Legislative Drafting Manual for Nitijela Members

NITIJELA

REPUBLIC OF THE MARSHALL ISLANDS
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FOREWORD

Message from the Speaker

A law should easily be understood by Members who enacted it, officials who will enforce it, judges who will interpret it, and citizens who must abide by it. With the effort to make the jobs of writing, enacting, administering, interpreting, and obeying legislation simpler, if not easier, the Legislative Counsel has prepared this manual to provide for the Members of the Nitijela, guidelines for drafting, debating and enacting good laws in the Nitijela of the Republic of the Marshall Islands.

This manual is part of the on-going measures of strengthening the Members of the Nitijela in carrying out their Constitutional mandates, in particular, the process and functions of enacting laws for the People of the Republic of the Marshall Islands. Many appreciations to the United Nations Development Program for providing assistance to publish this Manual.

The manual is a quick guide to the legislative drafting process. It is however not a substitute for advice and drafting assistance from the Legislative Counsel, rather, it will encourage you to call or visit the Legislative Counsel for further help.

I hope that you find this legislative drafting manual useful.

Hon. Alvin T. Jacklick
Speaker of the Nitijela
PART 1 – Introduction

Members of the Nitijela are at the heart of the law-making process. Members – either as Ministers or in their own right – are responsible for taking action in the Nitijela to turn a policy idea into legislation. In reality, the law-making process begins with an idea or a policy concept. This idea is then expressed in writing, in the form of a Bill. That Bill is then considered by the Nitijela, and if enough Members believe that it is a good idea, the Bill will be approved and it will become a law of Marshall Islands.

Most commonly, the process of law-making happens within the public service. It begins with the formulation of a policy within a Ministry. If the policy requires legislation to be enacted, the legislative proposal will be brought before the Cabinet for endorsement. Once endorsed, it will then be forwarded to the Legislative Counsel or the Attorney General for drafting. Once a draft is produced, the Minister responsible will table the Bill in the Nitijela for consideration.

The job of writing legislative instruments is carried out by the Office of the Legislative Counsel, under the Legislative Counsels Act, or by the Office of the Attorney General in the case of Government Bills (for simplicity, hereafter this Manual will refer to the Legislative Counsel’s office). The primary role of the Legislative Counsel is to translate the policy idea into formal written rules. It is important that each Member of the Nitijela understand his or her role in creating law and the processes entailed in writing and passing a law.

In practice, a Member or a Ministry official comes to the Legislative Counsel with an Instruction to draft a Bill. Before the Legislative Counsel drafts a Bill in conformity with the requisite standards, it is essential that the Legislative Counsel understands what the Member hopes to achieve with the proposed law. If the Legislative Counsel has a good understanding of the legislative proposal, he or she will be in a better position to design a good Bill which serves its purpose effectively.

This Manual aims to help Members, and the officials who assist them, to ensure that when an Instruction is given to the Legislative Counsel for drafting, the Legislative Counsel will be able to:

1. Understand the intent of the Instruction given by a Member;
2. Design and write the Bill in a manner that will facilitate easy understanding by Members’, officials and the public; and
3. Ensure that the Bill is drafted so that it can be effectively implemented and administered in a manner which achieves its purpose.

This Legislative Drafting Manual offers a guide for Members and staff of the Nitijela to help them engage more effectively in the law-making process in the Republic of the Marshall Islands. It may also be useful for other government agencies that are required to engage in the legislative process.

This manual highlights the roles of Members in developing and enacting laws in furtherance of their constitutional duty to enact laws for the development of the Republic of the Marshall Islands. It describes the procedures for giving instructions for drafting a Bill, in order to ensure that Members provide clear guidance to the Legislative Counsel to enable the design of laws that are clear, simple, and easy to understand and use. This Manual promotes uniformity in drafting style. It describes the process of the passage of a Bill and the role a Member plays during the first, second and third readings. The Manual also emphasizes the need for Members to assess Bills to identify the costs, benefits and/or the implementation requirements envisaged by the Bill, and to ensure that all Bills enacted serve the public interest.
PART 2 - Role of the Members of the Nitijela in law-making

Article IV, section 1 of the Constitution of the Republic of the Marshall Islands gives legislative power to the Nitijela to make, repeal, revoke or amend any law. This constitutional function obliges Members not merely to make laws, but to make good laws for the benefit of the people of the Republic of the Marshall Islands. Good governance ultimately depends on the clarity with which laws are written and enacted. A well-drafted law communicates clearly and effectively to the citizens who must abide by it, the officials who administer it and the judges who will interpret it.

To be an effective legislator in the Marshall Islands in the years leading up to 2023, when the current Compact of Free Association expires, requires much more than just pronouncing inspiring policies. During this pivotal period in the history of the Marshall Islands an effective Member must:

1. **Enact legislation which promotes national development**
   The most important job of a Member is to enact legislation which promotes the national development of the country. Rather than waiting for debate and voting on Bills, an effective Member will focus his/her legislative efforts on initiating and supporting enactment of legislation that will facilitate national development. Below is a list of documents that may serve as a guide for Members of the Nitijela who want to understand, introduce or support legislation for the development of the Marshall Islands:
   - Constitution of the Republic of the Marshall Islands;
   - Vision 2018;
   - Nitijela Corporate Plan 2010;

2. **Ensure oversight of the executive and governmental agencies in implementing the laws**
   The rapid pace of social, economic and technological changes in the Republic of the Marshall Islands places heavy demands on Nitijela Members to make laws in a wide range of policy areas. In this context, the legislative oversight role of a Member is important to: (i) ensure that laws which are passed serve the public interest; and (ii) maintain checks and balances on the implementation of those laws, as well as the government policies which support them. In this oversight role, it is the job of the Member to monitor the
executive branch and all government agencies to ensure that laws are appropriately and effectively implemented. Such legislative review also involves scrutiny of government performance.

This oversight role is performed by Members of the Nitijela through different Nitijela processes. Most times, the Members of the Nitijela exercise their oversight roles by asking questions on the floor of the Nitijela to the responsible Ministers. However, these questions are restricted to some extent, in that they cannot contain arguments or opinions or raise issues which are likely to prejudice cases pending before court. Members also use Nitijela committees to undertake oversight. Members can summon Secretaries or other officials to appear for questioning before the Nitijela, the Committee of the Whole, the Standing Committees of the Nitijela or specially appointed committees. For instance, the Standing Committee on Public Accounts is mandated to examine and question financial reports and audits of any public corporation or other statutory authority constituted under the laws of the Republic of the Marshall Islands and can call any officials to answer questions in that regard.

3. **Represent constituent’s views and educate them on the law**

   A Member has a duty to inform his or her constituency about the implications of a new law. It is very important for a Member to maintain effective interactions with his or her constituents and other members of civil society. In particular, a Member must:

   - **Represent**: As a national people’s representative, a Member needs to learn about the issues facing his or her constituents, and identify whether there are legal responses that could be taken to address those issues. An effective Member will represent all constituents and make special efforts to open channels of communication with everyone, including the working class, young people, women, the poor and the vulnerable in society. It is often these groups who are particularly in need of legislative protection. Under the parliamentary democratic system of the Republic of the Marshall Islands, an elected Member is the voice that represents his or her constituent in the Nitijela. As such, the Member needs to actively respond to public inputs into the law-making process.

   - **Educate**: A Member should seek to educate his or her constituents to become part of the democratic process, including by educating them about proposed laws and new laws which are passed by the Nitijela. Building stronger links between Member and citizens is important in
transitional democracies such as the Marshall Islands, where democratic principles are slowly emerging. Effective communication between legislators and constituents, and between the government institutions and the general public, can help to build a strong democratic tradition in a Marshallese society. A Member can use different forms of communication to make contact with his or her constituents, including news media, radio programs, newsletters, regular postal services and the Nitijela website. The objectives of open communication with constituents is to enable people to get involved in the law and policy making process, and to ensure that there is transparency and accountability in undertaking the law-making process.

A Member can contribute to the growth of democracy by voicing the concerns of constituents and assisting them in understanding laws and dealing with the government bureaucracy. Creating strong links to constituents is important, in order to educate both citizens and legislators about their role in a representative democracy. This will contribute greatly to the legitimacy of democratic government and, eventually, lead to a more significant and effective policy role for elected representatives.
PART 3 - Enacting a Bill: the Process

Many Members only become aware of a Bill when it is presented in front of them in the Nitijela for their consideration. However, the process of developing and enacting a Bill starts much earlier than that. This section explains the law-making process before and after a Bill reaches the Nitijela for consideration.

