

**Votes & Proceedings  
Of the  
Eighteenth Parliament**

**No. 19**

**Third Sitting of the Twelfth Meeting  
Monday, 22<sup>nd</sup> June 2009**

**10.00 a.m.**

1. The House met at 10 a.m. pursuant to adjournment.

2. **Prayers**

Hon. Riddell Akua (Speaker of Parliament) entered the Chamber and then read the Parliamentary Prayer.

Due to the absence of technicians recording the proceedings the Chair suspended the sitting and to resume after the ringing of the bells.

**Resumed.**

3. **Motion suspending Standing Orders**

Hon. Dr. Kieren Keke (Minister for Finance) moved that all relevant Standing Orders be suspended to enable the House to proceed forthwith to Orders of the Day.

His Excellency President Marcus Stephen seconded.

Question put and passed.

4. **Orders of the Day No. 1 – Constitution of Nauru (Parliamentary Amendments) Bill 2008 and Constitution of Nauru (Referendum Amendments) Bill 2008**

5. **Leave of Absence**

Prior to the House resolving itself into the Committee of the Whole, Hon. Tsitsi (Aiwo) sought leave of absence for Hon. Waqa (Boe) who is away overseas attending a Church conference.

Hon. Bernicke (Buada) seconded.

Leave was granted.

The House resolved itself into the Committee of the Whole.

**In the Chair**

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

The Committee proceeded to deliberate on the Parliamentary and Referendum Amendment Bills 2008.

## 6. Motion - Article 48

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 amendments to Article 48 of the Constitution, as set out on pages 35 and 36 of Appendix 2 to the Select Committee Report; and*

*That the Committee therefore resolves to amend clause 22 of the Constitution of Nauru (Parliamentary Amendments) Bill in the manner set out in attachment A48.1 to this motion,*

*So that Article 48 if amended in the manner proposed by this motion would read as follows:*

### **‘Supreme Court of Nauru**

*48-(1) The judicial power of Nauru shall vest in the Supreme Court, and in such other courts as Parliament may establish by law.*

*(2) The Supreme Court shall be a superior court of record and shall have, in addition to the jurisdiction conferred on it by this Constitution, such jurisdiction as is prescribed by law.*

*(3) The Supreme Court consists of a Trial Division, a Constitutional Division and an Appellate Division.*

*(4) The Chief Justice may make and publish and may amend rules governing the Supreme Court and its divisions and other courts established by law, including rules regarding the conduct of proceedings at a distance and the taking of evidence from a distance by any appropriate means in any court.*

*(5) An order or decision issued by a court binds all persons to whom it applies including the Republic.*

*(6) The Supreme Court and other courts are independent and subject only to the Constitution and the law.*

*(7) Neither the Republic nor any person shall interfere with the functioning of the courts.*

*(8) The Republic, through legislative and other measures, shall assist and protect the Supreme Court and other courts to ensure their independence, impartiality, dignity, accessibility and effectiveness.*

*(9) The Supreme Court and such other courts as Parliament may establish by law, shall have the power to punish natural or legal persons for contempt in accordance with the law.’*

Debate ensued.

Question put.

**AYES:** Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Akua, Mr. Solomon, Mr. Bernicke, Mr. Tsitsi. Total – 9 votes.

There being no votes against, the motion was passed unanimously.

## 7. Motion – Article 49

Hon. Mathew Batsiua (Minister for Justice, Health & Sports) moved the following amendment:

*‘That the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the amendments to Article 49 of the Constitution as set out on pages 36 and 37 of Appendix 2 to the Select Committee Report; and*

*That the Committee further adopt some minor modifications to the numbering and formatting of proposed amendments to Article 49; and*

*That the Committee therefore resolves to amend clause 23 of the Constitution of Nauru (Parliamentary Amendments) Bill in the manner set out in attachment A49.1 to this motion,*

*So that Article 49, if amended in the manner proposed by this motion, would read as follows:*

### **‘Chief Justice and Judges of Supreme Court**

*49-(1) The Supreme Court consists of a Chief Justice and, subject to the requirements of clause (2) of Article 57, such number of other judges as is prescribed by law.*

*(2) The judges of the Supreme Court appointed under this Article and under Article 43 shall be appointed by the President after consultation with Cabinet.*

*(3) A persons shall not be qualified for appointment as a judge of the Supreme Court under this Article unless that person is qualified by education, experience and character to discharge judicial office, and*

*(a) is entitled as prescribed by law to practise as a barrister or solicitor in Nauru and has been so entitled for not less than five years; or*

*(b) holds or has held high judicial office in any common law country in the Pacific region or in any designated country; or*

*(c) is entitled as prescribed by law to practise as a barrister and solicitor in any common law country in the Pacific region or in any designated country and has been so entitled for a period amounting in the aggregate to not less than seven year.*

*(4) The Minister responsible for Justice acting in consultation with the Chief Justice may declare to be a designated country for the purposes of this Article and notify in the Gazette any country that in his opinion has a legal system sufficiently similar to that existing in Nauru as to render qualified persons from that country competent to exercise judicial functions in Nauru.’*

Question put.

**AYES:** Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Tsitsi, Mr. Bernicke, Mr. Solomon, Mr. Akua. Total – 9 votes  
There being no votes against, the motion was passed unanimously.

### **8. Motion – Articles 50 & 53**

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 amendments in Articles 50 and 53 of the Constitution, as set out on pages 37 and 38 of Appendix 2 to the Select Committee Report, which amendments will have the effect of increasing the retirement age of judges from 65 to 75; and*

*That the Committee therefore resolves to amend clause 24 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 24 of the Bill as amended will read as follows:*

**'24. Amendment to Article 50**

*Article 50 of the Constitution is amended by substituting for the word 'sixty-five' the word 'seventy-five'.*

*And to insert a new clause in the Constitution of Nauru (Parliamentary Amendments) Bill to provide for the amendment of Article 53, which clause will read as follows:*

**'24A Amendment to Article 53**

*Article 53 of the Constitution is amended by substituting for the word 'sixty-five' in clause 92) the word 'seventy-five'.*

Debate ensued.

Question put.

**AYES:** Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Batsiua, Mr. Dabwido, Mr. Akua, Mr. Solomon, Mr. Bernicke, Mr. Amwano, Mr. Tsitsi. Total – 10 votes.

There being no votes against, the motion was passed unanimously.

**9. Motion – Article 54**

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 amendment of Article 54 of the Constitution on the jurisdiction of the Supreme Court in matters concerning the Constitution, as set out on page 38 of Appendix 2 to the Select Committee’s Report; and*

*That the Committee further agrees to modify the wording of the proposed amendments to Article 54 in the manner highlighted in attachment A54.1 to this motion, below; and*

*That the Committee therefore resolve to amend clause 25 of the Constitution of Nauru (Parliamentary Amendments) Bill in the manner set out in attachment A54.2 to this motion, so that Article 54 as amended would read as follows:*

**'Matters concerning the Constitution**

51 –(1) *Subject to clauses (4) and (5) of this Article, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction to determine any question arising under or involving the interpretation or effect of any provision of this Constitution.*

(2) *Without prejudice to any appellate jurisdiction of the Supreme Court, where in any proceedings before another court a question arises involving the interpretation or effect of any provision of this Constitution, the cause shall be*

removed into the Supreme Court, which shall determine that question and either dispose of the case or remit it to that other court to be disposed of in accordance with the determination.

