

REPUBLIC OF NAURU

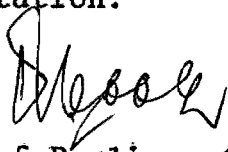
(No. 15 of 1974)

AN ACT

To amend certain provisions of the Appeals Act, 1972 relating to appeals to the Supreme Court in criminal matters and to add to the Act provisions for appeals from the Supreme Court to the High Court of Australia.

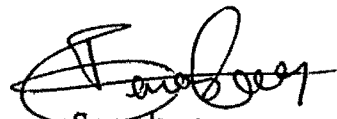
(Certified: 31/12/1974)

I HEREBY CERTIFY that the attached document is a fair print of an Act entitled the Appeals (Amendment) Act, 1974 that has been made by Parliament and is now presented to the Speaker for his Certificate under Article 47 of the Constitution.



Clerk of Parliament
31/12/1974

Pursuant to Article 35(3) and 47 of the Constitution, I, KENAS AROI, Speaker of Parliament, HEREBY CERTIFY that the Appeals (Amendment) Act, 1974 a copy of which is attached has been passed by Parliament.



Speaker
31/12/1974

REPUBLIC OF NAURU

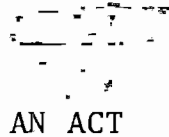
APPEALS (AMENDMENT) ACT, 1974

ARRANGEMENT OF SECTIONS.

Section

1. Short title and commencement
2. Interpretation
3. Amendment to section 2 of the principal Act
4. Amendment to section 12 of the principal Act
5. Amendment to section 14 of the principal Act
6. Addition of a new section 21A to the principal Act
7. Amendment to section 23 of the principal Act
8. Amendment to section 35 of the principal Act
9. Amendment to section 36 of the principal Act
10. Addition of new Parts V, VI and VII to the principal Act

REPUBLIC OF NAURU
(No. 15 of 1974)



To amend certain provisions of the Appeals Act 1972 relating to appeals to the Supreme Court in criminal matters and to add to the Act provisions for appeals from the Supreme Court to the High Court of Australia.

(Certified : 31st December, 1974)

Enacted by the Parliament of Nauru as follows :

SHORT TITLE AND COMMENCEMENT

1. This Act may be cited as the Appeals (Amendment) Act 1974 and shall come into force on a date to be specified by the Minister by notice in the Gazette.

INTERPRETATION

2. In this Act, unless the context otherwise requires -

"the principal Act" means the Appeals Act 1972.

AMENDMENT TO SECTION 2 OF THE PRINCIPAL ACT

3. Section 2 of the principal Act is amended -

(a) by deleting the word and number "Part III" in the definition of "appeal" and inserting in lieu thereof the words and numbers "Parts III and VI";

(b) by deleting the definition of "conviction" and inserting in lieu thereof the following definition -

""conviction" includes a special finding under section 111 of the Criminal Procedure Act 1972 that an accused person was not guilty by reason of insanity";

(c) by deleting the definition of "sentence" and inserting in lieu thereof the following definition -

""sentence" includes any penalty, punishment, disqualification or order for payment of costs or compensation or for restitution imposed, ordered or made by a Court in respect of any person upon his conviction or by

the Supreme Court in exercise of its powers under Part II of this Act";

(d) by adding after the definition of "sentence" the following definition -

"the High Court" means the High Court of Australia established under the Constitution of Australia."

AMENDMENT TO SECTION 12 OF THE PRINCIPAL ACT

4. Subsection (2) of section 12 of the principal Act is amended by deleting the words and number "section 47 of the Penal Code" and inserting in lieu thereof the words and number "section 118 of the Criminal Procedure Act 1972, as though the order for their payment had been made under the provisions of that section".

