

REPUBLIC PROCEEDINGS

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Republic Proceedings Act 1972

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The Republic Proceedings Act 1972 No 19 was certified and commenced on 1 November 1972 (GN No 306/1972; Gaz 49/1972).

Amending Legislation	Certified	Date of Commencement
Republic Proceedings (Amendment) Act 2010 No 5	18 November 2010	18 November 2010
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

An Act to make provisions relating to the civil liabilities and rights of the Republic and to civil proceedings by and against the Republic and relating to the civil liabilities of persons other than the Republic in certain cases involving the affairs and property of the Republic, and for persons connected with those matters.

Enacted by the Parliament of Nauru as follows:

PART 1 — PRELIMINARY

1 Short title and commencement

This Act may be cited as the *Republic Proceedings Act 1972* and came into effect on 1 November 1972.

2 Interpretation

(1) Any reference in this Act to this Act shall, unless the context otherwise requires, include a reference to rules of court made for the purposes of this Act.

(2) In this Act:

‘agent’, when used in relation to the Republic, includes an independent contractor employed by the Republic;

‘civil proceedings’ includes proceedings in the Supreme Court for the recovery of fines or penalties but does not include proceedings of a nature such as in England are taken on the Crown Side of the Queen’s Bench Division of the High Court of Justice;

‘instrumentality of the Republic’

(a) means a body established by statute, which statute expressly provides that the body is subject in some respect to Cabinet or Ministerial direction; but

(b) does not include:

(i) a statutory body that is deemed, by regulation made under Section 2A, not to be an instrumentality of the Republic; or

(ii) a statutory body that, in the statute establishing the body, is expressly provided not to be an instrumentality of the Republic for the purposes of this Act;

[def subst Act 5 of 2010 s 3 and Sch clause [1], opn 18 Nov 2010]

‘officer’, in relation to the Republic, includes any Minister, any public officer, any other servant of the Republic and any officer or employee of an instrumentality of the Republic;

[def subst Act 5 of 2010 s 3 and Sch clause [1], opn 18 Nov 2010]

‘order’ includes a judgment, decree, rule, award or declaration;

‘proceedings against the Republic’ includes a claim by way of set-off or counterclaim raised in proceedings by the Republic;

‘Secretary for Justice’ means the Head of the Department of Justice;

[Amendment by Law Revision Commission under the Law Revision and Consolidation Act 2019.]

'ship' has the meaning assigned to it by Section 2 of the *Shipping Registration Act 1968*; and

'statutory duty' means any duty imposed by or under any written law.

- (3) Any reference in Part 4 or Part 5 of this Act to civil proceedings by or against the Republic, or to civil proceedings to which the Republic is a party, shall be construed as including a reference to civil proceedings to which the Secretary for Justice or any Government department or instrumentality of the Republic, or the President or any officer of the Republic as such, is a party:

Provided that the Republic shall not for the purposes of Part 4 and Part 5 of this Act be deemed to be a party to any proceedings by reason only that they are brought by the Secretary for Justice or any other officer of the Republic upon the relation of some other person.

2A Exclusion of statutory body from definition of instrumentality

The Cabinet may, by regulation, provide that a specified statutory body is not an instrumentality of the Republic for the purposes of this Act.

[s 2A insrt Act 5 of 2010 s 3 and Sch clause [2], opn 18 Nov 2010]

PART 2 — SUBSTANTIVE LAW

3 Claims against the Republic

(1) In this Section:

‘Republic’ means the Republic or any Government department or instrumentality of the Republic or the President, the Cabinet, any Minister or any public officer in his or her official capacity; and

‘proceedings’ includes a counter-claim in proceedings against the Republic.

