



REPUBLIC OF NAURU

SUPREME COURT BILL 2018

No. of 2018

A Bill for an Act for the Supreme Court of the Republic and for related purposes

Certified: []

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Enacted by the Parliament of Nauru as follows:

PART 1 – PRELIMINARY

1 Short title

This Act may be cited as the *Supreme Court Act 2018*.

2 Commencement

This Act commences on 15 May 2018.

3 Definitions

In this Act:

'accused' means a person charged with an offence in a criminal cause or matter;

'barrister and solicitor' means a person entitled to practise as a barrister and solicitor under the Legal Practitioners Act 1973;

'cause or matter' includes any appeal, action, suit or other original proceeding in any Court between the person originating the proceeding and one or more other parties as defendant or respondent, and includes any original criminal proceeding;

'chambers' means not in open court;

'Chief Justice' means the Chief Justice of the Supreme Court;

'Clerk' means the Clerk of the District Court;

'Commissioner for Oaths' means a person who is a Commissioner for Oaths either by virtue of appointment under the provisions of section 106 of this Act or ex officio under the provisions of any other section of this Act or under any other written law;

'Commissioner of Police' means the public officer in charge of the Nauru Police Force including a public officer appointed to act as the Commissioner of Police;

'criminal cause or matter' includes offences established under any written law;

'defendant' means a person served or intended to be served with any application to the Supreme Court for the exercise of its civil jurisdiction;

'District Court' means the District Court formerly established under the Courts Act 1972 and which continues under the District Court Act 2018;

'Fund' means the Courts Trust Fund established under section 96 of this Act;

'heard' includes tried;

'hearing' includes trial;

'judgment, decision or order' where applicable, includes decree, conviction and sentence;

'Judge' unless otherwise stated refers to Judges of the Supreme Court;

'lay magistrate' means any magistrate other than the Resident Magistrate;

'legal representative' means barrister and solicitor or a pleader duly admitted to practice law under the Legal Practitioners Act 1973 or any other written law;

'magistrate' means a person appointed under the provisions of section 5 of the District Court Act 2018 to be the Resident Magistrate, a lay magistrate or a person appointed to act as the Resident Magistrate;

'plaintiff' means a person who makes an application (other than an interlocutory application) to the Supreme Court for the exercise of its civil or criminal jurisdiction;

'pleader' means a person qualified to practice as a pleader in Nauru in accordance with the Legal Practitioners Act 1973;

'Registrar' means the Registrar of the Courts appointed under section 12;

'Resident Magistrate' means a person appointed under the District Court Act 2018 to be, or to act as, the Resident Magistrate;

'rules of the court' means rules of the court made under, or continued in force by, any law for the time being in force;

'Supreme Court' means the Supreme Court established by Article 48 of the Constitution.

PART 2 – THE SUPREME COURT

4 The Supreme Court

- (1) There continues to be a Supreme Court of the Republic as established under Article 48 of the Constitution.
- (2) The Supreme Court shall have the jurisdiction conferred on it by the Constitution, any other written law and inherent jurisdiction.
- (3) The Supreme Court is a Superior Court of record.
- (4) There shall be the following divisions of the Supreme Court:
 - (a) civil;
 - (b) criminal;
 - (c) commercial;
 - (d) family;

- (e) probate;
- (f) appellate;
- (g) miscellaneous; and
- (h) such other divisions which the Chief Justice may deem appropriate.

5 Seal

- (1) The Supreme Court shall have a seal bearing the emblem of the Republic with the inscription '*Supreme Court of Nauru*'.
- (2) The Registrar shall have custody and control of the seal of the Court.
- (3) The seal shall be used for sealing judgments, decisions, orders or certificates and for any other purposes where the Supreme Court may require a seal.

PART 3 – COMPOSITION OF THE SUPREME COURT

6 Composition of the Supreme Court

- (1) The Supreme Court shall consist of:
 - (a) the Chief Justice; and
 - (b) such number of other Judges as the President in consultation with the Chief Justice deems fit.
- (2) The Supreme Court shall be deemed to be duly constituted despite a vacancy in the office of the Chief Justice or a Judge.

7 Exercise of jurisdiction of the Supreme Court

- (1) The jurisdiction of the Supreme Court shall be exercised by a single Judge except insofar as it is:
 - (a) provided in subsection (2); or
 - (b) under any written law or the rules of the court exercisable by the Master, Registrar or other officer of the Supreme Court.
- (2) The full Supreme Court shall constitute a panel of 3 Judges which may be empanelled by the Chief Justice for the purposes of:
 - (a) any matter of significant public importance;
 - (b) an important point of law; or
 - (c) rendering an opinion under Article 55 of the Constitution.

- (3) The Chief Justice may publish practice directions for the purposes of empanelling a full bench.

8 Powers of Judges

- (1) All the Judges shall have equal judicial power, authority and jurisdiction under this Act.
- (2) The jurisdiction of the Supreme Court may be exercised in any cause or matter by a Judge notwithstanding that it is being exercised at the same time in another cause or matter by another Judge.

9 Qualification for appointment as Chief Justice and Judge

A person is not qualified to be appointed as the Chief Justice or a Judge unless he or she is entitled to practice as a barrister and solicitor in the Republic and has been so entitled for not less than 5 years.

10 Tenure of Chief Justice and Judges

- (1) Subject to subsection (2), the Chief Justice and the Judges of the Supreme Court continue to hold office until:
 - (a) resignation from that office;
 - (b) retirement; or
 - (c) removal from that office.
- (2) Where the Chief Justice or a Judge is appointed on a fixed term of contract, unless extended, the appointment shall cease on the day of expiry of the contract.
- (3) For the purposes of subsection (2), the Chief Justice in consultation with the President may:
 - (a) extend the term of the contract of a Judge for such further period;
 - (b) extend the term of the contract for a period not exceeding 30 days for the delivery of any reserved judgments, decisions or orders; or
 - (c) extend the term of the contract of a Judge for such period not exceeding 60 days where practicable to complete any part heard cause or matter to avoid any prejudice to the parties.
- (4) No person shall be appointed to act as a Judge unless he or she is qualified to be appointed as a Judge under section 9.
- (5) In the absence of a Judge, the President in consultation with the Chief Justice may appoint a person to act as a Judge who shall continue to act as

a Judge in hearing and determining any cause or matter which commenced before the Supreme Court constituted by him or her as an acting Judge.

- (6) The President in consultation with the Chief Justice may appoint a Judge for the purposes of solely for the hearing and determination of a specified cause or matter.
- (7) If a person has been appointed to act as a Judge, the person is deemed to have ceased to be acting as a Judge where the appointment:
 - (a) is for a specified period, in respect of the hearing and determination of all causes and matters of which the hearing is commenced during that period; or
 - (b) is made for the hearing and determination of a specified cause or matter, in respect of the hearing and determination of that cause or matter only.

11 Oath or affirmation

- (1) A Judge before entering the office of the Supreme Court, shall take and subscribe before the President the oath set out in the Fourth Schedule of the Constitution.
- (2) A Judge, who may not be able to subscribe an oath, shall before entering the office of the Supreme Court, make an affirmation before the President with necessary modification to the oath of a Judge contained in the Fourth Schedule of the Constitution.

PART 4 – OFFICERS OF THE COURT

12 Registrar of the Courts

- (1) The Registrar of the Courts shall be the Registrar of the Supreme Court.
- (2) The Registrar shall be appointed by the Minister after consultation with the Chief Justice.
- (3) No person shall be appointed to be or to act as the Registrar unless he or she is entitled to practice as a barrister and solicitor in the Republic and has been so entitled for not less than 5 years.

13 Duties of the Registrar

- (1) The Registrar shall be the administrative head of the Department of the Judiciary and shall perform such functions and powers as may be prescribed by written law, the rules of the court and directions given by the Chief Justice.
- (2) The Registrar shall perform the functions of the Master, Registrar, Taxing Master, Keeper of the Records and such other functions provided for by this Act, other written law or the rules of the court.

