

Referendum Procedures Bill 2009

Second Reading Speech
Hon Baron Waqa MP, CRC Deputy Chairman
26 November 2009

Mr Deputy Speaker,

I have introduced to this House today a Bill for an Act to provide for the conduct of a referendum.

The *Referendum Procedures Bill* would serve as a replacement of the provisions which it is proposed to repeal from the *Constitutional Review Committee Act*. The *Constitutional Review Committee (Amendment) Bill* – which I introduced earlier today – and the *Referendum Procedures Bill* are therefore closely interrelated.

Mr Deputy Speaker, as I mentioned earlier, the reason for the proposed repeal of the referendum provisions from the *Constitutional Review Committee Act* is that they do not satisfy the requirements of Article 84 of the Constitution, which prescribes the procedure for amending the Constitution.

The *Referendum Procedures Bill* would replace those provisions, and would prescribe procedures that **are** consistent with the constitutional requirements of Article 84. The procedures set out in the *Referendum Procedures Bill* would apply to **all** future referenda, not just the referendum that is planned for 27 February 2010 in relation to the *Constitution of Nauru (Referendum Amendments) Bill*. It is for this purpose that, rather than being inserted in the *Constitutional Review Committee Act*, the referendum procedures are set out here in a separate bill, which stands alone and will continue in force even if the Constitutional Review Committee should in future cease to be a Standing Committee.

Mr Deputy Speaker, clause (3) of Article 84 of the Constitution provides that ‘**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 the votes validly cast on a referendum held... as prescribed by law’.

As I stated in relation to the *CRC (Amendment) Bill* earlier today, this means **the proposed law as a whole** must be approved by referendum. It is therefore necessary, when conducting a referendum, to ask voters whether or not they approve of the proposed law, rather than asking them whether or not they approve of each individual provision within the proposed law.

Some people may take the view that this is an undesirable way to conduct a referendum, and that it would be better to ask a series of questions in respect of each separate proposed constitutional amendment, so that people do not have to vote ‘yes or ‘no’ to the whole law, but can distinguish between some amendments they approve and some that they don’t. However, as I have said, it is

necessary for the referendum procedure to comply with the procedural requirements of the Constitution itself, and it is therefore necessary to frame the referendum question in a way that concerns the whole proposed law.

I should emphasise, Mr Deputy Speaker, that members of the CRC are conscious that the single question to be posed at the 2010 referendum, whilst it may be short, is in fact a very complex question. In order for voters to answer the question “Do you approve of the proposed law entitled *Constitution of Nauru (Referendum Amendments) Bill?*” voters will need to know what is contained in the Bill, and precisely what proposed constitutional amendments they are being asked to approve. For the 2010 referendum, the CRC will be coordinating an extensive information and awareness campaign throughout January and February, to make sure that people have the information they require to really understand the proposed constitutional amendments, and therefore to understand the real meaning of this deceptively simple question. It is expected that Parliament will do likewise in respect of any future Article 84 referendum.

The main objective of this Bill in the immediate short term is to enable the referendum that is scheduled for 27 February 2010 to be conducted in a manner that is consistent with the constitutional requirements of Article 84. But the scope of the Bill is not confined to the referendum in 2010. This law would apply to the conduct of all future referendums.

Mr Deputy Speaker, the Explanatory Memorandum which accompanies the Bill sets out in detail the meaning and effect of each clause of the Bill. I will just highlight a few of the most significant provisions of the Bill, but Members can of course consult the Explanatory Memorandum and the text of the Bill itself for more detail.

The Bill makes a distinction between two different kinds of referenda: first, a referendum required by Article 84 in relation to a proposed law to alter the Constitution, and second, a referendum required under new Article 84A to ask voters whether or not they think a Constitutional Convention should be held to consider amending the Constitution.

The Bill provides that within 30 days after Parliament passes a proposed law that requires an Article 84 referendum, Cabinet must fix the date for the referendum by notice in the Gazette. The date fixed must be no sooner than two months after the proposed law has been passed by Parliament, and no later than twelve months thereafter.

The Bill also prescribes rules for the administration of the referendum, including the appointment of a returning officer and presiding officers and scrutineers. The Bill proposes that polling places need not necessarily be the same as the polling places used in a general election, but a polling place must be allocated for each roll, must be reasonably accessible to the voters on the relevant roll, and that there must be sufficient polling places to ensure that each voter can vote within a reasonable time of arriving at a polling place and that all voting can be completed within polling hours.

Part 3 of the Bill deals with voting, and provides that certain provisions of the *Electoral Act* apply also to referenda, with appropriate modifications. The Bill prescribes the form of the ballot paper that is to be used for Article 84 referenda and for Article 84A referenda. In the case of an Article 84

referendum, voters are to be asked whether they approve of the proposed law to alter the Constitution, and must vote “yes” or “no” in the box provided. In the case of an Article 84A referendum, voters are to be asked the question that is prescribed in new Article 84A of the Constitution, namely: “Do you think there should be a Constitutional Convention to consider whether there should be any amendments to the Constitution?” Again, they must vote “yes” or “no” in the box provided.

The Bill makes provision for disputing the validity of the result of a referendum by filing a notice of dispute with the Court of Disputed Returns within 5 days after the result of the referendum has been published in the Gazette. The Court of Disputed Returns (which is the Supreme Court) must hear and determine any such dispute as soon as practicable. A proposed law to alter the Constitution that has been approved by referendum cannot be certified by the Speaker until the time for filing a notice of dispute has expired, or until any dispute has been determined by the Court.

Under this Bill, voting in a referendum would be compulsory, just as voting in a general election is compulsory, and a voter who fails to vote without a lawful excuse would be subject to a fine of \$100.

Mr Deputy Speaker, the referendum that is to be held on 27 February 2010 will be the first time that Nauru has ever held a referendum. It is a very significant undertaking, in which the people of Nauru will be asked to decide whether they approve of certain proposed changes to their Constitution, and it is important that the procedure by which it is conducted is valid. The *Referendum Procedures Bill* seeks to ensure that valid procedures are in place for the conduct of the upcoming referendum, and for all future referenda. The Bill would effectively replace the invalid provisions currently contained in the *Constitutional Review Committee Act*, and would operate together with, and as a complement to, the *Electoral Act*.

I commend the Bill to the House.

Thank-you Mr Deputy Speaker.