

Republic of Nauru – 20th Parliament

Education Bill 2011

EXPLANATORY MEMORANDUM

BACKGROUND AND OBJECTIVES

The two main objects of the *Education Bill 2011* are to improve the quality of education in Nauru, and to promote compulsory education. The Bill seeks to make available to each school-age child in Nauru an education that will maximise the child's educational potential and enable the child to become an effective and informed member of the community.

The Bill seeks to achieve this through measures such as requiring adherence to approved curricula, requiring all teachers to be qualified and registered, providing for the registration of non-government schools, imposing health and safety standards on all schools, and placing responsibilities on parents and the Government in relation to the education of school-age children.

At present, education is largely unregulated in Nauru. The *Compulsory Education Ordinance 1921-1967* is still technically in force, but it is not actively administered or enforced. There is no law regulating standards for curricula, for teachers or for school environments.

In 2007 the Education Department commenced work towards an Education Bill that would be suitable for Nauru, and that would enable Nauru to improve the standard of teaching and the standard of Education in Nauru. This Bill is the end result of a long internal process of developing policy standards that suit the needs of Nauru in terms of regulating and improving primary and secondary education, and translating that policy into draft legislation.

The Bill provides not only for primary and secondary education in government schools, but also for the registration of non-government schools, for the provision of home education, and for education that meets the special educational needs of students with disabilities.

The Bill reaffirms the right of every child to education, and the responsibility of every parent to choose a suitable educational environment for their child. The general principles in clause 7, which are intended to guide the achievement of the objects of the Bill, provide that the Government, parents, teachers, school communities and non-government entities should recognise the fundamental importance of education and work collaboratively to foster a commitment to achieving the best educational outcomes for school-age children.

NOTES ON PARTS, DIVISIONS AND CLAUSES

PART 1 – PRELIMINARY MATTERS

Part 1 comprises three standard provisions: short title, commencement, and the binding of the Republic. The commencement provision provides that the Act will commence 90 days after certification. This is intended to give the Education Department sufficient time to ensure that all persons who will be affected by the Act, particularly those who will have new responsibilities or obligations under the Act, have time to become familiar with the new rules before the Act comes into force. The Department will provide information and training to facilitate the administration of and compliance with the Act.

PART 2 - INTERPRETATION

Part 2 of the Bill concerns the interpretation of certain words used in the Bill.

PART 3 – OBJECTS AND GENERAL PRINCIPLES

Part 3 of the Bill sets out the objects of the Bill and the general principles that are intended to guide the achievement of the objects. Clauses 6 and 7 are not justiciable in themselves (they do not give rise to any binding legal obligations and cannot form the basis of a legal action), however they would be used to guide the Court in the interpretation of the Act in the event of any ambiguity. These provisions also explain the underlying purpose and spirit of the Bill.

PART 4 – COMPULSORY EDUCATION

Part 4 of the Bill concerns compulsory education of school-age children. A school-age child is defined in Part 2 as a child who on 1 January in any year is at least 4 years of age and under 18 years of age. The Part is divided into three divisions.

Division 1 covers the requirement for enrolment and the method of enrolment. **Clause 8** of the Bill provides that each parent of a school-age child must ensure the child is enrolled at a school until the child completes the school year during which she or she turns 18, unless the child is registered for home education or has been issued with a certificate of exemption. What this means in effect is that school is compulsory from pre-school to year 12. **Clause 9** enables parents to apply for a certificate of exemption from compulsory education for their child. The Secretary may grant a certificate of exemption if satisfied that the exemption is necessary or desirable, because for example, the parents want their child to be able to undertake an apprenticeship or some other form of training or employment before the child attains school-leaving age. The Secretary may also grant an exemption if satisfied that it is in the best interests of the child, having regard to the care, health, development or education of the child. **Clauses 10, 11 and 12** concern enrolment and the information that may be required for enrolment.