- (3) The Registrar shall be ex officio a Commissioner for Oaths and a Commissioner of the Supreme Court to take examinations of witnesses.
- (4) The Registrar shall prepare and provide monthly returns of cases filed, heard and disposed of in the respective court to the Minister.

14 Deputy Registrars

The Deputy Registrars shall be appointed by the Minister after consultation with the Chief Justice.

15 Powers of Deputy Registrars

- (1) Subject to any directions given from time to time by the Chief Justice, a Deputy Registrar shall perform any act or functions and duties of the Registrar.
- (2) A Deputy Registrar may be:
 - (a) a barrister and solicitor;
 - (b) a pleader; or
 - (c) a person who has experience in the management and administration of the courts.
- (3) Subject to any directions from the Chief Justice the Deputy Registrar may not perform the functions of the Registrar contained in section 13(2).

16 Other officers

- (1) The Registrar in consultation with the Chief Justice and the Chief Secretary shall appoint such other officers of the Supreme Court as may be necessary for the administration of justice and due execution of all jurisdiction and power which are granted or vested in the Supreme Court.
- (2) An officer appointed as an interpreter shall take oath or affirmation of an interpreter before the Chief Justice or a Judge.

PART 5 – JURISDICTION

17 Jurisdiction of the Supreme Court

The jurisdiction of the Supreme Court includes:

- (a) the jurisdiction vested in it under the Constitution and any other written law that it had prior to the commencement of this Act;
- (b) the jurisdiction conferred on it by this Act or any other written law;

- (c) original and appellate jurisdiction in civil and criminal matters conferred to it by the Constitution, this Act or any written law;
- (d) the powers and jurisdiction as may from time to time be vested in it under the Constitution, this Act or any other written law;
- (e) admiralty jurisdiction;
- (f) the power and authority to appoint and control guardians of infants and their estates;
- (g) probate jurisdiction;
- (h) the jurisdiction for winding up and bankruptcy related proceedings;
- (i) matrimonial, family and adoption related jurisdiction;
- (j) appellate jurisdiction under the Constitution, this Act or any other written law; and
- (k) inherent jurisdiction.

PART 6 –POWERS OF THE SUPREME COURT

18 Power of Supreme Court to refer to arbitration

- (1) The Supreme Court may with the consent of the parties to any cause or matter, order that the cause or matter be referred to arbitration with such directions as may be necessary.
- (2) A referral under subsection (1) shall be not be revoked by any party except with the leave of the Supreme Court.
- (3) An award made under subsection (1), shall be entered as a judgment, decision or order in the cause or matter as if it were granted by the Supreme Court.
- (4) A consent judgment, decision or order of the Supreme Court under subsection (1) may not be set aside by the Supreme Court in the same cause or matter except by way of a new cause or matter filed by a party for the purposes of setting aside the judgment, decision or order.
- (5) In this section, '*award*' includes interim award.
- (6) This section does not apply to criminal causes or matters.

19 Power of Supreme Court to refer to referee

- (1) In any cause or matter the Supreme Court may refer to a referee for inquiry and report as to:

- (a) the whole cause or matter if:
 - (i) it requires any prolonged examination of documents or any scientific or local investigation which cannot, in the opinion of the Supreme Court, conveniently be made before it;
 - (ii) the question in dispute consists wholly or in part of matters of account; or
 - (iii) the parties consent; or
 - (b) any interlocutory issues arising in the cause or matter to which the parties consent.
- (2) Where any cause, matter or question is referred under subsection (1), the Supreme Court may:
- (a) direct how the reference shall be conducted;
 - (b) remit any report for further inquiry and report; or
 - (c) on consideration of any report, give such judgment, decision or order.
- (3) The Supreme Court may, after deciding or reserving any question of liability, refer to a referee any issues relating to accounts in dispute between the parties and, after deciding the question of liability, give judgment, decision or order on the referee's report.
- (4) This section does not apply to criminal causes or matters.

20 Power to order arrest of absconding debtors

- (1) The Supreme Court may, on an application of a party to a proceeding to recover an amount of money, issue a warrant to arrest a defendant in the proceeding and bring the defendant before the Supreme Court.
- (2) A warrant shall not be issued unless the Supreme Court is satisfied that:
 - (a) the plaintiff has a good cause of action against the defendant;
 - (b) there are reasonable grounds to suspect that the defendant is about to leave the Republic with an intention of evading legitimate payment; and
 - (c) the plaintiff has given an undertaking of value to compensate to fulfil his or her such undertaking.
- (3) The defendant shall be brought before the Supreme Court unless the amount claimed in the proceeding is paid to the plaintiff before the warrant is executed.

- (4) The Supreme Court may:
 - (a) release the defendant;
 - (b) remand the defendant in custody; or
 - (c) release the defendant on bail on such terms and conditions as the Supreme Court may deem fit with or without surety.
- (5) A person who is remanded in custody shall be brought before the Supreme Court within 7 days of the date of the order for review and such other orders as the Supreme Court think appropriate for the purpose of this section.
- (6) Where a defendant arrested under the warrant in subsection (1) deposits in the Supreme Court the amount shown in the warrant and costs, he or she shall be released and the amount paid shall be retained:
 - (a) to be paid to the plaintiff if a judgment, decision or order is given in favour of the plaintiff in the proceedings; or
 - (b) to be returned to the defendant if a judgment, decision or order is given in favour of the defendant.
- (7) The Supreme Court may:
 - (a) if the defendant consents, hear and determine the proceedings at the time the defendant is brought before the Supreme Court; or
 - (b) fix a date and time for the hearing of the proceedings.
- (8) Where a judgment, decision or order is given in favour of the defendant, the Supreme Court may make such inquiries and award such compensation to the defendant to be paid by the plaintiff.
- (9) The practice and procedure for the purposes of this section may be prescribed by the rules of the court.
- (10) A person aggrieved by an interlocutory or final judgment, decision or order of the Supreme Court under this section may appeal to the Nauru Court of Appeal within 30 days of the judgment, decision or order being made.

21 Power of Judges to administer oath or affirmations

A Judge shall have the power:

- (a) to administer oaths and take affirmations and declarations;
- (b) to make such decrees and orders; and
- (c) to issue such process and exercise such powers judicial or administrative, -

in relation to the administration of justice as shall from time to time be prescribed by the Constitution, this Act or any other written law.

22 Power to recuse

- (1) Where a Judge has a conflict of interest, he or she shall declare such interest and shall recuse himself or herself from adjudicating in the cause or matter as a single Judge or as a member of the full Supreme Court.
- (2) A party to any cause or matter may seek the recusal of a Judge from adjudicating in a cause or matter.
- (3) The Chief Justice shall develop and publish guidelines on recusal to assist Judges to properly effect recusals in a cause or matter.

23 Power to transfer from the Supreme Court to the District Court

- (1) Subject to subsection (2), where any cause or matter pending determination in the Supreme Court is within the jurisdiction of the District Court, a Judge may, of his or her own motion or upon the application of any party, direct that the cause or matter be transferred into the District Court for hearing and determination.
- (2) A criminal cause or matter may not be transferred into the District Court except where a particular cause or matter has first been transferred from the District Court into the Supreme Court for the determination of a question involving the interpretation or effect of any provision of the Constitution.

24 Power to award costs

The Supreme Court shall have the discretion to award such costs in a cause or matter as it deems fit.

25 Power to adjourn

- (1) The Supreme Court may adjourn the hearing of any cause or matter before it from day to day or to any convenient day.
- (2) If the Judge is not present at the time and place appointed or adjourned for a sitting of the Supreme Court, the Registrar may by public notice, written or oral, adjourn the sitting to such time as he or she considers appropriate.
- (3) Where any sitting of the Supreme Court is adjourned under subsection (2), all persons bound to be present at the sitting so adjourned shall be deemed to be similarly bound to be present at the time appointed by the notice of adjournment.