AMENDMENT TO SECTION 14 OF THE PRINCIPAL ACT

5. Section 14 of the principal Act is amended by repealing subsection (5) thereof and inserting in lieu thereof the following new subsection (5) -

"(5) The Supreme Court on an appeal against acquittal shall allow the appeal if it thinks that the verdict should be set aside on the ground that -

(a) the facts found by the District Court to have been proved establish the offence charged or any other offence of which the accused person could have been convicted on the trial of that charge;

(b) on the evidence before it the District Court could not properly have decided that the facts establishing any such offence as is referred to in the preceding paragraph had not been proved;

(c) the District Court wrongly excluded evidence tendered by the prosecution which, if admitted and believed by the Court, would have been likely to result in the Court finding facts proved which would have established any such offence as is referred to in paragraph (a);

(d) the District Court wrongly decided at the close of the case for the prosecution that a case had not been made out against the respondent sufficiently to require him to make a defence in respect of the charge or any count of the charge; or

(e) the District Court wrongly decided that the charge was defective and did not record its findings of the facts;

and in any other case shall dismiss the appeal. Where the

appeal is allowed on ground (a) or ground (b), the Court shall, unless it is a proper case for the charge to be dismissed or the accused person to be discharged under any written law, enter a conviction in respect of the offence of which the accused person has been proved to be guilty and of which he could have been convicted on the trial of the charge; where the appeal is allowed on ground (c), it shall order that a new trial be held before the District Court; and, where the appeal is allowed on ground (d) or ground (e), it shall order, if the trial was not commenced, that the charge be tried and, if the trial was commenced, that the trial be continued and completed in the District Court or, if for any reason the magistrate, or any of the magistrates, who presided at the trial will not be able to preside at the continued trial, that a new trial be held before the District Court."

ADDITION OF A NEW SECTION 21A TO THE PRINCIPAL ACT

6. The following new section 21A is hereby added to the principal Act -

"THE DIRECTOR OF PUBLIC PROSECUTIONS MAY REQUIRE RECORD TO BE SENT TO THE SUPREME COURT

21A. (1) Where -

(a) the Director of Public Prosecutions considers that -

(i) any finding, sentence or order of the District Court in any criminal cause or matter is illegal or improper or that there was any irregularity in any proceedings in any such cause or matter; and

(ii) the interests of justice require that the Supreme Court should examine the record of that cause or matter and exercise its powers under section 23; and

(b) no appeal has been commenced by any person in respect of that cause or matter,

the Director of Public Prosecutions may, by notice in writing under his hand, require the resident magistrate to send to the Supreme Court the record of that cause or matter.

(2) Every notice under the preceding subsection shall include a brief statement of the Director's reasons for the requirement therein.

(3) Upon receiving a notice under subsection (1), the resident magistrate shall send to the Supreme Court the record of the cause or matter to which it relates, together with a copy of the notice."

AMENDMENT TO SECTION 23 OF THE PRINCIPAL ACT

7. Section 23 of the principal Act is amended -

(a) in subsection (5) by deleting the word "No" and by inserting in lieu thereof the words and punctuation "Subject to section 21A, no"; and

(b) by adding thereto the following additional subsection -

"(6) Where the record of any criminal cause or matter has been called for under section 21, or has been sent or forwarded to the Supreme Court under section 21A or section 22, the resident magistrate, a judge or, if there is no judge present in Nauru, the Registrar may, if he considers that the interests of justice so require, suspend any sentence imposed or order made in that cause or matter upon such terms and for such period as he considers reasonable and, where a sentence of imprisonment is suspended, may, if he thinks fit, order that any person subject to that sentence be released on bail, with or without sureties. In any such case the time during which that person is at large after being so released shall be excluded in computing the term of the sentence."

AMENDMENT TO SECTION 35 OF THE PRINCIPAL ACT

8. Section 35 of principal Act is amended by adding -

(a) in subsection (1), after the word "appeals" the words and numbers "under Parts II and III of this Act";

(b) in subsection (2), after the word "appeal" the words and numbers "under Parts II and III of this Act"; and

(c) in subsection (3), after the word "appeal" where it first appears in that subsection the words and numbers "under Parts II and III of this Act".

AMENDMENT TO SECTION 36 OF THE PRINCIPAL ACT

9. Section 36 of the principal Act is amended by adding the words, numbers and punctuation "Parts II, III and IV of " -

(a) after the words "for carrying"; and

(b) after the words "for regulating generally the practice and procedure under".