- (2) No civil proceedings may be taken against the Republic to enforce a claim against the Republic unless:
- before the commencement of the proceedings, Cabinet has given leave for them to be taken; or
 - the claim is of a kind mentioned in subsection (3).
- (3) A person may take civil proceedings, without leave of Cabinet, to enforce any of the following claims:
- a claim for the enforcement of a contract validly entered into by or on behalf of, the Republic;
 - a claim for judicial review of administrative action;
 - a claim to enforce the payment of debt charges which are a charge on the Treasury Fund; or
 - a claim in respect of which it is provided in an Act that the provisions of this Section do not apply.
- (4) The Cabinet shall prescribe by regulations the manner in which application may be made to the Cabinet for leave to take proceedings against the Republic.
- (5) Where leave to take proceedings against the Republic is granted by the Cabinet, the proceedings, if taken, shall be taken in accordance with the provisions of this Act.

[s 3 subst Act 5 of 2010 s 3 and Sch clause [3], opn 18 Nov 2010]

4 Liability of the Republic in tort

- (1) Subject to the provisions of this Act, the Republic shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject:
- in respect of torts committed by its servants or agents;
 - in respect of any breach of those duties which a person owes to his or her servants or agents at common law by reason at being their employer; and
 - in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control or property:

Provided that no proceedings shall lie against the Republic by virtue of paragraph (a) of this subsection in respect at any act or omission, of a servant or agent of the Republic unless the act or omission would, apart from the provisions of this Act, have given rise to a cause of action in tort against that servant or agent or his or her estate.

- (2) Where the Republic is bound by a statutory duty which is binding also upon persons other than the Republic, the President and the Republic's officers, then, subject to the provisions of this Act, the Republic shall, in respect of a failure to comply with that duty, be subject to all those liabilities in tort, if any, to which it would be so subject if it were a private person of full age and capacity.
- (3) Where any functions are conferred or imposed upon the President or an officer of the Republic as such either by any rule of the common law or by any written law, and the President or that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Republic in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Republic.
- (4) Any written law or contract which negatives or limits the amount of the liability of any Government department, any instrumentality of the Republic, the President, the Cabinet, a Minister or any public officer acting in his or her official capacity in respect of any tort committed by it or him or her shall, in the case of proceedings against the Republic under this Section in respect of a tort committed by that department, instrumentality of the Republic, the Cabinet, the President, that Minister or that public officer, apply in relation to the Republic as it would have applied in relation to that department, the Cabinet, that instrumentality of the Republic, the President, that Minister or that public officer if the proceedings against the Republic had been proceedings against that department, the Cabinet, that instrumentality of the Republic, the President, that Minister or that public officer.
- (5) No proceedings shall lie against the Republic by virtue of this Section in respect of anything done or omitted to be done by a person while discharging or purporting to discharge any responsibilities of a judicial or quasi-judicial nature vested in him or her, or any responsibilities which he or she has in connection with the execution of judicial or quasi-judicial process.
- (6) No proceedings shall lie against the Republic by virtue of this Section in respect of any act, neglect or default of any officer of the Republic, unless that officer has been directly or indirectly appointed by the Republic and was at the material time paid in respect of his or her duties as an officer of the Republic wholly out of the Treasury Fund or was at the material time holding an office in respect of which the Chief Secretary certifies that the holder thereof would normally be so paid.

5 Provisions as to industrial property

- (1) Where after the commencement of this Act any servant or agent of the Republic infringes a patent, or infringes a registered trade mark, or infringes any copyright, including any copyright in a design subsisting under any written law, and the infringement is committed with the authority of the Republic, then, subject to the provisions of this Act and any rights conferred on the Republic, any Government department or any instrumentality of the Republic by any other written law for the time being in force, civil proceedings in respect of the infringement shall lie against the Republic.

- (2) Save as expressly provided by this Section, no proceedings shall lie against the Republic by virtue of this Act in respect of the infringement of a patent, in respect of the infringement of a registered trade mark, or in respect of the infringement of any such copyright as is mentioned in subsection (1).

