unlike the method of counting for a general election, in a by-election, the Electoral Commissioner will first count the first preference votes. If there is a candidate who has received the largest number of first preference votes then that candidate is declared elected after the first count.

If no candidate receives a clear absolute majority then the Electoral Commissioner proceeds with the scrutiny and a second count of the votes. Following the second count, if there is a candidate that receives the fewest first preference votes, then that candidate is excluded and each ballot paper counted toward him is counted toward the candidate next in order of the voter's preference. If after this count a candidate has absolute majority then he or she is elected but if not then the process shall continue and the order of counting the lowest candidate's ballot papers toward the next candidate is repeated and the candidate who finally emerges with an absolute majority is declared elected.

Again if there is a situation where candidates receive the same amount of votes, the Electoral Commissioner must use the method in Clause 87 to exclude one candidate and declare the other elected. This method is further elaborated in the next Clause.

Clause 87 provides for the determination of the exclusion of a candidate in a situation where two or more candidates receive the same value of votes after the count is conducted.

The first action that will be taken by the Commissioner is to deduct from each relevant candidate the total value of the votes received by the candidate from all his or her last preference votes. Once the Commissioner has complete the deduction, he or she will then ascertain which candidate or candidates has the highest remaining value of votes and all other candidates will be excluded.

If in the circumstance where after the deduction made the candidates still have an equal value of votes, then the Commissioner must repeat the process by deducting second last preference votes and third last preference votes until it is possible for the Commissioner to determine which candidate emerges with the highest value of votes and determined elected.

Finally, there may be a situation where even after the procedure carried out and described above, there is still no outright winner. In this case the Electoral Commissioner will use a random method of selection which involves the tossing of a coin or the drawing of names out of a container in a manner where the Electoral Commissioner cannot see the name being drawn. If the Commissioner chooses the latter method then it must be conducted in the presence of a police officer and the relevant candidates. The relevant candidates in this case are those candidates who have been put through the different methods of elimination to determine which is to be excluded due to the fact that they have an equal value of total votes.

Clause 88 provides for the declaration of results. Once the Electoral Commissioner has determined the results of an election (including the method of exclusion in Clause 87, the Commissioner must publicly declare those candidates as elected as Members of Parliament.

The Commissioner's declaration must be published by notice at the Government Buildings and in the Government Gazette.

The notice must include:

- (a) the results of the election;
- (b) the names of the candidates;
- (c) the number of valid votes cast; and
- (d) the number of invalid votes.

Clause 89 is a clause relating to the declaration of the results. This clause provides that the declaration of results must be made as soon as practicable after the close of the count of the votes.

Clause 90 allows candidates to submit a request for the Electoral Commissioner to conduct a recount. The request must be made in writing and must contain reasons for the request.

Upon receiving a request under this clause, the Electoral Commissioner must respond immediately due to the obvious urgency of the situation. The Commissioner will not necessarily agree to the request. He or she will consider the request and if there is sufficient reason provided by the candidate, then a recount will be done. If there is a recount done, then this must be done on an uninterrupted basis in the presence of any member of the Commissioner.

Once the recount is complete, the Electoral Commissioner must:

- (a) decide the correct figures and results if errors were made in the initial results; and
- (b) confirm if the initial results are the correct results; or
- (c) cancel the incorrect results and enter the new results.

If new results are entered, then the Electoral Commissioner must once again make a declaration under clause 88.

It is important to note here that any decision of the Electoral Commissioner regarding the request for a recount is final and subject only to any review conducted under this Act.

Clause 91 provides for the storage of election material following an election. This is important in the event that there is an appeal to the Court. It is not only the used ballot papers (valid, invalid, spoiled) that are kept but all election material including unused

ballot papers, signed voter lists, copies of complaints and appeals, any official stamps, results and any record books.

These must be kept in safe custody and may not be accessed by any person (except the Electoral Commissioner) unless ordered to by a court.

If there is a petition questioning the validity of any election or return or if any criminal prosecution has arisen out of any election, the Electoral Commissioner must, if under a court order, deliver to the court the papers relating to the election involved.

