

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

## **Administrative Arrangements Bill 2010**

### **EXPLANATORY MEMORANDUM**

#### **BACKGROUND AND OBJECTIVES**

The organisation of the administration of government in Nauru is presently governed primarily by Article 23 of the Constitution, which provides that the President may assign responsibility for the business of government to himself or to a Minister.

However, Nauru does not have an Administrative Arrangements Act, common in many other jurisdictions, which sets out a procedure for the head of government or head of state to assign responsibility for the administration of a department or the administration of a law to a particular Minister and department.

Some of Nauru's existing laws specify which Minister is responsible for administering the law, but most do not. In the absence of an Administrative Arrangements Act, responsibility for the administration of many of Nauru's laws is uncertain, and many laws that are legally in force are not administered at all. This means that those laws are effectively 'dead letter': they are on the statute book, but nobody is responsible for making sure that they are given effect.

This Bill is an important complement to the existing laws that govern public administration, and will enable the government to ensure that clear responsibility for the administration of each law can be expressly allocated, as well as providing greater flexibility in the reallocation of such responsibilities.

The key feature of the Bill is that it provides for the President to make administrative arrangement orders, published in the Gazette, under which he can assign to a Minister responsibility for the administration of a department or a written law, and assign to a department responsibility to a Minister for the administration of a written law.

The term 'written law' is defined in the *Interpretation Act* (and therefore not defined in this Bill) as: 'all Acts and Ordinances, including this Act, and applied statutes and all subsidiary legislation.'

This Bill is interrelated with a number of other legislative proposals. In the course of the consolidation of the laws of Nauru, presently being undertaken in the course of the Legal Information Access Project (LIAP), it is proposed to introduce four Bills that will give effect to and enhance the coherence of the consolidation:

- this Bill, the *Administrative Arrangements Bill 2010*;
- *Acts Publication Bill* (providing for authorised electronic reprints of legislation);
- *Interpretation (Amendment) Bill* (making some essential corrections and additions to the Act); and
- *Statute Law Revision Bill* (making hundreds of corrections of minor errors contained in the laws of Nauru).

The *Statute Law Revision Bill* will propose that any law which currently specifies which Minister is responsible for the administration of that law will be amended, so that all references to a Minister, Department or Secretary in relation the administration of an Act are non-specific. This will facilitate the making of administrative arrangements orders that allocate responsibility for the administration of a law to a certain Minister and department, without having to contradict the law. It also makes it easier to deal with a situation where the name of a portfolio or department changes, or where the responsibilities previously attached to a particular Minister or department are divided or reallocated.

In the event that any such desired amendments (making references to Ministers and departments generic) are overlooked in the *Statute Law Revision Bill*, or that in future any law is passed which does specify a responsible Minister or department, it would still be possible for the President to alter that allocation of responsibility by way of an administrative arrangements order, because clause 6 of this Bill provides that any such specific reference in a written law must be construed to give effect to the administrative arrangements prescribed in an administrative arrangements order or an assignment under Article 23.

When the LIAP database is launched, the home page for every law in force will note which Minister and which department are responsible for the administration of that law, and the database will also include any administrative arrangements orders in force. This will not only make such important information accessible to the public, but should also assist in the process of better familiarising public servants with the concept of administering legislation, and with the particular legislative responsibilities of their respective departments.

This Bill, together with the completion of the LIAP (which will result in consolidated reprints of all laws in force in Nauru) and the proposed Cabinet Handbook (which, among other things, will guide Ministers and public servants in the administration of legislation) should enhance the effectiveness and the transparency of the administration of government in Nauru.

## **NOTES ON CLAUSES**

**Clause 1** is a standard provision, providing the short title by which the Act may be cited: the *Administrative Arrangements Act 2010*.

**Clause 2** provides that the Act will commence on a date to be notified by the President in the Gazette. The reason that the Act will not commence on the day of certification is that it is important for the commencement of this Act to occur after the *Statute Law Revision Bill* has been passed and has commenced, so that the amendments to all Acts that contain references to specific Ministers or departments have been made, rendering them generic (and facilitating the making of administrative arrangement orders). It is also proposed that after the commencement of the proposed *Statute Law Revision Act* and before the commencement of this Act, the Office of Parliamentary Counsel will prepare draft administrative arrangements orders that allocate responsibility for the administration of each Act in force, in order that such orders may be made immediately upon commencement of this Act, and it will not be necessary to rely upon or resort to the ‘default’ allocation of responsibility under clause 5.