ADDITION OF NEW PARTS V, VI AND VII TO THE PRINCIPAL ACT

10. The following new Parts V, VI and VII are hereby added to the principal Act -

"PART V - APPEALS FROM THE SUPREME COURT IN CRIMINAL CAUSES

APPEALS FROM THE SUPREME COURT IN CRIMINAL CAUSES

37. (1) A person convicted on a trial held before the Supreme Court may appeal to the High Court -

(a) against his conviction on any ground of appeal which involves a question of fact alone, a question of mixed law and fact or a question of law alone; and

(b) against the sentence passed on his conviction, unless the sentence is one fixed by law;

and the High Court has jurisdiction to hear and determine the appeal.

(2) The High Court may, if it thinks fit, grant to any party to an appeal from the District Court to the Supreme Court under Part II of this Act leave to appeal to the High Court against the decision of the Supreme Court therein upon such grounds as the High Court may allow and the Full Court of the High Court has jurisdiction to hear and determine the appeal; but no appeal shall lie against the confirmation by the Supreme Court of an order of acquittal by the District Court.

(3) For the purposes of the last preceding subsection, there shall be deemed to have been an appeal from the District Court to the Supreme Court under Part II of this Act in any cause where the Supreme Court has exercised its revisional powers and the decision of the Supreme Court in the exercise of its revisional jurisdiction shall be deemed to be the decision of the Supreme Court in the appeal.

POWERS OF HIGH COURT ON HEARING OF APPEAL

38. (1) On the hearing of any appeal under this Part the High Court may affirm, reverse or modify the judgment appealed from and may give such judgment as ought to have been given in the first instance or may remit the cause, together with its judgment or order thereon, to the Court of first instance for determination, by the way of trial de novo or re-hearing, with such directions as the High Court may think necessary.

(2) The High Court may, notwithstanding that it may be of the opinion that the point raised in an appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has in fact occurred.

STAY OF SENTENCE AND ORDERS

39. (1) Sentence of death and any order made by the Supreme Court on conviction, or made or confirmed by the Supreme Court under the provisions of Part II of this Act, for the payment of compensation or of any of the expenses of the prosecution or for the restoration of any property to any person, and the operation of any provision of any law re-vesting in the original owner or his personal representative the property in stolen goods in case of any such conviction, shall be stayed in every case -

(a) until the expiration of twenty-one days after the date on which the Supreme Court imposed, made or confirmed it;

(b) where any period longer than twenty-one days is allowed for applying under this Part to the High Court for leave to appeal or for filing a notice of appeal under this Part to the High Court, until the expiration of that period;

(c) where an application has been made under this Part to the High Court for leave to appeal, until the application has been heard and determined by the High Court or discontinued and, if leave to appeal is granted, for a further period until the expiration of the time allowed for filing the notice of appeal; and

(d) where a notice of appeal to the High Court under this Part has been filed in a Registry of the High Court, until the appeal has been heard and determined by the High Court or discontinued;

but, if in any cause the Supreme Court is satisfied that the title to any property to which any such order relates or in respect of which such provision of the law operates is not in dispute, it may direct that the order or the operation of such provision of the law shall not be stayed insofar as it relates to such property.

(2) Where in respect of any cause an application for leave to appeal under this Part has been made or notice of appeal under this Part has been filed, the sentence and any order made upon the conviction or by the Supreme Court on an appeal under Part II of this Act, other than an order quashing a conviction, shall be stayed, unless the Supreme Court otherwise orders, -

(a) where an application has been made for leave to appeal, until the application has been heard and determined by the High Court or discontinued and, if

leave to appeal is granted, for a further period until the expiration of the time allowed for filing the notice of appeal; and

(b) where notice of appeal has been filed, until the appeal has been heard and determined by the High Court or discontinued;

but the Supreme Court shall not order the execution of a sentence of death until the appeal has been determined or discontinued.

(3) The Supreme Court may, if it thinks fit, make the stay of a sentence of imprisonment conditional upon the person subject to such sentence entering into such a bail recognizance, with or without sureties, as it considers reasonable.