(3) The Supreme Court shall interpret and apply the Constitution in a manner that takes into account the principles set out in the Preamble.

(4) The Constitution is enforceable at the suit of:

(a) a person whose interests are or are likely to be affected by an alleged contravention of the Constitution; or

(b) a person acting on behalf of another person who would be entitled to bring a suit under paragraph (a) of this clause but who cannot act in their own name; or

(c) an association whose members' interests are or are likely to be affected by an alleged contravention of the Constitution.

(5) A person referred to in clause (4) of this Article may, without prejudice to any other action with respect to the same matter which is lawfully available, apply to the Supreme Court for relief in relation to the alleged contravention of the Constitution and the Supreme Court shall have jurisdiction to determine whether any provision of the Constitution has been contravened and to make such orders and declarations as are necessary and appropriate, including compensation, and the Supreme Court shall not grant relief at the suit of any other person.'

Debate ensued.

## 10. **Motion of Amendment**

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

*'That the following words 'or is likely to be' be added under 54(b)(5) before the word 'contravene' in the third last sentence.*

Question put.

**AYES:** Mr. Stephen, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Akua, Mr. Amwano, Mr. Solomon, Mr. Bernicke. Total – 10 votes.

There being no vote against, the amendment motion was passed unanimously.

## 11. **Supplementary Motion – Article 14**

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

*'That notwithstanding its earlier resolution in relation to the amendment of Article 14, the Committee resolves to further amend Article 14 in the manner set out in attachment A14SPL.1, so that Article 14 if amended would read as follows:*

### **'Enforcement of fundamental rights and freedoms**

14. A right or freedom conferred by this Part is enforceable by the Supreme Court in accordance with Article 54.'

And that the Committee therefore resolves to further amend clause 17 of the Constitution of Nauru (Referendum Amendments) Bill, so that clause 17 as amended will read as follows:-

**'17. Amendment of Article 14**

Article 14 of the Constitution is amended by

- (a) deleting from the beginning of clause (1) the brackets and number '(1)'; and
- (b) Deleting from clause (1) the words 'at the suit of a person having an interest in the enforcement of that right or freedom', and inserting in their place the words 'in accordance with Article 54'.

Debate ensued.

Question put.

**AYES:** Mr. Stephen, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Akua, Mr. Amwano, Mr. Solomon, Mr. Bernicke. Total – 10 votes.

There being no vote against, the amendment motion was passed unanimously.

**12. Motion – Article 55**

His Excellency President Marcus Stephen moved the following motion:

*'That the Committee adopt amendments to Article 55 of the Constitution in relation to the reference of questions to the Supreme Court in matters concerning the Constitution so as to expressly state that the opinion of the Supreme Court in a constitutional reference is binding and determinative, and to expressly state that the Supreme Court shall allow any person whose interests would be affected by the opinion to be heard; and*

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

**'25A Amendment to Article 55**

Article 55 of the Constitution is amended by inserting:

- (a) immediately before the words 'The President or a Minister' the characters '(1)'; and
- (b) immediately after the words 'opinion on the question' a comma and the words 'such opinion to be binding and determinative, subject to any appeal'; and
- (c) immediately after new clause (1), the following new clause (2);  
'(2.) The Supreme Court shall, before pronouncing its opinion on the question, give any person whose interests would be affected by its opinion the right to be heard on the question.'

So that Article 55 of the Constitution, if amended in the manner proposed, would read as follows:

### ***'The Cabinet may refer questions on Constitution to the Supreme Court***

*55.(1) The President or a Minister may, in accordance with the approval of the Cabinet, refer to the Supreme court for its opinion any question concerning the interpretation or effect of any provision of this Constitution which has arisen or appears to the Cabinet likely to arise, and the Supreme Court shall pronounce in open court its opinion on the question, such opinion to be binding and determinative, subject to any appeal.*

*(2) The Supreme Court shall, before pronouncing its opinion on the question, give any person whose interests would be affected by its opinion the right to be heard on the question.*

Debate ensued.

Question put.

**AYES:** Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Akua, Mr. Amwano, Mr. Solomon, Mr. Bernicke.  
Total – 11 votes.

There being no vote against, the amendment motion was passed unanimously.

### **13. Motion – Article 57**

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 repeal and replacement of Article 57 of the Constitution, as set out on page 39 of Appendix 2 to the Select Committee Report; and*

*That the Committee further adopt some modifications to the recommended wording of new Article 57, which modifications are highlighted in attachment A57.1 to this motion; and*

*That the Committee therefore resolves to amend clause 26 of the Constitution of Nauru (Parliamentary Amendments) Bill in the manner set out in attachment A57.2 to this motion;*

*So that Article 57, if amended in the manner proposed by this motion, would read as follows:*

### ***'Appellate Division of the Supreme Court***

*57.(1) The Appellate Division of the Supreme Court shall have jurisdiction and powers, subject to such regulation as Parliament may prescribe, to hear and determine appeals from –*

- (a) the Trial and Constitutional Divisions of the Supreme Court;*
- (b) the Appellate Division of the Supreme Court constituted by one judge; and*
- (c) subordinate courts,*

*provided that no regulation prescribed by Parliament shall prevent the Appellate Division of the Supreme Court from hearing and determining any appeal from a subordinate court.*

(2) *Where the Appellate Division of the Supreme Court is hearing an appeal from another Division of the Supreme Court, it shall be constituted by two or more judges.*

(3) (a) *Appeals in criminal matters lie as of right, save for appeals from the Appellate Division of the Supreme Court constituted by one judge.*  
(b) *Appeals in civil matters and other causes shall be by leave.'*

Debate ensued.

Question put.

**AYES:** Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Tsitsi, Mr. Thoma, Mr. Akua, Mr. Amwano, Mr. Solomon.  
Total – 11 votes.

There being no vote against, the amendment motion was passed unanimously.

The Committee suspended till 3.00 p.m.

**Resumed.**

#### 14. **Article 58 – Treasury Fund**

Debate on clause 21 of the Referendum Amendment Bill be agreed to.

Debate ensued.

Question put.

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

**NOES:** Mr. Akua. Total – 1 vote.

Question resolved in the affirmative.

#### 15. **Motion – Article 59 & Proposed Articles 58A and 59A**

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:*

- *there being **no amendment to Article 59** of the Constitution and*
- *the insertion proposed **new Articles 58A and 59A,***

*as set out on pages 43-44 of Appendix 2 to the Select Committee Report, and*

*That the Committee **therefore resolves***

- *to delete clause 22 of the Constitution of Nauru (Referendum Amendments) Bill, and*
- *to insert two new clauses in the Constitution of Nauru (Parliamentary Amendments) Bill to provide for the insertion in the Constitution of new Articles 58A and 59A, as set out on pages 28-29 of Appendix 3 to the Select Committee Report,*

*So that Article 59 of the Constitution will remain as it is, and new Articles 58A and 59A will read as set out in attachment A58A.1 to this motion.”*



## **Annual Budget and Appropriation**

58A. (1.) Before the end of each financial year Cabinet shall present to Parliament an annual budget setting out the estimates of revenues and expenditures for the next financial year, in accordance with clause (4) of Article 59, and an annual appropriation bill that complies with clause (3) of Article 59 and which reflects the estimates of expenditures.

