

Republic of Nauru – 20th Parliament

Statute Law Revision Bill 2011

EXPLANATORY MEMORANDUM

BACKGROUND AND OBJECTIVES

The *Statute Law Revision Bill 2011* is a Bill to make dozens of corrections to existing laws. It is being introduced as part of the Legal Information Access Project (LIAP), which will result in an online legal database containing the laws of Nauru. In the course of preparing all of the laws in Nauru in electronic and consolidated form for inclusion in the database, the LIAP project team has identified a large number of minor corrections and amendments that would improve the quality of Nauru's statute book.

Some of the proposed amendments relate to correcting erroneous subsection or paragraph numbering, correcting spelling, punctuation and other typographical errors, and updating cross-references to other Acts. In a number of instances, Acts provide for commencement on notification in the Gazette, but the commencement date appears never to have been notified, so this Bill provides for such Acts to be deemed to have commenced on a certain date. Other amendments propose to 're-make' a provision, by repealing and replacing it, usually in cases where a provision is unclear and would benefit from being broken down into paragraphs, or removing several errors.

The Bill also proposes to make a number of changes to the short titles of Acts. At present, there is a great deal of inconsistency in the statute book in terms of the citation of laws. Many Acts that have been amended have been given double-year citations, while others have not. This Bill proposes to introduce consistent single-year citations for all Acts, and to change the short title of all Ordinances to Acts. It also proposes to amend the name of certain Acts so that the short title is clearer, for example, changing *Police Offences Act* to *Summary Offences Act*, and changing *Extradition of Fugitive Offenders Act* to *Extradition Act*.

Finally, the Bill proposes to repeal a large number of laws that are spent or otherwise redundant, including some adopted laws.

The Bill is divided into three Parts. Part 1 deals with miscellaneous matters. Part 2 deals with validations, such as deeming Acts to have commenced. Part 3 deals with amendments and repeals. Amendments to Acts are set out in Schedule 1, each Act amended having its own Part in the Schedule. Schedule 2 contains Ordinances being repealed, and Schedule 3 contains Acts being repealed by this Bill.

NOTES ON CLAUSES

Clause 1 provides for the short title, and clause 2 deals with commencement. The Act would commence on the day it receives the certificate of the Speaker, except for the amendments of the *Adoption of Children Ordinance* (technical amendments concerning errors that were made in 1973 with reference to courts), which have retrospective commencement to 3 October 1977 (the day on which the *Family Court Act 1973* commenced).

VALIDATIONS

The *Agricultural Quarantine Act 1999* provides that it will commence on a day to be notified by the Minister in the Gazette. It appears that no Gazette notice has been published commencing the Act. Clause 3 of the Bill provides that the remaining provisions are taken to have commenced on the date the Act was certified.

The *Appeals (Amendment) Act 1974* provides that it will commence on a day to be notified by the Minister in the Gazette. It appears that no commencement notice has ever been published for this Act. The *Appeals (Amendment) Act 1976* was expressed to commence on the same day as the commencement of the *Appeals (Amendment) Act 1974* – which, because of apparent lack of Gazettal, is a date that remains unknown (or may not exist). The validation provision in clause 4 of this Bill proposes to deem the *Appeals (Amendment) Act 1974* to have commenced on 23 September 1976, which is the day on which the second amending Act (*Appeals (Amendment) Act 1976*) was certified, so that both amending Acts are deemed to have commenced on the same day. This gives effect to legislative intention in the second amending Act, without having to deem Parliament to have made retrospective legislation.

Clause 5 deems the *Births, Deaths and Marriages Ordinance 1957* to have commenced on 9 March 1959, to clarify the commencement situation as a result of two conflicting Gazette notices that were published around the same time, the second of which purported to ‘cancel’ the first, and to set 9 March 1959 as the commencement date. This provision ensures that there can be no argument about the validity of the second Gazette notice.

Clause 6 provides that fees charged for services provided under section 29(4) of the *Births, Deaths and Marriages Act 1959-2009* are taken to have been validly charged.

The *Disaster Risk Management Act 2008* provides that it will commence on a day to be notified by Cabinet in the Gazette. It appears that no Gazette notice has been published

commencing the Act. Clause 7 provides that the remaining provisions are taken to have commenced on the date the Act was certified.

Clause 8 provides a commencement date for the *Immigration Amendment Act 2005*, and clause 9 deems certain amendments to the *Nauru Air Corporation Act 1995* to have been validly made even though there were citation errors in the relevant amending Acts.

Clause 10 deems postal rates that have been charged prior to the commencement of this Act to have been validly charged, notwithstanding that the rates were different to those prescribed under law. It also provides, in combination with necessary amendments to the *Post and Telegraph Ordinance 1952-1963*, for Cabinet to prescribe rates for postal services, and for the lawful continuation of existing rates until regulations are made.

Clause 11 is related to the repeal of the *Insurance Act 1974-1996*, and provides that assets held by the Nauru Insurance Corporation the day before the *Statute Law Revision Act* commences are vested in the Republic.

AMENDMENTS

Clause 12 of the Bill provides that Schedule 1 amends the Acts mentioned in it. Schedule 1 is divided into separate parts for each separate law being amended.

Part AC – Accommodation Registration Act 2006

Item [1] proposes to remake subsection 10(2). This substitution does not change the effect of the provision, but simply redrafts it in a way that clarifies the meaning of the provision. **Item [2]** makes further minor corrections to punctuation and grammatical errors in the Act.