26 Power to admit legal practitioners

Where the Chief Justice is unable to preside over a petition for admission to practise as a barrister and solicitor in the Republic under the Legal Practitioners Act 1973, a Judge or the Registrar may preside over such application.

27 Powers and jurisdiction in relation to corporations

In relation to corporations, the Supreme Court shall exercise all such powers and jurisdiction vested to it under the Corporations Act 1972, this Act and any other written law.

PART 7 – CONSTITUTIONAL APPLICATION, INTERPRETATION, EFFECT AND REDRESS

28 Exercise of jurisdiction

The jurisdiction and powers conferred to the Supreme Court under Articles 14, 54 and 55 or any other Articles of the Constitution may be exercised by a single Judge.

29 Application

- (1) An application to the Supreme Court for redress shall be made by:
 - (a) an originating summons; and
 - (b) a supporting affidavit.
- (2) The originating summons shall provide:
 - (a) a concise nature of the claim;
 - (b) a concise declaration of relief sought;
 - (c) such other order as may be appropriate; and
 - (d) the relevant provision of the Constitution.
- (3) Where a constitutional redress application is filed, whether or not the Republic is a party, the Secretary for Justice shall be served with a copy of the originating summons and supporting affidavit within 14 days of the filing of the application.
- (4) Where necessary, the Secretary for Justice shall enter an appearance to assist the Supreme Court in the interpretation or application of the Constitution.

30 Reference by the subordinate court by way of case stated on the Constitution or an important question of law

- (1) A question referred to the Supreme Court pursuant to any written law by a subordinate court for the interpretation and effect of the provisions of the Constitution or an important question or interpretation of a law shall be by way of a case stated in a pending case before the subordinate court.
- (2) The case stated in subsection (1) shall be referred to the Supreme Court within 14 days of the decision of the subordinate court to refer the question.

- (3) The case shall:
- (a) set out the facts which have been established by evidence or admitted;
 - (b) set out the concise constitutional question which is referred to the Supreme Court for its determination; and
 - (c) be transmitted by the subordinate court referring the constitutional question to the Registrar who shall list it before a Judge.
- (4) The Registrar shall notify:
- (a) the party, if any, on whose request the case was stated;
 - (b) other parties to the proceedings;
 - (c) the Secretary for Justice in all matters; and
 - (d) in a criminal cause or matter, the Director of Public Prosecutions unless the Director of Public Prosecutions is already representing the Republic in the criminal matter.
- (5) The Secretary for Justice and the Director of Public Prosecutions under subsection (4), shall be entitled to appear and be heard in the determination of the constitutional question before the Supreme Court.
- (6) The Registrar shall notify the subordinate court by which the constitutional question was referred of the decision of the Supreme Court.

31 Limitation on applications for Constitutional interpretation

No application for the interpretation of the Constitution shall be made in any proceedings other than this Part of the Act.

PART 8 – PROBATE CAUSES AND MATTERS

32 Application for grant or revocation of probate or administration

- (1) Applications for grant of probate or letters of administration or for the revocation of such grants shall be made to the Probate division of the Supreme Court.
- (2) Any grant made by the Supreme Court shall be under the seal of the Supreme Court.
- (3) No grant shall be made by the Supreme Court where:
 - (a) there is contention or until the contention is disposed of; and

(b) a probate action or proceedings relating to the grant is determined by the Supreme Court.

33 Resealing

The Supreme Court shall have the power and jurisdiction to reseal an overseas grant of probate or letters of administration.

34 Caveats

- (1) A caveat against a grant of probate or letters of administration may be entered in the Probate Registry.
- (2) Where a caveat is entered, probate or letters of administration shall not be granted until such time the caveat is removed.
- (3) A caveat under this section shall be valid for 6 months and may be extended by the Supreme Court:
 - (a) upon application by the caveator; or
 - (b) where a probate action or proceeding has already commenced.

35 Records of grants

The Registrar shall keep and maintain the records of all grants under this Part.

36 Power of the Supreme Court in relation to personal representatives

The Supreme Court shall summon the person named as the executor in a will to prove or renounce probate of, the will and do such other things concerning the will as the Supreme Court had power to order such a person to do immediately before the commencement of this Act.

PART 9 – SUPERVISORY JURISDICTION

37 Supreme Court's supervisory jurisdiction

- (1) The Supreme Court as the superior court shall have the supervisory power and jurisdiction over subordinate or inferior courts and tribunals.
- (2) In the exercise of supervisory jurisdiction, the Supreme Court shall grant such prerogative reliefs it deems fit or prescribed by the rules of the court.
- (3) Where an appeal procedure is provided to appeal a judgment, decision or order of the subordinate or inferior court or tribunal to the Supreme Court, the only remedy or redress for the review of the decision of such subordinate court or tribunal is by way of an appeal.
- (4) The Chief Justice shall make rules for the exercise of this supervisory jurisdiction.

PART 10 – APPEALS FROM THE DISTRICT COURT IN CRIMINAL CAUSES OR MATTERS

38 Appeal to the Supreme Court in criminal causes and matters

- (1) This section provides for an appeal to the Supreme Court by a person convicted on the trial of a criminal cause or matter by the District Court against the conviction or sentence or both.
- (2) Where the District Court has ordered the acquittal of any person in any cause or matter, the Director of Public Prosecutions or with his or her sanction in writing, may authorise any person who prosecuted the case before the District Court, to appeal to the Supreme Court against the acquittal.
- (3) Where the District Court has convicted and sentenced a person, the Director of Public Prosecutions may appeal to the Supreme Court against the sentence only.
- (4) Where the Director of Public Prosecutions or a prosecutor is ordered by the District Court to pay costs or compensation, he or she may appeal to the Supreme Court against such order.
- (5) Where a person convicted on a trial by the District Court is not represented by a legal representative he or she shall be informed by the Resident Magistrate having charge of the proceedings of his or her right of appeal at the time of sentencing.
- (6) An appeal to the Supreme Court may be on a question of law, facts or of mixed law and facts.
- (7) For the purposes of this Part, the extent of a sentence shall be deemed to be a matter of law.
- (8) The Director of Public Prosecutions shall be deemed to be a party to any criminal cause or matter in which the proceedings were instituted and carried on by a public prosecutor.

39 Limitation of appeal on plea of guilty and in petty cases

- (1) Save with the leave of the Supreme Court, an appeal may not be brought by a person who has pleaded guilty and has been convicted on that plea by the District Court, except as to the extent or legality of the sentence.
- (2) Save with the leave of the Supreme Court, an appeal may not be brought against conviction or, except by the Director of Public Prosecutions, against sentence or order for payment of the costs or compensation where in the District Court no sentence of imprisonment has been imposed, otherwise than in default of payment of a fine or costs, and no fine exceeding \$100 has been imposed and no order of disqualification has been made.

- (3) No appeal shall lie against conviction or sentence merely on the ground that the person convicted is ordered to find surety to maintain peace.
- (4) For the purposes of this section *'fine'* includes costs and compensation ordered by the District Court to be paid by a prosecutor or by a person convicted in a trial.

40 Time for filing appeal or application for leave to appeal

A person who seeks to appeal a judgment, decision or order of the District Court under this Part shall file and serve a notice of appeal within 21 days of the delivery of the judgment, decision or order.

41 Appeal to be by way of notice of appeal

- (1) A person who seeks to appeal a judgment, decision or order of the District Court under this Part shall file a notice of appeal in the Supreme Court.
- (2) A person who seeks to obtain leave to appeal a judgment, decision or order of the District Court under this Part where leave is required, shall file a summons for leave to appeal in the Supreme Court.
- (3) Subject to section 55, an appellant shall not be permitted on the hearing of the appeal to allege or give evidence on, any ground of appeal not included in the notice of appeal or in the additional grounds without the prior leave of the Supreme Court.

42 Form and contents of notice of appeal

- (1) A notice of appeal shall contain concise:
 - (a) grounds upon which it is alleged that the District Court has erred; and
 - (b) relief sought from the Supreme Court.
- (2) Where two or more persons have been jointly tried and convicted and their interests do not conflict, a notice of appeal may be presented on their behalf and the Supreme Court may hear the appeals separately or together as it deems just.
- (3) If the case is one which requires the leave of the Supreme Court under section 41, the grant of leave to appeal shall be endorsed on the notice of appeal.

