

REPUBLIC OF NAURU

LAW REVISION AND CONSOLIDATION BILL 2019

EXPLANATORY MEMORANDUM

The *Law Revision and Consolidation Bill 2019* is a Bill for the *Law Revision and Consolidation Act 2019*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

EXPLANATION OF CLAUSES

PART 1 – PRELIMINARY

Clause 1 provides that, once enacted, the short title of the Bill will be the *Law Revision and Consolidation Act 2019*.

Clause 2 sets out when the Bill's provisions will commence which is upon certification by the Speaker.

Clause 3 defines certain terms used in the Bill.

PART 2 – LEGISLATIVE DRAFTING FUNCTION

Clause 4 repeats the transferring of the responsibility from the Office of the Parliamentary Counsel to the Department of Justice under the *Legislation Publication Act 2011*. This clause restates the vesting of legislative drafting and other functions to the Department. Such functions are to:

- draft Bills;
- draft subsidiary legislation;
- educate and disseminate information pertaining to Bills or written laws to the public;
- provide explanation or information to the Cabinet or the Members of Parliament in relation to any Bill or written law;
- publish written laws including Bills for the purposes of updating and maintaining RONLAW or any other website;
- perform functions under this Act as directed by the Minister; and
- cause the gazettal of written laws after certification by the Speaker or approval by the Cabinet or any other person.

PART 3 – POWER TO AUTHORISE REVISION AND CONSOLIDATION OF WRITTEN LAWS

Clause 5 in subclause (1) provides that the Minister in consultation with the Cabinet may authorise from time to time the revision and consolidation of the written laws of the Republic.

The Minister in providing authorisation under subclause (1) shall:

- prescribe the period for the consolidation and the effective date on which the revised edition of written laws is to be brought into force;
- direct the form and manner and frequency of the publication and distribution of revised edition of the written laws. This could be in print or electronic format;
- require a separate reprint of the Constitution; and
- require that a notation be made to indicate the Department or agency which is vested with the responsibility of administering a particular written law under the *Administrative Arrangements Act 2011*. This is to ensure that people are aware of which department or agency is responsible for the administration of a particular law.

Subclause (3) provides that the official language for the revision and consolidation shall be English unless the Minister approves another version in the Nauruan language.

PART 4 – LAW REVISION COMMISSION

Clause 6 establishes an office of the Law Revision Commission. Subclause (2) provides that a Law Revision Commissioner may constitute the office of the Law Revision Commission.

The purpose of the Commissioner under subclause (2) is to undertake the revision and consolidation of the laws. This exercise will be undertaken on a periodical basis for that purpose.

Subclause (3) provides for the establishment of an alternative commission. In the absence of the Law Revision Commissioner, the Minister may establish a Law Revision Commission consisting of: the Secretary for Justice, the Clerk of Parliament, the Solicitor General and the Principal Legislative Drafter. The alternative commission is established for the ongoing revision and consolidation of the laws of the Republic particularly electronic consolidation for the purposes of RONLAW. The intent of the Commission in subclause (3) is to ensure Nauru's laws are current at all times with the additional requirement under clause 13.

This alternative Commission can be activated without any additional costs. In addition, this alternative Commission will allow for the revision and consolidation of new laws passed by the Parliament on a periodic or annual basis. This will avoid the appointment or retaining of a Commissioner on a full time basis. The Commissioner under subclause (2) can be appointed to consolidate laws for a substantive period of time or only for special purposes.

Clause 7 provides for the appointment of a Law Revision Commissioner by the President in consultation with the Cabinet. The purpose of the appointment of a Law Revision Commissioner under clause 6(2) is to undertake the revision and consolidation of the laws. This exercise will be undertaken on a periodical basis for that purpose.

Clause 8 provides for the functions of the Commission which shall include: to collate, record and store current and historical laws; the revision of written laws; consolidation of written laws; in consolidating, to collate and compile the written laws in electronic and print copies; preparation of complete revised edition in the English language; updating of revised edition on annual basis; and preparation of unofficial publications of the written laws in electronic form for RONLAW or other means of electronic storage.

