

Republic of Nauru – 20<sup>th</sup> Parliament

**Legislation Publication Bill 2011**

**EXPLANATORY MEMORANDUM**

**Background**

The Legislation Publication Bill 2011 assists in the implementation of one of the major outcomes of the Legal Information Access Project (LIAP), which commenced in March 2010. The goals of this project are to:

- strengthen human rights and good governance in Nauru, in particular transparency of government;
- strengthen the capacity of Nauru's legal and judicial system; and
- improve access to Nauruan legal information for the government, administration, legal practitioners, students and the public in a manner that is sustainable over the long term.

The end results of LIAP will be:

- consolidated electronic reprints of all laws in force;
- a searchable database that contains a complete and accurate collection of legislation, court decisions and Gazettes – this system will be available on-line to the public free of charge and will allow users to access up-to-date versions of all Nauruan legislation, including historical versions (that is, superseded versions of the law as in force at a particular time in the past); and
- a Legal Publication Unit responsible for maintaining the database and for other publishing tasks.

Until recently, it has been impossible to find or access a complete and accurate collection of the laws of Nauru, and there has not been a consolidation of legislation since 1966. It is essential for people to be able to access the laws that apply to them, and it is especially important for people who administer or apply the law (such as government departments and the courts) to have a complete and accurate picture of what the law is.

The traditional role of the Government Printer in other jurisdictions is to produce consolidated hard copy reprints of laws – that is, laws that have been amended are published with all the amendments incorporated into the text of the law. This allows the public to access up-to-date versions of the law. Hard copy reprints are expensive to produce, a cost which is recouped in most jurisdictions by charging the public for copies. In recent years, many jurisdictions have harnessed advancements in technology to also provide free electronic reprints of laws via an online database. This improves access to the

law, because electronic reprints are both free to access and available much more quickly than hard copy reprints.

Some jurisdictions have gone further by enacting legislation that gives official status to electronic reprints – this means that the version published online is the definitive version that will be accepted by courts as an accurate reflection of the law as in force at a particular time. This particularly suits jurisdictions like Nauru that no longer have a Government Printer and therefore have no other way of publishing authoritative reprints of laws. The Legislation Publication Act will give such status to electronic reprints of Nauru laws by providing a presumption that such reprints are a complete and accurate reflection of the law in the absence of proof to the contrary. This would not only be a milestone for access to the law in Nauru – it would also place Nauru at the forefront of developments in access to legislation taking place around the world.

To facilitate the publication of official electronic reprints, it is necessary to empower someone to establish and maintain the necessary database and prepare and publish laws on the database. In Nauru, as in most other jurisdictions, this role will be carried out by the Parliamentary Counsel. The Parliamentary Counsel is not currently a statutory office, and the Bill includes provisions establishing the office to facilitate the operation of the rest of the Act.

### **Part 1 – Preliminary matters**

**Clauses 1 and 2** provide for the short title and commencement of the Act.

**Clause 3** specifies the object of the Act – to facilitate the ready availability of Nauru legislation.

**Clause 4** defines terms used in the Act.

### **Part 2 – Publication of legislation**

**Clause 5** provides for the Parliamentary Counsel to maintain electronic databases of legislation. These databases could contain legislation as certified (in the case of Acts) or made (in the case of subsidiary legislation) or compilations of legislation – that is, legislation as in force on a particular date, containing all amendments made to the legislation up to that date. The Parliamentary Counsel may, by Gazette notice, declare a database to be a legislation database. The Parliamentary Counsel is required to ensure that items published in a legislation database are available for inspection by the public.

**Clause 6** creates a presumption that the text of a written law published in a legislation database is complete and accurate and that any information published with it about the certification, commencement and amendment of the law is also accurate. This ensures users of legislation can rely on items published in a database as a correct statement of the law,

and they do not need to prove to a court that the law as published is accurate. In the case of a law published as certified or made, the law must be an accurate and complete record of the law as certified or made. In the case of a law published as amended up to a particular date (that is, a compilation of a law), the law must be an accurate and complete record of the law as in force on that date. However, if a person can prove that there is an error in the electronic version (for example, by producing the original certified version of the Act), this presumption will be displaced.

**Clause 7** provides that a document that purports to be an extract from a legislation database is presumed to be the extract, unless the contrary is proved.