(2.) The annual budget and budgetary processes shall promote transparency, accountability and the effective financial management of the economy, debt and the public sector.

(3.) The budget shall contain –

(a) estimates of revenue and expenditure, differentiating between capital and current expenditure;

(b) sources of revenue;

(c) proposals for financing any anticipated deficit for the period to which it applies; and

(d) an indication of Cabinet's intentions regarding borrowing and other forms of public liability that will increase public debt during the ensuing year.

## **Statement of Accounts**

59A. The Minister responsible for finance shall, as soon as practicable after the end of the financial year and not later than three months after that date or such longer period thereafter as Parliament may by resolution appoint, submit to the Director of Audit a statement of accounts of the moneys and assets of the Republic of Nauru for that year.'

Debate ensued.

Question put.

**AYES:** Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Akua, Mr. Amwano, Mr. Solomon, Mr. Thoma, Mr. Tsitsi.  
Total – 11 votes.

There being no vote against, the motion was passed unanimously.

## **16. Motion – Article 61 and Proposed Article 61A**

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 proposed amendments to Article 61 of the Constitution and in relation to the insertion and wording of new Article 61A, as set out on pages 44-46 of Appendix 2 to the Select Committee Report, and*

*That the Committee therefore resolves to amend clauses 31 and 32 of the Constitution of Nauru (Parliamentary Amendments) Bill in the manner set out on pages 29-31 of Appendix 3 to the Select Committee Report, So that Articles 61 and 61A of the Constitution, if amended and inserted respectively in the manner proposed in this motion, will read as set out in attachment A61R.1 to this motion:*

### ***'Withdrawal of moneys in advance of appropriation law***

61.(1.) Subject to clause (1A) of this Article, if Cabinet anticipates that the annual appropriation law will not receive the certificate of the Speaker under Article 47 before the commencement of the financial year, the Cabinet may, in accordance with clause (2.) of this Article, recommend to Parliament a proposed law authorising the withdrawal of moneys from the Treasury Fund for the purpose of meeting expenditure necessary to carry on the services of the Republic of Nauru after the commencement of that financial year until the expiration of three months or the coming into operation of the annual appropriation law, whichever is the earlier.

(1A.) Subject to clause (4.) of Article 61A, there shall be no more than one proposed law under clause (1) of this Article in any financial year.

(2.) A recommendation by the Cabinet referred to in clause (1.) of this Article shall be in writing delivered to the Speaker before the commencement of the financial year and the Speaker shall, on receiving the recommendation, lay it before Parliament as soon as practicable.

(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.) Subject to clause (5) of this Article, where the Cabinet has recommended a proposed law under clause (1.) of this Article and neither the appropriation law nor that proposed law has come into operation on or before the commencement of that financial year, the Cabinet may authorise the withdrawal of moneys in accordance with that proposed law but the amount of moneys so withdrawn shall not exceed one-quarter of the amount withdrawn under the authority of the appropriation law or laws in respect of the preceding financial year.

(5.) Subject to clauses (4) and (7) of Article 61A, there shall be no more than one authorised withdrawal of moneys under clause (4) of this Article in any financial year.

### ***Dissolution upon failure to pass appropriation law***

61A. (1.) Subject to clause (4) of this Article, where neither the annual appropriation law under Article 58A nor a proposed law under Article 61(1) has come into operation within 90 days of the commencement of any financial year, or where a law passed under clause (1) of Article 61 has expired and the annual appropriation law has not been approved, the Parliament shall be dissolved by the Speaker and the President and Ministers shall cease to hold office.

(2.) When Parliament is dissolved pursuant to clause (1.) or clause (6.) of this Article or clause (1.) of Article 24, the Council of State may, if moneys withdrawn by the previous Cabinet have expired, authorise the withdrawal of moneys from the Treasury Fund for the purpose of meeting expenditure necessary to carry on the services of the Republic of Nauru until the new Cabinet is formed following the general election and that Cabinet has passed its appropriation or supply law or authorised the withdrawal of moneys from the Treasury Fund in accordance with clause (4) of this Article, but the amount

*withdrawn shall not exceed one quarter of the amount withdrawn under the authority of the appropriation law or laws in respect of the preceding financial year.*

*(3.) When the Council of State authorises the withdrawal of moneys from the Treasury Fund pursuant to clause (2) or clause (7) of this Article, a statement of the sums so authorised shall be laid before Parliament when it first meets following the general election and the aggregate sums shall be included, under the appropriate heads, in the next appropriation bill.*

*(4.) When, following a dissolution of Parliament under clause (1) or clause (6) of this Article a new Cabinet is formed following a general election and the moneys withdrawn by the Council of State under clause (2) of this Article have expired, the provisions of clauses (1), (2), (3) and (4) of Article 61 shall apply to the new Cabinet notwithstanding that the financial year has already commenced.*

*(5.) When, following a dissolution of Parliament under clause (1) or clause (6) of this Article a new Cabinet is formed following a general election, and in any other circumstances where an annual appropriation law is not in place, the Cabinet shall as soon as practicable present to Parliament an annual budget and an annual appropriation bill that comply with the applicable requirements of Article 58A.*

*(6.) If, following a dissolution of Parliament under this Article and the formation of a new Cabinet following a general election or following the formation of a new Cabinet in any other circumstances where an annual appropriation law is not in place, the annual appropriation law has not been approved by Parliament within three months after the formation of the new Cabinet, Parliament shall be dissolved by the Speaker and the President and Ministers shall cease to hold office.*

*(7.) When a caretaker government or the Council of State is required to exercise the executive functions of government for a period exceeding three months by reason of a newly formed Parliament being dissolved under clause (8) of Article 41, the caretaker government or the Council of State may, if moneys previously appropriated or withdrawn have expired, authorise the withdrawal of moneys from the Treasury Fund for the purpose of meeting expenditure necessary to carry on the services of the Republic of Nauru until a new Cabinet is formed following the general election and that Cabinet has passed its appropriation law, but the amount withdrawn shall not exceed one quarter of the amount withdrawn under the authority of the appropriation law or laws in respect of the preceding financial year.'*

Debate ensued.

Question put.

**AYES:** Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Dabwido, Mr. Akua, Mr. Amwano, Mr. Solomon, Mr. Thoma, Mr. Tsitsi. Total – 10 votes. There being no votes against, the motion was passed unanimously.

