

**Constitution of Nauru (Parliamentary Amendments)  
(Consequential Amendments) Bill 2010**

**EXPLANATORY MEMORANDUM**

**Interpretation**

In this memorandum:

**'amended Article'** means an Article of the Constitution to be amended by the PAA;

**'new Article'** means an Article of the Constitution to be inserted by the PAA;

**'PAA'** means the *Constitution of Nauru (Parliamentary Amendments) Act 2009*;

**'RAB'** means the *Constitution of Nauru (Referendum Amendments) Bill 2009*.

**Explanation of clauses**

**Clauses 1 and 2** provide for the short title and commencement of the Act.

**Clause 3** enables the Schedule, which amends the PAA.

**Schedule**

**Item [1]** repeals and substitutes the commencement provision of the PAA to remove the spent requirement that the PAA be amended before commencement.

**Item [2]** amends the new Preamble to recognise the inalienable freedoms protected under Part II of the Constitution.

**Item [3]** inserts a new amendment to repeal and replace the Arrangement of Parts (a brief table of contents). The new Arrangement of Parts will reflect the changes in the numbering of the Constitution following the amendments made by the PAA.

**Item [4]** amends section 5 to renumber the new Articles about customary law and the Nauruan language. Previously these would have been new Articles 2B and 2C because the RAB would have inserted Article 2A. These provisions will now be new Articles 2A and 2B.

**Item [5]** inserts two new amending sections into the PAA: sections 5A and 5B. Section 5A proposes a new amendment to insert new Articles 16A and 16B. These Articles will outline the powers and functions of the President and insert a new Presidential oath of office. The President derives many of his powers and functions from specific provisions of the Constitution, but new Article 16A will list all the powers and functions given to the President by other provisions. This will assist the reader in

immediately determining what the role of the President is. The President's powers and functions are not limited to those listed in Article 16A, and include other powers and functions vested in him by law. Article 16A also specifies this. The content of Articles 16A and 16B was originally included in the amendments to Article 16 contained in the RAB. Because proposed Articles 16A and 16B do not alter or have the effect of altering any of the Articles listed in the Fifth Schedule, they can be effected by inclusion in the PAA.

Proposed new section 5B inserts a new amendment into the PAA to insert new Articles 17A and 17B in the Constitution. Article 17A will outline the powers and functions of Cabinet. This provides a clear statement of the goals of Cabinet. New Article 17B will enshrine the fundamental principle of international law that a treaty does not have effect domestically unless Parliament makes some legislative provision to give effect to it. The content of Articles 17A and 17B was originally included in the amendments to Article 17 contained in the RAB. Like proposed Articles 16A and 16B, because these new Articles do not alter or have the effect of altering any of the provisions listed in the Fifth Schedule, it is not necessary to subject them to referendum, and these proposed amendments can be effected by including them in the PAA.

**Item [6]** makes a drafting change to improve the clarity of new Article 21(3), omitting a reference to 'the preceding clause' and instead naming the clause.

**Item [7]** makes a necessary consequential amendment to Article 21A(3), removing paragraph (d) – which was inserted by the PAA – because it refers to a person assuming the office of President under Article 16D (an Article that was proposed in the RAB, and which is therefore now obsolete). It also makes a drafting change to improve the clarity of new Article 21A(6), omitting a reference to 'the preceding clause' and instead naming the clause.

**Item [8]** makes a drafting change to Article 23(2), for the sake of accuracy and consistency with the language used in Article 23(1), whereby the President is described separately from the Ministers (he may assign to himself or to any Minister responsibility for any business of government).

**Item [9]** repeals section 10, which would have inserted a new Article 24 had the RAB been approved at referendum. The PAA contains two alternate versions of a new Article 24, with the remaining version (inserted by section 11) intended to be inserted if the RAB was not approved at referendum. The first version stipulated that a successful motion of no confidence would result in automatic dissolution of Parliament. The second version, which is the version that will now be inserted, retains the current position that a successful motion of no confidence results in an election of a President rather than a dissolution of Parliament, with the modification that a second successful motion in one term of Parliament will result in dissolution.

**Item [10]** amends the second version of the new Article 24 to change references to 'President and Cabinet' to 'President and Ministers'. This is the correct terminology as the President is a member or Cabinet. Item 10 also amends the amending words in section 11 to remove the spent caveat that this version of Article 24 will only be inserted if the RAB is not approved at referendum.

**Item [11]** makes some minor corrections to the punctuation in Article 27A(4), which do not change the meaning or effect of the provision.

**Item [12]** inserts a new amending section in the PAA to amend Article 28. The proposed amendment to Article 28 would change the number of members of Parliament from 18 to 19.

**Item [13]** makes two drafting changes to improve the clarity of new Article 32(1A) and (1B). It replaces a reference to 'forthwith' with the plain language alternative, and it omits a reference to 'the preceding clause', instead naming the clause.

**Item [14]** amends the amendment to Article 34 to remove an obsolete clause about the Council of State, a concept that would have been included in the Constitution had the RAB been approved at referendum. It makes consequential amendments to the amended Article to renumber it following the change.

**Item [15]** omits an obsolete reference in Article 40 to the nomination of candidates for President that would have been required had the RAB been approved at referendum and the President been elected by the people from candidates nominated by Parliament. It also renumbers new clause (1A) as new clause (1B), as a result of breaking clause (1) up into two halves (clauses (1) and (1A)) in an attempt to make these provisions easier to follow. The date by which the first sitting of a new Parliament after a general election must occur has been changed from 'the second Tuesday after the day on which a general election is held', to 'the tenth day after the last day on which a candidate at a general election is declared elected', to provide for the possibility that there may be a delay in the declaration of a result.

**Item [16]** amends the amendments to Article 41 to reverse amendments included in readiness for the first alternate version of new Article 24 (see item 9) being inserted. This version stipulated that a successful motion of no confidence would result in automatic dissolution of Parliament. The second alternate version, which will now be adopted, retains the current position that a successful motion of no confidence results in an election of a President rather than a dissolution of Parliament, with the modification that a second successful motion in one term of Parliament will result in dissolution. The amendments reversed would have made changes to reflect the automatic dissolution option. Item 16 also omits an obsolete reference to the nomination of candidates for President, and removes a clause about dissolution if Parliament cannot nominate candidates. This item also amends the language used in new clause (8) to describe the day by which Parliament must have elected certain office bearers, in the same manner as in Article 40 (item 15): changing it to 'the conclusion of the tenth day after the last day on which a candidate at a general election is declared elected.'

**Item [17]** makes changes to Article 43 to remove the orphaned subsection number (1) that would have remained in this Article.

**Item [18]** makes drafting changes to new Article 44A to accurately reflect the content of the provision and the powers and functions of the Speaker.

**Item [19]** makes drafting changes to amended Article 48 to replace archaic language with the plain language alternative.

**Item [20]** replaces references to 'any common law country' in amended Article 49 with 'a common law country' to ensure the provision is not misinterpreted to mean 'every common law country'. The item also amends references in amended clause (3) to 'any designated country' so that they read 'a country designated under clause (4)', which is a more precise formulation.

**Item [21]** inserts additional words into amended Article 54(1) to direct readers to qualifications on the operation of the clause contained in later clauses, and also corrects references to ‘the Constitution’ to ‘this Constitution’ for the sake of consistency. This item also removes from new Article 54(5) the concluding words ‘and the Supreme Court shall not grant relief at the suit of any other person’, because they are superfluous.

**Item [22]** amends new Article 57 to remove superfluous references to the extent of Parliament’s legislative power to regulate the Court’s exercise of its jurisdiction, rendering clause (1) of new Article 57 a provision that simply states the jurisdiction of the Appellate Division of the Supreme Court, without referring to Parliament’s inherent legislative power. This item also removes from clause (3) the limitation on appeals in civil matters that had been previously been imposed under the PAA amendment.

**Item [23]** amends the new Article 57A (which inserts a leadership code) to replace a reference to a department in the Public Service with a reference to a department of government. It also corrects an incorrect use of the plural ‘clauses’.

**Item [24]** makes a drafting change to new Article 57C to replace archaic language with the plain language alternative. It also restructures new Article 57D(7) so it is easier to read.

**Item [25]** replaces and renumbers new Article 58A as Article 59A and relocates it to the provision following Article 59. This ensures the provision, which contains requirements that flow from the requirements of Article 59, is logically located. New Article 59A has also been amended so that the timing of the presentation of the budget accords with Article 59. Previously, the new Article would have required the estimates to be presented before the end of the financial year, even though Article 59 allows Parliament to fix a later date for the presentation of estimates. Article 59 is contained in the Fifth Schedule to the Constitution, so any provision that would have the effect of altering it must be approved at referendum. The requirement to present estimates earlier than required under Article 59 could have been challenged on the basis that it had the effect of altering the requirement contained in Article 59. The object of Article 58A was to ensure that an annual appropriation law is presented to Parliament each year and that the estimates are presented at the same time as the annual appropriation law. This has been achieved in the re-drafted Article 59A without offending the timing requirements of Article 59.

**Item [26]** makes numbering amendments consequential to the renumbering of Article 58A. It also inserts a definition which was previously located in Article 66A but which applies also to Article 59B. Locating the definition in Article 59B assists readers who may otherwise have overlooked the definition in Article 66A. The definition is in fact two definitions that have been combined into one, and consequential amendments have been made to clause (2).

**Item [27]** amends the amending words in section 41 to correct the amending formula used to effect the amendment. It also removes new Article 61(1A), as this provision could be inconsistent with Article 59 by limiting the number of supply bills proposed each year. In addition, the focus of the amendments to Article 61 is the limitation of withdrawals from the Treasury Fund without an Act of Parliament, and the insertion of new clause (5) achieves this without new clause (1A). Item 24 also removes references to provisions of Article 61A which will not exist following the amendments made by item 25.

**Item [28]** omits and substitutes new Article 61A. Clauses relating to the Council of State are now obsolete and have been removed. Also, new Article 61A no longer includes dissolution provisions. This is because the dissolution provisions in Articles 24 and 41 are sufficient to deal with a government's failure to pass a money bill. If the government cannot pass a money bill, it would also have insufficient numbers to survive a motion of no confidence. If a new Parliament is unable to pass a money bill because it could not elect a Speaker, President or Deputy President, it would be dissolved under Article 41(8). The remaining (re-drafted) provisions of new Article 61A provide for the withdrawal of moneys to meet the expenditure necessary to carry on the services of the Republic when Parliament has been dissolved under Article 24 or 41 and funds cannot be withdrawn under an appropriation or supply law.

**Item [29]** makes a minor amendment to Article 63, removing superfluous words.

**Item [30]** amends the definitions in new Article 66A to correct some inconsistencies between them. It also makes amendments consequential to the changes to the defined terms and the renumbering of Article 59B. Item 26 also omits references to 'the preceding clause', instead naming the clause.

**Item [31]** amends new Article 67A to omit a vague paragraph requiring accountability in public administration, but not specifying to whom public administration is accountable. It also makes consequential paragraph numbering changes.

**Item [32]** amends amended Article 70(1) to insert words alerting readers to the qualification on the operation of the clause contained in the new clause (9).

**Item [33]** makes a drafting change to new Article 70A to replace a reference to 'any appeal from any judgment' with 'an appeal from a judgment' for clarity.

**Item [34]** makes some renumbering changes to Article 72.

**Item [35]** amends Article 76 to make renumbering changes.

**Item [36]** amends amended Article 77 to correct a numbering error.

**Item [37]** amends amended Article 78 to ensure consistent use of terminology.

**Item [38]** replaces the amendment to Article 79 to ensure consistent use of terminology.

**Item [39]** amends amended Article 80 to improve the clarity of the provision. Amended Article 80 requires the President to take into account the advice of a new Committee before exercising the prerogative of mercy, but lacks a requirement that the President refer the matter being considered to the Committee for inquiry. Item 33 inserts this requirement.

**Item [40]** reverses the amendment to the definition of '**Minister**' to restrict it to a definition of a generic reference to a Minister. A definition of '**Minister**' where the term is used to refer to a specific Minister requires further elaboration and will be proposed as an amendment to the *Interpretation Act*. It also amends the referential definition of 'an office in the public service' to exclude the offices of Ombudsman, Director of Audit and Director of Public Prosecutions, which are all constitutional offices.

**Item [41]** amends Article 82 to change the Article heading, and make some renumbering changes.

**Item [42]** inserts a new amendment to insert a new Article 84B requiring promotion of awareness of the Constitution. This provision was originally included in the RAB as new Article 2A.

**Item [43]** makes numerous amendments to the transitional provisions to remove references to amendments that would have been made by the RAB and therefore would have required corresponding transitional provisions.

**Item [44]** inserts a new amendment to insert the Seventh Schedule, which prescribes the Presidential oath of office enabled by Article 16B, and also amends the Second Schedule to increase the number of Members for Meneng to 3.

Parliament of Nauru

***Constitution of Nauru (Parliamentary Amendments)  
(Consequential Amendments) Bill 2010***

**Attachment to Explanatory Memorandum:**

**DRAFT (AMENDED) CONSTITUTION**

**21 December 2010**

Text showing the existing Constitution of Nauru  
with all proposed amendments marked in the text

Amendments shown in blue text are contained in the *Constitution of Nauru (Parliamentary Amendments) Act 2009*.

Amendments shown in red text are proposed consequential amendments to the *Constitution of Nauru (Parliamentary Amendments) Act 2009* and are contained in the *Constitution of Nauru (Parliamentary Amendments) (Consequential Amendments) Bill 2010*.

## THE CONSTITUTION OF NAURU

~~WHEREAS we the people of Nauru acknowledge God as the almighty and everlasting Lord and the giver of all good things:~~

~~And Whereas we humbly place ourselves under the protection of His good providence and seek His blessing upon ourselves and upon our lives:~~

~~And Whereas we have declared that Nauru shall be a republic:~~

~~And Whereas a Constitutional Convention representing us has prepared a constitution for Nauru:~~

~~Now Therefore we the people of Nauru in our Constitutional Convention this twenty-ninth day of January, One thousand nine hundred and sixty-eight, do hereby adopt, enact and give to ourselves this Constitution to come into force on the thirty-first day of January, One thousand nine hundred and sixty-eight.~~

### PREAMBLE

WHEREAS Nauru became a sovereign independent Republic on the thirty-first day of January, 1968 under a Constitution adopted by a Constitutional Convention which held its final meeting on the seventeenth day of May 1968;

And WHEREAS after forty years, we have reviewed our independence Constitution, and a Constitutional Convention and Parliament representing us have prepared a revised Constitution for Nauru, we hereby introduce the Constitution as revised:

WE, THE PEOPLE OF NAURU, acknowledge God the almighty as the Creator and everlasting Lord and the giver of all good things. We humbly place ourselves under the protection of His good providence and pray for His blessing upon our beloved nation, ourselves, our lives and upon our land. We honour our history and declare our aspirations in this document, and acknowledge that our national motto is 'God's Will First'.

We proudly acknowledge and honour our ancestors, who made this beautiful and isolated island their home and built a friendly society based on amicable agreements. Nauru, our beloved Pacific island home, is the living link between all generations of Nauruans. On this island we have built our own unique society, and we pledge to safeguard and maintain our rightful home, history and future on this island.

Nauru has faced and survived many challenges, including foreign rule and the impact of foreign cultures, the devastation of war, and the destruction of much of the natural beauty of our island. We have been blessed with vast phosphate resources, which we as a people have used with mixed outcomes. In the face

of these challenges, our people have proven themselves to be resilient and adaptable.

We deeply respect and acknowledge the great leadership and achievements of our founding forefathers, who struggled for and won our independence, and enabled us to take our place, on equal terms, in the modern family of nations. We extend to other peoples and nations what we seek from them: peace, friendship, mutual understanding and respect for our common humanity and human dignity.

The Nauruan people expect honest and accountable government. We have reviewed our Constitution, striving to ensure that Nauru's future will be bright and that public institutions will serve the people with integrity.

The people of Nauru set out for themselves and for their governing institutions the following principles:

We strive for peace, justice, stability, welfare, progress and prosperity of the people;

Our institutions shall serve the people accountably and transparently and observe high ethical standards;

We affirm our commitment to democratic values and affirm that all power belongs to the people acting through their elected representatives and exercised through the institutions established in this Constitution, and that the people shall participate in the governance of their affairs;

We uphold respect for human dignity and the human rights of all people and affirm the protection of fundamental and inalienable rights and freedoms under Part II of this Constitution;

We seek to preserve the value of resolving matters of importance by consensus or compromise and recognise the need for courtesy and respect;

We recognise the importance of communities, respect for elders, and the strength and support of the family;

We uphold the importance of sharing within the extended family and the community;

We acknowledge and affirm the pride Nauruans have in their role as custodians of the land, and the importance of land and sea to the Nauruan people. We acknowledge the importance of kinship and oral history in matters concerning land;

We value highly the knowledge and history handed down over generations;

We affirm the matrilineal basis of our society and take pride in our traditions, culture, heritage, aspirations, respect for family life, our 12 tribes, kinship, and the preservation and unity of the people;

We acknowledge the need to be open to adapt to changing circumstances in the modern world and to be open to the gradual development of changing values and priorities:

These principles, under the guidance of God, are solemnly adopted and affirmed as the basis of this Constitution, and as the guiding principles to be observed in its interpretation and application at all levels of government and organised life.

AND WE DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS AMENDED CONSTITUTION.

Demoniba enim ogeidawianaw eben bwietā Naoero.

(May God bless our homeland Nauru)

Demoniba enim ogeidawianaw ata ngame.

(May God bless our people)

## **ARRANGEMENT OF PARTS**

Part I The Republic of Nauru and the Supreme Law of Nauru (Articles 1 and 2).

Part IA Custom and Language (Articles ~~2B-2C~~ 2A-2B)

Part II Protection of Fundamental Rights and Freedoms (Articles 3-15).

Part III The President and the Executive (Articles 16-~~25~~ 24).

Part IV The Legislature (Articles 26-47).

Part V The Judicature (Articles 48-57).

Part VA Leadership Code (Article 57A)

Part VB Ombudsman (Articles 57B-57E)

Part VI Finance (Articles 58-67).

Part VII The Public Service (Articles ~~68-70~~ 67A-70A).

