



Republic of Nauru

Republic Proceedings (Amendment) Bill 2010

Serial No. 5 of 2010

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Republic of Nauru

Republic Proceedings (Amendment) Bill 2010

Serial No. 5 of 2010

A Bill for an Act to amend the *Republic Proceedings Act 1972*

Certified on [...2010]

Enacted by the Parliament of Nauru as follows:

1 Short title

This Act may be cited as the *Republic Proceedings (Amendment) Act 2010*.

2 Commencement

This Act commences on the day it receives the certificate of the Speaker under Article 47.

3 Act amended

The Schedule amends the *Republic Proceedings Act 1972*.

SCHEDULE – AMENDMENT OF REPUBLIC PROCEEDINGS ACT

section 3

[1] Amendment of section 2

1.1 Section 2, definition of ‘instrumentality of the Republic’

omit, substitute

‘instrumentality of the Republic’:

- (a) means a body established by statute, which statute expressly provides that the body is subject in some respect to Cabinet or Ministerial direction; but
- (b) does not include:
 - (i) a statutory body that is deemed, by regulation made under section 2A, not to be an instrumentality of the Republic; or
 - (ii) a statutory body that, in the statute establishing the body, is expressly provided not to be an instrumentality of the Republic for the purposes of this Act;

1.2 Section 2, definition of ‘officer’

omit, substitute

‘officer’, in relation to the Republic, includes any Minister, any public officer, any other servant of the Republic and any officer or employee of an instrumentality of the Republic;

[2] Insertion of section 2A

After section 2

insert

2A Exclusion of statutory body from definition of instrumentality

Cabinet may, by regulation, provide that a specified statutory body is not an instrumentality of the Republic for the purposes of this Act.

[3] Repeal and substitution of section 3

Section 3

repeal, substitute

3 Claims against the Republic

(1) In this section:

'Republic' means the Republic or any government department or instrumentality of the Republic or the President, the Cabinet, any Minister or any public officer in his official capacity; and

'proceedings' includes a counter-claim in proceedings against the Republic.

(2) No civil proceedings may be taken against the Republic to enforce a claim against the Republic unless:

(a) before the commencement of the proceedings Cabinet has given leave for them to be taken; or

(b) the claim is of a kind mentioned in subsection (3).

(3) A person may take civil proceedings, without leave of Cabinet, to enforce any of the following claims:

(a) a claim for the enforcement of a contract validly entered into by, or on behalf of, the Republic;

(b) a claim for judicial review of administrative action;

(c) a claim to enforce the payment of debt charges which are a charge on the Treasury Fund; and

(d) a claim in respect of which it is provided in an Act that the provisions of this section do not apply.

(4) The Cabinet must prescribe by regulations the manner in which application may be made to the Cabinet for leave to take proceedings against the Republic.

(5) Where leave to take proceedings against the Republic is granted by the Cabinet, the proceedings, if taken, must be taken in accordance with the provisions of this Act.

[4] Repeal and substitution of section 18

Section 18

repeal, substitute

18 Satisfaction of orders against the Republic

- (1) In this section, except in subsection (7), **'Republic'** means the Republic or any government department or instrumentality of the Republic or the President, the Cabinet, any Minister or any public officer in his official capacity.
- (2) Where in any proceedings by or against the Republic, or in connection with any arbitration to which the Republic is a party, any order, including an order for costs, is made by any court or arbitrator in favour of any person against the Republic, the person may apply to the court for a certificate containing the particulars of the order.
- (3) An application under subsection (2) may be made:
 - (a) at any time after the expiration of twenty-one days from the date of the order; or
 - (b) if the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed,whichever is later.
- (4) Where a person makes an application under subsection (2):
 - (a) The Registrar of the court must notify the Secretary for Justice of the application; and
 - (b) The Secretary for Justice, within twenty-one days of being notified, must:
 - (i) elect to represent the Republic at an *inter partes* hearing of the application; or
 - (ii) waive the right to an *inter partes* hearing of the application.
- (5) Where the Secretary elects to represent the Republic at an *inter partes* hearing of an application, the Secretary may seek to have terms included in the certificate.
- (6) Where an application is validly made under this section, the Registrar:
 - (a) must issue a certificate in the prescribed form; and

- (b) may, if satisfied that it is necessary in view of the financial position of the Republic and the public interest in the ability of the Republic to maintain public services and meet other essential expenditure, include in the certificate terms for payment of the judgment debt and/or costs to be made in specified instalments; and
 - (c) may issue a separate certificate with respect to the costs, if any, ordered to be paid to the applicant.
- (7) A copy of any certificate issued under this section may be served by the person in whose favour the order is made—
 - (a) if the order is against an instrumentality of the Republic, upon the principal executive officer of the instrumentality; or
 - (b) if the order is against the Republic or any government department or the President, the Cabinet, any Minister or any public officer in his official capacity, upon the Secretary for Justice.
- (8) On being served with a certificate under subsection (7)(a), the principal executive officer of an instrumentality of the Republic must pay to the person entitled or the person's legal representative the amount specified in the certificate to be due to the person in accordance with any terms of payment specified in the certificate, unless payment against the certificate has been suspended under subsection (11).
- (9) On being served with a certificate under subsection (7)(b), the Secretary for Justice must pay to the person entitled or the person's legal representative the amount specified in the certificate to be due to the person in accordance with any terms of payment specified in the certificate, unless payment against the certificate has been suspended under subsection (11).
- (10) A payment that is required to be made by the Secretary under subsection (9) is a charge on the Treasury Fund.
- (11) The court by which an order referred to in subsection (2) is made, or a court to which an appeal against the order lies, may direct that, pending an appeal or otherwise, payment of all or part of the amount specified in the order is suspended and, if the certificate has not yet been issued, may order such directions to be included in the certificate.
- (12) No execution or attachment process may be issued out of any court for enforcing payment by the Republic of any judgment debt or costs except as provided for in this section, and no person is individually liable under any order for the payment by the Republic of any such debt or costs.

[5] Insertion of section 27

After section 26

insert

27 Effect of amendments

The amendments to this Act effected by the *Republic Proceedings (Amendment) Act 2010* apply from the date of commencement of that Act:

- (a) to any existing claim, proceeding, order, judgment debt or certificate; and
- (b) to any party to an existing proceeding; and
- (c) to any person or body in whose favour, or against whom, any order, certificate or debt is yet to be executed or paid.