

## NAURU LANDS COMMITTEE (AMENDMENT) BILL 2012

### Second Reading Speech

His Excellency Sprent Dabwido MP  
President and Minister for Home Affairs

10 October 2012

Mr Deputy Speaker, Honourable colleagues

This Bill seeks to amend the *Nauru Lands Committee Act 1956*, which establishes the Nauru Lands Committee and provides for its powers and functions. The Bill has been prepared in response to a number of recent Supreme Court decisions in which the Chief Justice has identified shortcomings in the legislation and suggested amendment.

The Bill, if passed, will serve five main purposes. The amendments will:

- give certainty as regards the role of the Committee in determining the distribution of personalty;
- provide for appeals to the Supreme Court against decisions of the Committee regarding personalty;
- oblige the Committee to publish its decisions in the *Gazette* and clarify the time from which the appeal period starts to run;
- enable the Supreme Court to extend the time within which to appeal, in appropriate circumstances; and
- validate certain decisions of the Curator of Intestate Estates with regard to personalty matters.

It may come as a surprise to many of you to learn that the Nauru Lands Committee's power to determine matters relating to personalty is not found in any written law. Last year the Supreme Court held that the source of the Committee's power was Nauruan custom, not legislation. This is an unusual situation for a body created by statute like the Committee. The Chief Justice said:

Although, as presently advised, I am persuaded that the Committee's role in dealing with personal property in deceased estates is preserved by virtue of section 3 of the *Custom and Adopted Laws Act*, it might be appropriate for the matter to be put

beyond doubt by amendment to the *Nauru Lands Committee Act*, thereby providing express statutory empowerment for the Committee to perform that role. That is a matter the Parliament might see fit to consider.

In the same case the Chief Justice also ruled that there was no appeal from a decision of the Committee on a personalty matter. On that question, His Honour said: “It would be appropriate for the issue to now be resolved by Parliament.” In line with the suggestions of the Chief Justice, this Bill seeks to amend the Act to state clearly that the Committee has power to determine matters of personalty, and to also extend the right of appeal to decisions relating to personalty.

While it has long been the practice of the Committee to publish its decisions in the *Gazette*, there is obligation on the Committee to do so. At present section 7(1) of the Act provides that any person dissatisfied with a decision of the Committee may appeal to the Supreme Court within 21 days of the decision being given. If there is no obligation on the Committee to actually publish their decisions, then there remains potential for the Committee to make a decision and not publicise it. Without publication, it is very difficult to challenge the Committee’s decision.

In practice, the Supreme Court has held that the appeal period should start to run from the date of publication of the Committee’s decision in the *Gazette*. The Court concedes that this approach is not strictly in accordance with the law, but accepts that it the only way to give practical effect to the right of appeal. To address these issues, this Bill seeks to amend the Act to oblige the Committee to publish its decisions in the *Gazette*, and to have the appeal period start to run from the date of publication.

The question as to whether the Supreme Court has the power to extend the time within which to appeal against a decision of the Committee is one over which there has long been much confusion. Section 7 of the Act provides that a person wishing to appeal against a decision of the Committee must do so within 21 days. Successive Chief Justices have ruled that the Court has no power to extend the period within which to appeal, while at the same time, in other cases, purporting to grant leave to appeal out of time. There are many cases in which the Supreme Court has considered appeals filed long after the statutory time limit had expired.

In March 2011, the Chief Justice ruled definitively that the Court had no power to extend the time within which to appeal. He made it clear that a person wishing to challenge a decision of the Committee after the appeal period had expired could only do so by bringing an application for judicial review. Having such a short time for appealing without flexibility has the potential to cause considerable hardship. Not everyone receives the *Gazette* electronically. People may have limited access to information, perhaps because they are house-bound, or overseas. The interests of minors may not have been adequately protected, a matter of which they may only become aware sometime after the event. These issues must be weighed against the need for certainty and finality.

It is very common for an appellate Court to be given an express power to grant leave to extend the time for appealing. The power to extend the time for an appeal is discretionary, and has to be exercised judicially, having regard to well-established principles. The factors to be considered when determining an application for an extension of time are: the length of the delay; the reasons for the delay; the strength of the appellant's case; and the degree of prejudice to the respondent if time is extended. Very often it is the final point (the question of prejudice) that leads a Court to refuse an application for leave.

With the passage of this Bill, the Supreme Court will be given the discretion to extend the time for appealing in appropriate circumstances. Within the 21-day limit an appeal may be brought 'as of right', but beyond that period it must be demonstrated to the Court that good reasons exist that justify leave being granted to extend the time limit.

Finally, I come to the issue of the Curator. For several years, from the late 1990s until 2010, there was a major misunderstanding as to the role of the Curator of Intestate Estates in determining the manner in which the personalty should be distributed. It is not clear how it came about, but there are numerous instances of decisions being made by the Curator on personalty that should have been made by the Committee. The Curator's role under the law is simply to hold the assets of the estate of a deceased Nauruan until such time as the Committee determines the manner in which it is to be distributed, and then to distribute the estate in accordance with the Committee's directions.

There are many instances of Curators having over-stepped their functions in this regard. Without formal validation by the Parliament, these decisions remain vulnerable to challenge,

even after several years. To leave the matter uncorrected could potentially lead to chaos, particularly as almost all of the decisions have been accepted in good faith by the people concerned. This Bill therefore seeks to validate the Curators' decisions retrospectively, so that they will have effect as if they were decisions of the Committee.

Overall, the changes introduced by this Bill simply seek to insert into the Act provisions that many have long thought were already there. It will provide greater clarity and certainty.

Mr Deputy Speaker, I commend this Bill to the House.

Thank you.