6 Application of law as to indemnity, contribution, joint and several tortfeasors, and contributory negligence

- (1) Where the Republic is subject to any liability by virtue of this Part, the law relating to indemnity and contribution shall, subject to the provisions of this Act, be enforceable by or against the Republic in respect of the liability to which it is so subject as if the Republic were a private person of full age and capacity.
- (2) Without prejudice to the effect of subsection (1), Part 2 of the *Law Reform (Married Women and Tortfeasors) Act 1935* of the Parliament of the United Kingdom, adopted as law in the Republic by the *Custom and Adopted Laws Act 1971*, shall, subject to the provisions of this Act, bind the Republic.
- (3) The *Law Reform (Contributory Negligence) Act 1945* of the Parliament of the United Kingdom, adopted as law in the Republic by the *Custom and Adopted Laws Act 1971* shall, subject to the provisions of this Act, bind the Republic.

7 Liability in connection with postal packets

- (1) Subject as hereinafter provided, no proceedings in tort shall lie against the Republic for anything done or omitted to be done in relation to a postal packet by a person while employed as a servant or agent of the Republic, or for anything done or omitted to be done in relation to a telephonic communication by a person while so employed; nor shall any public officer be subject, except at the suit of the Republic, to any civil liability for any of the matters aforesaid.
- (2) Notwithstanding the provisions of subsection (1), proceedings shall, subject to the provisions of this Act, lie against the Republic in respect of loss of or damage to a registered inland postal packet, not being a telegram, in so far as the loss or damage is due to any wrongful act done or any neglect or default committed by a person employed as a servant or agent of the Republic while performing or purporting to perform his or her functions as such in relation to the receipt, carriage, delivery or other dealing with the packet:

Provided that:

- (a) the amount recoverable in any proceedings under this subsection shall not exceed the market value of the packet in question, excluding the market value of any message or information which it bears, at the time when the cause of action arises;
- (b) the amount recoverable in any such proceedings shall not in any event exceed the maximum amount which under any written law is available for compensating the persons aggrieved having regard to the fee paid in respect of the registration of the packet; and
- (c) the Republic shall not be liable under this subsection in respect of any packet unless such conditions as are prescribed by virtue of subsection (5) in relation to registered inland postal packets have been complied with in relation to that packet.

For the purposes of any proceedings under this subsection, it shall be presumed, until the contrary is shown on behalf of the Republic, that the loss of or damage to the packet was due to some wrongful act done, or some neglect or default committed, by a person employed as a servant or agent of the Republic while performing or purporting to perform his or her functions as such in relation to the receipt, carriage, delivery or other dealing with the packet.

- (3) No relief shall be available under subsection (2) except upon a claim by the sender or the addressee of the packet in question; and the sender or addressee of the packet shall be entitled to claim any relief available under the said subsection in respect of the packet, whether or not he or she is the person indemnified by the injury complained of, and to give a good discharge in respect of all claims in respect of the packet under the said subsection:

Provided that where the court is satisfied, upon an application by a person who is not the sender or addressee of the packet, that the sender and the addressee are unable or unwilling to enforce their remedies in respect of the packet under the said subsection, the court may, upon such terms as to security for costs and otherwise as the court thinks just, allow that other person to bring proceedings under the said subsection in the name of the sender or the addressee of the packet.

Any reference in this subsection to the sender or addressee of the packet includes a reference to his or her personal representatives.

- (4) Where by virtue of subsection (3), a person recovers any money or property which, apart from that subsection, would have been recoverable by some other person, the money or property so recovered shall be held on trust for that person.
- (5) Regulations may be made under the *Naoero Postal Services Corporation Act 2018* for prescribing the conditions to be complied with for the purposes of this Section in relation to registered inland postal packets.
- (6) No claim for salvage shall lie against the Republic in respect of anything done to, or suffered in relation to, any postal packets while they are being carried by sea or by air.
- (7) In this Section:
- (a) the expression ***‘postal packet’*** has, subject as hereinafter provided, the same meaning as in the *Naoero Postal Services Corporation Act 2018*, and accordingly includes a telegram;
 - (b) the expression ***‘inland postal packet’*** means a postal packet which is posted in the Republic for delivery in the Republic, to the person to whom it is addressed; and
 - (c) the expression ***‘sender’***, in relation to a postal packet, has such meaning as may be assigned to it by regulations under the *Naoero Postal Services Corporation Act 2018*.
- (8) Any reference in this Section to a postal packet shall be construed as including a reference to the contents of such a packet.
- (9) [subs (9) rep Act 4 of 2018 s 46, opn 26 Jan 2018]

