

REVIEW OF ENVIRONMENT RELATED LAWS AND CONVENTIONS IN THE REPUBLIC OF NAURU

Background

In mid 2006 a comprehensive review of environment related laws was undertaken for the Department of Commerce, Industry and Resources in the Republic of Nauru. At the same time a review of environment related International Conventions was also undertaken with a view to identifying the legislative reforms that are required for the Government of Nauru to achieve compliance with the obligations that arise under these Conventions.

Both of these Reviews have identified a range of legislative areas related to issues of environmental management and protection where legislative reform is warranted. In some cases this would involve the making of new laws, by Act or Regulations, to cover areas which do not have effective laws in force. In other areas this would involve amendments to existing laws.

Purpose of this Paper

This Paper aims to identify areas where the laws of the Republic of Nauru can be said to be deficient and where clear gaps in Nauru's legislative framework exist that impact upon the capacity of the Government to effectively manage and protect the environment. These gaps also affect the ability of the Government of Nauru to comply with applicable international obligations.

It is not the purpose of this Paper to prioritise the legislative reforms that the Government of Nauru chooses to pursue. This is a matter for DCIR to determine, in conjunction with other relevant Departments and agencies. However this Paper may provide some useful basis upon which decisions relating to the timing of each reform can be determined. In many instances it will require an assessment of existing capacities to effectively apply new laws in this context. To a large extent legislative reform must go hand in hand with initiatives aimed at developing relevant capacities.

A new Environment Management Act

A key purpose in undertaking the reviews of environment related laws and conventions has been to formulate a new *Environment Management Act* for the Republic of Nauru. This has been done and the drafted law can be best described as a "framework" Act. It defines areas of administrative responsibility in relation to general issues of environmental management and protection. It provides a sound basis for the application of laws in this context and for their effective enforcement. Provision is made for the appointment of Environment Officers and a range powers can be exercised by them.

The draft Act makes provision for regulations to be made in relation to any matter that is required to meet Nauru's international obligations. Regulations can be made in relation to a range of other matters as well. The result would be a very comprehensive legislative

framework making effective provision in a full range of areas to secure protection of Nauru's environment and the application of applicable environment related Conventions.

The Regulations could be formulated over a period of time, and in doing this the priorities of the Government of Nauru can be applied.

AREAS WHERE REGULATIONS SHOULD BE MADE UNDER THE NEW ENVIRONMENT MANAGEMENT ACT

The gaps in the laws of Nauru which can be best addressed by the formulation and promulgation of Regulations under the proposed new Environment Management Act –

A. ENVIRONMENTAL IMPACT ASSESSMENTS

No law makes provision in relation to the assessment of developments on the environment. This could most usefully be done under Regulations made under the new Act.

Regulations of this nature would contribute to achieving compliance with matters arising under the Convention on Biological Diversity.

B. OZONE DEPLETING SUBSTANCES (MONTREAL PROTOCOL)

Regulations made under the new Act could adequately address all the requirements relating to the implementation of the *Montreal Protocol*.

To address the matters covered by the *Montreal Protocol* the essential features of the Regulations would be –

1. Prohibitions on Importation
2. Prohibitions on the Importation of Certain Goods
3. Exemptions in relation to imports
4. Prohibitions on Exportation
5. Prohibitions on Manufacture
6. Prohibitions on Sales
7. Exemptions in relation to sales
8. General Principles to be applied in relation to permits
9. Quarantine and pre-shipment permits
10. Medical permits
11. Base year permits
12. General provisions in relation to permits
13. Goods for which no permit may apply
14. Seizure of substances and goods
15. Forfeiture of seized substances and goods
16. Call-up of substances and goods
17. Offences and penalties

C. BIOSAFETY/LIVING MODIFIED ORGANISMS (CARTAGENA PROTOCOL)

Regulations made under the new Act could adequately address all the requirements relating to the implementation of the *Cartagena Protocol*.

