

**Interpretation Bill 2011**

**EXPLANATORY MEMORANDUM**

The Interpretation Bill 2011 is a Bill for an Act about the interpretation and operation of legislation. If enacted, the new Interpretation Act 2011 will repeal and replace Nauru's current interpretation legislation, the Interpretation Act 1971.

The purpose of interpretation legislation is to provide procedures for making legislation, rules about the operation of legislation and principles for interpreting legislation. These rules are contained in the Interpretation Act, and not in each law to which they apply, to allow for legislation to be shorter and simpler than it would otherwise be if the rules were replicated in each law. However, the interpretation legislation only applies if there is no contrary intention in the relevant law being considered.

Many of the provisions of the Interpretation Act 1971 have been largely restated in the Bill in clearer terms. However, the existing Act out of date in many respects and lacks some of the most useful provisions that are commonplace in interpretation legislation elsewhere. The new Interpretation Act will provide a comprehensive, modern set of rules and principles about the interpretation and operation of legislation, all contained in a single, clearly drafted Act.

Each provision of the Bill, together with the equivalent provision in the Interpretation Act 1971, is explained in the table of provisions below.

**TABLE OF PROVISIONS**

Clause	Description of new provision	Equivalent existing provision	Reasons
<b>PART 1 – PRELIMINARY MATTERS</b>			
1 & 2	These provisions specify the short title and commencement date of the Act.	Not relevant.	The commencement of the Act is postponed until 1 September 2011 to enable all necessary consequential amendments to be made.
3	The Act applies to all written laws except the Constitution, unless a contrary intention appears in the written law.	No specific application provision, although certain provisions (for example, s 2) are expressed to apply subject to a contrary intention	<ul style="list-style-type: none"> <li>• The Act provides for the general rules of the interpretation and operation of legislation. However, the general rules may not be appropriate in every circumstance. This provision ensures that the principles of the Act do not override a contrary provision in a law. For example, ‘adult’ is defined in the Interpretation Act to mean a person over the age of 18. If another Act specifies that, for that Act, an adult is a person over the age of 20, that definition will prevail over the definition in the Interpretation Act.</li> <li>• The Act does not apply to the Constitution because this could have the effect of altering the Constitution (for example, altering the meaning of a provision) contrary to Article 84. Only the Constitution can provide for its interpretation.</li> </ul>
<b>PART 2 – NUMBERING AND NOTIFICATION OF ACTS</b>			
4	Acts must be numbered in the order they are passed in Parliament.	None.	The number of an Act is significant as an Act may be cited by its year and number. The provision creates a statutory requirement for Acts to be numbered.

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
5	The certification of an Act must be notified in the Gazette by publishing notice of the certification that also specifies where the Act can be inspected, or publishing the whole Act in the Gazette.	Acts must be published in the Gazette in their entirety (s 7(1)).	Previously, the Gazette was the main method of providing access to written laws to the public. Today, the laws of Nauru are available electronically on the internet, and hard copies can easily be reproduced. It is cumbersome to publish entire Acts in the Gazette when they are published elsewhere, particularly as some Acts are hundreds of pages long. The requirement to notify the certification of an Act and the place the Act can be inspected ensures the public are aware of the existence of a new law and can easily access it if they wish.
<b>PART 3 – MAKING, NUMBERING AND NOTIFICATION OF SUBSIDIARY LEGISLATION</b>			
<b>Division 1 – Power to make subsidiary legislation</b>			
6	If an Act authorises or requires the making of subsidiary legislation under the Act, but does not specify who has the power to make the subsidiary legislation, Cabinet alone has the power to make the subsidiary legislation.	Same (s 29(1)(a)).	This provision restates the existing provision. In the vast majority of cases, the relevant Act will specify who has power to make subsidiary legislation, and in most cases this is Cabinet. This provision ensures Cabinet has power to make subsidiary legislation if the Act authorises the making of subsidiary legislation but fails to specify the person who may make it.
7(1) & (2)	If an Act authorises or requires the making of subsidiary legislation under the Act, subsidiary legislation may be made in relation to any matter that is required or permitted to be prescribed, or necessary or convenient to be prescribed to give effect to the Act.	None.	This provision enables the shortening of the language of regulation-making powers by outlining the standard regulation-making power in the Interpretation Act. It will be sufficient to state, for example, that 'Cabinet may make regulations under this Act' without specifying the general matters in relation to which the regulations may be made.