**Clause 8** provides for the regulations to prescribe matters relating to the maintenance of a legislation database, including the way information is recorded and altered and how each law and compilation is identified. This does not mean regulations must be made prescribing these matters, but if they are made, a legislation database must be kept in accordance with the regulations.

**Clause 9** ensures that any errors between the text of a law as certified or made and the version included in a legislation database, or an inaccurate compilation included in a legislation database, are corrected as soon as possible after the Parliamentary Counsel becomes aware of the error. The details of the correction and the reason for it must be included in the database. The correction does not affect any right or privilege acquired because of reliance on the uncorrected content of the database and it does not impose or increase any obligation or liability incurred before the correction was made.

**Clause 10** ensures that a compilation of a law incorporates all the amendments made to the law up to the date from which the compilation specifies that the law is in force.

**Clause 11** requires a compilation of a law to include the following information about the compilation:

- a reference to the amending legislation by which each amendment incorporated in the compilation was made
- the history of each provision of the law as amended by all amending legislation covered by the compilation
- the date the compilation was prepared
- a statement that the compilation was prepared and published by the Parliamentary Counsel
- any other information required by the regulations.

Clause 11 also provides that, in the absence of proof to the contrary, a compilation purporting to have been prepared and published by the Parliamentary Counsel is presumed to have been so prepared and published.

### **Part 3 – Office of Parliamentary Counsel**

**Clause 12** establishes the Office of Parliamentary Counsel, which consists of the Parliamentary Counsel, the Deputy Parliamentary Counsel and the staff of the Office. The Office is controlled by the Parliamentary Counsel, who is subject to the directions of the Speaker.

**Clause 13** lists the functions of the Office. The primary functions are to draft proposed laws (including committee stage amendments) and to perform other functions specified in the Act. The secondary functions are to perform functions specified in other Acts or by the Speaker. The performance of the secondary functions must not interfere with the performance of the primary functions.

**Clause 14** provides that the Parliamentary Counsel and the Deputy Parliamentary Counsel must be appointed by the Speaker. To be eligible for appointment to either position, a person must be entitled to practise, or eligible for admission, as a barrister and solicitor in Nauru, and have been so entitled or eligible for at least 5 years.

**Clause 15** provides that public servants may be appointed as staff to the Office, and will be subject to the directions of the Parliamentary Counsel.

**Clause 16** requires the Parliamentary Counsel to prepare an annual report each year outlining the activities of the Office for the year and any other details required by the regulations.

**Clause 17** ensures the Speaker can appoint a person to act as Parliamentary Counsel or Deputy Parliamentary Counsel if the position is vacant or the holder of the office is unable to perform the duties of the office. It allows such an appointment to be made for a particular period or for all periods when the circumstances necessitating the person to act in the office apply. It also allows more than one person to be appointed to act. This ensures a new acting appointment does not have to be made each time the office holder is on leave. It also facilitates ‘springing’ appointments – for example, person A can be appointed to act during all periods when the Parliamentary Counsel is absent, and person B can be appointed to act during all periods when both the Parliamentary Counsel and person A are absent.

**Clause 18** enables the Parliamentary Counsel to delegate his or her powers and functions under the Act (or any other Act) to the Deputy Parliamentary Counsel or a member of staff of the Office.

### **Part 4 – Miscellaneous matters**

**Clause 19** gives Cabinet the power to make regulations. The power includes, but is not limited to, the power to prescribe regulations permitting certain categories of corrections and editorial changes to be made to a law by the Parliamentary Counsel in preparation for

the publication of the law. Only corrections and editorial changes that do not change the effect of the written law may be prescribed. The Parliamentary Counsel can only make a correction or editorial change if it is of a type prescribed – any other correction or change must be made by Parliament by amending legislation.

#### **Part 5 – Repeal and transitional provision**

**Clause 20** defines terms used in the Part.

**Clause 21** repeals the *Amendments Incorporation Ordinance 1965*. This pre-Independence Ordinance provided for a reprint of laws by the Australian Government Printer. The new Act will make full provision for the publication of laws in Nauru by the Parliamentary Counsel.

**Clause 22** allows Cabinet to make regulations for transitional matters for the enactment of the new Act. Transitional regulations may have retrospective operation to a date not earlier than the date of commencement of the new Act, but they cannot operate retrospectively to decrease a person's rights or impose a liability on a person. The power to make transitional regulations ends 12 months after the commencement date.