In summary, in Marshall Islands both Ministers and ordinary Members have the right to draft and table legislation for consideration. Like other parliaments, passage of the law in the Nitijela involves three different readings, the first, second and the third readings. The Rules of Procedures of Nitijela clearly provides for each reading on a separate day, unless otherwise the rules are suspended.

Before the Bill reaches the Nitijela

The Constitution provides that any Member of the Nitijela may introduce any form of Bill. However, the Rules of Procedures of the Nitijela provide that the Nitijela shall not deal with a money Bill or an amendment Bill that deals with money unless the Cabinet has consented to the Bill. The Rules also go on to provide that the Nitijela shall not proceed beyond the first reading without the recommendation or consent of a member of the Cabinet. In practice, this means that a private member who wishes to table a money Bill or a Bill which deals with fees, taxes, charges etc, usually seeks to have a Minister sign up to the Bill or seeks to have Cabinet endorse it before it reaches the Nitijela for introduction.

Because the Constitution allows for any Member of the Nitijela to introduce a Bill, this means that all Members need to understand the legislative drafting process. The process begins when a member has a policy idea, and that policy idea requires a legal framework to support its implementation. For example, a Member looks into whether domestic violence cases are being properly handled by the police, and finds out that one of the problems for the police is that current laws allows for cases to be “dropped”, which is resulting in many cases not being prosecuted. A Member wishing to establish a “no-drop” policy might consider proposing an amendment to the Criminal Code. This requires legislative drafting support. Alternatively, a member of Cabinet may be advised by his or her Ministry officials that legislation is needed to implement one of the Government’s policies, for example, strengthening the Criminal Code in relation to prosecuting corruption more effectively. This will also require legislative drafting support.
As noted earlier, the legislative drafting process is carried out by the Office of the Legislative Counsel, under the Legislative Counsels Act, or by the Office of the Attorney General in the case of Government Bills. In practice, this requires a Member or a Ministry official (hereafter called the “sponsor” of the Bill) to develop an Instruction to draft a Bill (see Part 4 for more on Instructions). The Legislative Counsel/Attorney General then drafts the Bill and works with the sponsor of the Bill to ensure the draft serves its purpose.

**After the Bill reaches the Nitijela**

After the content of a Bill has been drafted, agreed and proofread, it is prepared for introduction into the Nitijela. The Legislative Counsel is responsible for ensuring that the Bill is formatted in accordance with the Nitijela format. The Office of the Legislative Counsel will work with the sponsor of the Bill to ensure it is in order before transmitting the draft. Once it is in order, an original copy of the Bill is prepared for the principal sponsor’s signature. For the purpose of transparency and ease of reference, it is recommended that a Member who is sponsoring a Bill write his or her name in CAPS beside the signature on the Bill.

After the Bill has been signed by the sponsor(s), the Legislative Counsel submits it to the Office of the Clerk for pre-filing. At this point, the Clerk will assign a sequential number to the Bill for reference purposes. Once the Nitijela is in session, the Clerk places the Bill on the agenda for the day. When the Bill comes up on the agenda, the Clerk reads the Bill by its number along with the title – this is called the First Reading.

After its first reading, the Bill is referred to one or more committees of the Nitijela. During this stage, the Bill should be given a public hearing before the committee, especially if it is a Bill of public importance. Alternatively, the committee can call expert witnesses to answer questions about the Bill during the committee’s executive meeting.

The committee will need to prepare a report to be submitted to the Nitijela with its recommendation. In practice, the Clerk and Legislative Counsel usually support the committees to put together their reports. The report will then be attached to the Bill, and the report will be placed on the agenda of the Nitijela. If a committee proposes amendments or defers action on the Bill, the committee report notes that action or recommendation.

Once the committee report is ready for tabling, the Bill proceeds to Second Reading. The Clerk again reads the Bill by its number along with the title. If the committee report recommends amendments and this recommendation is adopted on second reading, the Bill will be renumbered with an “ND” abbreviation, which means Nitijela Draft, and
a number added to indicate which draft it is. If the Bill is deferred by the Nitijela, it means it will not proceed to a
Third Reading. Deferment usually happens if the Nitijela decides defer the consideration or debate on the Bill at a
later date either specified or unspecified.

A Member may move a motion for a Floor Amendment. The Member may seek the assistance of the Legislative
Counsel to prepare Floor Amendments if he or she sees that a Bill needs further Amendments after the Committee
stage is completed.

Once a Bill passed the second reading, any member may move a motion for further amend to the Bill and that the
Bill be considered in detail before a Committee of the Whole. Usually, the Vice-Speaker is called to chair the
Committee of the Whole or any non-cabinet member may be appointed to preside. When the Committee of the
Whole has completed its consideration of the Bill, the Speaker resume the chair of the Nitijela and the Member
presiding in the Committee or his secretary report orally to the Nitijela, “with amendments” or “without
amendments” to the Bill. When the report of the Bill is adopted, the Speaker shall, unless the Nitijela otherwise
orders, places the Bill on agenda for third reading.

If the Bill is not deferred on second reading, it is placed on the agenda for third reading as it is or with an ND1 if it
has been amended. At this stage, Members debate the pros and cons of the Bill before voting on it. A Member
needs to fully assess and understand Bills, so that he or she can engage actively in the debate and cast his or her
vote based on an informed-decision (see Part 6 for more information). If a Member wishes to get assistance in
understanding the Bill or formulating questions or amendments about the Bill, he or she can request assistance
from the Legislative Counsel.

Before a Bill passes the third reading, any member may move a motion for re-committal to a Committee of the
Whole if the Member wishes to further amend specific sections or schedules – the same process as on the original
committal to the Committee of the Whole applies. Following the amendments or debate on third reading, a final
vote will be recorded. If a majority of the votes favor the Bill, the Bill will be passed.

Article III of the Constitution requires that once a Bill, other than the Appropriation Bill, passes the third reading, it
is transmitted to the Council of Iroij for review and consideration if the Bill affects customary law, a traditional
practice, or land tenure. If the Council of Iroij recommends reconsideration of the Bill, a joint conference of the
Members of the Nitijela and the Council of Iroij is conducted. If however after, seven days after the transmittal of
the Bill, the Council of Iroij has not made any decision to reconsider the Bill, the Speaker shall proceed to certify the Bill.

A Bill comes into effect upon certification by the Speaker of the Nitijela, with the Clerk’s signature witnessing the certification. The Chart below illustrates the enactment process of a Bill in the Nitijela.
PART 4 - Developing and Giving Instructions for Drafting Bills

Responsibility for Drafting Legislation
It is always advisable that before preparing Instructions, Members and/or officials should have a meeting with the Legislative Counsel or Attorney General to discuss the proposal, obtain advice and build a relationship with the drafter(s).

The Republic of the Marshall Islands has two offices which share the responsibilities for drafting legislation:

- The responsibility for drafting Government Bills is vested with the Office of the Attorney General (See Flow Chart 1 below).
- The Office of the Legislative Counsel concentrates on the general membership of the Nitijela and primarily drafts private members Bills, as well as amendment motions (See Flow Chart 2 below). The Legislative Counsel may also draft the appropriation Bill, money Bill and other forms of government Bill when requested by the Cabinet.

The Legislative Counsel also provides drafting support when Members wish to draft Resolutions to formally express a decision of the People of the Republic of the Marshall Islands through the Nitijela on matters which are of public importance. The most common resolutions drafted in the Nitijela are:

- To approve ratification of or accession to an international treaty or convention;
- To approve appointment of a public official such as Judge, Ambassador, Auditor General, Public Service Commission or any other official whose appointment requires approval of the Nitijela;
- Expressing the concern of the Nitijela in instances where the action of the Cabinet is required. For instance, requesting the Cabinet to amend the Regulations of the Public Service Commission;
- To express sympathy and condolences to families, relatives and friends upon the passing of an important public official.

Types of Bills that may be drafted
The Members of the Nitijela should be aware of the different kinds of Bills for drafting. The common classifications of Bills are:

- *Amending Bill* - a Bill to amend existing primary legislation;
• **Appropriation Bill** - an annual Bill which projects the revenue estimates of the Government and authorizes expenditures for the following financial year;
• **Codifying Bill** - a Bill to provide a comprehensive and coherent set of written rules for a major area of law;
• **Declaratory Bill** – a Bill to state what the law is, in order to remove uncertainty;
• **Enabling Bill** - a Bill with the primary of conferring power to do something which otherwise cannot be lawfully done;
• **Money Bill** - a Bill with provisions dealing with specified financial matters that under the Constitution requires the approval or consent of the Cabinet or a member of the Cabinet.