8 Saving in respect of Acts done under prerogative and statutory powers

- (1) Nothing in this Part shall extinguish or abridge any powers or authorities which, if this Act had not been passed, would have been exercisable by virtue of the prerogative of the Republic, the President or the Cabinet, or any powers or authorities conferred on the Republic, the President or the Cabinet by the *Constitution* or by any other written law, and, in particular, nothing in this Part shall extinguish or abridge any powers or authorities exercisable by the Republic, the President or the Cabinet, whether in time of peace or of war, for the purpose of the defence of the Republic or of maintaining law and order.
- (2) Where in any proceedings under this Act it is material to determine whether anything was properly done or omitted to be done in the exercise of the prerogative of the Republic, the President or the Cabinet, the President or a Minister may, if satisfied that the act or omission was necessary for any such purpose as is mentioned in subsection (1), issue a certificate to the effect that the act or omission was necessary for that purpose; and the certificate shall, in those proceedings, be conclusive as to the matter so certified.

PART 3 — JURISDICTION AND PROCEDURE

9 Civil proceedings may be instituted in any court

- (1) Subject to the provisions of this Act and to any written law relating to the jurisdiction of the courts and the right to institute proceedings, civil proceedings by or against the Republic may be instituted in any court.
- (2) Civil proceedings by or against the Republic shall be instituted and proceeded with in accordance with any written law for the time being in force relating to the practice and procedure of the courts and in no other manner whatsoever.

10 Interpleader

The Republic may obtain relief by way of interpleader proceedings, and, subject to the provisions of this Act, may be made a party to such proceedings, in the same manner in which any other person may obtain relief by way of such proceedings or be made a party thereto, and, subject to the provisions of this Act, may be made a party to such proceedings notwithstanding that the application for relief is made by the Commissioner of Police or other public officer; and all rules of court relating to interpleader proceedings shall, subject to the provisions of this Act, have effect accordingly.

11 Parties to proceedings

- (1) Civil proceedings by the Republic shall be instituted by the Secretary for Justice.
- (2) Civil proceedings against the Republic shall be instituted against the Secretary for Justice.
- (3) No proceedings instituted in accordance with this Part by or against the Secretary for Justice shall abate or be affected by any change in the person holding the office of Secretary for Justice.

12 Service of documents

All documents required to be served on the Republic for the purpose of, or in connection with, any civil proceedings by or against the Republic shall be served on the Secretary for Justice.

13 Removal and transfer of proceedings

- (1) Where in a case where proceedings are instituted against the Republic in the District Court an application in that behalf is made by the Republic to a judge of the Supreme Court, and there is produced to the Court a certificate of the Secretary for Justice to the effect that the proceedings may involve an important question of law or may be decisive of other cases arising out of the same matter or are for other reasons more fit to be tried in the Supreme Court, the Judge shall order that the proceedings be removed into the Supreme Court.
- (2) Where any proceedings have been removed into the Supreme Court as the result of an order made under this Section and it appears to the Supreme

Court or a Judge at that time or at any subsequent stage in the proceedings that the removal has occasioned additional expense to the person by whom the proceedings are brought, the Court or Judge may take account of the additional expense so occasioned in exercising its, or his or her, powers in regard to the award of costs.

- (3) Without prejudice to the rights of the Republic under subsections (1) and (2), Rules of the court and enactments relating to the removal or transfer of proceedings from the District Court to the Supreme Court, and to the transfer of proceedings from the Supreme Court to the District Court, shall apply in relation to proceedings against the Republic.