The revision and consolidation is intended to give the discretion for publication of written laws in the Nauruan language. For example, the Constitution, land matters and so forth so that the community is able to have access to and have better understanding of the law.

Clause 9 details the powers of the Commission. The Commission shall have all such powers as may be necessary to carry out its functions. Despite its wide powers, the Commission in the exercise of its powers may not make any amendment to a written law which may affect the substance or meaning of such written law.

Subclause (3) empowers the Commission to omit or exclude the inclusion of any written laws as part of the revised edition. The laws which the Commission may omit or exclude are detailed in this subclause. For example:

- appropriation laws;
- laws of a temporary nature, limited application or under revision; or
- laws the carrying into effect of whose provisions is doubtful.

In addition, this clause permits the Commission to omit any laws which may have expired due to affluxion of time, purpose or intent.

The powers of the Commission detailed under subclause (4) are to allow the Commission to make changes to the form of the written laws. The underlying responsibility is to ensure the revision does not amend or make changes to the existing laws. This power is necessary to ensure the laws are made consistent, modern, gender neutral, in conformity with other laws and including avoidance of duplication of law. These changes under subclause (4) to any existing statutes (not the law itself) will require Parliamentary approval as contained in the Bill in the Schedule to the Act to be submitted to Parliament each time when law revision takes place.

The Commission's powers under this subclause include:

- arranging the laws in an order or manner and in groups as the Commission may determine;
- adding a short title where a law does not have one or alter the long or short title or title of any law;
- rearranging the provisions of any law or any list in a provision of a law;
- adding a table of content or destinations to a law;
- omitting any Schedule, map, picture, drawing or diagram or other object;

- changing references to a person, office, body, place or thing to reflect changes in name, transfer of function or provision for construction of the reference;
- changing words or references to an office established by law to make them gender neutral;
- changing spelling, punctuation and layout;
- shortening or simplifying phrases and sentences;
- renumbering the sections, subsections and paragraphs;
- amending cross references;
- doing all things which appear to the Commission to be necessary to render the revised edition consistent with the Constitution, current written laws and drafting practices.

Subclause (5) provides that a list of omitted laws under subclause (3) shall be published with the revised edition.

Subclause (6) provides that the changes permitted in this clause are to be properly referenced for the purposes of interpretation of the written laws. This is important where provisions may be moved from one statute to another.

Subclause (7) requires consistency in words and phrases defined in written laws and the Interpretation Act 2011 unless the words and phrases in particular written laws have specific meaning and purpose.

Subclause (8) provides that words and phrases appearing in the different laws capable of being defined shall be in the *Interpretation Act 2011*.

Subclause (9) authorises the amendment of the powers of the Commission by regulations made by the Cabinet.

Clause 10 in subclause (1) authorises the Commission when it deems necessary in preparing a revised edition to draft a Bill for any amendments required for any written law.

Subclause (2) provides that a Bill drafted under subclause (1) may have references to more than one written law although such written laws may not be on the same subject matter.

Subclause (3) allows the Commission where a Bill under subclause (1) is enacted, in preparing the revised edition, give effect to the provisions of that Act as if they have been authorised under clause 9.

PART 5 – REVISED AND CONSOLIDATED WRITTEN LAWS

Clause 11 requires a revised edition shall be in electronic and print form and to include the following: a booklet format of the Constitution, a consolidated index of the written laws in alphabetical order, bound copy in booklet or loose-leaf format, all laws in force on the revision date and not omitted under clause 9(3), a reference to the amending legislation by which each amendment was made, the history of each provision of the law as amended by all amending legislation, the date of certification by Speaker of the original law, the date or dates

of certification by the Speaker of the amendments to the original written laws and such introductory and explanatory material and such tables as the Commission deems fit.

Subclause (2) provides that where a revised edition contains any law adopting or applying a treaty, convention or protocol, footnotes or references shall be made to the respective treaty, convention, protocol or any specific provisions or part of the same.

