

**Nauru Lands Committee (Amendment) Bill 2012**

**EXPLANATORY MEMORANDUM**

**BACKGROUND AND OBJECTIVES**

The *Nauru Lands Committee Act 1956* (the Act) establishes the Nauru Lands Committee (NLC) and provides for its powers and functions. There have been a number of recent Supreme Court decisions in which the Chief Justice has identified defects in the legislation and suggested amendment.

Significant difficulties have arisen with regard to the following matters:

- the power of the NLC to determine the distribution of the personal estate (personalty) of deceased Nauruans;
- whether an appeal lies to the Supreme Court against a decision of the NLC with respect to the distribution of the personalty;
- the date from which the appeal period starts to run (for both realty and personalty determinations); and
- the power of the Supreme Court to extend the period of time within which to appeal.

Another difficulty has arisen in relation to a misunderstanding of the role of the Curator of Intestate Estates, whereby the Curator has made numerous decisions in relation to personalty that ought properly to have been made by the Nauru Lands Committee.

The objective of the *Nauru Lands Committee (Amendment) Bill 2011* is to redress each of these difficulties, and to clarify the legal situation in relation to the determination of the distribution of the personal estate of deceased Nauruans and appeals from the Nauru Lands Committee to the Supreme Court.

**NOTES ON CLAUSES**

**Clause 1** is a standard provision, providing the short title by which the amending Act may be cited: the *Nauru Lands Committee (Amendment) Act 2011*.

**Clause 2** provides that the amending Act will commence on the day it receives the certificate of the Speaker under Article 47 of the Constitution.

**Clause 3** provides that the Schedule has the effect of amending the *Nauru Lands Committee Act 1956*. Each of the amendments to the Act is described in the amending items set out in the Schedule.

**Schedule – amending item [1]** inserts a new part heading in the Act. Because the amendments effected by this Bill will result in the Act containing 3 transitional provisions, it is desirable to divide the *Nauru Lands Committee Act* into three distinct Parts: Part 1 – Preliminary matters; Part 2 – Nauru Lands Committee; and Part 3 – Transitional Provisions.

**Amending item [2]** inserts 2 additional definitions in section 2 – a definition of ‘Curator’ by reference to the *Succession, Probate and Administration Act 1976*, and a definition of ‘personal estate’, which is very similar to the definition of personal estate contained in the *Succession, Probate and Administration Act 1976*. The definition of personal estate in this Bill has been drafted in a plainer style, and also contains an additional dimension – the property must be subject to the law of Nauru (because neither the NLC nor the Supreme Court of Nauru can make any determination in relation to personal property that is outside Nauru and not subject to the law of Nauru). These 2 new definitions cover terms that are contained in new section 6(1A) (see item 5.1, below) and new section 9 (see item [9], below).

**Amending item [3]** inserts a new part heading in the Act (see item [1], above).

**Amending item [4]** amends section 4 of the Act to modernise the cross reference to another provision of the Act.

**Amending item [5]** - 5.1 amends section 6 of the Act to insert a new subsection (1A), expressly providing that the NLC has the power to determine the distribution of the personal estate of deceased Nauruans.

The Act presently makes no mention of personalty. Despite this, the NLC has for decades determined the manner of distribution of the personal estates of deceased Nauruans. The Chief Justice recently ruled that the NLC could determine matters relating to personalty, but the source of that power was Nauruan custom, not the written law. This is an unusual situation for a body created by statute, such as the NLC. It is considered appropriate to now amend the Act to state clearly that the NLC has power to determine matters of personalty.

Amending sub-item 5.2 further amends section 6 of the Act to modernise the cross reference to another provision of the Act.

**Amending item [6]** inserts a new section 6A in the Act, requiring the NLC to publish a decision in the Gazette within 21 days after it is made.

At present section 7(1) of the Act provides that any person dissatisfied with a decision of the NLC may appeal to the Supreme Court within 21 days of the decision being given. There is no obligation on the NLC to actually publish their decisions, and the current practice of decisions being published in the Gazette is not required by law. Without a requirement to publish, there remains a possibility that the NLC could give a decision but not publish it, thereby potentially leaving people unhappy with the decision without any right of appeal. New section 6A will remedy this potential problem.

**Amending item [7]** replaces existing section 7(1) with a new section 7(1), which retains the 21 day right of appeal, but provides that the time starts to run from the day the decision is published, not from the day the decision is given, and which also gives the Court the discretion to grant leave to appeal beyond the 21 day time limit.