Part AD – Adoption of Children Ordinance 1965-1967

Item [3] is for the purpose of adopting a single year citation for the Act and changing the title from ‘Ordinance’ to ‘Act’. **Items [4] to [9]** are for the purposes of adopting post-independence terminology, correcting erroneous references to courts and officers, correcting cross-references to other Acts and fixing punctuation; no substantive changes are proposed.

Part AE – Aerodrome (Acquisition of Land) Act 1952-1968

Item [10] proposes to formally replace the short title and adopt a single year citation (the citation was amended from ‘Ordinance’ to ‘Act’ in 1968, but not by formal textual amendment to section 1). **Item [11]** proposes to repeal sections 2 (definitions), 7 and 8.

Section 2 would not be replaced, because, as a consequence of the amendments proposed below, none of the definitions provided for is now required.

Repeal of sections 7 and 8 of the Aerodrome (Acquisition of Land) Act: Unlike section 6 of the Act (which provides for compensation in perpetuity for the former owners in respect of their deprivation of the land), **section 7** provides for a one-off additional payment in relation to productive trees and buildings on the land acquired at the date of acquisition. Those payments were made nearly 60 years ago and the section is now spent. *(If further acquisitions were to be made in the future, the corresponding provision would need to be in dramatically different terms, as a result of the repeal of the NLGC legislation.)* **Section 8** provides compensation for occupation of the acquired land for aerodrome purposes from 1945 to 1951. Again, the payments in question were made nearly 60 years ago and the section is now spent.

Item [12] makes 2 further amendments, one of which (the proposed amendment to subsection 6(2)) is a substantive amendment. **Subsection 6(2)** currently provides for the annual compensation amount to be twice the amount payable as annual rent for non-phosphate-bearing land under the *Lands Ordinance 1921-1951*. That Ordinance has been replaced by the *Lands Act 1976*, which makes more detailed provision for the calculation of rents. In particular, it provides (in clause 4 of the Third Schedule) for rental charges for land used for aerodrome purposes to be double the standard rate. The land acquired under the *Aerodrome (Acquisition of Land) Act* is owned by the Republic, so the land is not leased. The former owners are entitled to be compensated in perpetuity at double the rate they would be paid if they were the landowners of leased non-phosphate bearing land. The proposed amendment to subsection 6(2) is designed to update the cross-reference so that it refers to the relevant provision of the current *Lands Act*.

Part AP – Appeals Act 1972

Item [13] is a minor correction to the long title and **item [14]** makes other minor amendments, including one correction that was noted by the High Court of Australia as being necessary when they applied the *Appeals Act* in a Nauruan case that was heard by the High Court on appeal (the amendment relating to placement of the word ‘either’ in the provision for quashing of convictions). None of the other proposed corrections constitutes a substantive amendment.

Part BA – Banking Act 1975

The substantive amendments proposed to the *Banking Act 1975* (see **items [15] to [19]** of Schedule 1) are:

- repeal of subsection 2(5), which provides that the Act does not apply to RONFIN (which has been abolished);
- repeal of subsection 3(1), which provides: There shall be a Registrar of Banks, who shall be responsible to the Minister for the administration of this Act. It is proposed to repeal this provision because it is not followed in practice, and because it is desirable, in light of the new *Administrative Arrangements Act 2011*, not to make specific reference within an Act to who is responsible for administering it. The remaining provisions of section 3 (which are not being repealed, but are being amended to remove specific reference to the Dept of IDI) provide that the President may appoint a public officer to be Registrar; where there is no Registrar, the head of the relevant department will be Registrar; and the Registrar has the powers given to him under this Act; and
- repeal and substitution of section 20. It is proposed to remake this section in two subsections, as the way it is presently drafted is unorthodox and unclear. The remaking involves no change to the substance or effect of the provision.

Part BI – Births, Deaths and Marriages Act 1957-2009

The substantive amendments proposed to the *Births, Deaths and Marriages Act* (see **items [20] to [27]**) are:

- repeal of sections 1 (short title) and 2 (parts); a new section 1 would give effect to the standard single year citation;
- remaking subsections 6(3), 15(3) and 22(3) by breaking them into paragraphs so that they are easier to follow (there is no change to the meaning or effect of the subsections);
- amending paragraph 23(1)(d), which presently requires the Head Chief and the Secretary of the NLGC to provide their consent to a marriage where either of the parties to the marriage is a Nauruan, to provide that it is the President who must certify that Cabinet consents;
- amending section 29 to reflect the increase in the fee charged for extracts from the Register, from 25c to \$10.

Part CE – Cemeteries Ordinance 1922-1967

It is proposed in **item [28]** that the *Cemeteries Ordinance* be provided with a new short title: the *Cemeteries Act 1922*. **Item [29]** replaces all references to ‘this Ordinance’ with references to ‘this Act’.

Part CEN – Census Act 1973

Item [30] amends the *Census Act 1973* to delete the definition of ‘the Minister’, which includes an obsolete reference to the Minister for Island Development and Industry (this is the only definition contained in section 2, hence section 2 is being repealed in its entirety). Section 2(2) of the *Interpretation Act 1971* provides that a reference to ‘the Minister’ in an Act is a reference to the Minister responsible for the administration of the Act. It is preferable to rely on section 2(2) rather than specify the responsible Minister as portfolio titles change over time.

Part CI – Civil Aviation Act 2011

Items [31] to [33] amend the *Civil Aviation Act 2011* to:

- correct a typographical error;
- specify that security restricted areas can be declared by Gazette notice rather than by sign;
- clarify the regulation-making power.