(4) The High Court may set aside any order of the Supreme Court that a sentence or order is not to be stayed or is to be stayed conditionally upon the person subject to such sentence entering into a bail recognizance and, in any such case, may make the stay of a sentence of imprisonment conditional upon the person subject to such sentence entering into such a bail recognizance, with or without sureties, as the High Court considers reasonable.

(5) A person whose sentence of imprisonment has been stayed under subsection (2) or subsection (4) of this section conditionally upon his entering into a bail recognizance shall not depart Nauru without leave of the Supreme Court. Any police officer having reason to believe that any such person intends to depart Nauru without such leave may arrest him without warrant and take him forthwith before the Supreme Court or, if the Supreme Court is not in session, before the Registrar. If the Court or the Registrar upon proper inquiry finds that such person did intend to depart Nauru without the leave of the Supreme Court, the Court or the Registrar may commit such person to prison to be detained therein until his appeal, or his application for leave to appeal, is determined by the High Court or discontinued.

(6) An appellant or applicant for leave to appeal whose sentence of imprisonment has not been stayed or who, if it has been stayed conditionally upon his entering into a bail recognizance, has not entered into such a recognizance shall, if he makes application therefor, be treated as a prisoner awaiting trial; but in that event eight weeks of the time during which he is in custody and is treated as a prisoner awaiting trial

in pursuance of the provisions of this subsection, or the whole of that time if it is less than eight weeks, shall be disregarded in computing the term of his sentence.

(7) Where a sentence of death is stayed under this section, the person subject to that sentence shall be detained in prison during the period for which it is stayed.

DIRECTOR OF PUBLIC PROSECUTIONS TO BE PARTY TO CERTAIN APPEALS

40. For the purposes of this Part of this Act, the Director of Public Prosecutions shall be deemed to be a party to any criminal cause in which the proceedings were instituted and carried on by a public prosecutor.

LEGAL AID

41. (1) A Justice of the High Court or a judge of the Supreme Court may at any time grant legal aid to a party to an appeal, or to an application for leave to appeal, under this Part to enable such party to have a written case prepared for him by a barrister and solicitor of the Supreme Court or to be represented by counsel at the hearing of the appeal or the application by the High Court, if, in the opinion the Justice or the judge, it appears desirable in the interests of justice that such party should receive such aid having regard to his financial means, the nature of the cause and the grounds of the appeal or the application.

(2) The expenses of legal aid granted to an appellant under this section shall be paid out of the Treasury Fund up to an amount allowed by the High Court but subject to any provision as to rates and scales of payment made by rules of court.

APPELLANT NOT ENTITLED TO ATTEND HEARING IF SENTENCED TO IMPRISONMENT

42. (1) A party to an appeal, or an applicant for leave to appeal, under this Part who has been sentenced to imprisonment in the cause to which the appeal or application relates or in any other cause, unless such imprisonment has been served, shall not be entitled to be present at the hearing of the appeal or application but shall be entitled, at his own expense or with legal aid if it is granted, to be represented at the hearing by counsel.

(2) The High Court may exercise its powers under section 38 of this Act notwithstanding that any

party to an appeal or an applicant for leave to appeal has not attended or been represented by counsel at the hearing of the appeal or application.

COSTS OF APPEAL

43. On the hearing and determination of an appeal, or of an application for leave to appeal, under this Part, the High Court may order the payment of such costs as it thinks just.

PART VI - APPEALS FROM THE SUPREME COURT IN OTHER CAUSES AND MATTERS

APPEALS FROM THE SUPREME COURT

44. Subject to the provisions of section 45, an appeal shall lie to the High Court -

(a) against any final judgment, decree or order of the Supreme Court in any cause or matter, not being a criminal proceeding or an appeal from any other Court or tribunal;

(b) with the leave of the trial judge or the High Court, against any judgment, decree or order, not being a final judgment, decree or order, of the Supreme Court in any cause or matter, not being a criminal proceeding or an appeal from any other Court or tribunal; and

(c) with the leave of the High Court, against any judgment, decree or order of the Supreme Court in the exercise of its appellate jurisdiction under Part III of this Act or under any other written law, except Part II of this Act;

and the High Court has jurisdiction to hear and determine the appeal.