Bills are also sometimes referred to according to who was responsible for initiating them. In this context, there are two types of Bill:
• **Government Bill** – a Bill introduced by or on behalf of the Government, normally by the Cabinet or a Member of the Cabinet and sometimes called a Cabinet Bill;
• **Private member Bill** – a Bill introduced by a Member who is not a member of the Cabinet.

**The Purpose of Instructions**
The purpose of an *Instruction* to draft a Bill is to ensure that the Legislative Counsel is given all the information he or she needs to know, especially the underlying policy objectives of the proposed Bill, in order to properly develop a Bill. It is essential for a Member to give Instructions for drafting a Bill in a written form (see the guidelines below for more guidance on the content of such written instructions). Except in a bona fide emergency situation, oral instructions are not acceptable because oral communication are likely to be imprecise and could be misunderstood.

A well thought-out and written *Instruction* will result in better quality drafting by the Legislative Counsel and it will help the Legislative Counsel to complete a Bill in less time. Unclear and/or oral instructions often result in unnecessary delays in the drafting stage.

**Content of the Instructions**
Ideally, when you submit Instructions to the Attorney General’s Office or Legislative Counsel, the Instruction should:
(a) Explain the reasons the Bill is being proposed, namely, the problem the Bill is intended to solve or the benefits which it is intended to confer;
(b) Set out the principal objectives of the Bill clearly and fully. It is also important that the Bill’s sponsor has clearly thought through the Bill’s precise purpose. It is also helpful for the Legislative Counsel to know the purpose of the legislation, so that the Legislative Counsel properly understands what the legislation is intended to achieve;

(c) Contain sufficient background information to enable the Legislative Counsel to understand the problem or initiative. The Bill’s sponsor should state how the problem has arisen and why a legislative solution is being proposed. This includes all issues the legislation is intended to deal with. Proposed legislation often has a history which contributes to the solution proposed by the instructing ministry or Member. This history is useful for the Legislative Counsel during the drafting process, but care should be taken to distinguish between background information and focusing on the actual legislative proposal;

(d) Identify and discuss the legal aspects of the proposal. The Instructions should tell the drafter what the present state of the law is; what the law is proposed to be; and why. (Members can request the assistance of the relevant Ministry or the Legislative Counsel to do research into the state of the law, if necessary.) Thinking these legal issues through will often help to sharpen the focus of the Instructions and/or identify new ideas for better legislative solutions. The Instructions should also mention whether any legal advice has already been given or sought on the issue (eg. from the Attorney General or the Legislative Counsel);

(e) Identify any Acts or regulations to be amended or repealed by the proposed Bill. The Instructions should also identify any related transitional or savings provisions that may be needed in order to deal with issues arising as a result of the repeal of a law/provision and the enactment of a new law/provision;

(f) Include information about the availability of other relevant legal opinions and attach any legal research that has been done that is relevant. Additionally, where such resources are available, the Instructions should include:

   i. Information about relevant court decisions (or references to such cases);

   ii. References to legislation in other jurisdictions that could be used to provide relevant guidance;

   iii. Discussion documents, articles, reports of committees/inquiries/law reform bodies, or the like, which are relevant to the proposed Bill;

(g) Mention any official or public feedback which has already been obtained in respect of the idea. Ideally, the proposing Ministry or Member will have consulted with other ministries/agencies stakeholders that are affected by the proposals before proceeding with proposing a Bill. The instructions should indicate if there have been consultations and note any outstanding issues. The Legislative Counsel or Attorney General’s Office is not
required to weigh the views of stakeholders who have been consulted, but it is useful for them to know what the various views were;

(h) Mention any other policy, administrative or factual issues known to the sponsor of the Bill. For example, if the Bill seeks to change the amount of import tax charged, the status of current revenue for the government should be referenced;

(i) Identify any specific areas of concern on which the advice of the Legislative Counsel is requested. Instructing officers or Members should not be reticent about pointing to gaps in the instructions or particular areas where advice is being sought or is required. It is better for the Legislative Counsel to know of these uncertainties up front;

(j) State the proposed timeframe for the Bill i.e. the date for coming into force of all or part of the legislation, or other information about how the law is to come into force;

(k) Provide the name and contact information for the senior official responsible for giving the Instructions and answering questions, in the case of cabinet Bill.
Instruction Sheet for Drafting Private Members Bill

NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

INSTRUCTION SHEET
FOR DRAFTING PRIVATE MEMBERS BILL

<table>
<thead>
<tr>
<th>Proposed Legislation (Bill Title):</th>
<th>Date Submitted:</th>
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<tr>
<th>Type of Bill (Check One):</th>
<th>New</th>
<th>Amending</th>
<th>Repeal</th>
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<th>Proposed commencement date:</th>
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<th>Proposed timeframe (required by):</th>
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<tr>
<th>Sponsoring Nitijela Member(s)</th>
<th>Member(s) Contact Information</th>
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<th>Objectives of the proposed legislation:</th>
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| 3) |

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<th>Brief background or relevant information:</th>
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<th>Level of penalties (if any):</th>
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<tr>
<th>Transitional or savings provision:</th>
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Finalizing a Bill prior to tabling

Once the Legislative Counsel or the Attorney General receives the Instructions, they will conduct further research if needed, analyze the issues, design and review the Bill. It usually takes at least two weeks to design and review a Bill. Sometimes it takes longer, if further research and information is needed. The sponsor of the Bill should factor these timelines into their own planning.

For a Government Bill, once the draft Bill is finalized, it is usually transmitted to the relevant Minister for submission to the Cabinet for approval. Once approved, it is sent back to the Office of the Legislative Counsel for finalizing before introduction to the Nitijela.

The two flowcharts below describe the processes that must be followed:

(i) when a government Ministry wishes to develop legislation; and

(ii) when a private Member wishes to develop legislation.
Flow Chart 1 – Process for Drafting Government Bills
Flow Chart 2 – Process for Drafting Private Member Bills

Instructions for the Drafting of Bills
Private Member Bills

Step One
Private Member informs Speaker of proposed Bill

Step Two
Private Member gives broad instruction to Legislative Counsel

Step Three
Legislative Counsel finalizes draft of bill in consultation with Private Member

Member Introduces Bill to the NitiJela

Members signs Draft Bill and submits to Clerk for Pre-filing

Clerk

Members Bill appears in the Agenda

NitiJela

Speaker

Private Members of the NitiJela

Speaker informs Legislative Counsel of Private Member Proposal

Legislative Counsel

Research and Drafting Staff

Staff submit first draft of proposed bill to Legislative Counsel for review and approval

Legislative Counsel assigns staff to research and develop first draft of proposed bill
PART 5 – Reading and Understanding a Bill

As described in Part 3 above, once a Bill has been drafted, it will be tabled in the Nitijela, by a sponsoring Member. It is important for every Member in the Nitijela to read and understand the content of a Bill, in order to be able to make an informed decision on how to vote on the Bill.

**Structure and Format of a New Act**

In order to understand the content of a Bill, a member must first understand the formal organization and structure of a Bill. A proposed new law is always divided into the following components:

a) Parts,
b) Chapters,
c) Divisions,
d) Sections,
e) Subsections, and
f) Paragraphs.

Logical organization of a Bill is the key to clear communication of any proposed law. Members need to be able to easily identify relevant chapter, sections, subsections or paragraphs, at least, so that Members can quickly identify where in the Act to look during debates on the Bill.

The basic characteristics of structure in a new Act are linked by a common theme to their contents. For example, definitions for words used in the Act will be found in Section 1 which covers the preliminary matters in the Act, whereas any provision dealing with how the Act is to come into force will always be found in the final section of the Act. This basic framework still allows considerable flexibility for organizing the main provisions of an Act to facilitate the goal of clear communication.