There has in the past been much confusion over the question of whether the Court can extend the period of time within which to appeal. Successive Chief Justices have ruled that the Court has no power to extend the period within which to appeal, while at the same time, in other cases, purporting to grant leave to appeal out of time. In March this year, the Chief Justice ruled definitively that the Court had no power to extend the time within which to appeal (*Giouba v. NLC* [2011] NRSC 1).

Having such a short time for appealing has the potential to cause considerable hardship. Not everyone receives the Gazette electronically. People may have limited access to information, perhaps because they are house-bound, or overseas. The interests of minors may not have been adequately protected, a matter of which they may only become aware some time after the event. These issues must be weighed against the need for certainty and finality.

It is very common for an appellate Court to be given the power to grant leave to extend the time for appealing. The power to extend the time for an appeal is discretionary, and has to be exercised judicially, having regard to well-established principles. The following factors are usually considered when determining an application for an extension of time: (a) the length of the delay; (b) the reasons for the delay; (c) whether there is an arguable case on the appeal; and (d) the degree of prejudice to the respondent if time is extended.

It is considered desirable to empower the Supreme Court to extend the time for appealing in appropriate circumstances. Within the 21-day limit an appeal may be brought ‘as of right’, but beyond that period it must be demonstrated to the Court that good reasons exist that justify leave being granted to extend the time limit.

**Amending item [8]** inserts a new part heading in the Act (see item [1], above).

**Amending item [9]** inserts new sections 9 and 10 in the Act.

New section 9 seeks to regularise invalid decisions made by the Curator of Intestate Estates. For several years, from the late 1990s until last year, there was a major misunderstanding as to the role of the Curator of Intestate Estates in determining the manner in which the personalty should be distributed. It is not clear how it came about, but there are numerous examples of decisions being made by the Curator on personalty that should have been made by the NLC. The *Succession, Probate and Administration Act 1976* makes it clear that the Curator’s role is simply to hold the assets of the estate of a deceased Nauruan until such time as the NLC determines the manner in which it is to be distributed, and then to distribute the estate in accordance with the NLC’s directions.

There are many instances of the Curator having over-stepped his functions in this regard. Without formal validation by the Parliament, these decisions remain vulnerable to challenge, even after several years. To leave the matter uncorrected could potentially lead to chaos, particularly as almost all of the decisions have been accepted in good faith by the people concerned.

In the circumstances, it is proposed that the best course of action is to validate the Curators' decisions retrospectively, so that they will have effect as if they were decisions of the NLC. In this way the decisions would be legally binding, although any person dissatisfied with a validated decision of the Curator could seek leave to appeal, as if it were an NLC decision.

New section 10 provides that new section 7(1)(b), which gives the Court the discretion to grant leave to appeal out of time, applies to all decisions made by the NLC, as well as decisions of the Curator now taken to have been made by the NLC, whether those decisions were made before or after the commencement of these amendments to the Act.



REPUBLIC OF NAURU

## Nauru Lands Committee Act 1956

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As in force from ~~15-April~~XXXX 201~~2~~4

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This compilation comprises Ordinance No. 3 of 1956 as amended and in force from ~~15-April~~XX XX 201~~2~~4 (being, at the time the compilation was prepared on ~~22-May~~XX XX 201~~2~~4, the date of commencement of the most recent amendment).

The notes section at the end of the compilation includes a reference to the law by which each amendment was made. The Table of Amendments in the notes section sets out the legislative history of individual provisions.

The operation of amendments that have been incorporated in the text of the compilation may be affected by application provisions that are set out in the notes section at the end of the compilation.

This compilation is prepared and published in a legislation database by the Nauru Parliamentary Counsel under the *Legislation Publication Act 2011*.

## Contents

<b>PART 1 – PRELIMINARY MATTERS .....</b>	<b>1</b>
1      Short title .....	1
2      Definitions .....	1
<b>PART 2 – NAURU LANDS COMMITTEE .....</b>	<b>2</b>
3      Establishment of Nauru Lands Committee .....	2
4      Procedure, etc., of Committee .....	2
5      Remuneration of members of Committee .....	2
6      Powers of Committee .....	2
6A     Publication of decisions .....	3
7      Appeals from decisions of Committee .....	3
<b>PART 3 – TRANSITIONAL PROVISIONS .....</b>	<b>3</b>
8      Validation of decisions of Central Court and Administrator .....	3
9      Validation of decisions of Curator .....	4
10     Application of section 7(1)(b) .....	4
<b>NOTES .....</b>	<b>5</b>
Tables of Constituent Legislation .....	5
Table of Amendments .....	5
Notes on Definitions .....	7
1      Short title .....	1
2      Definitions .....	1
3      Establishment of Nauru Lands Committee .....	1
4      Procedure, etc., of Committee .....	2
5      Remuneration of members of Committee .....	2
6      Powers of Committee .....	2
7      Appeals from decisions of Committee .....	2
8      Validation of decisions of Central Court and Administrator .....	2
<b>NOTES .....</b>	<b>4</b>
Tables of Constituent Legislation .....	4
Table of Amendments .....	4
Notes on Definitions .....	5