To address the matters covered by the *Cartagena Protocol* the essential features of the Regulations would be –

1. Powers of the Minister
2. The Competent Authority
3. Other statutory powers not to be affected
4. Notifications of transboundary movements
5. Approvals for imports
6. Scientific risk assessments
7. Confidential information
8. Exemptions from the procedure
9. Review of decisions
10. Exportation of Living Modified Organisms
11. Transit of Living Modified Organisms
12. Use for food, feed and for processing
13. Contained use
14. Unintentional releases and transboundary movements
15. Illegal releases and transboundary movements
16. Offences
17. Dealing with organisms contravening this Act

D. RESERVES AND CONSERVATION AREAS

No laws have been identified which make provision for the declaration and management of reserves or conservation areas on Nauru's land mass or in its marine areas. This could be done by amendment to the *Lands Act 1976* or by Regulations made under the new Act.

There does not appear to be a clear provision in the *Fisheries Act 1997* in relation to the declaration, regulation and management of marine protected areas and reserves. And there is therefore no clear provision in relation to the role that local communities may have in relation to such matters.

Regulations of this nature would contribute to achieving compliance with matters arising under the Convention on Biological Diversity.

E. WILDLIFE PROTECTION/TRADE IN ENDANGERED SPECIES

The *Wild Birds Preservation Ordinance 1937* makes only limited provision in this context, and reservations have been expressed (in the NEMS) as to its effectiveness. No provision is made in this law in relation to trade in wildlife. This is an area that should be considered in conjunction with any law dealing with reserves and conservation areas.

Regulations of this nature would contribute to achieving compliance with matters arising under the Convention on Biological Diversity.

Protection of marine wildlife should be considered and implemented in the context of the *Fisheries Act 1997* and *Fisheries Regulations 1998*, and is properly a matter to remain within the current functions and responsibilities of the Nauru Fisheries and Marine Resources Authority.

F. PROMOTION OF RENEWABLE ENERGY

There are no laws which currently apply in this context. Consideration might be given to proper policy formulation in relation to the promotion of environmental technologies and renewable energy. After this has been done then the scope for effective legislative reform shall be more easily determined.

G. DANGEROUS AND HAZARDOUS SUBSTANCES

There is some provision applying to dangerous substances in the *Port Authority Act 2006* and the *Criminal Code 1899* but these cannot be regarded as comprehensive, or even as particularly useful.

Existing provisions are not effective to implement Nauru's obligations under the *Waigani, Basel or Stockholm Conventions*. Regulations could be made under the new Act to implement these Conventions (alternatively relevant provisions may be made in a stand-alone Act).

H. WATER RESOURCES

No laws have been identified which make useful provision in relation to the management, protection and conservation of Nauru's water resources. Threats to the water resources have been identified in the NEMS and it is timely that an effective law is applied in this context. This could be done by regulations made under the new Act, or as a stand-alone Act.

I. WASTE MANAGEMENT

No laws have been identified which make useful provision in relation to aspects of waste management practices and systems. Landfills appear to be unregulated and no specific provision is made in relation to dealing with hazardous and noxious wastes. No law applies to waste management services including

household rubbish collection, commercial waste disposal and recycling composting and other accepted waste management practices.

These matters could be addressed in Regulations made under the new Act, or by a stand-alone Act.

J. PRESERVATION OF CUSTOMS AND TRADITIONS

The out-dated *Nauru Antiquities Ordinance 1935* is the only law that has been identified which seeks to protect aspects of Nauru's customs and traditions, and it is fair to say that doubts must exist as to the effectiveness of even this limited law.

Regulations dealing with such matters could be made under the new Act, and a Committee charged with responsibilities in this context could be established by the Minister under the authority of the new Act.

AREAS WHERE NEW ACTS SHOULD BE FORMULATED

The following are legislative areas which have been identified in the Review of Laws as justifying new Acts being formulated and enacted –

A. MARINE POLLUTION PREVENTION

The prevention of marine pollution and the effective response to marine pollution incidents does not appear to be effectively provided for in any law. This is a critical area of legislative reform for both domestic and regional purposes.

A Model Marine Pollution Prevention Bill has been drafted for the Pacific region. It is true that this model law should be reviewed in detail to ensure that it is applicable to the circumstances in Nauru. It should also be reviewed to ensure that the requirements of recent amendments to the relevant SPREP Convention Protocols are effectively provided for. This new law could also make provision in relation to the regulation of dumping and incineration of wastes at sea.

