



LEGISLATIVE DRAFTING MANUAL



Prepared by the Legislative Drafting Section of the
Department of Justice & Border Control

With kind assistance from
the Pacific Islands Forum Secretariat and the
Legislative Division of the Office of the Attorney General, Samoa

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MESSAGE FROM THE MINISTER

In 2014, informal discussions were held between the Department of Justice and Border Control and the Pacific Islands Forum Secretariat for the development of a Legislative Drafting Manual for Nauru. 2015 has seen the realisation of those discussions and through the assistance of the Pacific Islands Forum Secretariat and the Government of Samoa; I have the pleasure of presenting the completed Legislative Drafting Manual for the Department of Justice and Border Control.

Legislative drafting is a major function of the Department and this initiative to create a Manual for use in Nauru is greatly welcomed. The preparation of laws for Nauru has seen time and resources being committed by Government to ensure that the resulting laws comply with international standards while at the same time complying with local norms. Unfortunately, we have often been left to implement laws that have not taken into account the culture, experience and general way of life in Nauru. This experience has demonstrated the need for a Manual.

The Manual is intended for use by the Department of Justice and Border Control, other Governmental departments, consultant drafters and persons who intend to prepare legislation and subsidiary legislation for Nauru.

Its purpose is to promote uniformity in the form, style and language of laws, and to make the resulting laws clear, simple and easy to understand and use.

Hon. David Adeang MP
Minister for Justice and Border Control

ACKNOWLEDGEMENT

The Department of Justice and Border Control (DJBC) initiated a project to create a Manual for drafting legislation in Nauru and with a request for assistance to the Pacific Forum Islands Secretariat, were able to engage the help of the Samoa Attorney General's Office in putting together this Manual.

The Manual has been drafted in a way that is user friendly and yet still comprehensive enough to cover most if not all issues that may be encountered in the drafting of legislation. Although it can never solve every problem, it is the first step toward minimising issues that may arise and we must give many rounds of applause to the hard work that has gone into its creation.

The production of this Manual is for the benefit of all in Nauru, those in and out of the legal field.

Lionel Aingimea

Secretary

Department of Justice and Border Control

GLOSSARY

DJBC – Department of Justice and Border Control

SJBC - Secretary for Justice and Border Control

SL – Subsidiary Legislation

SOE – State Owned Enterprise

TOR – Terms of Reference

PART 1

INTRODUCTION TO LEGISLATIVE DRAFTING

1 AN OVERVIEW OF NAURU LEGISLATION

This first part provides an introduction and brief overview of laws, the legislative process in Nauru as well as a guide as to where laws may be located. Laws in Nauru are divided into primary legislation and subsidiary legislation.

1.1 Primary Legislation

Legislation or Acts as they are titled in Nauru are enacted by the legislature known as the Parliament of Nauru under Article 26 of the Constitution. Article 27 provides for that legislative role and Article 47 of the Constitution provides that '*A proposed law becomes law on the date when the Speaker certifies that it has been passed by Parliament*'. The process of law making in Nauru is provided in Part 2 of this Manual.

1.2 Subsidiary Legislation

Subsidiary legislation include regulations, notices, orders, proclamations, rules, resolutions or other statutory instruments made under or by virtue of any primary legislation and having legislative effect.

1.3 Important laws to consider when drafting legislation in Nauru

1.3.1 *Constitution*

The Constitution of Nauru contains important provisions all legislative drafters must bear in mind when drafting legislation as any draft law that is inconsistent with the Constitution is considered void to the extent of the inconsistency. Important provisions of the Constitution include those on fundamental human rights and Articles relating to the legislature and law making in Nauru.

1.3.2 *Interpretation Act 2011 ("IA")*

The Interpretation Act is an important law that legislative drafters should consult in the context of carrying out their work.

1.3.3 *Administrative Arrangements Order No. 2 of 2011*

This Order sets out which Ministry is in control of which legislation. It is very useful for legislative drafters in understanding the Government infrastructure and who to target in the consultation phase of the legislative drafting process.

1.3.4 *Public Service Act 1998*

This Act is important for reference in the context of drafting legislation that will impact on the organisational structure of certain Government Departments.

1.3.5 Criminal Code 1899 & Summary Offences Act 1967

For the purposes of drafting offence provisions, these Acts are important references to avoid duplication of offences already in existence in Nauru.

1.3.6 Public Accounts Committee Act 1992

This Act is important as it provides the framework on the incorporation and monitoring of bodies by the Public Accounts Committee. Therefore, in the context of drafting legislation for a body corporate, it is important to take this law into account if there are impacts on the implementation of this Act.

1.4 Locating the laws of Nauru

There are at times numerous difficulties in locating the full range of laws applying in Nauru, and may assist in overcoming the problems of accessing current and true copies of the laws.

A problem related to the accessing of legislation is due to legislation not being printed and although there have been printed versions of legislation in the past there has not been an updated reprint of these laws. This has largely been overcome with the establishment of the official Government website RONLAW where all legislative instruments may be found. RONLAW is the responsibility of DJBC's drafting section and contains primary legislation, subsidiary legislation such as Regulations, Orders, Notices, Rules and Proclamations.

The website is www.ronlaw.gov.nr

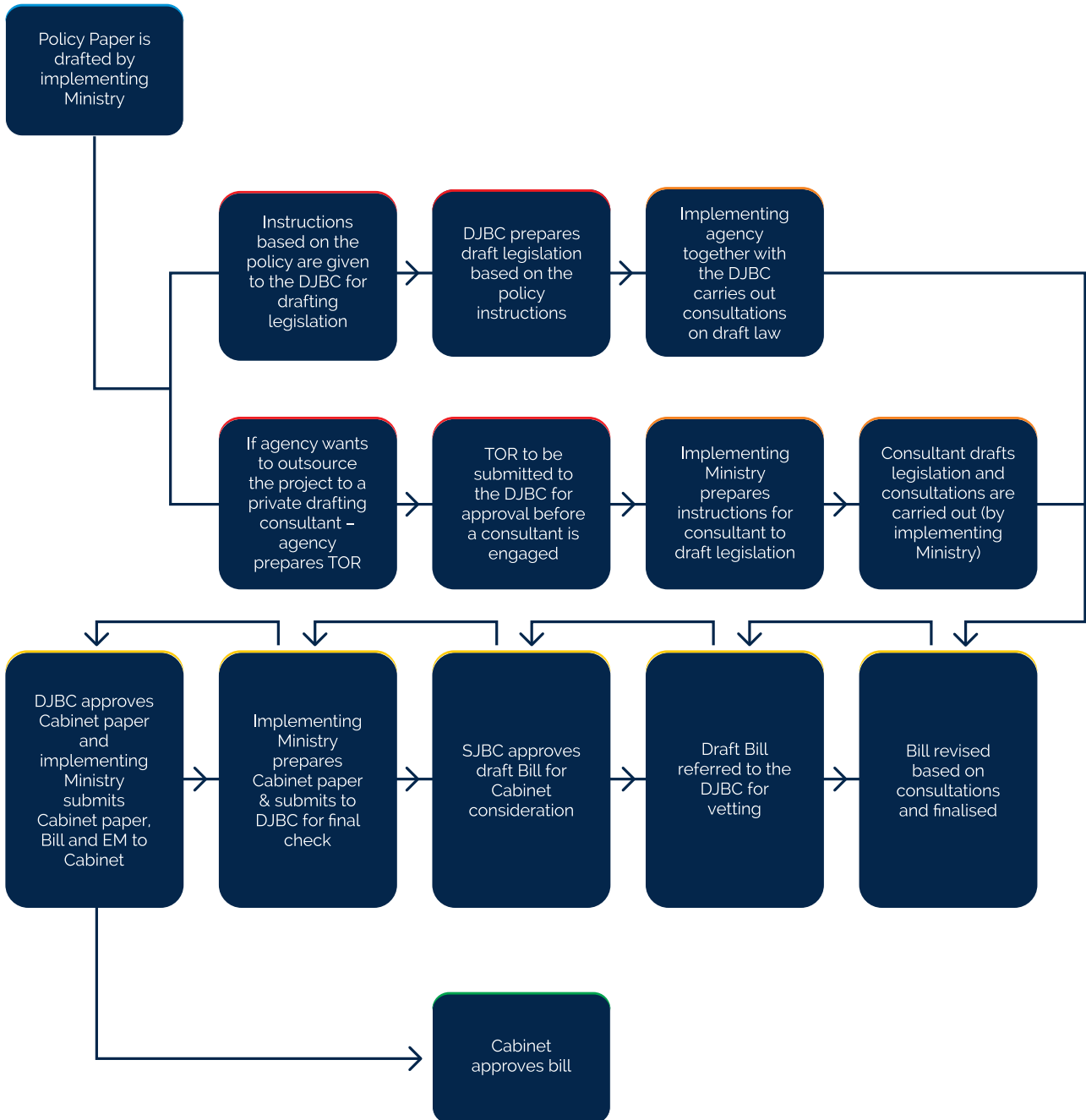
Nauru legislation can also be located on the PacLii website www.paclii.org

Did you know?