Division 2 comprises 5 clauses related to attendance at school. Clause 13 enables the Minister to prescribe the hours during which students are required to attend school, and to prescribe different hours for different school levels. Clause 14 requires each parent of a school-age child to ensure the child attends school on every school day if the child is enrolled in a school, unless the child is for some reason not permitted to attend or a parent has provided the principal with an acceptable reason for the child's non-attendance.

It is an offence for a parent to contravene clause 8(1) (obligation to ensure enrolment) or clause 14(1) (obligation to ensure attendance of enrolled student), however both clauses provide a number of defences.

Clause 15 sets out the circumstances in which a student is not permitted to attend school, namely: if the parent of a student has been given a notice that the child cannot attend school because of a contagious disease, if the student has been suspended, excluded or expelled, or if the school has been temporarily closed. If a student is not permitted to attend school, the parents must ensure the child does not attend school, and may be liable to a maximum penalty of \$50 for failure to meet this obligation.

Clause 17 reinforces the compulsory schooling requirement by making it an offence to employ a school-age child during school hours. The maximum penalty is \$1,000. This does not apply to employment of a child who is registered for home education, a child in respect of whom a certificate of exemption has been issued, or a child who is not permitted to attend school.

Division 3 concerns administration and enforcement. Clauses 18 and 19 require the principal of a school to keep proper records of enrolment and attendance, and to provide these records to the Secretary at prescribed intervals.

A parent cannot be prosecuted for breaching their obligation under clause 8 (enrolment) or 14 (attendance) unless reasonable steps have been taken to resolve the parent's contravention, and the parent has been properly warned about the penalties that may be imposed for further contravention (clauses 20 and 21). The penalty for a first offence is a maximum fine of \$50, and for a second or subsequent offence in the same school year, a maximum fine of \$250. A parent cannot simultaneously commit an offence under clause 8 and clause 14 in respect of a child, because clause 14 applies only if a child is enrolled at a school.

PART 5 – STANDARDS APPLICABLE TO ALL SCHOOLS

Part 5 of the Bill prescribes standards relating to curriculum, environment, health, school inspections, discipline and reporting that are applicable to all schools, whether government or non-government. The Part is divided into 6 Divisions.

Division 1 concerns curriculum. The Secretary must make curriculum submissions to the Board. The Board must then make recommendations to the Minister, and the

Minister approves curricula for each year level. The principal of a school must ensure that the curriculum for each year level is adhered to, and the Secretary must monitor the principal's compliance. The Board may request information from the Secretary or a principal about teaching and curricula, and the Board must report to the Minister about adherence to curricula. Clauses 34 and 35 which appear later in Division 4 of this Part are also relevant here, as the Board may appoint one of its members to be a school inspector, which may assist the Board in being able to report comprehensively to the Minister on adherence to curricula. Curricula may be modified by the principal of a centre for special education for the purpose of meeting the special learning needs of students enrolled at the centre.

Division 2 concerns the school environment, and requires the principal of a school to ensure that the school environment is clean, safe and secure, and that the school has clean running water and sufficient working toilet and bathroom facilities during school hours. If the principal is unable to meet this obligation, the principal may recommend to the Secretary (in the case of a government school) or the proprietor (in the case of a registered non-government school) that the school be temporarily closed. The Secretary or proprietor must then decide whether the relevant problem can be fixed promptly. If it can, the Secretary or proprietor must immediately arrange for the problem to be fixed. If it cannot be fixed promptly, the Secretary or proprietor must order the temporary closure of the school. If a school is temporarily closed, the Secretary or proprietor must ensure students are safely transported, parents are notified, and the problem is fixed as quickly as possible.

Division 3 covers health, and enables the Secretary for Education or the Department of Health to arrange for a health practitioner to visit a school to examine or treat students, or to advise the principal on any matter relating to the health or welfare of students. If the visit is to include examination or treatment of students, the principal must notify parents and provide them with an opportunity to object. This Division also requires health practitioners to notify parents of a child's disability, and requires parents to notify the principal of their child's school if the child has a contagious disease. The principal of a school may issue a notice to the parents of a student who is or appears to be carrying a contagious disease directing that the student must not attend school.

