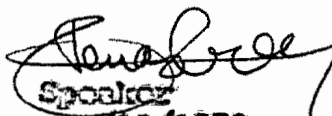


I HEREBY CERTIFY that the attached document is a fair print of an Act entitled the Family Court Act, 1973 that has been made by Parliament and is now presented to the Speaker for his Certificate under Article 47 of the Constitution.

  
Clerk of Parliament  
1/11/1973

Pursuant to Article 35 (3) and 47 of the Constitution, I, KENNETH AROI, Speaker of Parliament, HEREBY CERTIFY that the Family Court Act, 1973 a copy of which is attached has been passed by Parliament.

  
Speaker  
1/11/1973

REPUBLIC OF NAURU

THE FAMILY COURT ACT 1973

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REPUBLIC OF NAURU  
(No. 14 of 1973)

  
AN ACT

To establish a Family Court and make other provision in relation thereto.

(Certified: 1/11/1973 )

Enacted by the Parliament of Nauru as follows:

PART I - PRELIMINARY

SHORT TITLE AND COMMENCEMENT

1. This Act may be cited as the Family Court Act 1973 and shall come into force on a date to be notified by the Minister in the Gazette.

INTERPRETATION

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

"member" means a member of the Family Court appointed under section 4 of this Act;

"the Chairman" means the resident magistrate as the Chairman of the Family Court;

"the Clerk" means the Clerk of the District Court as the Clerk of the Family Court;

"the Courts Trust Fund" means the fund established by section 64 of the Courts Act 1972.

PART II - THE FAMILY COURT

THE FAMILY COURT ESTABLISHED

3. There is hereby established a subordinate Court to be called the Family Court. The Family Court shall be a court of record.

MEMBERS AND CLERK OF THE FAMILY COURT

4. (1) The members of the Family Court shall be

the person for the time being holding, or acting in, the office of resident magistrate and such other persons as may be appointed by the President, after consultation with the Chief Justice, to be members.

(2) The person for the time being holding, or acting in, the office of resident magistrate shall be the Chairman of the Family Court.

(3) Members of the Family Court who are not public officers may be paid such fees and allowances as the Minister may by notice in the Gazette direct.

(4) Save as may be otherwise expressly provided, the Family Court shall be properly constituted for the hearing and determination of any proceedings before it when it is presided over by the Chairman and two or more other members, and not otherwise.

(5) The Clerk of the District Court shall be the Clerk of the Family Court.

#### DECISIONS OF THE FAMILY COURT

5. (1) The decision of the majority of the members of the Family Court hearing any cause or matter on any question of fact shall be the decision of the Court: Provided that, where the members are equally divided in their views on the decision which should be given, the Chairman's decision shall be the decision of the Court.

(2) The decision of the Chairman on any question of law shall be the decision of the Court.

(3) For the purpose of this section, the decision as to the order to be made in any cause or matter shall be deemed to be a decision on a question of fact.

#### POWERS OF THE FAMILY COURT

6. The Family Court and the members constituting that Court shall exercise the jurisdiction, powers and authorities conferred on it by this Act, by the Maintenance Ordinance 1959-1967, by the Adoption of Children Ordinance 1965-1967 and by any other written law.

#### GENERAL POWERS OF MEMBERS OF THE FAMILY COURT

7. Every member of the Family Court shall have power to administer oaths and take solemn affirmations and declarations and to make such orders and to issue such process and exercise such powers, judicial and administrative, in relation to the administration of justice

as shall from time to time be prescribed by any written law.

#### POWER TO COMPEL THE ATTENDANCE OF WITNESSES

8. (1) Subject to the provisions of this Act, the Family Court in criminal proceedings shall have the same powers to compel the attendance of witnesses as are vested in the District Court in criminal proceedings by the Criminal Procedure Act 1972.

(2) Subject to the provisions of this Act the Family Court, in any proceedings other than criminal proceedings, shall, unless other provision is made by any other written law, have the same powers to compel the attendance of witnesses as are vested in the District Court in civil proceedings by the Courts Act 1972.