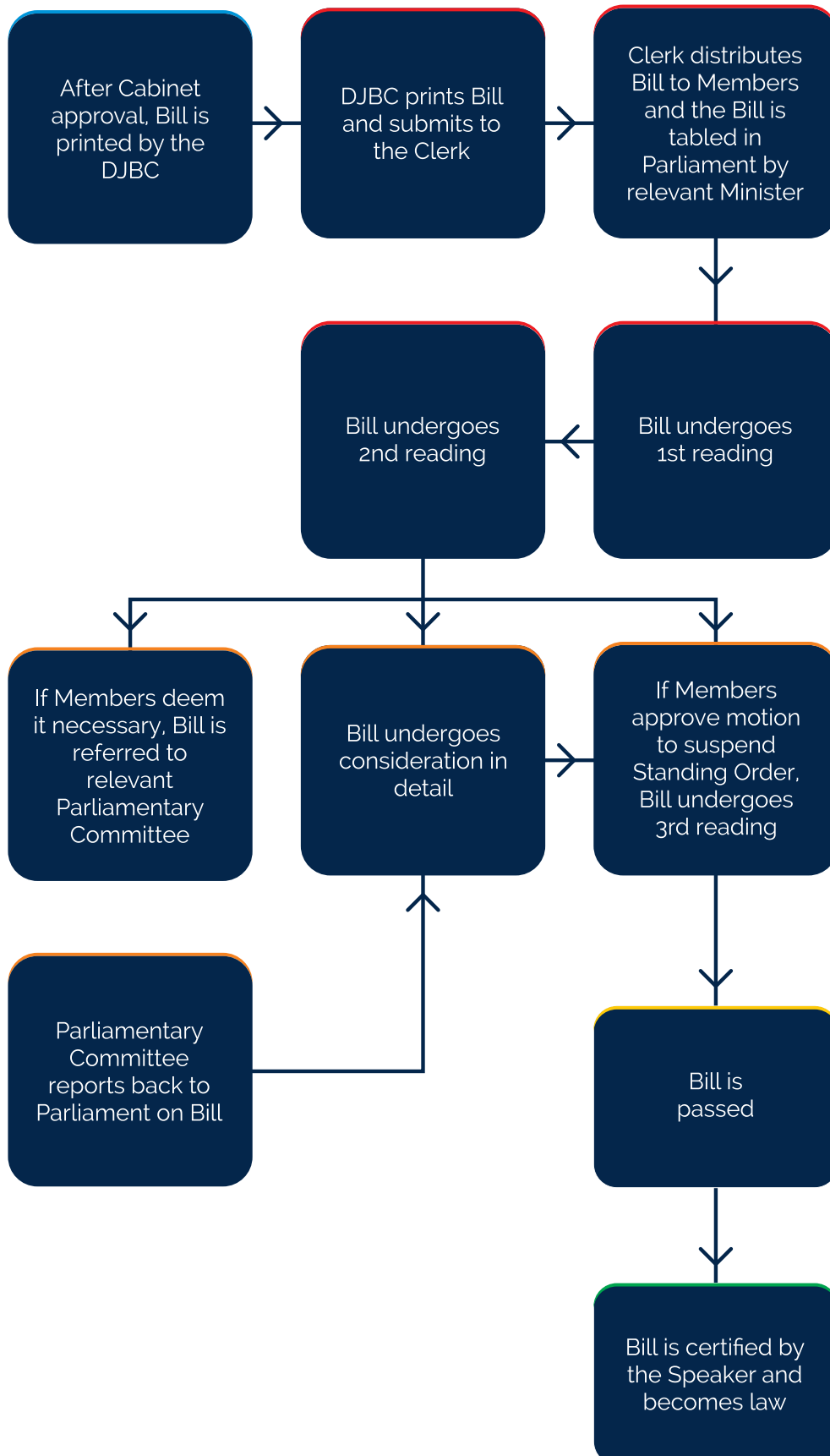
You can find the laws of
Nauru at
www.ronlaw.gov.nr

2 LEGISLATIVE PROCESSES

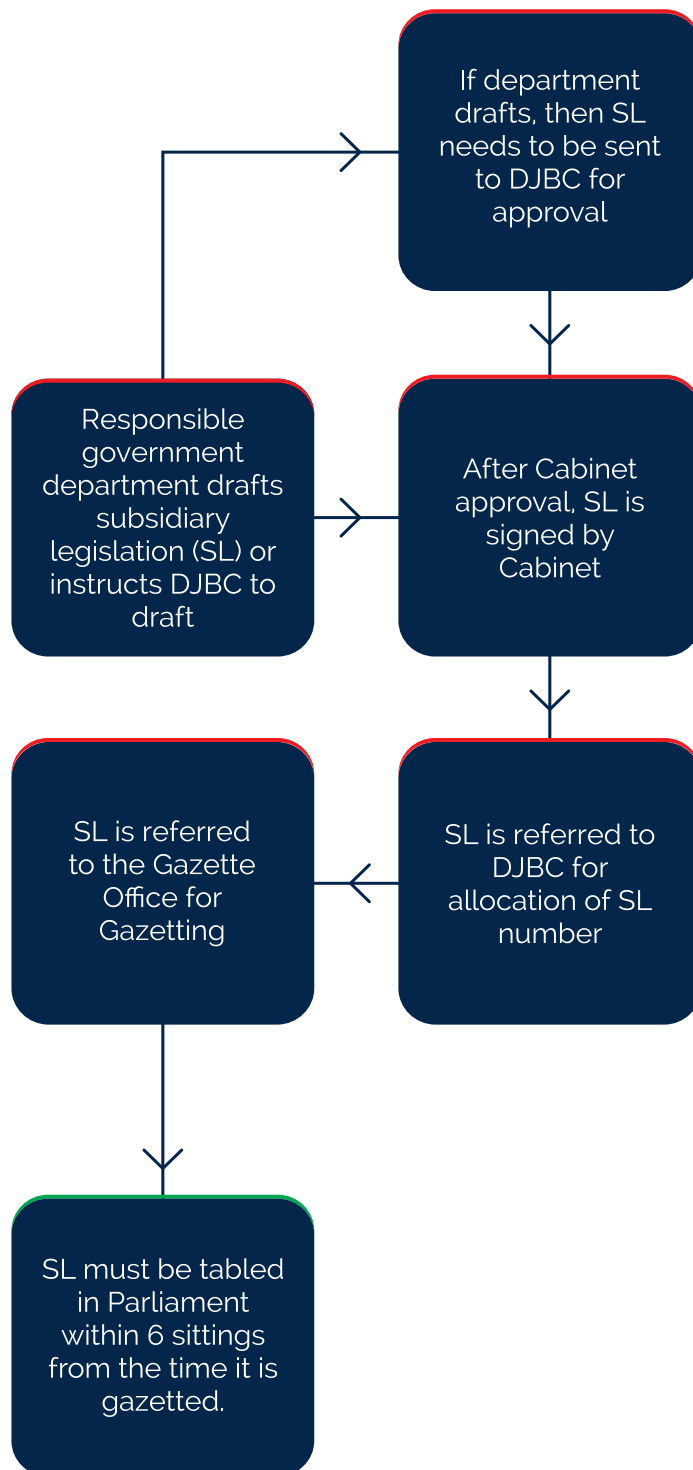
2.1 Legislative Process in Nauru



2.2 Primary Legislation



2.3 Subsidiary Legislation



3 ROLES IN THE LEGISLATIVE PROCESS

3.1 The Department of Justice and Border Control

3.1.1 *Drafting Role*

As shown in the legislative process above, a major role of the DJBC is the drafting of legislation for the Government. This is therefore a vital role when considering that a majority of legislation is not outsourced by the implementing Ministry. Where the DJBC is required to be the drafter for a project, the implementing Ministry will work closely with the DJBC in order to produce an approved draft to be submitted for Cabinet's approval.