Part CIA – Civil Aviation (Carriers’ Liability) Act 1995

The *Civil Aviation (Carriers’ Liability) Act 1995* is amended by **item [34]** to:

- replace an obsolete reference to the ‘Secretary for External Affairs’ with a generic reference to the head of the department responsible for foreign affairs. This ensures the reference will be correct regardless of the name given to the position at any given time;
- correct enabling provision references in the Schedules.

Part CIP – Civil Procedure Act 1972

Item [35] proposes to repeal and replace subsection 34(1), as the existing provision uses paragraphs and sub-paragraphs in an unorthodox and confusing way. The meaning and effect of this provision would not be changed by the proposed re-make. The amendment would break existing subsection (1) into three separate subsections, to make the content easier to follow. **Item [36]** proposes minor corrections, including a corrected cross-reference to another Act, a grammatical correction, and the substitution of a generic reference to the department responsible for foreign affairs.

Part COM – Commissions of Inquiry Ordinance 1948-1967

It is proposed in **item [37]** that the *Commissions of Inquiry Ordinance* be provided with a new short title: the *Commissions of Inquiry Act 1948*. Other minor corrections are proposed in **items [38] to [40]**.

Part CON – Constitutional Review Committee Act 2004-2009

Items [41] and [42] propose the correction of numbering errors, grammatical errors and punctuation errors in the *Constitutional Review Committee Act*. None of the proposed corrections constitutes a substantive amendment.

Part COP – Consular Privileges and Immunities Act 1976

The *Consular Privileges and Immunities Act 1976* is amended to replace an obsolete reference to the ‘Department of External Affairs’ with a generic description of the department responsible for foreign affairs. This ensures the reference will be correct regardless of the name given to the Department at any given time (see **item [43]**).

Part COR – Corporation Act 1972

Item [44] amends the *Corporation Act 1972* to change the short title to *Corporations Act 1972*. It also amends the section heading for section 1 to more accurately reflect the content of the section.

Part COU – Courts Act 1972

It is proposed to repeal section 75 and 76, which deal with repeals and transitional provisions made in the principal Act in 1972, because these provisions are now spent. None of the other proposed corrections constitutes a substantive amendment (see **items [45] to [47]**).

Part CRJ – Criminal Justice Act 1999-2009

Item [48] proposes a number of minor corrections to the Criminal Justice Act, such as removing superfluous subsection numbers and correcting capitalisation and punctuation. None of the proposed corrections constitutes a substantive amendment.

Part CRP – Criminal Procedure Act 1972-2006

Item [49] proposes a number of minor corrections to the *Criminal Procedure Act*, including correction of cross-references to other Acts, and updating forms to reflect the turn of the century. None of the proposed corrections constitutes a substantive amendment.

Part CUA – Custom and Adopted Laws Act 1971

Items [51] to [53] propose 3 amendments to the *Custom and Adopted Laws Act*:

- remaking the first part of section 6, in order to give effect to an amendment that was not properly effected when it was attempted in 1976, because the locator for the amendment was mis-described (the attempted 1976 amendment was the insertion of the words ‘except as specified in the proviso to the said First Schedule’);
- repeal of sections 7 to 11, because they are spent (they contain amendments to the *Laws Repeal and Adopting Ordinance* that have already been effected); and
- repeal of the Second, Third and Fourth Schedules because they are spent (they also contain amendments to the *Laws Repeal and Adopting Ordinance* that have already been effected).

Part CUS – Customs Ordinance 1922-1967

The *Customs Ordinance 1922-1967* is amended to change the short title to *Law Adoption (Customs) Act 1922* (see **item [54]**).

Part DIP – Diplomatic Privileges and Immunities Act 1976

The *Diplomatic Privileges and Immunities Act 1976* is amended by **item [55]** to replace an obsolete reference to the ‘Department of External Affairs’ with a generic description of the department responsible for foreign affairs. This ensures the reference will be correct regardless of the name given to the Department at any given time.

Part DIS – Disaster Risk Management Act 2008

The *Disaster Risk Management Act 2008* is amended by **item [56]** to replace 2 references to ‘the Minister responsible for National Disaster Management’ with ‘the Minister’. Section 2(2) of the *Interpretation Act 1971* provides that a reference to ‘the Minister’ in an Act is a reference to the Minister responsible for the administration of the Act. It is preferable to rely on section 2(2) rather than specify the responsible Minister as portfolio titles change over time.

Part EXP – Explosives Ordinance 1924-1967

It is proposed in **item [57]** to amend the short title so that the *Explosives Ordinance* becomes the *Explosives Act*, with a single year citation. The amendment of section 5 and insertion of new section 6 is simply to correct a drafting error, as the penalty provision in existing section 5 is not properly located, and it is proposed to move into a new section (see items **[58 to [59]**). Other minor corrections are made by **items [60 and [61]**.

Part EXT – Extradition of Fugitive Offenders Act 1973

Item [62] proposes to amend the short title of the Act, so that it has a simpler title, commonly used in other jurisdictions for equivalent laws: the *Extradition Act 1973*. **Item [63]** concerns correcting a numbering error. **Item [64]** proposes to correct an error that has occurred by virtue of the same amendment being made to the Schedule 3 times. The amendments contained in **item [65]** – the table of further amendments – are all minor corrections that effect no substantive change to the Act. The amendment proposed to subsection 3(2) is to remove the words ‘on the high seas’ because at present the provision reads, erroneously, ‘on the high seas within the territorial waters of Nauru’. High seas and territorial water are different things, and the provision intends to refer to territorial waters.

