

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

Second reading speech

Hon. Aloysius Amwano, M.P., Chairman of the Constitutional Review Committee
21 December 2010

Mr Deputy Speaker,

I have introduced to the House today a Bill for an Act to amend the Constitution of Nauru (Parliamentary Amendments) Act 2009.

The introduction of this Bill marks the beginning of the final stage of the Constitutional Review Project, which began in 2004.

Mr Deputy Speaker, this Bill has a somewhat complex history and purpose, which I will explain. In August 2009, this House unanimously passed 2 Bills – the Constitution of Nauru (Referendum Amendments) Bill and the Constitution of Nauru (Parliamentary Amendments) Bill. The Referendum Amendments Bill contained proposed amendments to the Articles listed in the Fifth Schedule to the Constitution, and therefore could not be certified unless it was approved at referendum. The Parliamentary Amendments Bill contained proposed amendments to Articles not listed in the Fifth Schedule, so did not require approval at referendum before it was certified. Indeed, the Bill was certified and therefore became an Act on 28 August 2009.

However, the amendments contained in both the Referendum Amendments Bill and the Parliamentary Amendments Act were interrelated in many respects. Some of the amendments contained in the Parliamentary Amendments Act could not operate without the corresponding amendments contained in the Referendum Amendments Bill. For this reason, the commencement provision of the Parliamentary Amendments Act specifies that, if the Referendum Amendments Bill is not approved at referendum, the Parliamentary Amendments Act cannot commence until it is amended. This is so the necessary amendments to clauses that correspond to provisions in the Referendum Amendments Bill can be made to allow the Parliamentary Amendments Act to operate alone.

As we are all aware, the Referendum Amendments Bill was not approved at referendum, so the commencement and operation of the Parliamentary Amendments Act can only be facilitated by making the necessary consequential amendments.

Enabling the commencement of the Parliamentary Amendments Act is of crucial importance to Nauru's future. There has, of course, been a great deal of focus on the amendments contained in the Referendum Amendments Bill, but the Parliamentary Amendments Act contains several significant provisions that will result in a more stable Parliament and greater financial accountability in government. Perhaps the most important amendment would be the shift from a Speaker who is a member of Parliament to a Speaker who is a non-member elected by the members. This will spell the end of the stalemates that have dogged our Parliament in the past. No longer will it be necessary for one side of politics to 'sacrifice' one of their number from the floor to take up the Speakership. The Parliamentary Amendments Act would also create a leadership code that applies to all members and to holders of constitutional offices. It would create a new constitutional office of Ombudsman. It contains amendments that promote transparency in the budget process, and would require the Minister for Finance to submit the accounts of the Republic to the scrutiny of the Director of Audit each year. The Act would also create a new Preamble to the Constitution, reflecting the values and beliefs of the Nauruan people. It would enshrine the place of customary law in our legal system, and require the government to take positive measures to preserve and advance the use of the Nauruan language. All of these amendments will have an extremely positive impact on the future of Nauru.

Mr Deputy Speaker, this is a Bill that, if passed, will indirectly result in amendments to the Constitution. I say indirectly because it is a Bill to amend an Act that will amend the Constitution – this Bill will change the text of the amendments and therefore is, in effect, a Bill to amend the Constitution. The requirements that apply to any Bill to amend the Constitution are well-known to members. Firstly, Article 84 of the Constitution specifies that a Bill to amend the Constitution must remain in the House for at least 90 days between introduction and passage. This allows time for proper consideration and debate. Secondly, the Bill must be passed by at least two-thirds of the total number of members of Parliament, that is, 12 members. Finally, if the Bill is a Bill to amend the provisions of the Constitution listed in the Fifth Schedule to the Constitution, the Bill cannot be certified by the Speaker unless it has been approved by not less than two-thirds of votes validly cast in a referendum. The Bill before the House today would not amend any of the provisions of the Constitution listed in the Fifth Schedule, so the requirement of approval at referendum does not apply in this case.

There are many amendments contained in this Bill, all of which are outlined in the explanatory memorandum. However, I will summarise some of the major consequential amendments.