Part VIII Citizenship (Articles 71-76).

Part IX Emergency Powers (Articles 77-79).

Part X General (Articles 80-~~84~~ 84A-84B).

Part XI Transitional Provisions (Articles 85-~~86A~~ 100).

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## PART I – THE REPUBLIC OF NAURU AND THE SUPREME LAW OF NAURU

### 1 The Republic of Nauru

Nauru is an independent republic.

### 2 Supreme Law of Nauru

- (1) This Constitution is the supreme law of Nauru.
- (2) A law inconsistent with this Constitution is, to the extent of the inconsistency, void.

## PART IA – CUSTOM AND LANGUAGE

### 2A Customary Law

- (1) Customary law shall continue to have effect as part of the law of Nauru, to the extent that such law is not repugnant to the Constitution or to any Act of Parliament.
- (2) Parliament mayshall make provision for the proof and pleading of custom.

### 2B Nauruan language

The government shall take positive and practical measures to preserve and advance the use of the Nauruan language.

## PART II – PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

### 3 Preamble

Whereas every person in Nauru is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following freedoms, namely:

- (a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
- (b) freedom of conscience, of expression and of peaceful assembly and association; and
- (c) respect for his private and family life,

the subsequent provisions of this Part have effect for the purpose of affording protection to those rights and freedoms, subject to such limitations of that

protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by a person does not prejudice the rights and freedoms of other persons or the public interest.

#### **4 Protection of right to life**

- (1) No person shall be deprived of his life intentionally, except in execution of a sentence of a court following his conviction of an offence for which the penalty of deprivation of life is prescribed by law.
- (2) Deprivation of the life of a person is not a contravention of the provisions of clause (1) of this Article where it results from the use, to such an extent and in such circumstances as is permitted by law, of such force as is reasonably justifiable in the circumstances of the case:
  - (a) for the defence of a person from violence;
  - (b) for the defence of public property;
  - (c) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
  - (d) for the purpose of suppressing a riot, insurrection or mutiny.

#### **5 Protection of personal liberty**

- (1) No person shall be deprived of his personal liberty, except as authorised by law in any of the following cases:
  - (a) in execution of the sentence or order of a court in respect of an offence of which he has been convicted;
  - (b) for the purpose of bringing him before a court in execution of the order of a court;
  - (c) upon reasonable suspicion of his having committed, or being about to commit, an offence;
  - (d) under the order of a court, for his education during any period ending not later than the thirty-first day of December after he attains the age of eighteen years;
  - (e) under the order of a court, for his welfare during any period ending not later than the date on which he attains the age of twenty years;
  - (f) for the purpose of preventing the spread of disease;
  - (g) in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of his care or treatment or the protection of the community; and

- (h) for the purpose of preventing his unlawful entry into Nauru, or for the purpose of effecting his expulsion, extradition or other lawful removal from Nauru.
- (2) A person who is arrested or detained shall be informed promptly of the reasons for the arrest or detention and shall be permitted to consult in the place in which he is detained a legal representative of his own choice.
- (3) A person who has been arrested or detained in the circumstances referred to in paragraph (c) of clause (1) of this Article and has not been released shall be brought before a judge or some other person holding judicial office within a period of twenty-four hours after the arrest or detention and shall not be further held in custody in connexion with that offence except by order of a judge or some other person holding judicial office.
- (4) Where a complaint is made to the Supreme Court that a person is unlawfully detained, the Supreme Court shall enquire into the complaint and, unless satisfied that the detention is lawful, shall order that person to be brought before it and shall release him.

## **6 Protection from forced labour**

- (1) No person shall be required to perform forced labour.
- (2) For the purposes of this Article, **'forced labour'** does not include:
  - (a) labour required by the sentence or order of a court;
  - (b) labour required of a person while he is lawfully detained, being labour that, though not required by the sentence or order of a court, is reasonably necessary for the purposes of hygiene or for the maintenance of the place at which he is detained;
  - (c) labour required of a member of a disciplined force in pursuance of his duties as such a member; or
  - (d) labour reasonably required as part of reasonable and normal communal or other civic obligations.

## **7 Protection from inhuman treatment**

No person shall be subjected to torture or to treatment or punishment that is inhuman or degrading.

## **8 Protection from deprivation of property**

- (1) No person shall be deprived compulsorily of his property except in accordance with law for a public purpose and on just terms.
- (2) Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of the provisions of clause (1) of this Article to the extent that that law makes provision:

- (a) for the taking of possession or acquisition of any property:
  - (i) in satisfaction of a tax;
  - (ii) by way of penalty for breach of the law or forfeiture in consequence of breach of the law;
  - (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
  - (iv) in the execution of a judgment or order of a court in proceedings for the determination of civil rights or obligations;
  - (v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or is injurious to the health of human beings, animals or plants; or
  - (vi) in consequence of any law with respect to the limitation of actions; or
- (b) for the taking of possession or acquisition of any of the following property-
  - (i) property of a deceased person, a person of unsound mind or a person who has not attained the age of twenty years, for the purpose of administering it for the benefit of the person entitled to the beneficial interest in that property;
  - (ii) property of a person adjudged bankrupt or insolvent or of a body corporate in liquidation, for the purpose of administering it for the benefit of the creditors of the bankrupt or insolvent or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property;
  - (iii) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust; and
  - (iv) property held by a body corporate established by law for public purposes.

## **9 Protection of person and property**

- (1) No person shall without his consent be subject to the search of his person or property or the entry on his premises by other persons.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the provisions of clause (1) of this Article to the extent that that law makes provision:
  - (a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, the development or utilisation of natural resources or the development or utilisation of any property for a purpose beneficial to the community;

- (b) that is reasonably required for protecting the rights or freedoms of other persons;
- (c) that authorises an officer or agent of the Republic of Nauru or of a body corporate established by law for public purposes to enter, where reasonably necessary, on the premises of a person in order to inspect those premises or anything in or on them in relation to any tax or in order to carry out work connected with any property that is lawfully in or on those premises and belongs to the Republic or body corporate as the case may be; or
- (d) that authorises, for the purpose of enforcing the judgment or order of a court, the search of a person or property by order of a court or entry upon any premises under such an order.

**10 Provision to secure protection of law**

- (1) No person shall be convicted of an offence which is not defined by law.
- (2) A person charged with an offence shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court.
- (3) A person charged with an offence:
  - (a) shall be presumed innocent until proved guilty according to law;
  - (b) shall be informed promptly in a language that he understands and in detail of the nature of the offence with which he is charged;
  - (c) shall be given adequate time and facilities for the preparation of his defence;
  - (d) shall be permitted to have without payment the assistance of an interpreter if he cannot understand or speak the language used at the trial of the charge;
  - (e) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice or to have a legal representative assigned to him in a case where the interests of justice so require and without payment by him in any such case if he does not, in the opinion of the court, have sufficient means to pay the costs incurred; and
  - (f) shall be afforded facilities to examine in person or by his legal representative the witnesses called before the court by the prosecution, and to obtain the attendance and carry out the examination of witnesses and to testify before the court on his own behalf, on the same conditions as those applying to witnesses called by the prosecution,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings

in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

- (4) No person shall be convicted of an offence on account of any act or omission that did not, at the time it took place, constitute such an offence and no penalty shall be imposed for an offence that is more severe in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.
- (5) No person who shows that he has been tried by a competent court for an offence and either convicted or acquitted shall again be tried for that offence, except upon the order of a superior court made in the course of appeal or review proceedings relating to the conviction or acquittal.
- (6) No person shall be tried for an offence for which he has been pardoned.
- (7) No person who is tried for an offence shall be compelled to give evidence at the trial.
- (8) No person shall be compelled in the trial of an offence to be a witness against himself.
- (9) A determination of the existence or extent of a civil right or obligation shall not be made except by an independent and impartial court or other authority prescribed by law and proceedings for such a determination shall be fairly heard and within a reasonable time.
- (10) Except with the agreement of the parties thereto, proceedings of a court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.
- (11) Nothing in clause (10) of this Article shall prevent the court or other authority from excluding from the hearing of the proceedings persons, other than the parties thereto and their legal representatives, to such extent as the court or other authority-
  - (a) is by law empowered to do and considers necessary or expedient in the interests of public morality or in circumstances where publicity would prejudice the interests of justice, the welfare of persons under the age of twenty years or the protection of the private lives of persons concerned in the proceedings; or
  - (b) is by law empowered or required to do in the interests of defence, public safety or public order.
- (12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the provisions of:
  - (a) paragraph (a) of clause (3) of this Article by reason that that law places upon a person charged with an offence the burden of proving particular matters; or

- (b) paragraph (f) of clause (3) of this Article by reason that that law imposes reasonable conditions which must be satisfied if witnesses called to testify on behalf of a person charged with an offence are to be paid their expenses out of public funds.

## **11 Freedom of conscience**

- (1) A person has the right to freedom of conscience, thought and religion, including freedom to change his religion or beliefs and freedom, either alone or in community with others and in public or private, to manifest and propagate his religion or beliefs in worship, teaching, practice and observance.
- (2) Except with his consent, no person shall be hindered in the enjoyment of a right or freedom referred to in clause (1) of this Article.
- (3) Except with his consent or, if he is under the age of twenty years, the consent of his parent or guardian, no person attending a place of education is required to receive religious instruction or to take part in or attend a religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own religion or belief.
- (4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the provisions of this Article to the extent that that law makes provision which is reasonably required:
  - (a) in the interests of defence, public safety, public order, public morality or public health;
  - (b) for protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of some other religion; or
  - (c) for regulating the secular education provided in any place of education in the interests of the persons receiving instruction in that place.

## **12 Protection of freedom of expression**

- (1) A person has the right to freedom of expression.
- (2) Except with his consent, no person shall be hindered in the enjoyment of his right to freedom of expression.
- (3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, the provisions of this Article to the extent that that law makes provision:
  - (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
  - (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information

received in confidence or maintaining the authority and independence of the courts;

- (c) that is reasonably required for the purpose of regulating the technical administration or technical operation of telephony, telegraphy, posts, wireless broadcasting or television or restricting the establishment or use of telephonic, telegraphic, wireless broadcasting or television equipment or of postal services; or
- (d) that regulates the use of information obtained by public officers in the course of their employment.

### **13 Protection of freedom of assembly and association**

- (1) Persons have the right to assemble and associate peaceably and to form or belong to trade unions or other associations.
- (2) Except with his consent, no person shall be hindered in the enjoyment of a right referred to in clause (1) of this Article.
- (3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, the provisions of this Article to the extent that that law makes provision that is reasonably required:
  - (a) in the interests of defence, public safety, public order, public morality or public health; or
  - (b) for protecting the rights and freedoms of other persons.

### **14 Enforcement of fundamental rights and freedoms**

- (1) A right or freedom conferred by this Part is enforceable by the Supreme Court at the suit of a person having an interest in the enforcement of that right or freedom.
- (2) The Supreme Court may make all such orders and declarations as are necessary and appropriate for the purposes of clause (1) of this Article.

### **15 Interpretation**

In this Part, unless the context otherwise requires:

**'contravention'**, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

**'disciplined force'** means:

- (a) the Police Force; or
- (b) any other body established by law for the purposes of defence or maintaining public safety or public order;

**'legal representative'** means a person entitled to be in or to enter Nauru and entitled by law to appear in proceedings before a court on behalf of a party to those proceedings;

**'member'**, in relation to a disciplined force, includes a person who, under the law regulating the discipline of that force, is subject to that discipline;

**'public property'** includes property of a body corporate established by law for public purposes.

## **PART III<sup>1</sup> – THE PRESIDENT AND THE EXECUTIVE**

### **16 The President**

- (1) There shall be a President of Nauru, who shall be elected by Parliament.
- (2) A person is not qualified to be elected President unless he is a member of Parliament.
- (3) The Speaker and the Deputy Speaker are not qualified to be elected President.
- (4) The President holds office until the election of another person as President.
- (5) Parliament shall elect a President:
  - (a) whenever the office of President is vacant;
  - (b) at the first sitting of Parliament next following its dissolution; and
  - (c) whenever:
    - (i) the President tenders the resignation of his office by writing under his hand delivered to the Speaker;
    - (ii) a resolution for the removal from office of the President and Ministers is approved under Article 24; or
    - (iii) the President ceases to be a member of Parliament otherwise than by reason only of its dissolution.

### **16A Powers and functions of the President**

The functions and powers of the President are those vested in him by this Constitution and by law, and include the following:

- (a) to appoint Ministers to the Cabinet – Article 19;
- (b) to preside at meetings of the Cabinet – Article 22;
- (c) to assign to Ministers responsibility for government business – Article 23;
- (d) to advise the Speaker on the appointment of a date of election after dissolution – Article 39;

- (e) to advise the Speaker on the time for the beginning of Parliamentary sessions – Article 40(1);
- (f) to advise the Speaker on the prorogation of Parliament – Article 41(1);
- (g) to initiate the process of dissolution of Parliament – Article 41(2);
- (h) to appoint judges and acting judges – Articles 49(2) and 53;
- (i) to appoint the Ombudsman – Article 57B;
- (j) to appoint the Director of Audit – Article 66(1);
- (k) to appoint the Director of Public Prosecutions – Article 70A;
- (l) to declare and revoke a state of emergency – Article 77;
- (m) to make emergency orders during a state of emergency – Article 78; and
- (n) to exercise the prerogative of mercy – Article 80.

#### **16B Presidential oath**

A person assuming the office of President shall, before entering upon the duties of that office, take and subscribe before the Chief Justice or the Speaker an oath in the form set out in the Seventh Schedule to this Constitution.

#### **17 Executive Authority vests in the Cabinet**

- (1) The executive authority of Nauru is vested in a Cabinet constituted as provided by this Part and the Cabinet has the general direction and control of the government of Nauru.
- (2) The Cabinet is collectively responsible to Parliament.

#### **17A Powers and functions of the Cabinet**

The executive authority vested in the Cabinet includes but is not limited to the following powers, functions, duties and responsibilities, subject to this Constitution and to any other law:

- (a) to recommend to Parliament such legislative proposals as it considers necessary or desirable to implement its policies and decisions; and, in particular, to recommend to Parliament proposals for the raising of revenue and for the expenditure of public money in accordance with the provisions of Part VI;
- (b) to be accountable to Parliament for all public expenditure and for relating such expenditure to the appropriations made by Parliament or to other authority conferred by this Constitution or by law;

- (c) to be responsible for conducting the foreign affairs of Nauru, whether by treaty or otherwise; provided that Cabinet shall, upon finally accepting any treaty as binding, table the treaty in Parliament;
- (d) to be responsible for making such provision as may be reasonable and necessary for the security of Nauru;
- (e) to be responsible for establishing and maintaining such hospitals and other institutions and for providing such other services as may be reasonable and necessary for the public health;
- (f) to be responsible for making such provision as may be reasonable and necessary to provide educational opportunities for the people of Nauru;
- (g) to be responsible for establishing and maintaining such other institutions and services and for making such other provision as may be reasonable and necessary to achieve an adequate standard of living for the people of Nauru, to enable them to enjoy their legal rights, and to serve their economic, social and cultural welfare;
- (h) to make, in the exercise of its responsibilities, such contracts and other instruments on behalf of the Government of Nauru as it considers necessary.

## **17B Treaties**

No treaty or other international agreement which is finally accepted as binding by or on behalf of the Republic of Nauru shall, of itself, have the force of law in the Republic.

## **18 The Cabinet**

- (1) The Cabinet consists of the President and the Ministers appointed under Article 19.
- (2) A member of the Cabinet shall, before entering upon the duties of his office, take and subscribe the oath set out in the First Schedule.
- (3) A member of the Cabinet shall not hold an office of profit in the service of Nauru or of a statutory corporation.

## **19 Appointment of Ministers**

- (1) Whenever a President is elected, he shall as soon as practicable appoint ~~four~~ or five a member of Parliament to be Deputy President and Minister, and four or five further members of Parliament to be Ministers of the Cabinet.
- (2) Whenever there are less than ~~four~~ five Ministers the President shall appoint a member of Parliament to be a Minister but if Parliament is dissolved the President shall appoint a person who was a member immediately before the dissolution of Parliament.

- (3) Whenever there are ~~four~~ five but not ~~five~~ six Ministers the President may appoint a member of Parliament to be a Minister.
- (4) Whenever the office of Deputy President is vacant, the President shall appoint a Minister to be Deputy President.

## **20 Vacation of office**

A Minister ceases to hold office:

- (a) upon the election of a President;
- (b) upon resigning his office by writing under his hand delivered to the President;
- (c) upon being removed from office by the President; or
- (d) upon ceasing to be a member of Parliament otherwise than by reason only of its dissolution.

## **21 ~~Provision for Minister to act as President~~**

~~The Cabinet may appoint a Minister to perform the duties and exercise the functions of the President during any period during which the President is unable to act owing to illness, absence from Nauru or any other cause.~~

## **21 Discharge of functions of President during absence illness, etc.**

- (1) Whenever the President is absent or considers it desirable to do so by reason of illness, accident or other cause, he may, by directions in writing, authorise the Deputy President to discharge such of the functions of the office of President as he may specify and the Deputy President shall discharge those functions until his authority is revoked by the President.
- (2) If the President is unable by reason of illness, accident or other cause of discharging the functions of his office and the infirmity or other cause is of such a nature that the President is unable to authorise another person under this Article to discharge those functions, the Deputy-President shall discharge the functions of the office of President.
- (3) Whenever the Deputy President is discharging the functions of the office of President ~~by virtue of the preceding clause under clause (2)~~, he shall cease to discharge those functions if he is notified by the President that the President is about to resume those functions.

## **21A The Deputy President**

- (1) There shall be a Deputy President of Nauru appointed by the President under Article 19.

(2) The Deputy President shall, before entering upon the duties of his office, take and subscribe before the Chief Justice or the Speaker an oath in the form set out in the Eighth Schedule to this Constitution.

(3) The Deputy President shall vacate his office as Deputy President:

(a) if he resigns his office, by writing under his hand delivered to the President;

(b) if he ceases to be a member of Parliament otherwise than by reason only of its dissolution;

(c) if his appointment is revoked by the President;

~~(d) when he assumes the office of President under clause (2) of Article 16D;~~

~~(e)~~(d) if he ceases to be a member of Cabinet; or

~~(f)~~(e) if a new President is elected.

