

THE REPUBLIC OF NAURU


No. 17 of 1972

AN ACT

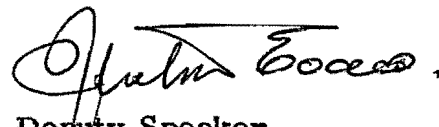
To amend the law of evidence in relation to civil proceedings,  
and in respect of the privilege against self-incrimination  
and to make corresponding amendments in relation to statutory  
powers of inspection or investigation.

(Certified:- 14 - 9 - 72)

I HEREBY CERTIFY that the attached document is a fair print of an Act entitled the Civil Evidence Act, 1972 that has been made by Parliament and is now presented to the Deputy Speaker for his Certificate under Article 47 of the Constitution.

  
Clerk of Parliament  
14 / 9 / 72

Pursuant to Article 35 (3) and 47 of the Constitution, I, IDARABABWIN VICTOR EOAE0, Deputy Speaker of Parliament, HEREBY CERTIFY that the Civil Evidence Act, 1972 a copy of which is attached has been passed by Parliament.

  
Deputy Speaker  
14 / 9 / 72.

REPUBLIC OF NAURU  
CIVIL EVIDENCE ACT 1972

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REPUBLIC OF NAURU  
(No. 17 of 1972)

AN ACT

To amend the law of evidence in relation to civil proceedings, and in respect of the privilege against self-incrimination to make corresponding amendments in relation to statutory powers of inspection or investigation.

(Certified : 14/9/72 )

PART I - PRELIMINARY

SHORT TITLE AND COMMENCEMENT

1. This Act may be cited as the Civil Evidence Act 1972 and shall come into force on a date to be notified by the Minister in the Gazette.

INTERPRETATION

2. (1) In this Act "civil proceedings" includes, in addition to civil proceedings in any of the Courts -  
(a) civil proceedings before any other tribunal, being proceedings in relation to which the strict rules of evidence apply; and  
(b) an arbitration or reference, whether under a written law or not,  
but does not include civil proceedings in relation to which the strict rules of evidence do not apply; and, for the purposes of the application of Part II of this Act in relation to any such arbitration or reference, any rules of court made for the purposes of this Act shall, except insofar as their operation is excluded by agreement, apply, subject to such modifications as may be appropriate, in like manner as they apply in relation to civil proceedings in the Supreme Court. If any question arises as to what are, for the purposes of any such arbitration or reference, the appropriate modifications of any such rule of court, that question shall, in default of agreement, be determined by the tribunal or the arbitrator or umpire, as the case may be.

(2) In this Act -

"Court", in relation to an arbitration or reference, means the arbitrator or umpire and, in relation to proceedings before a tribunal, not being one of the ordinary courts of law, means the tribunal;

"legal proceedings" includes an arbitration or reference, whether under an enactment or not;

and for the avoidance of doubt it is hereby declared that in this Act, and in any amendment made by this Act in any other enactment, references to a person's husband or wife do not include references to a person who is no longer married to that person.

(3) In Part II of this Act -

"computer" has the meaning assigned by section 7 of this Act;

"document" includes, in addition to a document in writing -

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disc, tape, sound track or other device in which sounds or other data, not being visual images, are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom; and
- (d) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable, as aforesaid, of being reproduced therefrom;

"film" includes a microfilm;

"statement" includes any representation of fact, whether made in words or otherwise.

(4) In Part II of this Act any reference to a copy of a document includes -

- (a) in the case of a document falling within paragraph (c) but not (d) of the definition of "document" in the preceding subsection, a transcript of the sounds or other data embodied therein;
- (b) in the case of a document falling within paragraph (d) but not (c) of that definition, a reproduction or still reproduction of the image or images embodied therein, whether enlarged or not;
- (c) in the case of a document falling within both those paragraphs, such a transcript together with such a still reproduction; and

(d) in the case of a document not falling within the said paragraph (d) of which a visual image is embodied in a document falling within that paragraph, a reproduction of that image, whether enlarged or not, and any reference to a copy of the material part of a document shall be construed accordingly.

(5) Any reference in this Act to any other written law includes a reference thereto as applied by or under any other written law.

(6) Nothing in this Act shall prejudice the operation of any written law which provides, in whatever words, that any answer or evidence given by a person in specified circumstances shall not be admissible in evidence against him or some other person in any proceedings or class of proceedings, however described.