Division 4 deals with school inspections. Clause 34 provides that the Minister may appoint an officer of the Department to be a school inspector, and the Board may appoint one or more of its members to be school inspectors. Under clause 35, a school inspector may enter a school at any time to inspect the school or anything in it, and if the inspector knows or suspects that the Act is being or has been contravened, the inspector must notify the Minister (and, if the inspector is a member of the Board, the Board).

Division 5 concerns discipline of students. If a principal of a school is satisfied on reasonable grounds that a student has exhibited unacceptable behaviour, the principal

may impose detention on the student or suspend the student for up to 5 days. If the principal thinks the behaviour warrants more serious discipline, the principal may refer the matter to the Secretary. The Secretary may suspend the student for up to 20 days, exclude the student for more than 20 days, or expel the student from the school. The principal must ensure that a student who is suspended or excluded is given appropriate school work to do during that period. The only reason for the distinction between suspension (up to 20 days) and exclusion (more than 20 days) is that, because exclusion is lengthier and therefore more serious, parents can apply to have an exclusion revoked (which they cannot do in relation to a suspension). The Secretary may revoke an exclusion or expulsion, either on application by a parent or on the Secretary's own motion, if the Secretary is satisfied that the student is willing to behave in an acceptable manner. Corporal punishment of students by a principal or teacher is an offence carrying a maximum penalty of \$500.

Division 6 contains only one clause, which requires the principal of a school to establish procedures for giving a report at least twice a year to the parents of each student enrolled at the school about the student's academic progress and social development at the school.

PART 6 – TEACHER REGISTRATION AND CURRICULUM BOARD

Part 6 of the Bill provides for the Teacher Registration and Curriculum Board. The earlier provisions relating to the process for developing approved curricula and monitoring adherence to approved curricula, and the later provisions relating to the registration of teachers, are designed to raise the standard of education. The rationale for having the curriculum recommendation and monitoring functions and the teacher registration functions vested in a new Board rather than in the Department of Education, is to ensure that these functions are performed independently and to enhance transparency. The establishment of a Board for these purposes also enables Government to utilise the knowledge of people who do not work in the Department but who have the appropriate level of education, experience and wisdom to perform their functions competently and objectively.

The Board is made up of 5 members appointed by Cabinet. Before making appointments to the Board, Cabinet must publish a notice in the Gazette inviting members of the public to nominate suitable persons for appointment, and Cabinet must consider any nominations received. Cabinet must also be satisfied, before appointing a person to the Board, that the person is of good character, of strong integrity and capable of performing the functions of a member of the Board in a competent and objective manner. A Board member holds office for up to 2 years, is eligible for reappointment, and may have his or her appointment revoked by Cabinet. The Board must meet at least once a month, must provide minutes of its meetings to the Minister, and must provide an annual report to the Minister, which must be tabled in Parliament.

Clause 43 provides that the principal purpose of the Board is to improve the quality of education in Nauru by overseeing the implementation of approved curricula and teacher registration, and it sets out the main powers and functions of the Board. The Board may arrange for administrative assistance from the Department, and must comply with any written direction from the Minister.

PART 7 – TEACHER REGISTRATION

Part 7 of the Bill provides for teacher registration. The purpose of introducing rules for teacher registration is to ensure that all persons who teach in schools are of good character, that they are suitably qualified to provide high-quality teaching, and that teachers who are not fit to teach can be removed from the register.

Division 1 establishes the basic requirement for a teacher to be registered, and makes it an offence to teach without being registered or supervised, and an offence to employ someone to teach who is not registered or supervised.