(4) If the Deputy President is absent from Nauru or is unable by reason of illness or any other cause to discharge the functions of his office, the President shall appoint one of the other Ministers to perform the functions of the office of Deputy President and any person so appointed shall discharge those functions accordingly until:

(a) his appointment is revoked by the President;

(b) he ceases to be a Minister;

(c) a new President is elected; or

(d) the Deputy President returns to Nauru or resumes the discharge of the functions of his office;

provided that any person who as a result of his appointment under this clause and the operation of Article 21 is performing the functions of the office of President shall not exercise the power of the President to revoke the appointment of the Deputy President.

(5) Where the Deputy President is performing the functions of the office of President in accordance with Article 21 of this Constitution he may appoint one of the other Ministers to perform the functions of the office of Deputy President and any person so appointed may discharge those functions accordingly until-

(a) his appointment is revoked by the Deputy President;

(b) he ceases to be a Minister; or

(c) the Deputy-President ceases to perform the functions of the office of President.

(6) During any period when, while the functions of the office of President are required under Article 21 of this Constitution to be discharged by the Deputy

President, there is no Deputy President or the Deputy President is absent from Nauru or is unable by reason of illness, accident or other cause of discharging the functions of his office and there is no subsisting appointment under ~~the preceding clause~~ clause (5), the functions of the office of President shall be performed by such Minister as the Cabinet shall appoint; provided that any person performing the functions of the office of President under this clause shall not exercise the power of the President to revoke the appointment of the Deputy President.

## 22 Meetings of the Cabinet

- (1) The President shall preside at meetings of the Cabinet.
- (2) Subject to this Constitution, the Cabinet may regulate its own procedure.

## 23 Appointment of Ministers to Departments

(1) The President may assign to himself or to a Minister responsibility for any business of the government of Nauru and may revoke or vary an assignment made under this Article.

(2) Where ~~the President or any Minister has been charged with responsibility for the administration of any department of government, he shall exercise direction and control over that department and, subject to such direction and control, the department shall be under the supervision of the head of the department, whose office shall be a public office.~~

(3) Subject to any law made by Parliament, the Cabinet may exercise elements of its executive authority directly, or through its individual members, and through other officers responsible to the Cabinet; but neither the provisions of any such law, nor any delegation of elements of the Cabinet's executive authority shall have the effect of diminishing the responsibility of the Cabinet and of each of its members to Parliament for the direction and implementation of executive policies.

## 24 Vote Motion of no confidence

(1) ~~Where Parliament on a resolution approved by at least one-half of the total number of members of Parliament resolves that the President and Ministers be removed from office on the grounds that it has no confidence in the Cabinet, an election of a President shall be held. Subject to the provisions of this Article, where a resolution on a motion of no confidence in the President and Cabinet Ministers is approved by at least one-half of the total number of members of Parliament, an election of a President shall be held.~~

(2) Where a President has not been elected before the expiration of a period of seven days after the day on which a resolution under clause (1) of this Article is approved Parliament shall stand dissolved.

(3) Notice of a motion of no confidence in the President and ~~Cabinet Ministers~~ shall be given to the Speaker at least five clear days before a vote on such motion is

taken, and shall include in express terms a summary of the grounds for the loss of confidence in the President and ~~Cabinet Ministers~~.

(4) Where Parliament for the second time during one term of Parliament approves a resolution ~~on a motion of no confidence in the President and Cabinet under clause (1)~~, Parliament shall stand dissolved.

(5) Where Parliament votes on a motion of no confidence and such motion is not approved by a resolution in accordance with clause (1) of this Article, no such motion shall again be placed on notice until the expiration of 120 days after the date on which the motion failed to be approved.

## **25 Chief Secretary**

~~(1) There shall be a Chief Secretary of Nauru, who shall be appointed by the Cabinet.~~

~~(2) A member of Parliament is not qualified to be appointed Chief Secretary.~~

~~(3) The Chief Secretary may resign his office by writing under his hand delivered to the President and may be removed from office by the Cabinet.~~

~~(4) The Chief Secretary has such powers and functions as the Cabinet directs and as are conferred on him by this Constitution or by law.~~

## **PART IV – THE LEGISLATURE\*\***

*\*\* The name of the Legislature was changed from "the Legislative Assembly" to "Parliament" on 17 May 1968.*

## **26 Establishment of legislature**

There shall be a Parliament of Nauru.

## **27 Legislative powers of legislature**

Subject to this Constitution, Parliament may make laws for the peace, order and good government of Nauru; laws so made may have effect outside as well as within Nauru.

## **27A The role and functions of Parliament**

(1) Parliament is elected to represent the people of Nauru and to ensure government by the people under the Constitution. It does this by providing a forum for public consideration of issues, by passing laws and by scrutinising and overseeing executive action.

(2) When exercising its legislative authority, Parliament is bound only by the Constitution of Nauru, and shall act in accordance with, and within the limits of, the Constitution.

(3) Parliament shall provide for mechanisms:

- (a) to ensure that all executive organs of the government of Nauru are accountable to it; and
- (b) to maintain oversight of the exercise of executive authority, including the implementation of laws enacted by Parliament.

(4) Parliament shall facilitate public involvement in its legislative and other processes such as its committees; conduct its business in an open manner; and hold its sittings in public; provided that reasonable measures may be taken to regulate public access, including access of the media, to Parliament.

**28 The Parliament**

- (1) Parliament shall consist of ~~eighteen~~ nineteen members or such greater number as is prescribed by law.
- (2) For the purpose of the election of members of Parliament, Nauru shall be divided into constituencies.
- (3) Unless otherwise prescribed by law, the constituencies and the number of members of Parliament to be returned by each of the constituencies are those described in the Second Schedule.
- (4) A person shall not be at the same time a member of Parliament for more than one constituency.

**29 Electors for Parliament**

Members of Parliament shall be elected in such manner as is prescribed by law, by Nauruan citizens who have attained the age of twenty years or such younger age, being an age not younger than eighteen years, as may be prescribed by law.

**30 Qualification for membership of Parliament**

A person is qualified to be elected a member of Parliament if, and is not so qualified unless, he:

- (a) is a Nauruan citizen and has attained the age of twenty years; and
- (b) is not disqualified under this Constitution.

**31 Disqualifications for membership of Parliament**

No person is qualified to be elected a member of Parliament if he:

- (a) is an undischarged bankrupt or insolvent who has been declared bankrupt or insolvent according to law;

- (b) is a person certified to be insane or otherwise adjudged according to law to be mentally disordered;
- (c) has been convicted and is under sentence or is subject to be sentenced for an offence punishable according to law by death or by imprisonment for one year or longer is serving a sentence of imprisonment imposed by a court in Nauru or in any other part of the Commonwealth;
- (d) does not possess such qualifications relating to residence or domicile in Nauru as are prescribed by law; ~~or~~
- (e) holds an office of profit in the service of Nauru or of a statutory corporation and a person who holds such an office of profit is deemed to have vacated that office immediately before the time at which he is declared elected to Parliament, ~~being an office prescribed by law for the purposes of this paragraph;~~ or
- (f) has been prohibited by order of any court or tribunal lawfully authorised to make such order, from holding a position of Leadership and:
  - (i) if such order applies for a finite period, the period for which such order applies has not yet expired; and
  - (ii) if such order was made by a tribunal or court other than the Supreme Court, such order has been upheld by the Supreme Court pursuant to Article 36 and clause (7) of Article 57A.

## **32 Vacation of seats by members of Parliament**

- (1) A member of Parliament vacates his seat:
  - (a) upon the dissolution of Parliament next after his election;
  - (b) subject to clauses (1A) and (1B) of this Article, upon becoming disqualified under Article 31 to be elected a member of Parliament;
  - (c) upon resigning his seat by writing under his hand delivered, ~~in the case of a member other than the Speaker,~~ to the Speaker and, in the case of the Speaker, to the Clerk of Parliament;
  - (d) if he is absent without leave of Parliament on every ~~day on which a meeting of Parliament is held during a period of two months~~ sitting day over three consecutive sessions within the same term of Parliament; or
  - (e) upon ceasing to be a Nauruan citizen.

(1A) Subject to the provisions of this Article, if a member of Parliament is sentenced by a court in Nauru or in any other part of the Commonwealth to imprisonment, and serves any part of such a sentence of imprisonment, he shall ~~forthwith~~ **immediately** cease to discharge his functions as a member of Parliament, and his seat in Parliament shall become vacant at the expiration of a period of 30 days thereafter: Provided that the Speaker may, at the request of the member, extend that period of 30 days to enable the member to pursue any review or

appeal in respect of his conviction or sentence, so, however, that extensions of time exceeding in the aggregate 150 days shall not be granted without the approval of Parliament signified by resolution.

(1B) If at any time before the member vacates his seat his conviction is set aside or a punishment other than imprisonment is substituted, his seat in Parliament shall not become vacant under ~~the preceding clause~~ clause (1A) and he may again discharge his functions as a member of Parliament.

(2) In the event of the occurrence of a vacancy in the office of a member of Parliament, an election shall be held in the manner prescribed by law of a member to fill the vacant office.

### 33 Clerk of Parliament

(1) There shall be an Office of Parliament under the administration of a Clerk of Parliament, who shall be appointed by the Speaker.

(2) A member of Parliament is not qualified to be appointed Clerk of Parliament.

(2A) The Clerk of Parliament shall not hold or perform the functions of any other public office.

(3) The Clerk of Parliament may at any time resign his office by writing under his hand delivered to the Speaker and may be removed from office by the Speaker at any time.

(4) Before or during the absence of the Clerk of Parliament, the Speaker may appoint a person who is not a member of Parliament to perform the functions of the Clerk during his absence.

(5) Subject to paragraph (c) of clause (6) of this Article, in the exercise of his duties and functions the Clerk of Parliament shall not receive any direction from Cabinet or from any other person or authority except the Speaker or Parliament by resolution.

(6) The Clerk of Parliament shall be responsible for:

(a) arranging the business and keeping the records of the proceedings of Parliament;

(b) arranging for the signing of documents and issuing of certificates by the Speaker whenever any signature or certification by the Speaker is required pursuant to this Constitution or any law, and keeping the records of all documents and certificates so signed or issued;

(c) performing with respect to the Speaker, members of Parliament and Parliamentary committees such secretarial and other administrative functions as may reasonably be required; and

(d) performing such other duties and functions as the Speaker or Parliament by resolution may direct.

### 34 Speaker of Parliament

- (1) ~~Parliament shall, before it proceeds to the despatch of any other business, elect one of its members to be Speaker and, whenever the office of Speaker is vacant, shall not transact any business other than the election of one of its members to fill that office.~~

Subject to clause (1) of Article 43 and clause (8) of Article 41, during the first session of Parliament next following a general election and whenever the office of Speaker is vacant, Parliament shall, before it proceeds to transact any other business, elect as Speaker a person who is not a member of Parliament but who is qualified to be a member of Parliament.

~~(1A2)~~ Parliament shall enact a law to provide for the manner in which nominations for and election of Speaker shall be conducted, and for related matters necessary or desirable to give effect to clause (1) of this Article.

~~(2) A member of the Cabinet is not qualified to be elected Speaker.<sup>2</sup>~~

(3) The Speaker ceases to hold office.<sup>3</sup>

- (a) when Parliament first meets after a dissolution;
- (b) upon ceasing to be qualified to be a member of Parliament ~~otherwise than by reason only of its dissolution~~;
- (c) upon ~~becoming~~ nominating for election as a member of Parliament the Cabinet;
- (d) upon being removed from office by a resolution supported by at least two thirds of the total number of members of Parliament; or
- (e) upon resigning his office by writing under his hand delivered to the Clerk of Parliament.

~~(4) Notwithstanding paragraph (a) of clause (3) of this Article, if at the time when Parliament first meets after a dissolution the Council of State is performing the functions of the President and the other executive functions of government, the Speaker shall continue to be a member of the Council of State until Parliament has elected a Speaker.~~

~~(4)(5)~~ Upon being elected, and before entering upon the duties of his office, the Speaker shall take and subscribe before Parliament the oath set out in the Ninth Schedule.

### 35 Deputy Speaker of Parliament

- (1) Parliament shall, after the election of the Speaker and before it proceeds to ~~the despatch of~~ transact any other business, elect one of its members to be Deputy Speaker and, whenever the office of Deputy Speaker is vacant, shall, as soon as possible, elect one of its members to fill that office.
- (2) A member of the Cabinet is not qualified to be elected Deputy Speaker.<sup>4</sup>

- (3) The Deputy Speaker ceases to hold office:<sup>5</sup>
- (a) when Parliament first meets after a dissolution;
  - (b) upon ceasing to be a member of Parliament otherwise than by reason only of its dissolution;
  - (c) upon becoming a member of the Cabinet;
  - (d) upon being removed from office by a resolution of Parliament; or
  - (e) upon resigning his office by writing under his hand delivered to the Clerk of Parliament.
- (4) The powers and functions conferred by this Constitution upon the Speaker shall, if there is no person holding the office of Speaker or if the Speaker is absent from a sitting of Parliament or is otherwise unable to exercise those powers and perform those functions, be exercised and performed by the Deputy Speaker and, if he is also absent or unable to exercise those powers and perform those functions, Parliament may elect one of its members to exercise those powers and perform those functions.

### **36 Determination on questions of membership of Parliament**

Any question that arises concerning the right of a person to be or to remain a member of Parliament shall be referred to and determined by the Supreme Court.

### **37 Powers, privileges and immunities of Parliament**

The powers, privileges and immunities of Parliament and of its members and committees are, subject to this Constitution, such as are declared by Parliament.

### **38 Procedure in Parliament**

- (1) Parliament may make, amend or repeal rules and orders with respect to:
- (a) the mode in which its powers, privileges and immunities may be exercised and upheld; and
  - (b) the conduct of its business and proceedings.
- (2) Parliament may act notwithstanding a vacancy in its membership and the presence or participation of a person not entitled to be present at, or to participate in, the proceedings of Parliament does not invalidate those proceedings.

### **39 General Elections for Parliament<sup>6</sup>**

A general election of members of Parliament shall be held at such time within two months fifty days after a dissolution of Parliament as the Speaker in

accordance with the advice of the President appoints, provided that it shall be held on a Saturday.

#### 40 Sessions of Parliament<sup>7</sup>

- (1) Subject to clause (1A), each ~~Each~~ session of Parliament shall be held at such place and shall begin at such time, not being later than twelve months after the end of the preceding session ~~if Parliament has been prorogued, or twenty-one days after the last day on which a candidate at a general election is declared elected~~ subject to clause (1A) of this Article, not later than the second Tuesday after the day on which a general election is held if Parliament has been dissolved, as the Speaker in accordance with the advice of the President appoints.

(1A) After a general election, the first session of the new Parliament shall be held at such place and shall begin at such time, not being later than the tenth day after the last day on which a candidate at the general election is declared elected, as the Speaker in accordance with the advice of the President appoints.

(1A1B) If the first session of a new Parliament begins earlier than the tenth day ~~second Tuesday~~ after the last day on which a candidate at a general election is declared elected ~~day on which a general election is held~~, regular sittings of that session shall continue until Parliament has elected a Speaker, a Deputy Speaker and ~~nominated candidates for an election of a~~ President, or until Parliament is dissolved under clause (8) of Article 41, whichever occurs sooner.

- (2) Subject to ~~the provisions of clause (1) of~~ this Article, the sittings of Parliament shall be held at such times and places as it, by its rules of procedure or otherwise, determines.

(3) A session of Parliament ends when Parliament is prorogued in accordance with clause (1) of Article 41 or on the expiry of seven clear days during which Parliament has not held sittings.

(4) Unless Parliament is prorogued, the ending of a session does not have the effect of causing the business of Parliament pending at the end of the session to lapse.

#### 41 Prorogation and dissolution of Parliament

- (1) The Speaker, in accordance with the advice of the President, may at any time prorogue Parliament.
- (2) The Speaker shall, if he is advised by the President to dissolve Parliament, refer the advice of the President to Parliament as soon as practicable and in any case before the expiration of fourteen days after his receipt of the advice.<sup>8</sup>
- (3) For the purposes of clause (2) of this Article, and notwithstanding Article 40, the Speaker shall, if necessary, appoint a time for the beginning of a session, or for a sitting, of Parliament.

- (4) Where the Speaker has, under clause (2) of this Article, referred the advice of the President to Parliament, and no resolution for the removal from office of on a motion of no confidence in the President and Ministers under Article 24 is approved after the date on which the advice was so referred, he shall dissolve Parliament on the seventh day after that date.
- (5) The President may withdraw his advice at any time before the Speaker has dissolved Parliament and where the President so withdraws his advice, subject to clause (1) of Article 24 and to clause (1) of Article 61A, the Speaker shall not dissolve Parliament.
- (6) Notwithstanding the preceding provisions of this Article, where a resolution ~~for the removal from office of on a motion of no confidence in~~ the President and Ministers is approved under Article 24, the Speaker shall not:
- (a) prorogue Parliament; or
  - (b) dissolve Parliament,
- during the period of seven days after the day on which the resolution is approved.
- (7) Parliament shall, unless sooner dissolved, continue for a period of three years from and including the date of the first sitting of Parliament after any dissolution and shall then stand dissolved.
- (8) If at the conclusion of the tenth day after the ~~day on which a general election is held~~ last day on which a candidate at a general election is declared elected Parliament has failed to elect a Speaker, failed to elect a Deputy Speaker, or failed to nominate candidates for election to the office of elect a President, Parliament shall stand dissolved.
- ~~(9) If at the conclusion of seven days after the day on which a session of Parliament called pursuant to clause (4) of Article 16D has commenced, Parliament has failed to nominate candidates for election to the office of President, Parliament shall stand dissolved.~~

## 42 Sessions of Parliament at request of one-third of members

- (1) Where:
- (a) Parliament is not twenty-eight days have elapsed since Parliament was in session; and
  - (b) there is delivered to the Speaker a request that complies with clause (2) of this Article for the holding of a session,<sup>9</sup>
- the Speaker shall appoint a time for the holding of a session of Parliament, being a time before the expiration of fourteen days after the request is delivered.
- (2) A request referred to in clause (1) of this Article:<sup>10</sup>

- (a) shall be in writing;
- (b) shall be signed by a member of Parliament for each of at least three constituencies and by a number of members of Parliament which is at least one-third of the total number of members of Parliament; and
- (c) shall set out particulars of the business proposed to be dealt with at the session of Parliament.