In this subsection the reference to giving evidence is a reference to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

(7) Nothing in this Act shall prejudice -

(a) any power of a Court, in any legal proceedings, to exclude evidence, whether by preventing questions from being put or otherwise, at its discretion; or

(b) the operation of any agreement, whenever made, between the parties to any legal proceedings as to the evidence which is to be admissible, whether generally or for any particular purpose, in those proceedings.

(8) It is hereby declared that where, by reason of any defect of speech or hearing from which he is suffering, a person called as a witness in any legal proceedings gives his evidence in writing or by signs, that evidence is to be treated for the purposes of this Act as being given orally.

## PART II - HEARSAY EVIDENCE

### HEARSAY EVIDENCE TO BE ADMISSIBLE ONLY BY VIRTUE OF THIS ACT OR OTHER STATUTORY PROVISIONS, OR BY AGREEMENT

3. (1) In any civil proceedings a statement other than one made by a person while giving oral evidence in those proceedings shall be admissible as evidence of any fact stated therein to the extent that it is so admissible by virtue of any provision of this Part of this Act or by virtue of any other statutory provision or by agreement of

the parties, but not otherwise.

(2) In this section "statutory provision" means any provision contained in, or in an instrument made under, any written law.

#### ADMISSIBILITY OF OUT-OF-COURT STATEMENTS AS EVIDENCE OF FACTS STATED

4. (1) In any civil proceedings a statement made, whether orally or in a document or otherwise, by any person, whether called as a witness in those proceedings or not, shall, subject to this section and to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

(2) Where in any civil proceedings a party desiring to give a statement in evidence by virtue of this section has called or intends to call as a witness in the proceedings the person by whom the statement was made, the statement -

(a) shall not be given in evidence by virtue of this section on behalf of that party without the leave of the Court; and

(b) without prejudice to paragraph (a), shall not be given in evidence by virtue of this section on behalf of that party before the conclusion of the examination-in-chief of the person by whom it was made, except -

(i) where, before that person is called, the Court allows evidence of the making of the statement to be given on behalf of that party by some other person; or  
(ii) in so far as the Court allows the person by whom the statement was made to narrate it in the course of his examination-in-chief on the ground that to prevent him from doing so would adversely affect the intelligibility of his evidence.

(3) Where in any civil proceedings a statement which was made otherwise than in a document is admissible by virtue of this section, no evidence other than direct oral evidence by the person who made the statement or any person who heard or otherwise perceived it being made shall be admissible for the purpose of proving it:

Provided that if the statement in question was made by a person while giving oral evidence in some other legal proceedings, whether civil or criminal, it may be proved in any manner authorised by the Court.

WITNESS'S PREVIOUS STATEMENT, IF PROVED, TO BE EVIDENCE OF FACTS STATED

5. (1) Where in any civil proceedings -  
(a) a previous inconsistent or contradictory statement made by a person called as a witness in those proceedings is proved by virtue of any of sections 3, 4 and 5 of the Criminal Procedure Act 1865 of England, an adopted statute; or

(b) a previous statement made by a person called as aforesaid is proved for the purpose of rebutting a suggestion that his evidence has been fabricated; that statement shall by virtue of this subsection be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

(2) Nothing in this Act shall affect any of the rules of law relating to the circumstances in which, where a person called as a witness in any civil proceedings is cross-examined on a document used by him to refresh his memory, that document may be made evidence in those proceedings; and where a document or any part of a document is received in evidence in any such proceedings by virtue of any such rule of law, any statement made in that document or part by the person using the document to refresh his memory shall by virtue of this subsection be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

ADMISSIBILITY OF CERTAIN RECORDS AS EVIDENCE OF FACTS STATED

6. (1) Without prejudice to section 7 of this Act, in any civil proceedings a statement contained in a document shall, subject to this section and to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if the document is, or forms part of, a record compiled by a person acting under duty from information which was supplied by a person, whether acting under a duty or not, who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in that information and which, if not supplied by that person to the compiler of the record directly, was supplied by him to the compiler of the record indirectly through one or more intermediaries each acting under a duty.

(2) Where in any civil proceedings a party desiring to give a statement in evidence by virtue of this



section has called or intends to call as a witness in the proceedings the person who originally supplied the information from which the record containing the statement was compiled the statement -

(a) shall not be given in evidence by virtue of this section on behalf of that party without the leave of the Court; and

(b) without prejudice to paragraph (a), shall not without the leave of the Court be given in evidence by virtue of this section on behalf of that party before the conclusion of the examination-in-chief of the person who originally supplied the said information.