Clause 92 gives the Electoral Commissioner the power to destroy and records in relation to any election. The Commissioner may only destroy records if it has been one year since the results of that election have been published under Clause 88. Records may not be destroyed if a court has directed otherwise.

Part 8 – Court of Disputed Returns

Clause 93 provides for election petitions. An individual who was aggrieved by any matter related to an election may present an election petition (in accordance with the provisions of this Act) to the Court of Disputed Returns.

A petition may only be brought by a candidate or a person qualified to vote in the election which is the subject of the petition.

Clause 94 deals with the status of persons elected. In all jurisdictions, following elections there will be challenges of different types pertaining to the validity of the elections. This does not mean that the Government will not function. Persons who are declared elected under Clause 88 of the Act are for all purposes deemed elected unless and until a Court orders otherwise. The Court would be the Court of Disputed Returns where petitioners would have their petitions heard.

Clause 95 provides for the Court of Disputed Returns. This is a universal name given to the Court that hears and determines petitions related to the validity of the elections. In Nauru this Court is the Supreme Court.

Clause 96 outlines the contents of a petition that persons must submit if disputing an election or the declaration of an election. A petition must:

- (a) set out the facts relied on to invalidate the election or the declaration of the election;
- (b) contain a prayer asking for relief to which the petitioner claims to be entitled;
- (c) be signed by a candidate at the election or by a person who was qualified to vote at the election;

(d) be attested by two witnesses; and

(e) be filed in the registry of the Supreme Court within 30 days after the publication in the Government Gazette of the notice in relation to the election in accordance with Clause 88.

Clause 97 states the amount that a person must deposit as security for costs. At the time of filing their petition, a person must deposit \$500 for security. How this security is used by the Courts is outlined in Clause 104 and Clause 105.

Clause 98 provides the Court with the power to stay proceedings if a person filing a petition has not complied with Clause 96 (contents of a petition) or Clause 97 (security deposit).

Clause 99 entitles the Electoral Commissioner to enter an appearance in any proceedings relating to a petition and not be represented and heard in those proceedings. If the Commissioner does enter an appearance, he or she is deemed to be a responded to that petition.

Clause 100 outlines the power of the Court in related to petitions before it. The Court of Disputed Returns sits as an open Court and its powers include the powers:

(a) to adjourn;

(b) to compel the attendance of witnesses and the production of documents;

(c) to grant to a party to a petition, leave to inspect, in the presence of the Registrar of the Supreme Court and the Electoral Commissioner, the Roll and other documents used at or in connection with an election and to take, in the presence of the Electoral Commissioner, extracts from those Rolls and other documents;

(d) to examine witnesses on oath;

(e) order the Electoral Commissioner to recount the ballot papers of one or more polling stations;

(f) to declare that a candidate who has been declared to be elected under Clause 88 was not duly elected;

(g) to declare that a candidate who has not been declared to be elected under Clause 88, duly elected;

(h) to declare an election for a constituency absolutely void;

(i) to dismiss or uphold a petition in whole or in part; and

(j) to award costs.

The Court has discretion in how it exercises the powers it has under this Clause.

Clause 101 provides that in considering and determining petitions that come before it, the Court of Disputed Returns must be guided by good conscience and the substantial merits of the case without regard to legal form and technicalities and it is also not bound by the rules of evidence.

Clause 102 states that any decision of the Court is final and conclusive and may not be questioned or appealed to any other Court.

Clause 103 provides that the Court may award costs against an unsuccessful party to a petition.

Clause 104 refers to the deposit that a petitioner has made under Clause 97. The deposit may be applied in payment of any sum ordered but otherwise the deposit is repayable to the petitioner.

Clause 105 provides for other costs that may be awarded by the Court. If there is any balance from costs referred to in Clause 104. That amount is recoverable by the petitioner and any order of the Court of Disputed Returns is made as if the order were a judgment of the Supreme Court.