#### **43 Oath of members of Parliament**

- ~~(1) A member of Parliament shall, before taking his seat, take and subscribe before Parliament the oath set out in the Third Schedule, but a member may before taking and subscribing that oath take part in electing the Speaker.~~
- ~~(2) The Speaker shall, if he has not taken and subscribed the oath set out in the Third Schedule, take and subscribe that oath before entering upon the duties of his office.~~

#### **44 Speaker to preside**

The Speaker shall preside at a sitting of Parliament and, as presiding officer, the Speaker shall be responsible for ensuring that the business of Parliament is conducted in compliance with this Constitution and the Standing Orders of Parliament and shall exercise his functions impartially and fairly.

#### **44A Duties Powers and functions of Speaker**

The duties powers and functions of the Speaker include, in accordance with this Constitution:

- (a) presiding over the proceedings of Parliament – Article 44;
- (b) convening sessions or sittings of Parliament as required under the Constitution – Articles 40, 42;
- (c) proroguing or dissolving Parliament – Article 41;
- (d) issuing writs appointing dates for elections – Article 39;
- (e) appointing, disciplining or removing the Clerk of Parliament – Article 33;
- (f) managing and controlling Parliament and its precincts including all staff and other employees in the service of the Office of Parliament; and
- (g) such other duties powers and functions as prescribed by this Constitution, by law or by Standing Orders of Parliament.

**45 Quorum**

No business shall be transacted at a sitting of Parliament if the number of its members present, other than the person presiding at the sitting if a member is presiding, is less than one-half of the total number of members of Parliament.

**46 Voting**

(1) Except as otherwise provided by this Constitution, a question before Parliament shall be decided by a majority of the votes of its members present and voting.

(2) ~~The Speaker or other member presiding in Parliament shall not vote unless on a question the votes are equally divided in which case he has and shall exercise a casting vote~~ If there is an equality of votes, the person presiding does not have a casting vote and the question concerned is deemed to be lost.

(3) If a member is performing the functions of Speaker, he shall continue to have a deliberative vote as a member of Parliament but shall not in addition have a casting vote.

(4) The Speaker shall not be entitled to vote on any question.

**47 Enactment of laws**

A proposed law becomes law on the date when the Speaker certifies that it has been passed by Parliament.

## PART V – THE JUDICATURE

**48 Supreme Court of Nauru**

(1) ~~There shall be a Supreme Court of Nauru, which shall be a superior court of record. The judicial power of Nauru shall vest is vested in the Supreme Court, and in such other courts as Parliament may establish by law.~~

(2) The Supreme Court ~~has shall be a superior court of record and shall have is a superior court of record and has~~, in addition to the jurisdiction conferred on it by this Constitution, such jurisdiction as is prescribed by law.

(3) The Supreme Court consists of a Trial Division, a Constitutional Division and an Appellate Division.

(4) The Chief Justice may make and publish and may amend rules governing the Supreme Court and its divisions and other courts established by law, including rules regarding the conduct of proceedings at a distance and the taking of evidence from a distance by any appropriate means in any court.

(5) An order or decision issued by a court binds all persons to whom it applies including the Republic.

(6) The Supreme Court and other courts are independent and subject only to the Constitution and the law.

(7) Neither the Republic nor any person shall interfere with the functioning of the courts.

(8) The Republic, through legislative and other measures, shall assist and protect the Supreme Court and other courts to ensure their independence, impartiality, dignity, accessibility and effectiveness.

(9) The Supreme Court and such other courts as Parliament may establish by law, shall have the power to punish natural or legal persons for contempt in accordance with law.

#### **49 Chief Justice and Judges of Supreme Court**

(1) The Supreme Court consists of a Chief Justice and two other judges or such greater number, ~~if any,~~ of other judges as is prescribed by law.

(2) The judges of the Supreme Court ~~appointed under this Article and under Article 53~~ shall be appointed by the President after consultation with Cabinet.<sup>11</sup>

(3) ~~A person is not qualified to be appointed a judge of the Supreme Court unless he is entitled as prescribed by law to practise as a barrister or solicitor in Nauru and has been so entitled for not less than five years. A person shall not be is not qualified for appointment as a judge of the Supreme Court under this Article unless that person is qualified by education, experience and character to discharge judicial office, and:~~

(a) is entitled as prescribed by law to practise as a barrister or solicitor in Nauru and has been so entitled for not less than five years; or

(b) holds or has held high judicial office in ~~any a~~ common law country in the Pacific region or in ~~any a country~~ designated ~~country~~ under clause (4); or

(c) is entitled as prescribed by law to practise as a barrister and solicitor in ~~any a~~ common law country in the Pacific region or in ~~any designated country a country designated under clause (4)~~, and has been so entitled for a period amounting in the aggregate to not less than seven years.

(4) The Minister responsible for justice acting in consultation with the Chief Justice may, ~~by Gazette notice, from time to time~~ declare to be a designated country for the purposes of this Article ~~and notify in the Gazette~~ any country that in his opinion has a legal system sufficiently similar to that existing in Nauru as to render qualified persons from that country competent to exercise judicial functions in Nauru.

#### **50 Vacation of office**

(1) A judge of the Supreme Court ceases to hold office on attaining the age of ~~sixty-five~~ seventy-five years or, if a greater age is prescribed by law for the purposes of this Article, on attaining that greater age.

- (2) A law that prescribes a greater age for the purposes of this Article may provide that that law applies only to specified judges.

#### **51 Removal from office and resignation**

- (1) A judge of the Supreme Court may not be removed from office except on a resolution of Parliament approved by not less than two-thirds of the total number of members of Parliament praying for his removal from office on the ground of proved incapacity or misconduct.
- (2) A judge of the Supreme Court may resign his office by writing under his hand delivered to the President.<sup>12</sup>

#### **52 Oath of office**

A judge of the Supreme Court shall not enter upon the duties of his office unless he has taken and subscribed the oath set out in the Fourth Schedule.

#### **53 Acting judges**

- (1) If the office of Chief Justice is vacant or if the Chief Justice is for any reason unable to perform the duties of his office then until a person has been appointed to and has assumed the duties of that office or until the person holding that office has resumed those duties, as the case may be, those duties shall be discharged by such one of the other judges of the Supreme Court as is designated by the President or, if there is no other judge of the Supreme Court, by a person designated by the President, being a person who is qualified to be appointed a judge of the Supreme Court.<sup>13</sup>
- (2) If the office of a judge of the Supreme Court other than the office of the Chief Justice is vacant or if the person holding that office is for any reason unable to perform the duties of his office or if the state of business in the Supreme Court so requires, the President may appoint a person qualified to be appointed a judge of the Supreme Court to act as a judge of the Supreme Court and a person so appointed may act as a judge of the Supreme Court notwithstanding that he has attained the age of ~~sixty five~~ seventy-five years or, if a greater age is prescribed by law for the purposes of Article 50, has attained that greater age.<sup>14</sup>
- (3) The provisions of clause (2) of this Article apply in respect of the office of Chief Justice if at a time when the office of the Chief Justice is vacant no other person holds office as a judge of the Supreme Court.
- (4) A person appointed under clause (2) of this Article to act as a judge of the Supreme Court shall continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the President.<sup>15</sup>

#### **54 Matters concerning this Constitution**

- (1) Subject to clauses (4) and (5) of this Article, the Supreme Court shall ~~The Supreme Court shall~~, to the exclusion of any other court, have original

jurisdiction to determine any question arising under or involving the interpretation or effect of any provision of this Constitution.

- (2) Without prejudice to any appellate jurisdiction of the Supreme Court, where in any proceedings before another court a question arises involving the interpretation or effect of any provision of this Constitution, the cause shall be removed into the Supreme Court, which shall determine that question and either dispose of the case or remit it to that other court to be disposed of in accordance with the determination.

(3) The Supreme Court shall interpret and apply ~~the~~ this Constitution in a manner that takes into account the principles set out in the Preamble.

(4) ~~The~~This Constitution is enforceable at the suit of:

(a) a person whose interests are or are likely to be affected by an alleged contravention of ~~the~~-this Constitution; or

(b) a person acting on behalf of another person who would be entitled to bring a suit under paragraph (a) of this clause but who cannot act in their own name; or

(c) an association whose members' interests are or are likely to be affected by an alleged contravention of ~~the~~-this Constitution.

(5) A person referred to in clause (4) of this Article may, without prejudice to any other action with respect to the same matter which is lawfully available, apply to the Supreme Court for relief in relation to the alleged contravention of ~~the~~-this Constitution and the Supreme Court shall have jurisdiction to determine whether any provision of ~~the~~-this Constitution has been or is likely to be contravened and to make such orders and declarations as are necessary and appropriate, including for compensation, ~~and the Supreme Court shall not grant relief at the suit of any other person.~~

## **55 The Cabinet may refer questions on Constitution to Supreme Court<sup>16</sup>**

(1) The President or a Minister may, in accordance with the approval of the Cabinet, refer to the Supreme Court for its opinion any question concerning the interpretation or effect of any provision of this Constitution which has arisen or appears to the Cabinet likely to arise, and the Supreme Court shall pronounce in open court its opinion on the question, and such opinion shall be binding and determinative, subject to any appeal.

(2) The Supreme Court shall, before pronouncing its opinion on the question, give any person whose interests would be affected by its opinion the right to be heard on the question.

(3) In a constitutional reference brought under this Article, the Supreme Court may make such orders and declarations as are necessary and appropriate.

**56 Subordinate courts**

There shall be such subordinate courts as are established by law and those courts possess such jurisdiction and powers as are prescribed by law.

**57 Appeals**

- ~~(1) Parliament may provide that an appeal lies as prescribed by law from a judgment, decree, order or sentence of the Supreme Court constituted by one judge to the Supreme Court constituted by not less than two judges.~~
- ~~(2) Parliament may provide that an appeal lies as prescribed by law from a judgment, decree, order or sentence of the Supreme Court to a court of another country.~~

**Appellate Division of the Supreme Court**

- ~~(1) The Appellate Division of the Supreme Court shall have~~has jurisdiction and powers, subject to such regulation as Parliament may prescribe, to hear and determine appeals from –
  - (a) the Trial and Constitutional Divisions of the Supreme Court;
  - (b) the Appellate Division of the Supreme Court constituted by one judge; and
  - (c) subordinate courts.~~provided that no regulation prescribed by Parliament shall prevent the Appellate Division of the Supreme Court from hearing and determining any appeal from a subordinate court.~~
- ~~(2) Where the Appellate Division of the Supreme Court is hearing an appeal from a Division of the Supreme Court, it shall be constituted by two or more judges.~~
- ~~(3) (a) Appeals in criminal matters lie as of right, save for appeals from the Appellate Division of the Supreme Court constituted by one judge.~~
  - ~~(b) Appeals in civil matters and other causes shall be by leave.~~

**PART VA – LEADERSHIP CODE**

**57A Leadership Code**

- (1) This Part applies to:
  - (a) the President;
  - (b) a Minister;
  - (c) a Member of Parliament;

- (d) a judicial officer;
- (e) the holder of any constitutional or statutory office;
- (f) the head of a department ~~in the Public Service of government~~; and
- (g) such other persons or offices as may be prescribed by Parliament.

(2) A person to whom this Part applies has a duty to conduct himself in such a way, both in his public or official life and his private life, and in his associations with other persons, as not:

- (a) to place himself in a position in which he has a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
- (b) to demean his office or position or compromise his integrity; or
- (c) to diminish respect for and confidence in the integrity of the government of Nauru,

provided that the duty imposed in paragraph (a) of this clause is to be interpreted in a manner that takes account of the circumstances of Nauru and its small population.

(3) A person to whom this Part applies shall not use his office for personal gain.

(4) A person to whom this Part applies who:

- (a) is convicted of an offence in respect of his office or position or in relation to the performance of his functions or duties; or
- (b) fails to carry out the obligations imposed by the preceding clauses of this Article,

is guilty of misconduct in office.

(5) Subject to the provisions of this Constitution, for the purposes of this Part, Parliament shall, as soon as practicable after the commencement of this Part:

- (a) make provision for the disclosure of the personal and business incomes and financial affairs of persons to whom this Part applies;
- (b) make provision for the investigation of cases of alleged or suspected misconduct in office; and
- (c) provide for the reference of cases of alleged or suspected misconduct in office to such independent courts or tribunals as may be prescribed, and for the determination by such courts or tribunals of any such cases that may be referred to them in the manner prescribed.

(6) Subject to the provisions of this Constitution, for the purposes of this Part, Parliament may:

- (a) prescribe specific acts or omissions constituting misconduct in office;
  - (b) create offences (including offences by persons to whom this Part applies and offences by other persons) and prescribe penalties for such offences; and
  - (c) make other provision as may appear necessary or expedient for attaining the objects of this Part.
- (7) If Parliament has by law empowered any tribunal or court in relation to breach of the provisions of this Article or breach of any law made pursuant to clauses (5) or (6) of this Article, to make orders prohibiting a person from holding a position of Leadership, such orders:
- (a) if made by a court or Tribunal other than the Supreme Court, shall not take effect until the order has been referred to the Supreme Court and upheld by that Court; and
  - (b) if the order is made in respect of a person currently occupying the office of a judge of the Supreme Court, Director of Audit or Ombudsman, shall not take effect in relation to the position currently held by that person until referred to Parliament and endorsed by a resolution under Article 51(1), 57B(5)(b) or 66(3)(b) ~~a vote of not less than two thirds of the total number of members of Parliament praying for his removal on the ground of proved incapacity or misconduct.~~
- (8) Notwithstanding the other provisions of this Article, nothing done by a judge in the independent exercise of his judicial functions shall be regarded as a breach by that judge of paragraph (c) of clause (2) of this Article.

## **PART VB – OMBUDSMAN**

### **57B Ombudsman**

- (1) There shall be an Ombudsman, whose office shall be a public and independent office.
- (2) The Ombudsman shall be appointed by the President, in consultation with the Speaker and the Chief Secretary.
- (3) Subject to clause (2) of Article 57C, the Ombudsman shall not perform the functions of any other public office, and shall not, without the approval of the President in each particular case, hold any ~~other~~ office of emolument ~~other~~ than the office of the Ombudsman or engage in any occupation for reward outside the duties of his office.
- (4) Subject to clause (5) of this Article, the Ombudsman shall hold office for a term of five years from the date of his appointment, and shall be eligible for reappointment on no more than one subsequent occasion.
- (5) The Ombudsman ceases to hold office:

- (a) at the expiry of his term;
- (b) upon being removed from office by a resolution of Parliament approved by not less than two thirds of the total number of members of Parliament praying for his removal on the ground of proved incapacity, misconduct or professional incompetence; or
- (c) upon resigning his office by writing under his hand delivered to the President.

### **57C Functions of Ombudsman**

(1) The functions of the Ombudsman shall be:

- (a) upon receipt of a complaint from a member of the public or at his own initiative, to enquire into the conduct of any person to whom this Article applies in the exercise of his office or authority, or abuse thereof;
- (b) to assist in the improvement of the practices and procedures of public bodies; and
- (c) to ensure the elimination of arbitrary and unfair decisions.

(2) Parliament may confer additional functions on the Ombudsman.

(3) This Article applies to members of the public service, the Nauru Police Force, and such other offices, government instrumentalities or public agencies as may be prescribed by Parliament.

(4) Nothing in this Article or in any law enacted for the purposes of this Part ~~shall confer on the Ombudsman any power to question or review any decision of any confers on the Ombudsman the power to question or review a decision of a judge, magistrate or registrar in the exercise of his judicial functions or to investigate action taken by the President or a Minister.~~

### **57D Discharge of functions of Ombudsman**

(1) Subject to clause (3) of this Article, in the discharge of his functions the Ombudsman shall not be subject to the direction or control of any other person or authority, but shall act independently.

(2) No proceedings of the Ombudsman shall be called in question in any court of law, save that, where any question arises as to whether the Ombudsman has jurisdiction, the Ombudsman or a person affected by the conduct or proposed conduct of the Ombudsman may apply to the Supreme Court for a determination of that question and the Supreme Court shall have jurisdiction to determine the question and to make such orders as it considers necessary and appropriate.

(3) The Ombudsman shall not conduct an investigation in respect of any matter if he has been given notice in writing by Cabinet that the investigation of that matter would not be in the interests of the security of Nauru.

(4) The Ombudsman shall grant any person or body that is the subject of a ~~complaint~~ ~~an inquiry~~ pursuant to paragraph 57C(1)(a) an opportunity to reply to the ~~complaints-allegations~~ made against them.

(5) The Ombudsman may in his discretion decide not to entertain a complaint where, in his opinion:

(a) the subject matter of the complaint is trivial; or

(b) the complaint is frivolous or vexatious or is not made in good faith; or

(c) the complainant has had knowledge for more than 12 months of the administrative action complained about, and fails to give a satisfactory explanation for the delay in making the complaint.

(6) Wherever, after due enquiry, the Ombudsman concludes that a complaint is unjustified, he shall so inform the complainant and the President and the head of the public department or authority concerned.

~~(7) Wherever, after due enquiry, the Ombudsman concludes that conduct was contrary to the law, based on error of law or of fact, delayed for unjustified reasons, or unjust or blatantly unreasonable and that, consequently, any decision taken should be annulled or changed or that any practice followed should be revised, he shall forward his findings in writing to the President and to the head of the public authority or department directly concerned.~~

~~(7) The Ombudsman must forward in writing to the President and to the head of the public authority or department directly concerned the findings of an inquiry into the conduct of a person if the Ombudsman concludes that:~~

~~(a) the conduct was:~~

~~(i) contrary to law; or~~

~~(ii) based on an error of law or fact; or~~

~~(iii) delayed for unjustified reasons; or~~

~~(iv) unjust or blatantly unreasonable; and~~

~~(b) as a result:~~

~~(i) a decision made by the person should be annulled or changed; or~~

~~(ii) a practice followed by the person should be revised.~~

(8) The findings of the Ombudsman pursuant to clause (7) of this Article shall be public unless he decides to keep such findings, or parts thereof, confidential to the President and the ~~person in charge of the relevant public department or authority~~ ~~head of the public authority or department directly concerned~~, on the grounds of public security or public interest. The complainant shall in any case be told of the findings of the Ombudsman.