(3) Any reference in this section to a person acting under a duty includes a reference to a person acting in the course of any trade, business, profession or other occupation in which he is engaged or employed or for the purposes of any paid or unpaid office held by him.

#### ADMISSIBILITY OF STATEMENTS PRODUCED BY COMPUTERS

7. (1) In any civil proceedings a statement contained in a document produced by a computer shall, subject to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown that the conditions mentioned in subsection (2) are satisfied in relation to the statement and computer in question.

(2) The said conditions are -

(a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly in Nauru or elsewhere to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any body, whether corporate or not, or by any individual;

(b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not

such as to affect the production of the document or the accuracy of its contents; and

(d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

(3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in paragraph (a) of subsection (2) was regularly performed by computers, whether -

(a) by a combination of computers operating over that period;

(b) by different computers operating in succession over that period;

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this Part of this Act as constituting a single computer; and references in this Part of this Act to a computer shall be construed accordingly.

(4) In any civil proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say -

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in subsection (2) relate,

and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities, whichever is appropriate, shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this Part of this Act -

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or, with or without human intervention, by means of any appropriate equipment;

(b) where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or, with or without human intervention, by means of any appropriate equipment.

(6) Subject to subsection (3), in this Part of this Act "computer" means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

#### PROVISIONS SUPPLEMENTARY TO SECTIONS 4 TO 7

8. (1) Where in any civil proceedings a statement contained in a document is proposed to be given in evidence by virtue of any of sections 4, 6 and 7 of this Act, it may, subject to any rules of court, be proved by the production of that document or, whether or not that document is still in existence, by the production of a copy of that document, or of the material part thereof, authenticated in such manner as the Court may approve.

(2) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of any of sections 4, 6 and 7 of this Act, the Court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including, in the case of a statement contained in a document, the form and contents of that document.

(3) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of

any of sections 4, 5, 6 and 7 of this Act regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular -

(a) in the case of a statement falling within subsection (1) of section 4 or subsection (1) or subsection (2) of section 5 of this Act, to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts;

(b) in the case of a statement falling within subsection (1) of section 6 of this Act, to the question whether or not the person who originally supplied the information from which the record containing the statement was compiled did so contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not that person, or any person concerned with compiling or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts; and

(c) in the case of a statement falling within subsection (1) of section 7 of this Act, to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied thereto, contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not any person concerned with the supply of information to that computer, or with the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.

(4) For the purpose of any written law or rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated -

(a) a statement which is admissible in evidence by virtue of section 4 or section 5 of this Act shall not be capable of corroborating evidence given by the maker of the statement; and

(b) a statement which is admissible in evidence by

virtue of section 6 of this Act shall not be capable of corroborating evidence given by the person who originally supplied the information from which the record containing the statement was compiled.

(5) If any person in a certificate tendered in evidence in civil proceedings by virtue of subsection (4) of section 7 of this Act wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he is guilty of an offence and is liable to imprisonment for two years.

ADMISSIBILITY OF EVIDENCE OF CREDIBILITY OF MAKER, ETC.,  
OF STATEMENT ADMITTED UNDER SECTION 4 OR SECTION 6

9. (1) Subject to rules of court; where in any civil proceedings a statement made by a person who is not called as a witness in those proceedings is given in evidence by virtue of section 4 of this Act -

(a) any evidence which, if that person had been so called, would be admissible for the purpose of destroying or supporting his credibility as a witness shall be admissible for that purpose in those proceedings; and

(b) evidence tending to prove that, whether before or after he made that statement, that person made, whether orally or in a document or otherwise, another statement inconsistent therewith shall be admissible for the purpose of showing that that person has contradicted himself:

Provided that nothing in this subsection shall enable evidence to be given of any matter of which, if the person in question had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.

(2) Subsection (1) shall apply in relation to a statement given in evidence by virtue of section 6 of this Act as it applies in relation to a statement given in evidence by virtue of section 4 of this Act, except that references to the person who made the statement and to his making the statement shall be construed respectively as references to the person who originally supplied the information from which the record containing the statement was compiled and to his supplying that information.