Part FA – Family Court Act 1973

Item [66] proposes to repeal sections 30, 31 and 33 because they concern effected amendments and transitional matters, and are spent. The amendments contained in the table of amendments, **item [67]**, are all minor corrections.

Part FI – Fisheries Act 1997

The *Fisheries Act 1997* is amended by **item [68]** to:

- correct the sentence structure of section 11(1);
- correct typographical errors, including a missing section reference.

Part FO – Foreign Trusts, Estates and Wills Act 1972

Item [69] amends the *Foreign Trusts, Estates and Wills Act 1972* to remove an obsolete reference to the Republic of Nauru Finance Corporation, which no longer exists.

Part IM – Immigration Act 1999

The repeal and substitution of subsection 3(3) is for the purpose of placing the wording of this subsection beyond doubt, after a failed amendment in 2005 (see **item [70]**). New subsection (3) is worded exactly as in the original principal Act. The repeal and substitution of subsection 5(7) is for the purpose of correcting erroneous paragraph numbering, so that 5(7) is remade as two separate subsections (see **item [71]**). **Items [72] to [76]** all make minor corrections to the Act but do not effect any substantive change.

Part IN – Insolvency Ordinance 1912

The *Insolvency Ordinance 1912* is amended by **items [77] and [78]** to change the short title to the *Insolvency Act 1912* and to make consequential amendments to references to ‘this Ordinance’ throughout the Act.

Part LAN – Lands Act 1976

Item [79] proposes to insert a note in the Third Schedule to the Lands Act, to clarify that whilst former landowners of land that is currently used as an aerodrome are entitled to compensation on an annual basis under the Aerodrome (Acquisition of Land) Act, they do not receive rent under this Schedule because the land is not leased (although they receive the same rate as if it were leased).

Part LAW – Laws Repeal and Adopting Ordinance 1922-1967

Item [80] substitutes the long title, and **item [81]** proposes to repeal sections 1 (short title) and 2 (definitions) and replace them with a new section 1 which modernises the short title. The definitions section contains only two definitions, both of which are superfluous, and it is therefore not being replaced. The removal of certain adopted laws from the Schedules, in **items [82] to [83]**, is explained below, under repeals. **Item [84]** makes a number of minor corrections.

Part LE – Legal Practitioners Act 1973

Item [85] proposes to make 3 small corrections to the *Legal Practitioners Act*. None of the proposed corrections constitutes a substantive amendment.

Part LN – Legitimation Ordinance 1959-1966

The amendments to the Legitimation Ordinance propose to modernise the short title (to *Legitimation Act 1959*) and to update references to the Administrator, ‘this Ordinance’, etc. None of the proposed corrections constitutes a substantive amendment. See **items [86] to [88]**.

Part MAI – Maintenance Orders (Reciprocal Enforcement) Act 1973

Item [89] amends the *Maintenance Orders (Reciprocal Enforcement) Act 1973* to delete the definition of ‘the Minister’, which includes an obsolete reference to the Minister for External Affairs. Section 2(2) of the *Interpretation Act 1971* provides that a reference to ‘the Minister’ in an Act is a reference to the Minister responsible for the administration of the Act. It is preferable to rely on section 2(2) rather than specify the responsible Minister as portfolio titles change over time. A consequential amendment is made to the

definition of ‘the responsible authority’. It also removes a reference to the Department for External Affairs, leaving behind a generic reference to the Department.

Part MAO – Maintenance Ordinance 1959-1967

Item [90] proposes to amend the *Maintenance Ordinance* by modernising the short title (to *Maintenance Act 1959*) and repealing section 2 which provides that the Act is divided into Parts (superfluous). The further amendments contained in **items [91] and [92]** include the correction of a cross-reference to another Act, and the correction of erroneous references to the District Court, when the intention of Parliament in 1973 was that these references be changed to Family Court (but the necessary amendments were not thoroughly effected at that time).

Part MAT – Matrimonial Causes Act 1973

The *Matrimonial Causes Act 1973* is amended by **item [93]** so that it is gender-neutral. Modern legislation is always drafted to be gender-neutral, but section 2(4) of the *Interpretation Act 1971*, which provides that words in legislation importing the masculine gender include the feminine gender, means that most older legislation does not have to be amended so it is gender-neutral. However, section 2(4) only applies if a contrary intention does not appear in the legislation. In the case of the *Matrimonial Causes Act 1973*, some provisions are deliberately gender-specific (that is, the use of gender-specific language is not a result of the drafting style of the day but a reflects a deliberate policy decision). As such, the provisions that are not deliberately gender-specific could be read to show a contrary intention to section 2(4), which would effect the implementation of the Act. These amendments ensure that provisions that are not deliberately gender-specific will be interpreted correctly.

Part ME – Mentally-disordered Persons Ordinance

Item [94] amends the short title of the Mentally-disordered Persons Ordinance, to make it an Act with a single-year citation. The amendments proposed in **items [95], [96], [97] and [98]** are for the purposes of removing inappropriately domestic references to Australia, replacing references to the Administration with modern references to the Republic and appropriate officers of the Republic, correcting cross-references to other Acts, and amending forms to reflect the turn of the century.