**Standard order of legislative provisions in a new Act**

<table>
<thead>
<tr>
<th>a)</th>
<th>Introductory Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long Title</td>
<td>Descriptive of the general scope of the Bill</td>
</tr>
<tr>
<td>Table of Contents</td>
<td>Added editorially, lists Part and Division headings, section numbers and marginal notes</td>
</tr>
<tr>
<td>Enacting clause</td>
<td>Statement expressing the exercise of legislative authority</td>
</tr>
</tbody>
</table>
b) Preliminary Provisions (Sections)

<table>
<thead>
<tr>
<th>Short Title</th>
<th>This is title to cite when the Bill becomes a law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definitions</td>
<td>Section providing definitions of specific words or expressions used in the Act</td>
</tr>
<tr>
<td>Special general rules</td>
<td>General provisions that affect how the entire Act is to be read (such as purpose provisions, special interpretation rules or statements that restrict or extend the scope of the Act)</td>
</tr>
<tr>
<td>Purposes</td>
<td>Provisions stating the purpose for the enactment of the Act</td>
</tr>
</tbody>
</table>

c) Main Provisions (Sections)

<table>
<thead>
<tr>
<th>Substantive provisions</th>
<th>Sections that establish the substantive rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative provisions</td>
<td>Sections that establish administrative processes</td>
</tr>
<tr>
<td>Offences and other enforcement</td>
<td>Sections that establish offences, penalties and related matters</td>
</tr>
<tr>
<td>Regulation-making authority</td>
<td>Sections authorizing subordinate legislation</td>
</tr>
</tbody>
</table>

d) Final Provisions (Sections)

<table>
<thead>
<tr>
<th>Consequential amendments</th>
<th>Any amendments needed for the purposes of the main provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transitional provisions</td>
<td>Any special provisions needed for transition from the existing law</td>
</tr>
<tr>
<td>Repeal</td>
<td>Any repeals of other Acts</td>
</tr>
<tr>
<td>Commencement</td>
<td>Statement of when or how the Act is to come into force</td>
</tr>
</tbody>
</table>

Not all types of the provisions described above will be found in every Act. In the Marshall Islands, once a Bill becoming an Act, it is regarded as a Public Law and is given a specific number based on the year and sequence it is passed, for example, Prohibition of Importation for Sale of Betelnut Act, 2010, P.L. 2010-39. A public law is later consolidated and codified in the Marshall Islands Revised Code, which are organized into Titles, Chapters and new sections. The Revised Code is organized in related subject-matter grouped under the same Title, for example, Title 2 of the Marshall Islands Revised relates to Elections and Referenda - Chapter 1 is Elections and Referenda Act 1980 and Chapter 2 is Election Offences Act 1980. To cite Title 2 Marshall Islands Revised Code, Chapter 1, Section 5, subsection 1 – it is cited as 2 MIRC 1 §5(1). Unless the public law has not been consolidate and codified, the laws should be cited and amended by the Revised Code.

The number of the sections of a Bill is also an important element in understanding and referencing the law. It underlines the logic of the Bill and facilitates cross referencing and citation for people who use the law. So far, there is no common style of numbering of sections of laws in the Marshall Islands. A Member however, should be familiar with the conventional method of numbering of sections which is widely accepted and is used in Marshall Islands Acts and the Revised Code.
See the table below:

<table>
<thead>
<tr>
<th>Component of Bill</th>
<th>Format</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sections</td>
<td>Arabic numerals</td>
<td>25</td>
</tr>
<tr>
<td>Subsections</td>
<td>Arabic numerals in parenthesis</td>
<td>(2)</td>
</tr>
<tr>
<td>Paragraphs</td>
<td>Alphabetic in lower case and parenthesis</td>
<td>(a)</td>
</tr>
<tr>
<td>Subparagraphs</td>
<td>Roman numeral in lower case and parenthesis</td>
<td>(iv)</td>
</tr>
<tr>
<td>Sub-subparagraphs</td>
<td>Alphabetic in upper case and parenthesis</td>
<td>(8)</td>
</tr>
</tbody>
</table>

**Bill Summary**

A Bill Summary is a summary statement about the Bill which is attached to the Bill. It is developed either by the Legislative Counsel or the Attorney General based on the instructions given by the Member or the relevant Ministries. It is an essential document which is supposed to help Members of the Nitijela understands the content of a Bill. A Bill summary provides a neutral description of the purpose, scope and effect of the Bill. It provides a layperson’s explanation of the Bill for Members.

For example:

**Bill Summary**

This Bill seeks to prohibit the importation and distribution of betelnut for sale in the Republic of the Marshall Islands. The use of betelnut has becoming a health concern, due to the undesirable sanitary practices of discharging spittle and substances in the public. The constant chewing of betelnut could result in mouth cancer, cancer of the throat, gastritis (inflammation of the stomach), peptic ulcer (sore in the stomach) inflammation of the gums as well as poor oral hygiene. It is envisage that by prohibiting the importation of betelnut for sale of betelnut will eventually stop people from chewing, and will prevent health, sanitary and environmental issues caused by betelnut in the Republic.

**Structure and Format of an Amending Bill**

Bills differs in organizations and structuring depending on whether they are intended to propose an entirely new Act or whether they are intended to amend existing legislation. An amending Bill contains only few sections, namely, the short title and the amending provisions. There are two common types of Amendment Bills normally introduced by the Nitijela Members:
1. A Bill amending a specific Act
   a) **Scope:** This type of Bill seeks to amend one specific Act. The only amendments to other Acts included in such a Bill are “consequential” to the specific Act amendments.
   b) **Title:** The title is based on the title of the original Act being amended, changing “Act” to “Amendment Act” and adding the year of introduction of the Amending Bill at the end of the title, for example, *Betelnut Prohibition (Amendment) Act*, 2010. If more than one such Bill is introduced in the same Legislative Session in relation to the same original Act, then each Amendment Bill is numbered, for example, *Betelnut Prohibition (Amendment) Act (No.2), 2010*. An example of Bill seeking to amend a specific Act is presented on page 41.
   c) **Organization:** The Bill begins with the amendments to the specific Act, followed by any consequential amendments to other Acts.

2. A Bill on a Specific Subject which amends a number of Acts
   a) **Scope:** This type of Bills seeks to amend a number of Acts in relation to a specific subject.
   b) **Title:** The title indicates the matter being dealt with and includes the year of introduction, for example, *Health Profession Licensing Act, 2009*.
   c) **Organization:** A central heading describes the range of amendments being proposed, for example, “An Act to provide for licensing of Health Professionals, to establish a Board, and to repeal certain provisions of the Health Services Act 1983, and the Nursing Act 1995.” Amendments to a number of laws on the same topic are dealt with in the Bill in specific sections, for example: “Section 28: Repealer – The provisions applicable to health professions in the Nursing Act 1995, and Health Services Act 1983 are hereby repealed.”

**Features of an amending Bill**

When reading an amending Bill, it is necessary for Members to identify the changes to existing laws that are being proposed by the Bill. Most commonly, amendments are indicated by using **underlining** and **strike-through**. However, where entire provisions are being proposed as an amendment, they may simply be indicated by using quotation marks.

**(a) Underlining**

When new words, phrases or sentences are added to an existing Act, the new language is underlined. For example:
Section 2 of the Betelnut Prohibition Act is amended by inserting a new definition as follows:

“Officer” includes an immigration officer, customs officer, quarantine officer, ports officer, police officer, or any officer authorized to enforce the law.

(b) Strike-through

The Nitijela uses strike-through to delete existing words, phrases or sentences from an existing Act. For example:

Section 3 of the Betelnut Prohibition Act is amended as follows:

§3. Importation, distribution or selling of betelnut for sell or distribution prohibited.

(1) No person shall import betelnut in the Republic for sale or distribution, except

(2) Nothing in this section may prohibit the importation of betelnut purposely for personal consumption.

(c) Direct quote

Where a large amount of new information is being added to an Act or replacing existing parts of an Act, the use of “direct quotes” will be used to indicate the changes, without using underline or strike-through. For example:

Section 130 of the Counter Terrorism Act is amended by adding a new subsection (8):

“(8) Subsections (1) to (7) apply to an act committed in relation to an aircraft used in military, customs or police service only if:

(a) the act is committed in or over the Republic of Marshall Islands; or

(b) if the act is committed outside the Republic of Marshall Islands, the person committing the act is a citizen of the Republic of Marshall Islands.”

Renumbering When a Section is Amended

A different numbering is used when a section is amended in an Amending Bill. The following is an example of renumbering an existing section by amendment.

<table>
<thead>
<tr>
<th>Component of Bill</th>
<th>Format</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sections</td>
<td>add a capital letter in alphabetic sequence</td>
<td>25A</td>
</tr>
<tr>
<td></td>
<td>after the Arabic numeral</td>
<td>25B</td>
</tr>
<tr>
<td>Subsections</td>
<td>add a capital letter in alphabetic sequence after the Arabic numeral</td>
<td>(2A)</td>
</tr>
<tr>
<td>-------------</td>
<td>---------------------------------------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Paragraphs</td>
<td>add a lower case letter in alphabetic order to the letter used for the immediately previous paragraph</td>
<td>(aa)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ab)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ac)</td>
</tr>
<tr>
<td>Subparagraphs</td>
<td>add a lower case letter in alphabetic sequence after the roman number</td>
<td>(iva)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ivb)</td>
</tr>
<tr>
<td>Sub-subparagraphs</td>
<td>repeat the capital letter, then add a lower case letter in alphabetic order</td>
<td>(BB)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(BBa)</td>
</tr>
</tbody>
</table>

The example below illustrates an amendment by adding a capital letter to add a new amending section.