(3) Subsection (1) of section 5 of this Act shall apply to any statement proved by virtue of paragraph (b) of subsection (1) of this section as it applies to a previous inconsistent or contradictory statement made by a person

called as a witness which is proved as mentioned in paragraph (a) of subsection (1) of section 5.

RULES OF COURT

10. (1) Provision shall be made by rules of court as to the procedure which, subject to any exceptions provided for in the rules, must be followed and the other conditions which, subject as aforesaid, must be fulfilled before a statement can be given in evidence in civil proceedings by virtue of any of sections 4, 6 and 7 of this Act.

(2) Rules of court made in pursuance of subsection (1) shall in particular, subject to such exceptions, if any, as may be provided for in the rules -

(a) require a party to any civil proceedings who desires to give in evidence any such statement as is mentioned in that subsection to give to every other party to the proceedings such notice of his desire to do so and such particulars of or relating to the statement as may be specified in the rules, including particulars of such one or more of the persons connected with the making or recording of the statement or, in the case of a statement falling within subsection (1) of section 7 of this Act, such one or more of the persons concerned as mentioned in paragraph (c) of subsection (3) of section 8 of this Act as the rules may in any case require; and

(b) enable any party who receives such notice as aforesaid by counter-notice to require any person of whom particulars were given with the notice to be called as a witness in the proceedings unless that person is dead, is outside Nauru, is unfit by reason of his bodily or mental condition to attend as a witness, cannot with reasonable diligence be identified or found, or cannot reasonably be expected, having regard to the time which has elapsed since he was connected or concerned as aforesaid and to all the circumstances, to have any recollection of matters relevant to the accuracy or otherwise of the statement.

(3) Rules of court made in pursuance of subsection (1) -

(a) may confer on the Court in any civil proceedings a discretion to allow a statement falling within subsection (1) of section 4, subsection (1) of section 6 or subsection (1) of section 7 of this Act to be given in evidence

(5) In deciding for the purposes of any rules of court made in pursuance of this section whether or not a person is fit to attend as a witness, a Court may act on a certificate purporting to be a certificate of a medical practitioner.

(6) Nothing in the foregoing provisions of this section shall prejudice the generality of section 76 of the Civil Procedure Act 1972 or any other written law conferring power to make rules of court; and nothing in any written law restricting the matters with respect to which rules of court may be made shall prejudice the making of rules of court with respect to any matter mentioned in the foregoing provisions of this section or the operation of any rules of court with respect to any matter mentioned in the foregoing provisions of this section or the operation of any rules of court made with respect to any such matter.

ADMISSIBILITY OF CERTAIN HEARSAY EVIDENCE FORMERLY ADMISSIBLE UNDER THE COMMON LAW OF ENGLAND AS ADOPTED

11. (1) In any civil proceedings a statement which, if this Part of this Act had not been passed, would, by virtue of any rule of law mentioned in subsection (2) have been admissible as evidence of any fact stated therein shall be admissible as evidence of that fact by virtue of this subsection.

(2) The rules of law referred to in subsection (1) above are the following, that is to say any rule of law -

(a) whereby in any civil proceedings an admission adverse to a party to the proceedings, whether made by that party or by another person, may be given in evidence against that party for the purpose of proving any fact stated in the admission;

(b) whereby in any civil proceedings published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated therein;

(c) whereby in any civil proceedings public documents (for example, public registers and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated therein; or

(d) whereby in any civil proceedings records (for example, the records of certain Courts, treaties, pardons and commissions) are admissible as evidence of facts stated therein.

In this subsection "admission" includes any representation of fact, whether made in words or otherwise.

(3) In any civil proceedings a statement which tends to establish reputation or family tradition with respect to any matter and which, if this Act had not been passed, would have been admissible in evidence by virtue of any rule of law mentioned in subsection (4) -

(a) shall be admissible in evidence by virtue of this paragraph in so far as it is not capable of being rendered admissible under section 4 or section 6 of this Act; and

(b) if given in evidence under this Part of this Act, whether by virtue of paragraph (a) or otherwise, shall by virtue of this paragraph be admissible as evidence of the matter reputed or handed down;

and, without prejudice to paragraph (b) above, reputation shall for the purposes of this Part of this Act be treated as a fact and not as a statement or multiplicity of statements dealing with the matter reputed.

