

**Constitutional Review Committee (Amendment) Bill 2009**

Second Reading Speech  
Hon Baron Waqa MP, CRC Deputy Chairman  
26 November 2009

Mr Deputy Speaker,

I have introduced to this House today a short Bill for an Act to amend the *Constitutional Review Committee Act 2004*. The Bill contains only five clauses and its purpose is to repeal the provisions in the Act relating to the conduct of a referendum. This Bill is closely interrelated with another Bill that I propose to introduce to this House later today, which is the *Referendum Procedures Bill*.

The reason for the repeal of these provisions is that they do not satisfy the requirements of Article 84 of the Constitution, which prescribes the procedure for amending the Constitution.

Mr Deputy Speaker, at present, section 15 of the *Constitutional Review Committee Act* provides that if Parliament passes a proposed law for the amendment of the Constitution that involves amendments to the provisions that require approval by referendum in accordance with Article 84(3), then a referendum shall be held in accordance with the provisions of the Schedule to the Act.

The Schedule contains a number of procedural details that do not accord with the constitutional requirements of Article 84, including the following provisions:

- ‘After Parliament has passed a proposed law to alter the Constitution which requires the approval of a referendum, the Speaker shall certify that the proposed law has been passed by Parliament but requires the votes of not less than two-thirds of the votes validly cast at a referendum’;
- ‘At the referendum the voters shall be asked in respect of each amendment proposed to be made to the Constitution if they approve or do not approve of it’; and
- ‘Any provision of the proposed law that has received two-thirds or more of the votes validly cast [shall be]... certified by the Speaker as having been duly passed... and shall have immediate effect’.

Mr Deputy Speaker, these provisions appear to be inconsistent with clause (3) of Article 84 of the Constitution, which provides that ‘**a proposed law** to alter or having the effect of altering the Fifth Schedule of any of the provisions of this Constitution specified in the Fifth Schedule shall not be submitted for the certificate of the Speaker under Article 47 unless, after it has been passed by Parliament, **it** has been approved by not less than two thirds of the votes validly cast on a referendum held... as prescribed by law’.

This means **the proposed law as a whole** must be approved by referendum. Although the manner of conducting the referendum may be prescribed by law, a referendum held in accordance with the existing provisions of the *Constitutional Review Committee Act* would **not** satisfy the requirements of Article 84, because it could lead to the partial approval of the proposed law and the rejection of certain components within the proposed law. The way in which Article 84 is worded means that it requires 'a proposed law' to be approved, not just some sections of a proposed law. This means that it is necessary, when conducting a referendum, to ask voters whether or not they approve of the proposed law, rather than asking them whether or not they approve of each individual provision within the proposed law.

Other aspects of the existing Schedule to the *Constitutional Review Committee Act* which I have quoted are problematic because they appear to require the Speaker to certify a proposed law before it can lawfully be certified in accordance with Article 84, and because provision is made for 'approved' provisions of a proposed law to have immediate effect, notwithstanding the rejection of other provisions of the proposed law and notwithstanding the fact that such law will normally include its own specific provisions for commencement at a particular time.

Mr Deputy Speaker, in view of these problems with the existing provisions in the *Constitutional Review Committee Act*, this Bill proposes to repeal section 15 of the Act and to repeal the Schedule to the Act. It is also proposed to make new provision for referendum procedures in a separate *Referendum Procedures Bill* which I intend to introduce to this House today. The *Referendum Procedures Bill* would prescribe procedures that are consistent with the constitutional requirements of Article 84, and would apply to all future referenda, not just the referendum that is planned for 27 February 2010 in relation to the *Constitution of Nauru (Referendum Amendments) Bill*.

Mr Deputy Speaker, like most amendment bills, this Bill is essentially a simple housekeeping matter by which it is proposed to tidy up the state of the law, and to remedy some problems with the existing *Constitutional Review Committee Act*.

Mr Deputy Speaker, I commend this Bill to the House.

Thank-you Mr Deputy Speaker.