Division 2 prescribes the standards and procedures for teacher registration. The Board is required annually to publish standards that specify what constitutes a recognised teaching qualification, and what the professional development requirements are for registered teachers. A person may apply to the Board for full registration (available to a person who has a recognised teaching qualification and at least 12 months' teaching experience to the satisfaction of the Board), provisional registration (available to a person who has a recognised teaching qualification), or a limited authority to teach a particular subject at a particular school (available to a person who does not have a recognised teaching qualification but who has the appropriate skills, knowledge or experience that an available registered teacher does not have). The transitional provisions (see Part 15, below) provide for gradual transition, so that teachers who are currently teaching but do not yet have a recognised teaching qualification are provided with sufficient time to obtain a recognised teaching qualification before the new system becomes absolute. In order to grant any form of registration, the Board must be satisfied that the person is of good character, and clause 52 sets out how good character is to be determined. The Board may impose conditions on registration, for example, restricting the subjects that a person may teach. Clause 59 provides that no fees may be charged for an application or registration.

Division 3 requires the Board to keep a teachers register, and specifies the details that must be kept in the register, as well as making provision for limited inspection of the teachers register.

PART 8 – INQUIRY AND DISCIPLINE

Part 8 covers disciplinary action against teachers. Clause 64 requires a teacher who is charged with a sexual offence or convicted of a serious offence to notify the Board within 28 days after the charge or conviction, and imposes a maximum penalty of \$500

for failure to notify. On receiving such notice, the Board may caution the teacher or, if the Board thinks the circumstances of the offence or charge make the teacher unfit to teach, suspend or cancel the teacher's registration or authority. Clause 66 requires an employer to notify the Board if the employer dismisses a teacher, or if a teacher resigns in circumstances that call into question the suitability of the teacher to teach.

Clause 67 enables a person to complain to the Board about the professional conduct of a teacher, and clause 68 sets out the circumstances in which the Board may decide to hold an inquiry in respect of a teacher. These circumstances include when a complaint has been made, if the Board reasonably believes that a teacher is not fit to teach, and if the Board reasonably believes the teacher is no longer of good character. The Board must also be satisfied that it would be in the public interest to hold the inquiry.

The Board can conduct an inquiry itself, or can appoint a committee of inquiry made up of 1 member of the Board and 2 registered teachers. The Board must give the teacher proper notice of the inquiry and the teacher may provide a written statement in response or may appear in person and may be represented by another person. Clause 72 sets out the decisions the Board may make as a result of an inquiry, including a decision to suspend or cancel the teacher's registration, to caution the teacher, or to dismiss the complaint or matter being inquired into. A decision to suspend or cancel the teacher's registration is a reviewable decision (see Part 13, below).

PART 9 – GOVERNMENT SCHOOLS

Part 9 of the Bill includes a number of general provisions that apply only to government schools. Clause 73 enshrines the basic principle of free public education, which is a right guaranteed in the Convention on the Rights of the Child.

Clause 74 provides that the Minister may establish, amalgamate or close government schools, and must notify any such action in the Gazette. Clause 75 makes general provision for the operation of government schools: the Secretary is responsible to the Minister for the operation of government schools, and the principal is responsible to educational leadership and management, educational outcomes, fulfilling responsibilities assigned under the Act, and ensuring the school is operated in accordance with the Act.

Clause 76 provides that education in government schools must be non-sectarian and secular, but that this may include the study of different religions as opposed to education in a particular religion. This clause gives effect to the protection of the right to freedom of conscience, thought and religion enshrined in Article 11 of the Constitution.

Clause 77 provides a limited exception to the provision on secular education, by permitting religious education for up to one hour per week by representatives of recognised religious denominations. This provision reflects the current practice whereby representatives of various churches provide weekly religious education

classes in government schools. Under clause 77, such classes are not compulsory, and must be conducted separately from normal classes. The principal of a school must comply with the wishes of a student's parents (indicated on the enrolment form – see section 11) in relation to whether or not the student may attend religious education class. This means that a parent can notify the principal that their child must not attend religious education, but that if a parent notifies that it is permissible for their child to attend religious education, the child can decide.

Clause 78 requires the Secretary to develop and implement a policy for handling complaints about government schools, and to investigate any complaint that is not frivolous or vexatious.