(4) The rules of law referred to in subsection (3) are the following, that is to say any rule of law -

(a) whereby in any civil proceedings evidence of a person's reputation is admissible for the purpose of establishing his good or bad character;

(b) whereby in any civil proceedings involving a question of pedigree or in which the existence of a marriage is in issue evidence of reputation or family tradition is admissible for the purpose of proving or disproving pedigree or the existence of the marriage, as the case may be; or

(c) whereby in any civil proceedings evidence of reputation or family tradition is admissible for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing.

(5) It is hereby declared that in so far as any statement is admissible in any civil proceedings by virtue of subsection (1) or paragraph (a) of subsection (3), it may be given in evidence in those proceedings notwith-



standing anything in sections 4 to 9 of this Act or in any rules of court made in pursuance of section 10 of this Act.

(6) The words in which any rule of law mentioned in subsection (2) or subsection (4) is there described are intended only to identify the rule in question and shall not be construed as altering that rule in any way.

### PART III - MISCELLANEOUS

#### CONVICTIONS AS EVIDENCE IN CIVIL PROCEEDINGS

12. (1) In any civil proceedings the fact that a person has been convicted of an offence by or before any Court in Nauru or elsewhere shall, subject to subsection (3), be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence, whether he was so convicted upon a plea of guilty or otherwise and whether or not he is a party to the civil proceedings; but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section.

(2) In any civil proceedings in which by virtue of this section a person is proved to have been convicted of an offence by or before any Court in Nauru or elsewhere -

(a) he shall be taken to have committed that offence unless the contrary is proved; and

(b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge on which the person in question was convicted, shall be admissible in evidence for that purpose.

(3) Nothing in this section shall prejudice the operation of section 14 of this Act or any other written law whereby a conviction or a finding of fact in any criminal proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

(4) Where in any civil proceedings the contents of any document are admissible in evidence by virtue of subsection (2), a copy of that document, or of the material part thereof, purporting to be certified or otherwise authenticated by or on behalf of the Court or authority

having custody of that document shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.

FINDINGS OF ADULTERY AND PATERNITY AS EVIDENCE IN CIVIL PROCEEDINGS

13. (1) In any civil proceedings -

(a) the fact that in any matrimonial proceedings in any Court in Nauru to which he was a party a person has been found to have committed adultery; and

(b) the fact that a person has been adjudged to be the father of a child in affiliation or maintenance proceedings before any Court in Nauru;

shall, subject to subsection (3), be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those civil proceedings, that he committed the adultery to which the finding relates or, as the case may be, is or was, the father of that child, whether or not he denied the allegation of adultery or paternity and whether or not he is a party to the civil proceedings; but no finding or adjudication other than a subsisting one shall be admissible in evidence by virtue of this section.

(2) In any civil proceedings in which by virtue of this section a person is proved to have been found to have committed adultery as mentioned in paragraph (a) of subsection (1) or to have been adjudged to be the father of a child as mentioned in paragraph (b) of subsection (1) -

(a) he shall be taken to have committed the adultery to which the finding relates or, as the case may be, to be, or have been, the father of that child, unless the contrary is proved; and

(b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the finding or adjudication was based, the contents of any document which was before the Court, or which contains any pronouncement of the Court, in the matrimonial, affiliation or maintenance proceedings in question shall be admissible in evidence for that purpose.

(3) Nothing in this section shall prejudice the operation of any written law whereby a finding of fact in any matrimonial, affiliation or maintenance proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

(4) Subsection (4) of section 12 of this Act shall apply for the purposes of this section as if the reference to subsection (2) were a reference to subsection (2) of this section.

#### CONCLUSIVENESS OF CONVICTIONS FOR PURPOSE OF DEFAMATION ACTIONS

14. (1) In a suit for libel or slander in which the question whether a person did or did not commit a criminal offence, in Nauru or any other country specified by the Minister by notice in the Gazette, is relevant to an issue arising in the suit, proof that at the time when that issue falls to be determined that person stands convicted, in Nauru or that other country, of that offence shall be conclusive evidence that he committed that offence; and his conviction thereof shall be admissible in evidence accordingly.

(2) In any such suit as aforesaid in which by virtue of this section a person is proved to have been convicted of an offence, the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge-sheet on which that person was convicted, shall, without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, be admissible in evidence for the purpose of identifying those facts.

