

**Votes & Proceedings
Of the
Eighteenth Parliament**

No. 18

**Second sitting of the Twelfth Meeting
Wednesday, 17th June 2009**

10.00 a.m.

1. The House met at 10 a.m. in accordance with the resolution of the House made on Tuesday, 16th June 2009.
2. Hon. Riddell Akua, M.P., Speaker of Parliament, took the Chair and read Prayers.
3. **Statement from the Chair**

‘Honourable Members, firstly a matter to revert recommendation to the Privileges Committee. On the 23rd December 2008 Parliament adopted the report of the Privileges Committee re David Adeang, which was sent to the DPP for action on the 12th of May 2009. A letter was received from the DPP stating in the first paragraph his apologies for the late reply. A lapse of 140 days and in this case it is an understatement and a mockery of protocols and courtesy.

In the second paragraph, he stated he had read the full report and considered all matters raised in the report.

In the third paragraph, it goes to state – ‘I do not give authority for criminal charges to be laid against Mr. Adeang either pursuant to the Parliamentary Powers, Privileges and Immunities Act or the Criminal Code.’

There were no reasons given for this reply and I sought none.

Therefore I lay before the Privileges Committee a copy of the DPP’s letter for their perusal.

And on a lighter tone Members, I said in a statement during yesterday’s sitting that we were anticipating the arrival of Kristen Walker, who has been contracted by Parliament on a short-term basis to serve as legal counsel on constitutional matters and who will, during that time, be an officer of Parliament and entitled to enter the Chamber. Kristen arrived on the island yesterday and will be joining us in the Chamber later on today when this House resolves itself into the Committee of the Whole.

On behalf of this House I wish to warmly welcome Kristen to Nauru. For the benefit of Members of Parliament and the public, I should also add a few more words of introduction.

Kristen is in Nauru to assist Parliament in its deliberations on the Constitutional Amendment Bills. Her contract is funded by the UNDP as part of the Constitutional Review Project.

Kris Walker is a distinguished constitutional lawyer from Melbourne. Kris graduated at the top of Melbourne Law School in 1992 and then worked as Associate to the Chief Justice of the High Court of Australia, Sir Anthony Mason. After some years in private practice at a large law firm in Melbourne,

Kris returned to the University of Melbourne as an academic teaching and researching in the field of constitutional law. Kris holds Masters of Law degrees from Columbia University and the University of Melbourne. She is an Associate Professor of Law in the Melbourne Law School and is also an Associate of the Centre for Comparative Constitutional Studies, which is an expert centre within the Law School. Kris is also in private practice at the Victorian Bar, where she specialises in constitutional law. She has appeared in many major constitutional cases in the High Court of Australia. Kris has also published widely in academic journals on constitutional law and other aspects of public law.

We are very grateful that someone with Kris' expertise and experience in the field of constitution law has been able to travel to Nauru to assist the Parliament in the very important task of considering final amendments to the Constitutional Amendment Bills and I hope that all Members will dedicate themselves to the task of considering these Bills during Kristen's time in Nauru to make the most of her legal expertise whilst she is here. Thank you.'

4. **Questions Without Notice** were asked.

5. **Ministerial Statements & Tabling of Papers** - nil.

6. **Motions**

His Excellency President Marcus Stephen moved that motion Nos. 1, 2, 3, 4, 5, 6, 7 and 8 on the notice paper be deferred to the next sitting.

Hon. Dr. Kieren Keke (Minister for Finance) seconded.

Question put and passed.

7. **Motion**

Mr. Dowiyogo (Ubenide) moved the following motion:

'That this august House resolve to end the suspension of the Member for Ubenide, Hon. David Adeang, M.P., in which the motion seek to rescind the motion of July 2008, as per S.O. 62 in the second part, whereas 'except upon a motion that such vote be rescinded.'

Mr. Bernicke (Buada) seconded.

Debate ensued.

The Chair, on request from Members, suspended the sitting and to resume when the bell rings.

Resumed.

The Chair advised the House regarding letters of apology from Hon. Adeang which were with the Parliamentary Counsel.

Debate continued.

Question put and negatived.

8. Division of the House Called for

Mr. Dowiyogo (Ubenide) and Mr. Tsitsi (Aiwo) called for division.

Bells rung for one minute.

The House divided.

AYES		NOES	
Mr. Dowiyogo	Mr. Stephen	Dr. Keke	Mr. Batsiua
Mr. Bernicke	Mr. Pitcher	Mr. Dabwido	Mr. Kun
Mr. Scotty	Mr. Tabuna	Mr. Amwano	Mr. Thom
Mr. Tsitsi	Mr. Solomon	Mr. Deireragea	
Total - 4		Total - 11	

Question put and negatived.

9. Order of the Day No. 1 - Shipping Bill 2008

The House to resolve itself into the Committee of the Whole for further consideration of the Bill.

Motion

Hon. Sprent Dabwido (Minister for Transport) moved that Order of the Day No. 1 be adjourned and made an Order of the Day at the next sitting.

Mr. Tabuna (Yaren) seconded.

Question put and passed.

10. Order of the Day No. 2 - Constitution of Nauru (Parliamentary Amendments) Bill 2008 and Constitution of Nauru (Referendum Amendments) Bill 2008.

That the House, by its resolution of 10th March 2009, resolve itself into the Committee of the Whole for further consideration of the Constitution of Nauru (Parliamentary Amendments) Bill 2008 and the Constitution of Nauru (Referendum Amendments) Bill 2008.

In the Committee of the Whole

(Mr. Chairman, Hon. Dominic Tabuna, M.P., presiding)

11. Motion

Hon. Dr. Kieren Keke (Minister for Finance) moved the following motion:-

'That the Committee resolve that throughout its deliberations on the Constitutional Amendment Bills,

- *The Speaker shall sit as a member of the Committee of the Whole;*
- *The Chairman shall be permitted to debate from the Chair, but shall exercise only a casting vote;*
- *The Committee's legal advisor shall be permitted to speak in committee at any time by seeking permission through the Chairman;*
- *On every vote in relation to a clause in either of the Bills, Members shall vote by a show of hands and, unless there is unanimity, the Clerk shall record the names of all*

Members voting with the 'ayes' and all Members voting with the 'noes', and it shall therefore be unnecessary to call for a formal division;

- *The Committee shall not be confined to considering the clauses of the Bills in order, as prescribed by Standing Order 165, but shall consider clauses, proposed clauses and proposed amendments in the order set out in the agenda or agendas adopted by the Committee;*
- *The Chair may grant leave to depart from the adopted agenda; and*
- *The Committee shall not be confined to considering each clause, proposed clauses and proposed amendment thereto separately, and may move and vote upon motions that concern more than one clause.*

And that Standing Order 165 and such other of the Standing Orders as necessary shall therefore be suspended to facilitate the adoption of such procedures.'

Hon. Frederick Pitcher (Minister for CIE) seconded.

Question put and passed.

The Chair suspended the sitting and to resume when the bell rings.

Resumed.

12. Motion of Amendment

Hon. Dr. Kieren Keke (Minister for Finance) moved an amendment to his earlier motion –

'That the motion be amended so that new dot point three is inserted as follows –

- *Ms. Kristen Walker shall be appointed to serve as legal advisor to the Committee;*

So that the motion, as amended, would be –

'That the Committee resolve that throughout its deliberations on the Constitutional Amendment Bills,

- *The Speaker shall sit as a member of the Committee of the Whole;*
- *The Chairman shall be permitted to debate from the Chair, but shall exercise only a casting vote;*
- *Ms. Kristen Walker shall be appointed to serve as legal advisor to the Committee;*
- *The Committee's legal advisor shall be permitted to speak in committee at any time by seeking permission through the Chairman;*
- *On every vote in relation to a clause in either of the Bills, Members shall vote by a show of hands and, unless there is unanimity, the Clerk shall record the names of all Members voting with the 'ayes' and all Members voting with the 'noes', and it shall therefore be unnecessary to call for a formal division;*
- *The Committee shall not be confined to considering the clauses of the Bills in order, as prescribed by Standing Order 165, but shall consider clauses, proposed clauses and proposed amendments in the order set out in the agenda or agendas adopted by the Committee;*
- *The Chair may grant leave to depart from the adopted agenda; and*
- *The Committee shall not be confined to considering each clause, proposed clauses and proposed amendment thereto separately, and may move and vote upon motions that concern more than one clause.*

And that Standing Order 165 and such other of the Standing Orders as necessary shall therefore be suspended to facilitate the adoption of such procedures.'
Debate ensued.

13. **Statement from the Chair**

'Members, before we start the Committee of the Whole I would just like to say a few words –

- To explain to the public what is the role of this Committee;*
- To cover a few procedural and house-keeping matters for the benefit of Members; and*
- To reflect on the importance of the task before this Committee.*

First of all I should note that the Committee of the Whole will be sitting every day for the next eight or nine days. The proceedings of the Committee of the Whole will be aired on the radio so that the public can follow the deliberations of the Committee.

The Standing Orders of Parliament provide for the House to resolve itself into the Committee of the Whole immediately after the second reading of any Bill, in order to go through the Bill clause by clause. In practice, this is not usually done because leave is granted to proceed to the third reading. But in the case of the two Bills that this Committee is considering now, the Constitution of Nauru (Parliamentary Amendments) Bill and the Constitution of Nauru (Referendum Amendments) Bill 2008 it is particularly important that all Members have the time and the opportunity to carefully consider every clause of the Bills and whether to amend the Bills before they are voted upon because every clause of these two Bills concerns a proposed amendment to Nauru's highest law, the Constitution.

Members of Parliament and members of the public will recall that earlier this year the Select Committee on Constitutional Amendment Bills sat for five weeks to consider recommended changes to the Bills and the Select Committee in doing so considered all of the material from the Constitutional Review thus far. They submitted their report to Parliament on 10 March 2009. Because the two Constitutional Amendment Bills have been referred to a Select Committee and report on by a Select Committee, this Committee of the Whole will be considering the Bills, as reported, by the Select Committee. That means that the Committee of the Whole will be looking at and voting on, not only the clauses currently contained in the two Constitutional Amendment Bills but also the report and all of the recommendations for changes to the Bills submitted by the Select Committee on Constitutional Amendment Bills.

In summary, the job of this Committee is to decide on the final content of the Constitutional Amendment Bills before Parliament votes on whether or not to pass the Bills.

Because it is important that the Committee be sure that the final content of the Constitutional Amendment Bills is legally sound, this Committee will be assisted by an expert constitutional lawyer, Kristen Walker, who will sit with us in the Committee of the Whole and will provide legal advice where required. Because Members of this House are already familiar with the contents of the Bills, Ms. Walker will not provide an introduction to every Article or proposed Article of the Constitution, she will just provide advice in answer to specific questions that Members may direct to her through the Chair, and provide advice when she is of the view that a legal point needs to be clarified or explained. The Speaker, introduced Ms. Walker earlier today during this morning's sitting of Parliament, and as you have all heard, Kristen Walker is a very experienced and distinguished constitutional expert. We are grateful to have the benefit of her assistance for this important work of the Committee of the Whole.

We have an awful lot to get through in the next eight to nine days in this Committee, so I should not make any opening comments too lengthy but I will just address a few small matters of procedure and house-keeping.

Members will recall that the House has already resolved that in considering the Constitutional Amendment Bills the Committee of the Whole will not be confined to considering the clauses of the Bills in order, which is what is normally required by Standing Order 165, but may consider matters in the order proposed in the report of the Select Committee on Constitutional Amendment Bills. In order to address all proposed amendments in the most logical fashion, it has been resolved that the Committee of the Whole will adopt its own agenda and suspend Standing Order 165.

One other very important procedural point is that in the Committee of the Whole the usual quorum requirements apply; there must be at least nine Members present in addition to the Chair and all matters will be decided by a simple majority of the Members present and voting. It has been agreed that in this Committee all Members will vote as independent Members according to their conscience, they will not be obliged to vote together with the group with whom they normally sit. These Bills are not government Bills, they are Bills that have been produced as a result of the Constitutional Review Process, and it is for every individual Member of Parliament to vote according to his conscience on each separate clause of the Bills.

It is not until we get to the end of the Committee of the Whole when this Committee has determined what will be the final content of the two Constitutional Amendment Bills and has reported back to the House, that the third reading of the Bills will take place and it is at the final third reading stage that the Article 84 Constitutional amendment procedure applies and a vote supported by no less than two-thirds of the total number of Members of Parliament will be required in order for the Bills to be successfully passed. That means at least 12 out of the 18 Members will have to vote in favour of the final Bills at the third reading in order for those Bills to be passed.

It is worth reflecting on this as we begin our deliberations on the Bills and proposed changes to the Bills, for all Members to bear in mind that at this stage matters will be decided by simple majority, but that when we get to the end of this process and I expect that there will be no Member who has gotten the outcome they want in respect of every single clause of the Bills, each Member acting independently according to his conscience will have to decide whether, taking the Bills in their final form as an overall package of suggested constitutional changes, he can vote 'yes' to support it or not.

Another procedural matter, Standing Order 167 provides that 'except by leave of the Chairman, no amendment may be proposed in the Committee of the Whole unless it is in writing and is signed by the mover'. If a Member wishes to move an amendment that involves changing one or two words, I will generally grant leave and will not require the Member to produce 18 copies in writing for circulation. But for more substantial amendments, I recommend that all members try to anticipate well in advance what amendments, if any, they wish to propose and to seek the help of legal counsel in advance with the drafting of your motion and the preparation of written signed copies for circulation. Parliamentary Counsel can assist you in this regard if Members wish to approach her in her office whilst this Committee is sitting, or you can seek the assistance of legal advisor, Kristen Walker before or after the daily sittings or this Committee, or during any break in the Committee. Please recall also that under Standing Order 182 motions in the Committee of the Whole do not need a seconder and do not require notice.

Parliamentary Counsel has advised me that disc 2 of the background documents for the Committee of the Whole will be distributed today as soon as the index to transcripts has been completed, and that should be within the next two hours or so, so that Members will have available all of the Minutes and the transcripts of the proceedings of the Select Committee and can quickly find where certain provisions were debated and voted on.

Finally, I would just like to say a few words about the significance of the work that this Committee is about to embark upon. What we are considering in the next eight to nine days is the final form of the proposed changes to our supreme law, the Constitution of Nauru. This is the first time that the Parliament of Nauru has considered Bills to amend the Constitution. The Bills and the Select Committee Report that we have in front of us are both products of the Constitutional review process that was initiated by the Scotty government in 2004.

In 2006, the CRC decided upon a six-step process of constitutional review and that process has been followed up to the point we have arrived at today. Step 1 involved raising awareness of the public about the reasons for the review and the type of amendments to the Constitution that might be considered. Step 2 involved extensive consultation with the people of Nauru about their views and preferences in relation to the Constitution. In step 3, an independent review Commission made recommendations for amendments and in step 4 the Constitutional Convention debated those recommendations and made its own resolutions that are reflected in the two Bills we have before us. Step 5 is the consideration of these two Bills by Parliament.

Step 5 started with the introduction of the two Bills to Parliament, and also included the work of the Select Committee on Constitutional Amendment Bills. The work that we are doing here in the Committee of the Whole is also part of step 5, and step 5 will conclude when Parliament votes in the third reading on whether or not to pass the Bills. If the Bills are passed, the sixth and final step in our constitutional review process will be a referendum in which the voters of Nauru will make the final decision on some of the proposed constitutional amendments.

It is fair to say that this House has never faced a more important or serious task than this one in the 41 years since independence. We are considering making amendments that are intended to be improvements to our supreme law. The Constitution of Nauru is the fundamental law that establishes our institutions of government, protects fundamental rights and freedoms and underpins all other laws in our legal system. I trust that all members of this Committee will approach this task in the most dignified and earnest manner with the best interests of the people of Nauru at the forefront of their minds and will be true to the dictates of their conscience.

