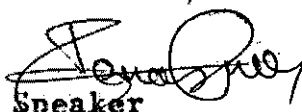


I HEREBY CERTIFY that the attached document is a fair print of an Act entitled the Criminal Code Amendment Act 1971 that has been made by Parliament and is now presented to the Speaker for his Certificate under Article 47 of the Constitution.


Clerk of Parliament
20/12/71

Pursuant to Article 35 (3) and 47 of the Constitution, I, KENAS AROI, Speaker of Parliament, HEREBY CERTIFY that the Criminal Code Amendment Act 1971, a copy of which is attached, has been passed by Parliament.


Speaker
20/12/71

REPUBLIC OF NAURU

(No. 8 of 1971)

AN ACT

To amend the Criminal Code of Queensland in its application to Nauru.

(Certified: 20/12/1971)

Be it enacted by the Parliament of Nauru as follows:

SHORT TITLE

1. This Act may be cited as the Criminal Code Amendment Act, 1971.

INTERPRETATION

2. In this Act "the Criminal Code" means the first Schedule to the Criminal Code Act 1899 of the State of Queensland in its application in Nauru.

SECTION 19 OF CRIMINAL CODE AMENDED

3. Section 19 of the Criminal Code is amended by -
(a) deleting subsection (3) thereof and substituting therefor the following new subsection -
"(3) A person liable to imprisonment for any offence may be sentenced to pay a fine in addition to or, save where it is expressly provided that a sentence of imprisonment shall be imposed, instead of imprisonment."; and
(b) deleting subsection (4) and (6) thereof.

ADDITION OF NEW SECTION 19A, 19B, 19C, 19D and 19E

4. The following new sections 19A, 19B, 19C, 19D and 19E are added to the Criminal Code immediately after section 19 thereof -

"FINES 19A.

(1) Where a fine is imposed under any law, then in the absence of express provisions relating to such fine in such law the following provisions shall apply:

- (a) where no sum is expressed to which the fine may extend, the amount of the fine which may be imposed is unlimited but shall not be excessive;
- (b) where the sum to which the fine may amount is expressed,

any lesser fine may be imposed;

(c) in the case of an offence punishable with a fine or a term of imprisonment shall be a matter for the discretion of the court;

(d) in the case of an offence punishable with imprisonment as well as a fine in which the offender is sentenced to a fine with or without imprisonment and in every case of an offence punishable with a fine only in which the offender is sentenced to a fine the Court passing sentence may, in its discretion -

- (i) direct by its sentence that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentence; and also
- (ii) issue a warrant for the levy of the amount of the immovable and movable property of the offender by distress and sale under warrant.

(2) The term of imprisonment to which a person may be sentenced by a Court in default of payment of a fine shall be such term as in the opinion of the Court will satisfy the justice of the case but shall not exceed the maximum fixed by the following scale:

<u>Amount</u>	
Not exceeding \$2	7 days
Exceeding \$2 but not exceeding \$4	14 days
Exceeding \$4 but not exceeding \$20	6 weeks
Exceeding \$20 but not exceeding \$40	2 months
Exceeding \$40 but not exceeding \$80	3 months
Exceeding \$80 but not exceeding \$150	4 months
Exceeding \$150 but not exceeding \$300	6 months
Exceeding \$300	9 months

(3) Where any offender serves any part of a sentence of imprisonment imposed in default of his paying a fine, the amount of the fine which he is liable to pay shall be reduced from day to day by such amount as is the same proportion of the whole fine as the period of imprisonment served is of the whole term of the default sentence and, upon payment of the balance of the fine due at any time, the sentence of imprisonment imposed in default of payment of the fine shall terminate.

(4) Notwithstanding the provisions of section 20 of this Code, the imprisonment which is imposed in default of

payment of a fine shall commence on the day on which the person so in default was arrested by virtue of the sentence of the Court.

DISTRESS 19B.

(1) Where a court orders money to be paid by an accused person or by a prosecutor or complainant as fine, penalty, compensation, costs, expenses or otherwise, the money may be levied on his personal property under warrant.