14 Nature of relief

- (1) In any civil proceedings by or against the Republic the court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:

Provided that:

- (a) where in any proceedings against the Republic any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and
 - (b) in any proceedings against the Republic for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Republic to the land or property or to the possession thereof.
- (2) The court shall not in any civil proceedings grant any injunction or make any order against the President, the Cabinet, a Government department, an instrumentality of the Republic, a Minister or an officer of the Republic if the effect of granting the injunction or making the order would be to give any relief against the Republic which could not have been obtained in proceedings against the Republic.

15 Appeals and stay of execution

Subject to the provisions of this Act, all provisions of any written law relating to appeals and stay of execution shall, with any necessary modifications, apply to civil proceedings by or against the Republic as they apply to proceedings between subjects.

16 Scope of Part 3

Notwithstanding anything in the preceding provisions of this Part, the provisions of this Part shall not have effect with respect to any of the following proceedings, that is to say:

- (a) proceedings brought by the Secretary for Justice on the relation of some other person; and
- (b) proceedings by or against the Official Trustee.

PART 4 — JUDGMENTS AND EXECUTION

17 Interest on debts, damages and costs

- (1) The provisions of any written law that any judgment debt shall carry interest, shall apply to a judgment debt of that nature due from or to the Republic.
- (2) Where any costs are awarded to or against the Republic in any court, interest shall be payable upon those costs unless the court otherwise orders, and any interest so payable shall be at the same rate as that at which interest is payable upon judgment debts due from or to the Republic.

18 Satisfaction of orders against the Republic

- (1) In this Section, except in subsection (7), '*Republic*' means the Republic or any Government department or instrumentality of the Republic or the President, the Cabinet, any Minister or any public officer in his or her official capacity.
- (2) Where in any proceedings by or against the Republic, or in connection with any arbitration to which the Republic is a party, any order, including an order for costs, is made by any court or arbitrator in favour of a person against the Republic, the person may apply to the court for a certificate containing the particulars of the order.
- (3) An application under subsection (2) may be made:
 - (a) at any time after the expiration of 21 days from the date of the order;
or
 - (b) if the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed,
whichever is later.
- (4) Where a person makes an application under subsection (2):
 - (a) the Registrar of Courts shall notify the Secretary for Justice of the application; and
 - (b) the Secretary for Justice, within 21 days of being notified, shall:
 - (i) elect to represent the Republic at an *inter partes* hearing of the application; or
 - (ii) waive the right to an *inter partes* hearing of the application.
- (5) Where the Secretary elects to represent the Republic at an *inter partes* hearing of an application, the Secretary may seek to have terms included in the certificate.
- (6) Where an application is validly made under this Section, the Registrar:
 - (a) shall issue a certificate in the prescribed form;
 - (b) may, if satisfied that it is necessary in view of the financial position of the Republic and the public interest in the ability of the Republic to maintain public services and meet other essential expenditure, include in the certificate terms for payment of the judgment debt and costs to be made in specified instalments; and
 - (c) may issue a separate certificate with respect to the costs, if any, ordered to be paid to the applicant.