#### POWERS TO DEAL WITH CONTEMPT OF THE FAMILY COURT

9. (1) If any person -

(a) wilfully insults a member of the Family Court or any witness or any officer of the Court in court, or in going to or returning from court;

(b) wilfully interrupts the proceedings of the Family Court or otherwise misbehaves in court; or

(c) wilfully and without lawful excuse disobeys any order or direction of the Family Court in the course of the hearing of any proceedings;

the Clerk, with or without the assistance of any police officer or other person, may, by order of the Chairman, take the offender into custody and detain him until the rising of the Court and the Chairman may, if he thinks fit, convict the offender of contempt of court and commit him to prison for any period not exceeding ten days or impose upon him a fine not exceeding fifty dollars for each offence.

(2) Any person aggrieved by an order of the Chairman under this section may appeal against it to the Supreme Court within fourteen days of the order being made and the provisions of the Appeals Act 1972 relating to bail pending the hearing of an appeal from the District Court following conviction shall apply mutatis mutandis.

(3) The Supreme Court shall have the same powers to deal with contempt of the authority of the Family Court as it has to deal with contempt of its own authority.

#### PROCEDURE

10. (1) Subject to the provisions of this Act, where the Family Court hears and determines a criminal charge, it shall follow as nearly as possible the procedure prescribed in Part VI of the Criminal Procedure Act 1972 for the trial of offences by the District Court.

(2) Subject to the provisions of this Act, where the Family Court holds a preliminary inquiry into a criminal charge, it shall follow as nearly as possible the procedure prescribed in Part VII of the Criminal Procedure Act 1972 for the holding of preliminary inquiries by the District Court.

(3) Where the Family Court hears and determines, or otherwise deals with, any cause or matter in exercise of powers or authorities conferred upon it by any other written law, it shall, unless the procedure which it is to follow is prescribed by that written law, follow as nearly as possible and so far as it may be applicable the procedure prescribed for the District Court in the exercise of its civil jurisdiction.

(4) Notwithstanding the provisions of the other subsections of this section, the Chief Justice may by rules of court prescribe the procedure to be followed by the Family Court in any type of proceedings or in any part of any proceedings and, where any such rules of court have been made, the provisions of the other subsections of this section shall, for so long as those rules are in force, have force and effect only to the extent that they are not repugnant to, or inconsistent with, those rules.

#### ABSENCE OF MEMBER

11. (1) Where the hearing of any cause or matter has commenced before the Family Court constituted by three or more members and before it has been determined one of the members, other than the Chairman, dies or, because of illness or absence from Nauru, is unable to continue to attend and is unlikely to be able to do so within a reasonable time, the remaining members may complete the hearing and determine the cause or matter.

(2) Notwithstanding the provisions of section 4 of this Act, where any hearing has been completed and the cause or matter determined under the provisions of this section, the Family Court shall be deemed to have been properly constituted at all times during the hearing

and determination of that cause or matter.

#### LANGUAGE OF THE FAMILY COURT

12. The language of the Family Court shall be English, unless in any proceedings the Chairman directs that it shall be Nauruan.

#### COPIES OF, AND ACCESS TO, RECORDS OF EVIDENCE

13. (1) A party to any cause or matter in the Family Court shall be entitled, upon payment of the prescribed fee, to receive a copy of the record of the evidence given therein.

(2) Save as may be provided by any written law, no person shall be entitled as of right to inspect the original record of the proceedings in any cause or matter in the Family Court but such inspection may be authorised by the Chairman.

#### RECORDING OF EVIDENCE

14. (1) In every cause and matter the whole of any oral evidence given before the Family Court, or so much thereof as the Court deems material, shall be taken down in writing by the Chairman or recorded in such other manner as the Chief Justice may from time to time by rules of court direct.

(2) Oral evidence shall ordinarily be taken down in the form of a narrative and not in the form of questions and answers:

Provided that the Chairman may in his discretion take down, or cause to be taken down, any particular question and answer.

#### TIMES OF SITTINGS OF THE FAMILY COURT

15. (1) So far as practicable no sitting of the Family Court shall be held at a time when, by reason of another Court sitting on that day, persons attending the Family Court will be brought into contact with persons attending any other Court.

(2) Subject to the provisions of the last preceding subsection and to any directions given by the Chief Justice, the Family Court shall sit at such times as the Chairman directs.

