



REPUBLIC OF NAURU

NAURU COURT OF APPEAL BILL 2018

No. of 2018

A Bill for an Act to establish the Nauru Court of Appeal 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 *Nauru Court of Appeal Act 2018*.

2 Commencement

This Act commences on 15 May 2018.

3 Definitions

In this Act:

'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;

'Constitution' means the Constitution of the Republic of Nauru;

'Court' means the Nauru Court of Appeal established by Article 57 of the Constitution unless otherwise stated;

'criminal proceedings' includes proceedings under the Crimes Act 2016 and such other offences in any other written law;

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

'Family Court' means the Family Court established by the Family Court Act 1973;

'judgment, decision or order' includes decrees and not an opinion under Article 55 of the Constitution;

'Justice of Appeal' means a Justice of Appeal appointed under this Act;

'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;

'Minister' means the Minister for Justice and Border Control;

'offence' includes a criminal offence under the Crimes Act 2016 and other offences under any written law;

'President' means the President of the Republic of Nauru;

'President of the Court of Appeal' has the same meaning as provided in Article 57 (5) and (6) of the Constitution;

'Registrar' means the Registrar of the Courts;

'session' means the sitting of the Court for a specified period;

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

PART 2 – NAURU COURT OF APPEAL

4 The Court

- (1) The final appellate court of the Republic shall be called the Nauru Court of Appeal.
- (2) The Court is a court of record.

5 General jurisdiction of the Court

The Court shall have the power and jurisdiction to hear and determine all appeals which lie to the Court by virtue of the Constitution, this Act or any other written law.

6 Sessions of the Court

- (1) Subject to subsection (2), the ordinary session of the Court shall be convened at least once a year and shall be notified in the Gazette by the Registrar by no later than 15th January of each year.
- (2) The Court may sit in the Republic from time to time as the President of the Court of Appeal may deem necessary.

7 Seal

- (1) The Court shall have a seal bearing the emblem of the Republic with the inscription '*Nauru Court of Appeal*'.
- (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 Court may require a seal.

8 Composition of the Court

- (1) The sitting of the Court shall be duly constituted if it consists of not less than 3 Justices of Appeal including the President of the Court of Appeal.
- (2) Subject to subsection (1), the Court may be constituted if it consists of not less than 2 Justices of Appeal where the President of the Court of Appeal is of the opinion it is impractical to summon a Court of 3 Justices of Appeal.
- (3) Where the President of the Court of Appeal is unable to sit in an appeal by virtue of Article 57(6) of the Constitution or for any other reason:
 - (a) the Senior Justice of Appeal shall preside in the sitting of the Court under subsection (1) or (2); and

- (b) another Justice of Appeal shall substitute the President of the Court of Appeal for the purposes of subsection (1) or (2).

PART 3 – APPOINTMENT OF JUSTICES

9 Appointment of Justices of Appeal

- (1) The Justices of Appeal are to be appointed by the President in consultation with the Chief Justice.
- (2) A person is not qualified to be appointed as a Justice of Appeal unless he or she is qualified to be appointed as a Judge of the Supreme Court and has been so qualified for at least 5 years.
- (3) A person may be appointed a Justice of Appeal either for a fixed period or for the hearing of one or more appeals as specified in the instrument of appointment.
- (4) No person may serve as a Justice of Appeal after the age of 75 years except that the person may continue to hear and determine an appeal commenced before he or she attained that age.

10 Justices of Appeal to take oath or affirm

The Justices of Appeal including the President of the Court of Appeal shall before entering office take and subscribe before the President the oath or affirmation set out in the Schedule.

11 Remuneration of Justices of Appeal

The Justices of Appeal appointed under section 9 shall receive such remuneration as may be fixed by the President in consultation with the Chief Justice.

12 Seniority of Justices

- (1) The Justices of Appeal other than the President of the Court of Appeal are senior to each other in order of their dates of appointment.
- (2) If 2 or more Justices of Appeal have the same date of appointment, then seniority among those Justices is determined according to their seniority as judicial officers of a superior court in the Republic or any other jurisdiction.

PART 4 – REGISTRAR AND OTHER STAFF

13 Registrar of the Court of Appeal

The Registrar of the Courts shall be the Registrar of the Nauru Court of Appeal.