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
7(3)	The general power given by cl 7(2) applies even if the Act also specifies specific purposes for which subsidiary legislation may be made.	Same (s 32(c)).	This provision restates the existing provision and the common law position that, if an Act specifies that subsidiary legislation may be made in relation to a particular matter (for example, to prescribe forms for use under the Act), this does not prevent the maker of the subsidiary legislation also making provision for matters that fall within the general 'necessary or convenient' power to make the subsidiary legislation.
7(4)	Subsidiary legislation must not be inconsistent with the Act under which it is made.	Similar (s 32(b)).	This provision restates the common law position that subsidiary legislation, being subordinate to the Act under which it is made, must not be inconsistent with that Act.
8	A power under an Act to regulate a matter by subsidiary legislation may be exercised by prohibiting the matter by subsidiary legislation.	None.	This provision provides flexibility in the way subsidiary legislation may operate. For example, a power to make by-laws providing for the issue of licences to use fireworks may prohibit the use of the fireworks without a licence. Of course, the subsidiary legislation cannot be inconsistent with a provision of the parent Act prohibiting or permitting the use of fireworks.
9	Subsidiary legislation may provide for the review of, or appeal against, a decision made under the subsidiary legislation.	None.	This provision ensures that, if an Act allows for discretion to be given to a person to make a decision under subsidiary legislation, the subsidiary legislation can provide for a review of the decision.
10	A general power under an Act to prescribe fees by subsidiary legislation may be exercised by prescribing fees in relation to any matter under the Act, even if the Act does not specifically mention a fee for a particular matter.	None.	This provision ensures that fees may be prescribed for a service provided, or a privilege given, under an Act even if Parliament has not specifically provided for it.

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
11	A power under an Act to prescribe fees by subsidiary legislation may be exercised by stating a fee or prescribing a method for determining the fee, or both. The subsidiary legislation may also provide for the exemption, waiver and refund of a fee.	Similar (s 35).	This provision is largely a restatement of the existing provision. It ensures that fees may be calculated in accordance with a formula, for example.
12	Subsidiary legislation may provide for an infringement notice scheme to deal with offences committed under the parent Act.	None.	This provision allows for a straightforward method of creating infringement notice schemes using subsidiary legislation. Infringement notice schemes can significantly improve the enforcement of laws by allowing minor offences to be dealt with outside of the court system. This provision ensures subsidiary legislation can create an infringement notice scheme for offences against the parent Act even if the parent Act does not provide for it.
13	Subsidiary legislation may apply, adopt or incorporate all or part of another instrument.	None.	Subsidiary legislation often deals with detailed regulatory matters, such as technical standards applying to a particular industry. Often, these matters are contained in a document produced by another body and are given effect as law by the subsidiary legislation. This provision allows subsidiary legislation to apply, adopt or incorporate such documents without replicating them in their entirety.
<b>Division 2 – Numbering and notification of subsidiary legislation</b>			
14	Defines 'made' for subsidiary legislation to include adopted for the Division.	None.	This definition applies the numbering and notification requirements to adopted subsidiary legislation as well as subsidiary legislation made in Nauru.

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
15	Subsidiary legislation must be numbered in the order it is made.	None.	The number of subsidiary legislation is significant as subsidiary legislation may be cited by its year and number. The provision creates a statutory requirement for subsidiary legislation to be numbered.
16	The making of subsidiary legislation must be notified in the Gazette by publishing notice of the making that also specifies where the subsidiary legislation can be inspected, or publishing the text of the subsidiary legislation in the Gazette.	Subsidiary legislation must be published in the Gazette in its entirety (s 26(1))	Previously, the Gazette was the main method of providing access to written laws to the public. Today, the laws of Nauru are available electronically on the internet, and hard copies can easily be reproduced. It is cumbersome to publish subsidiary legislation in the Gazette in its entirety when it is published elsewhere, particularly as some subsidiary legislation is very long. The requirement to notify the making of subsidiary legislation and the place the subsidiary legislation can be inspected ensures the public are aware of the existence of a new law and can easily access it if they wish.
17	Subsidiary legislation must be tabled in Parliament within 6 sitting days after it is notified in the Gazette. Parliament may disallow the legislation if notice of the motion of disallowance is given within 6 sitting days after the legislation is tabled. Disallowance has the same effect as repeal of the legislation.	Similar, with the exception that notice of a motion of disallowance may be given within 14 days after tabling of the legislation (s 29).	This provision restates the existing provision to provide for scrutiny of subsidiary legislation by Parliament. The time limit for giving notice of a motion of disallowance has been reduced to reflect the number of sitting days per year in Nauru. Nauru's Act was based on the equivalent Acts in Australian jurisdictions, where Parliament sits for 3-6 days at a time, several times a year. In Nauru, it is unusual to have more than 12 sitting days per year, which means subsidiary legislation could be disallowed more than 12 months after it was made under the current provision. This creates an unacceptable level of uncertainty in the implementation of the legislation.

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
18	Rules or by-laws made by a person other than a Minister must be given to the responsible Minister, who may recommend changes to the rules or by-laws. The recommended changes must be considered but need not be made. The tabling and disallowance provisions of section 17 apply to the rules or by-laws, as they are subsidiary legislation.	None.	It is necessary for rules and by-laws made by a person other than a Minister to be given to the Minister for notification and tabling. This provision provides a statutory requirement for rules and by-laws to be given to the Minister, as well as providing an opportunity for the Minister to scrutinise the legislation and recommendation changes. Because the Minister has not been given the power to make the rules or by-laws, recommended changes need not be made. However, Parliament will have an opportunity to disallow the rules or by-laws following tabling.
<b>PART 4 – COMMENCEMENT OF WRITTEN LAWS</b>			
19(1)	An Act commences when it is certified or another date provided for in the Act.	Same (s 5).	This provision restates the existing provision that the default commencement date for an Act is certification unless the Act specifies another date (for example, the Act may specify a date or provide for the date to be fixed by Gazette notice).
19(2)	The commencement and naming provisions of an Act always commence on certification or, if a provision of the Act commences retrospectively, on the earliest date of commencement for a provision of the Act.	None.	This provision ensures that the citation of an Act is authoritative even if the rest of the Act has not commenced, and that there is no doubt about the ability of the commencement provision to bring the rest of the Act into effect.
19(3)	An Act can only commence retrospectively in accordance with section 22.	None.	This provision directs readers to the requirements of section 22.