Parliamentary Counsel, Katy LeRoy, is available to assist Members with their proposed written amendments.

Before we begin our deliberations, I would like to invite the Chairman of CRC, Hon. Ali Amwano, M.P., who was also Chairman of the Select Committee on Constitutional Amendment Bills, to say a few short words about the Bills, as the person who introduced these Bills to the House. Thank you.

14. Statement from Chairman of the Constitutional Review Committee

Mr. Amwano (Ubenide), as Chairman of the Constitutional Review Committee, made the following statement to the Committee:-

'Mr Chairman, because it has been almost exactly six months since I delivered my second reading speeches in relation to these bills on 16 December 2008, I thought it might be useful to reiterate just a couple of the key points about the bills that were made all those months ago.

The Constitution of Nauru (Parliamentary Amendments) Bill 2008 and the Constitution of Nauru (Referendum Amendments) Bill, which I introduced to Parliament on 25 November 2008, reflect the resolutions of the Nauru Constitutional Convention, which sat from 24 April to 28 May 2007 to consider recommended amendments to the Constitution of Nauru.

These are unusual bills because they are not government bills, and they are not bills put together or endorsed by the Standing Committee on Constitutional Review, the CRC, but rather they are bills introduced to Parliament pursuant to section 15 of the Constitutional Convention Act 2007. Section 15 of that Act required the Convention to produce a Report, with a draft Bill to amend the Constitution in accordance with the resolutions of the Convention, as an appendix to the Report.

*Since that Report was tabled in Parliament, the title and format of the Bill that was appended to the Report have been changed to reflect the **procedural requirements** that relate to specific proposals for amendment that came out of the Convention, but the **substance and wording** of the constitutional amendments proposed by the resolutions of the Convention **have not been changed in any way**. They have been divided into two separate and interrelated Bills, to be considered together, merely to reflect the fact that the various proposals fall into two different procedural categories. Some proposals relate to Articles of the Constitution that can be amended by Parliament alone, other proposals relate to Articles of the Constitution that can only be amended by Parliament **and** a referendum.*

Both of these Bills must comply with the requirements of Article 84 of the Constitution, because they are Bills to amend the Constitution of Nauru. Clause (2) of Article 84 provides that a proposed law to alter the Constitution must sit in Parliament for at least 90 days between its introduction and its passage by Parliament, and shall not be passed by Parliament unless it is approved by not less than two-thirds of the total number of members of Parliament. Clause (3) provides that if the law to amend the Constitution alters any of the Articles listed in the Fifth Schedule to the Constitution (or the fifth schedule itself) it must also be approved by not less than two-thirds of all the votes validly cast in a referendum.

Both of these Bills have already satisfied the 90 day requirement, because they were introduced more than six months ago at the end of November 2008. As you have pointed out Chairman, the requirement for two thirds support of Parliament will apply at the third reading stage, and not in relation to every vote of this Committee of the Whole.

Chairman, as I said in my second reading speech in December, although the constitutional amendments proposed in this Bill are not all things that I personally support, I can say that the proposed constitutional amendments that we are considering have the valid and worthy objectives of enhancing transparency and accountability of public institutions, making our Constitution more Nauruan, making the Constitution clearer and easier to understand, fixing some of the technical problems of the past, or enhancing democracy. Chairman, as you pointed out in your opening remarks, these Bills are part of a comprehensive and inclusive process of constitutional review.

I would like to note again that whilst the Bills in their present form contain only the proposed amendments endorsed by the Constitutional Convention, it should be understood that - as was noted during the sitting of the Convention, and noted again during the second reading

and during the Select Committee – the bills may be amended by Parliament before they are passed. This is because Parliament is the authority ultimately responsible for representing the people and for law-making, and because Article 84 of the Constitution provides that Parliament may, via a special procedure, pass amendments to the Constitution.

The other unusual and important feature of these Bills is their significance to the Nauruan people, as these are Bills that propose amendments to the supreme law of Nauru. As I have said on previous occasions, it is important for the people of Nauru to continue to take an interest in the constitutional review and to continue to be involved in the consideration of amendments to their Constitution. I would encourage all members of the public to talk to their members of Parliament about the Constitutional Amendment Bills, and to follow the debate on the Bills which will take place in this Committee. Thank-you Chairman.'

15. Motion

His Excellency President Marcus Stephen moved that the draft agenda be adopted, and that Articles 16 and 34 be deleted before 'Method of Presidential Election' and 'Whether Speaker is a Member or a non-Member', respectively.

Hon. Dr. Kieren Keke (Minister for Finance) seconded.

Question put and passed.

16. Motion

Hon. Dr. Kieren Keke (Minister for Finance) moved the following motion –

'That the Committee resolves in principle to adopt the recommendation of the Select Committee on Constitutional Amendment Bills that the Constitutional Amendment Bills be amended to provide for a President who is directly elected by the people, from amongst candidates who are Members of Parliament selected by Parliament; provided that the Committee shall reserve debate on the precise wording of the necessary constitutional provisions until the Committee reaches Part III on the agenda.'

Debate ensued.

Voting on the question took place.

Results:

Ayes – Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Akua, Mr. Amwano, Mr. Dowiyogo, Mr. Solomon, Mr. Scotty and Mr. Tsitsi. Total – 11

Noes – Mr. Thoma, Mr. Deireragea and Mr. Stephen. Total – 3.

Abstentions - nil.

The question was resolved in the affirmative.

Agenda : Whether Speaker is a Member or a non-Member.

17. Motion

Hon. Frederick Pitcher (Minister for CIE) moved the following motion:-

'That the Committee resolves in principle to adopt the recommendation of the Select Committee on Constitutional Amendment Bills that the Constitutional Amendment Bills be amended to provide for a Speaker who is not a Member of Parliament but is a person qualified to be a Member of Parliament and elected by the Parliament; provided that the Committee

shall reserve debate on the precise wording of the necessary constitutional provisions until the Committee reaches Part IV on the Agenda.'

Debate ensued.

Voting on the question took place.

Results:

Ayes - Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Akua, Mr. Amwano, Mr. Dowiyogo, Mr. Solomon, Mr. Deireragea, Mr. Scotty and Mr. Thoma. Total - 13.

Noes - Mr. Tsitsi. Total - 1

Abstentions - nil

The question was resolved in the affirmative.

Agenda: Preamble

18. Motion

Hon. Frederick Pitcher (Minister for CIE) moved the following motion:

'That the Committee adopts the recommendation of the Select committee on Constitutional Amendment Bills in relation to the wording of the new Preamble as set out on pages 3 and 4 of Appendix 2 to the Select Committee report, and that the Committee therefore resolved to amend clause 3 of the Constitution of Nauru (Parliamentary Amendments) Bill 2008 in the manner proposed in Appendix 2 of the Select Committee Report, with the further addition of the word 'the' in paragraph 2 immediately following the word 'introduce'.

Debate ensued.

19. Motion

His Excellency President Marcus Stephen moved the following motion:-

'That further consideration on the motion moved by the Minister for CIE relating to the Preamble be deferred to the next sitting.'

Question put and passed.

20. Motion

His Excellency President Marcus Stephen moved that the Committee be suspended and to resume tomorrow at 10 a.m.

Hon. Dr. Kieren Keke (Minister for Finance) seconded.

Question put and passed.

The Chair suspended the Committee and to resume tomorrow, Thursday, 18th June 2009 at 10 a.m.

The Committee of the Whole resumed.

Thursday, 18th June 2009

Preamble

21. Motion of Amendment

Hon. Frederick Pitcher (Minister for CIE) moved the following motion:-

'That the Committee adopts the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the wording of the new Preamble as set out on pages 3 and 4 of Appendix 2 to the Select Committee Report, and that the Committee therefore resolves to amend clause 8 of the Constitution of Nauru (Parliamentary Amendments) Bill 2008 in the manner proposed in Appendix 3 of the Select Committee Report, with a further addition of -

The word 'the' in paragraph 2 following the word 'introduce';

The words 'and sea' in paragraph 16 immediately following the words 'importance of land'; and

The words 'Demoniba enim ogeidawianaw Naoero (May God bless Nauru),

Demoniba enim ogeidawianaw ata ngame (May God bless our people)' right at the end of the Preamble immediately following the words 'this amended Constitution'.

Debate ensued.

The Chair suspended the Committee and to resume when the bell rings.

Resumed.

22. Motion of Amendment to the Amendment Motion

Hon. Dr. Kieren Keke (Minister for Finance) moved to amend the motion of amendment moved by Hon. Frederick Pitcher (Minister for CIE).

That the Committee adopts the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the wording of the new Preamble as set out on pages 3 and 4 of Appendix 2 to the Select Committee Report, and that the Committee therefore resolves to amend clause 3 of the Constitution of Nauru (Parliamentary Amendments) Bill 2008 in the manner proposed in Appendix of the Select Committee Report, as further amended by the Committee of the Whole in the manner set out in attachment number 18.9.9.02 to this motion.

Question put.

Ayes: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Batsiua, Mr. Tsitsi, Mr. Thoma, Mr. Scotty, Mr. Deireragea, Mr. Solomon, Mr. Dowiyogo, Mr. Akua. Total - 12

Noes: Mr. Kun. Total - 1

The question resolved in the affirmative.

Part I - Article 2A

23. Motion of Amendment

Hon. Dr. Kieren Keke (Minister for Finance) moved the following motion -

'That the Committee adopts the recommendation of the Select Committee on Constitution Amendment Bills in relation to the wording of proposed new Article 2A and its replacement in Part I of the Constitution, as set out on page 5 of Appendix 2 to the Select Committee Report, and that the Committee therefore resolves to delete clause 5 of the Constitution of Nauru (Parliamentary Amendments) Bill and to insert in the Constitution of Nauru (Referendum Amendments) Bill a clause that provides for proposed new Article 2A, which clause of the Bill will read as follows:-

'The Constitution is amended by inserting in Part I, immediately after Article 2, the following new Article 2A –

Promotion of awareness of the Constitution.

2A. (1) *The government shall promote public awareness of the Constitution in the Nauruan and English languages.*

(2.) *The government shall provide for the teaching of the Constitution in schools, government institutions and disciplined services.'*

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Thoma, Mr. Scotty, Mr. Deireragea, Mr. Solomon, Mr. Akua. Total 12..

NOES: nil

Motion passed unanimously.

Part I(A)

24. Motion of Amendment

Hon. Roland Kun (Minister for Education) moved the following motion –

'That the Committee adopts the recommendations of the Select Committee on Constitutional Amendment Bills in relation to –

- *The creation of a new Part I(A) in the Constitution, with the heading 'Custom and Language';*
- *The placement of the new proposed new Articles on Customary Law and the Nauruan Language in Part I(A); and*
- *The renumbering and wording of those two proposed new Articles, as set out on pages 5 and 6 of Appendix 2 to the Select Committee Report,*

and that the Committee therefore resolves to –

- *Delete clause 6 and 7 of the Constitution of Nauru (Parliamentary Amendments) Bill 2008; and*
- *To amend clause 4 of the Constitution of Nauru (Parliamentary Amendments) Bill so that clause 4 of the Bill as amended will read as follows –*

'4. Insertion of Part I(A)

The Constitution is amended by inserting immediately after Part I, a new Part I(A) on Custom and Language, which comprises of new Articles 2B and 2C, as follows –

"PART I(A) – CUSTOM AND LANGUAGE

Customary Law

2B(1) *Customary law shall continue to have effect as part of the law of Nauru, to the extent that such law is not repugnant to the Constitution or to any Act of Parliament.*

(2) *Parliament shall make provision for the proof and pleading of custom.*

Nauruan Language

2C. *The government shall take positive and practical measures to preserve and advance the use of the Nauruan language."*

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Akua, Mr. Amwano, Mr. Deireragea, Mr. Scotty, Mr. Thoma, Mr. Tsitsi. Total – 12

NOES: nil.

Motion passed unanimously.

The Chair suspended the Committee and to resume when the bell rings.

Resumed.

Part II - Article 2D

25. Motion of Amendment

Hon. Roland Kun (Minister for Education) moved the following motion –

'That the Committee accepts the recommendation of the Select Committee on Constitutional Amendment Bills to delete clause 8 of the Constitution of Nauru (Parliamentary Amendments) Bill 2008 and to insert in the Constitution of Nauru (Referendum Amendments) Bill a clause that provides for proposed new Article 2D, and that the Committee further resolves to insert in proposed new Article 2D a new clause (3), so that the relevant clause of the Referendum Amendments Bill will read as follows –

'The Constitution is amended by inserting in Part II, immediately before Article 3, the following new Article 2D –

'Application

2D (1) *The provisions of this Part apply to all laws and bind the legislature, the executive, the judiciary, and all public officers.*

(2) *A provision in this Part binds natural and legal persons if, and to the extent that, it is applicable, taking into account the nature of the right and the duty imposed by the right.*

(3) *Only natural persons are entitled to the benefit of the rights and freedoms protected under this Part."*

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Akua, Mr. Dowiyogo, Mr. Solomon, Mr. Scotty, Mr. Thoma, Mr. Tsitsi. Mr. Deireragea. Total - 13

NOES: nil

Motion passed unanimously.

Article 3

26. Motion of Amendment

Hon. Roland Kun (Minister for Education) moved the following motion -

'That the Committee accepts the recommendation of the Select Committee on Constitutional Amendment Bills to adopt the Commission wording of the proposed amendments to Article 3 of the Constitution, and that the Committee accepts further minor modifications to the wording of the proposed amendments to Article 3, and that the Committee therefore resolves to amend clause 3 of the Constitution of Nauru (Referendum Amendments) Bill in the manner set out in the attachment to this motion, which is numbered attachment 18.6.9.A3.'

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Akua, Mr. Dowiyogo, Mr. Solomon, Mr. Thoma, Mr. Tsitsi. Total- 11.

NOES: nil

ABSTAINING: Mr. Deireragea Total - 1

The question resolved in the affirmative.

Article 4

27. No motion of amendment was moved.

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Thoma, Mr. Scotty, Mr. Deireragea, Mr. Solomon, Mr. Dowiyogo, Mr. Akua. Total - 13

NOES: nil

Motion passed unanimously.

Article 5

28. Motion of Amendment

Hon. Mathew Batsiua (Minister for Justice) moved the following motion -

"That the Committee accepts the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the proposed amendment to Article 5 of the Constitution as set out on pages 7 and 8 of Appendix 2 to the Select Committee

Report, and therefore resolves to amend clause 5 of the Constitution of Nauru (Referendum Amendments) Bill in the manner set out in Appendix e to the Report, so that clause 5 of the Bill as amended will read as follows:-

'5. Amendment to Article 5

Article 5 of the Constitution is amended by

- (a) Substituting in paragraph (e) of clause (1) for the word 'twenty', the word 'sixteen', and
- (b) Inserting in clause (4) immediately after the words 'complaint is made to the Supreme Court', the words 'or any subordinate court' and by inserting immediately after the words 'detained, the Supreme Court', the words 'or the subordinate court'.

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Scotty, Mr. Deireragea, Mr. Solomon, Mr. Dowiyogo, Mr. Amwano. Total - 12.

NOES: nil

Motion passed unanimously.

Articles 6 and 7

29. Motion

Mr. Dowiyogo (Ubenide), for record purposes, moved that Articles 6 and 7 as is, be agreed to.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Thoma, Mr. Deireragea, Mr. Solomon, Mr. Dowiyogo, Mr. Amwano. Total - 11.

NOES: nil

Motion passed unanimously.