**Section 2. Amendments**

(1) Section 47 of the Motor Traffic (Amendment) Act is amended by inserting a new section 47A as follows:

§47A. *Use of Portable Electronic Devices Prohibited.*

(1) Except for emergency purpose, no person shall use any portable electronic device while operating a motor vehicle.

(2) Any person who violates this section shall be punishable by fine of $100, or imprisonment of 6 months or both...
PART 6 - Assessing a Bill prior to voting

Before voting on whether or not to pass a Bill, a Member must assess the Bill to identify what it is trying to achieve, whether its purpose is valid and achieved by the proposed Bill, whether it can be effectively implemented, and the costs and benefits associated with the Bill. Members need to have enough facts to understand the impact of the law, evaluate its likely impact, and ask questions.

Understanding the basic facts, content and context

When analyzing whether or not to vote in favour of a Bill, it is essential that a Member understand the relevant facts, content and context of the Bill. In many countries, the ministry officials or other proponent of the Bill will be responsible for drafting an Explanatory Memorandum and/or a Bill Summary which sets out all of the relevant information needed to justify the measures in the Bill. Alternatively, to ensure a more balanced analysis of the Bill, the Legislative Counsel for the Nitijela may be tasked with drafting a Bill Summary. Members may wish to consider amending the current Rules of procedures to require that Members are provided with a comprehensive Bill Summary when they are given a copy of a Bill. A Bill Summary will assist busy members to quickly identify the key changes proposed by a Bill.

To complement the Bills Summary, Members may also want to undertake some fact-finding of their own, to satisfy themselves that they have been told all points of view regarding the pros and cons of a Bill. The ultimate goal of fact-finding is to obtain trustworthy information, rather than relying on the opinion, strategic propaganda, or biased beliefs. In assessing a Bill, Members need to determine whether the proposed legislative changes in the Bill are grounded in facts. In other words, is the sponsor’s hypothesis consistent with facts, or is it based on assumptions? If a Bill’s substantive provisions are based on assumptions that do NOT prove consistent with the available facts, a Member should:

i. Reject the Bill; or

ii. Require the Bill’s sponsor to revise the Bills provisions to better address the facts. In reality, this may require the Bills sponsor to undertake further research.

It is particularly crucial that Members of Nitijela Standing Committees, especially the chairperson, are well informed and provided with the relevant facts of the Bill. The conclusions of committees which are reported back
to the Nitijela are very significant, as Committees are responsible for making recommendations to the Nitijela on whether to proceed to the second reading, or have the Bill deferred for further consultation. Standing Committees provide an excellent opportunity for Members to check the facts on which a Bill is based, as Nitijela Standing Committees are empowered to hold public hearings which can be used to tap expert knowledge on the Bill. Officials from Ministries as well as members of the public can provide more information to Members on the potential impact of the Bill. Members can call any person to appear before their Committee and can ask them any relevant question about the Bill.

Assessing the Legal implications of a Bill

Members need to consider the legal implications of the Bill. Specifically, the following issues should be considered:

(a) Does the Bill violate any provisions of the Constitution (e.g. the human rights protections in the Bill of Rights, or the functions and powers of the different branches of the government or land rights)?

The Constitution is the paramount law of the Republic of Marshall Islands and no other law can contradict its provisions. If the Bill contradicts the Constitution, it must either be redrafted to bring it into line with the Constitution, or the Constitution will need to be amended which requires a Constitutional Convention to be held.

(b) Is a Bill the appropriate type of policy/legislative instrument to use? For example, could a regulation passed instead?

(c) Does the Bill propose to create a new law? If yes:

   i. Is a new law necessary, or can the relevant provisions be included in an existing law? Limiting the creation of entirely new laws is a good idea because it ensures coherency within the RMI Code.

   ii. What is the proposed new chapter number?

(d) Does the Bill propose to amend any existing laws? If so:

   i. What is the history of the section of law being amended - when was it enacted, when was it last amended, etc.?

   iii. Has the original law ever been previously repealed?

   ii. Have there been any court decisions based on the section of the existing law which provide any relevant guidance?

(e) Would the Bill duplicate any existing laws?

(f) Would the Bill in any other way affect any existing laws?

(g) Are the definitions used in the Bill consistent with other existing laws?
(h) Does the legislation include references to other statutes? If yes, are the references correct?

**Assessing whether the Bill serves the Public Interest**

Members are representatives of their constituents, and in that context, they have to serve the interests of their voters. At the same time however, Members are also national leaders, and in that capacity they have to serve the interests of the greater public good. This can sometimes require a tricky balancing of interests, but a Member must remember that his or her paramount role is to make law for the interest of the nation (referred to hereafter as the “public interest”).

> Sometimes Members will face conflicts with professional, personal or financial interests in their deliberation of a Bill. Rule 29 of the Rules of Procedure of the Nitijela explicitly requires that a Member who has a conflict of interest in any matter before the Nitijela must exclude him or herself from participating in the debate and voting on the matter.

In reality, when assessing a Bill, a Member must consider a range of public interest concerns, such as the potential impact of the Bills proposed changes on the economy, culture, the environment, human rights, gender balance and good governance. In many countries, the Legislative Counsel to Parliament will produce a “Regulatory Impact Assessment” which will provide an assessment of the socio-economic impacts of the proposed Bill for Members. This is not currently required in Marshall Islands but could be considered for the future.

The following sub-sections suggest some specific issues which Members should consider when deciding whether to vote for a Bill, keeping in mind that unless a Bill’s anticipated social and economic benefits exceed the anticipated costs, a Member should vote it down.

**Assessing the Social Impact of a Bill**

Members of the Nitijela have a role in ensuring the achievement of Marshall Islands national development goals, including achievement of the Millennium Development Goals and improvement on a range of social indicators. It is important that Members assess the social costs and benefits that may be caused by the enactment of a Bill. A range of social issues may be impacted by legislative change, for example:
- Human rights – As noted earlier, the RMI Constitution enshrines a range of human rights with which all legislation must comply. RMI has also ratified a range of international human rights treaties, and it is important that domestic legislation comply with such international standards. The Legislative Counsel can provide advice on such issues, as can the UN Office of the Human Rights Commission (the Pacific office is based in Suva), upon request from a Member;

- National development – Laws provide the framework which guides the implementation of national development policies. In this context, Members should consider whether the Bill will contribute to the achievement of the national goals described in the National Development Plan, the Nitijela’s Corporate Plan 2010 and/or the Millennium Development Goals (MDGs)? The RMI National MDGs Committee can be consulted on such issues, as can UNDP (the Pacific office is based in Suva), upon request from a Member;

- Culture – Culture is not static, but an ever-evolving aspect of Marshallese life. It is important for Members to assess the possible impact of a new law on traditional Marshallese culture, and to identify the pros and cons of such impacts. The Council of Iroij can be consulted on such issues;

- Gender – A gender-sensitive approach to legislative change requires Members to assess the possible different impacts of a law on men and women. For example, when reviewing provisions for compulsory paid leave when a woman has a baby, consideration needs to be given to the needs of both mothers and fathers. The Legislative Counsel, the Department of Women and “Women United Together for Marshall Islands” (an NGO) can be consulted on such issues, as can UNDP and UNWomen (their Pacific offices are based in Suva), upon request by a Member.

- Young people – As with gender issues, it is important for Members to assess the possible different impacts of a law on young people. Almost 45% of Marshallese are less than 24 years old, so it is important that laws are sensitive to the special needs of young people, for example, laws about juvenile offenders, youth employment programs or education. The Youth Service Bureau at the Ministry of Internal Affairs or the Marshall Islands Youth Advisory Board can be consulted on such issues, as can UNICEF and/or the United Nations Population Fund (their Pacific offices are based in Suva), upon request from a Member;
The environment - A range of laws may have an impact on the environment, in particular, laws regarding environmental protection standards, natural resource development (e.g. fishing, agriculture), land rights and use and climate change. It is essential that Members consider the implications a Bill may have on RMI’s environment and ensure all Bills comply with environment protection standards. Notably, Bills which may have an impact on the environment should be referred to the Resource and Development Committee for detailed consideration. The Office of Environment Planning & Policy Coordination (OEPPC) or the Environmental Protection Authority can be consulted on such issues, as can the South Pacific Regional Environment Programme (SPREP’s office is based in Apia), upon request from a Member;

Assessing the Economic/Fiscal Impacts of a Bill

Some Bills may actually have economic costs related to their implementation, for example, where they will require the Government to fund personnel, buildings, equipment and/or services. The private sector may also be required to bear some costs, for example, if the Bill seeks to change employment standards, wages or taxes. On the other hand, a Bill may also have economic benefits, such as stimulating the economy through construction of new buildings or increased employment, profits and/or wages for both the public and private sector.