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
20(1)	Subsidiary legislation commences on notification or another date provided for in the subsidiary legislation or an Act.	Same (s 29(1)(b)).	This provision restates the existing provision that the default commencement date for subsidiary legislation is notification unless the subsidiary legislation or an Act specifies another date.
20(2)	The commencement and naming provisions of subsidiary legislation always commence on notification or, if a provision of the legislation commences retrospectively, on the earliest date of commencement for a provision of the legislation.	None.	This provision ensures that the citation of subsidiary legislation is authoritative even if the rest of the legislation has not commenced, and that there is no doubt about the ability of the commencement provision to bring the rest of the legislation into effect.
20(3)	Subsidiary legislation can only commence retrospectively in accordance with section 22.	None.	This provision directs readers to the requirements of section 22.
21	If a provision of a law commences on a particular day, it commences at the beginning of the day.	Similar (s 6).	This provision provides certainty about the time of commencement on a particular day, which is the first second of the day.
22(3)	A written law must not be taken to provide for retrospective commencement unless the law clearly indicates that it is to commence retrospectively.	None.	This provision prevents the inadvertent application of retrospectivity, for example, if an Act includes a commencement date that precedes the certification date because there was some unexpected delay in certification. The law should clearly show that retrospectivity was intended, rather than inadvertent.



Clause	Description of new provision	Equivalent existing provision	Reasons
22(4)	In addition to the requirement of s 22(3), a provision of subsidiary legislation cannot commence retrospectively unless the date of commencement is later than the date of commencement of the parent Act, and the provision does not impose a penalty on a person for anything done before the date of notification.	Same (s 27).	This provision restates the current provision. Subsidiary legislation cannot operate before the power to make the subsidiary legislation exists. Also, because subsidiary legislation is not made by Parliament, the extent to which it can operate to the detriment of a person must be limited.
23	A commencement notice for an Act may specify a single day or time for commencement, or multiple days or times.	None.	This provision puts beyond doubt the power to make provision in a commencement notice for different commencement dates for different parts of an Act.
24	An amendment of an uncommenced law does not itself commence the law, and the amendment commences on commencement of the uncommenced law.	None.	It will sometimes be necessary to amend a law before it has commenced. This provision clarifies the effect of such an amendment.

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
25	A power conferred by an uncommenced provision of a written law may be exercised before the provision commences, but the exercise of the power does not take effect until the provision commences.	Same for Acts (s 8), none for subsidiary legislation.	This provision ensures things can be done in preparation for the commencement of a provision. For example, if an Act is certified that establishes a statutory authority and includes a provision for the appointment of the head of the authority, but the Act does not commence immediately, the recruitment and appointment of the head of the authority can take place in preparation for commencement, so that the authority can operate effectively as soon as the Act commences. The appointment will not have effect before commencement.
26	A reference in a written law to the commencement of a written law is a reference to the date of commencement of the last of the provisions of the law to commence.	None.	This provision is an interpretive aid for references to commencement of laws – in the absence of a contrary intention, a reference in a law to the commencement of the law or another law will be taken to mean the date the entire law has commenced.
<b>PART 5 – REPEAL AND AMENDMENT OF WRITTEN LAWS</b>			
27	Defines the term ‘amend’ to include modify, and ‘repeal’ to include expiry and repeal of an adopted law in its application to Nauru.	Provisions relating to repeal apply also to expiry.	This provision applies the remaining provisions of the Part to the modification, expiry and ‘unadoption’ of laws.
28	The repeal or amendment of a written law does not affect anything done under the law before it was repealed or amended.	Same (s 14).	This provision restates the existing provision, which ensures that savings provisions in respect of most matters do not need to be included when a law is amended or repealed.

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
29	If a law (the 'first law') repeals another law (the 'other law') and the first law is later repealed itself, the repeal of the first law does not revive the other law.	Same (s 20).	This provision restates the existing provision, which ensures that the repeal of a law does not effect the previous repeal of another law by that law.
30	If a provision of a law is repealed and another provision substituted for it, the repealed provision continues in force until the new provision commences.	Same (s 11).	This provision ensures the continuation of a repealed and substituted provision in the event of an inadvertent gap between commencement of repeal and substitution provisions.
31	If a provision of a law is repealed and substituted, a reference in another law to the provision is a reference to the substituted provision.	None.	This provision ensures that cross-references to repealed and substituted provisions do not need to be updated simply because of the repeal and substitution.
32	If a law that gives a person a power or function is amended and, under the amended law, a person has the same power or function, the exercise of the power or performance of the function before the amendment does not cease to have effect only because of the amendment.	None.	This provision ensures that powers and functions do not have to be confirmed or exercised or performed again simply because the law giving the power or function was amended, even if the person who had the power or function before the amendment is different to the person who is given the power or function under the amended law. For example, if a provision that required the head of a department to perform a function is amended so that a Minister has to perform the same function, the previous performance of the function by the head of department does not cease to have effect.
33	A written law and all laws amending it must be read as one.	Similar (s 15).	This provision restates the existing provision, which ensures that written laws are read as amended.