(9) The Ombudsman shall make an annual report to Parliament and may make such additional reports to Parliament as he deems appropriate concerning the

discharge of his functions, and may draw attention to any defects which appear to him to exist in the administration or any law, and the Speaker shall cause each report of the Ombudsman to be laid on the table of Parliament as soon as practicable.

#### **57E Further provisions**

Parliament may make provision for such supplementary and ancillary matters as may appear necessary or expedient to give effect to the provisions of this Part.

## **PART VI – FINANCE**

### **58 Treasury Fund**

All revenues and other moneys raised or received by Nauru, not being revenues or other moneys payable by law into another fund established for a specific purpose, shall be paid into and form a Treasury Fund.<sup>17</sup>

### **~~58A Annual Budget and Appropriation~~**

~~(1) Before the end of each financial year Cabinet shall present to Parliament an annual budget setting out the estimates of revenues and expenditures for the next financial year, in accordance with clause (4) of Article 59, and an annual appropriation bill that complies with clause (3) of Article 59 and which reflects the estimates of expenditures.~~

~~(2) The annual budget and budgetary processes shall promote transparency, accountability and the effective financial management of the economy, debt and the public sector.~~

~~(3) The budget shall contain —~~

~~(a) estimates of revenue and expenditure, differentiating between capital and current expenditure;~~

~~(b) sources of revenue;~~

~~(c) proposals for financing any anticipated deficit for the period to which it applies; and~~

~~(d) an indication of Cabinet's intentions regarding borrowing and other forms of public liability that will increase public debt during the ensuing year.~~

### **59 Withdrawals from Treasury Fund and public funds**

- (1) No moneys shall be withdrawn from the Treasury Fund except to meet expenditure that is charged upon the Treasury Fund by this Constitution or in accordance with law.

- (2) No moneys shall be withdrawn from any fund referred to in Article 58 other than the Treasury Fund except in accordance with law.
- (3) A proposed law for the withdrawal of moneys from the Treasury Fund or any other fund referred to in Article 58 shall not receive the certificate of the Speaker under Article 47 unless the purpose of the withdrawal has been recommended to Parliament by the Cabinet.<sup>18</sup>
- (4) The Cabinet shall cause to be prepared and laid before Parliament before the date of commencement of each financial year (or if, in respect of a particular financial year, Parliament, by resolution, determines a later date, before that later date), estimates of the revenues and expenditure of Nauru for that year.<sup>19</sup>

#### **59A Annual budget and appropriation**

- (1) At the same time as estimates of revenues and expenditure are laid before Parliament under Article 59(4), Cabinet shall:
  - (a) present to Parliament a bill for an annual appropriation law that complies with clause (3) of Article 59 and which reflects the estimates of expenditure; and
  - (b) lay before Parliament a statement setting out Cabinet's:
    - (i) proposals for financing any anticipated deficit for the period to which it applies; and
    - (ii) intentions regarding borrowing and other forms of public liability that are likely to increase public debt during the ensuing year.
- (2) The annual budget and budgetary processes shall promote transparency, accountability and the effective financial management of the economy, debt and the public sector.

#### **59AB Statement of Accounts**

- (1) In this Article:

'accounts of the Republic of Nauru' includes the accounts of all assets, liabilities, income and expenditure of all departments and offices of the legislative, executive and judicial branches of government and of all statutory corporations and other instrumentalities directly or indirectly controlled by the Republic except any statutory corporation for which provision is made by law for audit by a person other than the Director of Audit.
- (2) The Minister responsible for finance shall, as soon as practicable after the end of the financial year and not later than three months after that date or such longer period thereafter as Parliament may by resolution appoint, submit to the Director of Audit a statement of the accounts of ~~the moneys and assets of the~~ Republic of Nauru for that year.

**60 Taxation**

No tax shall be raised except as prescribed by law and a proposed law for the imposition of a tax shall not receive the certificate of the Speaker under Article 47 unless the imposition of the tax has been recommended to Parliament by the Cabinet.<sup>20</sup>

**61 Withdrawal of moneys in advance of appropriation law**

- (1) ~~If the appropriation law in respect of a financial year has not received~~ Subject to clause (1A) of this Article, if ~~If Cabinet anticipates that the annual appropriation law will not receive~~ the certificate of the Speaker under Article 47 ~~on or before the twenty-first day~~ before the commencement of ~~that the~~ financial year, the Cabinet may, in accordance with clause (2) of this Article, recommend to Parliament a proposed law authorising the withdrawal of moneys from the Treasury Fund for the purpose of meeting expenditure necessary to carry on the services of the Republic of Nauru after the commencement of that financial year until the expiration of three months or the coming into operation of the annual appropriation law, whichever is the earlier.<sup>21</sup>

~~—(1A) Subject to clause (4) of Article 61A, there shall be no more than one proposed law under clause (1) of this Article in any financial year.~~

- (2) A recommendation by the Cabinet referred to in clause (1) of this Article shall be in writing delivered to the Speaker ~~not later than the fourteenth day~~ before the commencement of the financial year and the Speaker shall, on receiving the recommendation, lay it before Parliament as soon as practicable.<sup>22</sup>
- (3) For the purposes of clause (2) of this Article and notwithstanding Article 40, the Speaker shall, if necessary, appoint a time for the beginning of a session, or for a sitting, of Parliament.<sup>23</sup>
- (4) ~~Where~~Subject to clause (5) of this Article, where the Cabinet has recommended a proposed law under clause (1) of this Article and neither the annual appropriation law nor that proposed law has come into operation on or before the commencement of that financial year, the Cabinet may authorise the withdrawal of moneys in accordance with that proposed law but the amount of moneys so withdrawn shall not exceed one-quarter of the amount withdrawn under the authority of the appropriation law or laws in respect of the preceding financial year.<sup>24</sup>
- ~~(5) Subject to clauses (4) and (7) of Article 61A, there shall be no more than one authorised withdrawal of moneys under clause (4) of this Article in any financial year.~~

**61A Dissolution upon failure to pass appropriation law**

~~(1) Subject to clause (4) of this Article, where neither the annual appropriation law under Article 58A nor a proposed law under clause (1) of Article 61 has come into operation within 90 days of the commencement of any financial year, or where a law passed under clause (1) of Article 61 has expired and the annual~~

~~appropriation law has not been approved, the Parliament shall be dissolved by the Speaker and the President and Ministers shall cease to hold office.~~

~~(2) When Parliament is dissolved pursuant to clause (1) or clause (6) of this Article or clause (1) of Article 24, the Council of State may, if moneys withdrawn by the previous Cabinet have expired, authorise the withdrawal of moneys from the Treasury Fund for the purpose of meeting expenditure necessary to carry on the services of the Republic of Nauru until the new Cabinet is formed following the general election and that Cabinet has passed its appropriation or supply law or authorised the withdrawal of moneys from the Treasury Fund in accordance with clause (4) of this Article, but the amount withdrawn shall not exceed one quarter of the amount withdrawn under the authority of the appropriation law or laws in respect of the preceding financial year.~~

~~(3) When the Council of State authorises the withdrawal of moneys from the Treasury Fund pursuant to clause (2) or clause (7) of this Article, a statement of the sums so authorised shall be laid before Parliament when it first meets following the general election and the aggregate sums shall be included, under the appropriate heads, in the next appropriation bill.~~

~~(4) When, following a dissolution of Parliament under clause (1) or clause (6) of this Article a new Cabinet is formed following a general election and the moneys withdrawn by the Council of State under clause (2) of this Article have expired, the provisions of clauses (1), (2), (3) and (4) of Article 61 shall apply to the new Cabinet notwithstanding that the financial year has already commenced.~~

~~(5) When, following a dissolution of Parliament under clause (1) or clause (6) of this Article a new Cabinet is formed following a general election, and in any other circumstances where an annual appropriation law is not in place, the Cabinet shall as soon as practicable present to Parliament an annual budget and an annual appropriation bill that comply with the applicable requirements of Article 58A.~~

~~(6) If, following a dissolution of Parliament under this Article and the formation of a new Cabinet following a general election or following the formation of a new Cabinet in any other circumstances where an annual appropriation law is not in place, the annual appropriation law has not been approved by Parliament within three months after the formation of the new Cabinet, Parliament shall be dissolved by the Speaker and the President and Ministers shall cease to hold office.~~

~~(7) When a caretaker government or the Council of State is required to exercise the executive functions of government for a period exceeding three months by reason of a newly formed Parliament being dissolved under clause (8) of Article 41, the caretaker government or the Council of State may, if moneys previously appropriated or withdrawn have expired, authorise the withdrawal of moneys from the Treasury Fund for the purpose of meeting expenditure necessary to carry on the services of the Republic of Nauru until a new Cabinet is formed following the general election and that Cabinet has passed its appropriation law, but the amount withdrawn shall not exceed one quarter of the amount withdrawn under the authority of the appropriation law or laws in respect of the preceding financial year.~~

**61A Withdrawal of moneys following dissolution**

- (1) This Article applies if:
- (a) Parliament is dissolved under Article 24(2), 24(4) or 41(8); and
  - (b) either:
    - (i) moneys previously appropriated or withdrawn from the Treasury Fund have been exhausted; or
    - (ii) the authorisation or law under which the moneys were withdrawn or appropriated has expired.
- (2) Cabinet may authorise the withdrawal of moneys from the Treasury Fund to meet the expenditure necessary to carry on the services of the Republic of Nauru until:
- (a) the next Parliament is formed following a general election; and
  - (b) the Speaker certifies a law passed by Parliament for the withdrawal of moneys under Article 59.
- (3) The amount authorised to be withdrawn under clause (2) must not exceed one quarter of the total amount withdrawn under the authority of the appropriation laws for the preceding financial year.
- (4) If moneys are withdrawn under clause (2):
- (a) a statement of the amount authorised to be withdrawn must be laid before Parliament when it first meets following the general election; and
  - (b) the amount must be included under the appropriate heads in the next bill for an annual appropriation law.

**62 Long Term Investment Fund**

- (1) There shall be a Long Term Investment Fund constituted by the moneys that immediately before the commencement of this Constitution constituted a fund called the Nauruan Community Long Term Investment Fund and by such other moneys as are appropriated by law for payment into the fund or are paid into the fund as provided by clause (2) of this Article.
- (2) Moneys constituting the Long Term Investment Fund may be invested as prescribed by law and income derived from moneys so invested shall be paid into the fund.
- (3) Notwithstanding the provisions of Article 59, no moneys shall be withdrawn from the Long Term Investment Fund (otherwise than for investment under clause (2) of this Article) until the recovery of the phosphate deposits in Nauru has, by reason of the depletion of those deposits, ceased to provide adequately for the economic needs of the citizens of Nauru.

**63 Phosphate royalties**

- (1) Parliament may provide for the establishment of a fund for the benefit of persons from whose land phosphate deposits have been recovered and for the payment into that fund of amounts from the Treasury Fund and for the payment of moneys out of that fund to those persons.
- (2) Parliament may provide for the payment from the Treasury Fund to persons from whose land phosphate deposits have been recovered of such royalties as are prescribed by law.
- (3) No moneys or assets held in the Nauruan Landowners Royalty Trust Fund established under the Nauruan Royalty Trust (Payment and Investment) Act 1968 as amended, or held in any trust established for the same purpose, shall be lent, mortgaged or charged as security for any borrowing for any purpose whatsoever.

**64 Contingencies Fund**

- (1) Parliament may provide for the establishment of a Contingencies Fund and for authorising the Cabinet, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that fund for the purposes of that expenditure.<sup>25</sup>
- (2) Where an advance is made from the Contingencies Fund, provision may be made by law for replacing the amount so advanced.

**65 Remuneration of certain officers**

- (1) There shall be paid to the holders of the offices to which this Article applies such salary and such allowances as are prescribed by law.<sup>26</sup>
- (2) The salaries and allowances payable to the holders of the offices to which this Article applies are a charge on the Treasury Fund.
- (3) The salary and allowances payable to the holder of an office to which this Article applies and his other conditions of service shall not be altered to his disadvantage during the term of his appointment.
- (4) This Article applies to the office of judge of the Supreme Court, Clerk of Parliament and Director of Audit.

**66 ~~Director of Audit~~**

- ~~(1) There shall be a Director of Audit, whose office is a public office.~~
- ~~(2) The powers and functions and the conditions of service of the Director of Audit are, subject to this Constitution, as prescribed by law.~~
- ~~(3) The Director of Audit shall not hold or act in any other public office during his period of service and a person who has held the office of Director of Audit shall~~

~~not hold or act in any public office during the period of three years after he ceases to be Director of Audit.~~

- ~~(4) The Director of Audit may resign his office at any time by writing under his hand delivered to the Speaker.~~
- ~~(5) The Director of Audit may not be removed from office except on a resolution of Parliament approved by not less than two-thirds of the total number of members of Parliament praying for his removal from office on the ground of proved incapacity or misconduct.~~

### **Director of Audit**

- ~~(1) The Speaker shall nominate and, with the approval of Parliament, signified by resolution, the President shall appoint, a person with appropriate expertise to be Director of Audit of Nauru whose office shall be a public and independent office.~~
- ~~(2) The Director of Audit shall hold office for a term of three years and shall be eligible for reappointment on no more than one subsequent occasion.~~
- ~~(3) The Director of Audit ceases to hold office-~~
- ~~(a) at the expiry of his term;~~
  - ~~(b) upon being removed from office by a resolution of Parliament approved by not less than two thirds of the total number of members of Parliament praying for his removal on the ground of proved incapacity or misconduct; or~~
  - ~~(c) upon resigning his office by writing under his hand delivered to the Speaker.~~
- ~~(4) If the office of Director of Audit is vacant, or it appears that the Director of Audit is for any reason unable to perform the functions of his office, the Speaker shall nominate and the President shall appoint an Acting Director of Audit, who shall perform the functions of the Director of Audit until the Director of Audit resumes the performance of the functions of his office or until a new Director of Audit is appointed and assumes office.~~
- ~~(5) In the exercise of his functions, the Director of Audit shall act independently and shall not receive any direction from the Cabinet or from any other authority or person.~~
- ~~(6) The Director of Audit shall not hold or perform the functions of any other public office during his term of office and a person who has held the office of Director of Audit shall not hold or act in any public office during the period of three years after he ceases to be Director of Audit.~~

### **66A Audit of Accounts**

- ~~(1) For the purposes of Article 59A and of this Article-~~

~~'accounts of the moneys and assets of the Republic of Nauru' includes the accounts of the revenues, expenditure, assets and liabilities of all departments or offices of the legislative, executive and judicial branches of government and of all statutory corporations and other instrumentalities directly or indirectly controlled by the Republic; and~~

~~'the moneys and assets of the Republic of Nauru' includes all revenue, loan, trust, and other moneys and all stamps, bonds, debentures and other securities whatsoever raised, received or held, whether temporarily or otherwise, by or on account of the Republic of Nauru and of all statutory corporations and other instrumentalities directly or indirectly controlled by the Republic.~~

(1) In this Article:

~~'accounts of the Republic of Nauru' means the accounts of all assets, liabilities, income and expenditure of all departments and offices of the legislative, executive and judicial branches of government and of all statutory corporations and other instrumentalities directly or indirectly controlled by the Republic;~~

~~'assets' includes all revenue, loan, trust, and other moneys and all stamps, bonds, debentures and other securities whatsoever raised, received or held, whether temporarily or otherwise.~~

(2) The Director of Audit shall, within two months after receiving from the Minister responsible for finance the statements of accounts for the financial year as provided for in Article 59A 59B, or within such longer period as Parliament may by resolution appoint, submit to the Speaker a report on his examination and audit of all accounts relating to the moneys and assets of the Republic of Nauru for the year, together with certified copies of the statements of accounts.

(3) The Speaker shall cause the report and statements submitted in accordance with the preceding clause under clause (2) to be laid on the table of Parliament as soon as practicable and shall send copies thereof to the President and the Minister responsible for finance.

(4) If provision is made by law for audit by any other person of the accounts of a statutory corporation, such person shall report to the Director, who shall have access to such accounts, and such person shall provide to the Director the audited accounts of the statutory corporation no later than two months after the end of the financial year, or within such longer period as Parliament may by resolution appoint.

(5) The Director of Audit may exercise his responsibilities under clause (2) of this Article either in person or through appropriately qualified officers who are subordinate to him, acting in accordance with his general or special instructions.

(6) For the purpose of carrying out his functions under this Article, the Director of Audit or any person authorised by him shall have full access to all public records, including electronic records, books, vouchers, documents, cash,

stamps, securities, stores or other government property in the possession of any officer.

(7) Nothing in this Article or in clause (6) of Article 66 shall prevent the Director of Audit from –

(a) offering technical advice and assistance to any person or authority having a responsibility in relation to the public revenues and expenditure of Nauru or having other auditing responsibilities within the Pacific region that are not in conflict with the interests of Nauru; and

(b) performing other functions in relation to the supervision of expenditure from public funds.

(8) In performing the audit referred to in clause (2), the Director shall satisfy himself:

(a) that all reasonable precautions have been taken to safeguard the collection of the moneys of the Republic of Nauru and that laws, directions or instructions relating thereto have been duly observed; and

(b) that all moneys of the Republic of Nauru appropriated or otherwise disbursed have been expended and applied for the purpose or purposes for which the grants made by Parliament were intended to provide and that expenditure conforms to the authority which governs it.

(9) The Director's report to Parliament referred to in clauses (2) and (3) of this Article shall:

(a) draw attention to any irregularities in the accounts audited by him;

(b) give consideration to the audit test prescribed in ~~the preceding clause~~ clause (8); and

(c) report on the performance of the functions of the Office of Director of Audit for the relevant financial year.

(10) The Director may, at any time, submit to the Speaker a special report on the performance of the functions of the Office of Director of Audit or on any matter of concern relating to the accounts of the Republic of Nauru, and the Speaker shall cause the special report to be laid on the table of Parliament as soon as practicable and send copies thereof to the President and Minister responsible for finance.