- (7) A copy of any certificate issued under this Section may be served by the person in whose favour the order is made:
 - (a) if the order is against an instrumentality of the Republic, upon the principal executive officer of the instrumentality of the Republic; or
 - (b) if the order is against the Republic or any Government department or the President, the Cabinet, any Minister or any public officer in his or her official capacity, upon the Secretary for Justice.
- (8) On being served with a certificate under subsection (7)(a), the principal executive officer of an instrumentality of the Republic shall pay to the person entitled or the person's legal representative the amount specified in the certificate to be due to the person in accordance with any terms of payment specified in the certificate, unless payment against the certificate has been suspended under subsection (11).
- (9) On being served with a certificate under subsection (7)(b), the Secretary for Justice shall pay to the person entitled or the person's legal representative the amount specified in the certificate to be due to the person in accordance with any terms of payment specified in the certificate, unless payment against the certificate has been suspended under subsection (11).
- (10) A payment that is required to be made by the Secretary under subsection (9) is a charge on the Treasury Fund.
- (11) The court by which an order referred to in subsection (2) is made or a court to which an appeal against the order lies, may direct that, pending an appeal or otherwise, payment of all or part of the amount specified in the order is suspended and, if the certificate has not yet been issued, may order such directions to be included in the certificate.
- (12) No execution or attachment process may be issued out of any court for enforcing payment by the Republic of any judgment debt or costs except as provided for in this Section, and no person is individually liable under any order for the payment by the Republic of any such debt or costs.

[s 18 subst Act 5 of 2010 s 3 and Sch clause [4], opn 18 Nov 2010]

19 Execution by the Republic

- (1) Subject to the provisions of this Act, any order made in favour of the Republic against a person in any civil proceedings to which the Republic is a party may be enforced in the same manner as an order made in an action between subjects, and not otherwise.
- (2) Subsection (1) shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.
- (3) Nothing in this Section shall affect any procedure which immediately before the commencement of this Act was available for enforcing an order made in favour of the Republic in proceedings brought by the Republic for the recovery of any fine or penalty, or the forfeiture or condemnation of any goods, or the forfeiture of any ship or any share in a ship.

20 Attachment of moneys payable by the Republic

Where any money is payable by the Republic to some person who, under any order of any court, is liable to pay any money to any other person, and that other person would, if the money so payable by the Republic were money payable by

a subject, be entitled under rules of court to obtain an order for the attachment thereof as a debt due or accruing due, or an order for the appointment of a receiver to receive the money on his or her behalf, the court may, subject to the provisions of this Act and in accordance with rules of court, make an order restraining the first-mentioned person from receiving that money and directing payment thereof to that other person or to the receiver:

Provided that, except as may be, authorised by any written law, no such order shall be made in respect of:

- (a) any wages or salary payable to any public officer as such; or
- (b) any money which is subject to the provisions of any enactment prohibiting or restricting assignment, charging or taking in execution.

PART 5 — MISCELLANEOUS AND SUPPLEMENTAL

21 Discovery

- (1) Subject to and in accordance with rules of court:
 - (a) in any civil proceedings in any court to which the Republic is a party, the Republic may be required by the court to make discovery of documents and produce documents for inspection; and
 - (b) in any such proceedings as aforesaid, the Republic may be required by the court to answer interrogatories:

Provided that this Section shall be without prejudice to any rule of law which authorises or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.
- (2) An order of the court made under the powers conferred by subsection (1)(b) shall direct by what officer of the Republic the interrogatories are to be answered.
- (3) Without prejudice to subsections (1) and (2), any rules made for the purposes of this Section shall be such as to secure that the existence of a document will not be disclosed if it would be injurious to the public interest to disclose the existence.

22 Exclusion of proceedings in rem against the Republic

- (1) Proceedings in rem shall not be commenced in any court in respect of any claim against the Republic, nor shall any ship, aircraft, cargo or other property belonging to the Republic be arrested, detained or sold by way of enforcing any judgment or order of any court, nor shall anything in this Act give to a person any lien on any such ship, aircraft, cargo or other property.
- (2) Where proceedings in rem have been instituted in any court against any such ship, aircraft, cargo or other property, the court may, if satisfied, either on application by the plaintiff for an order under this subsection or on application by the Republic to set aside the proceedings, that the proceedings were so instituted by the plaintiff in the reasonable belief that the ship, aircraft, cargo or other property did not belong to the Republic and, if further satisfied that the Cabinet has given leave for proceedings to be commenced in respect of the claim, order that the proceedings shall be treated as if they were in personam duly instituted against the Republic in accordance with the provisions of this Act, or duly instituted against any other person whom the court regards as the proper person to be sued in the circumstances, and that the proceedings shall continue accordingly.
- (3) Any such order may be made upon such terms, if any, as the court thinks just and where the court makes any such order it may make such consequential orders as it thinks expedient.