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
34	A modification to a written law modifies the operation of the law but does not amend the text of the law.	None.	A law may be modified if an amendment is not appropriate. For example, laws of foreign countries that are adopted as laws of Nauru must be read with the necessary modifications to the names of office-holders. This provision clarifies the effect of modifications, which do not result in textual amendments but affect the operation of the law.
<b>PART 6 – REFERENCES TO LAWS</b>			
35	This provision defines terms for referring to various types of written laws.	Similar definitions for some terms are contained in s 2.	The defined terms will facilitate the shortening of the language of Nauru's laws.
36	A written law may be cited by its short title, its year and number or the short title it is given by an amending law.	Similar (s 4), but citation by a title given by an amending law is not dealt with.	This provision restates, to a large extent, the existing provision, which specifies the ways a law may be referred to. The addition of citations given by amending laws replaces a similar provision in the (repealed) Amendments Incorporation Ordinance 1965.
37	A law of another jurisdiction may be referred to by its name (or any other citation appropriate in the jurisdiction) and a reference to the jurisdiction. A reference to a foreign law is taken to be a reference to the law as in force from time to time.	None.	This provision provides certainty about the way foreign laws may be identified in Nauru. Also, the provision ensures references to foreign laws do not become obsolete when the law is amended.
38	A general reference in a written law to a written law of the same kind includes a reference to the law itself.	None.	This provision ensures that, for example, a reference in an Act to things done under an Act includes things done under that Act.

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
39	A reference in a written law to another written law is a reference to the law as in force from time to time.	Same (s 4(2)).	This provision restates the current provision to ensure references to laws do not become obsolete when the law is amended.
40	A reference in a written law to another written law includes a reference to a statutory instrument made under the law.	Similar (s 33).	This provision extends the current provision, which only provides that a reference to a law includes a reference to subsidiary legislation made under the law, rather than all statutory instruments made under the law.
41	A reference in a statutory instrument to 'the Act' is a reference to the Act under which the statutory instrument is made.	Same (s 28).	This provision restates the current provision, which ensures the parent Act does not need to be defined or referred to in full in statutory instruments.
42	A reference to a written law includes a reference to part of the law.	None.	This provision facilitates the shortening of the language of laws by ensuring that a reference to a written law includes a reference to all or part of the law.
43	A reference to an adopted law is a reference to the adopted law in its application to Nauru.	None.	This provision ensures that if, for example, a reference is made to something done under an adopted law, the reference does not include things done under the law in its country of origin - only things done under the law in Nauru. Similarly, a reference to the commencement of an adopted law is a reference of its commencement in its application to Nauru – that is, the day on which it has force in Nauru, rather than the day on which it had force in its country of origin.
44	A reference to something done under a written law includes things done under a statutory instrument made under the law.	Same (s 34).	This provision restates the current provision, which facilitates the shortening of the language of laws by ensuring a reference to something done under a law encompasses things done under any statutory instrument made under the law.

Clause	Description of new provision	Equivalent existing provision	Reasons
<b>PART 7 – STRUCTURE OF LAWS</b>			
45 & 46	<p>The following form part of a written law:</p> <ul style="list-style-type: none"> <li>• Schedules</li> <li>• tables in the text of a written law</li> </ul> <p>The following form part of a written law if inserted or amended after the commencement of the Interpretation Act 2011:</p> <ul style="list-style-type: none"> <li>• preambles</li> <li>• punctuation</li> <li>• examples, notes and diagrams in the text of the law</li> </ul> <p>The following do not form part of a written law:</p> <ul style="list-style-type: none"> <li>• notes that are not part of the text of the law (for example, endnotes)</li> <li>• provision headings and numbers</li> <li>• tables of contents and indexes</li> </ul>	Similar, except preambles, punctuation, examples and notes are not part of a written law (s 17).	If something forms part of a written law, it can only be changed if Parliament amends it or, in very limited circumstances, if the Parliamentary Counsel makes an editorial change authorised by the Legislation Publication Act 2011. This provision expands the category of items that form part of a written law, to reflect their importance in the interpretation of the law.
47	Each section of an Act is a substantive enactment.	Similar (s 9).	This provision ensures individual sections have effect alone, without introductory words or other enabling provisions.
<b>PART 8 – CONSTRUCTION OF LAWS</b>			
<b>Division 1 – Key principles</b>			

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
48	A statutory instrument must be interpreted as operating to the full extent of, but not to exceed, the power under which it is made. If a provision of an instrument exceeds power, it is valid to the extent to which it does not exceed power and the remainder of the instrument is not affected by the invalidity.	None.	This provision ensures that statutory instruments operate to the maximum extent possible.
49	The interpretation of a written law that would best achieve the purpose of the law must be preferred to any other interpretation.	Same (s 19(a)).	This provision restates the existing provision, which entrenches the purposive approach to statutory interpretation.
50	The provisions of a law must be read in the context of the law as a whole.	None.	This provision ensures individual provisions of a law are not interpreted in a way that is inconsistent with the law as a whole.
51	Material not forming part of a law may be considered in certain circumstances.	S 18 permits the use of extrinsic material in ascertaining the meaning of a law.	There may be circumstances where the words of a law have no clear meaning, or a meaning that is clearly absurd. This provision outlines the circumstances in which extrinsic material may be used by a court to interpret the law.