Clause 106 outlines the effect of a decision of the Court made under this Act. A decision of the Court here can effectively overturn the results of an election and the court may declare a different candidate to be elected despite the declaration made under Clause 88. In brief, where:

- (a) the court declares that a person who has been declared to be elected under Clause 88 was not duly elected, he or she must be deemed not to have been elected;
- (b) the court declares that a candidate who has not been duly elected after the declaration under Clause 88, is now elected, the person must be deemed to have been elected under that court declaration;
- (c) the court declares an election for a constituency void, the election for that constituency must be deemed to have failed.

Clause 107 provides the power to make Rules of the Court. This power is given to the Chief Justice and he or she may create rules for regulating the practice and procedure of the Court as well as the forms to be used.

Part 9 – Special Provisions Applying to Referendum

Clause 108 relates to a referendum that may be held according to Article 84 of the Constitution. A referendum is held when there is a particular issue that needs the vote of the people. In some places this usually leads to the adoption of a new law. The Constitution states that there are certain matters in the Constitution that can only be amended after a referendum is held on a matter provided in Schedule 5 of the Constitution.

This Clause provides for a referendum that is held in parallel with an election and one that is held only for a vote on a special proposal such as an amendment to the Constitution. In the event that a referendum is held in parallel with an election, a person is qualified to vote if at the time the referendum is held that person is qualified to also vote at the election.

If a referendum is held for the purpose of Article 84 of the Constitution and not held together with an election, then a person is qualified to vote if that person's name appears on a Roll for a District at midnight, 6 working days before the date of the referendum.

Part 10 – Corrupt Practices and Electoral Offences

Clause 109 states that any person who assists, either by indirect or direct commission or omission, to contravene any provision of this Act, then that person is deemed to have also contravened the provision and will be held liable along with the person who actually committed the act.

Clause 110 states that any person who fails to vote at an election commits an offence and is liable to a penalty not exceeding \$100. There are exceptions provided in Clause 54(4) that a person may rely on in the event that they failed to vote. The exceptions under Clause 54(4) are that the person:

- (a) is absent from Nauru on polling day; or
- (b) is unable to vote because he or she is seriously ill or infirm; or
- (c) has another valid and sufficient reason for not voting.

Clause 111 makes it an offence for any person to fail to respond to a notice that they have been sent under Clause 55. The penalty is a fine not exceeding \$200.

Clause 112 covers circumstances where a person has provided a response under Clause 55 as to why they did not vote and the Electoral Commissioner considers that the reason that the voter has given is not sufficient enough reason for them not being able to vote on polling day. An offence under this Clause carries a penalty of a fine of up to \$200.

Clause 113 makes it an offence for any person to provide false or misleading information under this Act. This is in relation to any person who has provided any information to the Electoral Commission, a presiding officer or any other election official.

Clause 114 creates a prohibition for any person who is not a registered voter and enters a polling booth to mark a ballot paper. Any person contravening this Clause is liable upon conviction to a fine not exceeding \$1000.

Clause 115 makes it an offence for anyone to remove any unmarked ballot papers from any polling station. The exception to this clause is provided in Clause 75(2) where unmarked ballot papers may be removed from a polling station:

- (a) if a voter, who has been assigned to that polling station is unable to appear and cast his or her vote due to any illness, physical disability or for any reason approved by the Electoral Commissioner; or
- (b) if another polling station has run out of ballot papers and the Electoral Commissioner expressly authorises that ballot papers be transferred by the presiding officer to that other polling station.

Any person who is not covered by the exception and who removes any unmarked ballot paper from a polling station commits an offence and is liable upon conviction to a fine not exceeding \$5000 or imprisonment for a period not exceeding 2 years or to both a fine and imprisonment.

Clause 116 creates an offence where more than one person is present in a polling booth. The general rule is that voting is conducted in secret and that secrecy is highly guarded, but there are exceptions and this is contained in Clause 77 which provides for assisted voting for persons who are intellectually impaired, illiterate or who has some other disability that prevents them from voting. This category of voters may appoint someone of their choice to assist them with voting or get assistance from the presiding officer or other election official.

A person who is not covered by that exception and is found in a polling booth with another voter who is voting commits an offence and is liable to a fine not exceeding \$100.