(3) Subsection (4) of section 12 of this Act shall apply for the purposes of this section as it applies for the purposes of that section, but as if in the said subsection (4) the reference to subsection (2) were a reference to subsection (2) of this section.

(4) The foregoing provisions of this section shall apply for the purposes of any suit begun after the commencement of this Act, whenever the cause of action arose, but shall not apply for the purposes of any suit begun before the commencement of this Act or any appeal or other proceedings arising out of any such suit.

#### PRIVILEGE AGAINST INCRIMINATION OF SELF OR SPOUSE

15. (1) The right of a person in any legal proceedings other than criminal proceedings to refuse to answer any

question or produce any document or thing if to do so would tend to expose that person to proceedings for an offence or for the recovery of a penalty -

(a) shall apply only as regards criminal offences under the law of Nauru and penalties provided for by such law; and

(b) shall include a like right to refuse to answer any question or produce any document or thing if to do so would tend to expose the husband or wife of that person to proceedings for any such criminal offence or for the recovery of any such penalty.

(2) In so far as any existing written law conferring, in whatever words, powers of inspection or investigation confers on a person, in whatever words, any right otherwise than in criminal proceedings to refuse to answer any question or give any evidence tending to incriminate that person, subsection (1) shall apply to that right as it applies to the right described in that subsection; and every such existing written law shall be construed accordingly.

(3) In so far as any existing written law provides, in whatever words, that in any proceedings other than criminal proceedings a person shall not be excused from answering any question or giving any evidence on the ground that to do so may incriminate that person, that written law shall be construed as providing also that in such proceedings a person shall not be excused from answering any question or giving any evidence on the ground that to do so may incriminate the husband or wife of that person.

(4) Where any existing written law, however worded, that -

(a) confers powers of inspection or investigation; or

(b) provides as mentioned in subsection (3), further provides, in whatever words, that any answer or evidence given by a person shall not be admissible in evidence against that person in any proceedings or class of proceedings, however described, and whether criminal or not, that enactment shall be construed as providing also that any answer or evidence given by that person shall not be admissible in evidence against the husband or wife of that person in the proceedings or class of proceedings in question.

(5) In this section "existing written law" means

any written law enacted, made or adopted before this Act; and the references to giving evidence are references to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

#### ABOLITION OF CERTAIN PRIVILEGES

16. (1) The following rules of law are hereby abrogated except in relation to criminal proceedings, that is to say -

(a) the rule whereby, in any legal proceedings, a person cannot be compelled to answer any question or produce any document or thing if to do so would tend to expose him to a forfeiture; and

(b) the rule whereby, in any legal proceedings, a person other than a party to the proceedings cannot be compelled to produce any deed or other document relating to his title to any land.

(2) The rule of law whereby in any civil proceedings, a party to the proceedings cannot be compelled to produce any document relating solely to his own case and in no way tending to impeach that case or support the case of any opposing party is hereby abrogated.

(3) Section 3 of the Evidence (Amendment) Act 1853 of England, an applied statute which provides that a husband or wife shall not be compellable to disclose any communication made to him or her by his or her spouse during the marriage, shall cease to have effect except in relation to criminal proceedings.

(4) A witness in any proceedings instituted in consequence of adultery, whether a party to the proceedings or not, shall not be excused from answering any question by reason that it tends to show that he or she has committed adultery; and accordingly the proviso to section 3 of the Evidence Further Amendment Act 1869 of England, an applied statute, shall cease to have effect.

#### CONSEQUENTIAL AMENDMENTS RELATING TO PRIVILEGE

17. (1) Where a person is examined by virtue of an order under section 1 of the Foreign Tribunals Evidence Act 1856 of England, an applied statute, or section 1 of the Evidence by Commission Act 1859 of England, an applied statute, made by a Court or judge in Nauru for the purpose

of obtaining his testimony in relation to any legal proceedings pending before a Court or tribunal outside Nauru, then for the purpose of determining his rights under section 5 of the said Act of 1856 or section 4 of the said Act of 1859 to refuse to answer questions or produce documents -

(a) if those proceedings are criminal proceedings, the provisions of sections 15 and 16 of this Act shall be disregarded; but

(b) in any other case the references in the said section 5 or the said section 4, as the case may be, to any cause pending as mentioned in that section shall be construed as references to any civil cause so pending.

(2) Subsection (5) of section 15 of this Act shall apply for the purposes of this section as it applies for the purposes of that section.