Part NA – Nauru Antiquities Ordinance

The *Nauru Antiquities Ordinance 1935-1967* is amended by **items [99] to [101]** to:

- modernise the short title (*Antiquities Act 1935*);

- replace obsolete references to the Administrator and the Territory with appropriate post-Independence concepts;
- change references to the Collector of Customs to Chief Collector of Customs to reflect the current position title;
- change references to Officer in Charge of Police to Director of Police to reflect the current statutory position title;
- correct several typographical errors.

Part NLC – Nauru Lands Committee Ordinance

The *Nauru Lands Committee Ordinance 1956-1963* is amended by **items [102] to [106]** to:

- modernise the short title (*Nauru Lands Committee Act 1956*);
- omit obsolete references to the Nauru Local Government Council and replace them with references to the Cabinet;
- replace section 8 to correct an incorrect amendment made to it when the Supreme Court was created. The provision saves decisions of the pre-Independence Central Court, but the reference to this Court was mistakenly changed to the Supreme Court by a global consequential amendment. The new section 8 reflects the intention of the original section 8.

Part NRC – Nauru Rehabilitation Corporation Act 1997

The *Nauru Rehabilitation Corporation Act 1997* is amended by **item [107]** to:

- correct a number of typographical errors;
- correct the enabling provision reference in the Third Schedule.

Part NTC – Nauru Trustee Corporation Act

The *Nauru Trustee Corporation Act 1972* is amended by **items [108] to [110]** to update cross-references to the *Corporations Act 1972* to reflect the change in the short title of that Act.

Part NUB – Nauru Bureau of Statistics Act

Item [111] amends the *Nauruan Bureau of Statistics Act 1992* to change the short title to the *Statistics Act 1992*. **Item [112]** amends typographical errors.

Part OA – Oaths, Affirmations and Statutory Declarations Act

Item [113] amends the *Oaths, Affirmations and Statutory Declarations Act 1976* to update year references on prescribed forms and to correct an incorrect cross-reference in the Fifth Schedule.

Part PAR – Parliament of Nauru (Register of Interests) Act 2004

The *Parliament of Nauru (Register of Interests) Act 2004* is amended by **items [114] and [115]** to change its short title to the *Members of Parliament (Register of Interests) Act 2004* and to correct several typographical errors.

Part PAT – Patents Registration Act 1973

The *Patents Registration Act 1973* is amended by **item [116]** to replace an obsolete reference to the Nauru Phosphate Corporation with a reference to RONPHOS.

Part POL – Police Offences Ordinance 1967

The *Police Offences Ordinance 1967* is amended by **items [117] to [119]** to change the short title to the *Summary Offences Act 1967* and to make consequential amendments to references to ‘this Ordinance’ throughout the Act.

Part POS – Post and Telegraph Act 1901-1966

The *Post and Telegraph Act 1901-1966* is amended to change the short title to *Post and Telegraph Act 1901* (see **item [120]**).

Part PT – Post and Telegraph Ordinance 1952-1963

The *Post and Telegraph Ordinance 1952-1963* is amended by **items [121] to [128]** to remove reference to the Post and Telegraph Rates Act as an adopted law of Nauru (see repeals, below). The Ordinance is also amended to remove obsolete references to the Administrator, and to change the short title to *Law Adoption (Post and Telegraph) Act 1952*.

Part PUB – Public Accounts Committee Act 1992

The *Public Accounts Committee Act 1992* is amended by **item [129]** to:

- replace a reference to ‘select committees’ of Parliament with a reference to ‘standing committees’. The Act provides for members to the Committee to be appointed with reference to the procedures for appointing members to select committees. This is a clear typographical error, as the members of a select committee are appointed by the same motion that establishes the committee – the Public Accounts Committee is

established by the Act, so it is not possible to appoint members in the same way as members are appointed to a select committee. The only logical procedure to follow is that for appointing members to standing committees;

- correct a citation of the *Audit Act 1973* that is missing the reference to the year of the Act;
- correct an incorrect cross-reference to section 14 in section 18 – section 18 provides a general penalty for failure to comply with a provision of the Act other than section 14. The provision excluded should be section 15, as it contains a penalty already – section 14 does not.

Part PUF – Public Finances Control and Management Act 1997

The *Public Finances (Control and Management) Act 1997* is amended by **items [130] to [131]** to:

- change the short title to the *Public Finance (Control and Management) Act 1997*;
- correct the citation of various Acts that are missing the reference to the year of the Act;
- correct numerous typographical errors.

Part QU – Quarantine Act 1908-1920 (Commonwealth)

The *Quarantine Act 1908-1920* is amended by **item [132]** to change the short title to *Quarantine Act 1908*.

Part RB – Registration of Business Names Act 1976

Item [133] amends the *Registration of Business Names Act 1976* to change the short title to the *Business Names Act 1976*.

Part RS – Registration of Shipping Act 1968

Items [134] and [135] amend the *Registration of Shipping Act 1968* to change the short title to the *Shipping Registration Act 1968* and to delete the definition of ‘The Minister’, which contains an obsolete reference to the Minister responsible for Industry and Island Development. Section 2(2) of the *Interpretation Act 1971* provides that a reference to ‘the Minister’ in an Act is a reference to the Minister responsible for the administration of the Act. It is preferable to rely on section 2(2) rather than specify the responsible Minister as portfolio titles change over time.