REPUBLIC OF NAURU

# Nauru Lands Committee Act 1956

An Act to provide for the establishment of a Nauru Lands Committee, and for other purposes

## PART 1 – PRELIMINARY MATTERS

### 1 Short title

This Act may be cited as the *Nauru Lands Committee Act 1956*.

### 2 Definitions

In this Act, unless the contrary intention appears:

*'Curator'* means the Curator of Intestate Estates mentioned in section 6 of the *Succession, Probate and Administration Act 1976*.

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*'Nauruan'* and *'Pacific Islanders'* have, respectively, the same meanings as those expressions have in the *Nauruan Community Ordinance 1956*;<sup>1</sup>

*'personal estate'* means the personal property to which a deceased person was entitled at the time of the person's death, and any share or interest in such property, that is:

(a) subject to the law of Nauru; and

(b) not real estate;

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*'the Committee'* means the Nauru Lands Committee established under this Act.

<sup>1</sup> See Notes on Definitions at the end of this compilation.

## **PART 2 – NAURU LANDS COMMITTEE**

### **3 Establishment of Nauru Lands Committee**

- (1) There shall be a committee to be called the Nauru Lands Committee.
- (2) The Committee shall consist of not less than five, or more than nine, members, all of whom shall be Nauruans.
- (3) The members of the Committee:
  - (a) shall be appointed by the Cabinet; and
  - (b) hold office during the pleasure of the Cabinet.

### **4 Procedure, etc., of Committee**

Subject to ~~the last preceding section~~section 3, the constitution and procedure of the Committee shall be as determined by the Cabinet.

### **5 Remuneration of members of Committee**

Members of the Committee shall be paid such remuneration as the Cabinet approves.

### **6 Powers of Committee**

- (1) The Committee has power to determine questions as to the ownership of, or rights in respect of, land, being questions which arise:
  - (a) between Nauruans or Pacific Islanders; or
  - (b) between Nauruans and Pacific Islanders.

(1A) The Committee has power to determine the distribution of the personal estate of deceased Nauruans.

- (2) Subject to ~~the next succeeding section~~section 7, the decision of the Committee is final.

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**6A Publication of decision**

A decision of the Committee must be published in the Gazette within 21 days after the decision is made.

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**7 Appeals from decisions of Committee**

~~(1) A person who is dissatisfied with a decision of the Committee may, within twenty-one days after the decision is given, appeal to the Supreme Court against the decision.~~

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(1) A person who is dissatisfied with a decision of the Committee may appeal to the Supreme Court against the decision:

(a) within 21 days after the decision is published; or

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(b) with leave of the Court.

(2) The Supreme Court has jurisdiction to hear and determine an appeal under this section and may make such order on the hearing of the appeal (including, if it thinks fit, an order for the payment of costs by a party) as it thinks just.

(3) Notwithstanding anything contained in any other law, a judgment of the Supreme Court given on an appeal under this section is final.

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**PART 3 – TRANSITIONAL PROVISIONS**

**8 Validation of decisions of Central Court and Administrator**

(1) The former Central Court is taken to have had, at all relevant times, jurisdiction to determine appeals from the Lands Committee constituted, before the date of commencement of Ordinance No. 3 of 1956, in accordance with the customs and usages of the Nauruan people.

(2) The following decisions made before the date of commencement of Ordinance No. 3 of 1956 are taken to have been validly made:

(a) decisions of the former Central Court made on appeal from the Lands Committee;

(b) decisions of the pre-independence Administrator made on further appeal from the former Central Court.

**9 Validation of decisions of Curator**

A decision of the Curator made before the commencement of the *Nauru Lands Committee (Amendment) Act 2011* that purports to determine the distribution of the personal estate of a deceased Nauruan is taken to have been made by the Committee.

**10 Application of section 7(1)(b)**

Section 7(1)(b) applies to any decision made or taken to have been made by the Committee, whether before or after the commencement of the *Nauru Lands Committee (Amendment) Act 2011*.