PART 10 – NON-GOVERNMENT SCHOOLS

At present there is no legal mechanism for the regulation of non-government schools in Nauru. The Bill provides for the compulsory registration of non-government schools, and makes it an offence to operate a government school that is not registered. The rationale for this is to ensure that all school students benefit from the government's effort to raise the standard of education through measures such as approved curricula and teacher registration.

A person wishing to register a non-government school may apply to the Minister, and clause 80 sets out the requirements of the application. On receiving the application, the Minister must request a report from the Secretary on whether the proposed school meets the criteria for registration. The criteria for registration are provided for in clause 81, and include a full understanding by the principal of the conditions of registration, facilities of an adequate standard, financial viability, and satisfaction of the Minister that the registration of the school would not be contrary to the public interest. After considering the Secretary's report, the Minister decides whether to grant registration to the school. Registration is for a period up to 2 years, which means a registered non-government school must renew its registration at least every 2 years. Clause 84 sets out the procedure for renewal, and the information that must be included in an application for renewal of registration.

The conditions of registration of a non-government school are provided in clause 83: the school must provide high-quality education, the proprietor and the principal must cooperate fully with a school inspection or assessment, the proprietor must develop a complaints policy, the proprietor, principal and staff of the school must comply with the Act, and the principal of the school must not allow extra-curricular teaching or activities to interfere with the teaching of the full approved curricula. This last condition recognises that registered non-government schools may conduct lessons or other activities that are not part of the approved curricula (particularly if they are religious schools), but that these additional lessons or activities cannot detract from teaching the approved curricula to which all schools must adhere.

Clause 87 provides for the cancellation of the registration of a non-government school if a condition of registration has been contravened or if the Minister is satisfied on reasonable grounds that it is in the best interests of the students at the school to cancel the registration.

Clause 90 provides that the proprietor of a registered non-government school must report to the Secretary every six months on learning outcomes for students at the school, the school's financial situation and the details of the handling and resolution of complaints received by the school. At least once during every period of registration, the Secretary must arrange for an assessment of the school to ensure that the school is complying with its conditions of registration (clause 91). The Secretary must provide the assessment report to the Minister.

Clause 92 is intended to spell out the commitment of the Republic to funding the primary and secondary education of all school-age children in Nauru, whether they choose to attend a government school or a non-government school, but clarifying that this is only possible within the constraints of the resources that are available. The clause provides that while government may provide funding to non-government schools, and will use its best endeavours to do so, it will not fund non-government schools to an extent that would compromise government's ability to provide quality education for school-age children at government schools. This provision is intended to affirm the Republic's long-term commitment to doing what it can to assist registered non-government schools so that all students can benefit from the public funding of education.

PART 11 – SPECIAL EDUCATION

Part 11 makes provision for the principle of inclusive education, and for the special education of students with disabilities. The principle of inclusive education is designed to ensure that, wherever practicable, students with a disability can be integrated into mainstream schools. Where that is not practicable, they can be provided with schooling at a centre for special education that is better adapted to meet the special educational needs of students with disabilities. Clause 95 provides that a student with a disability must not be excluded from access to free primary and secondary education on the basis of disability, and that the Government must use its best endeavours, within available resources, to ensure that students with disabilities receive appropriate support measures and that an adequate number of teachers are appropriately trained to support persons with disabilities. Clause 95(3) requires the Minister to establish a centre for special education, which means that when the Act comes into force the Minister would establish the existing Able-Disable Centre as a centre for special education under the Act.

PART 12 – HOME EDUCATION

Part 12 provides for the registration of a child to receive home education, as an alternative to enrolling in and attending a school. Home education is defined in Part 2 as being education provided at the child's home base. If only one of the child's parents apply for registration of the child for home education, the other parent must be notified of the application and has the opportunity to make submissions to the Secretary about the application (in other words, to object). In deciding the application, the Secretary must consider any submissions received by a non-applicant parent. The Secretary may approve the application if satisfied that the conditions of registration will be complied with and that the home education will not be harmful to the interests of the child. The registration period is up to two years, which means that registration must be renewed at least every two years. The conditions of registration are: the parents of the child must ensure the child is provided with a high-quality education, they must document the educational opportunities offered to the child and the learning strategies employed, and they must make available for inspection on request by the Secretary or an authorised person any education programs, materials or other records used for home education (clause 99).