NO APPEAL IN CERTAIN CASES

45. No appeal shall lie under this Part -

(a) where the appeal involves the interpretation or effect of the Constitution;

(b) in respect of the determination by the Supreme Court of a question concerning the right of a person to be, or to remain, a member of the Parliament;

(c) in respect of a judgment, decree or order given or made by consent;

(d) in respect of a judgment, decree or order given or made by the Supreme Court upon an appeal from the Nauru Lands Committee or any successor to that Committee that performs the functions performed by the

Committee immediately prior to the date on which this Part of this Act came into force;

(e) from an order allowing an extension of time for appealing from a decision;

(f) from an order of a judge giving unconditional leave to defend an action;

(g) from the decision of the Supreme Court or of any judge thereof where it is provided by any written law that such decision is to be final; or

(h) from an order absolute for the dissolution or nullity of marriage in respect of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree.

POWERS OF HIGH COURT ON HEARING OF APPEAL

46. Upon the hearing of any appeal under this Part of this Act the High Court may affirm, reverse or modify the judgment or order appealed from and may give such judgment or make such order as ought to have been given in the first instance.

PART VII - GENERAL PROVISIONS RELATING TO APPEALS TO THE HIGH COURT

QUORUM OF JUDGES

47. The jurisdiction of the High Court to hear and determine appeals and applications for leave to appeal under Parts V and VI of this Act shall be exercised by a Full Court consisting of any two or more Justices of the High Court sitting together.

DECISION IN CASES OF DIFFERENCE OF OPINION

48. Where the Justices sitting as a Full Court to hear and determine appeals and applications for leave to appeal under Parts V and VI of this Act are divided in opinion as to the decision to be given on any question, the question shall be decided according to the decision of the majority, if there is a majority; but, if the Court is equally divided in opinion, the decision appealed from shall be affirmed or the application for leave to appeal refused, as the case may be.

POWERS OF THE HIGH COURT

49. (1) For the purposes of and incidental to the

hearing and determination of appeals under Parts V and VI of this Act the High Court shall have all the power, authority and jurisdiction which it has for the purposes of and incidental to the hearing and determination of appeals from the Supreme Courts of the States of Australia.

(2) The High Court may, if it thinks it necessary or expedient in the interest of justice in an appeal under Part V of this Act, order any witnesses who would have been compellable witnesses at the trial to attend and be examined before any judge or the Registrar of the Supreme Court or any other person appointed by the Supreme Court for the purpose and allow the admission of any depositions so taken as evidence before the High Court.

PLACE OF HEARING

50. Appeals and applications for leave to appeal under Parts V and VI of this Act shall be set down for hearing and heard at such place as the High Court may direct.

JUDGMENT OF HIGH COURT

51. When an appeal, or an application for leave to appeal, has been heard and determined by the High Court, and the Registrar of the Supreme Court has been notified by the Registrar of the High Court of the judgment given and the orders made therein, such judgment and orders shall have force and effect in Nauru as if they were the judgment and orders of the Supreme Court and effect shall be given to them in Nauru accordingly.

APPLICATION OF HIGH COURT RULES

52. (1) Subject to the provisions of this Act, the provisions of the High Court Rules, made under the Judiciary Act 1903-1969 of the Commonwealth of Australia, for the time being in force in relation to appeals to the High Court shall, so far as they can be applied, apply to proceedings under Parts V and VI of this Act.

(2) For the purpose of applying the High Court Rules -

(a) insofar as they relate to the filing of notices of appeal and of applications for leave to appeal, the Registry of the Supreme Court shall be deemed to be a District Registry of the High Court;

(b) references to "the Supreme Court of a State" or "a court of a State" shall be deemed to include

reference to the Supreme Court of Nauru and to a court of Nauru respectively.

RULES OF COURT

53. The Chief Justice may make Rules of Court to provide for -

- (a) application to a Judge of the Supreme Court for legal aid, and rates and scales of payment in respect of legal aid, in appeals, and applications for leave to appeal, to the High Court under Part V of this Act; and
- (b) the practice and procedure to be followed in respect of applications to the trial judge under Part VI of this Act for leave to appeal to the High Court.