Clause	Description of new provision	Equivalent existing provision	Reasons
52	Some of the categories of extrinsic material that may be considered in interpreting a law (where permitted by section 51) are listed. They include documents related to the law that were tabled in Parliament, relevant treaties, and material not forming part of the law that is included in an authorised version of the law. The lists are not exhaustive.	Similar (s 18).	This provision ensures that certain types of extrinsic material can clearly be considered in interpreting a law.
53	Changes in drafting practice do not affect the meaning of a provision.	None.	Drafting techniques change over time. In recent years, the plain language movement has resulted in significant changes in the language and structure of laws. This provision ensures such changes are not taken to affect the meaning of the law – they are intended to make laws easier to understand, not to change their substantive effect. For example, this provision ensures the use of ‘shall’ in a provision of a law can be replaced by the plain language equivalent of ‘must’ if the provision is amended, even if other provisions in the same law still use the word ‘shall’. The difference in terminology in the two provisions will not be taken to result in different meanings.
54	An amending law must be given the same interpretation as the law being amended.	None.	This provision ensures amending laws are interpreted consistently with the laws they are amending.



<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
55	An adopted law must be read with the modifications necessary for its application in Nauru.	Same (s 10(1)).	This provision restates the existing provision in simpler terms. It avoids the necessity to amend all references to things (such as office holders) in adopted laws that are specific to the jurisdiction of origin.
<b>Division 2 – Aids to interpretation</b>			
56	In a written law, words indicating a gender include each other gender, and words indicating the singular include the plural and vice versa.	Same (s 2(4) and (5)).	This provision restates the existing provision, which ensures a gender-neutral interpretation of old gender-specific legislation and shortens the language of legislation by enabling ideas of general application to be expressed in the singular, without the need to resort to phrases such as ‘person or persons’.
57	If a law states that a person ‘may’ exercise a power or perform a function, the power or function may be exercised or performed at the discretion of a person. If a law states that a person ‘must’ exercise a power or perform a function, the power or function is required to be exercised or performed.	Similar (s 36).	This provision restates the existing provision using the modern terminology of ‘must’ rather than ‘shall’.
58	Terms used in a statutory instrument have the same meanings as in the law under which the instrument is made.	Same (s 28).	As a statutory instrument deals with the same concepts as the law under which it is made, it is useful to be able to use the same terms without defining them both in the parent law and the instrument.

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
59	A person attains a particular age at the beginning of the anniversary of the person's birth. If the person is born on 29 February, the anniversary of the person's birth on a day that is not a leap year is taken to be 28 February.	None.	The time at which a person attains a particular age is relevant in the application of many laws. This provision removes uncertainty about when that time is.
60	A reference to a range of numbers, words or other things includes the numbers, words or things indicating the beginning or end of the range.	None.	Ranges of words, numbers and other things (for example, 'Monday to Friday') are used extensively in legislation. This provision avoids the need to specify 'inclusive' at the end of such a range.
61	Measurement of distance for a written law must be made in a straight line on a horizontal plane.	Same (s 55).	This provision restates the existing provision about how distance must be measured for a written law.
62	A reference to 'from time to time' means at any time; a reference to 'for the time being' means at the time the reference is made.	None.	There has previously been confusion about the meaning of the terms 'from time to time' and 'for the time being', which are used extensively in written laws, often with little thought for their meaning. The meaning of these terms is now settled at common law, and this meaning has been reflected in the interpretation legislation of many other jurisdictions. This provision articulates the settled meaning.
63	The provision provides rules for the computation of time, for example, if a written law requires something to be done within a specified period after a specified day.	Similar (ss 52 & 53).	This provision restates and expands upon the current provision to ensure certainty in the computation of time without articulating the rules in each written law to which they apply.

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
64	An example in a provision of a written law is not exhaustive, does not limit or extend the meaning of the provision and yields to the content of the provision if there is an inconsistency between the two.	None.	Examples are increasingly used in legislation as an interpretive aid. This provision explains the effect of examples.
65	This provision defines terms that are often used in written laws.	S 2.	Many terms that are commonly-used in written laws are defined in this provision. The general definitions provision in any interpretation legislation is heavily relied upon to shorten the language of written laws. The new provision adds many new terms to the existing provision, and the definitions of many terms have been changed or updated. Some obsolete terms have been removed.
66	If a term is not defined in the Interpretation Act, the meaning given to it in the Constitution applies.	None.	Many commonly used terms, such as 'Cabinet' and 'President' are defined in the Constitution. These terms are often used in written laws without definition, but the meaning given by the Constitution is given to them anyway. This provision codifies this practice. Of course, as with all the provisions of the Interpretation Act, if a written law exhibits a contrary intention about the meaning of the term that is defined in the Constitution or the Interpretation Act, the meaning given by the law will prevail (so long as this does not have the effect of making the law inconsistent with the Constitution).