Where the choice is made to outsource a drafting project, it is important to keep the DJBC informed of all developments throughout the drafting process. The DJBC must be given a chance to comment on draft legislation well before it is submitted by the implementing agency to the DJBC for final vetting.

It is important to note that where a project is undertaken by the DJBC for Government Ministries, this service is provided free of charge.

However, where a project is undertaken by the DJBC for a State Owned Enterprise ("SOE"), the DJBC will charge the SOE for services rendered. A fee rate is available from the DJBC office.

3.1.2 *Monitoring Role*

In 2013, the Nauru Parliament passed amendments to the *Legislation Publication Act 2011* which abrogated the Office of the Parliamentary Counsel ("OPC"), and vested the former responsibilities of the OPC in the DJBC.

Since that amendment, the DJBC became responsible for the drafting and vetting of all legislation for Nauru. The role of the DJBC is therefore vital in the legislative process as it now plays a monitoring role in the development of legislation in Nauru.

3.1.3 *Approval of the TOR for private drafting consultants*

The DJBC will now be responsible for vetting all TOR for any drafting project where the intention is to outsource or engage a consultant outside of Government to draft legislation for Nauru. This is inclusive of local private drafting consultants and foreign private drafting consultants. The process therefore as it stands is that the implementing Ministry must ensure that the approval of the DJBC is obtained before the TOR is advertised and a consultant is engaged for a drafting project.

The standard requirements to be inserted into a TOR include but are not limited to the following:

- A drafter must have a minimum of 8 years in experience of drafting legislation and proof of laws drafted must be provided;
- A drafter must respect the culture and traditions of the Nauruan people;
- A drafter must understand the impact of the legislation to be drafted on the Nauruan economy, infrastructure and culture and provide a report on the same;
- Once engaged, a drafter is required to provide a summary of laws that will be impacted by the required draft legislation.

3.1.4 Approval of the contract for consultant Drafters

Government Ministries must ensure that before any contract is signed with a consultant drafter, the DJBC has seen and approved the contract.

3.1.5 Vetting Role

As highlighted in the legislative process, the DJBC vets all legislation before they are finalised and submitted for Cabinet's consideration and endorsement. Once the SJBC approves legislation, if it is a Bill, the SJBC will revert to the implementing Ministry, the Bill, the Explanatory Memorandum and the relevant second reading speech for the Bill. The Ministries are to be responsible for putting together the relevant Cabinet paper for the Bill but if they are unable to complete this, they may seek assistance from the DJBC.

The DJBC will issue the following to the Ministry:

- The Cabinet submission (if required by Ministry);
- The Bill;
- The explanatory memorandum;
- The second reading speech; and
- The Secretary's certificate of endorsement for the Bill.

For the purpose of Regulations and other subsidiary legislative instruments, the DJBC will issue the following to the Ministry:

- The Cabinet submission (if required by the Ministry);
- The draft subsidiary legislation; and
- The Secretary's Certificate of endorsement.

It is then the duty of the Ministry to submit this to Cabinet for final approval. Once Cabinet approves, the Ministry must contact the DJBC for the allocation of an SL number before gazettal of the SL.

3.2 Government Ministries

Government Ministries play an important role in every stage of the legislative reform process. As the agencies responsible for the formulation of policies, the initiative to drive law reform are at times the result of good initiative from Government Ministries. A list of Ministries is included in Annex 2.

3.2.1 Policy makers

The implementing Ministry has the role to formulate, develop and obtain approval for aspects of Government policy that is relevant to that Ministry.

As the key agency responsible for policy formulation the Ministry plays a critical role in the legislative process from its outset.

While it is universally accepted that sound legislation derives from sound policy settled before the legislation is drafted, the reality in the Pacific Region and therefore in Nauru is that sound policy follows the drafting of legislation. This has proven that to work in some situations as legislative reform can provide sound legal basis for the formulation and application of policy. In other situations where the intended law reform requires a change in infrastructure, it would be more appropriate to settle the policy before embarking on drafting the relevant legislation.

There are also advantages to referring relevant policy to Cabinet for approval before the legislative drafting process begins or ends. This provides clear authority for the legislative drafting process required to be undertaken.

In each of these situations, the policy formulation is the role of the Ministry.

There are also situations where the DJBC may initiate the legislative drafting process, such as amending the relevant law to address issues that arise in court or to act on direct instructions from Cabinet to prepare legislation the Cabinet feels is imperative to have in place. Despite the DJBC not being the implementing Ministry, the DJBC will ensure that it works in close collaboration with the relevant implementing Ministry to carry out the instructions received.

3.2.2 Provider of Drafting Instructions

Part of the policy role that Ministries play in the Legislative Process includes providing instructions or requests to the DJBC. It is important to note that in order for the DJBC or legislative drafting consultants to understand what law needs to be drafted, the instructions provided to them, must be clear and well laid out.

An example of a drafting instruction template is included in Annex 1.

3.2.3 Proposers & Agents of Legislative Reform

Ministries play the important role of proposing legislative reform to support and assist in the discharge of their duties.

Officers of implementing Ministries must appreciate that they play a role as agents for legislative reform. This role includes the following:

- Close liaison with the DJBC;
- Facilitating the necessary Government and community consultations;
- Ensuring final compliance with all obligations of consultant drafters to the satisfaction

of their Ministry, their Minister, the DJBC and most importantly, the Cabinet.

3.2.4 Managers of Legislative Reform

While the DJBC plays a monitoring role in the legislative drafting process, the Ministries should appreciate the importance of their role as key managers of the legislative process for a law being drafted that they will eventually implement. This role includes carrying out the following:

- Ensuring that the TOR for consultant drafters are cleared by the DJBC before the consultant is hired;
- Ensuring that consultant drafters comply with the applicable TOR;
- Ensuring that DJBC approves the contract for consultant drafters before they are engaged;
- Ensuring that the consultant drafter undertakes adequate consultations with the relevant Government and community stakeholders;
- Ensuring that the nominated officers of the DJBC are kept informed and involved in the drafts provided throughout the process;
- Ensuring that the Ministry and the DJBC's approval of draft laws is obtained before consultant drafters are released of their obligations.

3.3 As Implementers

Every law requires that appropriate implementation action is taken to effectively apply the provisions of the law. Some laws require implementation action immediately and others involve long term strategies and action for effective implementation. In nearly every situation, this responsibility lies with the relevant implementing Ministry.

3.4 As Regulators

Some laws involve the establishment and application of regulatory processes. In nearly every situation these responsibilities must lie with the implementing Ministry. This may be done with the support and legal advice of the DJBC.

Did you know?

You can contact the DJBC if you have any doubts or general queries.

4 PRE-LEGISLATIVE REFORM STEPS

4.1 Purpose of this Part

This Part is designed to provide clear guidance for all persons drafting laws for the Republic of Nauru.

It is expected that the many deficiencies in previously drafted legislation are avoided in future and the requirements set out in this Manual are applied to all laws being drafted for Nauru.

While the principal target group for this Manual are the legislative drafting consultants engaged directly by Government Ministries, it must also be used by the DJBC as a guide for:

- Legislative drafters employed by the DJBC;
- Officers of Ministries whose work involves review and reform of the laws which apply to the functions and responsibilities of their respective Ministry.

4.2 Requirement to follow Manual

All matters identified in this Manual are to be regarded by all legislative drafting consultants and drafters within the DJBC and other Government Ministries managing consultants as **mandatory legislative drafting requirements**.

Where any doubt arises as to the applicability or efficacy of any matter in any particular circumstance, the matter should be referred to the DJBC at the earliest opportunity. Where appropriate, the Secretary will issue advice and necessary directions or modifications to the relevant Government Ministry undertaking legislative reform.

4.3 Pre-legislative reform steps

This part of the Manual:

- Identifies those who are involved in a legislative drafting project; and
- Sets out clearly the individual roles of those involved in a legislative drafting project and how those roles are linked to ensure that the legislative drafting project is carried out professionally and in a timely manner.

Although this part elaborates on some pre-reform steps to take, a more comprehensive checklist is provided in Annex 3.

4.4 Preparation by the implementing Ministry and SOE

Prior to drafting any law, it is important for a Ministry or SOE to appoint an appropriate officer as the coordinator of the legislative drafting project. This officer should report on a regular basis to the relevant supervisor within the Ministry or SOE.

