

Republic of Nauru - 18th Parliament

Referendum Procedures (Proxy Voting) Regulations 2010

EXPLANATORY MEMORANDUM

Background

The *Referendum Procedures Act 2009* applies certain provisions of the *Electoral Act 1965-2007* to the conduct of a referendum. Section 13(3) of the *Referendum Procedures Act* provides that, if a method is prescribed under the *Electoral Act* for a person to vote in an election where the person is unable to attend a polling place, the method applies, with the necessary and appropriate modifications, to voting in a referendum.

Under the *Electoral Act*, a method is prescribed for voting by proxy in an election if a person is unable to attend a polling place because the person is outside of Nauru on polling day. The method for voting by proxy is prescribed by the *Electoral (Proxy Voting) Regulations 2004*.

These Regulations prescribe modifications to the *Electoral (Proxy Voting) Regulations 2004* for the purpose of the application of those Regulations to voting in a referendum.

The modifications specify that certain terms used in the Regulations are taken to mean corresponding terms for a referendum. For example, a reference to an election is taken to be a reference to a referendum. These modifications will ensure there is no confusion about the application of the proxy voting method to a referendum.

The Regulations are made under section 29 of the *Referendum Procedures Act 2009*, which provides that Cabinet may make regulations prescribing matters that necessary or convenient to give effect to the Act. Section 29(2) of the Act specifically provides that the regulations may prescribe modifications to the *Electoral Act*. Under section 33 of the *Interpretation Act 1971*, a reference to an Act includes a reference to subsidiary legislation made under the Act. This means the regulations may also prescribe modifications to regulations made under the *Electoral Act*.

Because section 13(3) of the *Referendum Procedures Act* provides that the proxy voting method applies with the necessary and appropriate modifications to voting in a referendum, there is no requirement for the modifications to be prescribed by regulation. However, the modifications have been prescribed to avoid ambiguity about how the proxy voting system applies to a referendum.

Notes on clauses:

Clauses 1, 2 provide for the short title and commencement of the Regulations.

Clause 3 prescribes modifications to the *Electoral (Proxy Voting) Regulations 2004* to ensure that certain terms used in those Regulations are given a corresponding meaning for the purposes of a referendum. This clause also provides that the prescribed modifications do not have the effect of limiting any other modifications that may be necessary or appropriate but are not prescribed.