Some of the consequential amendments relate to Article 24, which deals with motions of no confidence. The Parliamentary Amendments Act contained two alternative

versions of a new Article 24 – the first would be inserted in place of the current Article 24 if the Referendum Amendments were made, and the second would be inserted if they were not. 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 adopted, retains the current position that a successful motion of no confidence results in an election of a President rather than the dissolution of Parliament, with the modification that a second successful motion in one term of Parliament will result in dissolution. In readiness for the first version being inserted if the referendum amendments had been made, amendments to other provisions of the Constitution were made to reflect the automatic dissolution option. The Bill before the House today will reverse those amendments.

In addition, references to the Council of State have been removed. As members will recall, one of the major amendments proposed by the Referendum Amendments Bill would have required the formation of a Council of State to provide caretaker governance in the event of a dissolution following a successful motion of no confidence or the inability of the government to pass the budget. There are a number of references to the Council of State in the Parliamentary Amendments Act that are now obsolete and must be removed.

The transitional provisions of the Parliamentary Amendment Act also require amendment. The transitional provisions deal with matters relating to the transition between the current Constitution and the amended Constitution. For example, had the Referendum Amendments Bill been approved at referendum, the right to information would have been included in the Constitution. The provision creating this right also required Parliament to pass a freedom of information law to give effect to this right. The transitional provisions specified when that law had to be enacted. Such transitional provisions are now obsolete and must be removed.

In addition to amendments required due to the relationship between the Referendum Amendments Bill and the Parliamentary Amendments Act, the Constitutional Review Committee has also taken this opportunity to make some drafting changes to improve the clarity of the finished product. Some of the finance provisions have been rearranged to create a more logical structure to this important part of the Constitution. The new provisions about finance, in particular, have been revised to create a clearer set of rules about the appropriation of money and the audit of accounts.

The amendments to Article 80 have also been further amended to improve clarity. The amendments to Article 80 included in the Parliamentary Amendments Act would create a Committee to advise the President on the exercise of his prerogative of mercy. These amendments required the President to take into account the advice of the Committee

before exercising the prerogative, but did not include the crucial step that the matter being considered be referred to the Committee for inquiry. The amendment proposed by the Bill before the House would correct this.

In addition to these amendments, the Committee has noted that some of the content of the amendments included in the Referendum Amendments Bill are highly desirable and can be made without amending any of the provisions in the Fifth Schedule. Some of the proposed amendments that were contained in the Constitution of Nauru (Referendum Amendments) Bill, and which were put to referendum, were contained in that Bill only because it was desired to include the proposed new provisions within existing Articles that are listed in Schedule 5. However, some of these proposed amendments could just as readily be located in separate provisions, and would not require amendment to or have the effect of amending any of the provisions listed in Schedule 5 that are subject to the referendum requirement.

For example, it was originally proposed to include the powers and functions of the President and Cabinet in Articles 16 and 17, both of which can be amended only by referendum. However, if these proposed amendments are included in separate new provisions, named 16A and 17A, they can be included in the Constitution of Nauru (Parliamentary Amendments) Act. The insertion of these new provisions will provide a focus that is currently lacking, bringing together the various powers of the President contained in other Articles into a single list for ease of reference, and providing clear goals for Cabinet. In addition, the inclusion of an oath to be taken by the President is appropriate to reflect the magnitude and solemnity of the responsibilities of our Head of State.

Another important provision included in the Referendum Amendments Bill stipulated that a treaty or other international agreement does not, of itself, have the force of law within Nauru. This is a fundamental principle of international law – Parliament must make some legislative provision to give effect to a treaty domestically. This provision can, and should, be inserted into the Constitution, and we now have an opportunity to do this.

Finally, the Committee has not abandoned its resolve to include the requirement that the government promote awareness of the Constitution. This amendment, which would have been made by the Referendum Amendments Bill, would be included in the amended Parliamentary Amendments Act. Awareness of the rights, freedoms, checks and balances included in our supreme law is fundamental to the robust scrutiny of all branches of government.

Mr Deputy Speaker, the unanimous passage of both the Referendum Amendments Bill and the Parliamentary Amendments Bill in 2009 demonstrated unprecedented support

for critical improvements to our Constitution. As the Chairman of the Constitutional Review Committee in the 18th Parliament and today, I of course was deeply disappointed that the referendum did not succeed. However, we now have an opportunity to enable the commencement of the Parliamentary Amendments Act by passing the necessary consequential amendments contained in the Bill I have introduced today. The 20th Parliament has a chance to repair the damage of past political turmoil by moving forward with change that will shape our nation's future.

I commend the Bill to the House.

Thank you, Mr Deputy Speaker.