The appointed officer is also responsible for making contact with other relevant stakeholders especially the DJBC regarding the development of a project. Other work includes:

- Identifying all relevant reports and previous recommendations (and making copies of these available);
- Setting aside workspace for legislative drafting consultants which should preferably include internet access and standard office stationary and support;
- Identifying all stakeholders and giving them initial notification of the proposed work including its nature and scope and potential impacts;
- Notifying all relevant Secretaries of Government departments or Managers of SOEs in writing or at a meeting convened for this purpose, of the proposed work. Careful consideration must be given to the impact a project has upon such departments and SOEs and whether such impact is beneficial or negative;
- Provide proper drafting instructions to the DJBC using as an example the template included in Annex 1;
- Ensure that the approval of the SJBC is obtained for the TOR and contract for a private legislative drafting consultant;
- When drafting contracts, milestones must include required reporting outcomes, including the review of relevant laws, the report of consultation outcomes, and a final report highlighting key aspects of the draft law and its implications on Nauru. A template on such contract is available from the DJBC.

4.5 Liaison with the DJBC

The SJBC should be requested to nominate one or more officers as the representatives of the DJBC for the particular legislative reform. This should be done at the earliest opportunity.

The agency proposing the legislative reform must obtain from the DJBC confirmation that the legislative reform is necessary or within the scope of the reform (e.g. authority to prescribe regulations or whether a subsidiary legislation is meant to be a rule or regulation).

4.6 Funding of law reforms

Implementing Ministries and SOEs are encouraged to seek sources of sufficient funds for all legislative drafting projects. If external funding is available then this should be utilised in order that the DJBC may be relieved of its increasing legislative burden.

It is important to note that where a project is undertaken by the DJBC for Government departments, this service is provided free of charge.

However, where a project is undertaken by the DJBC for an SOE, the DJBC will charge the SOE for services rendered. The rates charged should be sourced from the DJBC and the rates are based on the Government lawyer's rank within the DJBC.

5 THE DRAFTING STAGE

5.1 Requirements for implementing Ministries and SOEs

5.1.1 *Close Liaison with the DJBC*

As referred to earlier in the Manual, it is important for all Government Ministries and SOEs when undertaking any legislative drafting project, to liaise closely with the DJBC on the development of draft legislation. The DJBC should be given a chance to review different drafts produced of legislation so that changes may be made to that draft before it is submitted to the DJBC for final vetting.

This is especially important for legislation that is drafted by a private legislative drafting consultant. The rationale is to ensure that a consultant is available to make the necessary changes pursuant to review and comments of the DJBC before legislation is finalised. This ensures that the DJBC does not spend extra time making changes (especially major changes) to legislation that was outsourced to a consultant to complete.

5.1.2 *Lawyer-Client Relationship*

The relationship between the DJBC (if it is drafting a project) and a consultant must be maintained on a professional basis but all consultants must be held accountable for the standard of their work. It is in their interest to contribute to the national interest of Nauru in every way as well as ensuring that the principal obligation of the implementing Agency is fulfilled.

5.1.3 *Broad and Representative Consultations*

Broad stakeholder consultation is an essential feature of nearly all successful law reform. It is the primary responsibility of the implementing Ministry and SOE to identify stakeholders and to facilitate their effective involvement in a legislative reform project.

As the DJBC plays an important monitoring role in the legislative process, the DJBC also plays a part in ensuring stakeholder consultation is representative. For instance, if upon receiving a consultation report, the DJBC may identify other Government stakeholders that should be consulted and refer the draft legislation to such stakeholders for comments.

For outsourced projects, it is important that stakeholder representation and the means by which consultations are carried out are discussed in detail with consultants and other project officers. In most cases the appointed officer of the relevant Ministry or SOE should play the key role in facilitating the consultation processes. Assistance of the DJBC may be sought but it is important that the Ministry or SOE take the lead in spearheading the consultations.

Evidence of consultations is important to the DJBC for its final vetting process. This allows the DJBC to determine whether a law was widely consulted and can therefore make an objective assessment and provide advice to Cabinet on whether to consider and approve draft legislation. Consultation reports must therefore be detailed and informative.

Consultation reports must show:

- Evidence of presentations conducted and by whom (Ministries and SOEs should take part in these presentations);
- Register of names and designation of people in attendance;
- Views made;
- Response to views made; and
- Other relevant information.

5.1.4 Reporting Problems to the SJBC

It is acceptable and often important that matters be brought to the attention of the SJBC particularly if:

- Any delay may prejudice the national interest by resulting in the loss of revenue or the causing of any other disadvantage to the Government of Nauru;
- Any important matter requiring approval or input from the DJBC has not been addressed in the necessary timeframe or manner;
- Any dispute has arisen within Government as a result of any proposed legislative reform, or there is any possibility of such a dispute arising;
- Any opposition to the legislative reform has arisen which may impact on the legislative process or cause embarrassment to the Government in any way.

5.1.5 Legislative drafting Consultant - Management

The responsibility to effectively manage legislative drafting consultants (and any other project officers) has been referred to in numerous sections of this Manual. This is a critical responsibility and involves regular (even daily) oversight.

Some essential aspects of this responsibility include ensuring that:

- The requirements of this Manual are known and followed;
- The relevant TOR is adhered to (or changed if necessary);
- Contact is maintained with the DJBC and that relevant matters are brought to the specific attention of the drafting officer of the DJBC;
- A list of all laws needed to be reviewed or affected by the proposed reform is provided at the earliest;
- Effective stakeholder consultation is undertaken and that its outcomes are recorded;
- Deadlines are adhered to;
- All required output is delivered in an acceptable form before any release is given from contractual obligations or any approval for payment is made.

In some situations there may also be a policy consultant and in this case the TOR for the legislative drafting consultant must reflect the role of the policy consultant.

For consultants engaged through international organisations, the DJBC must be given prior notice of the engagement. A TOR is required even though the consultant is engaged by the international organisation through a technical assistance agreement with Nauru.

6 REQUIREMENTS FOR DRAFTERS

6.1 Placing draft laws in the overall legislative context

For new laws to effectively meet the requirements of Nauru, care must be taken to ensure that each specific law reform does not contradict or unnecessarily duplicate existing laws. It is essential that time is taken to place each new law reform in its legislative context, namely all current laws of Nauru and all laws which have been proposed and which are under consideration by the Government. This can be best achieved by the preparation of a review of laws relevant to the matters under consideration in the manner and for the purposes stated below.

6.2 Review of relevant legislation

At the early stages of a law reform project prior to the commencement of drafting, it is a general requirement that a review of relevant Nauruan laws be prepared in the form of a report. This is to ensure that any proposed law fits correctly into the existing legislative framework, and also takes account of other recently proposed legislative initiatives.

All reviews of relevant laws should be divided into appropriate classifications of relevant laws. For each law that is determined to be of relevance, the following matters should be noted in the Review:

- The correct title of the law;
- The year the law was passed;
- The commencement date of the law;
- The number of amendments made to the law and the years these were made;
- The laws repealed at the time the law came into effect;
- The Government Ministry principally responsible for the administration of the law (unless there is no clearly defined responsibility in relation to a particular law);
- The main objective of the law;
- The relevance of the law to the review;
- If model law or precedent law of another jurisdiction is used, it is important to identify and explain the relevance of the law to Nauru;
- The substance of the relevant sections.

6.3 Laws to be necessary and relevant

A review of relevant laws should be able to determine that a proposed law is both necessary for Nauru's purposes and relevant to the needs and interests of its Government and people as well as being practical and enforceable in Nauru.

6.4 Laws to be harmonised

The review of relevant laws should facilitate the overall harmonisation of laws. Thus, if it is identified that a relevant law which is currently in force has been drafted in a style or form appropriate for a proposed law, or contains specific provisions similar to those proposed under the new law reform, similar styles or provisions should be applied to the new law.

For example, if a new law proposes to establish a statutory corporation or entity then this should be done in substantially the same manner as is provided for in any current law which creates a similar body.

If a new law involves the creation of a regulatory regime and the exercise of regulatory powers, then these should reflect current arrangements applying to similar regulatory bodies.

If it is proposed to vest powers of enforcement in a new law, then these should be framed to be consistent with existing legal powers of a similar nature. These matters must be kept in mind to achieve an appropriate degree of harmonisation of Nauru's laws.