43 Respondent's notice

- (1) A respondent who, not having appealed from the judgement, decision or order of the District Court seeks to contend on the appeal that the judgment, decision or order of the District Court shall be varied, shall give notice to that effect specifying the grounds of that contention and the precise form of the order which he or she proposes the Supreme Court to consider.

- (2) A respondent who seeks to contend on the appeal that the decision of the District Court be affirmed on the ground other than those relied upon by the Supreme Court shall give notice to that effect specifying the grounds of that contention.
- (3) A respondent shall not be entitled on the hearing of the appeal to contend that the judgment, decision or order of the District Court be varied upon the grounds not specified in the notice under this section, to apply for any relief not so specified or to support a judgment, decision or order of the District Court on any grounds not relied upon by the District Court or specified in such a notice.
- (4) A respondent's notice shall be filed within 14 days of the service of the notice of appeal to the respondent.
- (5) For the purposes of this Part on criminal appeals against conviction or sentence by any person, the Director of Public Prosecutions shall be the respondent.

44 Respondent's notice to be treated as notice of appeal

The provisions relating to a notice of appeal shall also apply to the respondent's notice with such modifications as necessary.

45 Amendment to the notice of appeal and respondent's notice

- (1) A notice of appeal or respondent's notice may be amended and served:
 - (a) without the leave of the Supreme Court at any time before 14 days of the date fixed for the hearing of the appeal; or
 - (b) with the leave of the Supreme Court at any time less than 14 days of the date fixed for the hearing of the appeal.
- (2) The amended appeal or respondent's notice shall be by way of Supplementary notice of appeal or respondent's notice.

46 Who may prepare the notice of appeal

- (1) If the appellant is not represented by a legal representative the notice of appeal may be prepared by the Office of the Public Legal Defender.
- (2) If the appellant is imprisoned and is not represented by a legal representative, the notice of appeal may be prepared under the supervision of the Chief Correctional Officer and filed in the Supreme Court.
- (3) For the purposes of considering or preparing a notice of appeal a person entitled to appeal or his or her legal representative, the Clerk or the Chief Correctional Officer shall be entitled to peruse the original record of the proceedings at such time as the Registrar or the Resident Magistrate may allow.

47 Extension of time

- (1) The Supreme Court may extend the time for filing a notice of appeal beyond the 21 days.
- (2) The Supreme Court may extend time:
 - (a) if the intended appellant is able to show good cause for such an order to be granted;
 - (b) in a case where the legal representative engaged by the appellant was not present at the hearing before the District Court and for that reason requires further time for the preparation of the notice of appeal; or
 - (c) where there is an error of law.

48 Admission to bail and suspension of sentence pending appeal

- (1) Where after a conviction and sentencing to a term of imprisonment and the appellant files and serves a notice of appeal, the Supreme Court may order that the appellant be admitted to bail pending appeal with or without sureties.
- (2) An appellant who is not admitted to bail pending the determination of his or her appeal may, at his or her own request, be treated in like manner as a prisoner awaiting trial.
- (3) Where an appellant under this Part is admitted to bail pending appeal, the time during which he or she is at large on bail shall be disregarded in computing the term of any sentence to which he or she is for the time being subjected to.

49 Suspension of order for restoration or payment of compensation, expenses, etc.

- (1) Where on conviction an order is made by the District Court for:
 - (a) the payment of compensation;
 - (b) the restoration of any property to any person; or
 - (c) the re-vesting of any property to the original owner of any stolen property by operation of any written law, -

the judgment, decision or order shall be stayed until the expiration of 21 days from the date of the conviction or where a notice of appeal or leave to appeal is given within 14 days after the date of the conviction until the determination of the appeal.
- (2) Where on appeal, the judgment, decision or order of the District Court is affirmed by the Supreme Court, the District Court judgment, decision or order shall take immediate effect.

- (3) Where on appeal the judgment, decision or order of the District Court is reversed or varied, the Supreme Court shall make appropriate orders for:
 - (a) the payment of compensation;
 - (b) the restoration of any property to any person; or
 - (c) the re-vesting of any property to the original owner of any stolen property by operation of any written law.

50 Notice of hearing

The Registrar shall:

- (a) enter the appeal for hearing within 42 days of the notice of appeal being filed and record of the proceedings provided by the District Court; and
- (b) serve on the parties a notice setting out the date and time of the hearing of the appeal.

51 Costs

No costs shall be awarded by the Supreme Court under this Part of the Act for any criminal cause or matter.

52 Discontinuance of appeal

- (1) An appellant may by giving notice in writing to the Registrar discontinue his or her appeal at any time before the date of the hearing and upon such discontinuance no further steps shall be taken in the appeal and the District Court may proceed to enforce the decision appealed from.
- (2) The Registrar shall send to the respondent a copy of the notice of discontinuance.

53 Determination of appeal by the Supreme Court in ordinary cases

- (1) At the hearing of an appeal the Supreme Court shall hear the appellant or his or her legal representative and the respondent or his or her legal representative.
- (2) In considering an appeal against a conviction, the Supreme Court shall allow the appeal and set aside the conviction if:
 - (a) the conviction in all the circumstances of the case is inconsistent with the finding of facts;
 - (b) the judgment, decision or order was a consequence of an error of law; or
 - (c) a substantial miscarriage of justice has occurred.

- (3) Where an appeal against a conviction is allowed, the Supreme Court shall quash the conviction and:
 - (a) direct a judgment and verdict of acquittal to be entered; or
 - (b) where the interest of justice requires, remit the cause or matter to the District Court for retrial.
- (4) Where on an appeal against sentence, the Supreme Court determines that a different sentence ought to have been passed, the Supreme Court shall:
 - (a) quash the sentence passed at the trial; and
 - (b) in substitution, pass such other sentence which the Supreme Court deems fit under the respective law.
- (5) The Supreme Court on an appeal against acquittal shall allow the appeal if it deems 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 paragraph (a) 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 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 or her 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.
- (6) Where the appeal is allowed under subsection (5)(a) or (b), the Supreme 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 or she could have been convicted on the trial of the charge.
- (7) Where the appeal is allowed under subsection (5) (c), the Court shall order that a new trial be held before the District Court; and

- (8) Where the appeal is allowed under subsection (5) (d) or (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 Resident 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.
- (9) Where under subsection (5) the Supreme Court has set aside a verdict of acquittal and entered a conviction, it shall proceed to pass sentence on the person so convicted in respect of the offence of which it has convicted him or her and such sentence shall, for the purposes of this Act, be deemed to have been passed by the District Court, save that no further appeal shall lie thereon to the Supreme Court.

54 Powers of the Supreme Court in special cases

- (1) Where the Supreme Court determines that a person may not be properly convicted on some counts or part of the charge but has been convicted properly on some other counts or part of the charge, the Supreme Court may in respect of the counts or part of the charge it considers that the appellant has not been properly convicted, either affirm the sentence passed by the District Court or pass such other sentence in substitution which it deems proper.
- (2) Where the Supreme Court determines in an appeal under this section:
 - (a) that the District Court had convicted a person of an offence; and
 - (b) based on the findings of the District Court the Supreme Court is satisfied of the facts which proves a person guilty of some other offence, -the Supreme Court may instead of allowing or dismissing the appeal, substitute for the conviction entered by the District Court a conviction for that other offence and pass such sentence in substitution for the sentence passed by the District Court.