14 Duties, powers and jurisdiction of the Registrar

The duties of the Registrar include:

- (a) taking all necessary steps to obtain a hearing date of the appeals or applications;
- (b) obtaining and compiling a record of the Supreme Court proceedings of all judge's notes, transcripts, exhibits and other matters relating to the appeal;
- (c) providing necessary directions in relation to the appeals or applications to any parties to the proceedings, officers of the courts, the Chief Corrections Officer and such other officers as he or she thinks fit; and
- (d) such other powers and jurisdiction given under this Act, other written law or the rules of the Court.

15 Officers of the Court

- (1) There shall be such other officers including interpreters appointed, as the Registrar with the approval of the Chief Justice and Chief Secretary, shall consider necessary for the administration of justice and due execution of all the powers and authority vested in the Court.
- (2) The interpreters appointed under subsection (1) shall take oath or affirmation before the Chief Justice or any other Justice of Appeal.

PART 5 – COURT JUDGMENTS

16 Judgment of Court of Appeal

- (1) A judgment, decision or order of the Court shall be in accordance with the opinion of a majority of the Justices of Appeal constituting the Court for the hearing and determination of the cause or matter.
- (2) Where the Justices of Appeal are equally divided, the judgment, decision or order appealed from the Supreme Court is taken as affirmed and the appeal is deemed to be dismissed.
- (3) A judgment, decision or order of the Court may be delivered by a Justice of Appeal or by the Registrar where the Court cannot be constituted in accordance with section 8.

17 Stay of execution of judgment, decision or order

- (1) Subject to Part 7, the Court shall have the jurisdiction and power to stay the execution of any judgment, decision or order of the Supreme Court until the final determination of the appeal or such further or other orders the Court may deem fit.
- (2) A party may apply for the discharge or variation of an order granting stay on the grounds of change of circumstances from the time the decision to stay was granted.

18 Judgment of the Court enforceable by the Supreme Court

A judgment, decision or order of the Court may be enforced by the Supreme Court as if it had been given or made by the Supreme Court.

PART 6 – APPEALS IN CIVIL PROCEEDINGS

19 Appeals in civil proceedings

- (1) For the purposes of this Part, '*civil proceedings*' means any cause or matter which when commenced in the District Court or the Supreme Court was not a criminal proceeding.
- (2) Subject to subsection (3), an appeal shall lie under this Part in any civil proceeding to the Court:
 - (a) from any final judgment, decision or order of the Supreme Court sitting in the first instance including a judgment, decision or order of a Judge in chambers;
 - (b) from any final judgment, decision or order of the Supreme Court on appeal from the District Court or other subordinate tribunals or committees or bodies constituted under a written law to make decisions appealable to the Supreme Court;
 - (c) from any final judgment, decision or order of the Supreme Court on an appeal from a decision of the Nauru Lands Committee on questions of law only;
 - (d) from any final judgment, decision or order of the Supreme Court sitting under the Refugees Convention Act 2012 in its appellate jurisdiction on questions of law only;
 - (e) from any final judgment, decision or order of the Supreme Court's original or appellate jurisdiction in relation to proceedings on appeal from the Family Court;
 - (f) from any final judgment, decision or order of the Supreme Court involving the interpretation or effect of any provision of the Constitution; and
 - (g) as may from time to time be provided under this Act, other written law or the rules of the Court.
- (3) No appeal shall lie:
 - (a) from an Order allowing extension of time for appealing;
 - (b) from a judgment, decision or order of the Court of Disputed Returns under the Electoral Act 2016 and Article 57 of the Constitution;
 - (c) from an Order of the Supreme Court giving unconditional leave to defend a cause or matter;

- (d) from the final judgment, decision or order of the Supreme Court where it is provided by any written law that such decision is to be final;
 - (e) without the leave of the Supreme Court or the Court where the Order was made or granted by the Supreme Court with the consent of the parties;
 - (f) without the leave of the Supreme Court or the Court from an interlocutory judgment, decision or order given by the Supreme Court except in cases:
 - (i) where the liberty of a person or an infant is concerned;
 - (ii) where an injunction is granted or refused;
 - (iii) where the appointment of a receiver is granted or refused;
 - (iv) where a decree nisi in a matrimonial cause or judgment is granted;
 - (v) where a decree nisi or order in an admiralty action determining liability is granted; and
 - (vi) which may be prescribed by this Act, other written laws or the rules of the Court.
- (4) Where leave is required of the Supreme Court to appeal to the Court, the order in which the application shall be made is first to the Supreme Court and if declined, to a single Justice of Appeal.
- (5) No review or appeal lies to the Court from the judgment, decision or order of a single Justice of Appeal under subsection (4) unless permitted by this Act, any other written law or the rules of the Court.