## **17. Motion – Article 63**

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 proposed*

amendment to Article 63 of the Constitution concerning phosphate royalties, namely, to insert a new clause (3) in Article 63, so that Article 63 as amended would read as follows:

### **‘Phosphate royalties**

63.-(1.) Parliament may provide for the establishment of a fund for the benefit of persons from whose land phosphate deposits have been recovered and for the payment into that fund of amounts from the Treasury Fund and for the payment of moneys out of that fund to those persons.

(2.) Parliament may provide for the payment from the Treasury Fund to persons from whose land phosphate deposits have been recovered of such royalties as are prescribed by law.

(3.) No moneys or assets held in the Nauruan Landowners Royalty Trust Fund established under the Nauruan Royalty Trust (Payment and Investment) Act 1968 as amended, or held in any trust established for the same purpose, shall be lent, mortgaged or charged as security for any borrowing for any purpose whatsoever.’

And the Committee **therefore resolves to amend clause 33** of the Constitution of Nauru (Parliamentary Amendments) Bill in the manner set out on page 31 of Appendix 3 to the Select Committee’s Report.”

Debate ensued.

Question put.

**AYES:** Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Dabwido, Mr. Batsiua, Mr. Akua, Mr. Amwano, Mr. Solomon, Mr. Thoma, Mr. Tsitsi.  
Total – 11 votes.

There being no vote against, the motion was passed unanimously.

### 18. **Motion – Article 65**

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 proposed amendments to Article 65 of the Constitution concerning remuneration of certain officers, in the manner set out at page 47 of Appendix 2 of the Select Committee’s Report; and

The Committee **therefore resolves to insert a new clause 22A** into the Constitution of Nauru (Referendum Amendments) Bill that would read as follows:

#### **‘22A. Amendment of Article 65**

Article 65 of the Constitution is amended by inserting in clause (4) immediately after the words ‘judge of the Supreme Court,’ the words ‘Speaker of Parliament’ and by inserting in clause (4) immediately after the words ‘Clerk of Parliament,’ the words ‘Director of Public Prosecutions, Ombudsman’.

So that Article 65, if amended in the manner proposed by the motion, would read as set out in Attachment A65.1 to this motion.”

Article 65 of the Constitution as it would appear if amended in the manner proposed by the motion:

**‘Remuneration of certain officers**

65.-(1.) There shall be paid to the holders of the offices to which this Article applies such salary and such allowances as are prescribed by law.

(2.) The salaries and allowances payable to the holders of the offices to which this Article applies are a charge on the Treasury Fund.

(3.) The salary and allowances payable to the holder of an office to which this Article applies and his other conditions of service shall not be altered to his disadvantage during the term of his appointment.

(4.) This Article applies to the office of judge of the Supreme Court, Speaker of Parliament, Clerk of Parliament, Director of Public Prosecutions, Ombudsman and Director of Audit.’

Debate ensued.

Question put.

**AYES:** Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Akua, Mr. Tsitsi. Total – 8 votes.

**ABSTAINING:** Mr. Thoma. Total – 1 vote.

The question was resolved in the affirmative.

**19. Motion – Articles 66 and 66A**

Hon. 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 repeal and replacement of Art 66 of the Constitution concerning the Director of Audit as set out on pages 47-48 of Appendix 2 to the Select Committee Report; and*
- *the insertion in the Constitution of new Article 66A concerning the Audit of Accounts as set out on pages 48-50 of Appendix 2 to the Select Committee’s Report,*

*and the Committee **therefore resolves to amend clauses 34 and 35** of the Constitution of Nauru (Parliamentary Amendments) Bill in the manner set out on pages 31-33 of Appendix 3 to the Select Committee Report.*

Debate ensued.

Question put.

**AYES:** Dr. Keke, Mr. Pitcher, Mr. Batsiua, Mr. Dabwido, Mr. Akua, Mr. Thoma, Mr. Tsitsi, Mr. Amwano. Total – 9 votes.

There being no votes against, the motion was passed unanimously.

**20. Motion – Article 67**

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 proposed amendments to Article 67 of the Constitution, as set out on page 50 of Appendix 2 of the Select Committee’s Report, and*

The Committee **therefore resolves to insert a new clause 35A** into the Constitution of Nauru (Parliamentary Amendments) Bill, which clause would read as follows:

**‘35A. Amendment of Article 67**

Article 67 of the Constitution is amended by inserting immediately after clause (2) a new clause (3) as follows –

‘(3.) No mortgage or other charge over the property of the Republic or of an instrumentality of the Republic and no public guarantee shall have effect in law or equity unless and until it is approved by Parliament.’”

So that Article 67, if amended in the manner proposed in this motion, will read as follows:

**‘Public debt**

67.-(1.) All debt charges for which Nauru is liable are a charge on the Treasury Fund.

(2.) For the purposes of this Article, debt charges include interest, sinking fund charges, repayment or amortisation of debt and all expenditure in connexion with the raising of loans and the service and redemption of the debt thereby created.

(3.) No mortgage or other charge over the property of the Republic or of an instrumentality of the Republic and no public guarantee shall have effect in law or equity unless and until it is approved by Parliament.’”

Debate ensued.

Question put.

**AYES:** Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Amwano, Mr. Thoma, Mr. Tsitsi, Mr. Akua, Mr. Solomon.  
Total – 11 votes.

There being no votes against, the motion was passed unanimously.

**21. Motion – Article 25, new Articles 67A & 67B and Article 68**

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 proposed amendments to Article 67 of the Constitution, as set out on page 50 of Appendix 2 of the Select Committee’s Report, and

The Committee **therefore resolves to insert a new clause 35A** into the Constitution of Nauru (Parliamentary Amendments) Bill, which clause would read as follows:

**‘35A. Amendment of Article 67**

Article 67 of the Constitution is amended by inserting immediately after clause (2) a new clause (3) as follows –

‘(3.) No mortgage or other charge over the property of the Republic or of an instrumentality of the Republic and no public guarantee shall have effect in law or equity unless and until it is approved by Parliament.’”

So that Article 67, if amended in the manner proposed in this motion, will read as follows:

**‘Public debt**

67.-(1.) All debt charges for which Nauru is liable are a charge on the Treasury Fund.

(2.) For the purposes of this Article, debt charges include interest, sinking fund charges, repayment or amortisation of debt and all expenditure in connexion with the raising of loans and the service and redemption of the debt thereby created.

(3.) No mortgage or other charge over the property of the Republic or of an instrumentality of the Republic and no public guarantee shall have effect in law or equity unless and until it is approved by Parliament.”

Debate ensued.

Question put.

**AYES:** Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Akua, Mr. Amwano, Mr. Solomon, Mr. Thoma, Mr. Tsitsi.  
Total – 11 votes

There being no votes against, the motion was passed unanimously.

**22. Motion – Article 68A**

Hon. Mathew Batsiua (Minister for Justice/Health & Sports) moved the following motion:

*“That the Committee adopts the recommendation of the Select Committee on Constitutional Amendment Bills in relation to proposed new Article 68A of the Constitution concerning the Nauru Police Force, as set out on page 52 of Appendix 2 of the Select Committee’s Report, and*

*The Committee **therefore resolves to amend clause 37** of the Constitution of Nauru (Parliamentary Amendments) Bill in the manner set out on page 35 of Appendix 2 of the Select Committee’s Report, so that Article 68A if adopted in the manner proposed in this motion, would read as follows:*

**‘Nauru Police Force**

68A (1.) There shall be a Nauru Police Force.