## **67 Public debt**

(1) All debt charges for which Nauru is liable are a charge on the Treasury Fund.

(2) For the purposes of this Article, debt charges include interest, sinking fund charges, repayment or amortisation of debt and all expenditure in connexion with the raising of loans and the service and redemption of the debt thereby created.

- (3) No mortgage or other charge over the property of the Republic or of an instrumentality of the Republic and no public guarantee shall have effect in law or equity unless and until it is approved by Parliament.

## **PART VII\*\*\* -- THE PUBLIC SERVICE**

\*\*\* Part VII., Articles 68-70 substituted 17.5.68

### **67A Basic values and principles governing public administration**

- (1) Public administration shall be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

- (a) a high standard of professional ethics shall be promoted and maintained;
- (b) efficient, economic and effective use of resources shall be promoted;
- (c) public administration shall be development oriented;
- (d) services shall be provided impartially, fairly, equitably and without bias;
- (e) people's needs shall be responded to, and the public shall be encouraged to participate in policy-making;
- ~~(f) public administration shall be accountable;~~
- (gf) transparency shall be fostered by providing the public with timely, accessible and accurate information;
- (hg) good human-resource management and career-development practices, to maximise human potential, shall be cultivated;
- (ih) public administration shall be broadly representative of the Nauruan people, with employment and personnel management practices based on ability, objectivity and fairness.

- (2) The above principles shall apply to:

- (a) the public service;
- (b) statutory corporations;
- (c) government instrumentalities; and
- (d) the Nauru Police Force.

### **67B Chief Secretary**

- (1) There shall be a Chief Secretary of Nauru, who shall be appointed by and responsible to the Cabinet.

- (2) A member of Parliament is not qualified to be appointed Chief Secretary.

(3) The Chief Secretary may resign his office by writing under his hand delivered to the President and may be removed from office by the Cabinet.

(4) Subject to clause (1)(a) of Article 69, the Chief Secretary has such powers and functions as are conferred on him by this Constitution or by law.

(5) The powers and functions of the Chief Secretary include:

(a) managing all departments and offices of government in accordance with the values and principles in Article 67A;

(b) advising Cabinet in relation to the administration of government; and

(c) ensuring that the written policies of Cabinet are implemented by the public service.

(6) The head of any department or office shall account for the work of that department or office to the Chief Secretary, as well as to the Minister primarily responsible for that department or office.

## **68 Appointments, etc., in the Public Service**

(1) Except as otherwise provided by law under Article 69, there is vested in the Chief Secretary the power:

(a) to appoint, subject to clause (3) of this Article, persons to hold or act in offices in the Public Service;

(b) to exercise disciplinary control over persons holding or acting in such offices; and

(c) to remove such persons from office.

(2) The Chief Secretary may, by instrument in writing under his hand, delegate to a public officer power to exercise disciplinary control over persons holding or acting in such public offices, other than offices referred to in clause (3) of this Article, as the Chief Secretary specifies in the instrument and such delegation is subject to such conditions, if any, as the Chief Secretary specifies in the instrument.

(3) The Chief Secretary may not exercise his power under paragraph (a) of clause (1) of this Article in relation to the office of a person in charge of a department of government and such other offices as are prescribed by law except in accordance with the approval of the Cabinet.

(4) The Chief Secretary shall report to the Cabinet on ~~such matters relating to~~ the exercise of the powers under this Article ~~as are prescribed by law~~ at least once a year and the Cabinet shall cause a copy of the report to be laid before Parliament.

**68A Nauru Police Force**

- (1) There shall be a Nauru Police Force.
- (2) The functions and responsibilities of the Nauru Police Force include to prevent, combat and investigate crime, to maintain public order, to protect and secure the people of Nauru and their property, and to uphold and enforce the law.
- (3) The powers of the Nauru Police Force shall be prescribed by law.

**69 Power of Parliament to establish Public Service Commission Board and to make special provisions regarding Police**

- (1) Parliament may make provision for either or both of the following:
  - (a) vesting the powers and functions of the Chief Secretary under clauses (1) and (2) of Article 68, and any other powers and functions in relation to the public service other than those referred to in clause (5) of Article 67B, in a Public Service Commission Board consisting of the Chief Secretary, who shall be Chairman, and not less than two other persons who are not members of Parliament; and
  - (b) subject to clause (2) of this Article, vesting in the public officer in charge of the Nauru Police Force the powers and functions of the Chief Secretary under clause (1) of Article 68, in so far as they apply to or in respect of public officers in the Nauru Police Force.
- (2) Where Parliament makes provision under paragraph (b) of clause (1) of this Article:
  - (a) it shall also make provision for establishing a Police Service Board consisting of not less than three persons, who are not members of Parliament, of whom one shall be the Chief Justice, who shall be Chairman, one shall be the Chief Secretary, and one shall be a person elected by members of the Nauru Police Force in such manner and for such term as are prescribed by law;
  - (b) the power of the public officer in charge of the Nauru Police Force to appoint persons to hold or act in offices in the Nauru Police Force shall be subject to such consent, if any, of the Police Service Board as is required by law; and
  - (c) the Chief Secretary or, where Parliament has made provision for a Public Service Commission Board, the Public Service Commission Board, shall not exercise the powers or perform the functions under clauses (1) and (2) of Article 68 in so far as they apply to or in respect of public officers in the Nauru Police Force.
- (3) An appeal lies to the Police Service Board from a decision of the public officer in charge of the Nauru Police Force under this Article to remove a public officer from office or to exercise disciplinary control over a public officer at the instance of the public officer in respect of whom the decision is made.

- (4) The Police Service Board shall exercise such other powers and functions as are conferred on it by law and shall, subject to this Article and any law, regulate its own procedure.
- (5) Except as otherwise provided by law, no appeal lies from a decision of the Police Service Board.

## **70 Public Service Appeals Board**

- (1) Subject to clause (9) of this Article, there shall be a Public Service Appeals Board which shall consist of the Chief Justice, who shall be Chairman, one person appointed by the Cabinet and one person elected by public officers as prescribed by law.
- (2) A member of Parliament is not qualified to be a member of the Public Service Appeals Board.
- (3) A member of the Public Service Appeals Board ceases to hold office:
  - (a) upon being elected a member of Parliament;
  - (b) if he was appointed by the Cabinet, upon being removed from office by the Cabinet or upon resigning his office by writing under his hand delivered to the President; or
  - (c) if he was elected by public officers, upon the expiration of the term for which he was elected, upon being removed from office in the manner prescribed by law or upon resigning his office by writing under his hand delivered to the Chief Secretary.
- (4) Whenever a member of the Public Service Appeals Board, other than the Chief Justice, is unable for any reason or ineligible under clause (5) of this Article to perform the duties of his office, the Cabinet may:
  - (a) if the member was appointed by it, appoint a person who is not a member of Parliament; or
  - (b) if the member was elected by public officers, appoint, subject to such conditions, if any, as are prescribed by law, a person,  
  
to act as a member of the Public Service Appeals Board during the period of the inability or ineligibility of the member.
- (5) Parliament may provide that a member of the Public Service Appeals Board, other than the Chief Justice, is ineligible to act in relation to such matters as are prescribed by law.
- (6) Except where an appeal lies to the Police Service Board under Article 69, an appeal lies to the Public Service Appeals Board from a decision to remove a public officer from office or to exercise disciplinary control over a public officer at the instance of the public officer in respect of whom the decision is made.

- (7) The Public Service Appeals Board shall exercise and perform such other powers and functions as are conferred on it by law and shall, subject to this Constitution and any law, regulate its own procedure.
- (8) Except as otherwise provided by law, no appeal lies from a decision of the Public Service Appeals Board.
- (9) If Parliament exercises its power under clause (1)(a) of Article 69 to create a Public Service Commission, the Public Service Appeals Board shall become defunct, and appeal ~~of~~ against decisions of the Public Service Commission shall lie to the Supreme Court until Parliament provides for appeal to such other court as it may prescribe.

#### **70A Director of Public Prosecutions**

- (1) There shall be a Director of Public Prosecutions, who shall be appointed by the President after consultation with Cabinet.
- (2) The Director of Public Prosecutions shall be a person who is qualified to be appointed as a judge of the Supreme Court and shall not hold or perform the functions of any other public office.
- (3) The Director of Public Prosecutions may:
  - (a) institute and conduct criminal proceedings;
  - (b) take over criminal proceedings that have been instituted by another person or authority;
  - (c) discontinue, at any stage before judgment is delivered, criminal proceedings instituted or conducted by himself or another person or authority; and
  - (d) do anything that he is authorised or required to do by any law in force in Nauru.
- (4) The powers conferred on the Director of Public Prosecutions by paragraphs (b) and (c) of clause (3) of this Article shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, that person or authority may discontinue those proceedings with the leave of the Director of Public Prosecutions.

- (5) In exercising his responsibilities under this Article the Director of Public Prosecutions:
  - (a) shall act independently and shall not accept any direction from the Cabinet or any other person or authority other than a lawful order of a court of competent jurisdiction; and

- (b) may exercise his responsibilities either in person or through subordinates or other suitably qualified persons acting under and in accordance with his general or special instructions.
- (6) During any period when the office of Director of Public Prosecutions is vacant or the holder of that office is for any reason unable to perform the functions of his office those functions shall be performed by a suitably qualified public officer appointed by the Minister responsible for justice.
- (7) The Director of Public Prosecutions ceases to hold office:
- (a) at the expiry of his ~~contract appointment~~;
- (b) upon being removed from office by Cabinet on the ground of incapacity, gross misconduct or professional incompetence; or
- (c) upon resigning his office by writing under his hand delivered to the President.
- (8) In this Article, ~~'proceedings' include any appeal from any~~ includes an appeal from a judgment in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings to the Trial or Appellate Division of the Supreme Court.

## PART VIII – CITIZENSHIP

### 71 **Members of Nauruan community to be Nauruan citizens**

A person who on the thirtieth day of January One thousand nine hundred and sixty-eight was included in one of the classes of persons who constituted the Nauruan Community within the meaning of the *Nauruan Community Ordinance* 1956-1966 of Nauru is a Nauruan citizen.

### 72 **Persons born on or after 31 January 1968**

- (1) A person born on or after the thirty-first day of January One thousand nine hundred and sixty-eight is a Nauruan citizen if his parents were Nauruan citizens at the date of his birth.
- ~~(2) A person born on or after the thirty-first day of January One thousand nine hundred and sixty-eight is a Nauruan citizen if he is born of a marriage between a Nauruan citizen and a Pacific Islander and neither parent has within seven days after the birth of that person exercised a right prescribed by law in the manner prescribed by law to determine that that person is not a Nauruan citizen.~~
- (32) A person born on or after the thirty-first day of January One thousand nine hundred and sixty-eight is entitled to become a Nauruan citizen if one of his parents was a Nauruan citizen at the date of his birth.

**73 Persons born in Nauru on or after 31 January 1968**

A person born in Nauru on or after the thirty-first day of January One thousand nine hundred and sixty-eight is a Nauruan citizen if, at the date of his birth he would not, but for the provisions of this Article, have the nationality of any country.

**74 Women Persons married to Nauruan Citizens**

~~A woman~~ Any person, not being a Nauruan citizen, who is married to a Nauruan citizen or has been married to a man person who was, throughout the subsistence of the marriage, a Nauruan citizen, is entitled, upon making application in such manner as is prescribed by law subject to such reasonable conditions as may be prescribed by law, to become a Nauruan citizen.<sup>27</sup>

**75 Powers of Parliament regarding citizenship**

- (1) Parliament may make provision for the acquisition of Nauruan citizenship by persons who are not otherwise eligible to become Nauruan citizens under the provisions of this Part.
- (2) Parliament may make provision for depriving a person of his Nauruan citizenship being a person who has acquired the nationality of another country otherwise than by marriage.
- (3) Parliament may make provision for depriving a person of his Nauruan citizenship being a person who is a Nauruan citizen otherwise than by reason of Article 71 or Article 72.
- (4) Parliament may make provision for the renunciation by a person of his Nauruan citizenship.

**76 Interpretation**

~~(1) In this Part, "Pacific Islander" has, except as otherwise prescribed by law, the same meaning as in the Nauruan Community Ordinance 1956-1966 of Nauru.~~

~~(2) A reference in this Part to the citizenship of the parent of a person at the date of that person's birth shall, in relation to a person one of whose parents died before the birth of that person, be construed as a reference to the citizenship of the parent at the time of the parent's death.~~

## **PART IX – EMERGENCY POWERS**

**77 Declaration of an emergency**

- (1) If the President is satisfied, after consulting Cabinet, that a grave emergency exists whereby the security or economy of Nauru is threatened he may, by public proclamation, declare that a state of emergency exists.<sup>28</sup>

(2) A declaration of emergency lapses:

- (a) if the declaration is made when Parliament is sitting-in session, at the expiration of seven days after the date of publication of the declaration; or
- (b) ~~in any other case if the declaration is made when Parliament is not in session~~, at the expiration of ~~twenty-one~~ fourteen days after the date of publication of the declaration,

unless it has in the meantime been approved by a resolution of Parliament approved by a majority of the members of Parliament present and voting.

(2A) The Parliament may approve a declaration of a state of emergency for no more than three months at a time by a resolution approved by a majority of the members of the Parliament present and voting, save that, subject to clause (2B) of this Article, any successive continuation of a declaration of a state of emergency and any declaration of a state of emergency made within 21 days of the expiration of a declaration of a state of emergency shall be by further resolution approved by a vote of no fewer than two thirds of the members of the Parliament present and voting.

(2B) If, following the making of a declaration of a state of emergency or within 21 days of the expiration of a declaration of a state of emergency, Parliament is by reason of the nature or extent of the emergency unable to meet, the President may make a further declaration of a state of emergency pursuant to clause (1) of this Article.

(3) The President may at any time revoke a declaration of emergency by public proclamation.

(4) Where a declaration of a state of emergency is made and Parliament is not in session, it shall be convened by the Speaker immediately in special session and remain in session during the entire period of the state of emergency; provided that Parliament shall not remain in session beyond the end of the normal term of Parliament.

(5) Where a declaration of a state of emergency is made when Parliament has been dissolved, or when Parliament is dissolved during an emergency, the members of the dissolved Parliament shall be called by the Speaker to a special session and remain in session until the conclusion of the state of emergency or the election of a new Parliament, whichever occurs sooner.

(6) Parliament may at any time revoke a declaration of a state of emergency or amend or revoke orders made under Article 78 by resolution of a majority of members present and voting and the President shall act accordingly and immediately carry out the resolutions of Parliament.

~~(4) A declaration of emergency that has been approved by a resolution of Parliament under clause (2.) of this Article remains, subject to the provisions of clause (3.) of this Article, in force for twelve months or such shorter period as is specified in the resolution.~~

- ~~(5) A provision of this Article that a declaration of emergency lapses or ceases to be in force at a particular time does not prevent the making of a further such declaration whether before or after that time.~~

## 78 Emergency powers

- (1) During the period during which a declaration of emergency is in force, the President may make such ~~E~~emergency orders as appear to him to be reasonably required for securing public safety, maintaining public order or safeguarding the interests or maintaining the welfare of the community.<sup>29</sup>
- (2) Subject to the provisions of this Part, an ~~emergency~~ order made by the President under clause (1) of this Article:<sup>30</sup>
  - ~~(a) has effect notwithstanding anything in Part II of this Constitution or in Article 94;~~
  - (b) is not invalid in whole or in part by reason only that it provides for any matter for which provision is made under any law or because of inconsistency with any law; and
  - (c) lapses when the declaration of emergency lapses unless in the meantime the order is revoked by a resolution of Parliament approved by a majority of the members of Parliament present and voting.
- (3) Subject to clauses (4) and (5) of this Article, the revocation or lapsing of an ~~emergency~~ order made by the President under clause (1) of this Article does not affect the previous operation of that order, the validity of anything done or omitted to be done under it or any offence committed or penalty or punishment incurred.<sup>31</sup>
- ~~(4) Any law enacted in consequence of a declared state of emergency and any ~~E~~emergency ~~O~~order made under clause (1) of this Article may derogate from the provisions of Part II of this Constitution (Protection of Fundamental Rights and Freedoms) only to the extent that:~~
  - ~~(a) the derogation is strictly required by the emergency; and~~
  - ~~(b) the law or ~~O~~order:~~
    - ~~(i) is consistent with Nauru's obligations under international law applicable to states of emergency;~~
    - ~~(ii) conforms to clause (5); and~~
    - ~~(iii) is published in the Gazette as soon as reasonably possible after being enacted or declared.~~
- ~~(5) No ~~D~~declaration of ~~E~~emergency or Act of Parliament that authorises a declaration of a state of emergency, and no ~~E~~emergency ~~O~~order or law enacted or other action taken in consequence of a declaration, may permit or authorise:~~

- (a) ~~indemnifying indemnification of~~ the government, or any person, in respect of any unlawful act;
- (b) any derogation from the Articles in this Part;
- (c) the dissolution of Parliament prior to the normal expiry of the legislative term;
- (d) the suspension or dismissal of ~~the judiciary any judicial officer;~~
- (e) any amendments to ~~the this~~ Constitution; or
- (f) any derogation from an Article listed in column 1 of the Table of Non-Derogable Rights, to the extent indicated opposite that Article in column 3 of that table.

**Table of Non-Derogable Rights:**

Article Number	Article Title	Extent to which the right is protected
3	<del>Right to equality</del>	<del>Clause 3(3) with respect to gender, race and colour only</del>
4	<del>Protection of right</del> Right to life	Entirely
5	Protection of personal liberty	With respect to clauses 5(2) and (4) only
7	Protection from inhuman treatment	Entirely
10	Provision to secure protection of law	With respect to clauses 10(1), (2) (in respect of a fair hearing by an independent and impartial court), (3), (4), (5), (6), (7) and (8) only

- (6) The Supreme Court may determine the validity of:
  - (a) a declaration of a state of emergency;
  - (b) any extension of a declaration of a state of emergency; or
  - (c) any ~~E~~mergency ~~O~~order made under this Article and any law enacted, or other action taken, in consequence of a declaration of a state of emergency.