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
67	Provides for the interpretation of references related to the Nauru Local Government Council.	Same (s 2(7)).	The NLGC is dissolved, but a few references related to the NLGC remain on the statute book. This provision attributes the equivalent offices and bodies to the references (as provided in the Nauru Local Government Council Dissolution Act 1992).
68	A definition in a written law applies except so far as the context otherwise indicates.	None.	This provision shortens the language of written laws by removing the need to specify that terms apply 'unless the context otherwise requires' or 'unless the contrary intention appears'.
69	Other parts of speech and grammatical forms of a defined term have a corresponding meaning to the term.	Similar (s 2(3)).	This provision restates the existing provision, which ensures different grammatical forms of the same terms do not need to be individually defined.
70	A reference to a person generally (for example, 'party') includes a body as well as an individual.	None, but 'person' and 'party' are defined as including bodies and individuals.	This provision complements the definition of 'person' to deal with other, more general ways of referring to persons.
71	A reference to 'the Minister' is a reference to the Minister responsible for administering the provision in which the expression occurs.	Similar (s 2(1) & (2)).	This provision can be used to avoid obsolete and incorrect references to Ministerial portfolios, which can occur if a particular Minister is specified and responsibility for the provision is allocated to another Minister or the name of the portfolio changes. Instead of referring to a Minister by portfolio, it will be sufficient in the majority of cases to refer simply to 'the Minister'. Responsibility for laws may be allocated under Article 23 or the Administrative Arrangements Act 2011. Responsibility for every law in force is currently specified in an Administrative Arrangements Order made under that Act.

Clause	Description of new provision	Equivalent existing provision	Reasons
72	A reference to 'the Department' is a reference to the Department responsible to a Minister for administering the provision in which the expression occurs.	None.	This provision achieves the same result as clause 71 in relation to references to departments.
73	A reference to 'the Head of Department' is a reference to the head of the department responsible to a Minister for administering the provision in which the expression occurs.	None.	This provision achieves the same result as clause 71 in relation to reference to heads of departments.
74	This provision defines terms such as 'parent', 'spouse', 'stepchild', 'de facto relationship' and other related terms.	'Father' and 'son' are defined (s 2(1)).	This provision clarifies the meaning of most family relationships.
75	This provision defines terms to describe different categories of legal practitioner: <ul style="list-style-type: none"> <li>• a lawyer who is admitted in Nauru is a 'lawyer'</li> <li>• a lawyer who is admitted in Nauru and has a practising certificate (i.e. is entitled to practice) is a 'barrister and solicitor'</li> <li>• a lawyer who is admitted overseas is a 'foreign lawyer'</li> <li>• a person who is entitled to practice in Nauru, whether as a barrister and solicitor or a pleader, is a 'legal practitioner'.</li> <li>• a person who is entitled to practice in Nauru as a pleader is a 'pleader'.</li> </ul>	s 2(1) defines 'barrister and solicitor' in similar terms to the new definition.	The additional definitions provide terms for use in a wide variety of situations. For example, a lawyer admitted to practice overseas is often eligible for appointment to a statutory office. Similarly, a person who is admitted as a lawyer in Nauru might be eligible for appointment to certain positions, but appearing in court requires a practising certificate. The new defined terms will shorten the language of laws as the qualification of the legal practitioner in each case will not need to be specified.

Clause	Description of new provision	Equivalent existing provision	Reasons
<b>Division 3 – Offences and penalties</b>			
76	Defines 'written law' for the Division as meaning an Act or subsidiary legislation.	Not applicable.	This provision ensures the Division is not taken to authorise the imposition of a penalty for an offence against a statutory instrument other than subsidiary legislation (regulations, rules and by-laws).
77	A penalty specified at the foot of a provision indicates that a contravention of the provision is an offence for which the maximum penalty is the penalty specified.	None.	This provision ensures that a penalty at the foot of the provision is sufficient to render contravention of the provision an offence, even if the provision does not specify this. The provision also ensures that the penalty is the maximum penalty, even if the provision does not specify that it is the maximum penalty.
78	A penalty specified (otherwise than at the foot of a provision) for an offence against a provision of a law indicates that the maximum penalty for the offence is the penalty specified.	Similar (s 62(1))	This provision ensures that a penalty for an offence located otherwise than at the foot of a provision is the maximum penalty for the offence, even if the provision does not specify that it is the maximum penalty.
79	An offence applies to bodies corporate as well as individuals.	Similar (s 65(1))	This provision restates the existing provision that offences apply to bodies corporate.
80	If an offence provision does not specify a fine for a body corporate that is different to that for an individual, the maximum fine for a body corporate that commits the offence is 5 times the fine for an individual.	None.	It is appropriate for bodies corporate to be subject to higher fines than individuals, as bodies corporate tend to have access to substantially greater resources than individuals, which dilutes the deterrent effect of fines applicable to individuals if they are also applied to bodies corporate. This provision ensures that different fines do not have to be specified in offence provisions.

