

## **Consular Privileges and Immunities (Amendment) Bill 2012**

### **EXPLANATORY MEMORANDUM**

#### **OBJECTIVES**

On 3 December 2012, Nauru acceded to the Vienna Convention on Consular Relations (the “*Convention*”) which was adopted on 22 April 1963 by the United Nations Conference on Diplomatic Intercourse and Immunities held in Vienna, Austria, from 4 March to 22 April 1963.

The *Consular Privileges and Immunities (Amendment) Bill 2012* seeks to amend the *Consular Privileges and Immunities Act 1976* to give greater domestic application of the Convention in Nauru by incorporating Articles of the Convention as law in Nauru. The Articles listed below are to be incorporated to Schedule 2 of the *Consular Privileges and Immunities Act 1976* which means they will have the effect of law in Nauru.

#### **EXPLANATION OF CLAUSES**

**Clause 1** provides for the short title of the Bill.

**Clause 2** provides that the Act will commence on certification by the Speaker of Parliament.

**Clause 3** provides that Schedule 1 amends the *Consular Privileges and Immunities Act 1976*.

#### **Schedule 1**

**Amending item 1** repeals section 7 of the Act as it is not consistent with Article 5 of the Constitution which provides an exhaustive list of the circumstances in which a person may be lawfully detained. Section 7 purports to authorise the detention of one person by another in the territory of the Republic under disciplinary rules as may apply on a vessel according to the laws of another nation. This circumstance is not contemplated by Article 5 and therefore, by the terms of Article 5 which prohibits any other form of detention, the section is unconstitutional.

**Amending item 2** adds to Schedule 2 of the Act Articles of the Convention that will apply as a law of Nauru as follows:

- **Article 2** provides for the establishment of consular relations between States by mutual consent;
- **Article 3** provides for the exercise of consular functions;
- **Article 4** provides for the establishment of consular posts by the consent of the receiving State;
- **Article 5** lists the consular functions under the Convention;
- **Article 6** provides for the exercise of functions by a consular officer outside the consular district;

- **Article 8** provides for the exercise of consular functions by a consular post on behalf of a 3<sup>rd</sup> State;
- **Article 15** provides for the temporary exercise of the functions of a head of post by an acting head of post if the head of post is unable to carry out those functions;
- **Article 17** provides for a consular officer to perform diplomatic acts in certain circumstances;
- **Article 18** provides for the appointment of the same person as a consular officer in a receiving State by 2 or more States;
- **Article 22** provides that the nationality of consular officers should, in principle, be that of the sending State, but may be otherwise with the consent of the receiving State;
- **Article 23** provides for the declaration of a person as a *persona non grata* by the receiving State and for such a person to be either recalled or terminated from consular functions;
- **Article 29** provides for the use of the national flag and coat of arms of the sending State within the receiving State;
- **Article 31, paragraphs 1, 2 and 4**, provide that consular premises may not be entered without the consent of the head of the consular post and that the property and furnishings of the post are immune from requisition for national defence or public utility without compensation;
- **Article 32** provides for the exemption from local taxes of the consular post and the career head of a consular post;
- **Article 33** provides for the inviolability of consular archives and documents;
- **Article 35** provides for the freedom of communication by the consular post for all official communications, including the consular bag;
- **Article 39** provides that a consular post may impose fees and charges for its services;
- **Article 41**, paragraphs 1 and 2, provide for immunity from detention during criminal proceedings except in the case of a grave crime and under a court's decision, or at the final conclusion of the proceedings and by court order;
- **Article 43** provides that consular officers and employees are immune from judicial or administrative action for official consular acts;
- **Article 44** provides limitations on the requirements of consular officials to give evidence in judicial or administrative proceedings;
- **Article 45** provides that a sending State may waive certain privileges and immunities provided for under Articles 41, 43 and 44;
- **Article 48** provides that members of a consular post and members of their households are exempt from social security payments of the receiving State;
- **Article 49** provides that consular officers, employees and members of their families and households are to be exempt from all taxes except for certain taxes such as goods and services taxes;
- **Article 50** provides that all articles for the official use of the consular post and the personal effects of consular officers and family members, including personal baggage, will be, on entry to the receiving State, exempt from customs duties and inspection;
- **Article 51** provides for dealings with the estate of a deceased consular official or family member;

- **Article 52** provides an exemption from public service for consular officials and family members;
- **Article 53** provides for the timing of consular privileges and immunities;
- **Article 54** provides for a 3<sup>rd</sup> State to accord all the privileges and immunities of a consular official while travelling through that State;
- **Article 55, paragraphs 2 and 3**, provides that consular premises will not be used in any manner incompatible with the exercise of consular functions;
- **Article 57, paragraph 2**, provides that the privileges and immunities will not apply in relation to a consular official who undertakes private gainful occupation in the receiving State;
- **Article 58, paragraphs 1, 2 and 3**, provides for the privileges and immunities provided by certain Articles to apply to consular posts headed by an honorary consular officer but not to the family members of such a consular officer;
- **Article 60** provides for the consular premises of a post headed by an honorary consular officer to be exempt from most dues and taxes in the receiving State;
- **Article 61** provides for the consular archives and documents of a post headed by an honorary consular officer to be inviolable under certain circumstances;
- **Article 62** provides for certain items required for the use of the consular premises of a post headed by an honorary consular officer to be exempt from customs duties and other related charges;
- **Article 66** provides that an honorary consular officer will be exempt from due and taxes on the remuneration and emoluments which he or she receives in respect of consular functions;
- **Article 67** provides an exemption for an honorary consular officer from public service as may be required by law;
- **Article 68** provides that the receiving or appointment of honorary consular officers is a discretion of a receiving State;
- **Article 70, paragraphs 1, 2 and 4**, provides that diplomatic missions may provide consular services and that the privileges and immunities of the Convention apply;
- **Article 71** provides that consular officers who are nationals or permanent residents of the receiving State will only have immunity from jurisdiction or personal inviolability in respect of official acts performed in the exercise of their functions. Other members of the consular post who are also nationals or permanent residents of the receiving State will only have such privileges and immunities as are granted by the receiving State.