Clause 117 prohibits persons who are not engaged in voting to be present at any polling station or to be present at the scrutiny and count without authorisation. Any person in contravention of this Clause is liable to a penalty not exceeding \$100.

Clause 118 contains two offences related to electoral information. The first makes it an offence under the Act for any person, other than the Electoral Commissioner or someone authorised by him, to possess, manipulate or change by electronic, mechanical or other means any information contained in the Roll or voter list. A person who contravenes this is liable upon conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 1 year or to both.

The second is an offence where any person who uses any information contained in the Roll or voters list uses that information for a commercial or for other purposes related or unrelated to an election. A contravention of this clause can have a person being held liable to a term of imprisonment not exceeding 2 years.

Clause 119 makes it an offence for any candidate or person supporting a candidate to wilfully or recklessly destroy any campaign material of another candidate. This is to ensure that all campaigning is done in a fair and just manner. Any person who contravenes this Clause is liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 1 year or to both a fine and imprisonment.

Clause 120 prohibits the displaying of any campaign material at any polling station or within 200 meters of any polling station. Persons contravening this clause are liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 1 year or to both a fine and imprisonment.

Clause 121 is a prohibition on employees of the public service or instrumentality of the Republic to campaign or to use Government resources for the purpose of campaigning. Employees of the public service include permanent employees, temporary employees, contract employees and heads of departments and all other persons who are employed in the public service. Instrumentalities of the Republic are employees of a statutory corporation or authority listed in paragraphs 3 to 8 of Schedule 10 or a corporation owned and controlled by Government and subject to Cabinet or Ministerial direction. Paragraphs 3 to 8 include:

- (a) An officer who holds an office under the *Nauru Air Corporation Act 1995*;
- (b) An officer who holds an office under the *Nauru Rehabilitation Corporation Act 1997*;
- (c) An officer who holds an office under the *Nauru Utilities Corporation Act 2011*;
- (d) An officer who holds an office under the *Nauru Fisheries and Marine Resources Authority Act 1997*;
- (e) An officer who holds an office under the *Port Authority Act 2015*;
- (f) An officer who holds an office under the *RONPHOS Act 2005*.

This Clause makes it an offence for any such employee to campaign in support of a candidate, to post or distribute any campaign material inside a public office in support of a candidate or to use any Government resources to support a candidate.

It is also an offence for any person to coerce, pressure or intimidate any such officer to carry out any of the actions described.

Any such officer or other person who contravenes this Clause commits an offence and is liable upon conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 1 year or to both a fine and imprisonment.

Clause 122 prohibits any campaigning to be conducted on polling day and any person contravening this (whether a candidate or not) is liable upon conviction to a fine not exceeding \$5,000 or to imprisonment for a period not exceeding 1 year or to both a fine and imprisonment.

Campaigning under this clause includes any action where on polling day the person holds or takes part in any meeting, demonstration or procession at a polling station or within 200 meters of a polling station with the intention of:

- (a) canvassing votes;
- (b) soliciting the vote of a voter;
- (c) inducing a voter not to vote for a particular candidate;
- (d) inducing a voter not to vote at the election; or
- (e) ascertaining who a voter intends to vote for or has voted for.

Clause 123 makes it an offence for any police officer to influence voters to vote for a particular candidate or candidates. A police officer who contravenes this clause may be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a period not exceeding 2 years to both.

Clause 124 creates the offence of bribery where it is an offence for any person to offer their vote or support to a candidate for an election in exchange for any property or benefit.

A person who commits an offence under this Clause is liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Clause 125 makes it an offence for any person to apply for a ballot paper in the name of another person, whether the name is that of a person who is living or dead, or applies for a ballot paper under a fictitious name. It is also an offence to knowingly and wilfully impersonate an election official.

A person who contravenes this Clause is liable to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 1 year or to both.

Clause 126 creates the offence of double voting where a person who has already voted attempts to vote again. That person commits an offence and is liable to a fine not exceeding \$5,000 or to imprisonment to a term no exceeding 1 year or to both.

Clause 127 is the offence of intimidation where a person:

- (a) by himself or herself, or with the assistance of another, uses or threatens to use of any force, violence, or restraint or inflicts or threatens any injury, damage, harm, loss; or
- (b) in any other manner intimidates a person in order to induce or compel that person to vote or refrain from voting at any election.

