

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

## Geneva Conventions Bill 2012

### EXPLANATORY MEMORANDUM

#### BACKGROUND

The Geneva Conventions Bill 2012 gives effect in Nauru to the 1949 Geneva Conventions and their 1977 and 2005 Protocols concerned with the treatment of members of armed forces, prisoners of war, victims and civilians caught up in war. These Conventions are sometimes also known as the Red Cross Conventions since they recognise the activities of the Red Cross and similar organisations in the protection of such persons. The Conventions are widely adopted throughout the world as a central component of what is now referred to as international humanitarian law. Nauru ratified the Conventions and Protocol I and II on 27 June 2006 and recently ratified Protocol III.

The Bill is based on a model Act for common law States.

#### EXPLANATION OF CLAUSES

##### PART 1 – PRELIMINARY MATTERS

**Clauses 1 and 2** are formal provisions.

##### PART 2 – INTERPRETATION

**Clause 3** contains definitions for the purposes of the measure.

**Convention** means:

- First Convention: the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted at Geneva on 12 August 1949
- Second Convention: Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on 12 August 1949
- Third Convention: Geneva Convention relative to the Treatment of Prisoners of War, adopted at Geneva on 12 August 1949
- Fourth Convention: Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949

**Protocol** means:

- Protocol I: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, done at Geneva on 8 June 1977 (including Annex 1 to the Protocol)

- Protocol II: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, done at Geneva on 8 June 1977
- Protocol III: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem, done at Geneva on 8 December 2005

**Clause 4** defines *grave breach* by reference to each of the Conventions and Protocols. The definition is central to Part 3 of the Bill. In terms of the Conventions, this covers wilful killing, torture and inhuman treatment and, in terms of Protocol 1, a wilful act or omission that seriously endangers the physical or mental health or integrity of a person in relevant circumstances. Grave breach also extends (under clause 4(f) of the Bill) to the use of the third Protocol emblem to kill, injure or capture an adversary.

**Clause 5** defines *protected emblem*. The term covers emblems known as the Red Cross, the Red Crescent, the Red Lion and Sun, the Red Crystal (or third Protocol emblem), the heraldic emblem of the Swiss Confederation, the international distinctive sign of civil defence, the signals of identification for medical units and transports and the international special sign for works and installations containing dangerous forces. The term can be extended by regulations to encompass other flags etc.

Clause 5 also defines *protected item* as an identity card, information card, uniform and allows the regulations to prescribe other items as protected items as necessary to give effect to a Convention or Protocol.

These definitions are central to Part 5 of the Bill.

**Clause 6** requires the Convention or Protocol to be interpreted subject to any reservation or declaration that applies in respect of Nauru's ratification of it.

### **PART 3 – BREACH OF CONVENTION OR PROTOCOL**

**Clause 7** makes it an offence to commit a breach of a Convention or Protocol or to aid, abet or procure another to do so. The maximum penalty is imprisonment for life if the breach involves the wilful killing of a person; in the case of a grave breach not involving the wilful killing of a person, 14 years imprisonment; and, in any other case, 7 years imprisonment.

**Clause 8** requires a person prosecuted for an offence against clause 7 or 8 to be represented by a lawyer at the trial and that the lawyer be allowed at least 14 days to prepare. The Republic is obliged to appoint a lawyer to represent the defendant if the defendant does not do so.

**Clause 9** provides an evidentiary aid in relation to the application of the Convention or Protocol by means of Ministerial certificate.

#### **PART 4 – LEGAL PROCEEDINGS RELATING TO PROTECTED PERSONS**

**Clause 10** requires notice of a prosecution of a protected prisoner of war to be given to the Protecting Power, the prisoner and the prisoner's representative. These terms are defined in clause 3 by reference to the Convention or Protocol. It also requires notice of a prosecution for an offence that carries a maximum term of imprisonment of 2 years or more of a protected internee (interned in Nauru) to be given to the Protecting Power. Details required to be included in the notice are set out in subclause (3).

**Clause 11** requires a protected prisoner of war prosecuted for an offence to be represented by a lawyer at the trial and that the lawyer be allowed at least 14 days to prepare. The Republic is obliged to appoint a lawyer to represent the defendant if the defendant does not do so.

**Clause 12** requires notice to be given to the Protecting Power of a protected person (that is, a protected prisoner of war or protected internee) if the court sentences the person to imprisonment for 2 years or more. The clause will not apply if at the time of conviction or sentence there is no Protecting Power for the person.

**Clause 13** authorises the Minister to direct that time that a protected person has spent in custody be deducted from the time that the person must serve in prison if the court has not done so.

#### **PART 5 – USE OF EMBLEMS**

**Clause 14** contemplates a Ministerial Gazette notice consenting to the use or display of a protected emblem or item, but only to give effect to the Convention or Protocol.

**Clause 15** makes it an offence to use or display, for any purpose, a protected emblem or item without such consent. However, this does not apply in respect of certain registered trademarks. A defence is provided in respect of certain emblems if they were lawfully used before the commencement of the measure or the emblem was applied by someone else who could lawfully use it before the commencement of the measure.

**Clause 16** gives a court convicting a person of an offence against the Part the power to order forfeiture of anything on which a protected emblem was used or displayed in the commission of the offence or a protected item used in the commission of the offence.

**PART 6 – MISCELLANEOUS MATTERS**

**Clause 17** requires the consent of the Minister for the commencement of a prosecution for an offence against the measure. This is because prosecutions can give rise to international considerations.

**Clause 18** provides general regulation making power.