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
81	If an Act authorises a maximum penalty that may be imposed under subsidiary legislation made under the Act and does not specify a maximum penalty for a body corporate that is different to that for an individual, the maximum penalty that may be imposed on a body corporate under the subsidiary legislation is 5 times the maximum for an individual.	None.	For the reasons outlined for clause 80, this provision ensures that different maximum penalties do not have to be authorised for individuals and bodies corporate in each written law.
82	If the penalty for an offence is expressed to be both a fine and imprisonment, a person who is found guilty of the offence may be fined, imprisoned or both.	Same (s 62(2)).	This provision ensures that the court has discretion to impose penalties alternatively or cumulatively if both (not either) are prescribed as the penalty for an offence.
83	The maximum penalty that may be imposed by subsidiary legislation for an offence against the legislation is \$10,000 or 6 months imprisonment or both, unless the parent Act of the legislation specifies otherwise.	Similar (s 32(d)) except the current maximum fine is \$500.	Subsidiary legislation often contains serious offences, the proceeds of which can be substantial. The current maximum fine of \$500 reflects monetary values in 1972, when the existing provision was drafted.
84	Revenue from fines must be paid to the Republic.	Similar (s 64).	This provision is designed to avoid the misappropriation of fine revenue.

Clause	Description of new provision	Equivalent existing provision	Reasons
<b>PART 9 – ADMINISTRATIVE AND MACHINERY PROVISIONS</b>			
<b>Division 1 – Exercise of powers and functions generally</b>			
85	A power or function given to a person by a law may be exercised or performed from time to time.	Same (s 39).	This provision restates the existing provision, which ensures powers and functions can be performed or exercised as required.
86	The performance of a function or exercise of a power does not cease to have effect only because the person who performed or exercised it no longer has the power or function.	None.	This provision confirms that the previous exercise of a power or performance of a function by an office-holder is not affected if the individual holding the office ceases to hold the office.
87	In the absence of proof to the contrary, it is presumed that the conditions precedent to making a statutory instrument have been satisfied.	None.	Often a statutory instrument can only be issued after the person issuing it has taken certain steps, or is satisfied of certain matters. This provision provides a rebuttable presumption that such conditions have been satisfied.
88	A power under a written law may be exercised in whole or in part, subject to conditions, differently in relation to different matters or subject to exceptions.	No general provision but elements of this provision exist in relation to various powers (for example, ss 40 & 69).	This provision facilitates the shortening of the language of laws by providing for the ways in which a power can be exercised.
89	A power to take an action includes the power to revoke or amend the action, but this must be done in the same way as the action was taken.	Partially the same in relation to the power to make subsidiary legislation (s 31).	This provision articulates the common law position that a person who may take an action may also revoke or vary the action. It also ensures any conditions precedent to the original exercise of the power must be satisfied in exercising the power of revocation or variation.



<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
90	If a law provides for the establishment of a body with a common seal, the seal may be affixed only by a person authorised by the body to do so.	Similar (s 49) but lists office-holders who may affix the seal.	This provision ensures written laws do not need to make provision for the affixing of a seal, but simplifies the existing provision which does not provide certainty as to who may affix the seal if more than one of the listed offices exist.
<b>Division 2 – Powers of appointment</b>			
91	The power to appoint a person may be exercised by appointing a person by name or by reference to a position.	None.	Often, the holder of a particular position (for example, the head of a particular department) will be the most appropriate person to hold a particular statutory office. This provision enables a person from time to time holding the position to be appointed to the statutory office. Exercising the power of appointment in this way (instead of appointing a named person) will ensure the appointment does not need to be re-made when the holder of the position changes.
92	A power to appoint includes the power to terminate or suspend the appointee, but this must be done in the same way as the appointment was made.	Same (s 38)	This provision restates the current provision in simpler terms to ensure that a person with power to appoint a person may also remove or suspend the appointee. It also ensures any conditions precedent to the original exercise of the power must be satisfied in exercising the power of removal or suspension.
93	The power to appoint a person to a position includes the power to appoint a person (or 2 or more people) to act in the position, but this must be done in the same way as the power to appoint.	None.	This provision facilitates acting appointments, which are an essential aspect of public administration. The power to make ‘springing’ appointments reduces the likelihood of an office being unoccupied at any point.

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
94	A person appointed to act in a position has all the powers and functions of the position.	None.	This provision confirms the ability of persons acting in positions to exercise the powers and perform the functions of the position.
<b>Division 3 – Powers of delegation</b>			
95	Defines terms used in the Division.	Not applicable.	This provision allows for the shortening of the language of the Division by defining terms used within it.
96	A power to delegate a power or function may be exercised by delegating the power or function to a person (or 2 or more persons) by name or by reference to a position. The power to delegate cannot itself be delegated.	Partially the same - power to delegate cannot itself be delegated (s 40(5)).	Often, the holder of a particular position (for example, the holder of a particular public office) will be the most appropriate person to delegate a particular power or function to. This provision enables a power or function to be delegated to person from time to time holding a position. Exercising the power of delegation in this way (instead of delegating to a named person) will ensure the delegation does not need to be re-made when the holder of the position changes. The provision also restates the existing provision preventing a power of delegation from being delegated.
97	A person who has delegated a power or function to another person is not prevented from exercising the power or function.	None.	This provision preserves the ability of the substantive holder of a delegated power or function to exercise the power or function.