(2) A person referred to in the last preceding subsection may pay or tender to the officer having the execution of the warrant the sum therein mentioned together with the amount of the expenses of the distress up to the time of payment or tender and thereupon the officer shall cease to execute the same.

(3) A warrant under this section may be executed within Nauru and it shall authorise the distress and sale of any personal property belonging to such person.

(4) Any person claiming to be entitled to or to have legal or equitable interest in the whole or part of any property seized in execution of a warrant issued under this section may, at any time prior to the receipt by the Court of the proceeds of sale of such property, give notice in writing to the Court of his objection to the seizure of such property. Such notice shall set out shortly the nature of the claim which that person (hereinafter in this section referred to as "the objector") makes to the whole or part of the property seized and shall certify the value of the property claimed by him. Such value shall be deposited to upon affidavit which shall be filed with the notice.

(5) Upon receipt of a valid notice given under the last preceding subsection, the Court shall by an order in writing addressed to the officer having the execution of the warrant, direct a stay of the sale of the property, or that part of it claimed by the objector.

(6) Upon the issue of an order under the last preceding subsection, the Court shall, by notice in writing, summon the objector to appear before it upon a date to be specified in the notice in order to establish his claim.

(7) A notice shall be issued by the Court to the person whose property was, by the warrant issued under

subsection (1) of this section, directed to be seized and, unless the property is to be applied to the payment of a fine, upon the person entitled to the proceeds of this sale of such property. Such notice shall specify the time and place fixed for the appearance of the objector and shall direct the person upon whom the notice is served to appear before the Court at the same time and place if he wishes to be heard upon the hearing of the objection.

(8) If, upon investigation of the claim, the Court is satisfied that the property was not, when attached, in the possession of the person whose property was, by the warrant issued under subsection (1) of this section, directed to be seized or of some person in trust for him or that, being in his possession at such time, it was so in his possession not on his own account or as his own property but on account of or in trust for some other person or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property, wholly or to such extent as it thinks fit.

(9) If, upon the date fixed for his appearance, the objector fails to appear or if, upon investigation of the claim in accordance with the provisions of subsection (8) of this section, the Court is of opinion that the objector failed to establish his claim, it shall order the execution of the warrant to proceed and shall make such order as to costs as it deems fit.

(10) Nothing in this section shall be deemed to deprive a person who has failed to comply with the requirements of subsection (4) of this section of the right to take any other proceedings which, apart from the provisions of this section, may lawfully be taken by a person claiming an interest in property seized under a warrant.

(11) No distress made under this section shall be deemed unlawful, nor shall any person making the same to be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress or aother proceedings relating thereto.

SUSPENSION OF EXECUTION OF IMPRISONMENT IN DEFAULT OF FINE

19C. (1) Where a convicted person has been sentenced to a fine only and to imprisonment in default of payment of a fine and whether or not a warrant of distress has been

issued under section 19B of this Code, the Court may make an order directing the fine to be paid on or before a specified date, not being more than thirty days from the date of the order, and in the event of the fine not being paid on or before that date may, subject to the other provisions of this section, forthwith issue a warrant of committal. The Court may, before making such order, require the convicted person to execute a bond, with or without sureties, conditioned for his appearance before the Court on the specified date if the fine be not in the meantime paid. Upon the making of an order under this subsection the sentence of imprisonment shall be deemed to be suspended and the convicted person shall be released from custody.

(2) In any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith, the Court may require the person ordered to make such payment to enter into a bond as prescribed in the last preceding subsection and, in default of his doing so, may at once pass sentence of imprisonment as if the money had not been recovered.

(3) The Court may in its discretion direct that any money to which this section applies may be paid by instalments at such times and in such amounts as it may deem fit; but so nevertheless that, in default of payment or any such instalment as aforesaid, the whole of the amount outstanding shall become and be immediately due and payable and all the provisions of this Code applicable to a sentence of fine and to imprisonment in default of payment thereof shall apply to the same accordingly.