**Clause 3** defines terms that are used in the Bill: ‘administrative arrangements order’, ‘department’ and ‘head of department’. It also defines ‘Minister’ as including the President, to ensure that it is clear that any reference in the Bill to the President assigning responsibilities, or to departments being responsible to a Minister, also permits the President to assign responsibilities to himself, and for him to be the Minister administering a department or a written law. Certain other terms are not defined here, because they are already defined in the *Interpretation Act*, which applies to all laws. Notably, the terms ‘written law’, ‘Minister’ and ‘functions’ derive their definitions from the *Interpretation Act*.

**Clause 4** provides that the President may make administrative arrangements orders, assigning to a Minister the administration of a department or a written law (or part thereof), specifying a department that is responsible to a Minister for the administration of a written law, and assigning to a Minister responsibility for any business of government. Administrative arrangements orders must be published in the Gazette, and take effect from the day specified in the order, or the day on which the order is published (if no date is specified). Before making an administrative arrangements order of the type mentioned in sub-clause (1)(b) – that is, an order specifying that a department is responsible to a Minister for the administration of a written law – the President must consult with the Chief Secretary and with the head of each affected department (for example, the head of both the department from whom the responsibility is being taken and the department to whom it is being given). Subsidiary legislation, such as a regulation, is subject to the same administrative arrangements (in other words, administered by the same Minister) as the ‘parent’ Act under which it was made. The final sub-clause provides that this clause does not invalidate any assignment of responsibility for the business of government made under Article 23, and nor does it prevent the President from making assignments under Article 23. It is envisaged that when this Act commences, it will be more convenient and appropriate for the President to make administrative arrangements under this Act rather than under Article 23, but because Article 23 is part of the Constitution, it is not possible for this Act to restrict the scope of the President’s power under Article 23, and so in effect, both possibilities will co-exist: the President will be able to make administrative arrangements under Article 23 or under this Act. This Act attempts to provide a procedure for making administrative arrangements that is both more specific and more flexible than what has traditionally been done under Article 23.

**Clause 5** covers the situation where no administrative arrangements order has yet been made to allocate responsibility for the administration of an Act. This means that, from the commencement of the *Administrative Arrangements Act*, every Act will have a Minister responsible for its administration. Because it is proposed that the necessary administrative arrangements orders will be prepared prior to the commencement of this Act, no Act should be ‘orphaned’ (that is, no Act should be without a specified Minister responsible). However, in the event that any Act is overlooked in the attempt to make comprehensive administrative arrangements orders, or in the event that in future an administrative arrangements order is not made immediately upon the commencement of a new Act to allocate responsibility for the administration of that new Act, clause 5 will provide that such Act is administered by the Minister who introduced the Bill for that Act, or, if the bill was a private member’s bill, the Act will be administered by the President. This ‘default’ position can be changed by the making of an administrative arrangements order in respect of the relevant Act.

**Clause 6** provides that if a reference in a written law to a specific Minister, department, office or body of persons is inconsistent with an administrative arrangements order or an assignment under Article 23, the reference must be construed to give effect to the order or assignment. This means that an administrative arrangements order can effectively override the express words of another written law. Because it is intended that in the proposed Statute Law Revision Act all existing references to administration of laws by specific Ministers or departments will be amended to be rendered generic, and that all future laws will make only generic references to Ministers or departments (in relation to the administration of those laws), it should seldom be necessary for clause 6 to have any effect. However, it is included in the Bill to cater for the event that the President wants to alter the assignment of responsibility for the administration of a written law and, because a law does make specific reference to the administering Minister or Department, he might, in the absence of this clause, be prevented from doing so.

**Clause 7** is intended to ensure that if administrative responsibilities are transferred from one department to another, the new administering department is able to expend any appropriation that was made for the purpose of those responsibilities, and is not prevented from doing so because of the head specified in the Appropriation Act.

**Clause 8** provides for the President to temporarily assign the functions of a Minister to another Minister, if the substantive Minister is temporarily absent or unable for any reason, such as illness, to perform those functions. At present, when it is necessary to make an Acting appointment, the President makes an assignment of the responsibility of government under Article 23. This clause is not inconsistent with Article 23, but it provides an alternative mechanism for directing that a Minister will temporarily perform the functions of another, and also clarifies that if the substantive Minister is absent from Nauru, the assignment of his functions during his absence to another Minister does not have the effect of revoking any functions conferred on the substantive Minister (this is one of the main advantages of making directions under this clause rather than using Article 23 for Acting appointments), and it means that a Minister who is travelling retains responsibility for his functions, and can perform some of those functions during his absence as appropriate. He would also clearly retain his portfolios and title, rather than there being any suggestion that, because a new assignment had been made under Article 23 to provide for an Acting Minister in his absence, such assignment superseded his substantive assignment.