6.5 Care when basing drafts on laws from other jurisdictions

The option of simply taking laws from other jurisdictions and making minor changes to give the appearance that they are applicable to Nauru will often prove to not be the easy option. Many attempts have been done to do this in the past. Sometimes even the references to the jurisdiction of their origin have not been modified.

The SJBC will reject the draft and refuse endorsement if it does not conform strictly to the requirements of this Manual or does not serve the national interest of Nauru.

It is a requirement that if laws are drafted from laws applying in other jurisdictions, the DJBC must be notified. There should be no automatic assumption that because the drafter believes the processes, concepts and actual provisions to have been successful in foreign jurisdictions that they will find acceptance in Nauru. In such cases every feature of these laws must be fully justified and agreed to by the key Nauruan stakeholders and for this to be clearly identified and explained in the review of laws.

6.6 Care when using “model” laws

When “model laws” are to form the basis of a law for Nauru, care must be taken to ensure that:

- each provision is properly applicable to Nauru; and
- every aspect of the drafting fully complies with the requirements identified in this Manual.

A person tasked with drafting a law for Nauru based on “model law” must ensure that the format and substance are consistent with the requirements stated in this Manual. Any draft that does not comply is not likely to achieve speedy enactment in Nauru. The DJBC can return and refuse to endorse any draft that fails to meet these requirements.

6.7 Domesticating treaties and conventions

Treaties and conventions can be domesticated by:

- direct application of the treaty or convention as law of Nauru;
- indirect application through an implementing legislation, or
- a combination of the direct and indirect method.

The decision as to which option to be adopted depends on the subject matter of the treaty and the convention. Treaties often only cover rights and duties of the parties to the treaty (i.e. state obligations only). In that case, implementing legislation is not necessarily required. Generally, only treaties and conventions that cover rights and duties of persons within a State will require an implementing legislation.

It is important to take into account the substance of the treaty or convention.

If direct application is used, ensure that the language, structure and definitions in the treaty or the convention can be implemented and applied in Nauru. If indirect application is used, ensure that the provisions of the treaty or convention are accurately provided in the implementing legislation. Although the indirect application is used, it is prudent for the drafter to make reference to the treaty or convention in the implementing legislation.

If there is a problem with directly adopting the language, structure and definitions in the treaty, the combination method should be adopted. Care must be taken to ensure that the implementing provisions do not contradict the provisions of the treaty or convention.

For any subsequent amendments to a treaty or convention that has been domesticated in Nauru, the amendments should not automatically become the law of Nauru. They should be adopted by regulations or other subsidiary legislation made under the Act so that they are analysed first before they are domesticated.

This may only be departed from in special circumstances.



Important!

Drafters must take extra care when using “model” laws.

PART 2

TECHNICAL DRAFTING REQUIREMENTS

7 FORMAL REQUIREMENTS FOR BILLS

7.1 Language

All Bills are to be drafted in English, the official language of Nauru.

7.2 Form of Bills

A Bill must comply with the following requirements relating to form:

- The Bill must be given a short title corresponding with the title by which it is to be cited if it becomes law, and that short title shall remain unchanged throughout the passage of the Bill;
- The Bill must be given a long title setting out the purposes of the Bill in general terms;
- The clauses of the Bill must be preceded by the enacting words;
- The Bill must be divided into clauses numbered consecutively and having a descriptive section heading above each clause;
- An explanatory memorandum stating the contents and objectives of the Bill in non-technical language must be attached to the Bill.

7.3 One Bill, One Subject

A Bill should deal with one general subject only. Subjects that have no proper relation to each other should not be included in one Bill. However:

- a Bill may contain consequential amendments to other enactments; and
- related amendments may be combined in one Bill if there is a unifying theme.

7.3 Preliminary Requirements

7.3.1 *The Title*

A Bill must be given a title or short title as it is referred to, that is appropriate not only for the subject matter, but for the purposes of its identification by users of the law both within Nauru and outside. This ensures that the laws of Nauru are easily identifiable and accessible. This short title is intended to serve as a label.

7.3.2 *The Table of Contents*

There should be at the beginning of each draft Bill, a table of contents listing out each clause heading. This should appear immediately after the certification clause of the Bill. It is important to ensure that each clause in a Bill corresponds to the section title or subtitle that appears in the table of contents page.

7.3.3 *The Long Title*

Each Bill must contain a long title inserted at the appropriate place. The long title of a Bill must reflect the nature and purpose of the proposed law. The long title must be wide enough to embrace the whole of the contents of the Bill and should be drafted to be specific enough to put the reader on notice as to the purpose or subject of the proposed law.

It is important to note that in the absence of a purpose clause within a Bill, the long title shall serve as the purpose clause and its importance cannot be emphasised enough. Traditionally, Bills in Nauru are framed as, “A Bill for an Act...” Once the Bill has received certification, it is framed, “An Act to...” See below for examples.

Examples:

Bill Stage

A Bill for an Act to regulate the operation of centres at which asylum seekers and certain other persons brought to Nauru under the Migration Act 1958 of the Commonwealth of Australia are required to reside; to establish certain protections for those persons and set out their obligations; to impose duties on the person managing operations at a centre and confer powers on certain persons in relation to a centre or persons residing there; to appoint the Minister as guardian of certain children and for related purposes.

Commencement Stage

An Act to regulate the operation of centres at which asylum seekers and certain other persons brought to Nauru under the Migration Act 1958 of the Commonwealth of Australia are required to reside; to establish certain protections for those persons and set out their obligations; to impose duties on the person managing operations at a centre and confer powers on certain persons in relation to a centre or persons residing there; to appoint the Minister as guardian of certain children and for related purposes.

7.3.4 *Enacting formula*

The enacting formula or the enacting words is the way of announcing the authority under which the law is enacted. They must be included in their appropriate place and for legislation shall be in the following form:

“Enacted by the Parliament of Nauru as follows”

7.3.5 *Preamble*

Preambles are rarely used in legislation and subsidiary legislation in Nauru. A preamble is appropriate only when an explanation of certain things is necessary to establish a context in which to understand the legislation. It should be reserved only for exceptional cases and drafters are discouraged from using them.

7.3.6 *Commencement provision*

Article 47 of the Constitution of Nauru provides, ‘A proposed law becomes law on the date

when the Speaker certifies that it has been passed by Parliament'. This is the commencement date for legislation but it is not uncommon for Parliament to enact laws whose provisions may commence on a later date than the certification date.

7.3.7 *Interpretation provisions*

Interpretation provisions or definitions exist in legislation to make them easier to read and understand and for the purposes of enhancing clarity.

The interpretation provisions often appear after the commencement provisions and will usually begin with the words, *'In this Act, unless the context otherwise requires...'*

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Important!

If in doubt regarding the formal requirements of a Bill, contact the DJBC.

8 REQUIREMENTS FOR SUBSIDIARY LEGISLATION

Subsidiary legislation are common in Nauru in the form of regulations, rules, orders and notices. The power to make these is usually given to the Minister who administers the Act or to Cabinet. Most subsidiary legislation though are required to pass through Cabinet for approval. It is important that any subsidiary legislation drafted is consistent with the primary legislation they are made under as well as complying with any other law of Nauru. Subsidiary legislation most often commence when they are gazetted. There are some exceptions to this commencement date. The *Interpretation Act 2011* makes further provision for subsidiary legislation and drafters must be aware of these.

8.1 Preliminary Requirements

8.1.1 *The Long Title*

When giving a subsidiary legislation a title, it is important for the drafter to give a title that reflects the parent legislation under which the subsidiary legislation is being made. For example, any subsidiary legislation made under the *Motor Traffic Act 2014* must reflect this in the title. Titles should also be specific if they are dealing with a specific part of the Act. Two examples are given below:

- *Motor Traffic Regulations 2014* (general)
- *Motor Traffic (Breath Analysis Machine) Notice 2015* (specific)

8.1.2 *The Table of Contents*

As with primary legislation, this shall appear at the beginning of every subsidiary legislation and care should be taken to ensure that the headings within the subsidiary legislation corresponds with the table of contents.

8.1.3 *Enacting words*

The enacting words for all SL's in Nauru are:

'Cabinet makes the following ... under section ... of the ... Act'

This will differ when it comes to notices and orders but the important point is to ensure that the authority empowered to make the subsidiary legislation and the empowering section is clearly stated at the very beginning.

