



REPUBLIC OF NAURU

**Constitution of Nauru (Special Powers
Amendments) Bill 2013**

Serial No. 11 of 2013

Table of Provisions

1	Short title.....	1
2	Commencement	1
3	Alteration of Constitution of Nauru	1
SCHEDULE — ALTERATION OF CONSTITUTION OF NAURU.....		2
[1]	Repeal and substitution of Part IX	2
	PART IX – EMERGENCY POWERS.....	2
	77 Declaration of an emergency	2
	78 Emergency powers	3
	79 Restriction on detention	5
[2]	Repeal and substitution of Article 80	6
	80 Prerogative of Mercy.....	6
[3]	Common amendments 2013—amendment of Article 85 (Existing laws); repeal and substitution of Articles 87 to 92; repeal of Articles 94 to 100 and Sixth Schedule.....	7
	92A Effect of alterations, interpretation of Constitution etc.....	8

REPUBLIC OF NAURU

**Constitution of Nauru (Special Powers
Amendments) Bill 2013**

Serial No. 11 of 2013

A Bill for:

An Act to alter The Constitution of Nauru in relation to emergency powers and the prerogative of mercy and for other purposes

Certified on []

Enacted by the Parliament of Nauru as follows:

1 Short title

This Act may be cited as the *Constitution of Nauru (Special Powers Amendments) Act 2013*.

2 Commencement

This Act commences on the day of the general election next following its certification.

3 Alteration of Constitution of Nauru

The Schedule alters The Constitution of Nauru.

SCHEDULE — ALTERATION OF CONSTITUTION OF NAURU

[1] Repeal and substitution of Part IX

Part IX

repeal, substitute

PART IX – EMERGENCY POWERS

77 Declaration of an emergency

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

(2) A declaration of emergency lapses:

(a) if the declaration is made when Parliament is in session, at the expiration of 7 days after the date of publication of the declaration; or

(b) if the declaration is made when Parliament is not in session, at the expiration of 14 days after the date of publication of the declaration,

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

(2A) Subject to clause (2B), Parliament may approve a declaration of a state of emergency for no more than 3 months at a time by a resolution approved by a majority of the members of Parliament present and voting.

(2B) Subject to clause (2C), any successive continuation of a declaration of a state of emergency and any declaration of a state of emergency made within 21 days of the expiration of a declaration of a state of emergency must be by further resolution approved by a vote of no fewer than two thirds of the members of the Parliament present and voting.

- (2C) If, following the making of a declaration of a state of emergency or within 21 days of the expiration of a declaration of a state of emergency, Parliament is by reason of the nature or extent of the emergency unable to meet, the President may make a further declaration of a state of emergency under clause (1).
- (3) The President may at any time revoke a declaration of emergency by public proclamation.
- (6) If a declaration of a state of emergency is made and Parliament is not in session, Parliament must be convened by the Speaker immediately in special session and remain in session during the entire period of the state of emergency; provided that Parliament may not remain in session beyond the end of the normal term of Parliament.
- (7) If a declaration of a state of emergency is made when Parliament has been dissolved, or when Parliament is dissolved during an emergency, the members of the dissolved Parliament must be called by the Speaker to a special session and remain in session until the conclusion of the state of emergency or the election of a new Parliament, whichever occurs sooner.
- (8) Parliament may at any time revoke a declaration of a state of emergency or amend or revoke orders made under Article 78 by resolution of a majority of members present and voting and the President must act accordingly and immediately carry out the resolutions of Parliament.

78 Emergency powers

- (1) During the period during which a declaration of emergency is in force, the President may make emergency orders that appear to the President to be reasonably required for securing public safety, maintaining public order or safeguarding the interests or maintaining the welfare of the community.
- (2) Subject to this Part, an emergency order made by the President under clause (1):
 - (b) is not invalid in whole or in part by reason only that it provides for a matter for which provision is made under any law or because of inconsistency with any law; and
 - (c) lapses when the declaration of emergency lapses unless in the meantime the order is revoked by a resolution of Parliament approved by a majority of the members of Parliament present and voting.

- (3) Subject to clauses (4) and (5), the revocation or lapsing of an emergency order made by the President under clause (1) does not affect the previous operation of that order, the validity of anything done or omitted to be done under it or any offence committed or penalty or punishment incurred.
- (4) A law enacted in consequence of a declared state of emergency and an emergency order made under clause (1) may derogate from the provisions of Part II of this Constitution (Protection of Fundamental Rights and Freedoms) only to the extent that:
 - (a) the derogation is strictly required by the emergency; and
 - (b) the law or order:
 - (i) is consistent with Nauru's obligations under international law applicable to states of emergency; and
 - (ii) conforms to clause (5); and
 - (iii) is published in the Gazette as soon as reasonably possible after being enacted or declared.
- (5) No declaration of emergency or Act of Parliament that authorises a declaration of a state of emergency, and no emergency order or law enacted or other action taken in consequence of a declaration, may permit or authorise:
 - (a) indemnification of the government, or any person, in respect of an unlawful act; or
 - (b) derogation from the Articles in this Part; or
 - (c) the dissolution of Parliament prior to the normal expiry of the legislative term; or
 - (d) the suspension or dismissal of a judicial officer; or
 - (e) alteration of this Constitution; or
 - (f) derogation from an Article listed in column 1 of the Table of Non-Derogable Rights, to the extent indicated opposite that Article in column 3 of that table.