20 Interlocutory Order

A judgment, decision or order which results in the final determination of a civil proceeding despite the application being interlocutory in nature shall not be constituted as an interlocutory order for the purposes of section 19 (3)(f).

21 Procedure for commencing civil appeals

- (1) A person who seeks to appeal a judgment, decision or order of the Supreme Court under this Part shall file a notice of appeal in such manner as prescribed by the rules of the Court.
- (2) A person who seeks to obtain leave to appeal a judgment, decision or order of the Supreme Court under this Part, he or she, shall file a summons for leave to appeal in such manner as prescribed by the rules of the Court.

22 Time for appealing

- (1) Where a person desires to appeal under this Part, he or she shall file and serve a notice of appeal within 30 days of the date of the delivery of the final judgment, decision or order of the Supreme Court.
- (2) Where a person requires leave to appeal under this Part, he or she shall file and serve to the proposed respondents a summons for leave to appeal within 21 days of the date of the delivery of the judgment, decision or order of the Supreme Court.
- (3) The time for filing of an appeal or an application for leave to appeal under this section may be extended:
 - (a) by the Supreme Court before it expires; or
 - (b) by the Court after it expires.
- (4) The time for filing an appeal or an application for leave to appeal may be extended by the Supreme Court or the Court under subsection (3) before or after it expires concurrently with the application for leave to appeal under subsection (2).

23 Power of the Court in civil appeals

- (1) In determining an appeal under this Part, the Court may affirm, vary or reverse a judgment, decision or order appealed from the Supreme Court.
- (2) Where the Court varies or reverses a judgement, decision or order of the Supreme Court under this Part, it may substitute its own judgment.
- (3) Where the Court varies or reverses a judgment, decision or order and orders a retrial of the whole or part of the cause or matter, the Court shall also make orders for the retrial either:
 - (a) before the judicial officer who heard the original cause or matter; or
 - (b) before another judicial officer of the same hierarchy of the court.
- (4) For the purposes of hearing and determining an appeal under this Part, including the power to enforce any judgment, decision or order, the Court shall have the same power and authority of the Supreme Court and such other powers as may be prescribed by a written law or the rules of the Court.

24 Fresh evidence

- (1) Subject to subsection (2), the Court has no jurisdiction to admit or allow any evidence in determining an appeal which were not part of the records of the proceedings of a cause or matter before the Supreme Court in its original or appellate jurisdiction.
- (2) An application for leave to admit fresh evidence in an appeal may be allowed by the 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.

25 Security for costs

- (1) The appellant may be required to give security for costs for the purposes of the appeal to the satisfaction of the Registrar.
- (2) The Registrar may 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 Supreme Court upon payment of the security for costs.
- (5) A single Justice of Appeal may waive the requirement of security for costs if he or she is satisfied that the nature of the case or the appellant's financial capacity justifies waiving the security for costs.

26 Power of the Court of Appeal to strike out appeal for non-compliance

The Court shall not entertain any appeals made under this Part unless the appellant has fulfilled the conditions prescribed by this Act or the rules of the Court.

27 Powers of a Justice of Appeal

The powers of a Justice of Appeal under this Part are to:

- (a) give leave to appeal an interlocutory judgment, decision or order of the Supreme Court;
- (b) give leave to appeal an interlocutory judgment, decision or order where leave in the first instance has been refused by the Supreme Court;
- (c) extend the time within which a notice of appeal or an application for an appeal may be given;
- (d) give directions as to the service of documents;
- (e) stay execution of a judgment, decision or order of the Supreme Court;

- (f) give leave to amend a notice of appeal or a respondent's notice;
- (g) make orders by consent of the parties;
- (h) make orders for costs;
- (i) dismiss an appeal for want of prosecution;
- (j) give leave to withdraw an appeal on the application of an appellant;
- (k) strike out an appeal under section 26;
- (l) deliver a reserved judgment of the Court if any or all the Justices of Appeal who heard the appeal are unable to sit to deliver the judgment;
- (m) give general directions for the purposes of the appeal; or
- (n) any other matters as prescribed under the Act, other written law or the rules of the Court or directions published by the Chief Justice from time to time.