23 Application to Republic of certain statutory provisions

This Act shall not prejudice the right of the Republic to take advantage of the provisions of any written law although not named therein and it is hereby declared that in any civil proceedings against the Republic the provisions of any

written law which could, if the proceedings were between subjects, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Republic.

24 Rules of court

- (1) A power to make rules of court shall include power to make rules for the purpose of giving effect to the provisions of this Act, and any such rules may contain provisions to have effect in relation to any proceedings by or against the Republic in substitution for or by way of addition to any of the provisions of the rules applying to proceedings between subjects.
- (2) Provision shall be made by rules of court with respect to the following matters:
 - (a) for providing for service of process, or notice thereof, in the case of proceedings by the Republic against persons, whether Nauruan citizens or not, who are not resident in the Republic;
 - (b) for providing that in the case of proceedings against the Republic the plaintiff shall not enter judgment against the Republic in default of appearance or pleading without the leave of the court to be obtained on an application of which notice has been given to the Republic; and
 - (c) for providing:
 - (i) that a person shall not be entitled without the leave of the court to avail himself or herself of any set-off or counterclaim in any proceedings by the Republic; and
 - (ii) that the Republic shall not be entitled without the leave of the court to avail itself of any set-off or counterclaim.

25 Financial provisions

- (1) Any expenditure incurred by or on behalf of the Republic by reason of the passing of this Act shall be defrayed out of and be a charge upon the Treasury Fund.
- (2) Any sums payable to the Republic by reason of the passing of this Act shall be paid into the Treasury Fund.

26 Savings

- (1) Except as herein expressly provided, nothing in this Act shall:
 - (a) affect the law relating to prize salvage or apply to proceedings in causes or matters within the jurisdiction of the Supreme Court as a prize court or to any criminal proceedings;
 - (b) subject the Republic to any greater liabilities in respect of the acts or omissions of any independent contractor employed by the Republic than those to which the Republic would be subject in respect of such acts or omissions if it were a private person;
 - (c) affect any rules of evidence or any presumption relating to the extent to which the Republic is bound by any written law; or
 - (d) affect any right of the Republic to demand control or otherwise intervene in proceedings affecting its rights, property or profits.
- (2) Where any property vests in the Republic by virtue of any rule of law which operates independently of the acts or the intentions of the Republic,

the Republic shall not by virtue of this Act be subject to any liabilities in tort by reason only of the property being so vested; but the provisions of this subsection shall be without prejudice to the liabilities of the Republic under this Act in respect of any period after the Republic or a person acting for the Republic has in fact taken possession or control of any such property, or entered into occupation thereof.

- (3) This Act shall not operate to limit the discretion of the Supreme Court to grant relief by way of mandamus in cases in which such relief might have been granted before the commencement of this Act, notwithstanding that by reason of the provisions of this Act, some other and further remedy is available.

27 Effect of amendments

The amendments to this Act effected by the *Republic Proceedings (Amendment) Act 2010* apply from the date of commencement of that Act:

- (a) to any existing claim, proceeding, order, judgment debt or certificate;
- (b) to any party to an existing proceeding; and
- (c) to a person or body in whose favour, or against whom, any order, certificate or debt is yet to be executed or paid.

[s 27 insrt Act 5 of 2010 s 3 and Sch clause [5], opn 18 Nov 2010]

Proceedings Against the Republic Regulations 1973

TABLE OF PROVISIONS

<i>Regulation</i>	<i>Title</i>
1	Citation
2	Interpretation
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	APPENDIX — APPLICATION FOR LEAVE TO TAKE CIVIL PROCEEDINGS AGAINST THE REPUBLIC

Proceedings Against the Republic Regulations 1973

TABLE OF AMENDMENTS

The Proceedings Against the Republic Regulations 1973 were made and commenced on 31 October 1973.