**79 Restriction on detention**

- (1) For the purposes of this Article there shall be an advisory board consisting of the Chief Justice, one person nominated by the Chief Justice and one person nominated by the Cabinet.<sup>32</sup>
- (2) A person detained under an ~~order under Article 78~~ emergency order shall, as soon as practicable, be informed of the reasons for his detention and be ~~brought before~~ heard by the advisory board in person or by any other practicable means and permitted to make representations against his detention.
- (3) No person shall be detained under an ~~order under Article 78~~ emergency order for a period exceeding three months unless that person has been ~~brought before~~ heard by the advisory board and any representations made by him have been considered by it and it has within that period determined that there is sufficient cause for the detention.

**PART X – GENERAL**

**80 ~~Grant of pardon~~ Prerogative of Mercy**

(1) In exercising the prerogative of mercy, the President may:

- (a) grant a pardon, either free or subject to lawful conditions, to a person convicted of an offence;<sup>33</sup>
- (b) grant to a person a respite, either indefinite or for a specified period, of the execution of a punishment imposed on that person for an offence;
- (c) substitute a less severe form of punishment for any punishment imposed on a person for an offence; or
- (d) remit the whole or a part of a punishment imposed on a person for an offence or of a penalty or forfeiture on account of an offence.

(2) There shall be a Committee on the Prerogative of Mercy (in this Article referred to as ‘the Committee’) which shall consist of a qualified medical practitioner who shall be Chairperson and two other persons, one of whom shall be a senior officer of the Public Service and the other of whom shall be a community leader, appointed by Cabinet.

(3) Members of the Committee shall not be remunerated or receive any allowance for their service on the Committee.

(4) A member of the Committee appointed under clause (2) of this Article shall vacate his seat on the Committee:

- (a) at the expiration of the term of his appointment (if any) specified in the instrument of his appointment; or
- (b) if his appointment is revoked by Cabinet.

(5) Before exercising the prerogative of mercy in relation to a matter under clause (1), the President shall refer the matter to the Committee.

~~(56) Where a matter has been referred to the Committee under clause (5) Whenever the Committee advises the President on whether the Prerogative of Mercy should be exercised, the Committee shall make a recommendation about whether the prerogative of mercy should be exercised in relation to the matter and provide to the President a report which details the reasons for the recommendation, and a statement which summarises the reasons but which does not disclose any confidential information.~~

~~(67) In the exercise of the powers conferred upon him by clause (1) of this Article, the President shall take into account the **advice report** of the Committee.~~

~~(78) In any case in which the **P**prerogative of **M**mercy is exercised in accordance with clause (1), the President shall present to Parliament:~~

~~(a) if the power is exercised during a meeting of Parliament – during that session; or~~

~~(b) if the power is exercised at any other time – during the next session of Parliament,~~

~~the statement referred to in clause (56) and a statement from the President giving details of the exercise of the power and a summary of the reasons for it.~~

~~(89) Parliament may make provision for criteria or guidelines to be followed by the Committee in exercising its functions under this Article, and for any other matter necessary or expedient to give effect to the provisions of this Article.~~

## 81 Interpretation

(1) In this Constitution, unless the context otherwise requires:

**‘Article’** means Article of this Constitution;

**‘Cabinet’**<sup>34</sup> means the Cabinet established under Article 17;

**‘Chief Justice’** means the Chief Justice of the Supreme Court;

**‘Chief Secretary’**<sup>35</sup> means the Chief Secretary of Nauru appointed under Article ~~25~~ 67B;

**‘Court’** means a court of law having jurisdiction in Nauru;

**‘Existing law’** means a law in force in Nauru immediately before Independence Day;

**‘Government Gazette’**<sup>36</sup> means the Nauru Government Gazette;

**‘Independence Day’** means the thirty-first day of January, One thousand nine hundred and sixty-eight;

**'Law'** includes an instrument having the force of law and an unwritten rule of law and 'lawful' and 'lawfully' shall be construed accordingly;

**'Minister'**<sup>37</sup> means a Minister of the Cabinet; ~~or, in a provision in which a Minister with a particular responsibility is specified, means the particular Minister specified;~~

**'Month'** means calendar month;

**'Parliament'**<sup>38</sup> means the Parliament of Nauru established under Article 26;

**'Person'** includes a body corporate or politic;

**'President'**<sup>39</sup> means the President of Nauru;

**'Property'** includes [land and](#) a right, title or interest in or over [land or any other](#) property;

**'Public office'** means an office of emolument in the public service;

**'Public officer'** means a person holding or acting in a public office;

**'Public service'** means, subject to the provisions of this Article, the service of the Republic of Nauru;

**'Schedule'** means Schedule to this Constitution;

**'Session'**<sup>40</sup> means ~~the period beginning when the Legislative Assembly of Nauru first met on Independence Day or after Parliament has at any time been prorogued or dissolved and ending when next Parliament is prorogued or dissolved~~ [a series of sitting days held in accordance with Article 40;](#)

**'Sitting'** means ~~a period during which Parliament is sitting without adjournment~~ [the daily meeting of Parliament from the time of commencement of business until the adjournment of Parliament;](#)

**'Speaker'** means the Speaker of Parliament;

**'Supreme Court'** means the Supreme Court of Nauru established under Article 48;

**'Writing'** includes any mode of representing or reproducing words in a visible form.

(2) In this Constitution:<sup>41</sup>

(a) a reference to an office in the public service does not include:

- (i) a reference to the office of President, Minister, Speaker, Deputy Speaker, member of Parliament or Clerk of Parliament;
- (ii) a reference to the office of a Judge of the Supreme Court;

~~(iii)~~ [a reference to the offices of Ombudsman, Director of Audit or Director of Public Prosecutions; or](#)

- (iii) except in so far as is prescribed by law, a reference to the office of a member of a council, board, panel, committee or other similar body, whether incorporated or not, established by law; and
- (b) a reference to an office of profit in the service of Nauru does not include a reference to the office of President, Minister, ~~Speaker~~, Deputy Speaker, or member of Parliament.
- (3) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by an expression designating his office shall be construed as including, to the extent of his authority, a reference to a person for the time being authorised to exercise the powers or perform the functions of that office.
- (4) In this Constitution, a reference to the total number of members of Parliament is a reference to the number of members of which Parliament consists in accordance with Article 28.
- (5) In this Constitution, unless the context otherwise requires:
- (a) words importing the masculine gender shall be taken to include females; and
- (b) words in the singular include the plural and words in the plural include the singular.
- (6) Where a law is repealed, or is deemed to have been repealed, by, under or by reason of this Constitution, the repeal does not:
- (a) revive anything not in force or existing at the time at which the repeal takes effect;
- (b) affect the previous operation of the law or anything only done or suffered under the law;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law;
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, and, in respect of acts or events occurring prior to such repeal, any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the law had not been repealed.
- (7) Where a person is required by this Constitution to take and subscribe an oath, he shall be permitted, if he so desires, to comply with that requirement by making and subscribing an affirmation.

**82** **~~Parts, etc., of~~ Material that is, and is not, part of this Constitution**

(1A1) The Preamble forms part of this Constitution, and establishes principles upon which this Constitution, and the conduct of public affairs in Nauru, are to be based, provided that the Preamble is not justiciable.

(1A) The headings of the Parts into which this Constitution is divided are part of this Constitution.

(2) A Schedule to this Constitution is part of this Constitution.

(3) The ~~preamble and the~~ marginal notes to this Constitution do not form part of this Constitution.

**83** **Right to mine phosphate**

(1) Except as otherwise provided by law, the right to mine phosphate is vested in the Republic of Nauru.<sup>42</sup>

(2) Nothing in this Constitution makes the Government of Nauru responsible for the rehabilitation of land from which phosphate was mined before the first day of July, One thousand nine hundred and sixty-seven.

**84** **Amendment of the Constitution<sup>43</sup>**

(1) This Constitution shall not be altered except in accordance with this Article.

(2) This Constitution may be altered by law but a proposed law for that purpose shall not be passed by Parliament unless:

(a) there has been an interval of not less than ninety days between the introduction of the proposed law in Parliament and the passing of the proposed law by Parliament; and

(b) it is approved by not less than two-thirds of the total number of members of Parliament.

(3) A proposed law to alter or having the effect of altering the Fifth Schedule or any of the provisions of this Constitution specified in the Fifth Schedule shall not be submitted for the certificate of the Speaker under Article 47 unless, after it has been passed by Parliament, it has been approved by not less than two-thirds of all the votes validly cast on a referendum held, subject to clause (4) of this Article, as prescribed by law.

(4) A person who, at the time the referendum is held, is qualified to vote at an election of members of Parliament, is entitled to vote at a referendum held for the purposes of this Article and no other person is so entitled.

(5) A proposed law to alter this Constitution shall not receive the certificate of the Speaker under Article 47 unless it is accompanied by a certificate under the hand of the Clerk of Parliament that the provisions of clause (2) of this Article have been complied with and, if it is a proposed law to which clause (3) of this

Article applies, by a certificate under the hand of a person prescribed by law stating that it has been approved as provided by that clause.

#### **84A Opportunity for periodic review and inclusive review process**

- (1) At least every 15 years, Parliament shall submit to a referendum the question 'do you think there should be a Constitutional Convention, to consider whether or not there should be any amendments to the Constitution?', and if the referendum is passed by a majority of the votes cast, Parliament shall establish a Constitutional Convention.
- (2) Nothing in clause (1) shall prevent Parliament from initiating a review of the Constitution at any other time, and any such additional review shall not require a referendum prior to being commenced.
- (3) If a Constitutional Convention is established pursuant to clause (1) or a process of constitutional review is initiated pursuant to clause (2) Parliament shall enact a law setting out an inclusive process for review of the Constitution which ensures that people are able to participate in the process prior to a proposed law being introduced to Parliament pursuant to Article 84, and in the case of Convention under clause (1), prior to the establishment of the Convention.

#### **84B Promotion of awareness of the Constitution**

- (1) The government shall, in the English and Nauruan languages, promote public awareness of the Constitution.
- (2) The government shall provide for the teaching of the Constitution in schools, government institutions and disciplined services forces.

## **PART XI – TRANSITIONAL PROVISIONS**

### **85 Existing laws**

- (1) A law in force in Nauru immediately before Independence Day continues in force, subject to this Constitution and to any amendment of that law made by a law enacted under this Constitution or by order under clause (6) of this Article, until repealed by a law enacted under this Constitution.
- (2) A law which has not been brought into force in Nauru before Independence Day may, subject to this Constitution and to any amendment of that law made by law, be brought into force on or after Independence Day and a law brought into force under this clause continues in force subject as aforesaid, until repealed by a law enacted under this Constitution.
- (3) Clause (1) of this Article does not apply to the *Nauru Act 1965* of the Commonwealth of Australia, other than sections 4 and 53 of that Act, or to an Act of the Commonwealth of Australia that immediately before Independence Day extended to Nauru as a Territory of that Commonwealth.

- ~~(4) The *Constitutional Convention Ordinance 1967* of Nauru shall not be amended so as to affect the membership of the Constitutional Convention established under that Ordinance.~~
- (5) Where a matter that, under this Constitution, is to be prescribed or otherwise provided for by law, is prescribed or otherwise provided for by a law continued in force by clause (1) or (2) of this Article, that matter has, on and after Independence Day, effect as if it had also been prescribed or provided for by a law enacted under this Constitution.
- ~~(6) For the purposes of bringing the provisions of an existing law into accord with the provisions of this Constitution (other than Part II. of this Constitution) the President may, except as otherwise prescribed by law, within a period of two years after Independence Day, make, by order published in the Government Gazette, such adaptations, whether by way of modification of, addition to or omission from those provisions, as he deems necessary or expedient and an order so made has effect, or shall be deemed to have effect, from and including such date, not being a date before Independence Day, as is specified in the order.<sup>44</sup>~~
- (7) All laws that were in force on the date of commencement of the 2010 amendments continue in force, subject to:
- (a) any amendment or repeal; and
- (b) consistency with the Constitution as amended.
- (8) Where, by virtue of any amendment to this Constitution, any matter is to be provided for by Parliament and such matter is prescribed or otherwise provided for by a law already in force prior to the amendments, that law has effect in respect of that matter, subject to any amendment or repeal and to consistency with the Constitution as amended, for the purpose of satisfying the requirement that legislative provision be made.

## **86 Adaptation of existing laws**

- (1) Subject to this Constitution, a reference in a law continued in force by clause (1) or (2) of Article 85 to:<sup>45</sup>
- (a) the Governor-General of the Commonwealth of Australia; or
- (b) the Minister of State for Territories of the Commonwealth of Australia,
- shall, unless the context otherwise requires, be read as a reference to the President.
- (2) Subject to this Constitution, a reference in a law continued in force by clause (1) or (2) of Article 85 to the Administrator of the Territory of Nauru shall, unless the context otherwise requires, be read as a reference to the President or where responsibility for the administration of that law is assigned to a Minister under Article 23, to that Minister.

- (3) Subject to this Constitution, a reference in a law continued in force by clause (1) or (2) of Article 85 to the Administrator of the Territory of Nauru acting in accordance with the advice of the Executive Council of the Territory of Nauru shall, unless the context otherwise requires, be read as a reference to the Cabinet.

#### **86A Transitional provisions for the 2010-2009 amendments**

The transitional provisions contained in the 10<sup>th</sup>-Tenth Schedule apply to the implementation and application of the 2010 2009 amendments to the Constitution.

#### **87 Existing public officers**

- ~~(1) Subject to this Constitution and any law, a person who immediately before Independence Day hold; or is acting in a public office shall, on and after Independence Day, hold or act in that office or the corresponding office established by this Constitution on the same terms and conditions as those on which he holds or is acting in the public office immediately before Independence Day.~~
- ~~(2) Nothing in this Article shall be construed as applying to a person who immediately before Independence Day holds or is acting in the office of Administrator, Public Service Commissioner or Official Secretary.~~

#### **88 Existing legal proceedings**

~~All legal proceedings pending or incomplete in the Central Court of the Island of Nauru immediately before Independence Day shall stand removed to the Supreme Court, which shall have jurisdiction to hear and determine the proceedings and the judgments and orders of the Central Court of the Island of Nauru given or made before Independence Day shall have the same force and effect as if they had been delivered or made by the Supreme Court.~~

#### **89 The first Parliament<sup>46</sup>**

- ~~(1) The persons who were elected at the election conducted during January, One thousand nine hundred and sixty eight at the instance of the Constitutional Convention to become members of the Legislative Assembly of Nauru on Independence Day are members of the first Parliament and shall be deemed to have been elected in accordance with this Constitution.~~
- ~~(2) The first Parliament came into existence on Independence Day under the name of the Legislative Assembly of Nauru and continues under the name of Parliament from and including the date on which this clause comes into operation.~~
- ~~(3) The first Parliament shall, unless sooner dissolved, continue for a period of three years from and including Independence Day and shall then stand dissolved.~~

- ~~(4) In this Article, "Constitutional Convention" means the Constitutional Convention established under the *Constitutional Convention Ordinance 1967* of Nauru.~~

**90 Powers privileges and immunities of Parliament**

~~Until otherwise declared by Parliament, the powers, privileges and immunities of Parliament and of its members and committees shall be those of the House of Commons of the Parliament of the United Kingdom of Great Britain and Northern Ireland and of its members and committees as at the commencement of this Constitution.~~

**91 Vesting of property, etc.**

- ~~(1) All property and assets which, immediately before Independence Day, were vested in the Administrator of the Territory of Nauru or in the Administration of the Territory of Nauru, vest in the Republic of Nauru.~~
- ~~(2) All rights, liabilities and obligations of the Administrator of the Territory of Nauru or of the Administration of the Territory of Nauru, whether arising out of contract or otherwise, are rights, liabilities and obligations of the Republic of Nauru.~~

**92 Constitutional Convention to continue in existence**

- ~~(1) Notwithstanding the coming into force of this Constitution, the Constitutional Convention established under the *Constitutional Convention Ordinance 1967* of Nauru shall, subject to this Article, continue in existence during the period of five months after Independence Day or, if the Constitutional Convention approves by resolution a shorter period, during that shorter period.~~
- ~~(2) The Constitutional Convention shall, in lieu of the powers held by it before Independence Day, have the powers conferred on it by clause (3.) of this Article.~~
- ~~(3) The Constitutional Convention may, during the period referred to in clause (1.) of this Article, by resolution approved by a majority of the members of the Constitutional Convention, alter any of the provisions of this Constitution other than this Article and clause (4.) of Article 85.~~
- ~~(4) In this Article, a reference to the members of the Constitutional Convention is a reference to the number of members of which it consists on the day on which the question arises.~~

**93 Agreement of 14 November 1967 relating to Phosphate Industry**

- (1) The Agreement made on the fourteenth day of November, One thousand nine hundred and sixty-seven between the Nauru Local Government Council of the one part and the Partner Governments of the other part shall, on and after Independence Day, be construed as an agreement between the Government of the Republic of Nauru of the one part and the Partner Governments of the other part and all rights, liabilities, obligations and interest of the Nauru Local Government Council in or under that Agreement are, on and after

Independence Day, rights, liabilities, obligations and interest of the Government of the Republic of Nauru.

- (2) In clause (1) of this Article, '**Partner Governments**' means the Government of the Commonwealth of Australia, the Government of New Zealand and the Government of the United Kingdom of Great Britain and Northern Ireland.

