

Courts (Amendment) Bill 2010

Second Reading Speech
Hon Mathew Batsiua MP, Minister for Justice
1 November 2010

Mr Speaker,

I have introduced to this House today a short Bill for an Act to amend the *Courts Act 1972*. The Bill contains only three clauses plus a schedule, and is quite straightforward. The main aim of this Bill is to strengthen judicial independence.

It may be useful to provide a brief outline of the background to the proposed amendments to the *Courts Act*.

The Constitution of Nauru provides in clause (1) of Article 49 that the Supreme Court of Nauru 'consists of a Chief Justice and such number, if any, of other judges as is prescribed by law.' At present, there is one judge of the Supreme Court who is not the Chief Justice. This appointment is valid, because the instrument of appointment is itself a law, being a piece of subsidiary legislation. However, to avoid any doubt, it is desirable to make express provision in the *Courts Act 1972* that the President may determine the number of judges appointed to the Supreme Court. The insertion of a new subsection in section 4 of the *Courts Act* is proposed for this purpose.

Articles 50 and 51 of the Constitution are designed in part to provide for judicial independence, by providing for security of tenure. However, because Nauru has never had a resident judge, and judges have usually been non-resident expatriates who are older than the prescribed retirement age of 65, judges of the Supreme Court have ordinarily been appointed as Acting Judges under Article 53 rather than as substantive Judges under Article 49, and have been appointed for fixed terms.

In order to enable the President to make substantive appointments under Article 49, rather than acting appointments under Article 53, and thereby to properly protect judicial independence, it is desirable to increase the retirement age of judges from 65 to 75.

Mr Speaker, an increase in the retirement age for judges was widely supported during the public consultation phase of the constitutional review process. On the basis of the public submissions, as well as legal arguments, the Constitutional Review Commission recommended that the retirement age for judges be increased to 70.

When the Standing Committee on Constitutional Amendment Bills debated the clauses of the proposed *Constitution of Nauru (Parliamentary Amendments) Bill* in early 2009, the Committee recommended that the Bill be amended to increase the retirement age to 75. The Committee of the Whole agreed to this amendment. Thus, the *Constitution of Nauru (Parliamentary Amendments) Act* that was passed by Parliament and certified by the Speaker in August 2009 (but

which has yet to commence) includes an amendment to Article 50 of the Constitution to increase the retirement age for judges to 75 years.

Mr Speaker, as Members are aware, those constitutional amendments will not commence until after Parliament has passed certain consequential amendments. However, in the meantime, it is possible to give immediate effect to the increased retirement age by amending the *Courts Act*, because Article 50 of the Constitution, whilst currently prescribing a retirement age of 65, also empowers Parliament to provide for a greater age.

It is proposed to insert in the *Courts Act* a new section 5A, prescribing a retirement age of 75, for this purpose. This will enable to new Chief Justice to be properly appointed under Article 49 as the substantive Chief Justice, rather than as an Acting Chief Justice under Article 53.

Mr Speaker, the explanatory memorandum that accompanies the Bill explains in detail the meaning and effect of each clause of the Bill and of each item in the Schedule.

In summary, Mr Speaker, the amendments to the Courts Act proposed in this Bill will serve two principal objectives:

They will satisfy the requirements of Article 49(1) by making legal provision for the President to determine the number of judges of the Supreme Court; and

They will strengthen judicial independence by increasing the retirement age of judges to 75 years, thereby enabling substantive, rather than acting, judicial appointments to be made.

Mr Speaker, I commend this Bill to the House.

Thank-you Mr Speaker.