A person who carries out any of the above actions commits an offence and is liable upon conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 1 year or to both.

Clause 128 provides for the offence of undue influence where any person hinders or interferes with the free exercise or performance by any other person or any political right or duty that is relevant to an election.

A person who does the act described above commits an offence and is liable upon conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 1 year or to both.

Clause 129 creates an offence of electoral treating. This clause covers any person with the intent to corruptly influence a voter at an election, and who:

- (a) offers cash or promises or supplies food, drink or entertainment;
- (b) offers or promises to give cash or to pay for food, drink or entertainment;
- (c) offers or provides transport to or from polling stations;
- (d) offers, promises or gives a gift, donation or prize, including cash, to or for any person, club or association.

It is important to note that it is not an issue:

- (a) whether or not the offer was accepted before, on or after polling day; and
- (b) whether or not a promise is fulfilled before, on or after polling day.

This clause takes into account any offer or promise that was made under a customary obligation but in this case the onus is on the person making the offer or promise to prove that it was in fact under a customary obligation.

Clause 130 creates the offence of stuffing ballot boxes. An offence is committed if a person knowingly places or is privy to the placing into a ballot box any ballot paper which has not been lawfully issued to a voter or where a voter places in the ballot box any paper other

than the ballot paper issued to him or her for that purpose. A person who is in contravention of this Clause is liable upon conviction to a fine of \$5,000 or to imprisonment for a term not exceeding 1 year or to both.

Clause 131 states that it is an offence for any person to use a camera, phone or other electronic device while in a polling booth. Any person in contravention of this Clause is liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 1 year or to both.

Clause 132 makes it an offence to obstruct or prevent a voter from casting his or her vote and a person in contravention of this Clause is liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Clause 133 makes it offence for any person to:

- (a) intrude into a polling booth and not be lawfully entitled to be in it; or
- (b) wilfully interrupt, obstruct or disturb any proceedings at an election.

A person in contravention of this Clause may be arrested without a warrant by a police officer or in the absence of one, by a presiding officer or other election official and is liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

Clause 134 empowers the Electoral Commissioner, Deputy Electoral Commissioners, presiding officer or other election official to remove from a polling station who fails to obey any lawful direction issued by any one of these officials. A person who is removed is also liable upon conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 1 year or to both.

Clause 135 states If any person who is the holder of an office of profit or an employee of an instrumentality of the Republic is required to resign under the applicable Act in Schedule 10 or any other law does not comply with the provisions of that law and continues to hold their office or employment prior to and after submitting their nomination under this Act, that person commits an offence and is liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Part 11 – Regulations, Repeal and Transitional Regulations

Clause 136 creates a power that is given to the Electoral Commission to make regulations under this Act that include but are not limited to the following:

- (a) registration of voters;

- (b) registration of political parties;
- (c) nomination of candidates;
- (d) conduct of polling, counting and tabulation of results;
- (e) proxy voting;
- (f) voting by people who are unable to attend a polling place;
- (g) filing and adjudication of complaints and appeals;
- (h) the fees for applications or services provided under this Act; or
- (i) any matter necessary or convenient for giving effect to this Act.

Clause 137 is a repealing provision that repeals the Electoral Act 1965 and the Electoral Regulations 2013. These repealed laws are replaced by this Act and any regulations that may be made by the Electoral Commission.

Clause 138 is a savings provision that saves any name that was entered into Roll upon the commencement of this Act. A person whose name was entered on a Roll prior to the commencement of this Act will continue to have his or her name entered on that Roll. This clause is to ensure that the administration of the Roll continues despite the transition from one Act to another.

Clause 139 provides that any appointments made under the repealed Act continues until new appointments are made under the new Act. Any proceedings that were instituted under the repealed Act continues until it is determined under the repealed Act. Any fees paid under the repealed Act is taken to be authorised under this Act and any authorisation granted under the repealed Act is taken to be an authorisation under this Act. Finally any application made under the repealed Act is taken to have been made under this Act.

