

Summary of the Report of Select Committee on Constitutional Amendment Bills 10 March 2009

Introduction:

The Select Committee on Constitutional Amendment Bills is a Committee made up of nine members of Parliament, which was created by a resolution of Parliament.

The Committee was given the task of looking at all the material from the constitutional review process so far, and recommending to Parliament whether anything in the constitutional amendment bills should be changed.

The Committee was created in December 2008 and it did its work in January, February and March 2009. On 10th March 2009 the Committee presented its report to Parliament. The Report explains the work of the Committee, and the recommendations of the Committee.

The Report is about 18 pages long, but it has three large documents attached at the end, which explain the recommendations, so all together it is about 200 pages.

The following is a short summary of the Report.

Summary of the SCCA Report:

Terms of reference

The Select Committee on Constitutional Amendment Bills (SCCA) was given a particular task by Parliament. When Parliament voted to create the Committee, the job of the Committee was spelled out in the motion.

The Committee's terms of reference said that the Committee had to have regard to the Reports of the Nauru Constitutional Review Commission and the Constitutional Convention, public opinion, legal advice and any other useful or relevant material. The Committee's main job was to examine whether any changes should be made to the constitutional amendment bills, whether the bills are legally sound and what the impact of the proposed constitutional amendments would be.

You can find the full text of the Committee's terms of reference on pages 8-10 of the Report of the SCCA, available from GIO or from Parliament.

What is the place of the Committee in the constitutional review process?

The SCCA is part of the constitutional review process, which was started by the Scotty government in 2006. The constitutional review process involves six steps:

Step 1 was raising public awareness about the Constitution and about the review;

Step 2 was public consultation, where people expressed their opinions in meetings and submissions;

Step 3 was the Constitutional Review Commission, chaired by Ruby Thoma, which took account of public opinion and made recommendations for amending the Constitution;

Step 4 was the Constitutional Convention, which debated and voted on the recommendations of the Commission;

Step 5, which is where we are now, is consideration of suggested constitutional amendments by Parliament; and

Step 6 will be a referendum.

During step 5 of the process, a number of different things will be taking place within Parliament. First, bills to amend the Constitution are introduced to Parliament. This happened in November 2008. The bills, or draft laws, that were introduced in November reflect the resolutions of the Constitutional Convention, but Parliament has the authority to make amendments to these bills before they are voted on.

In order to consider whether the bills should be amended, in December 2008 Parliament established the Select Committee on Constitutional Amendment Bills. The bills were referred to the Select Committee for consideration. The Select Committee held 30 meetings to consider the bills and other relevant material, and made a number of recommendations for amendments to the bills.

In June 2009, the recommendations of the Select Committee will be considered by the Committee of the Whole Parliament. The Committee of the Whole is all 18 members of Parliament sitting together as a Committee to consider draft laws clause by clause. The Committee of the Whole will determine the final content of the Bills, and Parliament will then vote on whether to pass the bills into law.

Because the bills concern proposed amendments to the Constitution, they need the support of at least twelve of the eighteen members in order to be passed (not just a simple majority like ordinary laws). This will be the end of step 5.

If Parliament passes the bills, then there will be a referendum (Step 6) to see whether the people of Nauru approve of some of the proposed changes to the Constitution. A referendum is a special vote on questions about the Constitution and whether it should be changed, and anyone who is entitled to vote in a general election can also vote in a referendum. People will be asked to vote only on some of the constitutional amendments, not all of them, because Article 84 of the Constitution only requires a referendum for changes to specific Articles of the Constitution that are listed in the fifth schedule to the Constitution. The Articles that require approval by a referendum are those that are regarded as the most important Articles of the Constitution, such as the way the President is elected, some of the finance Articles, human rights provisions and some others.

If the changes submitted to a referendum do not win the support of at least two thirds of all the votes cast in a referendum, then those changes will not be passed and will not take effect. Even if Parliament has passed them by two thirds of Parliament,

without the additional support of the public in a referendum, any changes to the important Articles listed in the fifth schedule will not be passed into law.

Recommendations of the Committee

As outlined above, the Committee, which is part of step 5 in the constitutional review process, was asked to carefully examine the two constitutional amendment bills and to report on whether anything in the bills should be changed, or anything added. The Committee made a number of recommendations for changes to the bills.

In summary, the Select Committee found that the recommendations of the Commission and the resolutions of the Convention were mostly sound, and in many cases, the Committee resolved to adopt the same resolution as the Convention. In some cases however, after careful consideration and detailed debate, the Select Committee passed resolutions that differ from what the Commission recommended and/or from what the Convention resolved. The reasoning behind each of the Committee's resolutions is summarised in Appendix 1 to the Committee's Report, and can also be found in the transcripts of debate, available from Parliament.

The following is a short summary of some of the main recommendations of the Committee:

Bill of Rights – the Committee agreed with the Convention that some of the existing Articles in Part II of the Constitution should be amended, and made only very minor changes to the proposed wording of some of those amendments; the Committee also agreed with the Convention that new rights should be included in Part II, including the right to information, right to education, right to privacy, women's rights and the rights of persons with disabilities, and made some minor amendments to the proposed wording of the new rights.