(2.) The functions and responsibilities of the Nauru Police Force include to prevent, combat and investigate crime, to maintain public order, to protect and secure the people of Nauru and their property, and to uphold and enforce the law.

(3.) The powers of the Nauru Police Force shall be prescribed by law.”

Debate ensued.

Question put.

**AYES:** Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Akua, Mr. Amwano, Mr. Solomon, Mr. Thoma, Mr. Tsitsi.  
Total – 11 votes.

There being no votes against, the motion was passed unanimously.

### 23. **Motion – Articles 69 & 70**

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 proposed amendments to:*

- **Article 69** of the Constitution concerning the power of Parliament to establish a Public Service Board and
- **Article 70** of the Constitution concerning the Public Service Appeals Board

*as set out on pages 52-54 of Appendix 2 of the Select Committee’s Report, and The Committee **therefore resolves to:***

*(a) **amend clause 38** of the Constitution of Nauru (Parliamentary Amendments) Bill in the manner set out on pages 35-36 of Appendix 3 of the Select Committee’s Report, and*

*(b) **insert a new clause 38A** into the Constitution of Nauru (Parliamentary Amendments) Bill that would read as set out at page 36 of Appendix 3 of the Select Committee’s Report.”*

Debate ensued.

Question put.

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

There being no vote against, the motion was passed unanimously.

### 24. **Motion – Article 70A**

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 proposed Article 70A of the Constitution concerning the Director of Public Prosecutions, which new Article if adopted would read as set out on pages 54-55 of Appendix 2 of the Select Committee’s Report, and*

*The Committee **therefore resolves:***

- **to delete clause 28** of the Constitution of Nauru (Parliamentary Amendments) Bill, and
- **to insert a new clause 38B** into the Constitution of Nauru (Parliamentary Amendments) Bill in the manner set out at pages 36-37 of Appendix 3 of the Select Committee’s Report.”

Debate ensued.

Question put.

**AYES:** Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Akua, Mr. Amwano, Mr. Solomon, Total – 9 votes

**ABSTAINING:** Mr. Thoma, Mr. Tsitsi. Total – 2 votes

The question was resolved in the affirmative.



## 25. **Supplementary Motion – Article 31**

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

*‘That further to its earlier resolution in relation to the amendment of Article 31, the Committee resolves to make additional amendments to Article 31 in order to:*

- *clarify the relevant point in time at which the provisions of paragraph (e) of Article 31 disqualifying a person who holds an office of profit in the service of Nauru or a statutory corporation from being a member of Parliament; and*
- *clarify that ‘office of profit’ does not include members of Parliament, Minister or President; and*

*that the Committee therefore resolves to further amend clause 15 of the Constitution of Nauru (Parliamentary Amendments) Bill, so that clause 15 as amended will read as set out in attachment A315.1 to this motion;*

*and so that Article 31 as further amended will read as set out in attachment A315.2 to this motion.*

*Clause 15 of the Constitution of Nauru (Parliamentary Amendments) Bill – Attachment A315.1*

### **’15. Amendment of Article 31**

*Article 31 of the Constitution is amended by*

- (a) inserting at the beginning of Article 31 immediately before the words ‘no person is qualified’ the brackets and number ‘(1)’;*
- (b) 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’*
- (c) deleting from paragraph (e) the comma after ‘corporation’ and the words ‘being an office prescribed by law for the purposes of this paragraph’ and inserting in their place the words ‘and a person who holds such an office of profit is deemed to have vacated that office immediately before the time at which he is declared elected to the Parliament’;*
- (d) 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.’;*  
*and*
- (e) inserting immediately after new paragraph (f) of new clause (1,) the following new clause (2.) –*

*'(2) In this Article, 'office of profit in the service of Nauru' does not include the office of a Member of Parliament, a Minister or the President.'*

Attachment A315.2

### **Disqualifications for membership of Parliament**

31. (1) No person is qualified to be elected a member of Parliament if he –
- (a) is an undischarged bankrupt or insolvent who has been declared bankrupt or insolvent according to law;
  - (b) is a person certified to be insane or otherwise adjudged according to law to be mentally disordered;
  - (c) is serving a sentence of imprisonment imposed by a court in Nauru or in any other part of the Commonwealth;
  - (d) does not possess such qualifications relating to residence or domicile in Nauru as are prescribed by law;
  - (e) holds an office of profit in the service of Nauru or of a statutory corporation and a person who holds such an office of profit is deemed to have vacated that office immediately before the time at which he is declared elected to the Parliament; or
  - (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.
- (2) *In this Article, 'office of profit in the service of Nauru' does not include the office of a Member of Parliament, a Minister or the President.*

Debate ensued.

Question put.

**AYES:** Mr. Stephen, Dr. Keke, Mr. Pitcher, Mr. Kun, Mr. Batsiua, Mr. Dabwido, Mr. Akua, Mr. Amwano, Mr. Solomon, Mr. Thoma, Mr. Tsitsi.  
Total – 11 votes.

26. His Excellency President Marcus Stephen suspended the sitting until tomorrow, Tuesday, 23<sup>rd</sup> June 2009 at 10 a.m.

**Tuesday, 23<sup>rd</sup> June 2009**

**Resumed.**

26. **Articles 71, 73 & 75** - no changes.

27. **Motion – Article 72**

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 proposed amendment to Article 72 of the Constitution, as set out on page 55 of Appendix 2 to the Select Committee’s Report, and*

*that the Committee therefore resolves:*

- *to insert a new clause 22B in the Constitution of Nauru (Referendum Amendments) Bill, which clause would read as follows:*

**‘22B. Amendment of Article 72**

*Article 72 of the Constitution is amended by substituting in clause (1) for the words ‘his parents were’ the words ‘either of his parents was a’ and by substituting in clause (1) immediately before the words ‘at the date of his birth’ for the word ‘citizens’ the word ‘citizen.’*

*and*

- *to insert a new clause 38C in the Constitution of Nauru (Parliamentary Amendments) Bill, which clause would read as follows:*

**‘38C. Amendment of Article 72**

*Article 72 of the Constitution is amended by repealing clause (2).’  
So that Article 72, if amended in the manner proposed by this motion, would read as follows:*

**‘Persons born on or after 31 January 1968**

*72.-(1.) A person born on or after the thirty-first day of January One thousand nine hundred and sixty-eight is a Nauruan citizen if either of his parents was a Nauruan citizen at the date of his birth.”*

Debate ensued.

Question put.

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

There being no votes against, the motion was passed unanimously.