Amending Legislation	Notified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

IN EXERCISE of the powers conferred on it by Section 3 of the *Republic Proceedings Act 1972*, the Cabinet has made the following regulations:

1 Citation

These Regulations may be cited as the *Proceedings Against the Republic Regulations 1973*.

2 Interpretation

In these Regulations '*civil proceedings against the Republic*' has the same meaning as in the Act, which includes civil proceedings by or against an instrumentality of the Republic or a statutory corporation to which the provisions of Section 3 of the Act have been applied by the Cabinet but does not include any of the proceedings specified in Section 16 of the Act.

3 Application for leave to commence proceedings

- (1) Application to the Cabinet for leave under Section 3 of the Act to take civil proceedings against the Republic shall be made in writing in the form set out in the Appendix to these Regulations, signed by the person in whose name it is intended that the proceedings should be taken or where that person is a body corporate or instrumentality of the Republic, by an officer thereof and shall be sent or delivered to the Secretary to the Cabinet.
- (2) Every such application shall be accompanied by a copy of:
 - (a) the statement of claim which the applicant intends to indorse on the writ of summons or to serve;
 - (b) the counterclaim which he or she intends to add to his or her defence;
or
 - (c) the third party notice which he or she intends to issue,
as the case may be in pursuance of his or her claim against the Republic and shall be indorsed with details of the applicant's full name and occupation and of his or her usual places of residence and of business if any.
- (3) The statement of claim, counterclaim or third party notice referred to in subregulation (2) shall include a statement of the circumstances in which the Republic's liability is alleged to have arisen and as to the Government department, instrumentality of the Republic or statutory corporation or the President or the officer of the Republic concerned.

4 Cabinet may require further details of claim

- (1) If the Cabinet having obtained the advice of the Secretary for Justice thereon considers that the statement of claim, counterclaim or third party notice referred to in Regulation 3(2) does not comply with Regulation 3(3), it may direct the Secretary to the Cabinet to notify the applicant accordingly.
- (2) If the applicant is seeking leave to take proceedings against the Republic on behalf of or as the representative of any other person or in respect of any cause of action which he or she alleges or which appears from his or her statement of the circumstances in which the Republic's liability is alleged to

have arisen to be vested in any other person in addition to himself or herself, the Cabinet may direct the Secretary to the Cabinet to require him or her to supply to it details of the full name, occupation and places of residence and of business, if any of that other person.

- (3) Where the Cabinet gives any direction to the Secretary to the Cabinet under subregulation (1) or subregulation (2), he or she shall forthwith notify the applicant in writing of the Cabinet's requirement and the applicant shall send or deliver to the Secretary to the Cabinet in writing for transmission to the Cabinet any information necessary to comply with that requirement.

APPENDIX



REPUBLIC OF NAURU

[Regulation 3]

**APPLICATION FOR LEAVE TO TAKE CIVIL PROCEEDINGS AGAINST THE
REPUBLIC**

The Cabinet
Republic of Nauru

1. I hereby apply for leave to be given by the Cabinet under Section 3 of the *Republic Proceedings Act 1972* for me to take civil proceedings against the Republic of Nauru.

2. This application is accompanied by a copy of:
 - * the statement of claim which I intend to indorse on the writ of summons */ to serve.
 - * the counter claim which I intend to make against the Republic in Civil Action No of 20 now pending in the Supreme */ District Court of Nauru.
 - * the third party notice which I intend to issue in Civil Action No of 20 now pending in the Supreme */ District Court of Nauru.

3. The personal details which I am required by regulation 3 of the *Proceedings against the Republic Regulations 1973* to indorse on this application are:
My full name is
My occupation is
My usual place of residence is
My usual place of business is

4. The address to which any notices relating to this application should be sent is

Dated the day of 20

Signed.
Applicant

* delete whichever is not applicable