Fiscal implications refer to the effect of the Bill on the nation’s economic activity and, for obvious reasons, are an important consideration. The following questions should be addressed in any analysis of a Bill:

Top 10 Criteria for Evaluating Proposed Tax Legislation

Here are the ten principles:

1. Simplicity: The tax law should be simple so that taxpayers understand the rules and can comply with them correctly and in a cost-efficient manner.
2. Fairness: Similarly situated taxpayers should be taxed similarly.
3. Economic Growth and Efficiency: The tax system should not impede or reduce the productive capacity of the economy.
4. Neutrality: The effect of the tax law on a taxpayer’s decisions as to how to carry out a particular transaction or whether to engage in a transaction should be kept to a minimum.
5. Transparency: Taxpayers should know that a tax exists and how and when it is imposed on them and others.
6. Minimizing Noncompliance: A tax should be structured to minimize noncompliance.
7. Cost-Effective Collection: The costs to collect a tax should be kept to a minimum for both the government and taxpayers.
8. Impact on Government Revenues: The tax system should enable the government to determine how much tax revenue will likely be collected and when.
9. Certainty: The tax rules should clearly specify when the tax is to be paid, how it is to be paid, and how the amount to be paid is to be determined.
10. Payment Convenience: A tax should be due at a time or in a manner that is most likely to be convenient for the taxpayer.
a) Will the Bill have any effect on the level of aggregate demand in the economy? If yes, what is the effect anticipated by the Bill’s sponsor? Is that conclusion supported by facts?

b) If the Bill has fiscal implications, is the Bill intended to support the nation’s economic objectives of price stability, full employment and economic growth?

In many countries, when a Bill is presented to Cabinet, it must be accompanied by a statement setting out any financial costs or benefits to the Government related to its implementation. Such good practice should be considered in Marshall Islands when the relevant Ministries submit a Bill accompanied with a Cabinet Paper. Ideally, when a Bill is tabled in the Nitijela, it should be accompanied by a statement on the costs and benefits of the Bill. This will ensure that Members base their decision on whether to vote for the Bill on a factual assessment of the cost and benefits of the Bill.

**Assessing the Political Impacts of a Bill**
As noted earlier, it is essential that Members vote for Bills after assessing their public interest implications. Nonetheless, the reality is that it is also important to understand the political context in which a Bill is being proposed, in order to assess its possible impact on national political stability. Members should consider whether the Bill sponsored by the government or an individual member, so that they can assess who supports and who opposes the Bill, and why? This will help Members to assess who stands to benefit from the proposed legislation and whether their intentions align with the national public interest.

**Community Responses to the Legislation**
It is important to consider how the Bill might affect Marshallese society, culture, traditions, business, government, political processes and regional and international relationships. Ideally, the Bill will have widespread community support, which will assist with its implementation. In this context, Members should consider how the Bill will be perceived in society? Will it be accepted?

The success of a law critically depends on the degree to which the community accepts it. Often, this depends on the extent to which the community understands how the law works and the objective(s) that the law is trying to achieve. Community support can be garnered through public consultation and education programs. Similar programs may also be targeted to industry groups. The public and industry should also be sufficiently warned about changes in economic instruments such as charge rates, allowable quotas (e.g. for fish) and so on.
PART 7 - Conclusion

The Constitution entrusts the Nitijela with the power to make laws for the People and Government of the Republic of the Marshall Islands. Like any other Parliament, the legislative process and functions of the Nitijela are essential and serve as the key building blocks for development. This Legislative Drafting Manual encourages Members to be at the forefront of the law-making process, in order to ensure that all laws enacted achieve improved progress in the social, economic, civil and political development of the country.

In order to improve current drafting processes and ensure effective outcomes from the law-making process, it is essential that Members give clear written instructions for drafting to the Legislative Counsel or any other Government drafters. The purpose of a clear Instruction is to ensure that the Legislative Counsel understands the underlying policy objectives of a proposed Bill. Once a Bill is drafted and is introduced by a Member in the Nitijela, it is also crucial that Members read and understand a Bill and be properly prepared for to debate the Bill during the enactment process. A Bill should be clearly understood by Members who enact it, before it is enshrined in law for citizens to abide by it. As such, prior to the voting on a Bill, Members must assess the Bill to understand the legal implications, and assess whether the Bill serves the public interest.

This manual aims to provide Members with a quick guide to the legislative drafting process and functions. However, it is not intended as a substitute for advice and drafting assistance from the Legislative Counsel, or Attorney General’s Office. All members who require legislative drafting assistance are encouraged to visit the Legislative Counsel for further help.

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References

Materials

Statutes

- Rules of Procedures of the Nitijela.

Publications / Reports

Websites

- E-Climate Parliament - http://www.climateparl.net/home.do
- Inter-Parliamentary Union – www.ipu.org
- IKnow Politics (resources on women in politics) - http://iknowpolitics.org/
Appendix 1:

NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
30TH CONSTITUTIONAL REGULAR SESSION, 2010 BILL NO. ___

A BILL FOR AN ACT

BE IT ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS:

Section 1. Short title.
This Act may be cited as the Betelnut Prohibition (Amendment) Act, 2010.

Section 2. Amendments.
(1) Section 2 of the Betelnut Prohibition Act is amended as follows:

"Officer" includes an immigration officer, customs officer, quarantine officer, ports officer, police officer, or any officer authorized to enforce the law.

(2) Section 3 of the Betelnut Prohibition Act is amended as follows:

§3. Importation, distribution or selling of betelnut for sale or distribution prohibited.
(1) No person shall import betelnut in the Republic for sale or distribution, except

(2) Nothing in this section may prohibit the importation of betelnut purposely for personal consumption.

(2) Any person who imports betelnut for personal consumption shall apply to the Chief of Agriculture for an import permit pursuant to the Animal and Plants Inspection Act and Regulations.

(3) The Chief of Agriculture shall issue import permit of betelnut for personal consumption, an amount not more than two hundred (200) pieces of betelnut.

(3) Section 4 of the Betelnut Prohibition Act is amended as follows:

§4. Use and possession of betelnut by a minor prohibited.
No minor shall publicly in possession of, and use of betelnut in any form. Any betelnut found in the possession of a minor shall be presumed to be the property of that person minor and shall be confiscated by an officer.

(4) Section 6 of the Betelnut Prohibition Act is amended as follows:

§6. Seizure, Forfeiture and Destruction
(1) Any quantity of betelnut imported, distributed for the purposes of sale in violation of Section 3, other more than the amount permitted for personal consumption, shall subject to seizure and or destruction by an officer, immigration officer, custom officer, quarantine officer, ports officer or any police officer.

(2) Any proceeds realized by an any of the officers mentioned in Subsection (1), or proceeds forfeit therefrom from an unlawful sell of betelnut shall be deposited into the Ministry of Justice Special Revenue Fund, and to be utilized for the purposes of that Fund.

Section 3. Effective Date
This Act shall take effect on the date of certification in accordance with the Constitution of the Republic of the Marshall Islands and Rules of Procedures of the Nitijela.

BILL SUMMARY

The Bill proposes to amend certain sections of the Betelnut Prohibition Act, 2010 to improve the Act and to ensure that importation of betelnut for personal consumption is subjected to the requirements of the Animal and Plants Inspection Act and Regulations. The Bill proposes to (i) define “officer” (ii) provide requirement, and set condition for importation of betelnut for personal consumption (iii) improve for consistency.(1) Define “Officer” – the Bill proposes to define “officer” to widen the scope of definition to include Chief of Agriculture and other officers that are not listed in the Act but are authorized to enforce the law. By defining officers in the Act and generally make reference would widen the scope to improve enforcement. (2) Subject to Quarantine requirements – the Bill proposes to provide condition and procedures for importation of betelnut for personal consumption as required under Animal and Plants Inspection Act and Regulation. To import betelnut for personal consumption in the Republic, (i) the person must apply to the Chief of Agriculture for an import permit; (ii) the import permit must allow only two hundred (200) pieces of betelnuts.
Appendix 2:
Example 2: Structure of New Legislation.

NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
30TH CONSTITUTIONAL REGULAR SESSION, 2010 BILL NO. ___

A BILL
FOR AN ACT

to prevent domestic violence, protect complainants or survivors of domestic violence; to ensure investigation, prosecution and punishment of perpetrators of domestic violence, and other related matters.

BE IT ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS:

PART I - PRELIMINARY MATTERS

Section 1. Short title.
This Act may be cited as the Domestic Violence Prevention and Protection Act, 2011.

Section 2. Purpose.
The purposes of this Act are:
(1) to prevent violence between family members and others who are in domestic relationships;
(2) to recognize that domestic violence of any kind is not acceptable in the Republic;
(3) to ensure investigation, prosecution and punishment of persons who commit domestic violence; and
(4) to provide support for complaints/survivors of domestic violence.

Section 3. Definition.
In this Act, unless the context otherwise requires:
(a) “applicant” means:
   (i) the person completing the application for a protection order;
   (ii) the person on whose behalf an application is made;
   (iii) any other persons protected by this Act;
(b) “care and custody” means a person who expressly or implicitly has, or under the circumstances should have had, physical custody or care of that child at the time;
(c) “child” means an individual or person under the age of 18;
(d) “complainant” means a person who is sought to be protected by a protection order, or temporary protection order under the Act;
(e) “court” means any Community Court, District Court and High Court of the Marshall Islands;
(f) “community court” means court which have local and community jurisdiction and grants temporary protection order under section 9 of this Act;
(g) “domestic violence” has the meaning given by section 4 of this Act;
(h) “protection order” means an order made under section 6 of this Act.
(i) “family member” means a member of a person’s family including spouse, child, parent, sibling, uncle, aunt, or uncle-in-law or aunt-in-law, nephew, niece or cousin; any other person who is treated by the person as a family member or a member of a same household;
(j) “respondent” means the person against whom a domestic violence prevention order is sought;
(k) “spouse of a person” means an individual of the opposite sex to the person who:
   (a) is or has been married to the person under law or custom; or
   (b) is a biological parent of a child with the person (whether or not they are or have been married or are living or have lived together);
(l) “sexual assault” has the same meaning under the Criminal Code of Republic of the Marshall Islands;
(m) “stalking” means:
   (a) following the person; or
   (b) watching the person; or
   (c) loitering outside premises where the person lives, works or frequents for the purposes of any social or leisure activity; or
   (d) Making persistent telephone calls to the person or to premises where the person lives or work;
(n) “temporary protection order” means an order issued by the Community Court under section 9 of this Act.

PART II - DOMESTIC VIOLENCE OFFENCE AND PENALTIES

Section 4. Domestic violence offences.
(1) Any person who:
   (a) assaults a family member;
   (b) psychologically abuses or intimidates a family member;
   (c) sexually assaults a family member;
   (d) unlawfully economically deprives a family member;
   (e) continuously unlawfully restrains the freedom of movement of a family member;
   (f) stalks a family member so as to cause him or her apprehension or fear;
   (g) unlawfully behaves in an indecent or offensive manner to a family member;
   (h) unlawfully damages or causes damage to a family member’s property,
   commits an act of domestic violence.
(2) Any person who counsels or procures another to commit any of the acts under subsection (1) shall commit an act of domestic violence.
(3) Any person who threatens to commit any of the acts under subsection (1) shall commit an act of domestic violence.
Section 5. Domestic Violence Penalties.
(1) Any person who commits domestic violence pursuant to section 4 (1)(a),(c),(g) or (h) is guilty of an offence punishable under the Criminal Code.
(2) Any person who commits domestic violence pursuant to section 4 (1)(b),(c) or (f) is liable to 6 months imprisonment or a fine not exceeding $1,000 or both;
(3) Any person who counsels or procures another person to commit domestic violence pursuant to section 4 (2) is guilty of an offence and is liable to 6 months imprisonment or a fine not exceeding $1,000 or both.

PART III - DOMESTIC VIOLENCE PROTECTION ORDER

Division 1 - Power of court to grant protection order

Section 6. Power of court to grant a protection order.
(1) A court may on application made under section 12 grant a protection order against a respondent if the court is satisfied on the balance of probabilities that:
   (a) the respondent has committed an act of domestic violence against the complainant; or
   (b) the respondent is likely to commit an act of domestic violence against the complainant.
(2) In deciding whether to grant a protection order, the court shall take into account the following:
   (a) ensure that the complainant and any children are protected from future domestic violence;
   (b) the well-being and accommodation needs of the complainant and the complainant’s children, as well as other family members are secured;
   (c) any other matter that the court consider relevant and significant.

Section 7. Condition of a protection order: General.
(1) If a court grants a protection order, it must include:
   (a) the respondent must be of good behavior towards the complainant and any of the family member who are named in the order; and
   (b) the respondent must not commit an act of domestic violence.
(2) The court may impose other conditions on the respondent in accordance with section 8 if it considers necessary in the circumstances, and or desirable in the interests of the complainant or any other family member.

Section 8. Conditions of a protection order: Specific
A court may include all or any of the following specific conditions in a protection order:
(1) Conditions relating to individual protection and harmonious family relationships.
   (a) prohibiting the respondent or complainant from approaching each other;
   (b) prohibiting the respondent or complainant from approaching each other while under the influence of alcohol, other forms of drug or non-prescription drugs
   (c) prohibiting the respondent or complainant from contacting each other;
   (d) prohibiting the respondent or complainant from being in or near specified premises, including premises where the others live, work or frequents, even though he or she has a legal or equitable interest in the premises;
   (e) prohibiting the respondent or complainant from communicating with each other by any means including telephone or electronically;
   (f) prohibiting the respondent or complainant from causing another person to engage in conduct referred to in paragraphs (a) to (e).
(2) Conditions relating to weapon.
   (a) prohibiting the respondent from possessing any weapon;
   (b) directing that the respondent dispose of any weapon or that it be forfeited to the court for disposal by a police officer in accordance with the order.
(3) Conditions relating to property.
   (a) prohibiting the respondent from damaging property of the complainant;
   (b) directing the respondent:
      (i) to return any specified personal property of the complainant; or
      (ii) allow the complainant to recover, have access to or make use of any specified personal property;
   (c) granting the complainant exclusive occupancy to a residence or specified part of a residence whether or not the residence is solely owned or leased by the respondent.
(4) Conditions relating to counseling and or mediation.
   (a) order one or both parties to attend counseling; or
   (b) order mediation; or
   (c) recommends both counseling and mediation with the consent of both parties;
Division 2 - Temporary Protection Order

Section 9. Temporary Protection Order
(1) A Community Court may on application made under section 12 grant a temporary protection order if the court is satisfied that:
   (a) the complainant is in danger of personal injury;
   (b) because of distance, time or other circumstances of the case, it is not practicable to apply to a court
(3) A Community Court may grant a temporary protection order whether or not the respondent or complainant is in court. If the complainant is unable to attend or appear, the court may accept affidavit or hearsay evidence on behalf of the complainant.
(4) A temporary protection order made under this section shall remain in force for not more than 28 days, and may be renewed by application of the complainant or by consent of the parties for a further period of 28 days.

Section 10. Further hearing by Community Court.
(1) If a temporary protection order is granted by a community court in accordance with section 9(3), the court shall issue a summons for the respondent to appear at a specified date before expiration of the temporary protection order for a further hearing.
(2) At a further hearing, a community court may confirm:
   (a) make the temporary protection order permanent;
   (b) revoke the temporary protection order;
   (c) continue the hearing and order that the temporary protection order remain until completion of the next hearing;
   (d) vary the temporary protection order.

Division 3 – Judicial Separation Orders and other Domestic Relation Orders.

Section 11. Judicial Separation Order
(1) A court may by application for a separation order, grant to the applicant a judicial separation order, based on the circumstances of the case and, on any grounds on which a petition for divorce may have been presented under the provisions and procedures of the Domestic Relations Act, 26 MIRC ch.1.
(2) Where the court grants a separation order in accordance with this section, it shall no longer be obligatory for the husband and wife to cohabit with each other.
(3) On application for judicial separation order, the court may grant other domestic relation orders as appear just and necessary to the custody and access of children, financial support of children as well as the applicant, and occupation of matrimonial home and distribution of property.

Division 4 - Application for Protection Orders

Section 12. Who can apply for a Protection Order?
An application for a Protection Order may be made by:
   (a) the complainant; or
   (b) other family member or a friend of the complainant if, the complainant has given given his or her oral or written consent for that friend to make the application;
   (c) a qualified legal practitioner on behalf of the complainant; or
   (d) any national or local police officer on behalf of the complainant; or
   (e) any national or local government prosecutor; or
   (f) any advocate or counselor from any crisis or rehabilitation centre.

