

Interpretation Bill 2011

SECOND READING SPEECH

Hon Mathew Batsiua, MP

Mr Speaker,

It gives me great pleasure to introduce to the House today a Bill for an Act about the interpretation and operation of legislation. If enacted, the new Interpretation Act 2011 will repeal and replace Nauru's current interpretation legislation, the Interpretation Act 1971.

The purpose of interpretation legislation is to provide procedures for making legislation, rules about the operation of legislation and principles for interpreting legislation. Every person who uses legislation, particularly legal practitioners and judicial officers, should read the legislation alongside the Interpretation Act. If a matter about how an Act operates or is interpreted is not dealt with in the Act itself, there is a good chance it is dealt with in the Interpretation Act. Put simply, the Interpretation Act fills the gaps.

The reason these rules are contained in the Interpretation Act, and not in each piece of legislation to which they apply, is that this allows for legislation to be shorter and simpler. The Bill I have introduced today is almost 50 pages long – if there were no Interpretation Act, many of the provisions contained in it would need to be reproduced in every Act. I think we can all agree that most legislation is long enough as it is.

This does not mean the provisions of the Interpretation Act apply without exception – it would clearly be undesirable for an Act containing general rules to apply without consideration of the intention of the lawmaker in each particular case. The Interpretation Act only applies if there is no contrary intention in the relevant law being considered.

Mr Speaker, our current Interpretation Act has solid foundations, containing many of the same provisions as exist in interpretation legislation in most jurisdictions in Australia. Those provisions have been largely restated in the new Act. However, it is also out of date in many respects and lacks some of the most useful provisions that are commonplace in interpretation legislation elsewhere. The new Interpretation Act 2011 will be clearly drafted, comprehensive and, most importantly, tailored to Nauru's laws.

The Bill deals with four broad areas:

1. Provisions about the making, numbering and notification of legislation.
2. How legislation operates.

3. How legislation is interpreted.
4. The administration and machinery of legislation.

Mr Speaker, the explanatory memorandum describes in detail each provision of the Bill, but I will briefly describe how the Bill addresses each of these broad areas.

The making, numbering and notification of legislation

The Bill introduces a new requirement for all Acts and subsidiary legislation to be numbered. It also changes the current requirement for notifying the making of legislation, providing an option to publish a Gazette notice stating that the legislation has been made and where it can be accessed. Currently legislation must be published in full in the Gazette, but the introduction of RONLAW, Nauru's legal information database, means the Gazette will no longer be the primary access point for legislation.

The Bill also deals with the power to make subsidiary legislation, providing rules for the interpretation of the subsidiary legislation-making power that is provided by an Act.

How legislation operates

The Bill restates existing provisions about the commencement of a law that does not specify a commencement date, and makes additional provision preventing the retrospective commencement of a law unless the lawmaker has clearly indicated this intention in the law itself. This provision prevents the inadvertent application of retrospectivity. The Bill also restates the existing provision about the exercise of powers before commencement, and includes a new provision about amendment of laws before commencement.

The Bill restates existing provisions that ensure the previous operation of a law is not affected by its repeal or amendment.

How legislation is interpreted

The majority of the Bill deals with how legislation is interpreted, with the addition of many new and useful provisions. General principles of construction are specified, including a restatement of the existing provision requiring laws to be interpreted in a way that best achieves their purpose. Detailed provision is made for the use of material related to, but not part of, a written law in the interpretation of the written law, such as second reading speeches and explanatory memoranda. An important new provision is added specifying that changes in drafting practice do not affect the meaning of a law – this ensures that new provisions can be drafted in a clear and modern way without raising the implication that the meaning of such provisions is different to older provisions expressing the same ideas in different words.

The Bill restates existing provisions about the computation of time and the measurement of distance for written laws, and includes a new provision about the effect of examples contained in written laws. One of the most important provisions of the Bill is clause 65, which defines terms used widely in the written laws of Nauru. With 10 pages of defined terms, this provision is one of the cornerstones of the Bill and will be one of the most useful provisions for people reading our laws. A number of terms defined in the existing Act are restated in clearer language, but many new terms are defined, providing much-needed clarity to many of our laws that do not sufficiently define important terms and concepts. Of course, as with everything in the Bill, the defined terms only apply to a written law if the law itself does not define the term differently. A new provision has been added specifying that terms defined in the Constitution apply to written laws unless the Interpretation Act has defined them – Article 81 of the Constitution defines many important terms used within it that are also used in other written laws.

The Bill includes many new provisions about penalties in written laws, including a provision specifying that the penalty for a body corporate for an offence against a written law is 5 times the penalty stated in the law, unless the law specifically provides for a penalty for bodies corporate.

The administration and machinery of legislation

The Bill includes numerous new provisions about the exercise of powers and functions given by written laws. It specifies that a power may be exercised subject to conditions, exceptions and qualifications and that the power to do something includes the power to undo it. One of the most important new provisions stipulates that the power to appoint a person to an office includes the power to make an acting appointment to the office. Other important new provisions concern the exercise of a power of delegation, and the exercise of delegated powers and functions by a delegate. Finally, the Bill explains how documents can be served, expanding on the existing provision to include modern methods of service.

Mr Speaker, interpretation legislation is often ignored by legal practitioners who do not realise its importance in the interpretation and application of all written laws. I would like to take this opportunity to encourage the legal practitioners of Nauru to familiarise themselves with the new Interpretation Act. To properly understand and apply the written laws of Nauru, it is necessary for practitioners to apply provisions of the Interpretation Act on a daily basis. Practitioners should view the Interpretation Act as an aid, not a burden, to their work. Of course, the Act is relevant to anyone reading or applying legislation in Nauru, whether they are a legal practitioner, a public servant or an interested member of the community.

Mr Speaker, the new Interpretation Act will provide a comprehensive, modern set of rules and principles about the interpretation and operation of legislation, all contained in a single, clearly drafted Act.

I commend the Bill to the House.

Thank you, Mr Speaker.