Article 8

30. Motion of Amendment

Hon. Mathew Batsiua (Minister for Justice) moved the following motion -

'That the Committee accepts the recommendation of the Select Committee on Constitutional Amendment Bills that Article 8 of the Constitution should be amended in the manner proposed by the Commission, and further accepts certain slight modifications to the wording of the proposed amendment to Article 8 as set out in attachment 18.6.9.A9-1 to this motion, and that the Committee therefore resolves to insert a new clause 5A in the Constitution of Nauru (Referendum amendments) Bill, which clause will read as follows -

‘5A. Amendment to Article 8

Article 8 of the Constitution is amended by inserting immediately after clause (1) a new clause (1A) as follows –

‘(1A) The just terms of compulsory acquisition of property shall be agreed between the relevant parties, or, if no agreement can be reached within a reasonable time, shall be determined by the Supreme Court, having regard to all relevant factors, including :

- (a) the current use of the property;*
- (b) the history of the acquisition and use of the property;*
- (c) the importance of the public purpose for which the property is being acquired;*
- (d) the interests of those affected by the acquisition; and*
- (e) any hardship to the owner/s’,*

so that Article 8, if amended in the manner proposed, would read as set out in attachment 18.6.9.A8-2 to this motion.

Article 8 of the Constitution as it would appear if amended in the manner proposed by the motion –

Protection from deprivation of property

8.(1.) No person shall be deprived compulsorily of his property except in accordance with law for a public purpose and on just terms.

(1A) The just terms of compulsory acquisition of property shall be agreed between the relevant parties, or, if no agreement can be reached within a reasonable time, shall be determined by the Supreme court, having regard to all relevant factors, including:

- (a) the current use of the property;
- (b) the history of the acquisition and use of the property;
- (c) the importance of the public purpose for which the property is being acquired;
- (d) the interests of those affected by the acquisition; and
- (e) any hardship to the owner/s’.

(2) Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of the provisions of clause (1.) of this Article to the extent that that law makes provision –

- (a) for the taking of possession or acquisition of any property –
 - (i) in satisfaction of a tax;
 - (ii) by way of penalty for breach of the law or forfeiture in consequence of breach of the law;
 - (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
 - (iv) in the execution of a judgement or order of a court in proceedings for the determination of civil rights or obligations;
 - (v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or is injurious to the health of human beings, animals or plants; or
 - (vi) in consequence of any law with respect to the limitation of actions; or

(b) for the taking of possession or acquisition of any of the following property:-

- (i) property of a deceased person, a person of unsound mind or a person who has not attained the age of twenty years, for the purpose of administering it for the benefit of the person entitled to the beneficial interest in that property;
- (ii) property of a person adjudged bankrupt or insolvent or of a body corporate in liquidation, for the purpose of administering it for the benefit of the creditors of the bankrupt or insolvent or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property;
- (iii) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust; and
- (iv) property held by a body corporate established by law for public purposes.

Debate ensued.

Question put.

AYES: Dr. Keke, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Scotty, Mr. Deireragea, Mr. Solomon, Mr. Dowiyogo, Mr. Amwano. Total - 10.

NOES: nil.

ABSTAINING: Mr. Stephen, Mr. Thoma. Total - 2

Motion passed unanimously.

Article 9

32. Motion of Amendment

Hon. Sprent Dabwido (Minister for Transport) moved the following motion:-

'That the Committee adopt the recommendation of the Convention in relation to the proposed amendment of Article 9 of the Constitution, as currently reflected in clause 6 of the Constitution of Nauru (Referendum Amendments) Bill, and that the Committee agree to make one slight modification to the wording of the proposed constitutional amendment contained in clause 6 of the Bill, by deleting the words 'cannot be used to support' and replacing them with the words 'is not admissible in proceedings for', so that Article 9 of the Constitution if amended in the manner proposed will read as set out in attachment 18.6.9.A9 to this motion, and clause 6 of the Referendum Amendments Bill will read as follows:-

"6. Amendment of Article 9

Article 9 of the Constitution is amended by

- (a) *inserting in clause (1) immediately after the words 'other persons' the words 'and nor shall the privacy of his communications be infringed'; and*
- (b) *inserting immediately after clause (1), a new clause (1A) as follows –*
'(1A) Evidence obtained pursuant to an invalid warrant, or obtained in a manner that in any other way contravenes this Article is not admissible in proceedings for a criminal conviction.'

Protection of person and property

9.-(1) No person shall without his consent be subject to the search of his person or property or the entry on his premises by other persons, and nor shall the privacy of communications be infringed.

(1A) Evidence obtained pursuant to an invalid warrant, or obtained in a manner that in any other way contravenes this Article, is not admissible in proceedings for a criminal conviction.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the provisions of clause (1.) of this Article to the extent that that law makes provision –

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, the development or utilisation of natural resources or the development or utilisation of any property for a purpose beneficial to the community;
- (b) that is reasonably required for protecting the rights or freedoms of other persons;
- (c) that authorises an officer or agent of the Republic of Nauru or of a body corporate established by law for public purposes to enter, where reasonably necessary, on the premises of a person in order to inspect those premises or anything in or on them in relation to any tax or in order to carry out work connected with any property that is lawfully in or on those premises and belongs to the Republic or body corporation as the case may be; or
- (d) that authorises, for the purpose of enforcing the judgement or order of a court, the search of a persons or property by order of a court or entry upon any premises under such an order.

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Thoma, Mr. Scotty, Mr. Deireragea, Mr. Solomon, Mr. Amwano. Total – 11.

NOES: nil

Motion passed unanimously.

Article 10 – Clause 7

33. No motion for amendment.

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Batsiua, Mr. Kun, Mr. Dabwido, Mr. Tsitsi, Mr. Thoma, Mr. Scotty, Mr. Solomon, Mr. Amwano. Total – 10.

NOES: nil

Motion passed unanimously.

Articles 11, 12 & 13

34. Motion

Mr. Amwano (Ubenide) moved that Articles 11, 12 and 13 be adopted.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Scotty, Mr. Solomon, Mr. Thoma, Mr. Amwano. Total – 10.

NOES: nil.

Motion passed unanimously.

Article 13A – Clause 8

35. No motion for amendment.

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Batsiua, Mr. Kun, Mr. Dabwido, Mr. Tsitsi, Mr. Thoma, Mr. Scotty, Mr. Solomon, Mr. Amwano. Total – 10.

NOES: nil

Motion passed unanimously.

Article 13B

36. Motion of Amendment

Hon. Mathew Batsiua (Minister for Justice) moved the following motion:

‘That the Committee adopts the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the wording of the proposed new Article 13B on the Right to Information, as set out on page 14 of Appendix 2 to the Select Committee Report, and that the Committee therefore resolves to amend clause 9 of the Constitution of Nauru (Referendum Amendments) Bill 2008 in the manner set out in attachment 18.6.9.A13B to this motion, so that clause 9 of the Bill as amended will read as follows:-

‘9. Insertion of Article 13B

The Constitution is amended by inserting immediately after Article 13A, the following new Article 13B –

‘Right to information

13B(1) Everyone has the right of access to information held by the government and its instrumentalities.

(2) As soon as practicable after the commencement of this Article, parliament shall enact a law to give effect to this right, including provision for the retention and secure storage of information.

(3) *Nothing contained in or done under the authority of a law passed in accordance with clause 92) of this Article, or any other law, shall be held to be inconsistent with or in contravention of clause (1) of this Article to the extent that that law makes provision:*

- (a) *for fair and reasonable measures to alleviate the administrative and financial burden of the right to information on the government; or*
- (b) *for the denial of public access to sensitive Cabinet information and sensitive information the disclosure of which could harm Nauru's foreign relations or national security or would be contrary to the public interest.'*

9. **Insertion of Article 13B**

The Constitution is amended by inserting immediately after Article 13A, the following new Article 13B –

“Right to information

13B(1) Everyone has the right of access to information held by the government and its instrumentalities.

(2) As soon as practicable after the commencement of this Article, Parliament shall enact a law to give effect to this right, including provisions for the retention and secure storage of information.

(3) Nothing contained in or done under the authority of a law passed in accordance with clause (2) of this Article, or any other law, shall be held to be inconsistent with or in contravention of clause (10) of this Article to the extent that that law makes provision:

- (a) for fair and reasonable measures to alleviate the administrative and financial burden of the right to information on the government; or
- (b) for the denial of public access to sensitive Cabinet information and sensitive information the disclosure of which could harm Nauru's foreign relations or national security or would be contrary to the public interest.

Debate ensued.

(Due to technical audio malfunction, the Chair suspended the Committee and to resume when the bell rings.)

Resumed.

Debate continued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Batsiua, Mr. Kun, Mr. Dabwido, Mr. Tsitsi, Mr. Akua, Mr. Scotty, Mr. Dowiyogo, Mr. Amwano. Total – 10.

NOES: nil

Motion passed unanimously.

Article 13C

37. Motion of Amendment

Hon. Dr. Kieren Keke (Minister for Finance) moved the following motion:

'That the Committee adopts the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the wording of proposed new Article 13C on the Right to health services, as set out on page 15 of Appendix 2 to the Select Committee Report, and that the Committee therefore resolves to amend clause 10 of the Constitution of Nauru (Referendum Amendments) Bill 2008 in the manner set out in attachment 18.6.9.A13C to this motion, so that clause 10 of the Bill as amended will read as follows:

'10. Insertion of Article 13C

The Constitution is amended by inserting immediately after Article 13B, the following new Article 13C –

"Right to health services

13C(1) *Everyone has the right to access basic health services, including maternity and related care for every woman.*

(2) *The government shall take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right, and to progressively improve the standard of health services.'*

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Batsiua, Mr. Kun, Mr. Dabwido, Mr. Tsitsi, Mr. Akua, Mr. Scotty, Mr. Dowiyogo, Mr. Amwano. Total – 10.

NOES: nil

Motion passed unanimously.

Article 13D

38. Motion of Amendment

Hon. Roland Kun (Minister for Education) moved the following motion:-

'That the Committee adopt the recommendation of the Convention in relation to the proposed new Article 13D of the Constitution, as currently reflected in clause 11 of the Constitution of Nauru (Referendum Amendments) Bill, and that the Committee agree to make one slight modification to the wording of the proposed new Article contained in clause 11 of the Bill by changing the word 'must' to 'shall' and by inserting immediately after the word 'measures' a comma and the words 'within its available resources', so that clause 11 of the Referendum Amendments Bill will read as follows:-

"11. Insertion of Article 13D

The Constitution is amended by inserting immediately after Article 13C, the following new Article 13D –

'Right to education

13D. (1) *Every person has the right to primary and secondary education.*

(2) *The government shall take reasonable measures, within its available resources, to make education accessible and to progressively improve the standard of public education services and may provide support to private education services.'*

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Batsiua, Mr. Kun, Mr. Dabwido, Mr. Tsitsi, Mr. Akua, Mr. Scotty, Mr. Dowiyogo, Mr. Amwano. Total – 10.

NOES: nil

Motion passed unanimously.

Article 13E – Clause 12

39. No amendment motion.

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Batsiua, Mr. Kun, Mr. Dabwido, Mr. Tsitsi, Mr. Akua, Mr. Scotty, Mr. Dowiyogo, Mr. Amwano. Total – 10.

NOES: nil

Motion passed unanimously.

Article 13F

40. **Motion of Amendment**

Hon. Mathew Batsiua (Minister for Justice) moved the following motion:-

'That the Committee adopts the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the wording of proposed new Article 13F on Employment Rights, as set out on page 15 of Appendix 2 of the Select Committee Report, and that the Committee therefore resolves to amend clause 13 of the Constitution of Nauru (Referendum Amendments) Bill 2008 in the manner set out in attachment 18..6.9.A13F to this motion, so that clause 13 of the Bill as amended will read as follows:-

"13. Insertion of Article 13F

The Constitution is amended by inserting immediately after Article 13E, the following new Article 13F –

"Employment rights

13F. (1) *Every person has the right to fair labour practices.*

(2) *Every citizen has the right to choose their trade, occupation or profession freely.*

(3) *The practice of a trade, occupation or profession may be regulated by law.*

(4) *Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the provisions of clauses (1) or (2) of this Article to*

the extent that that law makes provision for the prohibition of the practice of any trade or profession in the interests of public safety, public order, public morality or public health.'

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Batsiua, Mr. Kun, Mr. Dabwido, Mr. Tsitsi, Mr. Akua, Mr. Scotty, Mr. Dowiyogo, Mr. Amwano. Total – 10.

NOES: nil

Motion passed unanimously.

Article 13G – Clause 14

41. No amendment motion.

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Batsiua, Mr. Kun, Mr. Dabwido, Mr. Tsitsi, Mr. Akua, Mr. Scotty, Mr. Solomon, Mr. Dowiyogo, Mr. Amwano. Total – 11.

NOES: nil

Motion passed unanimously.

Article 13H – Clause 15

42. No amendment motion.

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Batsiua, Mr. Kun, Mr. Dabwido, Mr. Tsitsi, Mr. Akua, Mr. Scotty, Mr. Solomon, Mr. Dowiyogo, Mr. Amwano. Total – 11.

NOES: nil

Motion passed unanimously.

Article 13I – Clause 16

43. No amendment motion.

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Batsiua, Mr. Kun, Mr. Dabwido, Mr. Tsitsi, Mr. Akua, Mr. Scotty, Mr. Solomon, Mr. Dowiyogo, Mr. Amwano. Total – 11.

NOES: nil

Motion passed unanimously.

Article 14 – Clause 17

44. No amendment motion.

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Batsiua, Mr. Kun, Mr. Dabwido, Mr. Tsitsi, Mr. Akua, Mr. Scotty, Mr. Solomon, Mr. Dowiyogo, Mr. Amwano. Total – 11.

NOES: nil

Motion passed unanimously.

Article 15

45. Motion of Amendment

Hon. Roland Kun (Minister for Education) moved the following motion:

'That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the wording of the proposed amendment of Article 15 of the Constitution, as set out on pages 17 and 18 of Appendix 2 to the Select Committee Report, and that the Committee agree to make some further modifications to the wording of the proposed constitutional amendments to Article 15 in the manner set out in attachment 18.6.9.A15-1 to this motion, and that the Committee therefore resolves to amend clause 18 of the Constitution of Nauru (Referendum Amendments) Bill in the manner set out in attachment 18.6.9.A15-2 to this motion, so that clause 18 of the Bill will read as follows:

'18. Amendment to Article 15

Article 15 of the Constitution is amended by –

(a) inserting, immediately before the words 'In this Part', the following –

'(1.)When interpreting this Part, a court:

(a) shall promote the values that underlie a democratic society based on freedom and equality; and

(b) shall, if relevant, have regard to public international law applicable to the protection of the rights and freedoms set out in this Part; and

(c) may, if relevant, have regard to foreign law.

(2.)The provisions of this Part are not to be construed as denying or limiting other rights and freedoms that are not specified in this Part but that are recognised or conferred by common law, customary law or laws enacted by Parliament to the extent that they are not inconsistent with this Part.

(3) The rights and freedoms protected in this Part may only be limited in accordance with the exceptions provided for in this Part. In determining whether a law that limits rights is reasonably required for a prescribed purpose, the Court must take into account:

(a) the nature and extent of the limitation;

(b) the importance of the purpose of the limitation;

(c) the relation between the limitation and its purpose; and

(d) any less restrictive means to achieve the purpose.

(4) ';

(b) inserting in clause (4) immediately after the word 'requires-' the words "child" means a person under the age of eighteen years"; and

(d) deleting from clause (4) the words ' "public property" includes property of a body corporate established by law for public purposes'.