55 Powers of the Supreme Court to adduce fresh evidence

- (1) Where the Supreme Court deems it fit or expedient in the interest of justice, it may make one or more of the following orders:
 - (a) order production of any document, exhibit or any matters connected to the proceedings the production of which appears to the Supreme Court necessary for the determination of an application or the appeal;
 - (b) order any witnesses who have been compellable witnesses at the trial:
 - (i) to attend and be examined before the Supreme Court whether they were or were not called at the trial; or

- (ii) the examination of any such witnesses to be conducted in the manner provided by the rules of the Court or in the absence of the rules, the Supreme Court may direct the Resident Magistrate to take depositions of the evidence before him or her;
 - (c) receive the evidence if tendered, of any witness who is a competent but not compellable witness and if the appellant makes an application for the purpose, of the spouse of the appellant, in cases where the evidence of the spouse could not have been given at the trial except on such application;
 - (d) where any question arising in the appeal involves prolonged examination of documents, accounts or any scientific or local investigation which cannot in the opinion of the Supreme Court can be conducted before the Supreme Court, order the reference of the question in the manner provided by the rules of the Court for inquiry and report to a special commissioner appointed by the Supreme Court and act upon the report of any such commissioner as far as they think fit to adopt it; and
 - (e) appoint any person with special expert knowledge to act as an assessor to the Supreme Court where it appears to the Supreme Court that special knowledge is required for the determination of the case.
- (2) The Supreme Court shall not increase any sentence by reason of or in consideration of any evidence adduced before it under this section but was not adduced at the trial.

56 No appeal on point of form or matter of variance unless raised in the District Court

No finding, sentence or order of the District Court shall be reversed or altered on appeal, or revision under the provisions of this Act, except where the appellant was not represented at the hearing before the District Court by a legal representative on account of:

- (a) any objection to any information, complaint, charge, summons or warrant for any alleged defect in the cause or matter or substance or form; or
- (b) any variance between such information, complaint, charge, summons or warrant and the evidence adduced, -

unless it is found that such objection was raised before the District Court and that, notwithstanding that it was shown to the District Court that by such variance the appellant had been deceived or misled, the District Court refused to adjourn the hearing of the case to a future day.

57 Supreme Court order on appeal to be certified to the District Court

- (1) When a case is decided on appeal by the Supreme Court, the Registrar shall certify its judgment, decision or order to the District Court which shall

make such orders in conformity with the judgment, decision or order of the Supreme Court.

- (2) The District Court shall take such steps as may be necessary to enforce the judgment, decision or order of the Supreme Court.

58 Right of appellant to be present

An appellant, who is in custody, shall be entitled to be present, if he or she desires it, at the hearing of his or her appeal under this Part.

59 Revisionary power of the Supreme Court

The Supreme Court may call for and examine the record of any criminal cause or matter of the District Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the District Court.

60 Power of the Resident Magistrate to call for records of the District Court and to report to the Supreme Court

- (1) The Resident Magistrate may call for and examine the record of any criminal cause or matter of the District Court constituted by three lay magistrates for the purpose of satisfying himself or herself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the Court.
- (2) If the Resident Magistrate acting under subsection (1) considers that any finding, sentence or order is illegal or improper or that any such proceedings are irregular, he or she shall forward the record, with such remarks thereon as he or she deems fit to the Supreme Court.

61 Powers of the Supreme Court on revision

- (1) In the case of any proceedings in the District Court the record of which has been called for or which has been forwarded by the Resident Magistrate under the provisions of sections 59 and 60 or which otherwise comes to its knowledge, the Supreme Court may:
 - (a) in the case of a conviction, exercise any of the powers conferred on it as an appellate court and may increase the sentence; and
 - (b) in the case of any other order, other than an order of acquittal, alter or reverse such order.
- (2) Subject to section 62, no order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by a legal representative in his or her own defence.
- (3) Where the Supreme Court quashes the sentence passed by the District Court and passes sentence under the provisions of this section, such sentence shall, for the purposes of this Act, be deemed to be a sentence passed by the

District Court, save that no further appeal shall lie thereon to the Supreme Court.

- (4) Nothing in this section shall be deemed to authorise the Supreme Court to convert a finding of acquittal into one of conviction.
- (5) No proceedings by way of revision shall be entertained at the instance of any party to the proceedings.
- (6) Where the record of any criminal cause or matter has been called for under section 59, or has been sent or forwarded to the Supreme Court under section 60 the Resident Magistrate, a Judge or the Registrar may, if he or she considers that the interests of justice so require:
 - (a) suspend any sentence imposed or order made in that cause or matter upon such terms and for such period as he or she deems fit; or
 - (b) where a sentence of imprisonment is suspended, he or she may deem fit, to order any person be admitted to bail, with or without sureties; and
 - (c) 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.

62 Discretion of the Supreme Court as to hearing parties

- (1) No party shall have any right to be heard either personally or by a legal representative before the Supreme Court when it is exercising its powers of revision.
- (2) The Supreme Court in exercise of the powers under subsection (1), may where necessary require any party personally or by a legal representative to be heard.

63 Number of Judges on revision

- (1) All proceedings before the Supreme Court in the exercise of its revisional jurisdiction may be heard and any judgment, decision or order may be made or passed by a Judge sitting in chambers.
- (2) For the purpose of section 62(2), the Supreme Court may sit in an open court.

64 Supreme Court order on revision to be certified to the District Court

- (1) When a case is revised by the Supreme Court, the Registrar shall certify its judgment, decision or order to the District Court which shall make such orders in conformity with the judgment, decision or order of the Supreme Court.
- (2) The District Court shall take such steps as may be necessary to enforce the judgment, decision or order of the Supreme Court.

PART 11 – APPEALS FROM THE DISTRICT COURT IN CIVIL CAUSES AND MATTERS

65 Appeal to the Supreme Court in civil causes and matters

- (1) An appeal shall lie under this Part in any cause or matter, not being a criminal proceeding, to the Supreme Court against any final decision of the District Court.
- (2) For the purposes of this Part, '*civil proceedings*' include all other proceedings except criminal proceedings.

66 Appeal to be by way of notice of appeal

- (1) Every appeal shall be in the form of a notice of appeal in writing signed by the appellant or by his or her legal representative.
- (2) The notice of appeal shall:
 - (a) state whether the whole or only part of the decision is complained of and in the latter case shall specify which part;
 - (b) state the grounds of appeal; and
 - (c) be filed in the Supreme Court and served to the respondent within 21 days of the delivery of the judgment, decision or order.
- (3) A copy of the notice of appeal shall be served by or on behalf of the appellant on all parties to the appeal either before or immediately after the notice of appeal is filed in the Supreme Court.

67 Time for appeal

- (1) No appeal shall be brought after the expiration of 21 days from the day on which the judgment, decision or order of the District Court was delivered.
- (2) The Supreme Court may extend time for the filing and serving of the notice of appeal under subsection (1) provided the application is made before the expiry of 6 months after the delivery of the judgment, decision or order.

68 Security for costs

- (1) The appellant shall give security for costs for the purposes of the appeal to the satisfaction of the Registrar.
- (2) The Registrar shall fix an amount for the security for costs which shall be paid within 14 days of the order being made.
- (3) If the security for costs fixed is not paid in accordance with subsection (2), or the time for payment has not been extended by the Registrar, the appeal shall be deemed to be abandoned.

- (4) The Registrar shall compile the records of the proceedings of the District Court upon payment of the security for costs.

69 Respondent's notice

- (1) A respondent who intends on the hearing of the appeal to vary or reverse the judgment, decision or order of the District Court, shall file and serve a respondent's notice within 14 days of the service of the notice of appeal.
- (2) A respondent shall not be entitled on the hearing of the appeal to contend that the decision of the District Court be varied upon the grounds not specified in the notice under this section, to apply for any relief not so specified or to support a decision of the District Court on any grounds not relied upon by the District Court or specified in such a notice.

70 Amendment to the notice of appeal and respondent's notice

- (1) A notice of appeal or respondent's notice under this Part may be amended and served:
 - (a) without the leave of the Supreme Court at any time before 14 days of the date fixed for hearing of the appeal; or
 - (b) with the leave of the Supreme Court at any time less than 14 days of the date fixed for hearing of the appeal.
- (2) The amended notice of appeal or respondent's notice shall be by way of Supplementary notice of appeal or respondent's notice.