28 Representation

An appellant or a respondent may be represented in an appeal by a legal representative or may appear in person.

PART 7 – APPEALS IN CRIMINAL PROCEEDINGS

29 Appeals in criminal proceedings from the original jurisdiction of the Supreme Court

- (1) Where a person is convicted and sentenced for an offence in a trial held before the Supreme Court, he or she may appeal from the final judgment, decision or order of the Supreme Court:
 - (a) against the conviction on a question of law or a question of mixed law and fact;
 - (b) with the leave of the Court on a question of facts only;
 - (c) against the sentence passed unless the sentence is one fixed by a written law; or
 - (d) with the leave of the Court against the grant or refusal of bail including any conditions or limitations attached to a grant of bail on an application made in the Supreme Court either by the accused or the Director of Public Prosecutions.
- (2) Where the Supreme Court after a trial and delivery of a judgment certifies that the case is fit for appeal on the grounds that it involves a question of fact or a question of mixed law and fact, an appeal lies under this section without the leave of the Court.

(3) The Director of Public Prosecutions may appeal against a judgment, decision or order of the Supreme Court:

(a) where a person is acquitted on a question of law or a question of mixed law and fact; or

(b) in relation to the leniency or appropriateness of the sentence.

30

Appeals from the appellate jurisdiction of the Supreme Court

(1) Subject to this section, a party to an appeal from the District Court to the Supreme Court or the Director of Public Prosecutions may appeal against the judgment, decision or order of the Supreme Court exercising its appellate jurisdiction to the Court:

(a) with the leave of the Court; and

(b) on a question of law only.

(2) No appeal lies under this section:

(a) in respect of a sentence imposed by the Supreme Court in its appellate jurisdiction unless:

(i) the appeal is on an error of law; or

(ii) where the Supreme Court passed an immediate custodial sentence in substitution of a non-custodial sentence;

(b) the confirmation by the Director of Public Prosecutions or the confirmation by the Supreme Court of a verdict of acquittal by the District Court.

(3) Where the Court determines that a person may not have been properly convicted on some charges but has been properly convicted on some other charges, the Court may in respect of the charges it considers that the appellant has not been properly convicted of, either affirm the sentence passed by the District Court or Supreme Court or pass such other sentence in substitution which it deems proper.

(4) Where the Court determines in an appeal under this section:

(a) that the District Court and the Supreme Court had convicted a person of an offence; and

(b) based on the findings of the District Court or the Supreme Court the Court is satisfied of the facts which proves a person guilty of some other offence charged within the information, -

the Court may instead of allowing or dismissing the appeal, substitute the verdict of the District Court or Supreme Court, enter a conviction for that other offence and pass such sentence in substitution for the sentence passed by the District Court or Supreme Court.

- (5) On an appeal under this section, the Court may dismiss an appeal if it considers that no substantial miscarriage of justice has occurred despite some points raised in the appeal might be decided in favour of the appellant.
- (6) Where on an appeal against a conviction on an information containing 2 or more counts the Court allows the appeal in respect of part of the information, the Court may in respect of any count for which the appellant remains convicted, pass such sentence in substitution for any sentence passed at the trial as the Court deems fit and authorised by the law for the offence for which the appellant remains convicted.
- (7) The Court shall not under subsection (6), pass any sentence such that the appellant's sentence on the information as a whole will in consequence of the appeal be of greater severity than the sentence taken as a whole which was passed at the trial for all offences of which the appellant was convicted.

31 Appeals from case stated or revisional jurisdiction of the Supreme Court

- (1) A judgment, decision or order of the Supreme Court in exercise of its revisional jurisdiction or in a case stated under the provisions of any written law shall be deemed to be a judgment, decision or order of the Supreme Court in such appellate jurisdiction.
- (2) The judgment, decision or order of the Supreme Court may be appealed to the Court under this Part with the leave of the Court.
- (3) The Chief Justice shall make rules for the procedure for filing an appeal under this section.