Part SA – Salvage of Derelict Wreck Act 1969

Items [136] to [138] amend the *Salvage of Derelict Wreck Act 1969* to:

- correct the incorrect capitalisation of paragraphs in section 16;

- delete the definition of ‘the Minister’, which includes an obsolete reference to the member of Cabinet responsible for the business of Industry and Island Development. Section 2(2) of the *Interpretation Act 1971* provides that a reference to ‘the Minister’ in an Act is a reference to the Minister responsible for the administration of the Act. It is preferable to rely on section 2(2) rather than specify the responsible Minister as portfolio titles change over time.

Part SC – Succession, Probate and Administration Act 1976

The *Succession, Probate and Administration Act 1976* is amended by **item [139]** to replace obsolete references to the Nauru Phosphate Corporation with references to RONPHOS.

Part SM – Survey Marks Ordinance 1925-1967

Items [140] to [142] propose to change the short title to *Survey Marks Act 1925*, and to replace the definition of Government Surveyor so that the definition has an effective meaning even though it was originally a reference to an office created under the foreign administration.

Part SU – Survey Ordinance 1961-1967

Existing subsection 4(1) refers to a ‘state’ without making clear that it is intended to be a reference to a state in Australia. The Bill proposes to replace the subsection with a new subsection that is more clearly drafted, but which does not affect the meaning of the provision. It is also proposed to amend the definition of Government Surveyor, so that it has a coherent meaning in the context of the independent Republic. The existing definition describes an office by that title that existed during the foreign administration. See **items [143] to [147]**.

Part TM – Trademarks Regulations Adoption Ordinance 1964-1966

Item [148] amends the *Trademarks Regulations Adoption Ordinance 1964-1966* to change the short title to the *Law Adoption (Trade Marks Regulations) Act 1964*. **Item [149]** makes two minor updating amendments.

Part TR – Treasury Fund Protection Act 2004

Item [150] makes a number of minor grammatical corrections to the Treasury Fund Protection Act, and removes a reference to RONFIN. None of the proposed corrections constitutes a substantive amendment.

Part WC – Workers’ Compensation Ordinance

The *Workers’ Compensation Ordinance 1956-1967* is amended by **items [151] to [155]** to:

- modernise it’s short title (*Workers’ Compensation Act 1956*);
- update references to the Ordinance to reflect the short title change;
- replace obsolete references to the Administrator in Council and the Administrator with references to appropriate post-Independence offices;
- correct a number of typographical errors.

Part WI – Wild Birds Preservation Ordinance 1937-1967

Items [156] to [158] propose to amend the *Wild Birds Preservation Ordinance* by modernising the short title (to *Wild Birds Protection Act 1937*) and update obsolete references to the Administrator.

Part WO – Workers (Contracts of Service) Ordinance 1922-1967

The *Workers (Contracts of Service) Ordinance 1922-1967* is amended by **items [159] to [163]** to:

- modernise the short title (*Workers (Contracts of Service) Act 1922*);
- update references to the Ordinance to reflect the short title change;
- replace obsolete references to the Administrator in Council and the Administrator with references to appropriate post-Independence concepts;
- correct a number of typographical errors.

Part WR – Wreck and Salvage Ordinance 1912

The *Wreck and Salvage Ordinance 1912* is amended by **items [164] to [167]** to update the long title, change the short title, relocate the citation provision and update references to ‘this Ordinance’ throughout.

REPEALS

Clause 13 of the Bill provides that the laws specified in Schedules 2 and 3 are repealed. The rationale for the repeal of each of these laws is set out below.

The *Arms and Opium Prohibition Ordinance 1936-1967* is redundant and out-dated. It is redundant because it has been superseded by the *Customs Act* (arms are a prohibited import under the Customs Proclamation of 1980) and the *Illicit Drugs Act 2004*. It is out-

dated because it creates offences for Natives and Chinamen only, and does not apply equally to all persons.

The ***Cinematograph Censorship Ordinance 1927-1967*** provides for the censorship of films that are to be displayed in public. The censorship is to be carried out by a censor appointed by the Cabinet. As there are no longer any public cinemas, and the Ordinance does not cover the provision of movies for hire by the public, the Ordinance serves no useful purpose.

The ***Constitutional Convention Act 2007*** is spent and no longer has any application. It concerned the establishment and conduct of the 2007 Convention, and the Act therefore is now exhausted.

The ***Constitutional Convention Ordinance 1967*** is spent and no longer has any application. It concerned the establishment and conduct of the 1967 Convention, and the Act therefore is now exhausted.

Under the ***Currency (Remittance Charge) Act 1997*** any person sending out of Nauru more than \$1000 in any 30-day period is required to obtain a certificate of approval from the Bank of Nauru, the fee for which is 5% of the amount remitted. This was intended to constrict the flow of cash out of Nauru at a time when the liquidity of the Bank was under threat. This Act is to enter into force on a day to be notified by the Minister in the Gazette. It appears that no commencement notice has ever been published for this Act. With the failure of the Bank of Nauru, bringing this Act into force now would not serve its intended purpose. The Act's repeal is therefore proposed by this Bill.

The ***Executive Council Ordinance 1966-1967*** amended a number of Ordinances to require the Administrator to act in accordance with the advice of the newly-formed Executive Council. The amendments have been given effect and the Ordinance is therefore proposed to be repealed.

The ***Higher Education Act 1986*** was passed for the purpose of licensing off-shore higher education providers. In 1987 a foundation from the United States of America was, by order, permitted to establish a higher education institution, but the institution never eventuated and the order has lapsed. The Act is unsuited to present-day requirements and is recommended for repeal. Its repeal will not affect the operations of the University of the South Pacific. Should there be future interest by providers of higher education to establish facilities in Nauru, new legislation will be developed.