Clause 12 provides for the format and marking of a revised edition. This may be in bound books, collection of booklets, loose-leaf or electronic form. The date of revision for the revised edition needs to be marked on every separate written law of the revised edition and capable of being published on RONLAW or in any other electronic medium.

Clause 13 provides for the enactment of the revised and consolidated written laws. The Minister shall cause a Bill as set out in the Schedule to this Bill, to be drafted and tabled in Parliament for Parliament's endorsement of the revised and consolidated laws.

Clause 14 provides that the Minister may in consultation with the Cabinet authorise the publication and distribution of the revised edition free of charge to such persons as the Minister deems fit when a revised edition is brought into force under clause 13.

Subclause (2) allows the Minister to authorise the publisher of the revised edition or the Department to offer for sale print copies or a subscription for electronic copies.

Subclause (3) enables the Minister to prescribe the requirements for a person to access RONLAW with or without fees where a revised edition is published on RONLAW.

Clause 15 provides for the effect of the revised edition and ensures that the revised edition shall not operate as new law.

A copy of the revised edition published in print or electronic form is proof that written law is deemed to have been published by the Minister. If there is an inconsistency or inconsistencies between a consolidation and an original law, the original prevails to the extent of the inconsistency or inconsistencies.

This clause shall not affect the operation of any law which comes into force after the revision date and which repeals, alters or amends any law included in the revised edition.

This clause also makes it clear that where a law has been omitted under clause 9(3), such law shall not be deemed to be without force and validity only as a result of being omitted from the revised edition.

Clause 16 provides for the updating of a revised edition. A revised edition may be updated: to include written laws that came into effect after the revision date; by entire replacement in the form of bound booklet, bound book or other means of electronic storage. An update of a revised edition in loose-leaf format may be made by inserting or interfiling the amended written laws; removing superseding pages where there has been a repeal or repeal and replacement of a written law in its entirety; editing parts of a section and inserting amendment. An electronic version may be updated by editing the relevant parts of the written

law and such editing shall require a footnote or reference to the relevant laws removed or included.

Electronic versions of the revised edition on RONLAW may be updated by editing the relevant part or parts of a written law. Footnotes or references shall be made to the relevant laws which are removed or included.

Clause 17 empowers the Commission to correct any clerical or printing errors or omissions found in the revised edition. The Commission may correct the same as may be consistent with its powers of revision under clause 9(4) and give notice of corrections made in the Gazette.

Subclause (2) provides that any error or omission in a revised edition shall not affect the validity or lawfulness of any act or omission which would have otherwise been valid or lawful.

Clause 18 requires the Department to maintain electronic copies of all written laws, Bills, Explanatory Memoranda and subsidiary legislation; certificates of the Speaker certifying the written laws; Cabinet approval for subsidiary legislation; print copies of Bills, Explanatory Memoranda and subsidiary legislation and the gazette notices notifying the subsidiary legislation.

This clause ensures that all documents are kept and maintained by the Department in its archives as documents of record as well as for any future reference.

Clause 19 requires courts or the persons exercising judicial functions to take judicial notice of the written laws revised and consolidated under the authority of this Bill. This means that the authenticity and legality of the revised edition will not be questioned.

Clause 20 provides for the citation of revised and consolidated written laws which may be cited and referred to by its short or long title by using the expression '*Revised Written Laws of the Republic of Nauru*' or in the abbreviated form '*RWL*'.

PART 6 – MISCELLANEOUS

Clause 21 is the offence provision which prohibits a person from making an alteration to a revised edition with the intent of deceiving any person as to the true text of the written laws.

The penalty for this offence: imprisonment for a term not exceeding seven years or a fine not exceeding \$50,000 or to both.

Clause 22 allows for the Cabinet to make regulations prescribing matters required or permitted by the Bill or necessary for giving effect to the Bill.

Clause 23 repeals the *Legislation Publication Act 2011*.