28. **Motion – Article 74**

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 proposed amendment to Article 74 of the Constitution, as set out on page 56 of Appendix 2 to the Select Committee’s Report, and*

That the Committee further adopt a small modification to the wording of the proposed amendment, namely, the insertion of the word 'reasonable' in the manner highlighted below, and

That the Committee **therefore resolves to insert a new clause 38D** in the Constitution of Nauru (Parliamentary Amendments) Bill, which clause would read as follows:

**'38D. Amendment of Article 74**

Article 74 of the Constitution is amended by

- a) substituting in the heading of Article 74 for the word 'Women' the word 'Persons';
- b) substituting at the beginning of Article 74 for the words 'A woman' the words 'Any person';
- c) substituting for the word 'man' the word 'person'; and substituting for the words 'upon making application in such manner as is prescribed by law' the words 'subject to such reasonable conditions as prescribed by law'.

So that Article 74, if amended in the manner proposed by this motion, would read as follows:

**'Persons married to Nauruan Citizens**

74. Any person, not being a Nauruan citizen, who is married to a Nauruan citizen or has been married to a person who was, throughout the subsistence of the marriage, a Nauruan citizen, is entitled, subject to such reasonable conditions as prescribed by law, to become a Nauruan citizen."

Debate ensued.

Question put.

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

**NOES:** Mr. Kun, Mr. Thoma. Total – 2 votes.

The question resolved in the affirmative.

**29. Motion – Article 76**

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 proposed amendment to Article 76 of the Constitution, as set out on page 56 of Appendix 2 to the Select Committee's Report, which proposed amendment is a consequence of the proposed amendment to Article 72, and*

*That the Committee **therefore resolves to insert a new clause 38E** in the Constitution of Nauru (Parliamentary Amendments) Bill, which clause would read as follows:*

**38E. Amendment of Article 76**

*Article 76 of the Constitution is amended by repealing clause (1)."*

Debate ensued.

Question put.

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

There being no votes against, the motion was passed unanimously.

The Chair suspended the sitting and to resume after the ringing of the bells.

**Resumed.**

**30. Motion – Article 77**

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

*“That the Committee adopts the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the amendment of Article 77 of the Constitution, as set out on pages 56-57 of Appendix 2 to the Select Committee’s Report, and*

*That the Committee further adopt some modifications to the recommended wording of the proposed amendment, which further amendments are highlighted in Attachment **A77.1** to this motion, and*

*That the Committee **therefore resolves to delete clause 39** of the Constitution of Nauru (Parliamentary Amendments) Bill **and replace it with a new clause 39** which would read as set out in Attachment **A77.2** to this motion,*

*so that Article 77 as amended will read as set out in Attachment **A77.3** to this motion.”*

Debate ensued.

The sitting was suspended to enable Legal Counsel to make some amendments to the motion as raised by some Members of the Cabinet and to resume after the ringing of the bells.

**Resumed.**

*Article 77 of the Constitution as it would appear if the amendments recommended by the Select Committee on Constitutional Amendment Bills were adopted, with further amendments proposed by the motion before the COTW highlighted:*

**‘Declaration of an emergency**

*77.-(1.) If the President is satisfied, after consulting Cabinet, that a grave emergency exists whereby the security or economy of Nauru is threatened he may, by public proclamation, declare that a state of emergency exists.*

*(2.) A declaration of emergency lapses-*

*(a) if the declaration is made when Parliament is in session, at the expiration of seven days after the date of publication of the declaration;  
or*

*(b) If the declaration is made when Parliament is not ~~sitting~~ in session, at the expiration of fourteen days after the date of publication of the declaration,*

*unless it has in the meantime been approved by a resolution of Parliament approved by a majority of the members of Parliament present and voting.*

*(2A.) The Parliament may approve a declaration of a state of emergency for no more than three months at a time by a resolution approved by a majority of the members of the Parliament present and voting, save that, subject to clause (2B.) of this Article, any successive continuation of a declaration of a state of emergency and any declaration of a state of emergency made within 21 days of the expiration of a declaration of a state of emergency shall be by further resolution approved by a vote of no fewer than two thirds of the members of the Parliament present and voting.*

*(2B.) If, following the making of a declaration of a state of emergency or within 21 days of the expiration of a declaration of a state of emergency, Parliament is by reason of the nature or extent of the emergency unable to meet, the President may make a further declaration of a state of emergency pursuant to clause (1) of this Article.*

*(3.) The President may at any time revoke a declaration of emergency by public proclamation.*

*(4.) (a) Where a declaration of a state of emergency is made and Parliament is not in session, it shall be convened by the Speaker immediately in special session and remain in session during the entire period of the state of emergency; provided that Parliament shall not remain in session beyond the end of the normal term of Parliament.*

*(b) Where a declaration of a state of emergency is made when Parliament has been dissolved, or when Parliament is dissolved during an emergency, the members of the dissolved Parliament shall be called by the Speaker to a special session and remain in session until the conclusion of the state of emergency or the election of a new Parliament, whichever occurs sooner.*

*(5.) Parliament may at any time revoke a declaration of a state of emergency or amend or revoke orders made under Article 78 by resolution of a majority of members present and voting and the President shall act accordingly and immediately carry out the resolutions of Parliament.*

***Proposed new clause 39 of the Constitution of Nauru (Parliamentary Amendments) Bill (to replace existing clause 39 of the Bill):***

***39. Amendment of Article 77***

*Article 77 of the Constitution is amended by*

- a) inserting in clause (1) immediately after the words ‘if the President is satisfied’, the words ‘after consulting Cabinet’;*
- b) substituting in paragraph (a) of clause (2) for the word ‘sitting’ the words ‘in session’;*
- c) substituting in paragraph (b) of clause (2) for the words ‘In any other case’ the words ‘If the declaration made when Parliament is not in session’;*
- d) substituting in paragraph (b) of clause (2) for the word ‘twenty-one’ the word ‘fourteen’;*

e) inserting immediately after clause (2) new clauses (2A) and (2B) as follows –

‘(2A.) The Parliament may approve a declaration of a state of emergency for no more than three months at a time by a resolution approved by a majority of the members of the Parliament present and voting, save that, subject to clause (2B.) of this Article, any successive continuation of a declaration of a state of emergency and any declaration of a state of emergency made within 21 days of the expiration of a declaration of a state of emergency shall be by further resolution approved by a vote of no fewer than two thirds of the members of the Parliament present and voting.

(2B.) If, following the making of a declaration of a state of emergency or within 21 days of the expiration of a declaration of a state of emergency, Parliament is by reason of the nature or extent of the emergency unable to meet, the President may make a further declaration of a state of emergency pursuant to clause (1) of this Article.’;

and

f) substituting for all of clauses (4) and (5) the following new clauses (4) and (5) –

‘(4.) (a) Where a declaration of a state of emergency is made and Parliament is not in session, it shall be convened by the Speaker immediately in special session and remain in session during the entire period of the state of emergency; provided that Parliament shall not remain in session beyond the end of the normal term of Parliament.

(b) Where a declaration of a state of emergency is made when Parliament has been dissolved, or when Parliament is dissolved during an emergency, the members of the dissolved Parliament shall be called by the Speaker to a special session and remain in session until the conclusion of the state of emergency or the election of a new Parliament, whichever occurs sooner.

(5.) Parliament may at any time revoke a declaration of a state of emergency or amend or revoke orders made under Article 78 by resolution of a majority of members present and voting and the President shall act accordingly and immediately carry out the resolutions of Parliament.’