The ***Importation of Dogs Ordinance 1937-1967*** is redundant, as the same subject matter is now covered by the *Animals Act 1982*.

The ***Insurance Act 1974-1996*** provides for a Nauru Insurance Corporation in which the Republic is the Corporator, but the Nauru Local Government Council makes all the decisions about appointments, operation, etc. The Republic also guarantees all liabilities of the Corporation. This Act is now defunct as NIC is no longer operating and no insurance services are provided in Nauru. It is not possible to retain this Act on the statute book in its present form, given the outdated references to NLGC and the fact that these references cannot be interpreted or updated in the usual fashion (ie: Councillor becomes Minister, Council becomes Cabinet) because the Act contemplates certain dealings between the Republic and Council that would be nonsensical if interpreted to mean government was dealing with itself. This Bill therefore proposes to repeal the *Insurance Act*. When insurance services are restored to the island, a new Insurance Bill will be introduced that provides a system of regulation adapted to suit the present context.

The ***Leper Station and Hospital Enclosure Ordinance Repeal Act 1970*** is being repealed because it is spent – the repeal of the relevant Act has been effected and the repeal Act is now an empty shell with no further effect. The ***Leprosy Suppression Ordinance 1922*** is redundant as Leprosy no longer exists on the island.

The ***Long Term Investment Fund (Appropriation) Act 1996*** and the ***Long Term Investment Fund (Sequestration) Act 2004*** provided for one-off appropriations from the Long-Term Investment Fund for payment into the Treasury Fund. The Acts are spent and no longer of any application.

The ***Manufacture and Sale of Bread Ordinance 1926-1967*** is redundant as the matters covered by this Ordinance are adequately dealt with under the *Food Safety Act 2005*.

The ***Marking of Weight on Heavy Packages Ordinance 1932-1967*** has become redundant due to improvements in international shipping practices.

The ***Motor Vehicle (Third-Party Insurance) Ordinance 1967-1972*** requires motor vehicle owners to purchase third-party insurance cover. As it is not presently possible to purchase insurance cover in Nauru, this Ordinance is proposed for repeal. When insurance services are restored, new legislation will be introduced to address the issues covered by this Ordinance.

The ***Native Administration Ordinance 1922-1967*** empowered the Administrator to make regulations governing certain matters concerning Nauruans. Amongst the matters covered by regulations made under this Ordinance were ‘native dancing’ and attendance by girls under the age of 18 years at picture shows. This Ordinance is no longer required and its regulations are anachronistic. The 1938 regulations made under this Ordinance,

which provide guidance for the distribution of intestate estates, will be retained until such time as appropriate alternative legislation can be developed.

The ***Native Co-operative Societies Ordinance 1935-1967*** is outdated and no longer of any practical application in Nauru. It deals only with the formation of ‘native co-operative societies’ and places the control of these societies in the hands of the Administrator.

The ***Nauru Currency Act 1997*** provides for the establishment of a Nauru dollar, to replace the Australian dollar as legal tender in Nauru. This was primarily intended to constrict the flow of cash out of Nauru at a time when the liquidity of the Bank of Nauru was under threat. This Act is to enter into force on a day to be notified by the Minister in the Gazette. However, it appears that no commencement notice has ever been published. With the failure of the Bank of Nauru, bringing this Act into force now would not serve its intended purpose.

The ***Nauru Housing Fund Supply Act 1968*** is spent and no longer has any application. It provided for a temporary allocation of funds for the Nauru Housing Fund, pending formal appropriation for the 1968-1969 financial year.

The ***Nauru Island Council (Dissolution) Act 1999*** is spent and no longer has any application. It concerned the dissolution and winding-up of the former Nauru Island Council. All matters required to be done under the Act have been done, and the Act is now therefore exhausted.

The ***Nauru Island Council Subvention Act 1992*** provided for a one-off appropriation from the Treasury Fund for payment into the District Fund. The Act is spent and no longer of any application.

The ***Nauru Local Council Guarantee Act 1968***, the ***Nauru Local Government Council Guarantee Act 1970***, the ***Nauru Local Government Council Guarantee Act 1971-1972*** and the two Acts known as the ***Nauru Local Government Council Guarantee Act 1976*** (Act No 1 of 1976 and Act No 8 of 1977) each authorised the provision of a guarantee on behalf of the Republic in respect of certain debts of the Council. The Acts are spent and no longer of any application.

When the Nauru Local Government Council was dissolved in 1992, most of the provisions of the ***Nauru Local Government Council Act 1951-1985*** were repealed. However, certain remnants remain and, as they are no longer of any application, the Act requires repeal.

The ***Nauru Local Government Council Dissolution Act 1992*** is spent and no longer has any application. It concerned the dissolution of the former Nauru Local Government Council. All matters required to be done under the Act have been done, and the Act is now therefore exhausted.

The ***Nauru Local Government Council Dissolution Consequential Amendments Act 1997*** provided for a number of general legislative amendments consequential upon the dissolution of the Nauru Local Government Council. The amendments have been given effect and the Act is therefore proposed to be repealed.

The ***Nauru Phosphate Agreement Ordinance 1968*** gave effect to the agreement between the Nauru Local Government Council and the Governments of Australia, New Zealand and the United Kingdom concerning the transfer of the phosphate industry. It also provided for the establishment of the precursor of the Nauru Phosphate Corporation. All matters required to be done under the Act have been done, and the Act is now therefore exhausted.