**94 Financial provisions to 30 June 1968**

~~Notwithstanding the provisions of Part VI of this Constitution, no moneys shall be withdrawn from the Treasury Fund or any other fund referred to in Article 58 before the first day of July, One thousand nine hundred and sixty-eight, except-~~

- ~~(a) in accordance with the appropriations authorized under the *Supply Ordinance 1967-68 of Nauru* or the *Appropriation Ordinance 1967-68 of Nauru*;~~
- ~~(b) for the purpose of allocating, in respect of each ton of phosphate shipped from Nauru before the first day of July, One thousand nine hundred and sixty-eight, to the funds or for the purposes specified in the Sixth Schedule the amounts so specified;<sup>47</sup> or~~
- ~~(c) under a law enacted in accordance with Part VI of this Constitution.~~

**95 Transitional provision relating to judges of the Supreme Court**

~~Notwithstanding clause (3) of Article 49, until otherwise provided by law, a person is qualified to be appointed a judge of the Supreme Court if-~~

- ~~(a) he is or has been a judge of a court having jurisdiction in some part of the Commonwealth of Australia or in such other place as is approved by Parliament by resolution for the purposes of this Article or~~
- ~~(b) he is entitled to practise as an advocate in or solicitor of such a court and has been so entitled for not less than five years.~~

**96 Transitional provisions relating to Chief Justice**

- ~~(1) The powers and functions of the Chief Justice may, until the Chief Justice is first appointed, be exercised or performed by not less than three persons, being persons who, immediately before Independence Day, were magistrates of the Central Court within the meaning of the *Nauru Act 1965* of the Commonwealth of Australia.~~
- ~~(2) Notwithstanding clause (1) of this Article, the powers and functions of the Chief Justice under Articles 69 and 70 may, until the Chief Justice is first appointed, be exercised or performed by a person who, immediately before Independence Day, was a magistrate of the Central Court referred to in clause (1) of this Article.<sup>48</sup>~~

**97 Director of Audit**

- ~~— (1) Notwithstanding Article 66, until the Director of Audit is first appointed the Cabinet shall cause to be audited at least once in every year the public accounts of Nauru and the accounts of such public bodies as Parliament by resolution determines.<sup>49</sup>~~
- ~~— (2) The Cabinet shall cause a report on the results of an audit under clause (1) of this Article to be laid before Parliament as soon as practicable after completion of the audit.<sup>50</sup>~~

**98 Transitional provisions relating to Superannuation Board**

- ~~— (1) Until otherwise provided by law, the Superannuation Board established under the *Superannuation Ordinance 1966* of Nauru consists of three persons appointed by the Cabinet, of whom one shall be chairman, one shall be an actuary or a person experienced in respect of the investment of moneys and one shall be a person who is a contributor within the meaning of that Ordinance elected by contributors in the manner prescribed by or under law.<sup>51</sup>~~
- ~~— (2) Notwithstanding clause (1) of this Article and until otherwise provided by law, a person who, immediately before this clause comes into effect, is a member of the Superannuation Board referred to in clause (1) of this Article, shall continue to be a member of the Superannuation Board.<sup>52</sup>~~

**99 Transitional provisions relating to the first President and Cabinet<sup>53</sup>**

- ~~— (1) Notwithstanding anything in Part III of this Constitution, the first President shall be elected by Parliament at its first sitting held after this Article comes into effect.~~
- ~~— (2) The powers and functions of the President and of the Cabinet may, until the first President is elected, be exercised or performed by the Council of State.~~
- ~~— (3) In this Article, "Council of State" means the Council of State of Nauru in existence immediately before Part III of this Constitution relating to the President and the Executive comes into effect.~~

**100 Transitional provisions relating to Chief Secretary<sup>54</sup>**

~~Notwithstanding Article 25, the person who, immediately before this Article comes into effect, holds the office of Chief Secretary shall hold the office of Chief Secretary established by this Constitution.~~

## THE SCHEDULES

### First Schedule

Article 18

#### Oath of Member of Cabinet<sup>55</sup>

~~I, ..... swear by Almighty God that I will faithfully carry out my duties as a member of the Cabinet and that I will not improperly reveal any matters of which I have become aware by reason of my membership of the Cabinet. So help me God.~~

I, (name), do hereby swear by Almighty God to be faithful to the Republic of Nauru and undertake to hold my office as Minister with honour and dignity; to respect and uphold the Constitution and all other laws of the Republic of Nauru; not to divulge directly or indirectly any matters which are entrusted to me under secrecy; and to perform the duties of my office honestly, conscientiously and to the best of my ability. So help me God!

### Second Schedule

Article 28

#### DIVISION OF NAURU INTO CONSTITUENCIES AND NUMBER OF MEMBERS TO BE RETURNED BY EACH CONSTITUENCY

Constituency	District or Districts of Nauru comprised in Constituency	Number of Members to be returned by Constituency
Aiwo	Aiwo	2
Anabar	Anabar, Anibare, Ijuw	2
Anetan	Anetan, Ewa	2
Boe	Boe	2
Buada	Buada	2
Meneng	Meneng	<del>2</del> 3
Ubenide	Baiti, Denigomodu, Nibok Uaboe	4
Yaren	Yaren	2

### Third Schedule

Article 43

#### Oath of member of Parliament<sup>56</sup>

##### Oath

I, ..... swear by Almighty God that I will be faithful and bear true allegiance to the Republic of Nauru and that I will justly and faithfully carry out my duties as a member of Parliament of Nauru. So help me God!

### Fourth Schedule

Article 52

#### Oath of Judge

I, ..... swear by Almighty God that I will well and truly serve the Republic of Nauru in the office of ..... and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will. So help me God!

### Fifth Schedule<sup>57</sup>

Article 84

- (i) Part I.
- (ii) Part II.
- (iii) Articles 16, 17.
- (iv) Articles 26, 27, clause (7) of Article 41.
- (v) Articles 58, 59, 60, 62, 65.
- (vi) Article 71, clause (1) of Article 72.
- (vii) Article 84.
- (viii) Clauses (1), (2), (3) and (5) of Article 85.
- (ix) Article 93.

### Sixth Schedule

Article 94

<i>Amount</i>	<i>Fund or Purpose</i>
<del>1.70</del>	<del>Long Term Investment Fund established under Article 62.</del>
<del>0.50</del>	<del>Nauruan Landowners Royalty Trust Fund for the benefit of</del>

~~owners of phosphate bearing lands.~~

- ~~0.60 Nauru Development Fund for promoting the economic development of Nauru.~~
- ~~0.60 Nauru Development Fund for promoting the economic development of Nauru.~~
- ~~0.80 Nauru Housing Fund for erecting, repairing or maintaining houses in Nauru.~~
- ~~0.20 Nauru Rehabilitation Fund for the purpose of restoring or improving the parts of the Island of Nauru that have been affected by mining for phosphate.~~
- ~~0.60 For payment to the owners of phosphate bearing lands leased to the British Phosphate Commissioners.~~
- ~~0.10 Nauru Royalty Fund for any of the purposes for which the Nauru Local Government Council is authorised by the *Nauru Local Government Council Ordinance 1951-1967* of Nauru to expend moneys.<sup>58</sup>~~

### **Seventh Schedule**

**Article 16B**

#### **Oath of President**

In full realisation of the great responsibility I assume as President in the service of the Republic of Nauru I, (name), swear by Almighty God to be faithful to the Republic of Nauru, and solemnly and sincerely promise at all times to promote that which will advance the Republic and to oppose all that may harm the Republic; to obey, observe, uphold and maintain the Constitution and all other laws of the Republic; to discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice to all; and to devote myself to the well-being of the Republic and all its people. So help me God!

### **Eighth Schedule**

**Article 21A**

#### **Oath of Deputy President**

I, (name), swear by Almighty God that I will perform the duties of the Deputy President of the Republic of Nauru to the best of my ability. I will strictly obey and uphold the Constitution and all other laws of the Republic. I dedicate myself to the service of Nauru and the people and I promise to do Justice to all manner of persons. So help me God!

## Ninth Schedule

Article 34

### Oath of Speaker

I, (name), do hereby swear by Almighty God that I will be faithful and bear true allegiance to the Republic of Nauru, that I will perform the duties of the Speaker of Parliament to the best of my ability, that I will ensure that the business of Parliament is conducted in compliance with the Constitution of Nauru and the Standing Orders of Parliament, and that I shall at all times exercise my functions as Speaker impartially and fairly. So help me God!

## Tenth Schedule

Article 86A

### TRANSITIONAL PROVISIONS FOR THE 2010-2009 AMENDMENTS

#### Sections

1. ~~2010~~ 2009 Amendments
2. Enactment of laws required by amended Constitution
3. Transitional provisions relating to the President and Cabinet
4. Transitional provisions relating to the Speaker of Parliament
5. Existing office-holders
6. Existing legal proceedings
7. Transitional provisions relating to finance

#### 1 ~~2010-2009~~ Amendments

- (1) ~~'2010 2009 amendments'~~ means the amendments to the Constitution effected by the ~~Constitution of Nauru (Referendum Amendments) Act 2010 and the Constitution of Nauru (Parliamentary Amendments) Act 2009.~~
- (2) The date of commencement of the ~~2010-2009~~ amendments is ~~insert date of next general election when it is known~~ the date of commencement of the ~~Constitution of Nauru (Parliamentary Amendments) Act 2009.~~
- (3) The ~~2010 2009~~ amendments shall take effect on the date of commencement and none of the amendments shall have any retrospective effect in relation to any decision, act or omission prior to the date of commencement.
- (4) Anything done before the commencement of the ~~2010 2009~~ amendments is valid to the extent that it was valid when done.

(5) ~~For the avoidance of doubt, in~~ In any matter relating to, or involving the interpretation of, the Constitution as it stood prior to the ~~2010~~ 2009 Amendments:

(a) the Constitution is to be interpreted without regard to the ~~2010~~ 2009 amendments; and

(b) no implication shall be drawn from any of the ~~2010~~ 2009 amendments in relation to the meaning or operation of the Constitution prior to the ~~2010~~ 2009 amendments.

## 2 Enactment of laws required by amended Constitution

(1) Where, by virtue of the amendments to this Constitution, any matter is to be provided for by Parliament, Parliament shall, if such matter has not already been provided for, make such provision as soon as practicable and within a reasonable period of the commencement date of the relevant constitutional amendment.

~~(2) The law required by clause (2) of Article 13B must be enacted within six months of the commencement of that Article, but the absence of such law shall not affect the validity of clause (1) of Article 13B or prevent the enforcement of the right to information by the Supreme Court subject to such limitations of that right as the Court finds to be reasonable and justifiable in a democratic society.~~

~~(3) If by the date of commencement of the 2010 amendments Parliament has not made provision for the manner in which nomination for and election to the office of President shall be held, then, until Parliament otherwise provides and subject to the requirements specified in Article 16A –~~

~~(a) nominations for election to the office of President shall be conducted in such manner as the Speaker determines; and~~

~~(b) election to the office of President shall be conducted in accordance with the provisions of the Electoral Act, the application of such Act being adapted for this purpose and read as if the Republic of Nauru was a single constituency.~~

(2) (4) If by the date of commencement of the ~~2010~~ 2009 amendments Parliament has not enacted a law to provide for the manner in which nominations for and election of the Speaker shall be conducted pursuant to clause (1A) of Article 34, then, until Parliament otherwise provides and subject to the requirements specified in Article 34, nominations for and election of the Speaker shall be conducted in such manner as the Clerk of Parliament determines.

(3) (5) Clause (7) of Article 57A may not be enforced until the law envisaged in clause (5)(c) of that Article has been enacted; and until such law is enacted, clauses (2), (3) and (4) of Article 57A may be enforced by the Supreme Court at the suit of the Director of Public Prosecutions, save that the only ~~the~~ order the Supreme Court may make in such a proceeding is a declaration.

### 3 Transitional provisions relating to the President and Cabinet

~~(1) The person who is President when the 2010 amendments commence shall continue to hold office as President until a new President is elected under clause (1) of Article 16 in the manner prescribed in Article 16A, unless he earlier vacates his office under clause (2) of Article 16B.~~

~~(1) (2) Notwithstanding the commencement of the 2010-2009 amendments:~~

~~(a) a Deputy President shall not be appointed under clause (1) of Article 21 until after the first election of a President next following the commencement of the 2009 amendments under clause (1) of Article 16 and Article 16A; and~~

~~(b) if, prior to the first election of a President next following the commencement of the 2009 amendments under clause (1) of Article 16 and Article 16A the President is for any cause unable to perform the duties and exercise the functions of President, Cabinet may appoint a Minister to act as President for the period during which the President is unable to perform his duties and exercise his functions.~~

~~(3) Between the date of commencement of the 2010 amendments and the first election of a President under Article 16A, the office of the Deputy President shall for the purposes of clause (3) of Article 16D be regarded as vacant.~~

~~(2) (4) Notwithstanding the commencement of the 2010 2009 amendments, the President shall not exercise the power to appoint a sixth Minister to Cabinet until after the first election of a President next following the commencement of the 2009 amendments under clause (1) of Article 16 and Article 16A.~~

### 4 Transitional provisions relating to the Speaker of Parliament

~~The person who is the Speaker of Parliament when the 2010 2009 amendments commence shall continue to hold office as Speaker until the first sitting of the new Parliament next following the commencement date of the 2010 2009-amendments, unless he earlier vacates his office under clause (3) of Article 34 as amended.~~

### 5 Existing Office-holders

~~(1) Subject to this Constitution and any law, a person who immediately before the commencement of the 2010-2009 amendments holds or is acting in the office of:~~

~~(a) Clerk of the Parliament; or~~

~~(b) Director of Public Prosecutions; or~~

~~(c) Chief Secretary; or~~

~~(d) Subject to clause (2), Director of Audit~~

shall, on and after the commencement of the 2010 2009 amendments, continue to hold or act in that office on the same terms and conditions as those on which he holds or is acting in the office immediately before the commencement of the 2010-2009 amendments.

- (2) The person who immediately before the commencement of the 2010–2009 amendments holds the office of Director of Audit shall continue to hold that office until the end of his contract-appointment and shall, upon the expiry of that contract-appointment, be eligible for reappointment in accordance with clause (2) of Article 66.

## **6 Existing legal proceedings**

- (1) Subject to clause subsection (4), the 2010 amendments do not affect any proceedings commenced or concluded before the commencement of the 2010 2009 amendments.

- (2) All legal proceedings pending or incomplete in the High Court of Australia immediately before the commencement of the 2010 amendments shall remain in the High Court of Australia, which shall notwithstanding the 2010–2009 amendments have jurisdiction to hear and determine those proceedings pursuant to the Appeals Act 1972 as amended.

- (3) The judgments and orders of the High Court of Australia given or made in exercise of the judicial power of Nauru before the commencement of the 2010 2009 amendments shall have the same force and effect as if they had been delivered or made by the Appellate Division of the Supreme Court.

- (4) All legal proceedings pending or incomplete in the Supreme Court of Nauru shall continue in the Supreme Court of Nauru and the Chief Justice shall determine the Division of the Supreme Court in which the proceedings shall be heard.

- (5) The Rules of Procedure made by and applicable in the Supreme Court shall continue in force until repealed or amended by the Chief Justice pursuant to Article 48(4) and such Rules shall, until repealed or amended, apply to all proceedings in the Supreme Court, whether commenced before or after the 2010 2009 amendments.

## **7 Transitional provisions relating to Finance**

- ~~(1) Where a provision in Part VI imposes upon a person a duty to report upon or provide information in relation to any matter, subsection (3) of section 1 of this Schedule does not operate to relieve the person of the duty to report on or provide information in relation to matters prior to the commencement of the 2010 2009 amendments.~~

- ~~(2) For the avoidance of doubt, the obligation imposed by Article 58 on public officers and members of Parliament in relation to moneys received for or on behalf of, or for the benefit of, Nauru applies to all such moneys in the possession of the public officer or member of Parliament on or after the date of commencement of the 2010 Amendments, regardless of when such moneys were received.~~

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END NOTES

- |  |                                   |                                   |
|--|-----------------------------------|-----------------------------------|
| <sup>1</sup> Part III Articles 16-25 substituted 17.5.68 [for provisions relating to Council of State] | <sup>21</sup> Amended 17.5.68     | <sup>41</sup> Substituted 17.5.68 |
|  | <sup>22</sup> Substituted 17.5.68 | <sup>42</sup> Substituted 17.5.68 |
| <sup>2</sup> Inserted 17.5.68  | <sup>23</sup> Inserted 17.5.68    | <sup>43</sup> Substituted 17.5.68 |
| <sup>3</sup> Substituted 17.5.68   | <sup>24</sup> Substituted 17.5.68 | <sup>44</sup> Inserted 17.5.68    |
| <sup>4</sup> Inserted 17.5.68  | <sup>25</sup> Amended 17.5.68     | <sup>45</sup> Substituted 17.5.68 |
| <sup>5</sup> Inserted 17.5.68  | <sup>26</sup> Amended 17.5.68     | <sup>46</sup> Substituted 17.5.68 |
| <sup>6</sup> Amended 17.5.68   | <sup>27</sup> Amended 17.5.68     | <sup>47</sup> Amended 17.5.68     |
| <sup>7</sup> Amended 17.5.68   | <sup>28</sup> Amended 17.5.68     | <sup>48</sup> Amended 17.5.68     |
| <sup>8</sup> Amended 17.5.68   | <sup>29</sup> Amended 17.5.68     | <sup>49</sup> Amended 17.5.68     |
| <sup>9</sup> Amended 17.5.68   | <sup>30</sup> Amended 17.5.68     | <sup>50</sup> Amended 17.5.68     |
| <sup>10</sup> Amended 17.5.68  | <sup>31</sup> Amended 17.5.68     | <sup>51</sup> Amended 17.5.68     |
| <sup>11</sup> Amended 17.5.68  | <sup>32</sup> Amended 17.5.68     | <sup>52</sup> Inserted 17.5.68    |
| <sup>12</sup> Amended 17.5.68  | <sup>33</sup> Amended 17.5.68     | <sup>53</sup> Inserted 17.5.68    |
| <sup>13</sup> Amended 17.5.68  | <sup>34</sup> Inserted 17.5.68    | <sup>54</sup> Inserted 17.5.68    |
| <sup>14</sup> Amended 17.5.68  | <sup>35</sup> Inserted 17.5.68    | <sup>55</sup> Inserted 17.5.68    |
| <sup>15</sup> Amended 17.5.68  | <sup>36</sup> Inserted 17.5.68    | <sup>56</sup> Inserted 17.5.68    |
| <sup>16</sup> Substituted 17.5.68  | <sup>37</sup> Inserted 17.5.68    | <sup>57</sup> Substituted 17.5.68 |
| <sup>17</sup> Amended 17.5.68  | <sup>38</sup> Inserted 17.5.68    | <sup>58</sup> Inserted 17.5.68    |
| <sup>18</sup> Amended 17.5.68  | <sup>39</sup> Inserted 17.5.68    |                                   |
| <sup>19</sup> Amended 17.5.68  | <sup>40</sup> Amended 17.5.68     |                                   |
| <sup>20</sup> Amended 17.5.68  |                                   |                                   |