Article 77 of the Constitution as it would appear if amended in the manner proposed by the motion:

**Declaration of an emergency**

77.-(1.) If the President is satisfied, after consulting Cabinet, that a grave emergency exists whereby the security or economy of Nauru is threatened he may, by public proclamation, declare that a state of emergency exists.

(2.) A declaration of emergency lapses-

(a) if the declaration is made when Parliament is in session, at the expiration of seven days after the date of publication of the declaration;  
or

*(b) If the declaration is made when Parliament is not in session, at the expiration of fourteen days after the date of publication of the declaration, unless it has in the meantime been approved by a resolution of Parliament approved by a majority of the members of Parliament present and voting.*

*(2A.) The Parliament may approve a declaration of a state of emergency for no more than three months at a time by a resolution approved by a majority of the members of the Parliament present and voting, save that, subject to clause (2B.) of this Article, any successive continuation of a declaration of a state of emergency and any declaration of a state of emergency made within 21 days of the expiration of a declaration of a state of emergency shall be by further resolution approved by a vote of no fewer than two thirds of the members of the Parliament present and voting.*

*(2B.) If, following the making of a declaration of a state of emergency or within 21 days of the expiration of a declaration of a state of emergency, Parliament is by reason of the nature or extent of the emergency unable to meet, the President may make a further declaration of a state of emergency pursuant to clause (1) of this Article.*

*(3.) The President may at any time revoke a declaration of emergency by public proclamation.*

*(4.) (a) Where a declaration of a state of emergency is made and Parliament is not in session, it shall be convened by the Speaker immediately in special session and remain in session during the entire period of the state of emergency; provided that Parliament shall not remain in session beyond the end of the normal term of Parliament.*

*(b) Where a declaration of a state of emergency is made when Parliament has been dissolved, or when Parliament is dissolved during an emergency, the members of the dissolved Parliament shall be called by the Speaker to a special session and remain in session until the conclusion of the state of emergency or the election of a new Parliament, whichever occurs sooner.*

*(5.) Parliament may at any time revoke a declaration of a state of emergency or amend or revoke orders made under Article 78 by resolution of a majority of members present and voting and the President shall act accordingly and immediately carry out the resolutions of Parliament.'*

Debate on the amendment ensued.

Question put.

**AYES:** Mr. Stephen, Dr. Keke, Mr. Kun, Mr. Dabwido, Mr. Akua, Mr. Dowiyogo, Mr. Solomon, Mr. Tsitsi. Total – 8 votes.

**NOES:** Mr. Batsiua. Total – 1 vote.

**ABSTAINING:** Mr. Pitcher. Total – 1 vote.

The question was resolved in the affirmative.

### **31. Motion – Article 75**

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



*“That the Committee adopts the recommendation of the Select Committee on Constitutional Amendment Bills in relation to proposed amendments to Article 78 of the Constitution concerning emergency powers, as set out at pages 58-59 of Appendix 2 to the Select Committee’s Report, and*

*That the Committee **therefore resolves to amend clause 40** of the Constitution of Nauru (Parliamentary Amendments) Bill so that clause 40, of the Bill as amended will read as set out on pages 39-40 of Appendix 3 to the Select Committee Report.’*

Debate ensued.

Question put.

**AYES:** Mr. Stephen, Dr. Keke, Mr. Kun, Mr. Batsiua, Mr. Akua, Mr. Amwano, Mr. Dowiyogo, Mr. Solomon, Mr. Tsitsi. Total – 9 votes.

**NOES:** Mr. Pitcher, Mr. Dabwido. Total – 2 votes.

The question resolved in the affirmative.

### 32. **Motion – Article 79**

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

*“That the Committee adopts the recommendation of the Select Committee on Constitutional Amendment Bills in relation to proposed amendments to clause (2) of Article 79 of the Constitution concerning restrictions of detention, as set out at pages 59-60 of Appendix 2 to the Select Committee’s Report, and*

*That the Committee **therefore resolves to insert a new clause 40A** in the Constitution of Nauru (Parliamentary Amendments) Bill to provide for such amendments, which clause of the Bill will read as set out on page 40 of Appendix 3 to the Select Committee Report.*

*So that Article clause (2) of Article 79 of the Constitution, if amended in the manner proposed by this motion, will read as follows:*

*‘79....*

*(2.) A person detained under an Order under Article 78 shall, as soon as practicable, be informed of the reasons for his detention and be heard by the advisory board in person or by any other practicable means and permitted to make representations against his detention.’”*

Debate ensued.

Question put.

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

There being no votes against, the motion was passed unanimously.

### 33. **Motion – Article 80**

Hon. Solomon (Meneng) moved the following motion:

*“That the Committee adopts the recommendation of the Select Committee on Constitutional Amendment Bills in relation to proposed amendments to Article 80 of the Constitution concerning the prerogative of mercy, as set out on pages 60-61 of Appendix 2 to the Select Committee’s*

Report so that if the amendments are adopted Article 80 would read as follows:

***'Prerogative of Mercy***

80. (1.) *The President may-*

*(a) grant a pardon, either free or subject to lawful conditions, to a person convicted of an offence;<sup>33</sup>*

*(b) grant to a person a respite, either indefinite or for a specified period, of the execution of a punishment imposed on that person for an offence;*

*(c) substitute a less severe form of punishment for any punishment imposed on a person for an offence; or*

*(d) remit the whole or a part of a punishment imposed on a person for an offence or of a penalty or forfeiture on account of an offence.*

*(2.) There shall be a Committee on the Prerogative of Mercy (in this Article referred to as "the Committee") which shall consist of a qualified medical practitioner who shall be Chairperson, and two other persons, one of whom shall be a senior officer of the Public Service and the other of whom shall be a community leader, appointed by Cabinet.*

*(3.) Members of the Committee shall not be remunerated or receive any allowance for their service on the Committee.*

*(4.) A member of the Committee appointed under clause (2.) of this Article shall vacate his seat on the Committee-*

*(a) at the expiration of the term of his appointment (if any) specified in the instrument of his appointment; or*

*(b) if his appointment is revoked by Cabinet.*

*(5.) Whenever the Committee advises the President on whether the Prerogative of Mercy should be exercised, the Committee shall provide to the President a report which details the reasons for the recommendation, and a statement which summarises the reasons but which does not disclose any confidential information.*

*(6.) In the exercise of the powers conferred upon him by clause (1) of this Article, the President shall take into account the advice of the Committee.*

*(7.) In any case in which the Prerogative of Mercy is exercised in accordance with clause (1), the President shall present to Parliament-*

*(a) if the power is exercised during a meeting of Parliament – during that session; or*

*(b) if the power is exercised at any other time – during the next session of Parliament,*

*the statement referred to in clause (5) and a statement from the President giving details of the exercise of the power and a summary of the reasons for it.*

*(8.) Parliament may make provision for criteria or guidelines to be followed by the Committee in exercising its functions under this Article, and for any other matter necessary or expedient to give effect to the provisions of this Article.'*

*and that the Committee **therefore resolves to amend clause 41** of the Constitution of Nauru (Parliamentary Amendments) Bill in the manner set out on page 41 of Appendix 3 to the Select Committee Report."*

Debate ensued.