32 Circumstances when appeal against conviction is allowed

- (1) In considering an appeal against a conviction, the 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.
- (2) Where an appeal against a conviction is allowed, the 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 appropriate court for a retrial.
- (3) Where on an appeal against sentence, the Court determines that a different sentence ought to have been passed, the Court shall:
 - (a) quash the sentence passed at the trial; and
 - (b) in substitution, pass such other sentence which the Court deems fit under the relevant law.

33 Powers of the Court in special cases

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

the Court may instead of allowing or dismissing the appeal, substitute for the conviction entered by the Supreme Court a conviction of guilty for that other offence and pass such sentence it deems fit in substitution for the sentence passed by the Supreme Court.
- (3) On an appeal under this section, the Court may dismiss an appeal if it considers that no substantial miscarriage of justice has occurred notwithstanding that some points raised in the appeal might be decided in favour of the appellant.

34 Suspension of order for restoration or payment of compensation

- (1) Where on conviction an order is made by the Supreme 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:

- (i) until the expiration of 30 days from the date of the conviction; or,
 - (ii) where a notice of appeal or leave to appeal is filed within 30 days after the date of the conviction until the determination of the appeal or the application for leave to appeal.
- (2) Where on appeal the judgment, decision or order of the Supreme Court is affirmed by the Court, the Supreme Court judgment, decision or order shall take immediate effect.
- (3) Where on appeal the judgment, decision or order of the Supreme Court is reversed or varied, the Court shall make appropriate orders for:
- (a) the payment of compensation;
 - (b) the restoration of any property to any person; and
 - (c) the re-vesting of any property to the original owner of any stolen property by operation of any written law.

35 Re-trial

- (1) Where the Court allows an appeal and does so by reason of evidence received or available to be received by the Court under section 39 and if the interest of justice so require, the Court may order the appellant to be retried.
- (2) A person shall not under this section be ordered to be retried for an offence other than:
- (a) the offence for which he or she was convicted at the original trial and in respect of which his or her appeal is allowed;
 - (b) the offence of which he or she could have been convicted at the original trial; or
 - (c) an offence charged in an alternative count in the information.

36 Time for appealing

- (1) Where a person convicted and sentenced desires to appeal under this Part, he or she shall file and serve a notice of appeal within 30 days of the date of the delivery of the judgment, decision or order of the Supreme Court.
- (2) Where a person convicted and sentenced requires leave to appeal under this Part, he or she shall file and serve a summons for leave to appeal within 14 days of the date of the delivery of the judgment, decision or order of the Supreme Court.
- (3) Where a person seeks to appeal the judgement, decision or order of the Supreme Court under section 30, the application for leave shall be filed and

served within 21 days of the judgment, decision or order of the Supreme Court.

- (4) The time for filing of an appeal or an application for leave to appeal under this section may be extended:
 - (a) by the Supreme Court before it expires; or
 - (b) the Court after it expires.
- (5) The time for filing an appeal or an application for leave to appeal may be extended by the Supreme Court or the Court under subsection (3) before or after it expires concurrently with the application for leave to appeal under subsection (2).

37 Procedure for commencing appeals

- (1) A person who seeks to appeal a judgment, decision or order of the Supreme Court under this Part shall file a notice of appeal in such manner as prescribed by the rules of the Court.
- (2) A person who seeks to obtain leave to appeal a judgment, decision or order of the Supreme Court under this Part where leave is required, shall file a summons for leave to appeal in such manner as prescribed by the rules of the Court.

38 Presence of appellant for hearing

- (1) Subject to subsection (2), an appellant shall be entitled to be present if he or she wishes to be present on the hearing of the appeal although he or she may be in custody.
- (2) A person in custody is not required to be present without the grant of prior leave of the Court to be present for the hearing:
 - (a) where the appeal is on a ground involving a question of law alone;
 - (b) on an application by him or her for leave to appeal;
 - (c) on any proceedings preliminary or incidental to an appeal; or
 - (d) where the appellant is in custody in consequence of a verdict of not guilty by reason of insanity or finding of disability.
- (3) Where an appellant is unrepresented, the Court shall grant leave for the appellant to be present and to make submissions to the Court at any stage of the appeal proceedings.

39 Powers of the Court to adduce fresh evidence

- (1) Where the 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 where the production of which appears to the 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 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 Court may direct any judge of the Supreme Court or the Resident Magistrate of the District Court to take depositions of the evidence before them;
 - (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 Court can be conducted before the 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 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 Court where it appears to the Court that special knowledge is required for the determination of the case.
- (2) The 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.