71 Powers of the Supreme Court

- (1) On the hearing of an appeal under this Part, the Supreme Court may:
 - (a) order a rehearing of the case in the District Court upon such terms as it deems fit;
 - (b) order that the case be referred back to the District Court for variation;
 - (c) order judgment to be entered in the District Court for either party; or
 - (d) make a final or other order on such terms as it deems proper to ensure the determination on the merits of the real questions in dispute between the parties; and
 - (e) it may make such order as to costs as it deems proper.
- (2) The powers conferred by this section may be exercised by the Supreme Court notwithstanding that by the notice of appeal the appellant sought that part only of the judgment, decision or order be reversed or varied, and such powers may be exercised in favour of all or any of the respondents or parties,

although those respondents or parties may not have appealed from or complained of the judgment, decision or order.

72 Supreme Court order to be certified to the District Court

- (1) When a case is decided on appeal by the Supreme Court under this Part, the Registrar shall certify its judgment, decision or order to the District Court which shall make such orders in conformity with the judgment, decision or order of the Supreme Court.
- (2) The District Court shall take such steps as may be necessary to enforce the judgment, decision or order of the Supreme Court.

73 Fresh evidence

- (1) Subject to subsection (2), the Supreme Court has no jurisdiction to admit or allow any evidence or submissions in determining an appeal which were not part of the records of the proceedings of a cause or matter before the District Court.
- (2) An application for leave to admit fresh evidence in an appeal may be allowed by the Supreme Court where it is shown that the evidence:
 - (a) could not have been obtained with reasonable diligence for use at the trial;
 - (b) must be such that if admitted would more probable than not influence the result of the case; and
 - (c) must be such as to be believed or credible.

PART 12 – PROCEDURE AND RULES FOR APPEALS FROM DISTRICT COURT

74 Appeals to be by way of rehearing

- (1) All appeals under Parts 10 and 11 of this Act shall be by way of rehearing.
- (2) Subject to section 73, where any question of fact is involved in any appeal under Parts 10 and 11 of this Act, the evidence taken in the District Court bearing on the question shall be brought before the Supreme Court as follows:
 - (a) as to any evidence given orally, by the production of a copy of the written record made by the magistrate or such other materials as the Supreme Court may deem expedient;
 - (b) as to any evidence received by written statements or by affidavits and as to any exhibits, by the production of the written statements and affidavits and such of the exhibits as may have been forwarded by the Clerk and by the production by the parties to the appeal of such exhibits as are in their custody.

- (3) Where the language used by the District Court at the hearing of the cause or matter to which any appeal relates was Nauruan, the record made by the Resident Magistrate and any affidavits and exhibits in the Nauruan language shall be translated into the English language and certified by the Clerk to be a correct translation before the record is transmitted to the Registrar.
- (4) Any party to the appeal may, on payment of the prescribed fee, obtain from the Registrar a copy of the translation under subsection (3).

75 Procedure where appeal not prosecuted

- (1) If the appellant does not appear at the time appointed for hearing the appeal and is not represented by a barrister and solicitor or a pleader, his or her appeal shall, unless the Supreme Court for good reason orders otherwise, stand dismissed.
- (2) If the appellant does not prosecute his or her appeal with due diligence, the respondent may by summons apply to the Supreme Court to dismiss the petition of appeal and the Supreme Court may dismiss the petition accordingly.
- (3) In any cause to which this section applies the Supreme Court may order the payment by the appellant to the respondent of such amount for costs as it deems proper.

76 Rules for appeals

The Chief Justice may make rules of the court regarding appeals in civil proceedings.

77 Appeals from Arrest of Judgment

- (1) If the District Court arrests judgment, the District Court must, on application of counsel for the prosecution, reserve a case for consideration of the Supreme Court.
- (2) On the hearing of the case, the Supreme Court may affirm or reverse the order arresting judgment.
- (3) If the Supreme Court reverses the order:
 - (a) the Supreme Court must direct that judgment be pronounced on the offender and order the offender to appeal at a stated place and time to receive judgment; and
 - (b) any magistrate may issue a warrant for arrest of the offender.
- (4) An offender so arrested may be admitted to bail by order of the Court or a Judge when the Court directs that judgment be pronounced or at a later time.

PART 13 – MODE OF CONDUCTING PROCEEDINGS OF THE SUPREME COURT

78 Mode of conducting proceedings of the Supreme Court

The proceedings in the Supreme Court shall be conducted as follows:

- (a) a trial or hearing of a substantive cause or matter shall be heard and disposed of in the Supreme Court; and
- (b) interlocutory hearings and other such other matters provided under this Act or rules of the court may be heard and disposed of in chambers.

79 Language of the Supreme Court

- (1) The proceedings before the Supreme Court shall be conducted in the English language.
- (2) Where a person is unable to communicate in the English language:
 - (a) he or she shall be permitted to communicate in a language in which he or she can speak; and
 - (b) the Supreme Court shall provide an interpreter for the purposes of paragraph (a).

80 Sittings of the Court

- (1) The Supreme Court shall sit for a trial or hearing of a cause or matter or an interlocutory application in the Republic and at such times as the Chief Justice may direct.
- (2) The Registrar shall issue notices of such sittings to the parties in compliance with the directions of a Judge or rules of the court.

PART 14 – WITNESSES

81 Summoning witnesses

A Judge or the Registrar may, either of his or her own motion or on the application of any party summon any person to attend the Supreme Court:

- (a) to give evidence; or
- (b) to produce any document in his or her possession or power.

82 Compelling attendance of witness

If a person summoned under section 81:

- (a) has reasonable notice of the time and place at which he or she is required to attend the Supreme Court;

(b) after the provision of transport to and from court; and

(c) fails to attend without any reasonable excuse, -

he or she shall, independently of any other liability, be guilty of an offence and liable to a fine not exceeding \$300.00 and may be proceeded against by warrant to compel his or her attendance.

83 Prisoners may be brought to give evidence

(1) A Judge or Registrar may issue an order for production for a serving prisoner to be brought before the Supreme Court to be examined as a witness in any cause or matter.

(2) The Chief Correctional Officer shall comply with the order under subsection (1) and shall provide for the safe custody of the prisoner during his or her absence from prison.

84 Refusal to give evidence

(1) This section applies to a witness who without reasonable excuse refuses:

(a) to give evidence when required to;

(b) to produce a document the witness has been required to produce;

(c) to be sworn or affirmed; or

(d) to answer questions after having being sworn or affirmed to testify.

(2) Where a witness fails to comply with subsection (1), the Supreme Court may:

(a) issue a warrant to arrest and detain the witness; or

(b) order that the witness be detained in custody for a period not exceeding 7 days.

(3) This section does not limit the power of the Supreme Court to punish the witness for contempt.

(4) This section does not apply to any evidence, testimony or document which is protected by the Official Information Act 1976 or in the public interest or national security.

85 How allowances to witnesses are to be defrayed in civil cases

In any cause or matter other than criminal proceedings, the allowances for the witnesses shall be paid by the party on whose behalf the person attended and shall be recoverable as ordinary costs of the suit if the Supreme Court so orders.

86 Inspection of site, property or fixed evidence

Where inspection of a site or property may be material to the determination of an issue in any cause or matter, the Supreme Court may make:

- (a) such order for inspection of the site or property by the Judge, the officers of the Court, the legal representatives, parties and witnesses; and
- (b) such directions with regard to the inspection as it deems fit.

87 Copies of and access to records of evidence

- (1) A party to any cause or matter shall be entitled, upon payment of the prescribed fee, to receive a copy of the record of the evidence given therein.
- (2) A person shall not be entitled to inspect the original record of the proceedings in any pending cause or matter without the leave of the presiding Judge.
- (3) A person shall not be entitled to inspect the original record of a proceeding in any cause or matter which has been determined and finalised including any appeals without the leave of the Registrar.