Interpretation

15.(1) When interpreting this Part, a court:

- (a) shall promote the values that underlie a democratic society based on freedom and equality;
 - (a) shall, if relevant, have regard to public international law applicable to the protection of the rights and freedoms set out in this Part; and
 - (b) may, if relevant, have regard to foreign law.
- (2.) The provisions of this Part are not to be construed as denying or limiting other rights and freedoms that are not specified in this Part but that are recognised or conferred by common law, customary law or laws enacted by Parliament to the extent that they are not inconsistent with this Part.
- (3) The rights and freedoms protected in this Part may only be limited in accordance with the exceptions provided for in this Part. In determining whether a law that limits rights is reasonably required for a prescribed purpose, the Court must take into account:
 - (a) the nature and extent of the limitation;
 - (b) the importance of the purpose of the limitation;
 - (c) the relation between the limitation and its purpose; and
 - (d) any less restrictive means to achieve the purpose.
- (4) In this Part, unless the context otherwise required:-
 - “child” means a person under the age of eighteen years;
 - “contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;
 - “disciplined force” means -
 - (a) the Police Force; or
 - (b) any other body established by law for the purpose of defence or maintaining public safety or public order;
 - “legal representative” means a person entitled to be in or to enter Nauru and entitled by law to appear in proceedings before a court on behalf of a party to those proceedings;
 - “member” in relation to a disciplined force, includes a person who, under the law regulating the discipline of that force, is subject to that discipline.

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Batsiua, Mr. Kun, Mr. Dabwido, Mr. Scotty, Mr. Solomon, Mr. Dowiyogo, Mr. Akua, Mr. Amwano. Total - 10.

NOES: nil

ABSTAINING: Mr. Tsitsi. Total - 1

Motion passed unanimously.

The Chair, with consensus of the Committee, suspended the sitting and to resume tomorrow, Friday 19th June 2009 at 10 a.m.

Friday, 19th June 2009.

The Committee of the Whole resumed.

Part III of the Constitution.

Article 16

46. Motion of Amendment

Hon. Dr. Kieren Keke (Minister for Finance) moved the following motion:

'That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the amendment of Article 16 of the Constitution, as set out on pages 18 and 19 of Appendix 2 to the Select Committee Report, and that the Committee agree to make two slight modifications to the wording of proposed clause(3A) in Article 16, namely inserting a clause immediately before the word 'vested' the word 'those' and inserting immediately after the word 'Constitution' the words 'and by law' and that the Committee therefore resolve to amend clause 19 of the Constitution of Nauru (Referendum Amendments) Bill in the matter set out in attachment A16-1 to this motion, so that Article 16 of the Constitution if amended in the manner proposed would read as follows:-

'The President

16.(1) There shall be a President of Nauru, who shall be elected by the people of Nauru in accordance with Article 16A.

(1A) The President shall be the Head of State and Head of Government.

(2) A person is not qualified to be elected President unless he is a member of Parliament.

(3) The Deputy Speaker is not qualified to be elected President.

(3A) The functions and powers of the President are those vested in him by this Constitution and by law, and include the following:

- to appoint Ministers to Cabinet – Art 19*
- to preside at meetings of Cabinet – Art 22*
- to assign to Ministers responsibility for government business – Art 23*
- to advise the Speaker on the appointment of a date of election after dissolution – Art 39*
- to advise the Speaker on the time for the beginning of Parliamentary sessions – Art 40(1)*
- to advise the Speaker on the prorogation of Parliament – Art 41(1)*
- to initiate the process of dissolution of Parliament – Art 41(2)*
- to appoint judges and acting judges – Arts 49(2) and 53*
- to appoint the Ombudsman – Art 57B*
- to appoint the Director of audit – Art 66(1)*
- to appoint the Director of Public Prosecutions – Art 70A*
- to declare and revoke a state of emergency – Art 77*
- to make emergency orders during a state of emergency – Art 78; and*
- to exercise the prerogative of mercy – Art 80*

(3B) *A person assuming the office of President shall, before entering upon the duties of that office, take and subscribe before the Chief Justice or the Speaker an oath in the form set out in the Seventh Schedule to this Constitution.*

(4.) *Except as otherwise provided in the Constitution, the President holds office until the election of another person as President.'*

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Scotty, Mr. Bernicke, Mr. Solomon, Mr. Dowiyogo. Total – 10.

NOES: nil

Motion passed unanimously.

Article 16A

47. Motion of Amendment

Hon. Dr. Kieren Keke (Minister for Finance) moved the following amendment:

'That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the insertion in the Constitution of proposed new Article 16A concerning the election of the President, as set out on page 19 of Appendix 2 to the Select Committee Report, and

That the Committee adopt some modifications to the wording and numbering recommended by the Select Committee, as highlighted in the text below, and that the Committee therefore resolve to insert a new clause in the Constitution of Nauru (Referendum Amendments) Bill, which clause will make provision for the insertion of proposed new Article 16A in the Constitution immediately following Article 16, so that new Article 16A if adopted as proposed would read as follows:

'Election of President

16A. (1) *Notwithstanding for and an election to the office of President shall be held in such manner as is prescribed by this Article and, subject thereto, by an Act of Parliament and Standing Orders of Parliament.*

(1A) *Nomination for election to the office of President shall be held –*

(a) within the timeframe prescribed in clause (8) of Article 41 following a general election and before proceeding on any Bill; and

(b) subject to Article 16D and to clause (2) of Article 21B, whenever the office of President becomes vacant.

(2) *After the election of the Speaker and of the Deputy Speaker, Parliament shall nominate, from among members of Parliament, not fewer than two nor more than three candidates for election as President, and no other person may be a candidate.*

(3) *An election for President shall be held –*

(a) twenty-eight days after the day on which a general election is held, or

(b) not later than thirty-five days after a vacancy in the office of President has occurred.

(4) *Every person who is entitled to vote in a general election is entitled to vote in an election of President.*

(5) A person elected to the office of President under this Article assumes that office on the day upon which he is declared elected.

(6) A person may assume office as President after election on not more than three consecutive occasions.'

Debate ensued.

48. Motion of Amendment to the Amendment Motion

Hon. Frederick Pitcher (Minister for CIE) moved to delete clause 6 of 16A as moved earlier.

Debate continued.

Question put.

AYES: Mr. Stephen, Mr. Pitcher, Mr. Thoma, Mr. Dowiyogo, Mr. Solomon, Mr. Amwano. Total - 6

NOES: Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Akua. Total - 5.

ABSTAINING: Dr. Keke. Total - 1.

Question resolved in the affirmative.

Question on the motion moved by Dr. Keke (Minister for Finance), as amended, was put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Batsiua, Mr. Dabwido, Mr. Thoma, Mr. Bernicke, Mr. Solomon, Mr. Dowiyogo, Mr. Amwano, Mr. Akua. Total - 11.

NOES: nil

ABSTAINING: Mr. Tsitsi. Total - 1.

The question was resolved in the affirmative.

Articles 16B, 16C & 16D

49. Motion of Amendment

Hon. Dr. Kieren Keke (Minister for Finance) moved the following motion:-

“That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the insertion in the Constitution of:

- *proposed new Article 16B concerning the tenure of office of the President,*
 - *proposed new Article 16C concerning removal from office on the grounds of incapacity; and*
 - *proposed new Article 16D concerning vacancy in the office of President,*
- as set out on pages 19 to 21 of Appendix 2 to the Select Committee Report, and*

That the Committee further adopt some slight modifications to the Select Committee’s recommended wording of those proposed Articles, namely:

- *in proposed Article 16C the insertion in clause (4) of the words ‘in writing’ immediately after the word ‘determination’ and the deletion in clause (5) of the word ‘forthwith’ and its replacement with the words ‘from the date of the Chief Justice’s determination in writing’; and*

That the Committee therefore resolve:

- to insert new clauses in the Constitution of Nauru (Referendum Amendments) Bill, which clauses will make provision for the insertion in the Constitution of proposed new Article 16B and 16C, so that new Articles 16B and 16C if adopted as proposed would read in the manner set out in attachment A16BCD-1 to this motion; and
- to move what is presently clause 9 of the Constitution of Nauru (Parliamentary Amendments) Bill into the Constitution of Nauru (Referendum Amendments) Bill and to amend the content of that clause in the manner set out in attachment A16BCD-2 to this motion, so that new Article 16D if adopted as proposed would read in the manner set out in attachment A16BCD-1 to this motion.'

'Tenure of office

16B.(1) The President, unless he ceases to be President by virtue of this Article, shall continue in office until a person elected at the next election of President after a general election assumes office.

(2) The President shall vacate his office as President –

- if he resigns his office by writing under this hand delivered to the Speaker;
- if a motion of no confidence in the President and Cabinet is passed in accordance with Article 24;
- if Parliament is dissolved pursuant to Article 61A;
- if he ceases to be a member of Parliament otherwise than by reason only of its dissolution; or
- if he is removed in accordance with Article 16C.

Removal from office on the grounds of incapacity

16C.(1) Subject to clause (3) of this Article, where there is delivered to the Speaker a request that complies with clause (2) of this Article, for the question of the mental or physical capacity of the President to discharge the functions of his office to be investigated, the Speaker shall notify the Chief Justice who shall appoint a Medical Board consisting of not less than two persons who are qualified as medical practitioners under the law of Nauru or under the law of any other country in the Commonwealth, and the Board shall inquire into the matter and shall report to the Chief Justice stating the opinion of the Board whether or not the President is, by virtue of any infirmity of body or mind, incapable of discharging the functions of his office.

(2) A request referred to in clause (1) of this Article –

- shall be in writing;
- shall be signed by a member of Parliament for each of at least three constituencies and by a number of members of Parliament which is at least one third of the total number of members of Parliament; and
- shall set out the reasons for the request;

and if the Speaker is satisfied that the request satisfies the requirements of this clause and that the reasons provided under paragraph (c) of this clause are valid, he shall notify the Chief Justice in accordance with clause (1) of this Article.

(3) Where there is delivered to the Speaker a request for the question of the mental or physical incapacity of the President to discharge the functions of his office to be investigated which complies with clause 92) of this Article except for the fact the Speaker is not satisfied that the stated reasons for the request are valid, he shall inform Parliament of the receipt of

the request and shall put to Parliament the question of whether the Chief Justice ought to be notified in accordance with clause (1) of this Article, and if Parliament so resolves by a majority of the total number of members of Parliament other than the President, the Speaker shall notify the Chief Justice accordingly.

(4) Upon the receiving the report of the Medical Board the Chief Justice shall give the President or his representative the right to be heard, and shall then make a determination in writing as to whether the President is, by reason of infirmity of body or mind, incapable of discharging the functions of his office.

(5) If the Chief Justice determines under clause (4) of this Article that the President is, by reason of infirmity of body or mind, incapable of discharging the functions of his office the President shall cease to hold office from the date of the Chief Justice's determination in writing.

Vacancy in the office of President

16D.(1) If the office of President becomes vacant by reason of the President ceasing to hold office by virtue of Article 24(1) or Article 61(A) of this Constitution, the Council of State shall perform the functions of President in accordance with Article 21B.

(2) If the office of President becomes vacant for any other reason, the Deputy President shall assume the office of President.

(3) If the office of President becomes vacant during any period when the office of Deputy President is also vacant, the Cabinet shall elect one of the Ministers to assume the office of President.

(4) A person assuming the office of President under this Article shall advise the Speaker to call a session of Parliament to be held no later than two weeks after his assumption of the office of President and nomination for election to the office of President shall be held in the manner prescribed in Article 16A at the first sitting of that session and before proceeding on any Bill.

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Tsitsi, Mr. Scotty, Mr. Solomon, Mr. Dowiyogo, Mr. Akua. Total - 10.

NOES: nil

Motion passed unanimously.

Article 17

50. Motion of Amendment

Hon. Roland Kun (Minister for Education) moved the following motion:

“That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the amendment of Article 17 of the Constitution, as set out in attachment 17.2 to this motion; and

That the Committee therefore resolve to amend clause 20 of the Constitution of Nauru (Referendum amendments) Bill in the manner set out in attachment 17.1 to this motion, so that Article 17 of the Constitution if amended in the manner proposed would read as follows:-

'Executive Authority vests in the Cabinet

17.(1) *The executive authority of Nauru is vested in a Cabinet constituted as provided by this Part.*

(2) *The Cabinet is collectively responsible to Parliament.*

(3) *The executive authority so vested in the Cabinet shall include but shall not be limited to the following powers, functions, duties and responsibilities.*

- (a) *the Cabinet shall have the general direction and control of the government of Nauru;*
- (b) *the Cabinet shall recommend to Parliament such legislative proposals as it considers necessary or desirable to implement its policies and decisions; and, in particular, shall recommend to Parliament proposals for the raising of revenue and for the expenditure of public money in accordance with the provisions of Part VI;*
- (c) *the Cabinet shall be accountable to Parliament for all public expenditure and for relating such expenditure to the appropriations made by Parliament or to other authority conferred by this Constitution or by law;*
- (d) *the Cabinet shall be responsible for conducting the foreign affairs of Nauru, whether by treaty or otherwise; provided that Cabinet shall, upon ratifying any treaty, table the treaty in Parliament;*
- (e) *the Cabinet shall be responsible for making such provision as may be reasonable and necessary for the security of Nauru;*
- (f) *the Cabinet shall be responsible for establishing and maintaining such hospitals and other institutions and for providing such other services as may be reasonable and necessary for the public health;*
- (g) *the Cabinet shall be responsible for making such provision as may be reasonable and necessary to provide educational opportunities for the people of Nauru;*
- (h) *the Cabinet shall be responsible for establishing and maintaining such other institutions and services and for making such other provision as may be reasonable and necessary to achieve an adequate standard of living for the people of Nauru, to enable them to enjoy their legal rights, and to serve their economic, social and cultural welfare;*
- (i) *subject to this Constitution and to any other law, in the exercise of its responsibilities, the Cabinet may make such contracts and other instruments on behalf of the Government of Nauru as it considers necessary.*

(4) *No treaty or other international agreement which is finally accepted by or on behalf of the Republic of Nauru shall, of itself, have the force of law in the Republic.'*

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Tsitsi, Mr. Scotty, Mr. Solomon, Mr. Dowiyogo, Mr. Akua. Total – 10.

NOES: nil

Motion passed unanimously.

Article 18 – Seventh Schedule (Art. 16) & Seventh Schedule (Art. 18)

51. Motion of Amendment

Hon. Frederick Pitcher (Minister for CIE) moved the following motion:-

“That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to

- the insertion of a new Seventh Schedule to the Constitution prescribing a specific oath of office for the President; and*
- the repeal and replacement of the existing First Schedule with a new First Schedule prescribing a new oath of office for members of Cabinet*

and that the Committee therefore resolve

- to amend the Constitution of Nauru (Referendum Amendments) Bill to insert provision for the proposed Seventh Schedule; and*
- to amend the Constitution of Nauru (Referendum Amendments) Bill to insert provision for the repeal and replacement of the First Schedule;*

so that the Constitution if amended in the manner proposed would contain Schedules 1 and 7 that would read as follows:

First Schedule

Article 18

Oath of member of Cabinet

I, (name), do hereby swear by Almighty God to be faithful to the Republic of Nauru and to undertake to hold my office as Minister with honour and dignity, to respect and uphold the Constitution and all other laws of the Republic of Nauru, not to divulge directly or indirectly any matters which are entrusted to me under secrecy; and to perform the duties of my office honestly, conscientiously and to the best of my ability. So help me God!

Seventh Schedule

Article 16

Oath of President

In full realisation of the great responsibility I assume as President in the service of the Republic of Nauru, I, (name), do hereby swear by Almighty God to be faithful to the Republic of Nauru, and do solemnly and sincerely promise at all times to promote that which will advance the Republic and to oppose all that may harm the Republic; to obey, observe, uphold and maintain the Constitution and all other laws of the Republic; to discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice to all; and to devote myself to the well-being of the Republic and all its people. So help me God!

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Tsitsi, Mr. Scotty, Mr. Solomon, Mr. Dowiyogo, Mr. Akua. Total – 10.

NOES: nil

Motion passed unanimously.