9 OBSERVANCE OF FUNDAMENTAL RIGHTS

All laws must be consistent with the requirements of the Constitution. Copies of the Constitution are available through the official Nauru Government website at www.ronlaw.gov.nr or the PacLii website at www.paclii.org

The guaranteed basic rights and freedoms in Part II (Protection of Fundamental Rights and Freedoms) of the Constitution relate to the following matters:

- right to life (Article 3);
- right to liberty, security of the person, the enjoyment of property and the protection of the law (Article 3);
- freedom of conscience, freedom of expression, freedom of peaceful assembly and association, respect for private and family life (Article 3);
- freedom from forced labour (Article 6).

The Constitution provides for restrictions to some of the rights and freedoms and this must be taken into account when drafting a law to advance or restrict a certain right or freedom.

10 PLAIN LANGUAGE

10.1 Description of plain language

Laws are often highly complex and technical documents that are intended to apply and be understood by both lawyers and non-lawyers. The goal of plain language drafting is to make the final product simple and clear while still maintaining the substance of the law.

Some techniques of plain language writing include the use of words and expressions familiar to everyone, short sentences rather than complex syntax and a clear and meaningful organisation of the legislative provisions. It is essential that only plain language be used for the drafting of all laws.

10.2 Write easily understandable text

Although the text of laws may be quite technical in nature, it cannot be emphasised enough the need to make that text understandable. It may be helpful to employ the following technique:

- Organisation of clauses into logical and simple provisions.
- Present one topic per clause and one subtopic per sub-clause.
- If possible, try to limit one clause to a maximum of 6 sub-clauses.
- Short sentences with a simple structure are easier to understand.
- Avoid double or triple negatives.
- Avoid jargon and unfamiliar words.
- Use short words and short sentences whenever possible.
- Use the active rather than the passive voice.
- Use the positive rather than the negative.
- Avoid nominalisation by using a base verb to show the action.

10.3 Sentence Length

Readers may find it difficult to follow long sentences that contain a lot of information. It is recommended that the maximum length of a sentence that is not divided into paragraphs should usually be about 50 words or 5 lines of unbroken text. A sentence of more than 5 lines of unbroken text should be a warning bell to the drafter to consider using 2 or shorter sentences in order to make the text more readable.

10.4 Minimise cross references

Cross references often have the effect of interrupting sentence flow and a reader's chain of thought. It may also force readers to constantly check the references before proceeding with the text. Only use cross references if the absence of it creates an ambiguity. If a drafter is able to draft a clause and avoid the use of a cross reference, then they should do so. This is especially useful if the drafter knows that the particular clause only deals with a particular subject.

10.5 Avoid sub-subparagraphs

Any sentence that requires the use of sub-subparagraphs is definitely too complex and should be avoided. An example of this is below:

1 Heading

- (1) First provision
- (2) Second provision
 - (a) an element for the second provision;
 - (b) another element relating to the second provision; and
 - (c) yet another element on the second provision:
 - (i) sub element of third element of second provision; and
 - (ii) second sub-element of third element of second provision:
 - (A) first element within second sub-element of third element of second provision; and
 - (B) second element within second sub-element of third element of second provision.

The above example is from the outset too complicated and drafters should consider converting the subsection into a section.

10.6 Avoidance of certain terminology

10.6.1 Use of “shall” and “may”

“Shall” and “may” were words used extensively in the past to impose an obligation or a prohibition, but it has become practice today for drafters to replace them with more appropriate words.

Although “must” is often regarded as the plain language equivalent of “shall”, “must” may not be appropriate in every situation in which “shall” was formerly used. To find an appropriate alternative for “shall”, the drafter should first consider the purpose of the provision, in some cases to consider whether it is to create an offence or a statutory duty or to make a declaratory statement, as some examples.

The word “may” can be used to indicate that a discretion is vested in relation to the exercise of a power or function.

When amending legislation or subsidiary legislation, do not use the word “shall” even if the legislation uses “shall”.

If there is a difficulty in determining the correct word to use, it is up to the drafter to exercise judgment and individual preference and choose the word, expression or approach that best achieves the intended legal effect.

10.6.2 Avoid nominalisations – making verbs into nouns

A nominalisation is a noun derived from a verb. In formal writing, strong verbs are often replaced by a nominalisation plus a weak verb and the result is often more wordy and less direct. A drafter should remove nominalisations to make the provisions less wordy, shorter and crisper. See the table below for examples that should be avoided and alternative words that could be used.

Avoid (Nominalisation plus weak verb)	Use (Strong verb)
To make application	To apply
To ensure compliance	To comply
To effect/make delivery	To deliver
To conduct a hearing	To hear
To give consideration to	To consider
To undertake consultation	To consult
To conduct an investigation	To investigate

10.6.3 Other words and expressions which should be avoided

The table below provides in the second column some alternatives for the words and expressions in the let column.

Avoid	Use
aforesaid	under
construed to mean	means
during such time as, during the time that	while
during the course of	during
each and all	each, or all
each and every	each, or every
foregoing	under
forthwith	immediately
for the duration of	during
Hereby, thereby, therefrom therewith, thereafter	Then
herein	In this
in the case of	for or when
in the course of	during
in the event that	if

is binding upon	binds
means and includes	means or includes
notwithstanding	Despite/as an exception
Notwithstanding the fact that	Although/even if
On own motion	On own initiative
Preceding provision	section
Such	“or”, “a”, “the”
Shall be deemed	Is taken/ is treated/ is regarded
Shall mean	means
“Shall be” paid	“must be” or “is to be” paid
“shall be” sufficient	“is” sufficient
“shall be” liable	“is” liable
“shall be” guilty of an offence	“is guilty” of an offence
“shall be” entitled	“is” entitled
Shall have the powers	“may have” or “has” the powers
That is to say	Namely
Thereunder	Under
thereof	Of
thereon	on
therein	in
Where (<i>condition</i>)	if

10.6.4 Avoid explanatory provisions in the text of laws

Explanatory provisions should not be used within the law itself. This is why it is important to have an explanatory memorandum to accompany the law. One such example of an explanatory provision is the use of the phrase, “for the avoidance of doubt”. This should be avoided at all times. Good and concise drafting ensures that there is no room for doubt.

Important!

Use plain and gender neutral language.

11 USE OF GENDER NEUTRAL TERMS

History has shown us that legislation tended to be drafted using words referring to the masculine gender alone. With the advent of gender equality movements and the need for socially inclusive language it is more appropriate today to write using gender neutral terms. This does not mean though that gender cannot be specified in the law if there is a need for its specification. Gender neutral terms should be used as follows:

- “he” changed to “he or she” or “person”
- “him” changed to “him or her” or “person”
- “his” changed “his or her” or “person’s”
- References to offices may be repeated
*e.g. the **President** may if the **President** thinks fit*
- References to individuals may be repeated
*e.g. the **applicant** may if the **applicant** thinks fit*
- Words are simply deleted
*e.g. a member may resign from *his* office*

Any of these styles are acceptable and the proper choice must be made for the particular provision. Above all, the drafting style should avoid reference to gender whenever possible.

12 INDEMNITY PROVISIONS

In many cases an indemnity is given to enforcement agencies and their officers, and in some cases the indemnity is given for the protection of Government generally from liability. This must be considered and inserted in all appropriate cases.

Example:

*A police officer or an authorised officer is not liable in any civil or criminal proceedings for anything done in the exercise or the purported exercise of a power under this Part if the thing was done in good faith on reasonable grounds. [s 25, **Asylum Seekers (Regional Processing Centre) Act 2012**]*

13 REVERSING THE BURDEN OF PROOF

Provisions applying reverse burdens will generally not be acceptable but approval for provisions of this nature should be sought from the DJBC in appropriate cases.

This may be applied to instances where activities are limited to licensed persons. The burden to provide the right to undertake the activity may be placed on the person, rather than imposing a burden on the prosecution to provide that no such right existed.

14 EXPLANATORY MEMORANDUM

When a law is drafted and submitted to Cabinet and ultimately to Parliament, there is a requirement that it must be accompanied by an explanatory memorandum setting out the contents and objects of every Bill that must be written in non-technical language. This shall apply to principal legislation, amending legislation, repealing legislation and regulations and rules. The purpose of this memorandum is to assist members of parliament and the public to understand the law, especially if it is a technical area of law. It should state in clear and understandable language what the Bill does and why.

