

REPUBLIC OF NAURU
ELECTORAL (AMENDMENT) BILL 2019
EXPLANATORY MEMORANDUM

The *Electoral (Amendment) Bill 2019* is a Bill for the *Electoral (Amendment) Act 2019*.

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

EXPLANATION OF CLAUSES

Clause 1 provides that, once enacted, the short title of the Bill will be the *Electoral (Amendment) Act 2019*.

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

Clause 3 is the enabling provision for the amendment of the *Electoral Act 2016*.

Clause 4 inserts new words to be defined in the Act.

Clause 5 amends section 39(2) by clarifying that persons are entitled to have their names in the Roll for the district for which they were registered under in the Births Deaths and Marriages Registration Act 2017.

Clause 6 amends section 42. The *Births, Deaths and Marriages Act 1957* was repealed and replaced by the *Births Deaths and Marriages Registration Act 2017*. The reference to the correct Act and provision of the same is amended.

A new subclause (3) is inserted which defines 'Nauruan custom, customary links and affiliation'. The reference to Nauru custom, customary links and affiliation in subsection (2)(e)(i) is very broad and subsequently interpreted subjectively which has made it impractical to implement. The definition now defines the circumstances in which a voter may be eligible to register or transfer to another District. This is limited to customary adoption, de facto relations, tribe and land ownership.

Clause 7 amends section 56 by inserting a new subclause (3). This clause is to clarify the authority of the Speaker to issue the writ of election for the purposes of the Act and where required by the Constitution.

Clause 8 amends section 58. This clause now allows a person who is nominated under section 57 of the Act as a candidate to withdraw his or her nomination within 72 hours after the close of nominations. This clause now does not allow withdrawal of nomination once the 72 hours has lapsed. The current provision provides that the withdrawal be within 8 days before the polling date.

Clause 9 repeals and replaces section 59. Section 59(1) has prescribed the office of profit in the service of Nauru as required by Article 31(e) of the Constitution. The reference to employee may have a misconception under Article 31(e) of the Constitution as all employees are not holders of office of profit in the service of Nauru. The qualification for a candidate has to be consistent with Article 31(e).

Clause 10 repeals and replaces section 60. This clause provides for the procedures to be followed where there is a failure of election.

Subclause (1) provides that an election fails for a constituency where the required number of candidates for that constituency is not nominated or returned as elected or, after the day the names of candidates have been publicised and within 72 hours after the close of nominations, a candidate dies.

Subclause (2) provides that a new writ must be issued immediately by the Speaker to the Electoral Commissioner and a supplementary election must be held.

Subclause (3) provides that the elections will be held based on the Roll that was prepared for the election that has failed.

Subclause (4) allows the Speaker of the Parliament which has just been dissolved resulting in the election to issue a new writ of elections if an election in 1 or more of the constituencies fails because not enough candidates have been nominated or a candidate dies before the conclusion of the 72 hour withdrawal period. It preserves the position of the new Speaker after the elections who has the power to issue the writ of election under section 56.

Subclause (5) is necessary as in certain circumstances there may be a new Speaker appointed after elections. It is only appropriate that the Speaker who holds the office issues the writ which is consistent with section 56.

Subclause (6) provides for circumstances where the Speaker may not be able to issue a new writ due to death, absence from the country or any other reason. The Deputy Speaker performs the functions under the Constitution for the Speaker and this provision is consistent with the Constitution.

Clause 11 now requires that the Electoral Commissioner need only publicise the names of the first 2 voters that have nominated each candidate.

Clause 12 amends section 67 by repealing and replacing subsection (1) to clearly state that the Electoral Commissioner may adjourn polling for the scheduled polling day or if polling has not commenced at a polling station in case of force majeure or for any other reason. Any other reason may include a court injunction.

A new subclause is inserted to provide clarity over an adjourned election. An election is only adjourned to be held again as such the Roll and candidates must remain the same. This

is distinct from a failed election.

Clause 13 inserts a new subclause (3) in section 69. This subclause allows the Electoral Commissioner to display whatever information deemed necessary in a polling booth to be of use in assisting all voters and may include pictures and names of all candidates in ballot paper order.

Clause 14 amends section 70(2) and now requires the container in which the ballot papers are placed to be clear. The substitution of the words ‘translucent’ reflects this intent as an opaque container would not be transparent.

Clause 15 amends section 78(7) by amending the number of proxy votes granted to a voter. The reduction in the number of proxy votes is to reflect the recommendations of the election observers. It is more democratic as it gives credence to the secret ballot of a registered voter. A reduction of proxy votes is possible if early voting is introduced.

Clause 16 inserts a new clause 78A which provides for authorisation for early voting. Persons may apply to the Electoral Commissioner to vote earlier than the date of the scheduled polling day if the person will be absent from the country, the person’s religious beliefs prevents him or her from voting on the scheduled polling day and any other reason or basis regulated by the Electoral Commissioner.

Regulations may be made to provide for the manner and form of application for early voting, the duties and obligations of the Electoral Commissioner and the voters in relation to early voting and for any related matters.

Clause 17 inserts a new subclause (5) in section 85. This subclause is necessary to avoid unnecessary applications for recount where the margin of difference is minimal. The counting will be done automatically by the presiding officers.

Clause 18 amends section 96 by removing the requirement from paragraph (d) for a petition to be attested to by two witnesses and substituting verification by affidavit.

The time for presentation of a petition is reduced under paragraph (e) so that any contentions or challenges to election results are dealt with expeditiously. This is further reinforced in the amendment to section 102 by which the Court is now required to hear and determine an election petition within 90 days from the date of presentation of the petition.

Clause 19 amends section 97 by deleting the word ‘filing’ from where it appears and substituting with the words ‘presentation of’.

Clause 20 repeals and replaces section 98. This clause allows the Court of Disputed Returns to order a stay of proceedings on the application of a respondent to a petition where the petitioner fails to comply with section 96.

Subclause (2) provides that a petition presented after the expiry of the 21 day period of publication of the election results in the Gazette, without evidence of payment of the security for costs or where the security for costs was paid after the expiry of the 21 days, shall not be accepted by the Court of Disputed Returns.

Clause 21 repeals and replaces section 99. In the Act, the Electoral Commissioner plays an important role from registering voters to the declaration of results. Therefore, it is important that the Electoral Commissioner is joined as a party to the proceedings. Depending on the nature of the case, the Electoral Commissioner may play an active or passive role.

The Electoral Commissioner must be a party by virtue of section 19(3) as the Returning Officer. The election petitions generally have issues regarding the election process and also the decision of a petition may require the Returning Officer to do certain things as such he or she is required to be a party to the proceedings.

Clause 22 repeals and replaces section 102. In subclause (1), the Court is required to determine a petition within 90 days of the presentation of a petition. This is to ensure that election petitions are finalised as soon as possible to avoid any disruption to the composition of Parliament after a passage of a long period of time after an election.

Subclause (2) provides that the decision of the Court of Disputed Returns is final and conclusive which is a requirement under Article 57(2) of the Constitution.

Clause 23 inserts early voting provisions in the regulation making provision of the Act. The amended section 136(f) now allows for the making of regulations for voting by people who are unable to attend a polling station including early voting provisions.