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
98	If a delegate exercises or performs a delegated power or function, the power or function is taken to be exercised by the person who delegated it. If the exercise or performance of the power or function is based on the state of mind of the person exercising or performing it, the delegate may exercise or perform it based on the delegate's state of mind.	None.	This provision confirms the ability of a delegate to exercise or perform delegated powers or functions. It also confirms that if, for example, a power to do something may only be exercised if the substantive holder of the power is satisfied that a particular state of affairs exists, the delegate may exercise the power if the delegate is satisfied that the state of affairs exists.
99	A person who has delegated a power or function to another person remains responsible for the proper exercise or performance of the power or function.	None.	This provision ensures that a substantive holder of a delegated power or function cannot avoid responsibility for ensuring the power of function is exercise or performed properly simply by delegating it.
<b>Division 4 – Service of documents</b>			
100	The provisions about service of documents apply whether the relevant law uses the word 'service' or another word requiring a document to be given to a person. They also apply to service of documents outside Nauru.	Same (s 66(1)) in relation to service by post except no existing provision about service outside Nauru.	This provision restates and expands the existing provision to ensure the wide application of the service provisions.

Clause	Description of new provision	Equivalent existing provision	Reasons
101	<p>A document may be served on an individual:</p> <ul style="list-style-type: none"> <li>• personally;</li> <li>• by post;</li> <li>• by fax;</li> <li>• by email;</li> <li>• by leaving it with another person at the address of the individual.</li> </ul> <p>The provision outlines what is required to be done to serve a document in any of these ways.</p>	<p>Service can be effected by post or in person (s 66(1) &amp; (2)).</p>	<p>This provision expands the methods of service to include modern telecommunications methods. It also outlines what is required to effect service by any of the permissible methods.</p>
102	<p>A document may be served on a body corporate:</p> <ul style="list-style-type: none"> <li>• personally;</li> <li>• by post;</li> <li>• by fax;</li> <li>• by email;</li> <li>• by leaving it with another person at the address of the body corporate.</li> </ul> <p>The provision outlines what is required to be done to serve a document in any of these ways.</p>	<p>Service can be effected by post, in person or by leaving the document at the address of the body corporate (s 66(1) &amp; (2)).</p>	<p>This provision expands the methods of service to include modern telecommunications methods. It also outlines what is required to effect service by any of the permissible methods.</p>
103	<p>This provision describes the point at which a document is taken to be served following each method of service other than personal service.</p>	<p>Same for post (s 66(1)), none for fax or email.</p>	<p>With the recognition of email and fax as methods of service, it is necessary to specify the point at which service is effected, including exceptions for delivery failure.</p>

Clause	Description of new provision	Equivalent existing provision	Reasons
<b>Division 5 – Other matters</b>			
104	Substantial compliance with an approved or prescribed form is sufficient.	Same (s 72).	Minor deviations from the approved or prescribed form of a document that do not affect the substance of the document do not make the document void. This provision could be relied upon, for example, if a prescribed form includes a partially blank date field that includes the obsolete '19..' for the first 2 digits of the year, the form can be changed to specify '20..'.
105	Unless a contrary intention is proved, it is presumed that a Gazette is evidence of the matters contained within it.	Same (s 68).	This provision restates the existing provision to ensure Gazettes can be relied on as authoritative publications.
<b>PART 10 – REPEALS AND TRANSITIONAL MATTERS</b>			
<b>Division 1 – Repeals</b>			
106	Gives effect to Schedule 1, which lists Acts that are repealed.	Not applicable.	The Interpretation Act 1971 needs to be repealed to facilitate the commencement of the new Act. The constituent legislation of the 1971 Act that is still in force is also repealed.
<b>Division 3 – Transitional matters</b>			
107	Defines terms used in the Division.	Not applicable.	This provision allows for the shortening of the language of the Division by defining terms used within it.
108	The requirement under the repealed Act to publish each Act in full in the Gazette is taken to have been met if notification of the certification of the Act has been published.	Not applicable.	This provision validates the existing practice of publishing notification of certification, rather than full versions of Act.

<b>Clause</b>	<b>Description of new provision</b>	<b>Equivalent existing provision</b>	<b>Reasons</b>
109	A fee made in reliance on section 35 of the repealed Act is not invalid only because of the repeal of the repealed Act.	Not applicable.	There are small differences between the new provision about the method of prescribing fees and the previous provision. This provision saves the validity of existing fees, so long as they have been validly prescribed.
110	Transitional regulations may be made for 12 months after commencement of the new Act.	Not applicable.	This provision allows regulations to be made for the transition from the repealed Act to the new Act, to ensure that a matter not dealt with by Part 10, Division 2 can be dealt with by regulation.