(3) The Family Court shall sit at the Court House



at Yaren, unless the Chairman for any special reason considers that for the hearing or determination of any proceedings it should sit elsewhere.

#### THE FAMILY COURT NOT TO SIT ON CERTAIN DAYS

16. The Family Court shall not sit on Christmas Day, Good Friday, Independence Day, Constitution Day, Angam Day or any Sunday.

#### VACATIONS

17. The Chief Justice may, by order, direct such vacations of the Family Court, not exceeding in the aggregate thirty days in any one year, as he thinks fit.

#### PROCEEDINGS OF THE FAMILY COURT NOT OPEN TO THE PUBLIC

18. (1) No person shall be entitled or permitted to be present at the hearing of any proceedings of the Family Court, save as a witness therein, except -

- (a) members and officers of that Court;
- (b) the persons immediately concerned with the proceedings and their barristers and solicitors or pleaders;
- (c) the parents or guardians of any children in respect of whom the proceedings are taken, or any other person whom the Court may admit as standing in the place of such parents or guardians;
- (d) any probation officer or welfare officer whose presence is requested by the Court or by any person immediately concerned in the proceedings; and
- (e) such other persons as the Court may specially authorise to be present.

(2) Save with the special leave of the Chairman, it shall not be lawful for any person to publish a report of any proceedings of the Family Court or the names of the parties thereto or any information by which they may be identifiable.

#### SUMMONING WITNESSES

19. (1) Save as may be otherwise provided by any other written law, in any cause or matter in the Family Court the Chairman may, either of his own motion or on the application of any party, summon any person within Nauru to attend to give evidence or to produce any document in his possession or power, and may examine such

person as a witness and require him to produce any document in his possession or power, subject to just exceptions.

(2) The provisions of sections 50, 51, 52, 53 and 54 of the Courts Act 1972 shall apply mutatis mutandis to the Family Court.

#### SEAL OF THE FAMILY COURT

20. The Family Court shall have and use, as occasion may require, a seal of such nature and pattern as the President may, by notice in the Gazette, direct.

#### MEMBERS OF THE COURT TO TAKE OATH

21. Every member of the Family Court shall, before entering upon his office, take and subscribe before the Minister the oath or affirmation set out in the Schedule to this Act:

Provided that failure by any member to take the oath or affirmation shall not invalidate any proceedings heard and determined by the Family Court.

#### RECORDS AND RETURNS

22. (1) The Family Court shall keep written records and furnish returns of causes and matters heard or dealt with by it to the Supreme Court in such manner as the Chief Justice may from time to time direct.

(2) A judge of the Supreme Court shall periodically inspect the records of the Family Court and may give such instructions and advice thereon as he may deem necessary.

#### REPRESENTATION OF PARTIES

23. Any party to any cause or matter in the Family Court may employ as his legal representative therein a barrister and solicitor or a pleader.

#### RULES RELATING TO DRESS

24. The Chief Justice may, by order, prescribe the dress to be worn by members of the Family Court and by barristers and solicitors and pleaders appearing before the Court.

#### DUTIES OF THE CLERK

25. The duties of the Clerk of the Family Court shall be -

- (a) to attend at such sittings of the Court as the Chairman may direct;
- (b) to prepare summonses, warrants, decrees, orders, recognizances, writs of execution and other documents and to submit them to the Chairman or, if the Chairman so directs, to another member of the Court, for signature;
- (c) to issue process if authorised by rules of court;
- (d) to maintain case files and registers, to record judgments and orders of the Court and to make, or cause to be made, copies of proceedings when required to do so;
- (e) to receive all fees, fines and penalties, and all other moneys paid or deposited in respect of proceedings in the Court, and to keep an account of them;
- (f) to perform, or cause to be performed, such other duties connected with the Court as may be assigned to him by the Chairman.

