

## REPUBLIC PROCEEDINGS (AMENDMENT) BILL 2010

### Explanatory Memorandum

#### BACKGROUND

The *Republic Proceedings Act 1972* provides for the manner in which legal proceedings may be taken by or against the Republic, including its officers and instrumentalities. As a consequence of the special nature of the Republic as a legal entity, it is necessary to make special provision for these matters.

This Bill seeks to amend the Act, to correct errors in drafting that have been highlighted by the Supreme Court during its most recent sitting, in the case of *Keung-Wah and others v. RONPHOS and another*. Prior to this decision of the Court, the prevailing view had been that the expression ‘instrumentality of the Republic’ in the Act included such entities as RONPHOS, on the authority of the Supreme Court’s 1987 decision in *Heinrich v. Nauru Phosphate Corporation*. This Bill seeks to amend the *Republic Proceedings Act* to ensure that appropriate instrumentalities of the Republic are given the protection they require so that essential government services can continue to be delivered without interruption. In order to achieve this result, it is necessary to balance the interests of litigants wishing to take legal action against such instrumentalities with the national interest.

#### NOTES ON CLAUSES

**Clause 1** specifies the short title of the Bill.

**Clause 2** provides for the date on which the Bill would enter into force.

**Clause 3** specifies that the *Republic Proceedings Act 1972* is to be amended as provided for in the Schedule to the Bill.

The **Schedule** provides for the following amendments to the *Republic Proceedings Act 1972*:

**Section 2** is to be amended by substituting new definitions for the expressions ‘instrumentality of the Republic’ and ‘officer’. The new definition of ‘instrumentality of the Republic’ provides that the expression covers bodies created by statute, where that statute expressly provides that the body is subject in some respect to Cabinet or Ministerial direction. However, the Nauru Phosphate Royalties Trust is not to be considered an instrumentality for the purpose of the Act, nor is any other body deemed not to be an instrumentality by regulation made under section 2A. The new definition of ‘officer’ is required as a consequence of the amendment to the definition of ‘instrumentality of the Republic’.

A new **section 2A** is to be inserted, to provide for regulations to be made excluding specified statutory bodies from the definition of ‘instrumentality of the Republic’.

**Section 3** is to be repealed and substituted. The original section was poorly drafted, and it was very difficult to clearly ascertain Parliament's intention. The new section retains the requirement to obtain leave from the Cabinet prior to commencement of proceedings against the Republic, except for certain categories of proceedings (as specified in subsection (3)).

**Section 18** is to be repealed and substituted. This section deals with the manner in which judgments against the Republic (including any instrumentality) may be enforced. The procedure is for the person seeking enforcement of a judgment to apply to the Court for a certificate setting out the details of the judgment. Upon receipt of an application for a certificate the Secretary for Justice is provided with an opportunity to be heard on the application, and to ask for terms to be inserted into the certificate that provide for payment of the judgment debt by instalments. The certificate is then produced to the Secretary for Justice (or the principal executive officer in the case of an instrumentality) for payment in accordance with its terms. This procedure is similar to the one provided for in the existing section 18, however the amendments clarify the application of the section to instrumentalities. The principal difference lies in the ability of the Court to take account of the financial situation of the Republic in deciding whether or not to add terms to the certificate allowing for payment of a judgment debt in instalments.

A new **section 27** is to be inserted, to provide for transitional provisions on the entry into force of the amending Act.