B. BIOSECURITY

It is quite likely that the *Agricultural Quarantine Act 1999* makes effective provision in relation to quarantine and border control issues. It is noted however that a *Model Biosecurity Bill* has been drafted for the Pacific region in recent years. This appears to be a useful and modern law and is deserving of consideration for Nauru.

C. BUILDING CONTROL AND PHYSICAL PLANNING

No laws applying effective building regulation or urban planning controls have been identified in Nauru. These issues are related to environment management but

their scope is well beyond that which would normally be vested in an environment division. Effective building and physical planning procedures and controls should be considered, and this could be done most effectively under stand-alone laws dealing with such matters.

D PESTICIDES

No comprehensive law regulating the importation and use of pesticides have been identified. This is an area which properly falls under the authority of the agriculture and quarantine authorities. There are important aspects of such a law which play a role in environmental protection, and these are required to give effect to certain obligations under International Conventions that apply in this context.

Features of an effective Pesticides Act are –

- The declaration of substances to be pesticides.
- A Pesticides Committee may be established comprising representatives from relevant Departments and agencies.
- The functions and powers of the Committee need to be prescribed.
- Cabinet may exempt any pesticide from the provisions of this Act.
- The importation of pesticides requires a permit.
- Applications for permits details of brand name and active ingredients, nature and formulation, proposed labelling, purpose and arrangements for storage.
- The sale and distribution of pesticides requires a permit.
- A register of permitted imports and sellers is to be maintained.
- Customs may not release a pesticide unless a permit for it has been issued.
- Cabinet is given a general Regulation making power.

E. CRIMINAL LAWS AND PUBLIC HEALTH LAWS

It is suggested that the *Criminal Code 1899* and the *Public Health Ordinance 1926-1967* are both in need of comprehensive review with a view to their repeal and replacement by more modern and effective laws. This would present an opportunity for appropriate provisions to be made for issues related to environment protection and management.

EXISTING LAWS IN NEED OF REVIEW AND AMENDMENT

The following are current laws applying in the Republic of Nauru which should be reviewed for the purpose of determining necessary amendments –

A. THE CONSTITUTION OF NAURU

The Constitution makes no reference to the environment. No mention of the principles of sustainability or the rights of future generations appears in the current Constitution.

The following are matters that might be considered in the context of constitutional review –

Preamble (Article 3)

- The natural resources of Nauru are vested in the people and their Government.
- Rights of future generations are to be respected and taken into account in the application of all laws
- The customs and traditions of Nauru are to be cherished and upheld.

Deprivation of property (Article 8)

Some exemptions to the protection from deprivation of property relate to the need to –

- protect human health
- impose planning and building requirements
- carry out works of soil conservation or the conservation of other natural resources
- carry out agricultural development or improvement works which the owner has refused to undertake
- acquire property which is injurious to the health of human beings, animals and plants

Protection of person and property (Article 9)

The guaranteed protection for privacy of home and other property should not prevent the entry into a home for any purpose related to –

- public health or safety
- enforcement of town and country planning requirements
- the enforcement of laws relating to the protection of the environment or the biodiversity of Nauru
- environment management and the fulfillment of international treaty obligations

B. LICENCES ORDINANCE 1967

Modern business licensing and foreign investment laws can be used effectively in the context of environmental management by declaring certain business activities to be illegal, or to be regulated or restricted. This could be applied to industries which produce dangerous substances, or to businesses which breach international obligations such as trade in endangered species.

In the event that such laws are reviewed and considered in Nauru, then this is an opportunity to apply appropriate environment protection provisions in laws dealing with business licensing and foreign investment.

C. SEA BOUNDARIES ACT 1997

The following amendment might be considered –

Contiguous Zone (section 5)

The powers of control should be extended to all laws relating to environmental protection and management and public health.

D. FISHERIES ACT 1997

Consideration might be given to including provisions relating to the formulation, enactment and enforcement of community based by-laws to –

- determine areas to be declared as protected areas
- apply restrictions in such areas relating to certain fishing practices or taking certain fish or other marine resources
- apply management and enforcement arrangements which involve community based structures and authority