Article 19

52. Motion of Amendment

Hon. Mathew Batsiua (Minister for Justice) moved the following motion:

“That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the amendment of Article 19 of the Constitution; and

That the Committee therefore resolve to insert a new clause in the Constitution of Nauru (Parliamentary Amendments) Bill, which clause will read as follows:

‘6. Amendment of Article 19

Article 19 of the Constitution is amended by deleting from clause (1) the words ‘four or five’ and inserting in their place the words ‘a member of Parliament to be Deputy President and Minister, and three or four further’, and by inserting new clause (4) as follows-

‘(4) Whenever the office of Deputy President is vacant, the President shall appoint a Minister to be Deputy President.’

So that Article 19 of the Constitution, if amended in the manner proposed would read as follows:

‘Appointment of Ministers

19.(1) Whenever a President is elected, he shall as soon as practicable appoint a member of Parliament to be Deputy President and Minister, and three or four further members of Parliament to be Ministers of the Cabinet.

(2) Whenever there are less than four Ministers the President shall appoint a member of Parliament to be a Minister but if Parliament is dissolved the President shall appoint a person who was a member before the dissolution of Parliament.

(3) Whenever there are four but not five Ministers the President may appoint a member of Parliament to be a Minister.

(4) Whenever the office of Deputy President is vacant, the President shall appoint a Minister to be Deputy President.

Debate ensued.

53. Motion of Amendment to the Amendment Motion

Hon. Sprent Dabwido (Minister for Transport) moved to amend the motion.

“That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the amendment of Article 19 of the Constitution, and that the Committee agree to further amend Article 19 to increase the number of Ministers that the President may appoint from ‘four or five’ to ‘five or six’; and

That the Committee therefore resolve to insert a new clause in the Constitution of Nauru (Parliamentary Amendments) Bill, which clause will read as follows:

‘6. Amendment to Article 19

Article 19 of the Constitution is amended by –

- (a) deleting from clause (1) the words ‘four or five’ and inserting in their place the words ‘a member of Parliament to be Deputy President and Minister, and four or five further’;*
- (b) substituting in clause (2) for the word ‘four’ the word ‘five’;*
- (c) substituting in clause (3) for the words ‘four but not five’, the words ‘five but not six’; and*
- (d) inserting new clause (4) as follows –*
‘(4)Whenever the office of Deputy President is vacant, the President shall appoint a Minister to be Deputy President’;

so that Article 19 of the Constitution, if amended in the manner proposed, would read as follows:-

‘Appointment of Ministers

19.(1) Whenever a President is elected, he shall as soon as practicable appoint a member of Parliament to be Deputy President and Minister, and four or five further members of Parliament to be Ministers of the Cabinet.

(2) Whenever there are less than five Ministers the President shall appoint a member of Parliament to be a Minister but if Parliament is dissolved the President shall appoint a person who was a member before the dissolution of Parliament.

(3) Whenever there are five but not six Ministers the President may appoint a member of Parliament to be a Minister.

(4) Whenever the office of Deputy President is vacant, the President shall appoint a Minister to be Deputy President.

Debate continued.

The Chair, with the consensus of the Committee, suspended the sitting and to resume when the bell rings.

Resumed.

54. Motion

Hon. Dr. Kieren Keke (Minister for Finance) moved that further consideration of Article 19 be deferred to the next sitting.

The Chair suspended the Committee and to resume when the bell rings.

Resumed.

55. Motion

The question on the motion moved by Hon. Dr. Kieren Keke (Minister for Finance) was put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Akua. Total – 4.
NOES: Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Thoma, Mr. Scotty, Mr. Solomon, Mr. Dowiyogo, Mr. Amwano. Total – 8
The question was resolved in the negative.
Debate continued.

56. **Motion**

The question on the motion of amendment moved by Hon. Sprent Dabwido (Minister for Transport) was put.

AYES: Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Thoma, Mr. Scotty, Mr. Solomon, Mr. Dowiyogo, Mr. Amwano. Total – 8.

NOES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Akua. Total – 5.
The question was resolved in the affirmative.

Article 20

57. **Motion of Amendment**

Hon. Frederick Pitcher (Minister for CIE) moved the following motion:-

“That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the rejection of the proposed amendment to Article 20 of the Constitution that was recommended by the Commission and adopted by the Convention; and

That the Committee therefore resolve to delete clause 10 of the Constitution of Nauru (Parliamentary Amendments) Bill so that Article 20 of the Constitution will remain as it is.’

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Thoma, Mr. Scotty, Mr. Solomon, Mr. Dowiyogo, Mr. Amwano, Mr. Akua. Total – 13.

NOES: nil

Motion passed unanimously.

Article 21

58. **Motion of Amendment**

Hon. Mathew Batsiua (Minister for Justice) moved the following motion:-

“That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the repeal of existing Article 21 of the Constitution and its replacement with a proposed new Article 21, in the manner set out on page 23 of Appendix 2 of the Select Committee Report; and

That the Committee therefore resolve to insert a new clause in the Constitution of Nauru (Parliamentary Amendments) Bill which clause will provide as follows:

'7. Repeal and replacement of Article 21

The Constitution is amended by repealing Article 21 and replacing it with a new Article 21 as follows –

'Discharge of functions of President during absence illness, etc.

21(1) *Whenever the President is absent or considers it desirable to do so by reason of illness, accident or other cause, he may, by directions in writing, authorise the Deputy President to discharge such of the functions of the office of President as he may specify and the Deputy President shall discharge those functions until his authority is revoked by the President.*

(2) *If the President is unable by reason of illness, accident or other cause of discharging the functions of his office and the infirmity or other cause is of such a nature that the President is unable to authorise another person under this Article to discharge those functions, the Deputy President shall discharge the functions of the office of President.*

(3) *Any person discharging the functions of the office of President by virtue of the preceding clause shall cease to discharge those functions if he is notified by the President that the President is about to resume those functions.'*

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Scotty, Mr. Solomon, Mr. Dowiyogo, Mr. Akua. Total – 11.

NOES: nil

Motion passed unanimously.

Article 21A

59. Motion of Amendment

Hon. Mathew Batsiua (Minister for Justice) moved the following motion:

"That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the insertion in the Constitution of proposed new Article 21A on the Deputy President; and

That the Committee therefore resolve to insert a new clause in the Constitution of Nauru (Parliamentary Amendments) Bill which clause will provide as follows:

'7. Insertion of Article 21A

The Constitution is amended by inserting immediately after Article 21 a new Article 21A as follows –

' The Deputy President

21A(1) *There shall be a Deputy President of Nauru appointed by the President under Article 19.*

(2) *The Deputy President shall, before entering upon the duties of his office, take and subscribe before the Chief Justice or the Speaker an oath in the form set out in the Eighth Schedule to this Constitution.*

(3) *The Deputy President shall vacate his office as Deputy President –*

- (a) *if he resigns his office, by writing under his hand delivered to the President;*
- (b) *if he ceases to be a member of Parliament otherwise than by reason only of its dissolution;*
- (c) *if his appointment is revoked by the President;*
- (d) *when he assumes the office of President under clause (2) of Article 16D;*
- (e) *if he ceases to be a member of Cabinet; or*
- (f) *if a new President is elected.*

(4) *If the Deputy President is absent from Nauru or is unable by reason of illness or any other cause to discharge the functions of his office, the President shall appoint one of the other Ministers to perform the functions of the office of Deputy President and any person so appointed shall discharge those functions accordingly until –*

- (a) *his appointment is revoked by the President;*
- (b) *he ceases to be a Minister; or*
- (c) *a new President is elected.*

(5) *Where the Deputy President is performing the functions of the office of President in accordance with Article 21 of this Constitution he may appoint one of the other Ministers to perform the functions of the office of Deputy President and any person so appointed may discharge those functions accordingly, until –*

- (a) *his appointment is revoked by the Deputy President;*
- (b) *he ceases to be a Minister; or*
- (c) *the Deputy President ceases to perform the functions of the office of President.*

(6) *During any period when, while the functions of the office of President are required under Article 21 of this Constitution to be discharged by the Deputy President, there is no Deputy President or the Deputy President is absent from Nauru or is incapable by reason of illness or accident of discharging the functions of his office and there is no substituting appointment under the preceding clause, the functions of the office of President shall be performed by such Minister as the Cabinet shall appoint; provided that any person performing the functions of the office of President under this clause shall not exercise the power of the President to remove the Deputy President from office.'*

Debate ensued.

60. **Motion**

Hon. Mathew Batsiua (Minister for Justice) moved to defer consideration of Article 21A.

Question put and passed.

Article 21B

61. **Motion of Amendment**

Hon. Mathew Batsiua (Minister for Justice) moved the following motion:

“That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the wording of proposed new Article 21B on the Council of State; and

That the Committee therefore resolve that clause 11 of the Constitution of Nauru (Parliamentary Amendments) Bill be moved into the Constitution of Nauru (Referendum Amendments) Bill, and that the content of the clause be amended in the manner set out in Appendix 3 to the Select Committee Report, so that the relevant clause of the Bill will read as follows:-

‘(No.) Insertion of Article 21B

The Constitution is amended by inserting immediately after Article 21A, a new Article 21B as follows –

‘Council of State

21B(1) In the circumstances specified in clause (2) of this Article, a Council of State shall be formed, which shall, subject to clauses (6) and (7) of this Article, consist of the persons for the time being holding or acting in the offices of Chief Secretary, who shall be Chairman, Chief Justice and Speaker.

(2) In the event of the dissolution of Parliament in the circumstances specified in clause (1) of Article 24 or the circumstances specified in clause (1) of Article 61A of this Constitution, the Council of State shall, subject to clauses (3), (4) and (5) of this Article and to clauses (2) and (3) of Article 61A, perform the functions of the President and other executive functions of the government until the person elected at the next election of President following a general election assumes office.

(3) During any period in which the Council of State is performing the functions of the President and the other executive functions of government, such functions shall be performed in a manner consistent with the conventional limitations on a caretaker government, and in particular the Council of State shall not be empowered to exercise:

- (a) the power to appoint judges (but may appoint acting judges for a term of no more than three months);*
- (b) the power to appoint the Director of Public Prosecutions, the Ombudsman or the Director of Audit;*
- (c) the power to exercise the prerogative of mercy;*
- (d) to power to ratify treaties; or*
- (e) the power to enter contracts for the disposal or acquisition of major public assets.*

(4) If the Council of State assumes the functions of the President and the other executive functions of government under clause (2) of this Article, the Council of State shall as soon as practicable after assuming such functions, collectively exercise the functions of the President and Speaker under Article 39.

(5) The Council of State may only exercise the emergency powers under Part IX of this Constitution by the unanimous agreement of all members.

(6) If, at any time when it is necessary for the Council of State to be formed, the Chief Secretary is not a Nauruan citizen or is a citizen but is unavailable, the place of the Chief Secretary on the Council of State shall be filled by a person who is a Nauruan citizen and is deemed by the Chief Secretary to be a fit and proper person for the purpose, designated by the

Chief Secretary, and, if Parliament has provided for a Public Service Commission, the provisions of clause (1) and of this clause shall apply to the Chairperson of the Public Service Commission as if that person was Chief Secretary.

(7) If, at any time when it is necessary for the Council of State to be formed, the Chief Justice is not a Nauruan citizen or is a citizen but is unavailable, the place of the Chief Justice on the Council of State shall be filled by a person who is a Nauruan citizen and is designated by the Chief Justice to be a fit and proper person for the purpose, designated by the Chief Justice.

(8) If, during any period in which the Council of State is performing the functions of the President and the other executive functions of government there is a vacancy in a position on the Council of State by virtue of the unavailability or vacancy in the office of any of the members specified in clause (1), the remaining members of the Council of State shall appoint to fill that vacancy a person who is a Nauruan citizen and who is deemed by those remaining members to be a fit and proper person for the purpose.'

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Kun, Mr. Batsiua, Mr. Scotty, Mr. Solomon, Mr. Dowiyogo, Mr. Akua. Total – 8.

NOES: nil

ABSTAINING: Mr. Pitcher, Mr. Tsitsi. Total - 2

Question resolved in the affirmative.

Article 22

62. Motion of Amendment

Hon. Mathew Batsiua (Minister for Justice) moved the following motion:

“That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the rejection and the proposed amendment to Article 22 of the Constitution; and

That the Committee therefore resolve that clause 12 of the Constitution of Nauru (Parliamentary Amendments) Bill be deleted so that Article 22 of the Constitution will remain as it presently is.’

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Scotty, Mr. Solomon, Mr. Dowiyogo, Mr. Amwano, Mr. Akua. Total – 12.

NOES: nil

Motion passed unanimously.

Article 23 – Clause 13

63. No motion of amendment.

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Dabwido, Mr. Tsitsi, Mr. Scotty, Mr. Solomon, Mr. Dowiyogo, Mr. Amwano, Mr. Akua. Total – 10.

NOES: nil

Motion passed unanimously.

Article 24

64. Motion of Amendment

Hon. Frederick Pitcher (Minister for CIE) moved the following motion:

“That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the amendment of Article 24 of the Constitution as set out on pages 26-27 of Appendix 2 to the Select Committee Report; and

That the Committee adopt some modifications to the Select Committee’s recommended wording of proposed new clause 13A of the Constitution of Nauru (Parliamentary Amendments) Bill 2009 to reflect the fact that adoption of proposed amended Article 24 as set out in that clause is contingent on the approval of the proposed amendment to Article 16(1) by the people voting at referendum; and

That the Committee also adopt an alternative form of Article 24, as accepted by the Select Committee in a motion passed on 27 February 2009, to take effect only if the proposed amendment to Article 16(1) of the Constitution is not approved by the people voting at a referendum and to be set out in a new clause 13B of the Bill; and

That special commencement provisions be adopted in relation to clauses 13A and 13B of the Constitution of Nauru (Parliamentary Amendments) Bill 2009 so as to ensure that only one of these clauses will in fact come into operation when the amended Constitution comes into effect, which commencement provisions will be considered at a later date; and

That the Committee therefore resolve to insert two new clauses into the Constitution of Nauru (Parliamentary Amendments) Bill 2009 that will read as follows:

‘13A. Amendment of Article 24

The Constitution of Nauru is amended by repealing Article 24 and replacing it with a new Article 24 as follows, if and only if the people, voting at referendum, approve the amendment to Article 16(1) of the Constitution contained in the Constitution of Nauru (Referendum Amendments) Act 2009 –

‘Motion of no confidence

24-(1) Subject to the provisions of this Article, where a resolution on a motion of no confidence in the President and Cabinet is approved by at least one-half of the total number of members of Parliament, the President and Ministers shall be removed from office and Parliament shall stand dissolved.

(2) Notice of a motion of no confidence in the President and Cabinet shall be given to the Speaker at least five clear days before a vote on such motion is taken but no earlier than 120 days after the commencement of a Parliamentary term, and shall include in express terms a summary of the grounds for the loss of confidence in the President and Cabinet.

(3) *Where Parliament votes on a motion of no confidence and such motion is not approved by a resolution in accordance with clause (1) of this Article, no such motion shall again be placed on notice until the expiration of 120 days after the date on which the motion failed to be approved.*

13B. Amendment to Article 24

The Constitution of Nauru is amended by repealing Article 24 and replacing it with a new Article 24 as follows, if and only if the people, voting at referendum, do not approve the amendment to Article 16(1) of the Constitution contained in the Constitution of Nauru (Referendum Amendments) Bill 2009 –

'Motion of no confidence

24.-(1) Subject to the provisions of this Article, where a resolution on a motion of no confidence in the President and Cabinet is approved by at least one-half of the total number of members of Parliament, an election of a President shall be held.

(2) Where a President has not been elected before the expiration of a period of seven days after the day on which a resolution under clause (1) of this Article is approved parliament shall stand dissolved.