The explanatory memorandum must be accurate and must not take the law further than the legislation does. Explanatory memorandums are important also when it comes to the interpretation of the law in court. Although not law itself, it is often relied on to assist the court in ascertaining the purpose of the law.

14.1 Drafting Guidelines for Explanatory Memorandum

In drafting an explanatory memorandum for a law in Nauru it is important that:

- plain language is used and that the writing is in clear and simple language;
- the objective of the law is stated clearly and ambiguity is avoided to ensure that this objective is translated for the appropriate person;
- refer to ‘clauses’ of the Bill rather than ‘sections’;
- Avoid overusing “provides”. Use more specific words such as “increases”, “establishes”, “creates”, “requires” etc;
- Avoid technical or legal terms;
- Avoid simply repeating the provision of the law, instead try to paraphrase the provision;
- A group of provisions with a common objective may be described together rather than giving a description of each provision individually;
- If repealing a provision, it is important to state the substance of that provision especially if it is significant to the operation of the law;
- When amending provisions, it is useful to state how the law will change and operate rather than how it will read after amendment.

15 SPELLING AND TERMINOLOGY

It is important when drafting laws that the spelling and use of certain terminology is consistent throughout the legislation and other laws in force in Nauru. The drafting style in Nauru has also begun moving away from the use of archaic language to using more modern language.

15.1 Spelling

15.1.1 *British Spelling*

When conflicted between the use of American and British spelling, drafters are to regard the British spelling of any word as the preferred spelling in Nauru.

15.1.2 Standardised spelling

The words “subsection”, “subclause”, “subregulation”, “subparagraph” and “subdivision” are spelt without a hyphen. The “ise” spelling (as opposed to the “ize” spelling) is used in legislation.

15.1.3 Capitalising words

A capital letter is used at the beginning of titles, such as “Commissioner of Police” and “Auditor General”. However, for generic terms such as “authorised persons” and “assistant commissioners”, capitals are not used.

The words “Bill”, “Chapter”, “Part”, and “Schedule” should always begin with a capital letter. Except when referring to a specific instrument, the words “notice”, “rule”, “order”, “regulation” etc should be in lower case. Capitals are always used in acronyms (e.g. NPRT) and initials (e.g. UNICEF) can be used if these are defined terms.

15.2 Use of Synonyms

In order to avoid interpretation issues it is recommended that different words or expressions should not be used to denote the same thing.

15.3 “If”...”then”...constructions

Although it is grammatically correct to use:

A person commits an offence if:

- (a) ...;
- (b) ...; or
- (c) ...,

and is liable upon conviction to a fine of \$50.

It is preferred in drafting to put the main clause first as in the following example:

A person commits an offence and is liable upon conviction to a fine of \$50 if the person:

- (a) ...;
- (b) ...; or
- (c) ...

15.4 E-Terminology

The standard spelling that should be used for e-terminology is:

- the Internet (as a proper noun) as used to refer to the global network of interconnected computers that is popularly known as the “Internet”. It is no longer necessary to preface this with “commonly known as”.
- “online”- the spelling “online” instead of “on-line”;
- “email” – the spelling “email” instead of “e-mail” is used. It may also be appropriate to use the expression “electronic mail”;
- “intranet” – the spelling “intranet” (not capitalised);
- “website” – the standard spelling “website” is used as opposed to “web-site”.

15.5 References to the Government of Nauru

It is appropriate in legislation when referring to the Government of Nauru to use the phrase “the Republic”.

16 REFERENCES TO ENACTMENTS AND PROVISIONS

16.1 References to parts of a section

Parts of a section are referred to as follows:

- (a) section 5(1) and not subsection 5(1);
- (b) section 5(1)(a) and not paragraph 5(1)(a);
- (c) section 5(1)(a)(i) and not subparagraph 5(1)(a)(i).

16.2 References to parts of a subsection

Parts of a subsection are referred to as follows:

- (a) subsection (1)(a) and not paragraph (1)(a);
- (b) subsection (1)(a)(i) and not subparagraph (1)(a)(i).

16.3 References to specific provisions

Generally, a provision should be referred to simply by its number. This would of course depend on the context. For example, to refer back to a previously cited provision, it may be appropriate to use “that section”, “that subsection”, “the section”, “the subsection” etc.

Do not use “the preceding section” or “the section next following” or similar expressions.

The following can be used to refer to other provisions depending on the situation:

- (a) Use “this section” to refer in a section to the same section; similarly use “this subsection” to refer to the same subsection;
- (b) Use “this Part”, “this Division” or “this Subdivision” to refer in a Part to the same Part, Division or Subdivision;
- (c) To refer to another section (e.g. “section 1”) say “section 1”; to refer to a subsection say “section 5(1)”;
- (d) To refer in one subsection to another subsection of the same section, say “subsection (3)”, “subsection (3)(b)” and so on.

17 AMENDING ENACTMENTS

17.1 Amendments must be made directly

All amendments must be made directly and textually rather than indirectly or non-textually. This means that an amending enactment must alter the text of the principal law by expressly adding, repealing or substituting words or provisions.

17.2 Language of new text

The general rule to be followed in drafting is that the language of an amending enactment must be consistent in style and language to the principal law. In some circumstances though, this might not be so practicable if the principal law does not comply with current drafting practices. Some examples include the use of “shall” as opposed to “must”, the use of gender inclusive or gender neutral language, the use of archaic language and the non-use of standardised language. The general rule is that the drafter should adhere to the drafting guidelines in this manual that promotes the use of simple, clear, gender neutral and standardised language.

17.3 No re-numbering of existing provisions

Existing provisions should not be renumbered when adding new sections or other whole provisions (including Schedules) to an enactment. The same applies when repealing sections or provisions. One exception to this rule is that an existing section without subsections may be renumbered as a subsection if new subsections are being added to the section.

17.4 Reusing numbers of repealed or omitted provisions

A number of a repealed provision, or a provision that has been omitted as spent, can be used for a new provision in a subsequent exercise. This applies to a section, a part of a section and also to Parts, Divisions, Subdivisions and Schedules. However, this is a matter for the drafter to decide.

17.5 Arrangement of clauses – amending Bills

The clauses of an amending Bill are usually arranged in the following order:

- Long title
- Enacting words
- Short title
- Commencement
- Amending provisions
- Savings and transitional provisions, if any
- Consequential amendments, if any
- Schedules, if any

As with a primary Bill, an amending Bill must be accompanied by an explanatory memorandum and the same rules apply to how the memorandum should be written. The same applies to

amending provisions for subsidiary legislation (below).

17.6 Arrangement of amending provisions – subsidiary legislation

- Title
- Empowering section/enacting words
- Commencement provision
- Amending provisions
- Savings and transitional provisions, if any
- Consequential amendments, if any
- Schedules, if any
- Date of signing
- Name, title and signature of the enacting authority or person signing on behalf of the enacting authority

17.7 Amendments to be in consecutive order

The sections of an amendment are to be in consecutive order with one clause for each section amended in the order in which they appear in the primary legislation. In certain limited cases, one clause may be used to amend two or more sections in the same way.

A clause that amends different words in different parts of a section should be organised so that words are amended in the order in which they appear in the section. This makes the Bill easier for the reader to understand.

17.8 Amendments to be noted in long title

The long title of a law that is intended to amend another law should be wide enough to encompass the amendments. An example of this is:

“An Act to amend the *Audit Act* 1973”

17.9 One subclause, one amendment

If two or more amendments are made to the same section, the amending clause should be divided into subclauses, with one subclause for each individual amendment. However, consecutive repeals within the same section can be effected by the same clause or subclause.

17.10 Substantive amendments to be in main body

Previous drafting practice in Nauru was to use Schedules for amendments but this practice is being slowly phased out with the requirement that amendments be included in the main body. A Schedule may be used only for technical amendments to a large number of provisions to substitute a new term for an existing term and for terminological amendments to replace a title consequent on the change of title or transfer of functions, of a public officer.

17.11 Multiple consequential amendments

It is permissible to make a range of consequential amendments to more than one law in the text of a new Act. It is not necessary in such cases to prepare individual amending laws for each of the laws that are to be subject to consequential amendments.

The relevant section will usually be given the title of “Consequential amendments to other laws”, or alternatively a separate section can be inserted to amend each separate law.

If the drafter is of the view that it would be more appropriate to include consequential amendments to other laws in a Schedule then this should be done.