Election of President – the Committee resolved that, although the Convention rejected the Commission recommendation that the Constitution should be amended to provide for the President to be elected directly by the people (instead of by Parliament), the constitutional amendment bills should be changed to include this proposal. The Committee resolved that because there is evidence that a majority of the public support the idea of the President being popularly elected, this should be reflected in the Bills, and people should be given the opportunity to decide for themselves in a referendum whether or not they want this change to the system. The Committee was also of the view that Nauru's democratic system would be enhanced by having a President chosen by the people.

Terms of Parliament – the Committee agreed with the Convention that there should be no change to the term of Parliament, which means that Parliamentary terms will remain three years and will not be extended.

Speaker of Parliament – the Committee resolved that, although the Convention rejected the Commission recommendation that the Constitution should be amended to provide that the Speaker of Parliament is somebody who is NOT a member of Parliament, this proposal should be included in the Bills, because it appears to be supported by public opinion, and because it would improve the current system by

making the election of the Speaker a less political issue, and therefore reducing game playing and time wasting in Parliament. It would also enable the Speaker to be objective and impartial, as he would not be a politician.

Number of members – the Committee agreed with the Convention that the number of members of Parliament should be increased to 19, by providing for a third member in the constituency of Meneng. This can be done by ordinary legislation and does not require any change to the Constitution.

Judiciary – the Committee agreed with the Convention that appeals from the Supreme Court of Nauru to the court of another country should be abolished, and that the Supreme Court should be divided into three divisions: a trial division, a constitutional division, and an appellate division, but the Committee made some small changes to the proposed wording of these amendments. The Committee also agreed with the Convention that the retirement age of judges should be increased, but recommended that it be increased to 75 rather than 70.

Leadership Code and Ombudsman – the Committee agreed with the Convention that new Articles should be inserted in the Constitution to create a leadership code and an Ombudsman, and agreed with the wording proposed by the Convention.

Finance – the Committee agreed with the Convention that the finance provisions of the Constitution should be amended and that new provision should be made for the dissolution of Parliament upon failure to pass a budget, and for the Director of Audit. The Committee made some changes to the wording of proposed amendments, and also made its own new recommendations for the insertion of new Articles 58A and 59A, to increase the financial accountability of governments to Parliament.

Public Service – the Committee agreed with the Convention's rejection of the Commission recommendation on the establishment of a Public Service Commission. The Committee resolved that for the time being the Chief Secretary should retain the power to hire and fire public servants, but that the Constitution should provide Parliament with the power to vest that role in a Public Service Commission in future if it should wish to. The Committee also agreed with the Convention resolution to include a new Article in Part VII concerning basic values and principles of the public service.

Citizenship – although the Convention resolved that there should be no change to Part XIII of the Constitution, the Committee resolved that Articles 72 and 74 should be amended: Article 72 should be amended to provide that a person is a Nauruan citizen if one of his parents is a Nauruan citizen, and Article 74 should be amended to say that a person who is married to a Nauruan may become a Nauruan citizen, subject to such conditions as prescribed by law (currently Article 74 applies only to women who marry Nauruans, not to men, and does not allow for conditions to be imposed by law on the citizenship entitlement).

Emergency Powers – the Committee agreed with the Convention resolutions in relation to amendment of the Emergency powers, and made only some minor changes to the proposed wording of the amendments.

Grant of pardon – the Committee agreed with the Convention resolution on the amendment of Article 80 to create a Committee on the Prerogative of Mercy to provide non-binding recommendations to the President on the exercise of the prerogative of mercy. The Committee made some very slight changes to the proposed wording of the amendments.

Other recommendations – if you would like more information on the other recommendations of the Select Committee, you can obtain a copy of the full Committee Report. The Report shows the recommendations of the Committee in three separate attachments. Appendix 1 to the Report is a comparative table which shows side-by-side the existing provisions of the Constitution, public opinion, Commission recommendations, Convention resolutions and the resolutions of the Select Committee; Appendix 2 shows the existing Constitution of Nauru with all of the amendments that would be made to it if all of the recommendations of the Select Committee were adopted; and Appendix 3 shows the two constitutional amendment bills with all of the changes that would be made to the bills if all of the recommendations of the Select Committee were adopted by the Committee of the Whole.

What happens next?

The resolutions of the Select Committee that are contained in its Report to Parliament are not final decisions of Parliament, they are only recommendations. These recommendations will be considered by the Committee of the Whole when it meets in June 2009 to go through the constitutional amendment bills clause by clause. During the Committee of the Whole, the members of Parliament will decide whether or not to accept the Committee's recommendations for changes to the Bills.

Once the Committee of the Whole has decided on the final content of the bills, Parliament will be ready to vote on whether or not to pass the bills. If the bills are passed by Parliament, by at least 12 members, that will be the end of step 5 of the constitutional review process.

If the constitutional amendment bills are passed by Parliament, a referendum will be held to ask the people of Nauru whether they approve of some of the proposed constitutional amendments. People will be given the information they need to make an informed choice as to whether or not they approve of those proposed changes that require approval by referendum.