88 Recording of evidence

- (1) Any oral evidence given before the Supreme Court or so much thereof as the Supreme Court deems material, shall be taken down in writing by the Judge or recorded in such other manner as the Chief Justice may from time to time by rules direct.
- (2) Subject to subsection (3), oral evidence shall ordinarily be taken down in the form of a narrative and not in the form of questions and answers.
- (3) The Judge may in his or her discretion take down, or cause to be taken down, any particular question and answer.

PART 15 – ENFORCEMENT OF JUDGMENTS AND ORDERS OF THE SUPREME COURT

89 Powers of the Supreme Court to enforce judgments and orders

- (1) The Supreme Court shall have such power to enforce its judgments and orders as may from time be provided by law.
- (2) In the absence of any provision to the contrary, the judgments, decisions and orders of the Supreme Court may be enforced in all or any of the ways in which judgments and orders of the High Court of Justice in England could be enforced in England so far as they are applicable to the circumstances of the Republic and are not inconsistent with the provisions of this Act or any other written law.

PART 16 – EXECUTION OF THE PROCESS OF THE COURTS

90 Commissioner of Police to be responsible for execution of process of the Courts

- (1) Subject to subsection (2), the Commissioner of Police shall be responsible for the execution of all such writs, warrants, orders, commands and process of the Supreme Court or any Judge to execute and shall make return of every writ, warrant, order, command or process together with the manner of execution thereof to the Supreme Court out of which it issued.
- (2) Where the Supreme Court directs or awards any process against the Commissioner of Police or awards any process in any cause, matter or thing in which the Commissioner of Police has such personal interest that the Supreme Court considers it undesirable that he or she 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.
- (3) Where the Commissioner of Police is prevented, by reason of his or her absence from the Republic or by illness, from performing his or her duties under subsection (2), they may be performed by the next most senior officer of the Nauru Police Force present in the Republic.
- (4) Every writ, warrant, order, command and process may be executed according to its tenor.

91 Police to obey orders and directions of Judges

All officers of the Nauru Police Force shall obey the orders and directions of the Supreme Court in the exercise of its criminal jurisdiction and shall have the powers and authority necessary to enable them to do so.

92 Execution of process

It is lawful for a person who is charged by law with the duty of executing that lawful process of a Supreme Court and who is required to arrest or detain another person under that process, and for every person lawfully assisting a person so charged, to arrest or detain the other person according to the terms of the process.

93 Execution of warrants

It is lawful for a person who is charged by law with the duty of executing a lawful warrant issued by the Supreme Court or other person having jurisdiction to issue it, and who is required to arrest or detain another person under the warrant, and for every person lawfully assisting a person so charged, to arrest or detain the other person according to the terms of the warrant.

94 Execution of sentence

It is lawful for a person who is charged by law with the duty of executing or giving effect to the lawful sentence of the Supreme Court to execute or give effect to that sentence.

PART 17 – FEES AND FUNDS IN THE SUPREME COURT

95 Fees

All fees prescribed by this Act, any other written law or the rules of the court and all fines, costs, forfeitures and penalties imposed by any Court in criminal proceedings may be demanded and received in the Supreme Court, by the Registrar or any other public officer nominated by him or her to do so.

96 Courts Trust Fund and securities deposited in court

- (1) Subject to subsection (2), there shall be a fund to be known as 'the Courts Trust Fund' and all moneys paid into the Supreme Court to stand to the credit of any party in any cause or matter shall be received into and credited to, that Fund and paid by the Registrar into a bank account in a bank in the Republic.
- (2) The Registrar may, if he or she deems fit, pay money from such account into an interest-bearing account in a bank in the Republic in the name of the Fund and in the name of the beneficiary.
- (3) All securities for money deposited in the Supreme Court shall be placed by the Registrar in safe custody or in the Fund.

97 Moneys in Fund and securities deposited to be held in trust by Registrar

- (1) All moneys received into the Fund and all securities for money deposited in the Supreme Court under section 96 shall be held by the Registrar in trust to attend the orders of the Court into which they were paid with regard thereto and subject to any rules made under this Act.
- (2) Subject to the provisions of section 98, no moneys shall be withdrawn from the Fund or securities for money handed over to any person save in accordance with directions in that regard given by the Court into which they were paid.

98 Republic to pay bank charges and be liable for loss of moneys and securities

- (1) The Republic shall pay all bank charges in respect of the bank accounts maintained by the Registrar in the name of the Fund and all expenses of the Registrar incurred in providing safe custody for securities for money deposited under the provisions of section 96 of this Act.
- (2) If any money paid into, or any security for money deposited in, the Court under the provisions of section 96 of this Act is lost or destroyed while held in trust by the Registrar, the Republic shall be liable to make good to the party to whose credit such money stood the amount of the money lost or to

replace the security lost or destroyed or otherwise to make good the loss suffered by the party to whose credit it stood, as the case may be.

- (3) Any interest paid by the bank on any moneys of the Fund paid into an interest-bearing account by the Registrar under the provisions of section 96 shall ensure to the benefit of the Republic and the Registrar shall from time to time, at intervals of not more than 12 months, withdraw from the Fund the amount of such interest and pay it into the Treasury Fund.
- (4) The Registrar may recover from the beneficiaries of such account reasonable expenses if it becomes necessary.

99 Rules relating to the Courts Trust Fund

The Chief Justice may from time to time make rules for giving effect to this Part of the Act.

PART 18 – REPRESENTATION OF PARTIES

100 Representation of the Republic and public officers

- (1) A civil proceeding against the Republic shall be filed in conformity with the requirements of the Republic Proceedings Act 1972.
- (2) Where the Republic or any public officer in his or her official capacity is a party to any cause or matter or where any relief sought affects the revenue of the Republic, the Republic or that officer shall be represented by the Solicitor General or a government lawyer.

101 Representation of parties

A party to any cause or matter in the Supreme Court may appear in person or engage the services of a legal representative.

102 Exercise of power of transfer

- (1) A Judge shall have the power vested to it under this Act to transfer a cause or matter to the District Court.
- (2) Any civil cause may be transferred either entirely or in respect of any part thereof or any procedure required to be taken therein.
- (3) Subject to the provisions of any written law relating to the procedure in criminal causes or matters, every order of transfer shall operate as a stay of proceedings in the Court from which the cause or matter is transferred and an attested copy of the record of the proceedings in that Court and of all entries in the registers of the Court relative thereto shall be transmitted to the Court to which it is transferred and henceforth, subject to the provisions of the subsection (2), all proceedings in the cause or matter shall be taken in that Court as if the cause or matter had been commenced therein.

- (4) Any order made under the provisions of this Act for the transfer of a cause or matter or refusing such transfer, shall not be subject to appeal.

103 Judgment of District Court may be removed into Supreme Court

- (1) A Judge, if satisfied that any person, whether resident in the Republic or not, against whom judgment has been obtained in the District Court for an amount exceeding \$500, whether by way of a claim or counterclaim or by way of costs or otherwise, has no goods or chattels within the Republic which can be conveniently seized to satisfy the judgment, may, if he or she deems fit and upon such terms as to costs as he or she may direct, by order under his or her hand and the seal of the Supreme Court, remove the judgment into the Supreme Court.
- (2) Upon removal of a judgment of the District Court into the Supreme Court under this section, no further proceedings shall be had or taken thereon in the District Court and judgment shall be entered in the Supreme Court for the amount due and payable under the judgment of the District Court together with the costs, if any, as aforesaid, and a judgment so entered shall have the same force and effect and the same proceedings may be had thereon as it were a judgment originally obtained in the Supreme Court.

PART 19 – PRACTICE AND PROCEDURE

104 Practice and procedure

- (1) The jurisdiction vested in the Supreme Court shall, except where otherwise provided by any law for the time being in force, be exercised, so far as regards practice and procedure, in the manner provided by any written law relating to the procedure in criminal causes and by such rules and orders of court as may be made pursuant thereto.
- (2) Where no provision is made by any written law relating to the procedure in criminal causes or by any rule or order of court made pursuant thereto the jurisdiction of the Supreme Court shall be exercised in substantial conformity with the law and practice for the time being observed in England in the High Court of Justice.