(3) Notice of a motion of no confidence in the President and Cabinet shall be given to the Speaker at least five clear days before a vote on such motion is taken, and shall include in express terms a summary of the grounds for the loss of confidence in the President and Cabinet.

(4) Where Parliament for the second time during one term of Parliament approves a resolution on a motion of no confidence in the President and Cabinet, Parliament shall stand dissolved.

(5) Where Parliament votes on a motion of no confidence and such motion is not approved by a resolution in accordance with clause (1) of this Article, no such motion shall again be placed on notice until the expiration of 120 days after the date on which the motion failed to be approved.'

Debate ensued.

Question put.

AYES: Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Thoma, Mr. Solomon, Mr. Amwano, Mr. Akua. Total - 9.

NOES: Mr. Tsitsi, Mr. Scotty, Mr. Dowiyogo. Total - 3

ABSTAINING: Mr. Stephen. Total - 1

Question resolved in the affirmative

Article 25

65. Motion

Hon. Frederick Pitcher (Minister for CIE) moved to defer discussion of this Article to await Committee discussions on the Public Service.

Question put and passed.

The Chair, with the consensus of the Committee, suspended the sitting until tomorrow, Saturday, 20th June 2009 at 10 a.m.

Saturday, 20th June 2009.

The Committee of the Whole resumed.

Part IV of the Constitution

Article 27A

66. Motion of Amendment

Mr. Thoma (Aiwo) moved the following motion:

'That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the insertion in the Constitution of new Article 27A; and

That the Committee therefore resolve to insert in the Constitution of Nauru (Parliamentary Amendments) Bill 2009 a new clause which shall provide for new Article 27A, which clause shall read as follows:

'13. Insertion of Article 27A

The Constitution is amended by inserting immediately after Article 27, a new Article 27a as follows-

'The role and functions of Parliament

27A.(1) *Parliament is elected to represent the people of Nauru and to ensure government by the people under the Constitution. It does this by providing a forum for public consideration of issues, by passing laws and by scrutinising and overseeing executive action.*

(2) *When exercising its legislative authority, Parliament is bound only by the Constitution of Nauru, and shall act in accordance with, and within the limits of, the Constitution.*

(3) *Parliament shall provide for mechanisms –*

(a) *to ensure that all executive organs of the government of Nauru are accountable to it; and*

(b) *to maintain oversight of the exercise of executive authority, including the implementation of laws enacted by Parliament.*

(4) *Parliament shall facilitate public involvement in its legislative and other processes such as its committees, conduct its business in an open manner; and hold its sittings in public; provided that reasonable measures may be taken to regulate public access, including access of the media, to Parliament.'*

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Thoma, Mr. Scotty, Mr. Akua. Total – 9

NOES: nil

Motion passed unanimously.

67. **Article 28** was deferred.

Article 29

68. **Motion of Amendment**

Hon. Roland Kun (Minister for Education) moved the following motion:

“That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the amendment of Article 29 of the Constitution in the manner set out on page 28 of Appendix 2 to the Select Committee Report; and

That the Committee therefore resolve to insert in the Constitution of Nauru (Parliamentary Amendments) Bill 2009 a new clause which shall provide for the amendment of Article 29, which clause shall read as follows:

‘14. Amendment to Article 29

Article 29 of the Constitution is amended by inserting immediately after the final word in the provision the additional words ‘or such younger age being an age not younger than eighteen years as may be prescribed by law’.

So that Article 29 of the Constitution, if amended in the manner proposed by this motion, would read as follows:

‘Electors for Parliament

29. *Members of Parliament shall be elected in such manner as is prescribed by law, by Nauruan citizens who have attained the age of twenty years, or such younger age not younger than eighteen years as may be prescribed by law.’*

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Thoma, Mr. Scotty. Total – 8

NOES: Mr. Akua. Total - 1

Question resolved in the affirmative.

69. **Article 30** was deferred.

Article 31

70. **Motion of Amendment**

Hon. Roland Kun (Minister for Education) moved the following motion:

'That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the wording of proposed amendments to Article 31 of the Constitution as set out in attachment 20.6.09.31-1 to this motion; and

That the Committee therefore resolve to amend clause 15 of the Constitution of Nauru (Parliamentary Amendments) Bill 2009 in the manner set out in Appendix 3 to the Select Committee Report so that clause 15 of the Bill will read as follows:

'15. Amendment to Article 31

Article 31 of the Constitution is amended by

- (a) deleting paragraph (c) and inserting in its place new paragraph (c) as follows –
'(c) is serving a sentence of imprisonment imposed by a court in Nauru or in any other part of the Commonwealth'*
- (b) deleting from paragraph (e) the comma after 'corporation' and the words 'being an office prescribed by law for the purposes of this paragraph'; and*
- (c) inserting immediately after paragraph (e) the following new paragraph (f) –
'(f) has been prohibited by order of the Leadership Tribunal or any other court or tribunal lawfully authorised to make such order, from holding a position of Leadership and if such order applies for a finite period, the period for which such order applies has not yet expired, and provided that if such order was made by a Tribunal or Court other than the Supreme Court, such order has been upheld by the Supreme Court pursuant to Article 36 and clause (7) of Article 57A.'*

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Thoma, Mr. Scotty, Mr. Dowiyogo, Mr. Akua. Total – 11

NOES: nil

Motion passed unanimously.

Article 32

71. Motion of Amendment

Hon. Mathew Batsiua (Minister for Justice) moved the following motion:

'That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the wording of proposed amendments to Article 32 of the Constitution as set out on pages 29 and 30 of Appendix 2 to the Select Committee Report; and

That the Committee therefore resolve to amend clause 16 of the Constitution of Nauru (Parliamentary Amendments) Bill 2009 in the manner set out on pages 14 and 15 of Appendix 3 to the Select Committee Report, so that Article 32 if amended in the manner proposed in this motion will read as follows:

'Vacation of seats by members of Parliament

31.-(1) A member of Parliament vacates his seat –

- (a) upon the dissolution of Parliament next after his election;**

- (b) *subject to clauses (1A) and (1B) of this Article, upon becoming disqualified under Article 31 to be elected a member of Parliament;*
- (c) *upon his resigning his seat by writing under his hand delivered;*
- (d) *if he is absent without leave of Parliament on every sitting day over three consecutive sessions of Parliament; or*
- (e) *upon ceasing to be a Nauruan citizen.*

(1A) *Subject to the provisions of this Article, if a member of Parliament is sentenced by a court in Nauru or in any other part of the Commonwealth to imprisonment, and serves any part of such a sentence of imprisonment, he shall forthwith cease to discharge his functions as a member of Parliament, and his seat in Parliament shall become vacant at the expiration of a period of 30 days thereafter: Provided that the Speaker may, at the request of the member, extend that period of 30 days to enable the member to pursue any review or appeal in respect of his conviction or sentence, so, however, that extensions of time exceeding in the aggregate 150 days shall not be granted without the approval of Parliament signified by resolution.*

(1B) *If at any time before the member vacates his seat his conviction is set aside or a punishment other than imprisonment is substituted, his seat in Parliament shall not become vacant under the preceding clause and he may again discharge his functions as a member of Parliament.*

(2) *In the event of the occurrence of a vacancy in the office of a member of Parliament, an election shall be held in the manner prescribed by law of a member to fill the vacant office.'*

Debate ensued.

Question put.

AYES: Mr. Stephen, Mr. Pitcher, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Scotty, Mr. Dowiyogo, Mr. Amwano, Mr. Akua. Total – 9

NOES: nil

Motion passed unanimously.

Article 21A

72. Motion of Amendment

Hon. Mathew Batsiua (Minister for Justice) moved the following motion:

“That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the insertion in the Constitution of proposed new Article 21A on the Deputy President, and

*That the Committee **therefore resolve to insert a new clause in the Constitution of Nauru (Parliamentary Amendments) Bill** which clause will provide as follows:*

‘7. Insertion of Article 21A

The Constitution is amended by inserting immediately after Article 21 a new Article 21A as follows –

‘The Deputy President

21A.(1.) There shall be a Deputy President of Nauru appointed by the President under Article 19.

(2.) The Deputy President shall, before entering upon the duties of his office, take and subscribe before the Chief Justice or the Speaker an oath in the form set out in the Eighth Schedule to this Constitution.

(3.) *The Deputy President shall vacate his office as Deputy President-*
(a) *if he resigns his office, by writing under his hand delivered to the President;*
(b) *if he ceases to be a member of Parliament otherwise than by reason only of its dissolution;*
(c) *if his appointment is revoked by the President;*
(d) *when he assumes the office of President under clause (2) of Article 16D;*
(e) *if he ceases to be a member of Cabinet; or*
(f) *if a new President is elected*

(4.) *If the Deputy President is absent from Nauru or is unable by reason of illness or any other cause to discharge the functions of his office, the President shall appoint one of the other Ministers to perform the functions of the office of Deputy President and any person so appointed shall discharge those functions accordingly until-*

- (a) *his appointment is revoked by the President;*
- (b) *he ceases to be a Minister;*
- (c) *a new President is elected; or*
- (d) *the Deputy President returns to Nauru or resumes the discharge of the functions of his office;*

provided that any person who as a result of his appointment under this clause and the operation of Article 21 is performing the functions of the office of President shall not exercise the power of the President to revoke the appointment of the Deputy President.

(5.) *Where the Deputy President is performing the functions of the office of President in accordance with Article 21 of this Constitution he may appoint one of the other Ministers to perform the functions of the office of Deputy President and any person so appointed may discharge those functions accordingly until-*

- (a) *his appointment is revoked by the Deputy President;*
- (b) *he ceases to be a Minister; or*
- (c) *the Deputy-President ceases to perform the functions of the office of President.*

(6.) *During any period when, while the functions of the office of President are required under Article 21 of this Constitution to be discharged by the Deputy President, there is no Deputy President or the Deputy President is absent from Nauru or is unable by reason of illness, accident or other cause of discharging the functions of his office and there is no subsisting appointment under the preceding clause, the functions of the office of President shall be performed by such Minister as the Cabinet shall appoint; provided that any person performing the functions of the office of President under this clause shall not exercise the power of the President to revoke the appointment of the Deputy President.'*

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Scotty, Mr. Solomon, Mr. Dowiyogo, Mr. Akua. Total – 11

NOES: nil

Motion passed unanimously.

73. Leave sought for

Hon. Mathew Batsiua (Minister for Justice) sought leave to allow him to move his motion.

Leave was granted.

74. **Motion**

Hon. Mathew Batsiua (Minister for Justice) moved the following motion:-

"That the Committee adopt the new oath of office for the Deputy President in proposed new Schedule Eight to the Constitution, as recommended by the Select Committee on Constitutional Amendment Bills, and

The Committee therefore resolves to insert in the Constitution of Nauru (Parliamentary Amendments) Bill a new clause providing for the insertion in the Constitution of new Schedule Eight, so that the Constitution if amended in accordance with this motion will contain a new Schedule Eight that will read as follows:

'Eighth Schedule

Article 21A

Oath of Deputy President

I, (name), swear by Almighty God that I will perform the duties of the Deputy-President of the Republic of Nauru to the best of my ability. I will strictly obey and uphold the Constitution and all other laws of the Republic. I dedicate myself to the service of Nauru and the people and I promise to do Justice to all manner of persons. So help me God!"

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Scotty, Mr. Dowiyogo, Mr. Amwano, Mr. Akua. Total – 11

NOES: nil

Motion passed unanimously.

Article 33

75. **Motion of Amendment**

Hon. Dr. Kieren Keke (Minister for Finance) moved the following motion:

'That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the wording of proposed amendments to Article 33 of the Constitution as set out on page 30 of Appendix 2 to the Select Committee Report; and

That the Committee further adopt some minor additions to the recommended wording, in the manner highlighted below and also highlighted in attachment A33.1 to this motion; and

That the Committee therefore resolve to amend clause 17 of the Constitution of Nauru (Parliamentary Amendments) Bill 2009 in the manner set out in attachment A33.1 to this motion, so that Article 33 if amended in the manner proposed in this motion will read as follows:-

'Clerk of Parliament

33-(1) There shall be an Office of Parliament under the administration of a Clerk of Parliament, who shall be appointed by the Speaker.

- (2) A member of Parliament is not qualified to be appointed Clerk of Parliament.
- (2A) The Clerk of Parliament shall not hold or perform the functions of any other public office.
- (3) The Clerk of Parliament may at any time resign his office by writing under his hand delivered to the Speaker and may be removed from office by the Speaker at any time.
- (4) Before or during the absence of the Clerk of Parliament, the Speaker may appoint a person who is not a member of Parliament to perform the functions of the Clerk during his absence.
- (5) Subject to paragraph (c) of clause (6) of this Article, in the exercise of his duties and functions, the Clerk of Parliament shall not receive any direction from Cabinet or from any other person or authority except the Speaker of Parliament by resolution.
- (6) The Clerk of Parliament shall be responsible for –
- (a) arranging the business and keeping the records of the proceedings of Parliament;
 - (b) arranging for the signing of documents and issuing of certificates by the Speaker, whenever any signature or certification by the Speaker is required pursuant to this Constitution or any law, and keeping the records of all documents and certificates so signed and issued.;
 - (c) performing with respect to the Speaker, members of Parliament and Parliamentary committees such secretarial and other administrative functions as may reasonably be required; and
 - (d) performing such other duties and functions as the Speaker of Parliament by resolution may direct.'

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Tsitsi, Mr. Solomon, Mr. Scotty, Mr. Amwano, Mr. Akua. Total – 10

NOES: nil

Motion passed unanimously.

Articles 34, 44, 44A & 45

76. Motion of Amendment

Hon. Roland Kun (Minister for Education) moved the following motion:

'That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the amendments to:

- *Article 34 concerning the election of the Speaker;*
- *Article 44 concerning the Speaker presiding over Parliament; and*
- *Article 45 concerning quorum*

as set out on pages 30-31 and 34-35 of Appendix 2 to the Select Committee Report; and

That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to:

- *the insertion in the Constitution of Article new 44A concerning the duties of the Speaker*

as set out on page 35 of Appendix 2 to the Select Committee Report, and

That the Committee further adopt some slight modifications to the Select Committee's recommended wording of proposed Article 44A so that new Article 44A if adopted as proposed would read as set out in attachment A34R.1 to this motion.

And that the Committee therefore resolves:

- to amend clause 8 of the Constitution of Nauru (Parliamentary Amendments) Bill in the manner set out in Appendix 3 of the Select Committee's Report so that clause 18 as amended would read as set out in attachment A34R.2 to this motion; and*
- to insert three new clauses in the Constitution of Nauru (Parliamentary Amendments) Bill to provide for the aforementioned amendments to Articles 44 and 45 and for the insertion of new Article 44A, which clauses of the Bill would read as set out in attachment A34R.3 to this motion.*

So that Articles 34, 44, 44A and 45 if amended/inserted in the manner proposed by this motion would read as set out in attachment A34R.4.'