(4) A warrant of commitment to prison in respect of the non-payment of any sum of money by a person to whom time has been allowed for payment under the provisions of subsection (1) of this section or who has been allowed to pay by instalments under the provisions of the last preceding subsection shall not be issued unless the Court shall first make inquiry as to his means in his presence. Provided that a Court may issue such a warrant of commitment without any further inquiry as to means if it shall have made such inquiry in the presence of the convicted person at the time when the fine was imposed or at any subsequent time and the convicted person shall not before the expiration of the time for payment have notified the Court of any change in

his means or applied to the Court for an extension of time to pay the fine.

(5) After making inquiry in accordance with the provisions of the last preceding subsection, the Court may, if it thinks fit, instead of issuing a warrant of commitment to prison, make an order extending the time allowed for payment or varying the amount of the instalments or the times at which the instalments were, by the previous order of the Court, directed to be paid, as the case may be.

(6) For the purpose of enabling inquiry to be made under the provisions of subsection (4) of this section, the Court may issue a summons to the person ordered to pay the money to appear before it and, if he does not appear in obedience to the summons, may issue a warrant for his arrest or, without issuing a summons, issue in the first instance a warrant for his arrest.

COMMITTAL IN LIEU OF DISTRESS

19D. (1) If the officer having the execution of a warrant of distress reports that he could find no property or not sufficient property whereon to levy the money mentioned in the warrant with expenses, the Court may by the same or a subsequent warrant commit the person ordered to pay to prison for a time specified in the warrant, unless the money and all expenses of the distress, commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

(2) Where it appears to the Court that distress and sale of property would be ruinous to the person ordered to pay the money or his family or by his confession or otherwise, that he has no property whereon the distress may be levied, or other sufficient reason appears to the Court, the Court may, if it thinks fit, instead of or after issuing a warrant of distress, commit him to prison for a time specified in the warrant, unless the money and all expenses of the commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

(3) The period for which a person may be committed to prison in default of or in lieu of distress under this section shall be:

(a) if the person has been sentenced to a term of imprisonment in default of payment of a fine, the period to which he was so sentenced;

(b) in other cases such period as the Court considers reasonable subject to the maximum laid down in subsection (2) of section 19A relating to fines;

(4) Any person committed for non-payment under this section may pay the sum specified in the warrant, with the amount of expenses therein authorised, if any, to the person in whose custody he is and that person shall thereupon discharge him if he is in custody for no other matter.

(5) If any person committed to prison for non-payment shall be any sum in part-satisfaction of the sum adjudged to be paid, the term of his imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which such person is committed, as the sum so paid bears to the sum for which he is liable.

PAYMENT AFTER ISSUE OF WARRANT BUT BEFORE COMMITTAL

19E Where a warrant has been issued under the provisions of this Code for non-payment of a fine, any payment made after the issue of such warrant but before the person in respect of whom the warrant has been issued has been taken into custody, being a payment insufficient to satisfy the sum mentioned in the warrant together with the amount of the expenses therein mentioned, shall be deemed to be appropriated primarily in satisfaction, or part-satisfaction, of such expenses."

PROVISIONS OF NEW SECTION 19B AND 19D TO EXTEND TO EXISTING UNPAID FINES.

5. The provisions of the new sections 19B and 19D added to the Criminal Code by the last preceding section shall have effect in respect of all unpaid fines imposed by the Courts of Nauru before the commencement of this Act as well as in respect of fines imposed after the commencement of this Act.

PARTS I & VIII OF THE CRIMINAL CODE TO APPLY TO ALL OFFENCES

6. The provisions of Part I and Part VIII of the Criminal Code shall, so far as they are applicable to the circumstances of Nauru and are not repugnant to, or inconsistent with, the provisions of any Act, Ordinance, Law, regulation, rule, order or proclamation having the force of law that has been, or may hereafter be, expressed to extend to, or applied to, or enacted, made or promulgated in, Nauru, apply and have force and effect in relation to all offences, whether against

the provisions of this Code or against any other law for the time being in force in Nauru and whether tried under the provisions of this Code or otherwise.