The Secretary may cancel the registration of a child for home education if satisfied on reasonable grounds that a parent has contravened a condition of the registration (clause 100). If the Secretary is proposing to cancel the registration, the parents must be given notice and an opportunity to respond. If the registration is cancelled, the decision is reviewable under Part 13.

Under clause 103, the parents of a child registered for home education must give the Secretary a report about the educational progress of the child once every year.

PART 13 – REVIEW OF DECISIONS

Part 13 of the Bill sets out the rights of persons affected by specified decisions to apply for review or appeal of the decisions. The table for clause 105 lists the decisions that are reviewable, with cross-references to the relevant clauses of the Bill. These include a decision to reject an application for a certificate of exemption, to suspend or cancel a teacher's registration, to refuse to register a non-government school or cancel the registration of a non-government school, and decisions relating to registration of a child for home education. If the initial decision was made by the Secretary or a principal, the decision can be reviewed on its merits by the Minister. The Minister can affirm, vary or set aside and substitute the decision. If the decision was made by the Minister (including a decision made by the Minister on review of a decision made by the Secretary or a principal) or by the Board, the decision can be appealed on a point of law to the Supreme Court. The Supreme Court can either affirm the decision or refer the matter back to the decision maker with directions to reconsider the whole or any specified part of the matter.

PART 14 – MISCELLANEOUS PROVISIONS

Part 14 covers a range of miscellaneous matters. The first two clauses concern general offences: offences on school premises, including trespassing and offensive or disorderly behaviour; and providing false or misleading information to a person who is exercising powers or performing functions under the Act. The maximum penalty for providing false or misleading information is a fine of \$10,000 and 12 months imprisonment. This offence could involve for example the commission of serious fraud in relation to making an application for registration as a teacher or registration of a non-government school.

Clause 111 protects any person who exercises a power or performs a function under the Act (for example, a Board member, principal etc) from criminal or civil liability for anything done or omitted to be done in good faith.

Clauses 112, 113 and 114 are standard administrative provisions: empowering the Minister to approve forms, empowering the Secretary to appoint authorised persons, and empowering Cabinet to make regulations under the Act.

PART 15 – REPEAL AND TRANSITIONAL PROVISIONS

Part 15 repeals the *Compulsory Education Ordinance 1921-1967* and provides for transitional matters. Clause 117 provides for the gradual transition from the current unregulated system of teaching to the new system of teacher registration. Sub-clause (1) provides all person currently teaching with 12 months from commencement within which to register, and provides that they may continue to teach in the meantime without being registered. Sub-clause (2) is intended to provide for teachers who do not yet have a recognised teaching qualification but who are studying towards one. These teachers may be provisionally registered even though they do not yet have a recognised teaching qualification, until 1 January 2015, when the transitional period will end and all teachers will have to have a recognised teaching qualification in order to be fully or provisionally registered.

Clause 118 provides that when making appointments to the first Board after commencement, Cabinet must appoint 2 of the members for a term of 1 year (rather than the usual term of up to 2 years). This is to ensure that the members of the Board have different terms of appointment and therefore that the membership is renewed gradually at different times and not all at once, thereby ensuring there is always some continuity in membership and experience. Clause 119 is a transitional provision for non-government schools, which provides that existing non-government schools can continue to operate without being registered for the remainder of the year in which the Act commences, but must be registered for the following school year. For the first year of registration, the normal application deadline is reduced from 6 months before the start of the school year, to 2 months before the start of the school year.

Clause 120 provides that the Minister must approve a curriculum for each year level for the start of the next school year after commencement. Until that has been done, requirements to adhere to approved curricula do not apply.