17.12 Savings and Transitional Provisions

When a new law is proposed to replace an existing law which makes provision for a regulatory system or regime, careful consideration must be given to the need for savings provisions, and provisions which make arrangements for the transition from one law or legal regime to a new one.

The exact nature of the former system, and its component elements and procedures, needs to be determined and appropriate provision must be made for previous regulatory acts or processes to be saved, where appropriate.

In some cases it is preferable to deem existing regulations to be made under the proposed new law. Other provisions may enable a phased implementation of the new processes in the place of the previous arrangements.

18 FORMAT, FONT AND OTHER STYLE REQUIREMENTS

Only appropriate formatting and style requirements to be used

Font type	Arial
Font size	hg.....18 No of instrument.....12 Enacting words.....11 Contents.....14 Headings in Contents.....9 Text in body of instrument.....11
Paper size	A4
Margins	Comply with the template provided by the DJBC
Indents	Comply with the template provided by the DJBC
Bold	<ul style="list-style-type: none"> - Clause headings in body of instrument - Part Headings in body of instrument
Clause headings	To be numbered 1, 2, 3, etc
Subclauses (or subsections)	To be numbered in brackets – (1), (2), (3) etc
Paragraphs	Letters (a) – (c) used in an alphabetical order
Subparagraphs	Roman numerals (i), (ii), (iii), (iv) are used

ANNEX 1
DRAFTING INSTRUCTIONS TEMPLATE



REPUBLIC OF NAURU

DEPARTMENT OF JUSTICE AND BORDER CONTROL

DRAFTING INSTRUCTIONS

Proposed short title of Bill (if known):

	Item number and possibly brief title	Use item numbers for amending Bills that implement a number of items.
1	Authority	Give details of the policy authority (including whether there are matters for which policy authority has not yet been given).
2	Legislative priority	State the priority allocated by Cabinet, or the priority for which the Minister will bid.
3	Timetable	Indicate what the timetable for the Bill is, including whether there are any matters that may affect the timetable for the Bill (for example, are consultations on the draft required, is the Bill to be prepared as an exposure draft?)
4	Background	A few short summary paragraphs.
5	Instructions	In ordinary language outline the legislative proposal.
6	Related proposals	For example, let the drafter know if the provision is part of a package of similar amendments.

	Item number and possibly brief title	Use item numbers for amending Bills that implement a number of items.
7	Affected provisions and consequential amendments	Identify the provisions that will need to be amended, including consequential amendments.
8	Application, savings and transitional provisions	Will any be needed?
9	Legal opinions	Are there any opinions from any Government or other lawyers that are relevant to the proposal?
10	Administrative or judicial review	The Department's view on whether review is needed. Mention consultations (if any) with the Department of Justice and Border Control.
11	Issues relating to legislative instruments	Mention any possible issues relating to legislative instruments, and any consultations with the Department of Justice and Border Control on the issues.
12	Consultations with other Departments	Have any consultations with other Departments been conducted? Are any further consultations required?
13	Commencement	Give instructions on the commencement provision.
14	Instructors	Name, phone and fax numbers and email address, for each. Also advise of any planned absences.
15	Other matters	Number the paragraphs and pages. Date the instructions. Mention if the instructions are incomplete, or are subject to possible change.

ANNEX 2

LIST OF GOVERNMENT DEPARTMENTS AND SOEs

- Department of Commerce, Industry and Environment
- Department of Education
- Department of Finance and Sustainable Development
- Department of Foreign Affairs and Trade
- Department of Health and Medical Services
- Department of Home Affairs
- Department of Justice and Border Control
- Office of the Chief Secretary (Public Service)
- Department of Telecommunications and Media
- Department of Transport
- Department of Sport
- Department of National Emergency Services
- Department of Land Management
- State Owned Enterprises (SOEs)
 - Eigigu Holdings Corporation
 - Nauru Utilities Corporation
 - Nauru Air Corporation
 - Nauru Rehabilitation Corporation
 - Ronphos Corporation

ANNEX 3

CHECKLIST FOR PRE-REFORM STEPS

• Step	Activity	Tick
1	Confirmation of funding for the law reform project	
2	Appointment of Agency officer to be project coordinator	
3	Notification of appointment to DJBC	
4	Meeting with the DJBC to confirm: <ul style="list-style-type: none"> - Need for legislative reform - Need for consultant drafter - Reporting and other procedural requirements 	
5	Identification of all relevant policies, reports, previous recommendations for legislative reform	
6	Advice to all relevant stakeholders of proposed reform	
7	Notification to and liaison with all senior officers of Agency	
8	Preparation of relevant TOR for consultant drafter	
9	Confirmation of TOR by DJBC	
10	Assessment of selection criteria for consultant drafter	
11	Confirmation of criteria by DJBC	
12	Confirmation of appropriate contractual requirements by DJBC including: <ul style="list-style-type: none"> - Practical timeframe - Obligation to comply with the Manual requirements (Payment to be subject to compliance) - Preparation of Review of Relevant Laws - Obligations to liaise with and report to DJBC - Obligations to undertake stakeholder consultations - Reporting obligations (including report of consultations and consultation outcomes, general reporting on drafting process) - Preparation of Explanatory Memorandum (if for a Bill) 	
13	Provision of workspace and support to consultant drafter (to be in accordance with any obligation under development assistance agreement)	

ANNEX 4
SAMPLE AMENDMENT/REPEALING BILL



REPUBLIC OF NAURU

SAMPLE (AMENDMENT) BILL 2015

No. 2 of 2015

A Bill for an Act to amend the *Sample Act 2015*

Certified: []

Enacted by the Parliament of Nauru as follows:

1 Short title

This Act may be cited as the *Sample (Amendment) Act 2015*.

2 Commencement

This Act commences upon certification by the Speaker.

3 Interpretation

In this Act, unless the context otherwise requires:

‘**the Act**’ means the *Sample Act 2015*.

4 Amendment of section 3

Omit

‘a definition’

Substitute

‘a different definition’

5 Amendment of section 6

Omit

The word ‘insert the word’ wherever it appears in this section

Substitute

The word ‘insert new word’

6 Amendment of section 10

Omit

‘Current section 10’

Substitute

‘This provision will replace the omitted section 10 by:

- (a) introducing a new concept;
- (b) amending the current offence, if any;
- (c) introducing a new offence; or
- (d) introducing a new penalty.’

7 Repeal of Part 3 of the Act

Part 3 of the *Sample Act* 2015 is repealed.

8 Savings and transitional provision

- (1) All licences and permits issued under the provisions of the repealed Part shall be deemed to have been made or issued under the corresponding provisions of the Act and shall remain in force and have effect until such time as they are revoked, renewed, extended or amended under the Act or any other Act.
- (2) Any orders and notices made under the provisions of the repealed Part in respect of which there are no corresponding provisions in the Act, shall remain in force and have effect until such time as they have been revoked or amended under the provisions of the Act or any other Act.
- (3) Any appointment or delegation made under the repealed Part before the commencement of this Act continues until the appointment or delegation is revoked under the Act.
- (4) Any proceedings instituted or action begun under the repealed Part before the commencement of this Act and which has not been determined before the commencement of this Act continues until determined under the repealed Part.

- (5) Any contract, covenant or agreement entered into under the repealed Part before the commencement of this Act shall remain in force until such time as they are rescinded or they expire.
- (6) Any assets or property transferred under the provisions of the repealed Part, including all liabilities and obligations, shall be deemed to have been transferred lawfully until they are disposed of.

9 Insert new Schedule

Description of Item	Fee \$AUD
Item 1	\$10
Item 2	\$20
Item 3	\$30
Item 4	\$40
Item 5	\$50

ANNEX 5
CERTIFICATE OF ENDORSEMENT

ANNEX 5 – CERTIFICATE OF ENDORSEMENT



REPUBLIC OF NAURU
Department of Justice & Border Control

CERTIFICATE OF ENDORSEMENT

[DATE]

[MINISTER RESPONSIBLE FOR BILL]

1. I have considered the above-mentioned Bill that was drafted and reviewed by my Office/ drafted by a consultant and reviewed by my Office.
2. I am satisfied that the Bill:
 - a. is appropriate as to form and content; and
 - b. makes proper provision for the matters intended to be covered by it.
3. Accordingly I recommend that the attached Bill now proceed to Cabinet for consideration.

.....
Secretary
Department of Justice and Border Control
Yaren District
Republic of Nauru