40 Director of Public Prosecutions

The Director of Public Prosecutions is deemed to be a party to any application for leave or appeal in any criminal cause or matter in which the proceedings were instituted and were carried on by a public prosecutor.

41 Cost of appeal

The Court shall not make any order as to costs on the hearing and determination of an appeal under this Part.

42

Admission of appellant to bail and custody when attending court

- (1) 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.
- (2) On an application for bail pending appeal, a single Justice of Appeal may grant the appellant bail pending the determination of the appeal.
- (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.

43

Powers which may be exercised by a Justice of Appeal

- (1) The powers of a Justice of Appeal under this Part are to:
 - (a) give leave to appeal to the Court;
 - (b) extend time within which notice of appeal or leave to appeal may be given;
 - (c) allow the appellant to be present in any proceedings where he or she is not entitled to be present without leave;
 - (d) admit an appellant to bail pending appeal; and
 - (e) cancel an appellant's bail on good cause being shown.
- (2) If on the filing of a notice to appeal or of an application for leave to appeal, a Justice of Appeal determines that the appeal is frivolous or vexatious or is bound to fail because there is no right of appeal or to seek leave to appeal, the Justice of Appeal may dismiss the appeal or the application for leave to appeal.
- (3) Where the Justice of Appeal refuses an application by the appellant under subsection (2), the appellant may have the application determined by the Court.
- (4) The decision of a Justice of Appeal to cancel bail under subsection (1)(e) may at the application of the appellant be reviewed by the Court.
- (5) A reserve judgment of the Court may be delivered by a Justice of Appeal if any or all of the Justices of Appeal who heard the appeal are unable to constitute the Court.

44

Judgment in criminal appeals

- (1) Any judgment, decision or order of the Court or a Justice of Appeal may be pronounced in such terms as the Court or the Justice of Appeal thinks

appropriate but the full contents of the judgment, decision or order shall be written down and a copy of the same shall be made available to the parties as soon as practicable after the pronouncement of such judgment, decision or order.

- (2) In an appeal under this Part, the Court shall ordinarily give only one judgment, decision or order which may be given by the President or a senior member of the Court present at the hearing of the appeal as he or she may direct, provided that:
 - (a) if any Justice of Appeal dissents from the judgment, decision or order of the Court it shall not be obligatory on him or her to sign the same instead he or she shall deliver a dissenting judgement, decision or order; and
 - (b) separate judgments, decisions or orders shall be given, if the Court is of the opinion, that it is convenient that there should be separate judgments, decisions or orders.
- (3) The judgment, decision or order of the Court or of any Justice of Appeal present at the hearing of the appeal shall be delivered in open Court either at the hearing of the appeal or at any subsequent time of which notice shall be given by the Registrar to the parties to the appeal.
- (4) The judgment, decision or order of the Court or of any of the Justices of Appeal present at the hearing of the appeal may be read in open Court by any Justice of Appeal, whether present at the hearing of that appeal or not or by the Registrar.

PART 8 – RESPONDENT’S NOTICE

45

Respondent’s notice

- (1) A respondent who, not having appealed from the judgment, decision or order of the court below seeks to contend on the appeal that the judgment, decision or order of the Court shall be varied, shall give notice to that effect specifying the grounds of that contention and precise form of the order which he or she proposes the Court to consider.
- (2) A respondent who seeks to contend on the appeal that the judgment, decision or order of the court below should 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 Supreme 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 Supreme Court on any grounds not relied upon by the Supreme Court or specified in such a notice.

- (4) A respondent's notice shall be filed within 21 days of the service of the notice of appeal to the respondent.
- (5) For the purposes of an appeal by a person under Part 7 of the Act, the Director of Public Prosecutions is deemed to be the respondent, who may file a respondent's notice under this Part.

46 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.

PART 9 – REVIEW OF OPINION UNDER ARTICLE 55

47 Review of opinion

- (1) The Court of Appeal shall have the power and jurisdiction to review the opinion of the Supreme Court pronounced under Article 55 of the Constitution.
- (2) The opinion of the Court of Appeal shall supersede the opinion of the Supreme Court.