'Duties of Speaker

44A. The duties of the Speaker include, in accordance with this Constitution:

- (a) presiding over the proceedings of Parliament – Art 44;*
- (b) convening sessions or sittings of Parliament as required under the Constitution – Arts 40, 42;*
- (c) proroguing or dissolving Parliament – Art 41;*
- (d) issuing writs for elections – Art 39;*
- (e) appointing, disciplining or removing the Clerk of Parliament – Art 33;*
- (f) managing and controlling Parliament and its precincts including all staff and other employees in the service of the Office of Parliament; and*
- (g) such other duties as prescribed by this Constitution, by law or by Standing orders of Parliament.*

18. Amendment of Article 34

Article 34 of the Constitution is amended by:

- (a) repealing clauses (1) and (2) and inserting a new clause (1) as follows –
'(1) Subject to clause (1) of Article 43 and clause (8) of Article 41, during the first session of Parliament next following a general election and whenever the office of Speaker is vacant, Parliament shall, before it proceeds to transact any other business, elect as Speaker a person who is not a member of Parliament but who is qualified to be a member of Parliament';*
- (b) in paragraph (b) of clause (3) immediately after the words 'ceasing to be' inserting the words 'qualified to be' and deleting the words 'otherwise than by reason only of its dissolution';*
- (c) in paragraph (c) of clause (3) deleting the words 'the Cabinet' and replacing them with the word 'Parliament';*
- (d) in paragraph (d) of clause (3) inserting immediately after the word 'resolution' the words 'supported by at least two thirds of the total number of members'; and*
- (e) inserting immediately after clause (3) new clauses (4) and (5) as follows –
'(4) Notwithstanding paragraph (a) of clause (3) of this Article, if at the time when Parliament first meets after a dissolution the Council of State is performing the functions of the President and the other executive functions of government, the*

Speaker shall continue to be a member of the Council of State until Parliament has elected a Speaker.

(5) Upon being elected, and before entering upon the duties of his office, the Speaker shall take and subscribe before Parliament the oath set out in the Ninth Schedule.'

'20B. Amendment to Article 44

Article 44 of the Constitution is amended by inserting immediately after the word 'Parliament' the words 'and, as presiding officer, the Speaker shall be responsible for ensuring that the business of Parliament is conducted in compliance with this Constitution and the Standing Orders of Parliament and shall exercise his functions impartially and fairly.'

20C. Insertion of Article 44A

The Constitution is amended by inserting immediately after Article 44 a new Article 44A as follows –

Duties of Speaker

44A. *The duties of the Speaker include:*

- (a) presiding over the proceedings of Parliament;*
- (b) convening sessions or sittings of Parliament as required under the Constitution;*
- (c) proroguing or dissolving Parliament;*
- (d) issuing writs for elections*
- (e) appointing, disciplining or removing the Clerk of Parliament;*
- (f) managing and controlling Parliament and its precincts including all staff and other employees in the service of the Office of Parliament; and*
- (g) such other duties as prescribed by this Constitution, by law or by Standing orders of Parliament.*

20D. Amendment of Article 45

Article 45 of the Constitution is amended by inserting immediately after the words 'presiding at the sitting' the words 'if a member is presiding'.

Articles 34, 44, 44A and 45 as they would appear in the Constitution if the Bill was amended in the manner proposed by the motion:

Speaker of Parliament

34 (1) Subject to clause (1) of Article 43 and clause (8) of Article 41, during the first session of Parliament next following a general election and whenever the office of Speaker is vacant, Parliament shall, before it proceeds to transact any other business, elect as Speaker a person who is not a member of Parliament but who is qualified to be a member of Parliament.

(3) The Speaker ceases to hold office –

- (a) when Parliament first meets after dissolution;*
- (b) upon ceasing to be qualified to be a member of Parliament;*

- (c) upon becoming a member of Parliament;
- (d) upon being removed from office by a resolution supported by at least two thirds of Parliament; or
- (e) upon resigning his office by writing under his hand delivered to the Clerk of Parliament.

(4) Notwithstanding paragraph (a) of clause (3) of this Article, if at the time when Parliament first meets after a dissolution the Council of State is performing the functions of the President and the other executive functions of government, the Speaker shall continue to be a member of the Council of State until Parliament has elected a Speaker.

(5) Upon being elected, and before entering upon the duties of his office, the Speaker shall take and subscribe before Parliament the oath set out in the Ninth Schedule.'

Speaker to preside

44. The Speaker shall preside at a sitting of Parliament and, as presiding officer, the Speaker shall be responsible for ensuring that the business of Parliament is conducted in compliance with this Constitution and the Standing Orders of Parliament and shall exercise his functions impartially and fairly.

Duties of Speaker

44A. The duties of the Speaker include, in accordance with this Constitution:

- (a) presiding over the proceedings of Parliament – Art 44;
- (b) convening sessions or sittings of Parliament as required under the Constitution – Arts 40, 42;;
- (c) proroguing or dissolving Parliament – Art 41;
- (d) issuing writs for elections - Art 39;
- (e) appointing, disciplining or removing the Clerk of Parliament – Art 33;
- (f) managing and controlling Parliament and its precincts including all staff and other employees in the service of the Office of Parliament; and
- (g) such other duties as prescribed by this Constitution, by law or by Standing orders of Parliament.

Quorum

45. No business shall be transacted at a sitting of Parliament if the number of its members present, other than the person presiding at the sitting if a member is presiding, is less than one-half of the total number of members of Parliament.'

Debate ensued.

His Excellency President Marcus Stephen moved to defer the motion.

Question put and passed.

Article 35

77. Motion of Amendment

Hon. Frederick Pitcher (Minister for CIE) moved the following motion:

'That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the amendment of clause (1) of Article 35 of

the Constitution, as set out on pages 31 and 32 of Appendix 2 to the Report of the Select Committee; and

That the Committee therefore resolve to insert a new clause in the Constitution of Nauru (Parliamentary Amendments) Bill 2009, which clause will read as follows:

'(No.) Amendment to Article 35

Article 35 of the Constitution is amended by deleting from clause (1) the words 'the despatch of' and replacing them with the word 'transact'.

So that clause (1) of Article 35 of the Constitution if amended in the manner proposed by this motion would read as follows:

'Deputy Speaker of Parliament

35.-(1) Parliament shall, after the election of the Speaker and before it proceeds to transact any other business, elect one of its members to be Deputy Speaker and, whenever the office of Deputy Speaker is vacant, shall, as soon as possible elect one its members to fill that office.'

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Tsitsi, Mr. Solomon, Mr. Scotty, Mr. Dowiyogo, Mr. Akua. Total – 10

NOES: nil

Motion passed unanimously.

78. **Articles 36, 38 & 47** were agreed to.

Article 37

79. **Motion of Amendment**

Hon. Mathew Batsiua (Minister for Justice) moved the following motion:

'That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the amendment to Article 37 of the Constitution; and

That the Committee therefore resolve to insert in the Constitution of Nauru (Parliamentary Amendments) Bill 2009 a new clause which shall provide for the amendment of Article 37, which clause shall read as follows:

(No.) Amendment to Article 37

Article 37 of the Constitution is amended by inserting immediately after the words 'committees are' a comma and the words 'subject to this Constitution'.

So that Article 37, if amended in the manner proposed, will read as follows:

'Powers, privileges and immunities of Parliament

37. *The powers, privileges and immunities of Parliament and of its members and committees are, subject to this Constitution, such as are declared by Parliament.'*

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Tsitsi, Mr. Solomon, Mr. Scotty, Mr. Dowiyogo, Mr. Akua. Total – 10

NOES: nil

Motion passed unanimously.

The Chair, with concurrence of the Committee, suspended the sitting and to resume when the bell rings.

Resumed.

Articles 34, 44, 44A & 45

80. Motion of Amendment

Hon. Roland Kun (Minister for Education) moved the following amendments:

'That the motion in relation to Articles 34, 44, 44A and 45, as amended in the manner highlighted in attachment A34R.5, be agreed to.'

'Speaker of Parliament

34.-(1) Subject to clause (1) of Article 43 and clause (8) of Article 41, during the first session of Parliament next following a general election and whenever the office of Speaker is vacant, Parliament shall, before it proceeds to transact any other business, elect as Speaker a person who is not a member of Parliament but who is qualified to be a member of Parliament.

(1A) Parliament shall enact a law to provide for the manner in which nominations for and election of Speaker shall be conducted, and for related matters necessary or desirable to give effect to clause (1) of this Article.

(3) The Speaker ceases to hold office –

(a) when Parliament first meets after dissolution;

(b) upon ceasing to be qualified to be a member of Parliament;

(c) upon nominating for election as a member of Parliament;

(d) upon being removed from office by a resolution supported by at least two thirds of Parliament; or

(e) upon resigning his office by writing under his hand delivered to the Clerk of Parliament.

(4) Notwithstanding paragraph (a) of clause (3) of this Article, if at the time when Parliament first meets after a dissolution the Council of State is performing the functions of the President and the other executive functions of government, the Speaker shall continue to be a member of the Council of State until Parliament has elected a Speaker.

(5) *Upon being elected, and before entering upon the duties of his office, the Speaker shall take and subscribe before Parliament the oath set out in the Ninth Schedule.'*

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Solomon, Mr. Thoma, Mr. Akua. Total – 10

NOES: nil

Motion passed unanimously.

Articles 39, 40 & 41

81. Motion of Amendment

Hon. Dr. Kieren Keke (Minister for Finance) moved the following motion:

That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the amendment of:

- *Article 39 concerning general elections for Parliament;*
- *Article 40 concerning sessions of Parliament; and*
- *Article 41 concerning prorogation and dissolution of Parliament*

as set out on pages 32 – 34 of Appendix 2 to the Select Committee Report; and

That the Committee therefore resolves:

- *to amend clause 19 of the Constitution of Nauru (Parliamentary Amendments) Bill in the manner set out in Appendix 3 of the Select Committee's Report so that clause 19 as amended would read as set out in attachment A39R.1 to this motion; and*
- *to insert two clauses in the Constitution of Nauru (Parliamentary Amendments) Bill to provide for the aforementioned amendments to Articles 39 and 41 of the Constitution, which clauses of the Bill would read as set out in attachment A39R.1 to this motion*

so that Articles 39, 40 and 41 if amended in the manner proposed by this motion would read as set out in attachment A39R.2'

Attachment A39R.1

[No.]. Amendment of Article 39

Article 39 of the Constitution is amended by replacing the words 'two months' with the words 'fifty days' and by inserting immediately after the word 'appoints' a comma and the words 'provided that it shall be held on a Saturday'.

19. Amendment of Article 40

Article 40 of the Constitution is amended by

- a) *deleting from Clause (1) the words 'if Parliament has been prorogued'; and*
- b) *substituting in clause (1) for the words 'twenty-one days after the last day on which a candidate at a general election is declared elected' the words 'subject to clause (1A) of this Article, not later than the second Tuesday after the day on which a general election is held';*
- c) *inserting immediately after clause (1) a new clause (1A) as follows –*

'(1A.) If the first session of a new Parliament begins earlier than the second Tuesday after the day on which a general election is held, regular sittings of that session shall continue until Parliament has elected a Speaker, a Deputy Speaker and nominated candidates for an election of President, or until Parliament is dissolved under clause (8) of Article 41, whichever occurs earlier.'; and

d) inserting immediately after clause (2), new clauses (3) and (4) as follows –

'(3.) A session of Parliament ends when it is prorogued in accordance with Article 41 (1) or on the expiry of seven clear days during which Parliament has not held sittings.

(4.) Unless Parliament is prorogued, the ending of a session does not have the effect of causing the business of Parliament pending at the end of the session to lapse.'

19A. Amendment of Article 41

Article 41 of the Constitution is amended by –

(a) deleting from clause (4) the words 'and no resolution for the removal from office of the President and Ministers under Article 24 is approved after the date on which the advice was so referred';

(b) inserting in clause (5) immediately after the words 'so withdraws his advice' a comma and the words 'subject to clause (1) of Article 24 and to clause (1) of Article 61A,';

(c) repealing clause (6); and

(d) inserting immediately after clause (7) a new clause (8) as follows:

'(8.) If at the conclusion of the second Tuesday after the day on which a general election is held Parliament has failed to elect a Speaker, failed to elect a Deputy Speaker, or failed to nominate candidates for an election of President, Parliament shall stand dissolved.'

Articles 39, 40 and 41 of the Constitution as they would appear if amended in the manner proposed by the motion:

'General Elections for Parliament

39. A general election of members of Parliament shall be held at such time within fifty days after a dissolution of Parliament as the Speaker in accordance with the advice of the President appoints, provided that it shall be held on a Saturday.

Sessions of Parliament

40.-(1.) Each session of Parliament shall be held at such place and shall begin at such time, not being later than twelve months after the end of the preceding session, or subject to clause (1A) of this Article, not later than the second Tuesday after the day on which a general election is held if Parliament has been dissolved, as the Speaker in accordance with the advice of the President appoints.

(1A.) If the first session of a new Parliament begins earlier than the second Tuesday after the day on which a general election is held, regular sittings of that session shall continue until Parliament has elected a Speaker, a Deputy Speaker and nominated candidates for an election of President, or until Parliament is dissolved under clause (8) of Article 41, whichever occurs earlier.

(2.) Subject to the provisions of clause (1.) of this Article, the sittings of Parliament shall be held at such times and places as it, by its rules of procedure or otherwise, determines.

(3.) A session of Parliament ends when it is prorogued in accordance with Article 41 (1) or on the expiry of seven clear days during which Parliament has not held sittings.

(4.) Unless Parliament is prorogued, the ending of a session does not have the effect of causing the business of Parliament pending at the end of the session to lapse.

Prorogation and dissolution of Parliament

41.-(1.) The Speaker, in accordance with the advice of the President, may at any time prorogue Parliament.

(2.) The Speaker shall, if he is advised by the President to dissolve Parliament, refer the advice of the President to Parliament as soon as practicable and in any case before the expiration of fourteen days after his receipt of the advice.

(3.) For the purposes of clause (2.) of this Article, and notwithstanding Article 40, the Speaker shall, if necessary, appoint a time for the beginning of a session, or for a sitting, of Parliament.

(4.) Where the Speaker has, under clause (2.) of this Article, referred the advice of the President to Parliament, he shall dissolve Parliament on the seventh day after that date.

(5.) The President may withdraw his advice at any time before the Speaker has dissolved Parliament and where the President so withdraws his advice, subject to clause (1) of Article 24 and to clause (1) of Article 61A, the Speaker shall not dissolve Parliament.

(7.) Parliament shall, unless sooner dissolved, continue for a period of three years from and including the date of the first sitting of Parliament after any dissolution and shall then stand dissolved.

(8.) If at the conclusion of the second Tuesday after the day on which a general election is held Parliament has failed to elect a Speaker, failed to elect a Deputy Speaker, or failed to nominate candidates for an election of President, Parliament shall stand dissolved.

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Solomon, Mr. Scotty, Mr. Dowiyogo, Mr. Akua. Total – 11

NOES: nil

Motion passed unanimously.

Article 43

82. Motion of Amendment

Hon. Dr. Kieren Keke (Minister for Finance) moved the following motion:

‘That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the amendment of Article 43 of the Constitution, as set out on page 34 of Appendix 2 to the Report of the Select Committee, and

*That the Committee **therefore resolve** to insert a new clause in the Constitution of Nauru (Parliamentary Amendments) Bill 2009 in the manner set out in Appendix 3 to the Select Committee Report, which clause of the Bill as will read as follows:*

‘20A. Amendment of Article 43

Article 43 of the Constitution is amended by –

- (a) deleting from clause (1) the comma that appears after 'Third Schedule' and deleting the words 'but a member may before taking and subscribing that oath take part in electing the Speaker'; and
- (b) repealing clause (2).'

so that Article 43 of the Constitution, if amended in the manner proposed in this motion, will read as follows:

'Oath of members of Parliament

43.-(1.) A member of Parliament shall, before taking his seat, take and subscribe before Parliament the oath set out in the Third Schedule.'"

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Solomon, Mr. Scotty, Mr. Dowiyogo, Mr. Amwano, Mr. Akua. Total - 12

NOES: nil

Motion passed unanimously.