PART 20 – PROTECTION OF JUDGES AND OFFICERS OF THE SUPREME COURT

105 Protection of Judges and officers of the Supreme Court

- (1) The Chief Justice, a Judge or the Registrar acting under this Act or any written law shall not be liable for any act done or ordered to be done in the discharge of judicial duties and functions, whether or not within the limits of his or her jurisdiction, provided that he or she at the time in good faith believed himself or herself to have jurisdiction to do or order the act complained of.

- (2) A person bound to execute the lawful judgments, decisions or orders of the Supreme Court shall not be liable to be sued in any Court for the proper execution of the same.

PART 21 – AFFIDAVITS

106 Appointment of Commissioners

- (1) The Chief Justice may appoint under his signature and the seal of the Supreme Court from time to time, barristers and solicitors and other persons to be Commissioners for taking affidavits and declarations and receiving production of documents or for taking the examination of witnesses on interrogatories or otherwise which may be necessary to be taken in respect of any proceedings in any Court, and any order of a Court for the attendance and examination of witnesses or production of documents before any such Commissioner shall be enforced in the same manner as an order to attend or be examined or produce documents before the Court.
- (2) Every person appointed upon his or her own application, to be a Commissioner for Oaths under subsection (1) shall on appointment pay to the Republic such fee as the Minister may from time to time prescribe.
- (3) No action shall be brought against any Commissioner in respect of any act or order performed or made by him or her in good faith in the execution or supposed execution of the powers or jurisdiction vested in him or her, but every such act or order, if in excess of such powers and jurisdiction, shall be liable to be revised, altered, amended or set aside upon application to the Court.
- (4) A Commissioner shall, unless otherwise directed in the Commission, receive such fees as may be prescribed by rules of court.

107 Swearing of affidavits outside the Republic

- (1) An affidavit required for the purposes of the Supreme Court may be sworn outside the Republic before a Commissioner appointed under the provisions of section 106 or:
- (a) in any place within any part of the Commonwealth, before a judge, magistrate, justice of the peace, notary public, commissioner for oaths, commissioner for affidavits, a diplomatic officer of the Republic or a person authorised by the law of that place to administer oaths; or
 - (b) in any other place, before a judge of a court the jurisdiction of which is unlimited, a notary public or a diplomatic officer of the Republic.
- (2) The office of the person before whom the affidavit is sworn and the date when and the place where it is sworn shall be stated in the affidavit.
- (3) The Supreme Court may receive in evidence an affidavit purporting to have been sworn in accordance with this section without proof of the signature of

the deponent or of the fact that the person before whom it was sworn holds the office stated in it.

- (4) Where an affidavit is not in the English language there shall be annexed to it:
- (a) a certified translation of it into the English language; and
 - (b) a certificate signed by a person before whom, under the provisions of this section, an affidavit can be sworn that to his or her own knowledge the person who has certified the translation has an adequate knowledge and understanding of the language in which the document is made and of the English language.
- (5) In this section '*diplomatic officer*' means a person appointed to hold or act in any of the following offices of the Republic in a country or place outside the Republic:
- (a) Ambassador;
 - (b) High Commissioner;
 - (c) Minister;
 - (d) Head of Mission;
 - (e) Consul General;
 - (f) Representative;
 - (g) Commissioner;
 - (h) Chargé d'Affaires; and
 - (i) Counsellor, Secretary or Attaché at an Embassy, High Commissioner's office, Legation or other post.

PART 22 – CONTEMPT OF COURT

108 Contempt of court

The Supreme Court shall have the power and jurisdiction to try and punish for contempt of court under section 14 of the Administration of Justice Act 2018.

PART 23 - MISCELLANEOUS

109 Courts not to be held on certain days

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

110 Vacations

The Chief Justice may declare the vacation of the Supreme Court not exceeding 30 consecutive days in any one year by a notice published in the Gazette.

111 Common law and the law of equity

The common law and the law of equity of England continue to apply in the Republic to the extent of any inconsistency with any written laws.

PART 24 – RULES OF THE COURT

112 Rules of the Court

(1) The Chief Justice may make rules relating to the Supreme Court for all or any of the following purposes:

- (a) for constitutional redress rules for the application under Part 7;
- (b) practice and procedure of the Supreme Court in civil proceedings;
- (c) practice and procedure in criminal proceedings;
- (d) for the grant, revocation or resealing and such other matters for the purposes of Part 8 and until such rules are made, the non-contentious probate rules of England continue to apply;
- (e) for regulating the receipt of moneys paid into court, or received and recovered under or by virtue of any process of execution or distress;
- (f) for regulating the payment out of court of all moneys to the persons entitled thereto;
- (g) for prescribing the books and forms of accounts to be kept or used in the Court;
- (h) for prescribing the acceptance, retention and disposal of fees;
- (i) for prescribing fees to be received by Commissioners;
- (j) for regulating the days and the hours of opening and closing the offices of the Court; and
- (k) for the better carrying into effect of the provisions, objects and intentions of this Act.

(2) The Civil Procedures Rules 1972 continue to apply until such time the Chief Justice may make rules under this section for the purposes of this Act.

PART 25 - SAVINGS AND TRANSITIONAL PROVISIONS

113 Imperial enactments ceasing to have effect in the Republic

Any Imperial enactment which has been partly or wholly replaced by any legislation in the Republic shall cease to apply.

114 Judicial officers to continue in office

- (1) This section applies to every person who is a judicial officer under the relevant Act immediately before the commencement of this section.
- (2) The appointment of the Registrar of the Supreme Court shall continue as Registrar of the Courts.
- (3) A judicial officer to whom this section applies continues to hold his or her judicial office under the conditions of his or her appointment.

115 Other officers of court to continue in office

- (1) This section applies to every person who is an officer of a court other than a judicial officer under the relevant Act immediately before the commencement of this section.
- (2) An officer to whom this section applies continues to hold his or her office subject to this Act.

116 Proceedings, etc, continue under relevant Act

- (1) All proceedings pending or incomplete in the Supreme Court immediately before the coming into effect of this Act may be continued, completed, and enforced only under that relevant Act as if that Act had not been repealed by this Act, the Nauru Court of Appeal Act 2018 or the District Court Act 2018.
- (2) All pending or incomplete proceedings filed in the Supreme Court shall continue to be heard and decided in accordance with the laws which were applicable at the time when such actions were filed.
- (3) All jurisdictions, offices, appointments, orders, warrants, rules, regulations, seals, forms, books, records, instruments, and generally all acts of authority that originated under the relevant Act or another enactment continued or repealed by this Act, and that are subsisting or in force on the commencement of this section, have full effect as if they had originated under the corresponding provisions of this Act and, where necessary, must be treated as having originated under this Act.

PART 26 – CONSEQUENTIAL AMENDMENTS AND REPEAL

117 Consequential amendments and repeal

- (1) Any reference to the Registrar of the Supreme Court under the Civil Procedure Act 1972 and Criminal Procedure Act 1972 or other written law is a reference to the Registrar of the Courts as defined under this Act.

(2) Any reference to the Appeals Act 1972 or any applicable provisions of the Appeals Act 1972 in the Civil Procedure Act 1972 and Criminal Procedure Act 1972 or any other written law is a reference to:

(a) in the case of the District Court, or applicable provisions of the District Court Act 2018, is the District Court Act 2018;

(b) in the case of the Supreme Court or applicable provisions of the Supreme Court Act 2018, is the Supreme Court Act 2018; and

(c) in the case of High Court of Australia, is the Nauru Court of Appeal under the Nauru Court of Appeal Act 2018.

118 General amendments as to references

Any reference to the Courts Act 1972 is a reference to:

(a) in the case of the District Court, the District Court Act 2018;

(b) in the case of the Supreme Court, the Supreme Court Act 2018; and

(c) in the case of High Court of Australia, the Nauru Court of Appeal Act 2018.

119 Repeals

The Courts Act 1972 is repealed.