### PART III - MISCELLANEOUS PROVISIONS

#### DIRECTOR OF POLICE TO BE RESPONSIBLE FOR SERVICE AND EXECUTION OF PROCESS OF THE FAMILY COURT

26. (1) The Director of Police shall be responsible for the service and execution of all such summonses, writs, warrants, orders, commands and process of the Family Court as he shall be required by the Court or any member thereof to serve or execute and shall make return of every writ, warrant, order, command or process together with the manner of execution thereof to the Court:

Provided that, where the Court directs or awards any process against the Director of Police or awards any process in any cause, matter or thing in which the Director of Police has such personal interest that the Court considers it undesirable that he should be responsible for its execution, the Minister may appoint some other fit person to execute and return it and the said process shall be directed to the person so appointed.

(2) Where the Director of Police is prevented, by reason of his absence from Nauru or by illness, from performing his duties under the last preceding subsection, they shall be performed by the next most senior officer of the Nauru Police Force present in Nauru.

(3) Every writ, warrant, order, command and

process may be executed according to its tenor.

#### POLICE TO OBEY ORDERS AND DIRECTIONS OF MEMBERS OF THE FAMILY COURT

27. All officers of the Nauru Police Force shall obey the orders and directions of every member of the Family Court in the exercise of the criminal jurisdiction of that Court and shall have the powers and authority necessary to enable them to do so.

#### MONEYS, ETC., DEPOSITED IN THE FAMILY COURT

28. (1) All moneys paid into the Family Court to stand to the credit of any party in any cause or matter in the Court shall be received into, and credited to, the Courts Trust Fund and paid by the Clerk into the bank account of that fund.

(2) All securities for money deposited in the Family Court shall be handed by the Clerk to the Registrar of the Supreme Court who shall place them in safe custody.

(3) The provisions of sections 65, 66 and 67, and of the proviso to subsection (1) of section 64, of the Courts Act 1972 shall apply to moneys paid into the Family Court to stand to the credit of parties to causes and matters in that Court and to securities deposited in the Family Court.

#### RULES OF COURT

29. The Chief Justice may make rules of court for the Family Court for all or any of the purposes for which he is empowered to make rules of court under the Courts Act 1972, the Criminal Procedure Act 1972 or the Civil Procedure Act 1972.

#### AMENDMENT OF MAINTENANCE ORDINANCE 1959-1967

30. (1) Section 3 of the Maintenance Ordinance 1959-1967 is amended by deleting the definition of "the Court" therein and by substituting therefor the following definition -  
"the Court" means the Family Court established by section 3 of the Family Court Act 1973."

(2) Any order made by the District Court before this Act comes into force and continuing to have effect thereafter, shall be deemed to have been made by the Family Court; and the Clerk of the District Court shall transmit

to the Clerk of the Family Court the record of the proceedings in which such orders were made and they shall thereafter form part of the records of the Family Court.

AMENDMENT OF ADOPTION OF CHILDREN ORDINANCE 1965-1967

31. (1) In the Adoption of Children Ordinance 1965-1967 the words "the Central Court" are deleted wherever they appear and there are substituted therefor the words "the Family Court".

(2) In subsection (5) of section 10, subsection (2) of section 12, subsection (1) of section 22 and section 24 of the Adoption of Children Ordinance 1965-1967 the words "the Registrar of the Court" are deleted and there are substituted therefor the words "the Clerk of the Family Court".

OTHER STATUTES NOT AFFECTED

32. Except as expressly provided in this Act, nothing in this Act shall limit or affect the provisions of the Maintenance Ordinance 1959-1967 or of the Matrimonial Causes Jurisdiction Ordinance 1910 of the Territory of Papua in its application in Nauru.

TRANSITIONAL PROVISIONS

33. Where before the commencement of this Act the hearing has commenced in some other Court of any cause or matter which under the provisions of this Act is to be heard and determined by the Family Court, the hearing of that cause or matter shall be completed, and the cause or matter determined, by that other Court as though this Act had not come into force and, where the circumstances so require, the provisions of section 76 of the Courts Act 1972 shall apply thereto mutatis mutandis.

SCHEDULE

(Section 21)

OATH (AFFIRMATION) TO BE TAKEN BY EVERY  
MEMBER OF THE FAMILY COURT

I, \_\_\_\_\_ swear by Almighty  
God (affirm) that I will well and truly serve the Republic of  
Nauru in the office of member of the Family Court and  
that I will do right to all manner of people according  
to law, without fear or favour, affection or ill-will.  
So Help me God!