PART 10 – MISCELLANEOUS

48 Amendments

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

49 Adjournments

- (1) If no Justices of Appeal are present at the time appointed for the session of the Court, the Registrar shall adjourn the session and determine the time of the next session.
- (2) The Court may adjourn a session of the Court or an appeal pending before it at its own discretion to a specific date or a date to be fixed.

50 Power to remit proceedings to Supreme Court or District Court

The Court shall have the power and jurisdiction in both civil and criminal appeals to:

- (a) remit the proceedings to the Supreme Court or District Court; or

(b) order a new trial in the Supreme Court or District Court.

51 Records of proceedings

(1) The Judge of the Supreme Court before whom a person is convicted or sentenced shall provide certified copies of the Judge's notes or transcripts of the proceedings to the Registrar for compiling the records of the proceedings for the purposes of the appeal.

(2) The rules of the Court may provide:

(a) for the making of the record of any proceedings in respect of which an appeal lies to the Court; and

(b) for the making and verification of a transcript of any such record and for supplying the transcript to the parties for the purposes of preparing the Court record.

52 Contempt of court

The Court shall have the same powers as the Supreme Court under section 14 of the Administration of Justice Act 2018 to try and punish any act of contempt of court committed by any person.

53 Protection of Justices of Appeal

(1) The President of the Court of Appeal, a Justice of Appeal or the Registrar of the Court 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 so or order the act complained of.

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

54 Costs

Subject to section 41, in determining an appeal, the Court shall have the jurisdiction and discretion to award costs to one or more of the parties to the appeal.

55 Fees

The Chief Justice may by notice in the Gazette prescribe such filing and hearing fees to be paid to the Court for the lodgement and hearing of an appeal.

PART 11 – TRANSITIONAL PROVISIONS

56 Appeals pending in the High Court of Australia

- (1) For avoidance of doubt, any appeals or applications for leave to appeal filed in the High Court of Australia on or before 13th March 2018 shall continue to be heard and determined by the High Court of Australia.
- (2) Where an appeal or application for leave to appeal was filed in the High Court of Australia after 13th March 2018, the High Court of Australia shall transfer the appeal to the Nauru Court of Appeal or the applicant or appellant may file an application for leave or appeal in the Court of Appeal under this Act.

57 Appeals which may filed in the Court of Appeal

- (1) The Court shall have exclusive power and jurisdiction to hear and determine an appeal:
 - (a) from any judgment, decision or order of the Supreme Court sitting under the Refugees Convention Act 2012 in its appellate jurisdiction delivered after 13th March 2018 on a question of law;
 - (b) from any judgment, decision or order of the Supreme Court delivered after 13th March 2018 limited to the causes or matters which were only appealable to the High Court of Australia under the Appeals Act 1972, Nauru (High Court Appeals) Act 1976 and Article 1 of the Agreement between the Government of Australia and the Government of Nauru relating to appeals to the High Court of Australia from the Supreme Court of Nauru; and
 - (c) from any judgment, decision or order of the Supreme Court to which appeals are allowed under this Act, from the commencement of this Act.
- (2) An appeal under subsections (1)(a) and (b) shall be filed within 21 days from the commencement of this Act.

58 Repeal

The Appeals Act 1972 is repealed.

PART 12 – RULES

59 Power to make rules

The Chief Justice may make rules of the Court for carrying this Act into effect and the practice and procedure of the Court.

SCHEDULE

Section 10

OATH

I,, swear that, as a Justice of Appeal of the Republic of Nauru, I will be faithful and bear true allegiance to the Republic of Nauru, and that I will obey, observe, uphold and maintain the Constitution and all other laws of the Republic of Nauru; and I solemnly and sincerely undertake that I will defend the rule of law and the rights of the people, and will do justice to all persons without fear, favour or prejudice, in accordance with the Constitution and the law. So help me, God!

AFFIRMATION

I..... do solemnly and sincerely and truly declare and affirm that as a Justice of Appeal of the Republic of Nauru, I will be faithful and bear true allegiance to the Republic of Nauru, and that I will obey, observe, uphold and maintain the Constitution and all other laws of the Republic of Nauru; and I solemnly and sincerely undertake that I will defend the rule of law and the rights of the people, and will do justice to all persons without fear, favour or prejudice, in accordance with the Constitution and the law.