Section 13. Application to a court for a Protection Order.
(1) An application to a court for a protection order may be made orally, by telephone or by radio, in writing, by facsimile, telex or email, or any other mode as required by the court rules and procedures.
(2) If the application is made orally, the court must reduce the application to writing.
(3) An application for a temporary protection order shall be made as part of the application and must state the grounds for the application for the temporary protection order.
(4) In the case of temporary protection order, an application may be made ex parte.

Division 5 - Offence and restitution

Section 14. Breach to protection order.
A person who breaches the protection order commits an offence and shall upon conviction be punishable by a term of imprisonment of 6 months or a fine of $1000 or both.

Section 15. Restitution.
(1) A court may make an order that the respondent pay restitution to the complainant if he or she as a result of an act of domestic violence suffered:
   (a) personal injury; or
   (b) damage to property; or
   (c) financial loss.
(2) The court may take into account the following, in making an order for restitution to a person:
   (a) any pain and suffering of the person;
   (b) any physical or mental injury of the person;
   (c) cost of any medical treatment incurred by the person;
   (d) any loss of earnings suffered by the person;
   (e) the value of any property of the person that has been taken, destroyed or damaged;
   (f) any necessary and reasonable expenses incurred as a result of separation which results from the act of the domestic violence, including:
      (i) accommodation expenses; and
      (ii) moving and transport expenses; and
      (iii) expenses of setting up a separate household, including housing loan repayments or rent for as long as the court considers reasonably necessary.

PART 4 - PROCEDURAL MATTERS RELATING TO PROTECTION ORDER

Division 1. Application and service

Section 16. Absent respondent
(1) Subject to subsection (2), a court may proceed to hear and determine an application for a protection order if the respondent is not present.
(2) The court must be satisfied that:
   (a) the respondent has been served with a summons to appear at the hearing;
   (b) the respondent is required to appear at the hearing;
   (c) having regard to the circumstances of the case, all reasonable efforts have been made to give the respondent notice of the hearing.

Section 17. Service of application and issue of summons or warrant
On application made to a court under section 12 for a protection order, whether or not an application for temporary protection order is made the court shall issue a summons directing the respondent to appear at the time and place set out in the summons.

Section 18. Service of Protection Orders
(1) If a Protection Order or a Temporary Protection Order is made by a court, the court must:
   (a) explain the order to the complainant and the respondent in a language that he or she understands;
   (b) cause a copy of the order to be served personally on the complainant and on the respondent; and
   (2) in the absence, cause a copy of the order to be given or forwarded to the police officer in charge to serve on the complainant or respondent, or to use use alternative forms of service including radio.

Division 2. Evidence and burden of Proof

Section 19. Evidence
The Rules of Evidence contained in the Evidence Act 28 MIRC Ch1 do not apply to an application for a protection order or temporary protection order.

Section 20. Spouse may give evidence
If a person is charged with an offence under this Act:
   (a) the person’s spouse is a competent and compellable witness in any legal proceedings in connection with the offence; and
   (b) the person’s spouse may be called to give evidence without the consent of the person.

PART 5 – MISCELLANEOUS

Section 21. Variation and revocation of orders.
(1) A court may vary or revoke a protection order upon application by any person whom the order applies.
(2) before the court varies or revokes a protection order, it must
   (a) in the case of protection order, have regard to conditions in section 7 and 8;
   (b) in the case of temporary protection order, consider whether the complainant is in danger of personal injury.

Section 22. Consent orders.
On application for protection order, a court may grant protection order with the consent of the complainant and the respondent.

Section 23. Collaborative Reporting
(1) Notwithstanding any other law or procedures concerning confidentiality to the contrary, any person, who in their professional or official capacity, have reason to believe that an act of domestic violence has occurred to a person or a child, or there is evidence to believe that such a person is at risk to domestic violence, shall immediately report the matter to the Chief of Police, or bring the matter before the court pursuant to section 12.
(2) For the purposes of this section, “person in their professional or official capacity” includes:
   (a) licensed or registered health or medical professionals including medical examiners or coroners;
   (b) employee or officers of public or private schools;
   (c) employee or officers of law enforcement agencies or institutions;
   (d) employee or officers of any public or private agency providing recreational, sports activities or spiritual welfare including churches.
Section 24. **No-drop policy.**
(1) A police officer upon receiving reports of domestic violence cases shall immediately investigate and press charges if appropriate.
(2) A prosecutor shall proceed with the case in court, before proceeding however, the prosecutor must:
   (a) believe that an act of domestic violence has been committed;
   (b) have sufficient evidence to proceed with the case.
   (c) have consent of the complainant.

Section 25. **Emergency assistance.**
(1) Nothing in this Act shall prohibit a local or national police officer from rendering assistance to any person who alleges that he or she or a minor child has been the victim or survivor of domestic violence.
(2) The local or national police officer responding to the request for assistance shall as soon as practicable take whatever steps are reasonably necessary to protect the complaint or survivor from harm, and may advice the complainant of the sources of shelter, medical care, counseling and other services.

Section 26. **Domestic Violence Prevention and Protection Fund.**
(1) A Domestic Violence Prevention and Protection Fund is hereby established. The Fund Shall be a fund within the National Treasury and under the control and supervision of the Ministry of Finance, which shall provide for its administration in accordance with the Financial Management Act of 1990.
(2) all fines imposed and collected under this Act, any funds appropriated by the Nitijela for the purpose of the fund, or any grants and gifts received by the Ministry of Internal Affairs for the purpose of the fund shall be deposited into the Fund.
(3) The Secretary of Internal Affairs shall make requests for withdrawn of funds to assist domestic violence center or safe house for women and children, community education program, counseling program, transportation services and call forwarding during the night or any other services in accordance with the purpose for which the fund is created.

Section 27. **Effective date.**
This Act shall take effect on the date of certification in accordance with the Constitution and the Rules of Procedures of the Nitijela.

Dated: _____________________________  Introduced by: _____________________________

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**BILL SUMMARY**

The purposes of this Bill are to prevent domestic violence, protect complainants or survivors of domestic violence; to ensure investigation, prosecution and punishment of perpetrators of domestic violence, and other related matters. The Bill intends to be gender neutral, considering domestic violence as violence against both male and female partner although however, violence against women is generally high in the Marshall Islands – according to the Marshall Islands Demographic and Health Survey by EPPSO in 2007, about thirty percent (30%) of women aged 15 to 49 have ever experienced some form of emotional, physical or sexual violence by their husbands or partners. Nearly one in five women (22.1 %) has experienced physical violence by their husbands and spouses. Currently, the RMI has lacked the special or specific protection measures for women and children. This legislative reform emerged to address and eliminate the violence against women, as a prevalent issue in the Republic of the Marshall Islands.

The Bill is divided into 5 parts. The first part deals with definition and purposes of the Bill. It is envisaged that the Bill will (i) prevent domestic violence between family members and others who are in domestic relationships; (ii) ensure that persons who committed domestic violence are investigated, prosecuted and punish; (iii) provide protection to complainants or survivors of domestic violence - who can apply to court for protection orders; (iv) provide safe havens for survivors of domestic violence.

The second part of the Bill deals with offences and penalties. Actions which are classified as domestic violence offences includes assault, psychological abuses or intimidation, sexually abuses or harassment, economical deprivation, continuous restraining of the freedom of movement, stalking or apprehension or fear, indecent or offensive manner or behavior, causes damage to a family member’s property.

The third part deals with domestic violence protection order. It provide for a complainant of domestic violence to apply to court for a protection order to restrain the respondent (or person who commits domestic violence) from certain actions or behavior towards the complainant, the children or any member of the family who lives in the same household, and who are affected by the act of domestic violence. The court may set general conditions or specific conditions depending on the nature of the case. For those who are living in the outer islands, the complainant may also apply to the community courts to grant temporary order which lasts only for 30 days and could be renewed for another 30 days.

The part four deals with procedures relating to the protection order which includes (i) application and service of the protection order, and (ii) evidence and burden of proof in court for domestic violence is similar to civil matter, other than criminal matter that has a higher burden of proof beyond reasonable doubt - sometimes difficult to prove.

The final part of the Bill deals with other matters which include variation and revocation of orders, consent orders, collaborative reporting between agencies, no drop policy, emergency assistance and the creation of domestic violence prevention and protection fund to financially support care centers (safe-house) and other activities relating to domestic violence.