# Notes for Nauru Lands Committee Act 1956

## Tables of Constituent Legislation

### Ordinances and Orders

Citation	Number	Made	Gazettal*	Commencement
<i>Nauru Lands Committee Ordinance 1956</i>	1956/03	23.08.1956	—	23.08.1956
<i>Nauru Lands Committee Ordinance 1963</i>	1963/05	25.10.1963	25.10.1963	25.10.1963
<i>Adaptation of Laws Order 1969</i>	GN 188/1969	09.10.1969	13.10.1969	31.01.1968

\* Gazettal date is of no legal significance for Ordinances made before 30.08.1956 (commencement of the *Interpretation Ordinance 1956*).

### Acts

Citation	Number	Certification	Commencement
<i>Statute Law Revision Act 2011</i>	2011/08	15.04.2011	15.04.2011
<i><u>Nauru Lands Committee (Amendment) Act 2012</u></i>	<u>2012/xx</u>	<u>xxx</u>	<u>xxx</u>

### Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted  
om. = omitted.....os. = omitted and substituted

Provision affected	How affected
Long title	Am. by Act 2011/08.
<i><u>Part 1, heading</u></i>	<i><u>Ad. by Act 2012/xx.</u></i>
Section 1	Citation rs. by Ord. 1963/05. Rs. by Act 2011/08.
Section 2	Am. by Act 2011/08, <i><u>Act 2012/xx.</u></i>
<i><u>Part 2, heading</u></i>	<i><u>Ad. by Act 2012/xx.</u></i>
Section 3	Subs. (1) os. by Ord. 1963/05. Subs. (3) os. by Ord. 1963/05, am. by Act 2011/08.
Section 4	Am. by Ord. 1963/05, Act 2011/08, <i><u>Act 2012/xx.</u></i>
Section 5	Rs. by Ord. 1963/05, am. by Act 2011/08.
<i><u>Section 6</u></i>	<i><u>Subs. (1A) ad. by Act 2012/xx.</u></i>
<i><u>Section 6A</u></i>	<i><u>Ad. by Act 2012/xx.</u></i>
Section 7	Subs. (1) am. by GN 188/1969, <i><u>rs. by Act 2012/xx.</u></i>

As in force from ~~15 April~~ XXXX 20124

*Nauru Lands Committee Act 1956*

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Subs. (2) am. by GN 188/1969.  
Subs. (7) am. by GN 188/1969.

| [Part 3, heading](#)

[Ad. by Act 2012/xx.](#)

Section 8

Am. by GN 188/1969, rs. by Act 2011/08.

| [Section 9](#)

[Ad. by Act 2012/xx.](#)

| [Section 10](#)

[Ad. by Act 2012/xx.](#)

## Notes on Definitions

Note 1: Section 2 of the *Nauru Lands Committee Act 1956* defines 'Nauruan' and 'Pacific Islander' by reference to the meanings those expressions have in the *Nauruan Community Ordinance 1956*. The *Nauruan Community Ordinance 1956-1997* ('the 1956 Ordinance') was repealed by the *Naoero Citizenship Act 2005*. Section 2(1) of the 1956 Ordinance provided in part:

'**Nauruan**' means a person included in one of the classes of persons who constitute the Nauruan community;

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

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

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

Note 2: Section 4 of the 1956 Ordinance provided:

'4. For the purposes of the laws in force in the Island of Nauru, the following persons constitute the Nauruan Community:

- (a) persons who, immediately before the commencement of this Ordinance, were, or were deemed to be, aboriginal natives of the island of Nauru by virtue of the institutions, customs and usages of the aboriginal natives of the Island of Nauru;
- (b) except as provided in section six of this Ordinance, Pacific Islanders married, before the first day of January, One thousand nine hundred and fifty-four, to persons who were, or were deemed to be, aboriginal natives of the Island of Nauru by virtue of the institutions, customs and usages of the aboriginal natives of the Island of Nauru;
- (c) Pacific Islanders who are admitted to the Nauruan community in pursuance of the next succeeding section;
- (d) children born after the commencement of this Ordinance whose parents are included in any of the classes of persons who constitute the Nauruan community; and
- (e) except as provided in section 7 of this Ordinance, children born in the Island of Nauru after the commencement of this Ordinance of a marriage between a person included in one of the classes of persons who constitute the Nauruan community and a Pacific Islander.'

Note 3: Sections 6 and 7 of the 1956 Ordinance, referred to in section 4, above, provided for certain persons to make an election not to be automatically included in the Nauruan community in certain cases.