

Referendum 2010: Frequently Asked Questions

Why is Nauru having a referendum?

What is the referendum?

- The referendum is a vote by the people for or against the proposed changes to our Constitution.
- At a referendum, voters do not vote for candidates or have lots of different choices to make. Instead, voters are asked a question, and can vote either 'Yes' or 'No'.

Who can vote in a referendum?

- Anyone who is entitled to vote in a general election can also vote in a referendum.

What happens if I don't vote?

- Under the *Referendum Procedures Act*, it is compulsory for all qualified voters to vote in a referendum. If you don't vote, you may be fined \$100.

Whose idea was it to have a referendum now?

- In 2006, Parliament held public consultations on whether certain parts of the Constitution need to be changed. Public opinion was that changing some parts of the Constitution would be a good idea for the future of Nauru.
- A Constitutional Review Commission was appointed in December 2006, and after much research and consideration of the findings of the public consultation, the Commission produced a report in February 2007. This report recommended that certain changes were necessary to learn from the lessons of the past and to ensure a stronger future for Nauru.
- A Constitutional Convention was held in May 2007, and in November 2008 the *Constitution of Nauru (Parliamentary Amendments) Bill 2009* and the *Constitution of Nauru (Referendum Amendments) Bill 2009* were introduced into Parliament.
- Parliament carefully considered the constitutional changes contained in these Bills, made some improvements to the proposed changes, and decided in August 2009 that the proposed changes to the Constitution would benefit Nauru and should be made. All 15 members of Parliament present and voting on the day voted in favour of the Bills.
- It is possible for Parliament to amend some parts of the Constitution without first holding a referendum, but other parts (the Articles listed in the Fifth Schedule of the Constitution) can only be amended if two thirds of voters approve of the amendments at a referendum.
- This is why a referendum will be held on 27 February 2010.

What will this question be?

- The referendum question will be: 'Do you approve of the proposed law entitled the *Constitution of Nauru (Referendum Amendments) Bill 2009*?'

Why do I have to vote for all the proposed changes at once?

- Amendments to certain parts of the Constitution (the Articles listed in the Fifth Schedule) can only be made in the way specified in Article 84 of the Constitution.
 - Firstly, a law to amend the Constitution (that is, a Bill) must be passed by two thirds of members of Parliament.
 - Next, a referendum must be held which asks Nauruan voters whether or not they approve of the proposed law that Parliament has passed.
- Parliament unanimously passed the *Constitution of Nauru (Referendum Amendments) Bill 2009*. This is the proposed law to amend the Constitution that must be approved by two thirds of voters. This is why the question that Nauruan voters will be asked is:
 - ‘Do you approve of the proposed law entitled the *Constitution of Nauru (Referendum Amendments) Bill 2009*?’

What if I like some of proposed amendments but not others?

- Parliament hopes that voters will consider all of the proposed amendments and have an opinion on them before deciding whether to vote ‘Yes’ or ‘No’.
- If you like some of the proposed amendments but not others, it is up to you to decide whether you believe that overall, the proposed amendments will benefit Nauru.

What will happen if not enough voters vote ‘Yes’?

- If two thirds of voters vote ‘Yes’, the referendum will pass and all of the proposed constitutional changes in the *Constitution of Nauru (Referendum Amendments) Bill 2009* will come into effect after the next general election.
- But, if more than one third of voters vote ‘No’, the referendum will not pass, and the *Constitution of Nauru (Referendum Amendments) Bill 2009* will not become law. Parliament has already made some changes to the Constitution that will come into effect after the next general election, but not those included in the Bill that voters now are being asked to vote on.
- This is the first referendum that Nauru has ever held. Because holding a referendum is a costly, time-consuming process, there is no guarantee that these proposed amendments will be put to a referendum again in the near future.

How do the proposed changes affect human rights?

What are human rights?

- A right is a human right if it is agreed that every person in the world is entitled to enjoy it. In this way, human rights confirm the importance and dignity of every single human being in the world.
- Human rights are a very important part of a democratic system, as they make clear to the government and to the people what government can and can’t do to people in trying to achieve its aims.

Why does Parliament want to include more human rights in the Constitution?

- The need to provide for the protection of human rights was recognised by the founders of the Republic in Nauru in 1968. The rights included in the Constitution in 1968 were civil and political rights that protect freedom of equality, freedom of speech and freedom of assembly.
- Parliament has decided social and economic rights such as the right to education, health services and environmental protection are equally important and should be protected in the Constitution.

What new rights are proposed?

The following rights are proposed for inclusion in the Constitution:

- Protection of right to privacy and personal autonomy
- Right to information
- Right to health services
- Right to education
- Environmental protection
- Employment rights
- Women's rights
- Children's rights
- Rights of persons with disabilities

How will including more rights in the Constitution affect me?

- If more rights are included in the Constitution, the government will have to consider how its policies and proposed laws might affect every Nauruan's enjoyment of these rights.
- The fundamental rights and freedoms included in the Constitution may be enforced by the Supreme Court.
- Once a human right is included in the Constitution, it is very difficult to change it. Any change would have to be approved by two thirds of voters at a referendum. This is the difference between including a human right in the Constitution and including it in an ordinary law, which can be changed by a simple majority of Parliament.