Question put.

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

There being no votes against, the motion was passed unanimously.

#### 34. **Motion – Article 81**

Hon. Mathew Batsiua (Minister for Justice/Health & Sports) moved the following motion:

*“That the Committee adopts the recommendation of the Select Committee on Constitutional Amendment Bills in relation to proposed amendments to Article 81 of the Constitution concerning interpretation of the Constitution, so that if amended Article 81 would read as set out at pages 61-64 of Appendix 2 to the Select Committee Report, and*

*That the Committee **therefore resolves to amend clause 42** of the Constitution of Nauru (Parliamentary Amendments) Bill so that if amended it would read as set out on page 42 of Appendix 3 to the Select Committee Report.”*

Debate ensued.

Question put.

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

There being no votes against, the motion was passed unanimously.

#### 35. **Motion – Article 82**

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 proposed amendments to Article 82 of the Constitution concerning Parts of the Constitution, so that if amended Article 82 would read as set out at pages 64 of Appendix 2 to the Select Committee Report, and*

*That the Committee **therefore resolves to amend clause 43** of the Constitution of Nauru (Parliamentary Amendments) Bill so that if amended it would read as set out on pages 42-43 of Appendix 3 to the Select Committee Report.”*

Debate ensued.

Question put.

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

There being no votes against, the motion was passed unanimously.

#### 36. **Motion – Article 83**

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 proposed amendments to Article 82 of the Constitution concerning Parts of the Constitution, so that if amended Article 82 would read as set out at pages 64 of Appendix 2 to the Select Committee Report, and*

*That the Committee **therefore resolves to amend clause 43** of the Constitution of Nauru (Parliamentary Amendments) Bill so that if amended it would read as set out on pages 42-43 of Appendix 3 to the Select Committee Report.”*

Debate ensued.

Question put.

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

There being no votes against, the motion was passed unanimously.

37. There was no change to Article 84.

### 38. **Motion – Article 84A**

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

*“That the Committee **resolves** to adopt the recommendation of the Select Committee on Constitutional Amendment Bills to make a small amendment to clause 45 of the Constitution of Nauru (Parliamentary Amendments) Bill, namely to substitute for the words “pass legislation” the words “enact a law”, so that clause 45 of the Bill as amended will appear as set out on page 43 of Appendix 3 to the Select Committee Report.”*

Debate ensued.

Question put.

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

There being no votes against, the motion was passed unanimously.

### 39. **Motion – Article 85**

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 proposed amendment to Article 85 of the Constitution, namely that only clauses (4) and (6) of Article 85 be repealed, as provided for in clause 46 of the Constitution of Nauru (Parliamentary Amendments) Bill, and that the Committee **therefore resolves to amend clause 23** of the Constitution of Nauru (Referendum Amendments) Bill, so that clause (3) of Article 85 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. Akua, Mr. Amwano, Mr. Dowiyogo, Mr. Solomon, Mr. Tsitsi.  
Total – 11 votes.

There being no votes against, the motion was passed unanimously.

40. There was no change to Article 86.

41. Clause 46 of the Constitution of Nauru (Parliamentary Amendments) Bill was agreed to.

42. **Motion – Fifth Schedule**

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 the Fifth Schedule the Constitution, concerning the Articles of the Constitution that are subject to referendum, namely to add Articles 16A, 57A, 58A, 59A, 78 and 84A to the Fifth Schedule and to delete Article 93 from the Fifth Schedule, and*

*That as a consequence of earlier resolutions passed by this Committee, the Committee resolve to further amend the Fifth Schedule to include Articles 16B, 16C, 16D and 21B, and*

*That the Committee **therefore resolves to insert a new clause** in the Constitution of Nauru (Referendum Amendments) Bill, to give effect to the aforementioned amendments, so that the Fifth Schedule, if amended in the manner proposed by this motion, will read as set out in attachment S5.1 to this motion.”*

*Schedule 5 as it would appear if amended in the manner proposed by the motion, with proposed changes shown as tracked changes:*

**Fifth Schedule**

*(i) Part I*

*(ii) Part II.*

*(iii) Articles 16, 16A, 16B, 16C, 16D, 17, 21B.*

*(iv) Articles 26, 27, clause (7.) of Article 41.*

*(iv-a) Article 57A.*

*(v) Articles 58, 58A, 59, 59A, 60, 62, 65.*

*(vi) Article 71, clause (1.) of Article 72.*

*(vi-a) Article 78*

*(vii) Articles 84, 84A.*

*(viii) Clauses (1.), (2.), (3.) and (5.) of Article 85.*

Question put.

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

There being no votes against, the motion was passed unanimously.

43. **Motion – Ninth Schedule**

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

*“That, consistent with its earlier resolution in relation to the amendment of Article 34 of the Constitution, the Committee adopt the recommendation of the Select Committee on Constitutional Amendment Bills in relation to the insertion of a new Ninth Schedule to the Constitution, concerning the Oath of Speaker, and*

*That the Committee **therefore resolves to insert a new clause** in the Constitution of Nauru (Parliamentary Amendments) Bill, to provide for the insertion of the new Ninth Schedule, so that the Ninth Schedule if inserted in the Constitution will read as follows:*

### **‘Ninth Schedule**

Article 34

#### **Oath of Speaker**

*I, (name), do hereby swear by Almighty God that I will be faithful and bear true allegiance to the Republic of Nauru, that I will perform the duties of the Speaker of Parliament to the best of my ability, that I will ensure that the business of Parliament is conducted in compliance with the Constitution of Nauru and the Standing Orders of Parliament, and that I shall at all times exercise my functions as Speaker impartially and fairly. So help me God!”*

Question put.

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

There being no votes against, the motion was passed unanimously.

#### **44. Motion**

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

Question put and passed.

#### **In the House.**

##### **(Speaker Akua in the Chair.)**

The Chairman of the Committee of the Whole, Hon. D. Tabuna, M.P. reported progress on the Constitution Amendment Bills and asked leave to sit again.

#### **45. Motion**

His Excellency President Marcus Stephen moved that further consideration of the Parliamentary Amendments Bill and the Referendum Amendments Bill 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.

46. **Motion Fixing the date for the next Sitting**

His Excellency President Marcus Stephen moved that the House at its rising do adjourn until Thursday, 25<sup>th</sup> June 2009 at 10 a.m.  
Hon. Dr. Kieren Keke (Minister for Finance) seconded.  
Question put and passed.

47. **Adjournment**

His Excellency the President moved that the House do now adjourn.  
Hon. Dr. Kieren Keke seconded.  
Question put and passed.

And then the House at ten minutes after eight o'clock p.m. adjourned until Thursday, 25<sup>th</sup> June 2009 at 10 a.m.

**Members Present**

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

- \* Mr. Waqa
- \*\* Mr. Adeang

Freddy Cain  
**Clerk of Parliament**

- \* Leave of Absence
- \*\* Suspension