Article 46

83. Motion of Amendment

Hon. Roland Kun (Minister for Education) moved the following motion:

That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the wording of proposed amendments to Article 46 of the Constitution as set out on page 35 of Appendix 2 to the Select Committee Report, and

That the Committee therefore resolve to amend clause 21 of the Constitution of Nauru (Parliamentary Amendments) Bill 2009 in the manner set out in Appendix 3 to the Select Committee Report so that clause 21 of the Bill as amended will read as follows:

'21. Amendment of Article 46

Article 46 of the Constitution is amended –

- a) *by substituting for the words in clause (2) the following words - 'If there is an equality of votes, the person presiding does not have a casting vote and the question is deemed to be lost.'; and*
- b) *by inserting immediately after clause (2) new clauses (3) and (4) as follows –*
- '(3.) If a Member is performing the functions of Speaker, he shall continue to have a deliberative vote as a member of Parliament but shall not in addition have a casting vote.*
- (4.) The Speaker shall not be entitled to vote on any question.'*

And so that Article 46 of the Constitution, if amended in the manner proposed in this motion, will read as follows:

Voting

46.-(1.) *Except as otherwise provided by this Constitution, a question before Parliament shall be decided by a majority of the votes of its members present and voting.*

(2.) *If there is an equality of votes, the person presiding does not have a casting vote and the question concerned is deemed to be lost.*

(3.) *If a Member is performing the functions of Speaker, he shall continue to have a deliberative vote as a member of Parliament but shall not in addition have a casting vote.*

(4.) *The Speaker shall not be entitled to vote on any question.'*

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Solomon, Mr. Scotty, Mr. Dowiyogo, Mr. Amwano, Mr. Akua. Total - 12

NOES: nil

Motion passed unanimously.

Part V

Part V(A) & Article 57A

84. Motion of Amendment

Hon. Mathew Batsiua (Minister for Justice) moved the following motion:

"That the Committee adopts the recommendation of the Standing Committee on Constitutional Amendment Bills in relation to the creation of a new Part V(A) in the Constitution which would comprise new Article 57A concerning the Leadership Code, and in relation to the manner in which new Article 57A should be worded,

And that the Committee therefore resolve to amend clause 29 of the Constitution of Nauru (Parliamentary Amendments) Bill in the manner set out in Appendix 3 to the Report of the Select Committee, so that clause 29 of the Bill as amended would read as follows:

29. **Insertion of Article 57A and creation of new Part V(A)**

The Constitution is amended by inserting between Parts V and VI a new Part with the heading 'Part V(A) - Leadership Code' and by inserting in Part V(A) Article 57A as follows -

'Leadership Code

57A(1.) *This Part applies to:*

(a) *the President;*

(b) *a Minister;*

(c) *a Member of Parliament;*

(d) *a judicial officer;*

(e) *the holder of any constitutional or statutory office;*

(f) *the head of a department in the Public Service; and*

(g) *such other persons or offices as may be prescribed by Parliament.*

(2.) *A person to whom this Part applies has a duty to conduct himself in such a way, both in his public or official life and his private life, and in his associations with other persons, as not-*

- (a) to place himself in a position in which he has a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
- (b) to demean his office or position or compromise his integrity; or
- (c) to diminish respect for and confidence in the integrity of the government of Nauru, provided that the duty imposed in paragraph (a) of this clause is to be interpreted in a manner that takes account of the circumstances of Nauru and its small population.
- (3.) A person to whom this Part applies shall not use his office for personal gain.
- (4.) A person to whom this Part applies who-
- (a) is convicted of an offence in respect of his office or position or in relation to the performance of his functions or duties; or
- (b) fails to carry out the obligations imposed by the preceding clauses of this Article; is guilty of misconduct in office.
- (5.) Subject to the provisions of this Constitution, for the purposes of this Part, Parliament shall, as soon as practicable after the commencement of this Part:
- (a) make provision for the disclosure of the personal and business incomes and financial affairs of persons to whom this Part applies;
- (b) make provision for the investigation of cases of alleged or suspected misconduct in office;
- (c) provide for the reference of cases of alleged or suspected misconduct in office to such independent courts or tribunals as may be prescribed, and for the determination by such courts or tribunals of any such cases that may be referred to them in the manner prescribed.
- (6.) Subject to the provisions of this Constitution, for the purposes of this Part, Parliament may:
- (a) prescribe specific acts or omissions constituting misconduct in office;
- (b) create offences (including offences by persons to whom this Part applies and offences by other persons) and prescribe penalties for such offences; and
- (c) make other provision as may appear necessary or expedient for attaining the objects of this Part.
- (7.) If Parliament has by law empowered any tribunal or court in relation to breach of the provisions of this Article or breach of any legislation made pursuant to clauses (5) or (6) of this Article, to make orders prohibiting a person from holding a position of Leadership, such orders:
- a) If made by a court or Tribunal other than the Supreme Court, shall not take effect until the order has been referred to the Supreme Court and upheld by that Court; and
- b) if the order is made in respect of a person currently occupying the office of a judge of the Supreme Court, Director of Audit or Ombudsman, such order shall not take effect in relation to the position currently held by that person until referred to Parliament and endorsed by a vote of not less than two thirds of the total number of members of Parliament praying for his removal on the ground of proved incapacity or misconduct.
- (8.) Notwithstanding the other provisions of this Article, nothing done by a judge in the independent exercise of his judicial functions shall be regarded as a breach by that judge of paragraph (c) of clause (2) of this Article.'

Debate ensued.
Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Solomon, Mr. Scotty, Mr. Dowiyogo, Mr. Amwano. Total - 11

NOES: Mr. Akua. Total - 1

Question resolved in the affirmative.

Part V(B) and Articles 57B, 57C, 57D & 57E

85. Motion of Amendment

Mr. Solomon (Meneng) moved the following motion:

“That the Committee adopts the recommendation of the Standing Committee on Constitutional Amendment Bills in relation to the creation of a new Part V(B) in the Constitution which would comprise new Articles 57B, 57C, 57D and 57E concerning the Leadership Code, as set out on pages 41-43 of Appendix 2 to the Report of the Select Committee; and

That the Committee therefore resolve to amend clause 30 of the Constitution of Nauru (Parliamentary Amendments) Bill in the manner set out in Appendix 3 to the Report of the Select Committee, so that clause 30 of the Bill as amended would read as follows:

‘30. Insertion of Articles 57B, 57C, 57D and 57E, and creation of new Part V(B)

The Constitution is amended by inserting between Parts V(A) and VI of the Constitution a new Part with the heading ‘Part V(B) – Ombudsman’ and by inserting the following Articles –

‘Ombudsman

57B.(1) There shall be an Ombudsman, whose office shall be a public and independent office.

(2.) The Ombudsman shall be appointed by the President, in consultation with the Speaker and the Chief Secretary.

(3.) The Ombudsman shall not perform the functions of any other public office, and shall not, without the approval of the President in each particular case, hold any other office of emolument than the office of the Ombudsman or engage in any occupation for reward outside the duties of his office.

(4.) Subject to clause (5.) of this Article, the Ombudsman shall vacate his office at the expiration of five years from the date of his appointment.

(5.) The Ombudsman may be removed from office only on a resolution of Parliament approved by not less than two thirds of the total number of members of Parliament praying for his removal on the ground of proved incapacity or misconduct.

Functions of Ombudsman

57C (1.) The functions of the Ombudsman shall be:-

(a) upon receipt of a complaint from a member of the public or at his own initiative, to enquire into the conduct of any person to whom this Article applies in the exercise of his office or authority, or abuse thereof;

- (b) to assist in the improvement of the practices and procedures of public bodies; and*
- (c) to ensure the elimination of arbitrary and unfair decisions.*

(2.) Parliament may confer additional functions on the Ombudsman.

(3.) This Article applies to members of the public service, the Nauru Police Force, and such other offices, government instrumentalities or public agencies as may be prescribed by Parliament.

(4.) Nothing in this Article or in any Act of Parliament enacted for the purposes of this Part shall confer on the Ombudsman any power to question or review any decision of any judge, magistrate or registrar in the exercise of his judicial functions or to investigate action taken by the President or a Minister.

Discharge of functions of Ombudsman

57D(1) In the discharge of his functions the Ombudsman shall not be subject to the direction or control of any other person or authority, but shall act independently, and no proceedings of the Ombudsman shall be called in question in any court of law.

(2) The Ombudsman shall not conduct an investigation in respect of any matter if he has been given notice by the President that the investigation of that matter would not be in the interests of the security of Nauru.

(3) The Ombudsman shall grant any person or body that is the subject of a complaint pursuant to paragraph 57C(1)(a) an opportunity to reply to the complaints made against them.

(4) Wherever, after due enquiry, the Ombudsman concludes that a complaint is unjustified, he shall so inform the complainant and the President and the head of the public department or authority concerned.

(5) Wherever, after due enquiry, the Ombudsman concludes that conduct was contrary to the law, based on error of law or of fact, delayed for unjustified reasons, or unjust or blatantly unreasonable and that, consequently, any decision taken should be annulled or changed or that any practice followed should be revised, he shall forward his findings to the President and to the head of the public authority or department directly concerned.

(6) The report of the Ombudsman shall be public unless he decides to keep the report, or parts of it, confidential to the President and the person in charge of the relevant public department or authority, on the grounds of public security or public interest. The complainant shall in any case be told of the findings of the Ombudsman.

(7) The Ombudsman shall make an annual report to Parliament and may make such additional reports to Parliament as he deems appropriate concerning the discharge of his functions, and may draw attention to any defects which appear to him to exist in the administration or any law, and the Speaker shall cause each report of the Ombudsman to be laid on the table of Parliament as soon as practicable.

Further provisions

57E. Parliament may make provision for such supplementary and ancillary matters as may appear necessary or expedient to give effect to the provisions of this Part."

Debate ensued.

The Chair suspended the Committee and to resume when the bell rings.

Resumed.

86 Motion

Mr. Solomon (Meneng) moved the following amendment to his earlier motion:

“That the Committee adopts the recommendation of the Standing Committee on Constitutional Amendment Bills in relation to the creation of a new Part V(B) in the Constitution which would comprise new Articles 57B, 57C, 57D and 57E concerning the Leadership Code, as set out on pages 41-43 of Appendix 2 to the Report of the Select Committee, and

That the Committee further agrees to make some modifications to the wording of proposed Article 57D in the manner highlighted in this motion, below, and

That the Committee therefore resolve to amend clause 30 of the Constitution of Nauru (Parliamentary Amendments) Bill in the manner set out in Appendix 3 to the Report of the Select Committee, so that clause 30 of the Bill as amended would read as follows:

‘30. Insertion of Articles 57B, 57C, 57D and 57E, and creation of new Part V(B)

The Constitution is amended by inserting between Parts V(A) and VI of the Constitution a new Part with the heading ‘Part V(B) – Ombudsman’ and by inserting the following Articles –

‘Ombudsman

57B.(1) There shall be an Ombudsman, whose office shall be a public and independent office.

(2.) The Ombudsman shall be appointed by the President, in consultation with the Speaker and the Chief Secretary.

(3.) The Ombudsman shall not perform the functions of any other public office, and shall not, without the approval of the President in each particular case, hold any other office of emolument than the office of the Ombudsman or engage in any occupation for reward outside the duties of his office.

(4.) Subject to clause (5.) of this Article, the Ombudsman shall vacate his office at the expiration of five years from the date of his appointment.

(5.) The Ombudsman may be removed from office only on a resolution of Parliament approved by not less than two thirds of the total number of members of Parliament praying for his removal on the ground of proved incapacity or misconduct.

Functions of Ombudsman

57C (1.) The functions of the Ombudsman shall be:-

(a) upon receipt of a complaint from a member of the public or at his own initiative, to enquire into the conduct of any person to whom this Article applies in the exercise of his office or authority, or abuse thereof;

(b) to assist in the improvement of the practices and procedures of public bodies; and

(c) to ensure the elimination of arbitrary and unfair decisions.

(2.) *Parliament may confer additional functions on the Ombudsman.*

(3.) *This Article applies to members of the public service, the Nauru Police Force, and such other offices, government instrumentalities or public agencies as may be prescribed by Parliament.*

(4.) *Nothing in this Article or in any Act of Parliament enacted for the purposes of this Part shall confer on the Ombudsman any power to question or review any decision of any judge, magistrate or registrar in the exercise of his judicial functions or to investigate action taken by the President or a Minister.*

Discharge of functions of Ombudsman

57D(1) *In the discharge of his functions the Ombudsman shall not be subject to the direction or control of any other person or authority, but shall act independently.*

(2) *No proceedings of the Ombudsman shall be called in question in any court of law, save that, where any question arises as to whether the Ombudsman has jurisdiction, the Ombudsman or a person affected by the conduct or proposed conduct of the Ombudsman may make application to the Supreme Court for a determination of that question and the Supreme Court shall have jurisdiction to determine the question and to make such orders as it considers proper.*

(3) *The Ombudsman shall not conduct an investigation in respect of any matter if he has been given notice by Cabinet that the investigation of that matter would not be in the interests of the security of Nauru.*

(4) *The Ombudsman shall grant any person or body that is the subject of a complaint pursuant to paragraph 57C(1)(a) an opportunity to reply to the complaints made against them.*

(5) *The Ombudsman may in his discretion decide not to entertain a complaint where, in his opinion:-*

(a) the subject matter of the complaint is trivial; or

(b) the complaint is frivolous or vexatious or is not made in good faith; or

(c) the complainant has had knowledge for more than 12 months of the administrative action complained about, and fails to give a satisfactory explanation for the delay in making the complaint.

(6) *Wherever, after due enquiry, the Ombudsman concludes that a complaint is unjustified, he shall so inform the complainant and the President and the head of the public department or authority concerned.*

(7) *Wherever, after due enquiry, the Ombudsman concludes that conduct was contrary to the law, based on error of law or of fact, delayed for unjustified reasons, or unjust or blatantly unreasonable and that, consequently, any decision taken should be annulled or changed or that any practice followed should be revised, he shall forward his findings to the President and to the head of the public authority or department directly concerned.*

(8) *The report of the Ombudsman shall be public unless he decides to keep the report, or parts of it, confidential to the President and the person in charge of the relevant public department or authority, on the grounds of public security or public interest. The complainant shall in any case be told of the findings of the Ombudsman.*

(9) *The Ombudsman shall make an annual report to Parliament and may make such additional reports to Parliament as he deems appropriate concerning the discharge of his functions, and may draw attention to any defects which appear to him to exist in the administration or any law, and the Speaker shall cause each report of the Ombudsman to be*

laid on the table of Parliament as soon as practicable.

Further provisions

57E. Parliament may make provision for such supplementary and ancillary matters as may appear necessary or expedient to give effect to the provisions of this Part."

Debate ensued.

Question put.

AYES: Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Tsitsi, Mr. Solomon, Mr. Scotty, Mr. Dowiyogo, Mr. Amwano, Mr. Akua. Total – 11

NOES: nil

Motion passed unanimously.

87. Motion

His Excellency President Marcus Stephen moved that the Committee reports progress and ask leave to sit again.

Hon. Dr. Kieren Keke (Minister for Finance) seconded.

Question put and passed.

IN THE HOUSE

(Mr. Speaker, Hon. Riddell Akua, M.P., presiding)

The Deputy Chairman reported progress and asked leave to sit again.

88. Motion

His Excellency President Marcus Stephen moved that further consideration of the Bill in the Committee of the Whole be adjourned and made an Order of the Day at the next sitting.

Hon. Dr. Kieren Keke (Minister for Finance) seconded.

Question put and passed.

89. Motion Fixing the date for the next Sitting

His Excellency President Marcus Stephen moved that the House at its rising do adjourn until Monday, 22nd June 2009 at 10 a.m.

Hon. Dr. Kieren Keke (Minister for Finance) seconded.

Question put and passed.

90. Adjournment

His Excellency the President moved that the House do now adjourn.

Question put and passed.

And then the House at twenty five minutes past seven o'clock p.m. adjourned until Monday, 22nd June 2009 at 10 a.m.

Members Present

All Members were present at some time during the sitting, except –

- Mr. Waqa
- * Mr. Adeang

John Garabwan
Deputy Clerk of Parliament

* Suspension