The ***Nauruan Housing Ordinance 1957-1967*** established the Nauruan Housing Scheme, overseen by the Nauru Local Government Council. The scheme is defunct and the Ordinance is no longer of any application.

The ***Ordinances Repeal Act 1968*** repealed four ordinances. The repeals have been given effect and the Act is therefore spent.

The ***Ordinances Revision Ordinance 1947***, the ***Ordinances Revision Ordinance 1966*** and the ***Ordinances Revision Ordinance 1967*** each provided for numerous minor amendments to various ordinances. The amendments have been given effect and the Ordinance is therefore spent.

The ***Phosphate Industry Finance Act 1968*** provided for a loan from the Nauru Phosphate Royalties Trust to finance the purchase of the assets of the British Phosphate Commission and to provide the initial working capital for the NPC. All matters required to be done under the Act have been done, and the Act is now therefore exhausted.

The ***Prohibition of Sale or Barter of Administration and Employers' Stores Ordinance 1953-1967*** is redundant, in that the matters covered by the Ordinance are adequately dealt with under other legislation.

The ***Prohibition of Sale to Chinese and Natives of Overmilled Rice Ordinance 1925-1967*** is redundant and out-dated. It is redundant because the matters with which it deals can be addressed under regulations made under the *Food Safety Act 2005*. It is out-dated

because it creates an offence for the sale of overmilled rice to a limited class of persons, and does not apply equally to all persons.

The ***Quarantine Area Ordinance 1921-1967*** concerns the use of warning devices at times when the former quarantine station in Denigomodu was in use. As the quarantine station is no longer in use as such the Ordinance is redundant.

The ***Quarantine (Plague) Ordinance 1922-1967*** provides for measures to prevent the introduction of the plague into Nauru. This Ordinance is redundant, as these matters are sufficiently addressed in the *Public Health Ordinance 1925-1967*.

The ***Rehabilitation Fund (Denigomodu School) Act 1998*** provided for a one-off withdrawal from the Rehabilitation Fund and a one-off appropriation from the Treasury Fund to finance the construction of a school at Denigomodu. The Act is spent and no longer of any application.

The ***Republic of Nauru Finance Corporation (Repeal) Act 2009*** is spent – the repeal of the *Republic of Nauru Finance Corporation Act 1972-1998* has been effected. All matters required to be done under this Act have been done, and the Act is now therefore exhausted

The ***Roads Maintenance Ordinance 1922-1967*** enacted a scheme whereby all owners, lessees and occupiers of land adjoining a road were made liable for the costs of maintaining the adjacent half-width of that road. The scheme is obsolete and the Act is no longer of any application.

The ***Shipping Fees Ordinance 1937-1967*** is redundant, as these matters are now addressed under the *Port Authority Act 2006*.

The ***Social Services Ordinance 1956-1967*** enacted a scheme under which the Council paid pensions, child endowment and other allowances. Payments under the Ordinance have not been made for several years and the scheme is now defunct. The Act is no longer of any application.

The ***War Deaths (Civilians) Certificates Ordinance 1946-1967*** provided for the registration of the deaths of persons who died during World War II, whose deaths went otherwise unrecorded. All matters required to be done under the Ordinance have now been done.

ADOPTED LAWS THAT WILL CEASE TO APPLY

The following Acts of the Commonwealth of Australia and Ordinances of the Territory of Papua were applied to Nauru under the *Laws Repeal and Adopting Ordinance 1922-1967*

(except for the *Post and Telegraph Rates Act 1902-1973*, which was adopted under the *Post and Telegraph Ordinance 1952-1963*). They are no longer considered relevant and it is proposed that they should cease to apply.

The ***Designs Act 1906-1934*** (Commonwealth of Australia) provides for the registration of designs and to give the creators copyright over their designs. There is no mechanism in place for the administration of this Act in Nauru. This Act had been substantially amended by the Australian Parliament over the years (amendments after 1934 do not apply in Nauru) and it was ultimately repealed in Australia by the *Designs Act 2003*.

The ***Employer's Liability Ordinance 1912*** (Territory of Papua) is redundant, as the matters it addresses are sufficiently covered under the *Workers' Compensation Ordinance 1956-1967*.

The ***Marriage Ordinance 1912*** (Territory of Papua) is redundant, as the matters it addresses are covered under the *Births, Deaths and Marriages Act 1957-2009*.

The ***Patents, Trade Marks and Designs Act 1910***, the ***Patents, Trade Marks and Designs Act 1914-1915*** and the ***Patents, Trade Marks and Designs Act 1932*** (Commonwealth of Australia) are companion legislation to the *Designs Act 1906-1934* (see above). In the Acts' application to Nauru, only the provisions dealing with designs presently survive. The provisions dealing with patents ceased to have effect on commencement of the *Patents Registration Act 1973*, and the provisions dealing with trade marks ceased to have effect with the application to Nauru of the *Trade Marks Act 1955-1958* of Australia.

The ***Post and Telegraph Rates Act 1902-1973*** (Commonwealth of Australia) has not been applied in Nauru for several years. It was repealed in Australia in 1975. This Act is considered redundant.

As with the *Employer's Liability Ordinance 1912* of Papua, the matters addressed by the ***Seamen's Compensation Act 1911*** of Australia are sufficiently covered under the *Workers' Compensation Ordinance 1956-1967*.

The ***Seamen (Foreign) Ordinance 1912*** (Territory of Papua) is redundant, as the matters it addresses are sufficiently covered by other laws of Nauru (dealing with criminal offences and immigration).