Why has Parliament proposed to change the way Nauru elects its President?

- All power in Nauru belongs to the people acting through their elected representatives, and the President is the most important representative of the Republic of Nauru.
- During public consultations in 2006, the majority of participants expressed the view that it should be the people of Nauru and not the members of Parliament that have the final say in who becomes their President.
- The Constitutional Review Commission agreed that the electoral process should be changed from a parliamentary election to a direct election by the people, and carefully considered how such a change could be made to strengthen the fairness and transparency of presidential appointments in Nauru.
- Parliament agreed that allowing the people to elect the President would result in a more stable and democratic process.

What are the proposed changes to how the President is elected?

- Currently, Parliament elects the President from among its members.
- Under the proposed changes, the election of the President would involve the following steps:
 1. After a general election, or when the office of President is vacated, Parliament must nominate from among its members 2 or 3 candidates whom they believe would make a good President.
 2. An election for President must then be held, either 28 days after the general election, or not later than 35 days after the President's office is vacated. Every person who is entitled to vote in a general election is entitled to vote in this election.

But won't candidates from the larger districts always be elected?

- No. General elections will run in the same way, and each constituency will be represented in Parliament.
- Parliament will then decide which 2 or 3 of its members would make the best candidates for President. These candidates will have time to campaign across the whole of Nauru, which will give everyone a chance to consider the suitability of each candidate for the role of President.
- Then all eligible voters from all districts will vote for the candidate they think will do the best job.
- Because there will be only 2 or 3 candidates for election, no single district will have enough votes to determine the winner.

Why does Parliament determine the candidates?

- The President is the Head of State and the Head of Government. It is important that the President has the support of Parliament in order to be able to govern effectively. By nominating 2 or 3 candidates, Parliament is expressing its support for the candidates.

What is the Council of State?

- The Council of State is a body comprised of the most senior public officers in Nauru.
- In very unlikely circumstances, the Council of State would be called upon to perform the functions of a caretaker government until a new President is elected.

Who will be on the Council of State?

If a Council of State has to be formed, it would consist of:

- the Chief Justice of the Supreme Court (or, if the Chief Justice is not a Nauruan, a Nauruan person nominated by the Chief Justice)
- the Speaker of Parliament (who would not be a member of Parliament as a result of other changes to the Constitution made by Parliament)

- the Chief Secretary (or, if the Chief Secretary is not a Nauruan, a Nauruan person nominated by the Chief Secretary)

What will the Council of State do?

- When the President, government and Parliament are working together well, there will be no need for a Council of State.
- But, under other changes to the Constitution made by Parliament, if there is a motion of no confidence in the President and Cabinet or Parliament cannot pass an appropriation Bill, Parliament will be dissolved. In these circumstances only, a Council of State would be formed, which would temporarily take care of the basic functions of the office of President.
- Because it is only a caretaker, the Council of State will not have the full powers and functions of the President. It will not be allowed to make significant changes to government policy, to appoint judges, to enter into treaties, or to enter into major contracts.
- It is simply empowered to make sure that the government keeps running smoothly until the people of Nauru elect a new person to take over the office of President.

Why do we need a Council of State in Nauru?

- The existence of a Council of State will increase stability of government in Nauru by providing leadership in the period between the dissolution of Parliament (because of a motion of no confidence or a failure to pass the appropriation Bill) and the election of the next President.

Will these changes have a negative effect on land owners?

- No. None of the proposed changes affect land ownership. However, one of the proposed amendments will assist land owners who have their land compulsorily acquired by government.
- Article 8 of the Constitution currently provides that no person can be deprived compulsorily of property except in accordance with a law for a public purpose and on **just terms**. This Article and the right of government to take land compulsorily has always existed.
- However, the Constitution doesn't specify the process for determining what the "just terms" are – that is, how much compensation a land owner should receive for the acquisition of their property.
- So, one of the proposed changes is the addition of a new provision requiring the terms of the acquisition to be agreed between the government and the relevant landowner. If they cannot agree, then the terms of the acquisition must be determined by the Supreme Court with regard to a list of factors, such as:
 - the current use of the property
 - the importance of the public purpose for which the property is being acquired
 - any hardship to the owners.

What is the point of the rest of the proposed changes?

- Parliament has agreed that amending the Constitution to stabilise government is in the interests not only of Parliament itself, but also of the Nauruan people and the future of the Republic.
- The rest of the amendments include clarifying the roles of the President and of Cabinet, and making clear that all public officers who receive money by or on behalf of Nauru must pay the money into the Treasury Fund.

Where can I get more information?

Please take the time to find out as much as you can about the proposed changes before 27 February 2010.

You can obtain a copy of the proposed law entitled the *Constitution of Nauru (Referendum Amendments) Bill 2009*:

- from a member of the referendum team touring Nauru
- by visiting Parliament House
- from the website

<http://www.naurugov.nr/parliament/projects/constitution/index.html>

You can also obtain plain language summaries of the proposed changes from all the above sources.